

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
DECEMBER 16, 2009**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on December 16, 2009, beginning at 10:00 AM. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Jonathan S. Williams, Commissioner J.D. Lyon and Commissioner Zander Guy were present at the meeting.

MINUTES OF NOVEMBER 17, 2009, MEETING

Chairman Williams asked if there was a motion to waive the reading of the minutes from the November 17, 2009, meeting into the record. Commissioner Lyon made a motion to waive the reading of the November 17, 2009 minutes into the record. Seconded by Commissioner Guy. So Ordered. Chairman Williams asked if there was a for a motion to approve the minutes from the November 17, 2009, meeting. Commissioner Lyon made a motion to approve the minutes from the November 17, 2009, meeting. Seconded by Commissioner Guy. So Ordered.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-15, Chairman Williams asked Commissioner Lyon and Commissioner Guy if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Chairman Williams, Commissioner Lyon and Commissioner Guy stated that they found no conflicts of interest.

I. HEARING CASES – 52

Chairman Williams stated the meeting would begin with the contested cases.

Chief Counsel Fred A. Gregory stated that the first case to be heard was contested case #1, Christina Restaurant and Catering. Assistant Counsel Timothy W. Morse represented the Commission at the administrative hearing. Administrative Law Judge J. Randall May heard the case. Mr. Morse stated that he had spoken with the permittee earlier and she indicated that she would not attend today's meeting. Mr. Morse stated the violation was an underage sale of alcohol. Mr. Morse recommended that the Commission adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge.

Chairman Williams made a motion to adopt the Findings of Fact and Conclusions of Law and uphold the recommended decision of the Administrative Law Judge. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that contested case #2, Fantasias Disco, was the next case to be heard. Permittee, Oscar Romero, was present with Mrs. Rebecca Jaime to translate for him. Assistant Counsel Timothy W. Morse represented the Commission at the hearing. Administrative Law Judge Selina W. Brooks heard the case. Mr. Morse stated that there were three cases petitioned; however, the only matter before the Commission was the petition involving criminal conviction. The permittee pled guilty to failing to supervise the business. That conviction made the permittee ineligible to hold an ABC permit. Mr. Morse

stated that once he received information about the conviction he made a motion for Summary Judgment. Administrative Law Judge Brooks asked for a response twice from the permittee to no avail. The Administrative Law Judge granted the Commission's request for summary judgment. Mr. Morse stated that the other petitioned charges were never tried and is moot because Mr. Romero is no longer eligible to hold an ABC permit.

Mrs. Jaime stated that the attorney and the interpreter in the criminal matter worked together and failed to consult the permittee. She went on to state that in reading over the records from the permittee's previous attorney, the attorney plead guilty without the permittee's consent and the permittee would not have entered a guilty plea but would have entered a not guilty plea and proceeded to trial.

Chairman Williams asked Mrs. Jaime if there had been any action with regard to the court in Catawba County to set aside the conviction. She stated that she wasn't an attorney; however, she was working on the permittee's behalf. She vouched for character and said that if he were able to keep the permit, she would make sure that everything would be done by the letter of the law.

Mrs. Jamie asked the Commission for a continuance of this case.

Chairman Williams made a motion to deny the continuance. Seconded by Commissioner Guy. So Ordered. The Chairman asked for a motion to adopt the recommended Summary Judgment. Commissioner Guy made a motion to adopt the recommended Summary Judgment. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that contested case #3, Good Food Market, was the next case to be heard. Assistant Counsel Timothy W. Morse represented the Commission at the hearing. Administrative Law Judge, J. Randall May heard the case. The permittee was not present. Mr. Morse stated that the case was an "undercover sting", involving an underage person and the permittee did not testify at the hearing. Mr. Morse asked that the Commission adopt the recommended decision of the Administrative Law Judge.

Chairman Williams asked for a motion. Commissioner Guy made a motion to adopt the recommended decision of the Administrative Law Judge. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that contested case #4, B P Roxboro Road, was the next case to be heard. Mr. Mobashar Chaudry, the owner of the business, was present to speak on behalf of his establishment. Assistant Counsel K. Renee Cowick represented the Commission at the hearing. Administrative Law Judge Beecher R. Gray heard the case. Ms. Cowick filed a motion for sanctions on the grounds that the permittee failed to show up at the hearing. Judge Gray was able to confirm that the certified mail was signed for and returned back to the Office of Administrative Hearings, proving that someone did receive the Notice of Hearing. Since no one was present at the hearing, the judge granted the motion for sanctions for a ten-day suspension. Ms. Cowick asked that the Commission adopt the recommended decision of the Administrative Law Judge.

Mr. Chaudry stated that the criminal charge against the employee was dismissed. He went on to state that he did not receive the Notice of Hearing in time to appear at the Administrative hearing.

Mr. Chaudry stated that someone signed for the notice at his store, but he was out of town and when he got back, it was already two days after the scheduled hearing date.

Chairman Williams asked Ms. Cowick how long in advance are the Notice of Hearing sent out. She stated that the statute requires at least fifteen days notice before the hearing date. A scheduling order was sent out

at least two months prior, so there is some warning of the upcoming hearing. Chairman Williams stated that the burden was on Mr. Chaudry to be aware of the hearing date.

Chairman Williams asked for a motion. Commissioner Lyon made a motion to adopt the recommended decision. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that contested case #5, Carolina Sports Arena, was the next case to be heard. The permittee was not present. Assistant Counsel K. Renee Cowick represented the Commission at the hearing. Administrative Law Judge Donald W. Overby heard the case. She stated the permittee failed to appear at the Administrative hearing. The permittee is on a modified reporting plan, and has never submitted the required financial reports. At one time there was an attorney representing the permittee and that attorney suggested that a divorce caused some of the paperwork from the business to disappear. That attorney was removed from the case and on the day of the hearing, no one showed up on behalf of the permittee. The judge granted Ms. Cowick's motion for sanctions and the judge ordered that the ABC permits be revoked. Ms. Cowick asked the Commission to adopt the recommended decision of the Administrative Law Judge.

Commissioner Lyon made a motion to adopt the recommended decision of the Administrative Law Judge. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that last contested case to be heard was contested case #6, Broad Street Bar & Grill. Assistant Counsel LoRita K. Pinnix represented the Commission at hearing. Attorney Leo Daughtry represented the permittee at the hearing. Administrative Law Judge Augustus B. Elkins, II heard the case. Mr. Daughtry was not present at today's meeting, nor was the permittee. This case was continued from November's Commission meeting. Ms. Pinnix stated that she had filed exceptions as previously discussed at last month's meeting. She went on to state that she had spoken to Mr. Daughtry yesterday and after reviewing the exceptions he did not have any problems with the exceptions. She asked the Commission to adopt the exceptions and to find that there were not violations in regard to the gambling devices.

Chairman Williams asked for a motion. Commissioner Guy made a motion to adopt the recommended decision, including the exceptions. Commissioner Lyon asked Ms. Pinnix if Mr. Daughtry agreed to the exceptions. Ms. Pinnix confirmed that he had agreed. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that, Mr. Isa Abuzaiter, owner of hearing case # 46, Johns Curb Market, was present to speak on behalf of his establishment. Mr. Abuzaiter stated that the employee who committed the violation no longer works for him. Mr. Abuzaiter stated that he thought the employee was honest, but he stole money from him and failed to show up for court. He told the Commission that he couldn't afford to pay the \$900.00 penalty nor can he afford to close his business for nine days. His business was down 50%. He went on to state that the economy is bad and he was asking for mercy from the Commission.

Chairman Williams addressed the previous violations, Mr. Abuzaiter stated the poker gambling machines were not legal at the time, but now they are. Chairman Williams stated that it came down to the fact that Mr. Abuzaiter had hired and trained the employees. Chief Counsel Gregory stated the fine had already been reduced, so the permittee had already received a break. Chairman Williams stated that he could understand about the economy; however, the Commission is required to be evenhanded. He went on to state that there had already been a reduction in the penalty and as the permittee, he was responsible for his employee's conduct.

Chairman Williams made a motion to accept the signed offer in compromise. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Michael Boston, owner of hearing case #8, Boston's House of Jazz, was present to speak on behalf of his business.

Mr. Boston stated that he had only had his permits for about ten days when the violation took place. The business is very small with a capacity of about 49 people. He stated that he had spoken with the ALE Agent and had hired a bartender who had just moved into the area. The bartender was training other bartenders on how to mark through the empty bottles. Mr. Boston went on to state the mark through the tax stamp, was a very faint line. The other bottles on the floor in clear view and were about to be defaced and disposed of when the agent came into the business. In explaining what happened, the ALE Agent stated that he believed him and suggested that he and his staff take the ALE Education training. Mr. Boston stated that he had classes set up for January. He went on to state that he didn't know that he had to immediately deface the bottles and asked the Commission for a reduction in the penalty.

Chairman Williams asked for any questions, comments or motions from the Commission.

Commissioner Guy made a motion to reduce the penalty from \$1,400.00 to \$700.00, upon the stipulation that all the staff complete the scheduled ALE Education classes in January 2010. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. John Adkins, owner of hearing case #20, Tot Hill Farm Golf Club, was present to speak on behalf of his establishment.

Chairman Williams reviewed the violation before the Commission. Mr. Adkins stated that they are a small golf club located in Asheboro, North Carolina in business since 2000, and had never had a violation. The employee failed to check identification and they admitted to the violation. Since the violation, Mr. Adkins has attended the RASP Class with three of his employees. Every server behind the bar has now read the ABC Guides. The hours of operation for the business are 7:00 A.M. to 7:00 P.M. Only minimum amounts of alcohol are sold because they are a golf club. Mr. Adkins felt that this was an isolated incident and asked the Commission for some reduction.

Commissioner Lyon asked Mr. Adkins if he had any violations since this violation. Mr. Adkins stated that he had. Mr. Gregory stated that Mr. Adkins was almost at the ten year mark for holding his permits.

Commissioner Lyon made a motion to reduce the penalty from \$900.00 to \$600.00. Seconded by Commissioner Guy. So Ordered.

Chairman Williams made a motion to approve the remaining offers in compromises, with the exception to the previously ratified case. Seconded by Commissioner Lyon. So Ordered.

II. ABC STORE LOCATION –ALAMANCE MUNICIPAL ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Alamance County. On November 4, 2009, the Commission received a letter from Haywood G. Simpson, Chairman of the Alamance County ABC Board, requesting approval to locate an ABC Store in Graham, North Carolina. On November 13, 2009, ALE Agent Brian Doward began an investigation and

found that the proposed location of the new ABC Store is 942 East Harden Street, Graham, North Carolina.

The proposed location is a 4,550 square foot, single story brick front building with glass windows, vinyl siding and green canvas awning.

The current owners of the proposed location are Charles Whittemore, Marion Whittemore and Betsy Whittemore. The Alamance County ABC Board is in negotiations with the owners to purchase the proposed site for \$50.00 per square foot or \$225,000.00. The board plans to open the new store location in March 2010.

The investigation found there were no financial conflicts of interest between the property owners and the Alamance County ABC Board.

The nearest church is Riverside Baptist Church and is located 1 mile from the proposed location.

The nearest school is Graham Middle School and is located 1 mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on November 13, 2009, in compliance with the ABC Commission's 30-day requirement.

There was one objection to the proposed location. That objection came from Pastor Robert Stephenson, of Riverside Baptist Church. He stated that he was speaking for the whole church and that the church has been in the community for sixty-six years and that alcohol destroys lives. Chairman Williams asked if there was anyone from the Riverside Baptist Church at the meeting. No one was present.

Mr. Herring recommended that the Commission approve the new location.

Commissioner Guy made a motion to approve the location. Seconded by Commissioner Lyon. So Ordered.

III. OTHER BUSINESS

Administrator Michael Herring requested that the Commission approve a new Commission date. He suggested March 17, 2010. The Commission verified that the proposed date was fine. Chairman Williams made a motion to approve a March 17, 2010 Commission date. Seconded by Commissioner Guy. So Ordered.

With no further business, the meeting adjourned.

Jonathan S. Williams, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany Goodson, Legal Division