

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 15, 2010**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on April 15, 2010, 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, Commissioners J.D. Lyon and Zander Guy were present at the meeting.

MINUTES OF MARCH 17, 2010, MEETING

Chairman Williams asked if there was a motion to waive the reading of the minutes from the March 17, 2010, meeting into the record. Commissioner Lyon made a motion to waive the reading of the minutes from the March 17, 2010 meeting. Seconded by Commissioner Guy. So Ordered. Chairman Williams asked if there was a motion to approve the minutes from the March 17, 2010 meeting. Commissioner Lyon made a motion to approve the minutes from the March 17, 2010 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 – 50

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

Assistant Counsel Renee Cowick stated that the first case to be heard was #1, El Paraiso II. Ms. Cowick asked if there was anyone present to speak on behalf of the business. There was no one present. LoRita K. Pinnix, Assistant Counsel, represented the Commission at the administrative hearing. Administrative Law Judge J. Randall May was assigned to the case and filed a Motion for Sanctions because the permittee failed to appear at the administrative hearing. Judge May recommended a ten-day suspension and a \$1,000.00 penalty.

Ms. Pinnix stated that she did receive a message from the permittee regarding the recommended decision and she left a message for the permittee. She recommended that the Commission adopt the recommended decision of the administrative law judge.

Chairman Williams asked if there was a motion to accept the recommended decision of the administrative law judge. Commissioner Lyon made a motion to accept the recommended decision. Seconded by Commissioner Guy. So Ordered.

Ms. Cowick stated that the next contested case to be heard was #2, Young's Market, an application case. Ms. Cowick stated Attorney William Raney was present to speak on behalf of the business. LoRita K.

Pinnix, Assistant Counsel, represented the Commission at the administrative hearing. Mr. Raney stated no exceptions were filed from either side. Administrative Law Judge Joe L. Webster was assigned to the case and issued a recommended decision to issue ABC permits to the establishment. Ms. Pinnix asked the Commission to adopt the recommended decision of the administrative law judge.

Chairman Williams asked if there was a motion to accept the recommended decision of the administrative law judge. Commissioner Lyon made a motion to accept the recommended decision. Seconded by Commissioner Guy. So Ordered.

Ms. Cowick stated that case #3, Rumba D Cache would be held over to the May agenda.

Ms. Cowick stated that case #4, Asian Odyssey, was the next case to be heard. Ms. Cowick represented the Commission at the hearing. She stated notices of the administrative hearing were sent and no one appeared at the hearing. On her motion, the judge entered sanctions to revoke the Mixed Beverage Restaurant ABC permit. Ms. Cowick asked the Commission members to uphold the judge's decision. The permittee's spouse was present to speak on behalf of the business. The permittee stated he wanted to convert his restaurant into a private club. Ms. Cowick stated she would have no objection to the permit being cancelled to allow the owner to apply as a private club; however, there were other pending violations and she did not know whether it would change anything. Ms. Cowick also stated the Commissioners could cancel the mixed beverage permit and allow the business to keep its malt beverage and wine permits. If the mixed beverage permit was revoked, the malt beverage and wine permits would also be revoked and the business would not be allowed to hold ABC permits for three years.

Chairman Williams made a motion to table this matter until the end of the meeting to give the permittee time to cancel its Mixed Beverage Restaurant permit and apply for permits as a private club.

Ms. Cowick stated that case #5, Double D Sports Bar and Grill, was the next case to be heard. No one was present to speak on behalf of the business. Administrative Law Judge Beecher Gray was assigned to the case. There were two violations, one resulting in a fatality. Ms. Cowick filed exceptions on behalf of the Commission. Ms. Cowick gave a brief summary of events on the night in question. Ms. Cowick asked that the Commission amend the judge's decision of a 15-day suspension to a 60-day suspension and a \$500.00 penalty.

After conferring with the other Commissioners, Chairman Williams made a motion to accept the recommendation of Ms. Cowick to adopt the exceptions. All Commission members were in agreement. So Ordered.

Ms. Cowick stated that concluded the contested cases.

The next case to be heard was #31, After 5 Lounge and Grill, formerly known as Rockland Bar and Grill. Mr. William Potter, attorney, was present to represent the permittee. There were a total of six pending violations alleged to have taken place at the location. After a summary of the events that occurred, Mr. Potter requested an increase in monetary penalty with no active suspension time, upon the stipulation that the permittee and employees attend a training class through the Commission.

Chairman Williams asked for a motion. After conferring with the Commissioners, Commissioner Lyon made a motion to increase the penalty from \$3,500.00 to \$4,200.00 with no active suspension, on the condition that the permittee and employees attend the class. Seconded by Commissioner Guy. So Ordered.

Ms. Cowick stated that Attorney Dave Blackwell was present to speak on behalf of the next case, #8, Club Cabaret. This case involved nine violations on three separate dates regarding being open to the public and a variety of controlled substance statutes occurring on the premises. Ms. Pinnix stated this was part of a campaign conducted through Alcohol Law Enforcement. Agents received complaints about controlled substance violations and set up a sting operation where agents went into the establishment, at which times sales were made. Commissioner Guy asked Ms. Pinnix if she had a recommendation; she responded she did not. Mr. Blackwell gave a summary, through the owner, Mr. Reeves, of what occurred during the times mentioned. Chairman Williams asked how many employees he had at the establishment. Mr. Reeves stated there were 12, five of which were security. Ms. Pinnix stated the violations occurred in January and the owner was not advised until November. Both Commissioners stated they would not have a problem in eliminating the active suspension. After all three Commissioners reviewed and discussed the case, Chairman Williams stated there would be no active suspension and the penalty reduced to \$2,500.00.

Ms. Cowick stated the next case to be heard was #49, V I P Club. This establishment was represented by counsel, Mr. Jack Nichols, who after a brief discussion of the case, asked for leniency in the penalty and educational training for all employees. Mr. Nichols asked the Commissioners to modify the period of suspension and increase the monetary penalty upon the stipulation that the employees attend a training class. The Commissioners conferred and Chairman Williams announced their decision to increase the penalty to \$4,200.00 and waive the active suspension. So ordered.

Ms. Cowick stated the next case was #51, Toreros Mexican Grill. Mr. Jeff Darwin was present to speak on behalf of this case. Mr. Darwin is in a partnership with two other people, during which time the violation occurred. Mr. Darwin is in the process of forming a new corporation between him and his wife and is trying to get new permits. Mr. Darwin is a member of the current corporation was told the violation would need to be settled before new permits could be issued. Mr. Darwin came to ask for relief on the violation; and if granted, would apply for permits under new ownership. After conferring with the other Commissioners, Chairman Williams announced their decision to reduce the penalty from \$1,200.00 to \$600.00 in light of the total reorganization, staffing of the business and previous training for all employees. So ordered.

Ms. Cowick stated that Mr. Darrell Cagle, owner of hearing case #9, Club Risque, was present to speak on behalf of the business. The charges were employees consuming alcoholic beverages while working on the premises on four different dates. Mr. Cagle commented the employees had undergone training. Mr. Cagle asked for leniency on the penalty stating he did not want to lose his permits. Commissioner Lyon asked Ms. Pinnix if the penalty had already been negotiated; she stated it had not. After conferring with the Commissioners, Chairman Williams announced the decision to reduce the penalty from \$4,000.00 to \$2,800.00. So ordered.

Ms. Cowick stated Mr. Randolph Ryan was present to speak on behalf of case #42, Sugarland. Mr. Ryan commented briefly on the violations that occurred on three separate dates. Commissioner Guy made a motion to eliminate the active time and reduce the penalty from \$3,500.00 to \$3,000.00. Seconded by Commissioner Lyon. So ordered.

The next case to be heard was #15, University General Store. Mr. Chris Martin, owner, was present to speak on behalf of the business. There was a period of time when neither partner was on the premises. Mr. Martin has since implemented training and purchased age-verification cards. The original offer was \$3,500.00 and a five-day active suspension. Mr. Martin stated he would be willing to pay \$4,000.00 and eliminate the active suspension.

Commissioner Lyon asked if the business was near a college. Mr. Martin replied they were near UNC in Greensboro. Commissioner Lyon made a motion to waive the five-day active suspension and increase the penalty from \$3,500.00 to \$4,000.00. Seconded by Commissioner Guy. So ordered.

Case #24, One Stop Mart, was the next case to be heard. Mr. Ronnie Skinner, owner and permittee, was present to speak on behalf of the business. Mr. Skinner stated he did not know he had signed an offer for a penalty of \$2,400.00.

Chairman Williams asked Mr. Skinner if he wanted to have the case petitioned for hearing since the Commission members had not ruled on the case. Mr. Skinner said he did not sign the offer.

Commissioner Lyon showed him a copy of the offer and asked if that was his signature.

Chairman Williams asked Assistant Counsel Tim Morse if he had anything to add before he heard from Mr. Skinner. Mr. Morse commented it was just a campaign case where the employee asked for the identification; the employee actually looked at the identification and sold anyway. The identification had 'Under 21' on it.

Commissioner Guy asked Mr. Morse if he had any recommendation. Mr. Morse stated it was a standard case with the standard penalty.

Upon further discussion with the permittee of his options, a motion was made by Chairman Williams to reduce the penalty from \$2,400.00 to \$1,800.00 upon the stipulation that all employees attend a RASP training class. So ordered.

Ms. Cowick announced the next case to be heard was #6, Akashi Japanese Restaurant. This case involved possession and purchase of fortified wine from a wholesaler without the proper ABC permit. Ms. Masaharu Tsujii, owner and permittee, spoke to the Commission regarding this case. She stated the wine was used for cooking. After conferring with the other Commissioners, Chairman Williams stated a written warning would be issued to the business due to a simple error with an unblemished record since 2004 upon the stipulation all employees attend a training class. So ordered.

The next case to come before the Commissioners was #16, Azteca Mexican Grill and Cantina, represented by Mr. Santiago. This was a campaign run by High Point Police Department with the help of Alcohol Law Enforcement. The minor ordered a beer at the bar accompanied by Agent McQueen. The manager gave the minor the beer without checking her identification. The manager stated he was distracted by the music and people talking loudly. Mr. Santiago stated the employees have attended a training class. Mr. Santiago asked for leniency on the penalty.

After conferring with the other Commissioners, Chairman Williams stated the penalty would be reduced from \$1,200.00 to \$900.00 in light of the fact the employees had attended a training class.

Hearing case #14, Tangerines Caribbean Grill, was the next case to be heard before the Commissioners. This violation was the result of an employee allowing the consumption of alcoholic beverages by an intoxicated person on the premises.

The owner spoke on behalf of the business stating the employees had attended a Be A Responsible Server (BARS) class conducted by ALE Agent Alton Baker and also attended a Responsible Alcohol Seller Program (RASP) class conducted by Education Specialist Eleanor Johnson. A special security staff has since been hired and anyone under 21 cannot enter the premises after 10:00 PM. The owner asked

respectfully that his statements be considered and that a reduction in the monetary penalty would be very welcome.

Chairman Williams conferred with the Commissioners and announced the decision to reduce the penalty from \$1,200.00 to \$600.00. So ordered.

Ms. Cowick stated that case #43, Taqueria Guadalejara II, would be continued to the May Commission meeting; and permits have been cancelled for #19, Donel Express Mart.

Commissioner Lyon made a motion to accept the remaining Offers in Compromise that had not been ratified. Seconded by Commissioner Guy. So ordered.

II. ABC STORE LOCATION – WAKE COUNTY ABC BOARD (Morrisville, NC)

Laurie Lee, Pricing Division Director, addressed the Commission concerning the proposed location of an ABC Store in Wake County. On March 15, 2010, the Commission received a letter via e-mail requesting approval to lease property for a new ABC Store in Morrisville, North Carolina. Notice was posted on the site on March 10, 2010, and ALE began their investigation on March 23, 2010. The property is currently owned by Park South Village LLC. The parcel is in the McCrimmon Corners Shopping Center. It is an .87 of an acre parcel and is part of an 1.94 acre parcel. A SunTrust Bank will be built on the remaining acreage.

The Town of Morrisville has requested that the front of the store face the shopping center and the rear face the road. When complete, the store will be approximately 5,000 square feet. The land purchase price is \$475,000.00.

The investigation found there are no financial conflicts of interest between the property owners and the Wake County ABC Board. Verbal confirmation has been received from all board members will be placed in writing at the next board meeting.

There have been no objections regarding the site to date.

The nearest church is Latterday Saints Church and is located .3 miles from the proposed location.

The nearest school is Goddard School and is located .2 miles from the proposed location.

The Wake County ABC Board projects the sales to be 1.2 million the first year.

Ms. Lee recommended that the Commission approve the new location.

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

III. ABC STORE LOCATION – ASHEVILLE ABC BOARD

Ms. Lee addressed the Commission concerning the proposed location of an ABC Store in Buncombe County. On February 25, 2010, the Commission received a letter from General Manager Curtis Canty, with the Asheville ABC Board, requesting approval to locate a new store at 650 Hendersonville Road, Asheville, NC.

A sign was properly posted on the property on February 25, 2010.

On March 3, 2010, ALE began an investigation and found that this store would be replacing an existing store located at 583 Hendersonville Road, which is approximately .2 of a mile away.

The property is currently zoned for both urban and commercial use. The proposed location is zoned highway business.

The owner of the property is 890 Hendersonville Road LLC.

The proposed site is approximately .62 acres and the purchase price is \$750,000.00.

All members of the ABC Board have signed and submitted Financial Disclosure Statements.

The nearest school is Irene Wortham Center and is approximately 200 yards away on West Chapel Road.

The nearest church is Calvary Chapel of Asheville and is approximately 100 yards away from the proposed site.

The ABC Commission has received five phone calls objecting to the proposed site, and those objections come from both the school and the church.

The ABC Board estimate sales will be \$1,500,000.00 the first year of operation which would not be until 2014.

General Manager Curtis Canty spoke on behalf of the ABC store location and objections from surrounding home owners and school personnel.

Ms. Lee recommended that the Commission approve this location.

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

IV. EXEMPTION REQUEST

Mr. Johnson was present to speak on behalf of the exemption request. The request involved the Warsteiner German Brewery wanting to invest in a second hotel in North Carolina. The permit, if granted, under the exemption would be conditioned on the hotel not selling any of the products of the brewery in which there is an ownership interest. Mr. Johnson stated it was the same situation as before, just in a different location.

Chairman Williams made a motion that on those conditions, they approve the exemption request.

Ms. Pinnix addressed the Commission members on a previous business as a reconsideration. The case #50, Fuel Depot Bar and Grill, involved failure to submit financial reports. Before the violation report had been processed, the owner had sent in the reports to the Audit Division.

Commissioner Guy made a motion to issue the business a written warning. Seconded by Commissioner Lyon. So ordered.

V. NEW BUSINESS

Joe Wall of the NC Association of ABC Boards requested an increase in the current markup from 39% to 41 1/2 %, raising consumer prices.

Chairman Williams made a motion to continue this discussion to the next Commission meeting.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Theresa D. Avery, Legal Division