

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JULY 17, 2007**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on July 17, 2007, beginning at 10:20 a.m. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox, Commissioner Mike Joyner and Commissioner John Lyon were present at the meeting.

MINUTES OF JUNE 12, 2007, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the June 12, 2007, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the June 12, 2007, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Lyon and 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 found no conflicts of interest. Commissioner Lyon recused himself from First Offense Case #10, Kimbers. Chairman Fox stated that he had no conflicts.

I. HEARING CASES – 79 Listed

Chief Counsel Fred A. Gregory stated that there was a contested case #1, La Fiesta Mexicana, and the respondent was not present. Assistant Counsel Renee Cowick represented the Commission at the administrative hearing on April 11, 2007, in Lillington, North Carolina.

Chairman Fox made a motion to adopt the Findings of Fact and Conclusions of Law of Administrative Law Judge Beecher R. Gray. Seconded by Commissioner Joyner. So Ordered.

Mr. Abdallah Jallal, owner of hearing case #6, Sandys Convenient 2, was present to speak on behalf of his business. Mr. Jallal stated this was his second appearance at the Commission, and he promised he would not appear before the Commission again. Mr. Jallal stated his brother, who was helping him, did not know the law. Mr. Jallal stated they had been to classes and his brother had checked I.D.s and received certificates from ABC and ALE for not selling to minors.

Assistant Counsel Renee Cowick stated that Mr. Jallal informed her of the second violation even before the violation report was received from ALE.

Chairman Fox made a motion to reduce the penalty to \$1,500.00. Seconded by Commissioner Joyner. So Ordered.

Mr. Glenn Lassiter, attorney for hearing case #41, Wicker Mart 3300, was present to speak on behalf of his client. Mr. Lassiter stated this violation was a sale of alcoholic beverages to an underage person. The

underage buyer drove away from the business after the sale and there was an accident that resulted in the death of one of his passengers. Mr. Lassiter stated there was a civil case in this matter and the Pantry paid a substantial amount of money to the family of the deceased. Also, the driver of the vehicle was convicted of second degree murder.

Mr. Lassiter stated the alleged violation occurred on June 22, 2003, and the original Offer in Compromise was a \$1,000.00 fine or a ten day suspension. Mr. Lassiter stated he understood the Commission decided to increase penalties in cases where there were injuries or fatalities. Mr. Lassiter said the minimum penalty that Ms. Pinnix would allow on an Offer in Compromise was \$3,000.00. Mr. Lassiter asked the Commission to honor the original Offer in Compromise which was \$1,000.00 and the policy which was in effect at the time of the alleged violation.

Chairman Fox asked Mr. Lassiter when was the original Offer. Mr. Lassiter replied it would have been for the March, 2004, meeting and the Notice was dated December 19, 2003.

Assistant Counsel LoRita Pinnix stated the accident happened about five minutes after the young people left the store.

Mr. Lassiter stated the clerk admitted selling the beer and that she did not check the driver's identification. Mr. Lassiter stated the driver was almost 21 years old, but she had checked his identification two or three days prior. The driver did have a fake driver's license.

Commissioner Joyner did not make a motion to change the decision but to accept the Offer in Compromise before the Commission. Seconded by Commissioner Lyon. So Ordered.

Mr. Taylor Arnold, attorney for hearing case #24, La Nueva Frontera, was present to speak on behalf of his client. Mr. Arnold represented Fidencia Portillo, the employee who sold an alcoholic beverage to an underage person. Mr. Arnold stated Mrs. Portillo managed the store while her husband was in Mexico and she was appearing on behalf of her husband, Roberto Garcia Angeles, the owner. Mr. Arnold stated Mrs. Portillo was one of three clerks and when the underage person came in there were ten or more people in the store. Mrs. Portillo asked to see the I.D. of the underage person, however, she glanced at it and rung up the sale. Mrs. Portillo attempted to call the girl back into the store but she did not come back in. Mr. Arnold said Mrs. Portillo had attended an ALE Bars class and made restitution in the county court. Mr. Arnold stated this was the second violation for this store but the first violation was selling to an intoxicated person.

Mr. Arnold asked the Commission for some leniency in the fine. Chairman Fox stated his concern over the two violations a little over a year.

Chairman Fox made a motion to reduce the penalty to \$1,500.00 upon the stipulation that Mrs. Portillo and the other two employees attend a RASP class within 60 days. Seconded by Commissioner Joyner. So Ordered.

Mr. Joseph Searles, general manager of hearing case #79, Ledo Pizza and Pasta, was present to speak on behalf of the business. Mr. Searles stated this was their first violation and took it very seriously the privilege to sell alcohol in the State of North Carolina. Mr. Searles stated the employee, who served the alcohol to the underage person, was fired that night. Mr. Searles said he and all his employees who worked with alcohol took the Bars course. Mr. Searles stated he took the ABC class and all the employees would be taking that class.

Chairman Fox made a motion to reduce the penalty to \$600.00. Seconded by Commissioner Lyon. So Ordered.

Mr. Niranjan Kansara, owner of hearing case #62, B's Mini Mart, was present to speak on behalf of his business. Mr. Kansara stated he was there about the violation to sell alcohol to an underage person and this was a second violation. Mr. Kansara stated that the first violation involved fortified wine being delivered by the vendor when the business did not hold a fortified wine permit. Mr. Kansara requested that the Commission void the charges because the first violation was because the vendor delivered a product not ordered by him.

Chairman Fox stated to Mr. Kansara that he was not being penalized with the fortified wine issue, and he was struggling with the issue of Mr. Kansara selling to a 20 year old and being in business less than a year.

Chairman Fox made a motion to reduce the penalty to \$800.00 upon the stipulation that all the employees attend a RASP class within 60 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Samah Ziad Al-Shara, manager of hearing case #77, Eddins Grocery, was present to speak on behalf of the business. Mr. Al-Shara stated that they received a violation in January for selling to an underage person and this was their first violation. Mr. Al-Shara said the employee did I.D. the patron but calculated the date wrong. Mr. Al-Shara felt she made a honest mistake. Mr. Al-Shara stated they took classes with Mr. Lasater. Mr. Al-Shara felt if you made a honest mistake that you shouldn't be penalized.

Commissioner Joyner asked Mr. Al-Shara how did his employees determine a date on the I.D. Mr. Al-Shara said they had calendars, stickers and it is a community store with regular customers.

Chairman Fox asked Mr. Al-Shara how old the patron was. Mr. Al-Shara replied he thought he was almost 21. Commissioner Lyon read in the violation report that the patron was 18 years old. Mr. Al-Shara stated he did not see the patron or the I.D.

Chairman Fox made a motion to reduce the penalty to \$800.00 upon the stipulation that all the employees attend a RASP class within 60 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Todd Parker, owner and manager of hearing case #69, Bada Bing, was present to speak on behalf of his business. Mr. Parker stated he did not deny any of the charges. Mr. Parker stated the manager was guilty and he is responsible because he is the owner of the club. Mr. Parker asked the Commission for some leniency.

Commissioner Joyner asked for a brief summary of what happened. Mr. Parker stated that he talked to his employee who said he brought alcohol in the club around 2:00 p.m. The employee poured nontaxpaid alcohol into the bottles which had the tax stamp.

Mr. Parker stated the problem closing his club for seven days is that he has about 50 girls who work for him. The employees will go somewhere else and the customers will go somewhere else in thinking the business has closed.

Chairman Fox stated that the club had been open since March, 2004 with about eight offenses and two pending.

Commissioner Joyner made a motion to reduce the penalty to \$2,000.00 with no active suspension for this and the two pending violations upon the stipulation that all employees attend a RASP class within 60 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Fred Gregory stated that hearing case #55, City Beverage Company, was settled. Mr. Gregory stated it was the contribution from City Beverage, the Budweiser wholesaler in Elizabeth City on the Hooters extortion case.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of contested case #1, La Fiesta Mexicana, hearing case #6, Sandys Convenient 2, hearing case #41, Wicker Mart 3300, hearing case #24, La Nueva Frontera, hearing case #79, Ledo Pizza and Pasta, hearing case #62, B's Mini Mart, hearing case #77, Eddins Grocery, hearing case #69, Bada Bing, which had already been ratified. Seconded by Commissioner Lyon. So Ordered.

The following were add-on Hearing cases:

#78 – Cape Fear Wine and Beer

#79 – Ledo Pizza and Pasta

II. FIRST OFFENSE CASES – 33 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on July 17, 2007, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Balsam Mountain Inn – 68 Seven Springs Drive, Balsam, NC 28707
2. Bellacino's Pizza & Grinders – 20129 North Main Street – F-G, Cornelius, NC 28031
3. Carlie C's I G A 850 – 1790 Owen Drive, Fayetteville, NC 28304
4. Flipperz Family Bar & Grill – 311 Mangrove Drive – Unit 2, Emerald Isle, NC 28594
5. Hong Kong Super Buffet – 307 Foushee Street, Durham, NC 27704
6. Moe's Southwest Grill – 4211 West Wendover Avenue, Greensboro, NC 27407
7. Sandhu Discount Gas – 25 JR Road, Selma, NC 27576
8. Time Saver – 1337 Norwood Street SW, Lenoir, NC 28645
9. Whole Foods Market – 3540 Wade Avenue, Raleigh, NC 27607
10. Kimbers – 230 West Main Street, Gibsonville, NC 27249
11. Depina Community Store – 2601-B North Tryon Street, Charlotte, NC 28206
12. Food Lion 197 – 1129 Weaver Dairy Road, Chapel Hill, NC 27514
13. Food Lion 1459 – 1508 Broad Street, Fuquay Varina, NC 27526
14. First Express – 2016 North Center Street, Hickory, NC 28601
15. Food World – 401 East Lakewood Avenue, Durham, NC 27701
16. Kangaroo Express 3633 – 2105 Ten Ten Road, Apex, NC 27539
17. Kangaroo Express 3082 – 102 Bickett Boulevard, Louisburg, NC 27549
18. Phillip 66 Express Store – 657 Railroad Avenue, Rutherfordton NC 28139
19. Rancho Grande – 911 East Main Street – Clayton, NC 27520
20. Andrews Solo – 2760 Stewart Road, Andrews, NC 28901
21. Southern Lights Bistro – 105 North Smyres Place, Greensboro, NC 27403
22. Williamson Mini Mart and Grill – 9020 Cornwall Road, Oxford, NC 27565
23. 3 Points Groceries and Grill 2 – 15645 Hwy 86 South, Prospect Hill, NC 27314
24. Circle C – 4780 Statesville Road, North Wilkesboro, NC 28659
25. Fuel Land Johnston Road, Inc. – 10222 Johnston Road, Charlotte, NC 28210
26. Grandover Resort and Conference Center – One Thousand Club Road, Greensboro, NC 27407
27. Haddocks BBQ – 10795 County Home Road – Ayden, NC 28513
28. Han Dee Hugos 74 – 11325 US Hwy 70 West – Clayton, NC 27520
29. Ingles Markets 67 – 710 North Broad Street – Brevard, NC 28712
30. Meadow Greens Golf Shop – 436 East Stadium Drive – Eden, NC 27288

31. Sharkey's Grill – 203 South Anthony Street – Burlington, NC 27215
32. Wilco 1866 – 101 West Washington Street – La Grange, NC 28551-1721
33. A J's Grill and Subs – 503 Bragg Street – Raleigh, NC 27601

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases. Seconded by Commissioner Joyner. So Ordered.

III. OTHER BUSINESS -

A. Red Oak Brewery

Chief Counsel Fred Gregory introduced Bill Sherrill and Mark Leggett from Red Oak Brewery, a microbrewery in Greensboro, North Carolina. Mr. Sherrill discussed the need to raise the limit that breweries can self distribute. Mr. Sherrill stated they currently distribute 25,000 barrels a year and would like to raise the limit to 60,000 barrels a year. Mr. Sherrill stated that at one time there were over 5,000 distributors and now there are about 1,700. Mr. Sherrill said if they could grow that jobs would be created. Mr. Sherrill stated they were in the process of completing a new brewery.

Commissioner Lyon asked Mr. Sherrill how many gallons or barrels did they brew per year. Mr. Sherrill stated they are currently brewing about 7,000. Mr. Sherrill said they started as a brew pub and they have about 450 draft accounts between Raleigh and Charlotte. Mr. Sherrill stated that two areas of the beer market which were growing was imports, at 8-10% a year and micros were growing at about 2-3% a year. Mr. Sherrill stated the problem with the growth in micros was the distribution system.

Commissioner Lyon asked about small guy versus the large distributor. Mr. Sherrill stated Budweiser does 110 million barrels a year. Mr. Sherrill said they want only the right to compete.

Mr. Mark Leggett, representative for Mr. Bill Sherrill at the General Assembly, spoke about the legislation introduced this year by Representative Harrison from Greensboro to raise the limit. Mr. Leggett said they were told that the Commission was to oppose the legislation but didn't know if that was true. Mr. Leggett stated that all Mr. Sherrill wants is an opportunity to grow.

Commissioner Joyner asked Chris Valauri, President of the North Carolina Beer And Wine, to speak to the Commission. Mr. Valauri gave a brief synopsis of the history of the micro-breweries. Mr. Valuri stated that this legislation was withdrawn from consideration this session.

B. Miller Brewing Company/Walnut Creek Amphitheater

Mr. Gregory stated the Miller Brewing Company and Walnut Creek Amphitheater were asking for an exemption to G.S. 18B-1116. Mr. Gregory stated that Mr. Bynum said this was an extension of the same contract they have had since Walnut Creek opened. Mr. Gregory stated he thought there were five primary concerts the location sponsored which hold exclusive beer advertising rights excluding retail places where all Point of Sale advertising such as banners of what the retailers want to display.

Chairman Fox made a motion to approve or allow him to sign to approve the contract. Seconded by Commissioner Lyon. So Ordered.

C. Sunset Beach ABC Board

Administrator Michael Herring addressed the Commission of a carryover and reconsideration from the June Commission Meeting. Mr. Herring stated it concerned a request from the Sunset Beach ABC Board to

relocate their ABC Store because of bridge construction. Mr. Herring stated that Commissioner Joyner wanted to know more about PNZ Development, LLC. Mr. Herring stated he spoke with the General Manager at Sunset Beach ABC Board and she said she did not know this person other than the business dealing of purchasing the property. The investigation found no conflict of interest. The other issue was the distance from store to store. Mr. Herring stated that the bill was pending at the legislature to allow the board to relocate within seven miles of an existing ABC Store that had been ratified.

Mr. Herring recommended the Commission approve the relocation of the store.

Commissioner Lyon made a motion to approve the relocation of the store. Seconded by Commissioner Joyner. So Ordered.

D. Warehouse Expansion Proposal

Mr. Herring addressed the Commission concerning expanding the warehouse. Mr. Herring stated the Commission received a proposal from Pease Architects-Engineers in Charlotte, North Carolina. At the time of that meeting, a proposal was requested for operating a second warehouse in North Carolina and LB&B was asked to present a proposal.

Mr. Herring stated that in the LB&B proposal the projected price for the property and building would be around four million dollars.

Commissioner Lyon stated he was not satisfied with the Pease study or the LB&B second warehouse analysis and price proposal. Commissioner Lyon stated the Commission needed to look at an independent expert for the proposal.

Mr. Ben Thompson, attorney for LB&B Associates, stated that there were advantages of a second facility and having the facility here. If the Commission decided on a second facility the best location would be in the western part of the state. Mr. Thompson stated the downside of the proposal would be the operation of two warehouse facilities.

Mr. Herring addressed two issues concerning the warehouse expansion. Mr. Herring stated the local boards would fund the warehouse expansion and increasing the bailment/surcharge too much will hurt a lot of the small boards which are struggling to pay the bailment/surcharge now. Mr. Herring stated there would be an additional burden to suppliers because they would be sending trucks into two warehouses and managing two different inventories. Mr. Herring stated the cost should be done in an efficient manner so as to serve the growing demand.

Mr. Bill Hester with Southern Wine & Spirits, stated that if there were two warehouses it would double their inventory costs. Mr. Hester stated that the price of liquor in North Carolina would raise up to at least 3% or more.

Commissioner Joyner asked about the suppliers palletizing liquor in an inefficient manner. Mr. Herring stated that product coming into the warehouse doesn't come in on the pallets stacked correctly. Mr. Herring stated that correspondence was sent to the companies letting them know to get their pallets under control. It was requested that the pallets be stacked five cases high, shrink wrapped, so as to be able to stack three pallets high in the warehouse in order to maximize the space in the warehouse. Mr. Herring stated more space has been created since the correspondence was sent out to the companies.

Mr. Jon Carr, attorney with the Jordan, Price Law Firm and legislative counsel for the North Carolina ABC Boards Association, commended the Commission and the Chairman for the leadership and vision in looking

at this issue. Mr. Carr stated they support what is in the Governor's budget and by extension what is in the House budget.

Chairman Fox, Commissioner Lyon and Commissioner Joyner discussed finding a facilitator for an independent study on the warehouse expansion. Mr. Herring stated he would keep the Commission members informed of the progress.

With no further business, the meeting adjourned.

Douglas A. Fox, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Dottie L. Taylor, Legal Division