

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 5, 2003**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on September 5, 2003. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commissioner Mike Joyner. Commissioner Ricky Wright was not present.

MINUTES OF AUGUST 8, 2003 MEETING

The Chairman asked Commission Member Mike Joyner if he had any corrections or additions regarding the Commission minutes from the August 8, 2003, meeting. Commissioner Joyner had no corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Joyner. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioner Joyner if there were any known 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. Commissioner Joyner stated that he had no conflict of interest with regard to the cases. The Chairman stated she found no conflict of interest with regard to herself.

I. HEARING CASES – 80 listed.

Chief Deputy Counsel Fred A. Gregory stated that Scott Zimmer, attorney for contested case #1, Bayleaf Convenience and Deli, was present to speak on behalf of his client. LoRita K. Pinnix, attorney for the ABC Commission stated that the case was heard before Administrative Law Judge Sammie Chess, Jr. and that Judge Chess found that an underage sale did take place and that the ABC Commission had the authority to take appropriate action on the ABC permits held by the Respondent. Mr. Zimmer stated that his client had a clean record. The Chairman asked Ms. Pinnix if she had a recommendation. Ms. Pinnix recommended a 20-day suspension with the last 10 days suspended upon payment of \$500.00. Mr. Zimmer stated that his client had owned ten or eleven stores or a period of time, but at present he only has five or six stores. He stated that his client is willing to pay \$1,500.00 with no active suspension.

Commissioner Joyner made a motion to reduce the penalty to 20-day suspension, with the last 15 days suspended upon payment of \$500.00. Seconded by The Chairman. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Mr. White from Market Basket Galaxy, case #14, a carry over case from the August Commission Hearing, was present to speak on behalf of his establishment. Mr. White stated that the employee that had committed the violation was a new, part-time employee, who had only been with the company for 25 days and had worked less than 100 hours. This employee was trained as all the employees were. He said that he felt that they had a good record and was asking for leniency and mercy in dealing with the monetary fine or even hoped that the Commission would waive it. The Chairman asked him if he still operated the three other stores and if he had any violations at any of those stores. Mr. Scott stated that he did still operate them, but not to his knowledge was he aware of any violations at those three other stores. Mr. Gregory stated that there was another violation at one of his stores that had just come in. The Chairman stated that the Commission could not reduce the penalty since this particular store only had their permits for two years. Commissioner Joyner made a motion to ratify the offer. Seconded by the Chairman. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Mr. Doser was present to speak on behalf of case #13 Food King and case #14 Food King Supermarket, both of which were on the 1st offense case list. Mr. Doser stated that according to his records, the last violation that he had was back in 1989. Mr. Doser showed memos that he sent out each month to his stores to remind them of checking ID's. Mr. Doser stated that he didn't know what more he could do. Commissioner Joyner asked if the clerk made up a date to enter into the computer, and Mr. Doser confirmed that they did. Mr. Doser said that he felt that the \$500.00 fine was a bit excessive for his two small stores. The Chairman stated that she understood his frustrations and that a lot of permit holders shared it. The Chairman further stated that the \$500.00 fine recognizes the fact that permits have been held for 10 or more years at this location. Commissioner Joyner asked Mr. Doser what he felt would be an acceptable penalty. Mr. Doser stated \$250.00 for each of the two stores. The Chairman stated that the Commission could not mitigate the penalty under existing Commission policy. The Chairman made a motion to ratify the offer. Seconded by Commissioner Joyner. So Ordered.

Chief Deputy Counsel Fred Gregory stated that Steve Plymeer was present to speak on behalf of his business, case #11 Store Next Door. Mr. Plymeer asked the Commission if they would waive the penalty. He stated that he had evidence to show that they had training for employees. He further stated the employees stated that they knew the laws, but forgot what it was and the time. Mr. Plymeer stated that neither of the employees work there any longer. Commissioner Joyner asked if they had the type of equipment that would alert them of a Sunday sale. Mr. Plymeer said no, the equipment was old. The Chairman stated that the

Commission could not mitigate the fine under existing policy. The Chairman made a motion to ratify the offer. Seconded by Commission Joyner. So Ordered. Chief Deputy Counsel Fred Gregory stated that Mr. Burns was present to speak on behalf of case #74, Riverview Inn. Mr. Burns asked the Commission to reconsider the administration section of the violation. He further stated that they have not received a violation in 56 years, with the exception of one in 2002. He said that they have had ABC permits since 1946. He said because of the violation in 2002, they redoubled their training. They brought out ALE and they even trained workers who don't handle alcohol. He said that it was a math error, even though they have a calendar posted to help them, she still did the math in her head. He further stated that the employee has been punished. She had to serve 24-hour community service plus pay a fine. Mr. Burns asked again that the Commission either waive the fine or reduce the fine. The Chairman stated that she could not mitigate the penalty under existing Commission policy. Seconded by Commissioner Joyner. So Ordered.

Chief Deputy Counsel Fred Gregory told the Commission that an offer had been signed in case #37, Big Daddy Grocery. He stated that was the case where the permittee was charged with possession of drugs, but when they went to court either his son or nephew admitted to the drugs. The Chairman made a motion to ratify the offer. Seconded by Commissioner Joyner. So Ordered.

The Chairman recognized Ms. Octavia Raney and asked if she had anything to say to the Commission. Ms. Raney stated that she wanted to know why the audits that were supposed to be done weren't done on the businesses within the Urban Redevelopment Zone in Southeast Raleigh. Chief Deputy Counsel Fred Gregory stated that there were statutory procedural steps that needed to be followed and those steps weren't followed by the City. Then, the legislature added a new requirement to the existing ones that the cities must follow, and that changed everything. He stated that it would probably be about 7 months before the audits could be conducted again.

The following cases were continued:

- #65 - Sammys
- #66 – Square Tropical Restaurant
- #72 - Desperados

Chief Deputy Counsel Fred Gregory advised the Commission that the order in La Orquedia, which was case # 11 on the August Commission meeting, needed to be amended to change the effective dates because the permittee never received the order by certified mail. The Chairman made a motion to amend the August order to reflect the September Commission dates. Seconded by Commissioner Joyner. So Ordered.

REMAINING OFFERS IN COMPROMISE

The Chairman made a motion to ratify all offers in compromise except the ones that were either earlier ratified or continued. Seconded by Commissioner Joyner. So Ordered.

II. The following is a list of first offense violation cases, in which Orders were signed by the Chairman on September 5, 2003, pursuant to the Commission's authorizing resolution dated November 8, 2002:

Trade Mart 107 – 2001 South Madison Street, Whiteville, NC 28472
Servco – 3950 Ward Boulevard, Wilson, NC 27893
Sams Pit Stop 63 – 1707 South Madison Street, Whiteville, NC 28472
Maple Leaf Sports – 80 Finley Road, Marion, NC 28752
Handy Mart 130 – 5385 River Road, Washington, NC 27889
Circle K 8527 – 2108 Millbrook Road, Raleigh, NC 27604
Harris Teeter 24 – 3310 West Friendly Avenue, Greensboro, NC 27410
Dabney Pit Shop – 555 Dabney Drive, Henderson, NC 27536
Crossroads Exxon – 5800 West Market Street, Greensboro, NC 27409
Macs Food Store 2 – Hwy 211 and Hwy 220, Candor, NC 27229
Harris Teeter 228 – 4150 Clemmons Road, Clemmons, NC 27012
Zip Mart 924 – 600 Spence Avenue, Goldsboro, NC 27534
Food King – South Main Street, Mount Gilead, NC 27306
Food King Super Market – 102 West Chestnut Street, Troy, NC 27371
Tienda Romeros – 103 Church Street, Biscoe, NC 27209
S and R Quick Mart – 1609 North William Street, Goldsboro, NC 27530
Quick and Easy – Hwy 220, Candor, NC 27229
New Hope Grocery – 774 New Hope Road, Goldsboro, NC 27534
Midtown Convenience Store – 1901-B North William Street, Goldsboro, NC 27530
Hometown Convenience Store – 8830 East Franklin Street, Mount Pleasant, NC 28124
Hasty Mart 34 – 2401 North William Street, Goldsboro, NC 27530
G G's - 601 Gastonia Hwy, Bessemer City, NC 28016
C's - Hwy 109 and Hwy 73, Mount Gilead, NC 27306
Alco 10 – 332 East Caswell Street, Wadesboro, NC 28170
West Havelock Fuel Market – 521 Hwy 70 West, Havelock, NC 28532
West Campus B P – 2432 Erwin Road, Durham, NC 27705
Service Distributing Company – 116 West Main Street, Troy, NC 27705
Quik Chek 3 – 511 East Main Street – Biscoe, NC 27209

III. OTHER BUSINESS

J A Jones Global Services. Michael Herring, Commission Administrator, made a presentation to the Commission outlining recent discussions and negotiations regarding the contractor's development of new software and technologies that will bring about greater operating efficiencies in order placement and turnaround times. Jones' representatives also discussed their plans to update the technology in accordance with a specific timeline. Mr. Herring identified several terms in the existing contract that would be amended to reflect these technology updates, as well as technical changes to shipment schedules and payment schedules. Mr. Herring recommended that the Commission extend the contract pursuant to its statutory authority under G.S. 18B-204(a)(1), pursuant to the new proposed changes. No increase in the contractor's existing compensation is provided under the extension (other than that permitted on an annual basis by the standard contract term regarding the consumer price index and motor fuels index). Motion made by Acting Chair Fulton to extend the contract as proposed. Seconded by Mr. Joyner. So ordered. The presentation is attached and incorporated.

No other business, new or old, was heard. The Chairman made a motion to adjourn the meeting. Seconded by Commissioner Joyner. So ordered.

With no further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division