

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 16, 2011**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on March 16, 2011, beginning at 10:10 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 Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

MINUTES OF FEBRUARY 16, 2011

Chairman Williams asked for a motion to waive the reading of the minutes from the February 16, 2011 and the March 10, 2011 special meeting into the record. Commissioner Guy made a motion to waive the reading of the minutes from the February 16, 2011 meeting and the March 10, 2011 special meeting. Motion Passed. Commissioner Guy made a motion to approve the minutes from the February 16, 2011 meeting and the March 10, 2011 special meeting. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Chairman Williams asked Commissioner Guy and 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. Chairman Williams recused himself from contested case #1, Papa Ja's Fine Family Dining. Commissioner Guy recused himself from hearing case #3, Brass Pelican and Commissioner Briggs stated that he found no conflicts of interest.

I. HEARING CASES – 75

Chief Counsel Fred Gregory stated that the first case to be heard was contested case #1, Papa Ja's Fine Family Dining. Assistant Counsel LoRita K. Pinnix stated that Mr. Melvin Lewis had applied for an ABC permit and his application was denied. Administrative Law Judge Beecher R. Gray heard the case and decided that although Mr. Lewis was a suitable applicant, the location was not a suitable place to hold ABC permits. Ms. Pinnix stated that she did not file exceptions, but Mr. Lewis did. Ms. Pinnix asked that the Commission adopt the recommended decision of Judge Gray.

Mr. Melvin Lewis stated that he felt that the judge based his decision on inaccurate information from different sources.

Commissioner Briggs made a motion to adopt the recommended decision of the administrative law judge. Motion Passed.

Chief Counsel Gregory stated that Ms. Abigail Myer, owner of hearing case #3, Brass Pelican, was present to speak on behalf of the business. Ms. Myer asked the Commission for a reduction in the penalty. She went on to state that she served the intoxicated person, who was her landlord, only one beer. Ms. Myer further stated that she had only met him on two occasions, which was when they met to discuss leasing the building and the second time was when they met to sign the lease. She stated that the landlord stuttered slightly and had certain eye movements and she thought that were normal.

Chairman Williams made a motion to reduce the penalty from \$1,000.00 to \$750.00, upon the stipulation that all of the employees attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Mr. Joe Elliot, President of hearing case #28, Elizabeth City Shrine Club, was present to speak on behalf of the business. Mr. Elliot asked the Commission to move the suspension date to April 18, 2011, because they could not afford to pay the penalty.

Chairman Williams stated that the Commission does not change the suspension date.

Chief Counsel Gregory stated that Ms. Veronica Pfeifer, restaurant manager of hearing case #13, Katys Great Eats, was present to speak on behalf of the business. Ms. Pfeifer stated that the employees have taken the RASP Class and the employee who sold to an intoxicated person no longer works at the business.

Chairman Williams made a motion to reduce the penalty from \$1,000.00 to \$750.00. Motion Passed.

Chief Counsel Gregory stated that Mr. Todd Majors, owner of hearing case #5, Citgo Quick and Easy 10, was present to speak on behalf of the business. Mr. Majors stated that some of the employees have taken the RASP Class. The employee who sold to the underage buyer no longer works at the business. Mr. Majors concluded by asking the Commission to reduce the penalty.

Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$600.00. Motion Passed.

Chief Counsel Gregory stated that Mrs. Sandra Burwell, owner of hearing case # 70, Tidal Market II, was present to speak on behalf of her business. Assistant Counsel Timothy W. Morse stated that the penalty was keyed in incorrectly and the penalty should be a nine day suspension or \$900.00 fine.

Mrs. Burwell asked the Commission for a reduction in the penalty.

Chairman Williams made a motion to reduce the penalty from \$900.00 to \$675.00, upon the stipulation that all the employees attend a RASP Class. Motion Passed.

Chief Counsel Gregory stated that Mr. Prasada Kodavanti, owner of hearing case #68, Snackers B P Service Station, was present to on behalf of his business. Mr. Kodavanti stated that the employee who sold to the minor was also his brother. He presented the Commission with a written statement as to what steps he has taken to prevent any future violations.

After reviewing the information, Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00. Motion Passed.

Chief Counsel Gregory stated that Mr. Chris Butler, owner of hearing case #47, Bobs Convenient Mart, was present to speak on behalf of the business.

Mr. Butler stated that all his employees have taken a RASP Class. He went on to state that the employee's case was dismissed in court. Mr. Butler concluded by asking the Commission for a reduction in the penalty.

Chairman Williams made a motion to reduce the penalty from \$3,500.00 to \$2,625.00, with no active suspension. Motion Passed.

Chief Counsel Gregory stated that the next case to be heard was hearing case #59, Monterrey Mexican Restaurant 31. Mr. Morse stated that the attorney for the permittee was unable to attend the meeting and submitted a letter for the Commission to review.

After reviewing the letter and conferring with Commissioner Guy and Commissioner Briggs, Chairman Williams stated that there would be no change to the penalty.

Chief Counsel Gregory stated that Mr. Glenn B. Lassiter, Jr. was present to speak on behalf of his client, hearing case #75, Great Stops 6. Mr. Frank Sutton and Mr. Phil Kleinman, the owners of the business were also present, along with Mr. Jeff Hood, the Controller and Mr. Pablo Tescon, the district manager. Mr. Lassiter presented a slide show showing the new technology that his clients have installed in all of their stores. The video showed how the new ID scanner scans the identification and allows sales of alcoholic beverages if the purchaser is over 21. If the buyer is underage, the scanner ends the sale and the clerk cannot override the system.

Mr. Hood provided the Commission with their company alcohol sale policy. He further stated that the new software also allows reports to be generated with a breakdown of each clerk's transactions, how many times a sale was terminated, how many sales went through, if there were any override attempts or repeated birthdates entered.

Mr. Lassiter asked the Commission to treat the two violations as one violation and to waive the active suspension.

After conferring the Commissioner Guy and Commissioner Briggs, Chairman Williams made a motion to handle the two violations with two separate offers and to amend the penalty to \$5,000.00 for each violation and to waive the active suspension. Motion Passed.

Commissioner Guy made a motion to approve the remaining offers in compromise, with the exception of the previously ratified cases. Motion Passed.

II. ABC STORE LOCATION – HENDERSONVILLE ABC BOARD

Administrator Michael Herring stated that the Hendersonville ABC Store location will be continued.

III. OTHER BUSINESS – EXEMPTION REQUEST – VITUS WORLD IMPORTS

Chief Counsel Gregory stated that the exemption request would be continued to the May Commission meeting.

IV. OTHER BUSINESS – EXEMPTION REQUEST – HARRIS TEETER AND E&J GALLO WINERY

Mr. Herring stated that the exemption request has been withdrawn.

V. OTHER BUSINESS – REVIEW AND CONSIDERATION OF THE RULES PUBLISHED IN STAFF REQUESTS FOR TECHNICAL CHANGES AND OPINIONS OF THE RULES PUBLISHED IN VOLUME 5, ISSUE 12 OF THE NC REGISTER (04 NCAC 02S AND 02T)

Rules Coordinator Bob Hamilton asked the Commission to approve the technical changes.

Chairman Williams made a motion to adopt the technical changes. Motion Passed.

VI. OTHER BUSINESS-EXEMPTION REQUEST – NC ASSOCIATION OF ABC BOARDS

Mr. Herring stated that Mr. Joe Wall, Executive Director and General Counsel of the North Carolina Association of ABC Boards was present to ask for an exemption to allow all North Carolinas to participate in all the functions of the NABCA conferences that will take place May 11- May 15, 2011.

Commissioner Guy made a motion to grant the exemption. Motion Passed.

VII. OTHER BUSINESS-WAREHOUSE EXPANSION

Mr. Herring stated that in 2007, the Commission recognized demand was about to exceed capacity in the State ABC Warehouse and in order to accommodate future growth, expansion of the facility would be required. An expansion study along with a report was completed in 2007 outlining four basic options for expansion that included: buy new property and build a new warehouse, extend out and add space onto the current warehouse, build a vertical stack, crane operated addition or operate a second warehouse in the western part of the state. Due to internal and external issues, the Commission has not been able to expand the warehouse.

Mr. Herring went on to state that there is no space left in the warehouse to handle the growing business. In order to add new items, profitable items have to be discontinued. Mr. Herring recommended that the Commission ask the current warehouse contractor, LB&B Associates, to put together a short term proposal to lease an additional 200,000 square feet of space nearby for five year years until a long term solution can be found.

Judge Eddie Green, counsel for LB&B stated that they are fully prepared to locate available property and prepare a proposal for warehouse expansion for the Commission's consideration.

Commissioner Guy made a motion to approve asking LB&B to prepare a proposal for warehouse expansion. Motion Passed.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division