

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 7, 2012**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on March 7, 2012, 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 Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

MINUTES OF FEBRUARY 8, 2012

Chairman Guy asked for a motion to waive the reading of the minutes of the February 8, 2012 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the February 8, 2012 meeting. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the February 8, 2012 meeting. Commissioner Briggs made a motion to approve the minutes from the February 8, 2012 meeting. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Chairman Guy asked Commissioner Briggs 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. Commissioner Briggs stated that he had found no conflicts of interest. Chairman Guy stated that he had found no conflicts of interest.

I. HEARING CASES – 61

Chief Counsel Fred Gregory stated that Mr. Shawn Howie was present to speak on behalf of hearing case #48, Yellow Rose Café and Billiards.

Mr. Howie stated that the ABC Officer gave him a breathalyzer test and he blew a .02. The officers were under the impression that he was working.

Chairman Guy asked Mr. Howie if he was guilty. Mr. Howie stated that he guess he was.

Assistant Counsel LoRita Pinnix stated that according the officer's report, Mr. Howie had been sitting near the front door helping to admit people into the business and was seen carrying money. According to the Commission's definition, he was performing service after consuming alcoholic beverages. Ms. Pinnix stated that this was the first violation of this kind for the business. She suggested a reduction in the penalty and that the permittee be ordered to attend a RASP class.

After conferring with Commissioner Briggs, Chairman Guy made a motion to reduce the penalty from \$700.00 to \$500.00 upon the stipulation that the permittee attend an RASP class. Motion passed.

Chief Counsel Gregory stated that Mrs. Linda Montoya, Corporate Secretary and Mr. Rafael Fernandez, Manager and owner of hearing case #43, Plaza Azteca Mexican Restaurant, were present to speak on behalf of the business.

Mrs. Montoya stated that they were not contesting the violations but the employee attended the education training. When the violation occurred, they were not allowed to sell alcohol for four days. She stated that they were prepared to pay the penalty, but requested to have the active suspension waived.

Assistant Counsel Pinnix stated that the business was on temporary permits when the violation occurred. Once the Commission received notice of the violation, the permits were immediately suspended until the permittee attended an education class. She further stated that after review of their records, the permits were suspended for three days and the permittee has attended the class.

Chairman Guy asked Ms. Pinnix if she was okay with waiving the active suspension. Ms. Pinnix stated that she was fine with that, as long as the permittee paid the penalty.

After some discussion with Chairman Guy, Commissioner Briggs made a motion to waive the active suspension and the permittee pay the \$3,500.00 penalty. Motion passed.

Chief Counsel Gregory stated that Mr. Jonathan Bridgers, attorney for hearing case #2, A J McMurphys, was present to speak on behalf of the business.

Mr. Bridgers stated that they were not contesting the violation and that all the employees have attended an education class with Eleanor Johnston. Mr. Anderson, the permittee has also taken an education class with the Pitt County ABC Board. Mr. Bridgers asked for a reduction in the penalty.

Assistant Counsel Pinnix stated this case was Assistant Counsel Renee Cowick's and that she had left a note stating that she did not have a problem issuing a written warning for the possessed nontaxpaid alcoholic beverages violation and reducing the penalty for the underage sale violation.

Chairman Guy made a motion to reduce the penalty for the underage violation to \$900.00 and to issue a written warning for possessed nontaxpaid beverage violation. Motion Passed.

Chairman Guy took a moment to introduce Mr. Mike Myrick, from Goldsboro North Carolina; Ms. Sarah Brewer; Mrs. Betty Ham; Mr. Joel Keith and Attorney Joe Wall.

Chief Counsel Gregory stated that Mr. Glenn Newberry-Smith, owner of hearing case # 11, Goat and Compass, was present to speak on behalf of his business.

Mr. Newberry-Smith stated he was not contesting the violations and that the next day his employees attended a RASP class given by Eleanor Johnston. The employee who committed the violation was fired. He asked the Commission for a reduction in the penalty.

Assistant Counsel Pinnix stated that this case was Assistant Counsel Cowick's. She left a note stating that she did not have a problem reducing the penalty if the permittee had attended a RASP class.

Chairman Guy made a motion to reduce the penalty by 25%. Mr. Newberry-Smith asked if it was possible to have the days reduced instead of the penalty.

Chairman Guy made a motion to reduce the suspension time from 14 days to 9 days. Motion passed.

II. OTHER BUSINESS – ABC STORE LOCATION – ORANGE COUNTY

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Orange County. On February 3, 2012, the Commission received a letter from Mr. Tony DuBois, General Manager of the Orange County ABC Board, requesting approval to relocate a store in Chapel Hill, North Carolina to a neighboring location. The property would be located at Lot 2 Perkins Drive Extension, Chapel Hill North Carolina 27516. On February 14, 2012, ALE Agent S. Williams began an investigation and found that the current site will be approximately 4,000 square feet.

The current property owner is Harris Teeter Properties LLC. Harris Teeter Properties LLC has agreed to sale the property to the Orange County ABC Board for \$381,934.00 upon approval from the North Carolina ABC Commission.

The new location will save the Orange County ABC Board \$100,000.00 in rent per year.

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

The nearest church is Calvary Chapel and is located .3 miles from the proposed location.

The nearest school is East Chapel Hill High School and is located 1.6 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on February 3, 2012, in compliance with the ABC Commission's 30-day requirement.

The investigation found no objections to the location and the Commission had not received any objections as well.

Mr. Herring stated that Mr. Dubois, general manager, was present to answer any questions the Commission may have.

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

Commissioner Briggs made a motion to approve the new location. Motion passed.

III. OTHER BUSINESS – ABC STORE LOCATION – TOWN OF WILKESBORO

Administrator Michael Herring addressed the Commission concerning a proposed location of a new ABC Store in the Town of Wilkesboro. On January 30, 2012, the Commission received a letter from Mr. Alton Absher, General Manager of the Town of Wilkesboro, requesting approval to open a second ABC Store. The proposed location is at 4061 West Hwy 421, Wilkesboro NC 28697. On January 31, 2012, ALE Agent Bobby Crumpler began an investigation and found that the current site is zoned B-2, general business and the sale of spirituous liquor is allowed and is 3,443 square feet.

The current property owner is Wisco Diversified.

The property has not been leased yet. The Town of Wilkesboro is waiting for Commission approval.

The investigation found there are no financial conflicts of interest between the property owners and the Town of Wilkesboro.

The nearest church is Pleasant Grove Baptist Church and is located .2 miles from the proposed location.

The nearest school is West Wilkes Middle School and is located 1.6 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on January 27, 2012, in compliance with the ABC Commission's 30-day requirement.

The investigation did find that there were objections to the proposed ABC Store location. The Commission received petitions from five different churches objecting to the location.

Chairman Guy asked if there was anyone present from the churches or anyone present objecting to the proposed location. There was no one present.

Mr. Herring stated that the Town of Wilkesboro has heard from over 1,000 citizens in the area and 814 citizens were against the proposed location and 215 citizens were for the proposed location. The 814 citizens were objecting on moral issues. He further stated that in speaking with a representative from one of the churches, they were not able to demonstrate that there is a health/safety/welfare issue.

Mr. Herring stated that Mr. Robert Urness, Finance Officer, with the Town of Wilkesboro, was present to speak to the Commission. Mr. Urness stated that the majority of the comments that they have received are morally based. The town residents are in favor of the proposed location.

Chairman Guy asked again for the record if there was anyone present in objection or wanted to speak in regard to the ABC Store location. No one was present.

Mr. Herring stated that the following churches sent in the objection to the proposed location: Pleasant Grove Baptist Church, William Church of Fall Creek Land and Timber, Harmony Baptist Church, Hinshaw Street Baptist Church and Zion Hill Baptist Church.

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

Chairman Guy asked again if there was anyone present from the churches or anyone present objecting to the proposed location. There was no one present.

Commissioner Briggs made a motion to approve the ABC Store location. Motion passed.

IV. OTHER BUSINESS – RESOLUTION FOR CONSOLIDATION OF CATAWBA COUNTY AND THE TOWN OF TAYLORSVILLE ABC BOARD SYSTEMS – G.S. §18B-703(a)(2)

Administrator Michael Herring asked Ms. Laurie Lee, Director of ABC Board Pricing, to address the Commission regarding the consolidation of the Catawba County and Town of Taylorsville ABC systems.

Ms. Lee read N.C. G.S. §18B-703, which deals with local ABC operations. Taylorsville is in Alexander County which is close to Catawba County and the distances between the home offices of the Catawba County ABC Board and Taylorsville is about 30-40 minutes. Catawba County did run the Taylorsville ABC Store for a number of months prior to this merger agreement. Taylorsville's general manager was terminated abruptly and Catawba County's general manager offered to come in and help run the board until they could work out something else. This is when the merger discussion came up. The benefits to this merger are the following: The immediate infusion of funds into the town's general fund. The Catawba County ABC Board purchased the inventory from Taylorsville, which was about \$70,000.00.

Taylorsville received a check for \$51,000.00 the amount remaining after bills were paid. The long term benefits are that the merger will provide a higher level of oversight for the single store in Taylorsville. The overhead will be split, since they would be sharing the cost. The Catawba County ABC Board is only asking for one half of one percent of gross sales.

Ms. Lee stated that she felt that this was a very fair agreement and benefits both sides and recommends that the Commission approve the merger.

Commissioner Briggs made a motion to approve the merger agreement. Motion passed.

V. OTHER BUSINESS – ADJUSTMENT DECREASE OF BAILMENT & BAILMENT/SURCHARGE – G.S. §18B-208(b).

Administrator Michael Herring stated that in 1982, the General Assembly removed the ABC Commission from the General Fund and created 2 special funds to support its operations. The fund that supports the ABC Commission's budget is called bailment surcharge and the fund that supports the ABC Warehouse is call Bailment.

The fees that support the two funds are included with other taxes and levies in the mark-up formula of spirituous liquor. The local ABC Boards collect the taxes and the per case bailment fees and remit the monies to the state. General Statute 18B-208 along with 18B-804 gives the Commission the authority to determine the level at which the bailment surcharge and bailment fees are set.

The bailment surcharge fee was last increased in 2006 to the current fee of \$.85 per case. Due to reductions in Commission staff and overall decreased spending related to operational efficiencies along with increased case shipments, Mr. Herring recommended that the bailment surcharge fee can be reduced by \$.05 per case. This reduction will allow local ABC boards in North Carolina to retain approximately \$240,000 that otherwise would have come to the Commission.

Additionally, the Bailment fee, was increased one year ago to \$1.65 to fund expansion of warehouse operations. With increased case shipments ending last year along with a strong start to this year's case shipments. Mr. Herring stated that he felt comfortable recommending a \$.05 reduction in this fee, which would allow the local ABC boards to retain an additional \$240,000.

By reducing these two levies on the pricing formula for Spirituous Liquor, distillers benefit with increased margins, the local boards profit by retaining \$480,000 that would have otherwise been sent to the Commission, and the public gains if the distiller passes on any of their savings.

Mr. Herring recommend that the Commission reduce the bailment/surcharge fee by \$.05 from \$.85 to \$.80, effective August 1, 2012 and reduce the bailment fee by \$.05 from \$1.65 to \$1.60, effective August 1, 2012.

Chairman Guy asked if there was anyone present who wished to speak on the issue. No one was present.

Chairman Guy made a motion to approve the adjustment. Motion passed.

Chairman Guy asked for a motion to approve the remaining offers in compromise, with the exception of previously ratified cases. Motion passed.

With no further business, the meeting adjourned.

A.D. "Zander" GUY, JR., Commissioner
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

Tiffany Goodson, Legal Division