

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
AUGUST 19, 2010**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on August 19, 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 and Commissioner Zander Guy were present at the meeting.

**MINUTES OF JULY 15, 2010**

Chairman Williams asked for a motion to waive the reading of the minutes from the July 15, 2010 meeting into the record. Commissioner Guy made a motion to waive the reading of the minutes from the July 15, 2010 meeting. Seconded by Chairman Williams. So Ordered. Chairman Williams asked for a motion to approve the minutes from the July 15, 2010 meeting. Commissioner Guy made a motion to approve the minutes from the July 15, 2010 meeting. Seconded by Chairman Williams. So Ordered.

**CONFLICTS OF INTEREST**

As required by North Carolina General Statute 138A-15, Chairman Williams asked 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 and Commissioner Guy both stated they found no conflicts of interest.

**II. OTHER BUSINESS – EMPLOYEE SERVICE AWARDS PRESENTATION**

Chairman Williams, Commissioner Guy and Administrator Michael Herring presented six ABC Commission employees with service awards for the following years of service to be State of North Carolina:

Laurie Lee – Five years of service.

Latoya Jones – Five years of service.

John Ruth – Five years of service.

Cathy Horne – Five years of service.

Theresa Avery – Thirty years of service and will be retiring at the end of August.

Annette Taylor – Almost eight years of service and will be retiring at the end of August.

**I. HEARING CASES – 81**

Chief Counsel Fred Gregory stated that Mr. Dennis Guthrie, attorney for contested case #1, Liquid Room, was present to speak on behalf of his client. Mr. Guthrie presented the Commission with excerpts from the transcript from the hearing. Mr. Nathan Mitchell and Mr. Shawn Booth, two of the three owners were

present. Mr. Guthrie stated that the underage buyer had been in the establishment for only an hour and had at least four other wristbands from other businesses on her wrist. He went on to state that incident testimony showed that the underage buyer had been drinking since the age of 15 and that this was not the first time that she had been drinking and driving at a high rate of speed. She was well known at the bar scenes in Wilmington, North Carolina. Mr. Guthrie further stated that the underage buyer came into the establishment and presented a valid Virginia drivers license. The Administrative Law Judge Melissa Owens-Lassiter found the picture on the driver's license to be similar to the underage buyer.

Assistant Counsel Timothy Morse addressed the Commission regarding the contested case. Mr. Morse stated that he had concerns about Conclusions of Law #36 and #37, as well as Findings of Fact #75. The Administrative Law Judge concluded that the Commission had no evidence to support the rejection of Liquid Room's application for permanent ABC permits and further, that the Commission had abused its discretion. Mr. Morse stated that ALE had conducted a in depth four month long investigation into the events at the Liquid Room prior to the death of the underage and that the evidence presented in the report gave the Commission ample basis in its decision to suspend Liquid Room's temporary permits and then reject Liquid Room's application for permanent permits. Mr. Morse argued that when deciding whether the Commission had abused its discretion, the Administrative Law Judge should have based her decision on the evidence before the Commission at the time it made its decision to reject, rather than what evidence was ultimately produced at the hearing. Mr. Morse went on to state that the Liquid Room's wristband system could not be used to establish a defense to the underage sale. He argued that the wristband system was flawed and that the law required the actual seller, the bartender, to check the purchasers' identification. Mr. Morse stated that the Commission had proved the underage violation. He asked the Commission to strike the Conclusions of Law #36 and #37 and Findings of Fact #75.

Mr. Guthrie stated that he didn't have a problem with Mr. Morse's requested changes; he only had an issue with the underage sale.

Chairman Williams stated that the requested changes will not prevent the Liquid Room from obtaining their ABC permits.

Chairman Williams asked Mr. Guthrie if he was arguing against the changes that Mr. Morse was proposing. Mr. Guthrie stated that he was against the charge of selling to a minor because he felt that there wasn't any evidence that was presented to indicate that the defenses were not proven.

After conferring with Commissioner Guy, Chairman Williams made a motion to modify the Conclusions of Law #36 and #37 and Findings of Fact #75. The Liquid Room was found responsible for selling to an underage person. Seconded by Commissioner Guy. So Ordered.

Assistant Counsel Renee Cowick stated that the next case to be heard was contested case #2, Margaritagrille on Main. The permittee for the case was not present. Ms. Cowick stated that the Commission filed a petition with the Office of Administrative Hearings. Administrative Law Judge Selina M. Brooks ordered both parties to file prehearing statements. When the permittee did not submit prehearing statements, a second order was issued. The permittee ignored the second request. Ms. Cowick filed a Motion for Sanctions and Judge Brooks recommended a 24-day suspension of permits and \$500.00 penalty.

Chairman Williams made a motion to adopt the recommended decision of Administrative Law Judge Brooks. Seconded by Commissioner Guy. So Ordered.

Assistant Counsel Renee Cowick stated that the next cases to be heard were cases # 3a. Road Runner Express, #3b. West Green Market, and # 3c. G & S Food Mart. All three cases were originally contested cases and represented by attorney, Mr. Leo Daughtry. Ms. Cowick stated that after the hearing for one case, Mr. Daughtry asked that the other two cases be included. Mr. Daughtry later requested that the cases be settled. Ms. Cowick went on to state that the Commission received the signed offers in compromise for all three cases that morning; therefore, the cases are no longer contested cases and have been settled. Ms. Cowick asked the Commission to adopt the offers in compromises for all three cases.

Commissioner Guy made a motion to accept the signed offers in compromise. Seconded by Chairman Williams. So Ordered.

Chief Counsel Gregory stated that the next case to be heard was hearing case #64, Millennium Center. Mr. Greg Carlyle, the owner of the business was present to speak on behalf of the business.

Mr. Carlyle said that he thought that his business was operating under a private convention center permit. He said that he began to question why after two years he hadn't received his permanent permits. On January 28, 2010, an event was held. ALE agents showed up and told him that he had to close down the event.

Assistant Counsel Renee Cowick stated that she had spoken with Mr. Carlyle regarding violations 2, 3, 4, and 5. What Mr. Carlyle told her coincided with what was in the violation report. She felt that now they only had to discuss violations 1 and 6.

Alcohol Law Enforcement Agents contacted Mr. Carlyle and told him that he must report to them all information regarding any future college events held at his business. He has made the decision to eliminate all college events from his business.

Commissioner Guy asked Ms. Cowick if the Commission was to only consider violations 1 and 6, did that affect the recommended fine. Ms. Cowick stated that the fine was high because of a previous violation but she would not object to a reduction.

Chairman Williams asked Ms. Cowick what the penalty would be for violation #1, failure to superintend and violation #6, intoxicated persons. Ms. Cowick stated that the penalty would be either a 25-day suspension of ABC permits or \$2,500.00.

After some discussion, Chairman Williams made a motion to reduce the penalty from 40 day suspension or \$4,000.00 to 25-day suspension or \$2,500.00 fine. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Attorney Richard Carlton was present to speak on behalf of his clients, hearing cases #59, Harris Teeter 258 and Harris Teeter 30.

Mr. Carlton stated that he wanted to thank the Commission for allowing him to speak regarding his clients. Harris Teeter works very hard on their alcohol training program and after the violations occurred at both locations, he spoke with Ms. Cowick. Ms. Cowick told him about the Commission's RASP class and the employees from both stores completed the education class. Harris Teeter received a lot of positive feedback from their employees after having completed the class. Ms. Carlton asked the Commission to reduce the penalty in light of the employees completing the program.

Ms. Cowick recommended that in recognition of the employees completing the class, the penalty for Harris Teeter 258, be reduced to \$900.00 and the penalty for Harris Teeter 30 penalty reduced to \$600.00.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty for Harris Teeter 258 from \$1,200.00 to \$900.00 and for Harris Teeter 30 from \$900.00 to \$600.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Marshal Payne, owner of hearing case #44, Blue Horn Lounge, was present to speak on behalf of his business. Mr. Payne stated that he is guilty of the violation. Since the violation occurred, he and his employees have had meetings. He has a RASP training scheduled for September 20, 2010. The business is very small and now everyone who enters the business will be carded. There is only one front door and one bathroom. The capacity is 44 people. He felt that the 44 people capacity is too many and doesn't allow the full capacity. He asked the Commission for a reduction in the penalty.

Commissioner Guy made a motion to reduce the penalty from \$1,200.00 to \$ 900.00, upon the stipulation that he and his employees complete the RASP as scheduled on September 20, 2010. Seconded by Chairman Williams. So Ordered.

Chief Counsel Gregory stated that Mrs. Yong Bryant, owner of hearing case #28, J B Express Greensboro, was present to speak on behalf of the business. Mrs. Bryant stated that her son didn't check the date on the identification. Mrs. Bryant said that her son attended RASP and she was asking for a reduction in the penalty.

Chairman Williams asked Assistant Counsel LoRita Pinnix if she had a recommendation since the employees has attended the RASP. Ms. Pinnix stated that the Commission could combine the two violations and treat them as 1<sup>st</sup> Offense cases.

Chairman Williams conferred with Commissioner Guy and made a motion to reduce the penalty from 36 days or \$3,600.00 to 24 days or \$2,400.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Richard Liles, owner of hearing case #30, Liles Country Cupboard, was present to speak on behalf of his business.

Mr. Liles stated that all three of his employees have attended the RASP. He asked the Commission for a reduction in the penalty.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Michael Le was present to speak on behalf of hearing case #13, Lees Curb Market.

Mr. Le stated that he started the business seven years ago. After the violation occurred, he and his employees attended a RASP. He went on to state that sometimes the licenses are hard to read.

Chairman Williams asked the legal staff if the violation had already been reduced because of the RASP or because this is his first violation after five years with no prior violations. Mr. Morse stated that it was because of no prior violations.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$900.00 to \$600.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that hearing case #9, Food Lion 504 would be carried over to the next meeting.

Chairman Williams made a motion to approve the remaining offers in compromises, with the exception of previously ratified cases. Seconded by Chairman Williams. So Ordered.

Assistant Counsel Cowick addressed the Commission with a letter of request for destruction of evidence from Alcohol Law Enforcement.

Chairman Williams signed the letter for destruction of evidence.

### **III. OTHER BUSINESS – EXEMPTION REQUEST – G.S. §18B-201- DANNY W. MARTIN**

Mr. Martin asked the Commission for an exemption request in order to allow him to continue his employment with the Eden ABC Board and to continue to work as a bartender. If time allows, he also is a self-employed bartender where he will bartends weddings and or special events.

After some discussion with Commissioner Guy and Administrator Herring, Chairman Williams made a motion to approve the exception request with a five - year stipulation. Seconded by Commissioner Guy. So Ordered.

### **V. OTHER BUSINESS – 4 NCAC 2R NOTICED PUBLIC HEARING**

Mr. Robert Hamilton presented the Commission with the published 4 NCAC 2R rules. Because copies of the rules had been distributed Chairman Williams waived the reading of the rules and they will be attached to the minutes.

Chairman Williams made a motion to accept the highlighted changes in section **.1405 COMMEMORATIVE BOTTLES**. Seconded by Commissioner Guy. So Ordered.

### **VI. OTHER BUSINESS – 4 NCAC 2S RULES REVIEW**

Mr. Robert Hamilton presented the Commission with a copy of 4 NCAC 2S Rules review. Mr. Hamilton went through each section of the proposed amendments to the rules. A copy will be attached to the minutes. They are as follows:

Section(s)

- .1302 STORAGE DELIVERIES: SECURITY**
- .1305 DIRECT SHIPMENTS**
- .1901 MIXED BEVERAGES TAX STAMP**
- .0101 DEFINITIONS**
- .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS**
- .0105 SPECIAL REQUIREMENTS FOR RESTAURANTS**
- .0106 SPECIAL REQUIREMENTS FOR HOTELS**
- .0107 SPECIAL REQUIREMENTS FOR PRIVATE CLUBS**
- .0209 USE OF PROFANITY PROHIBITED**
- .0212 CONSUMPTION: INTOXICATED BY PERMITTEE PROHIBITED**
- .0216 ENTERTAINERS AND CONDUCT**

- .0217 VISUAL DISPLAYS**
- .0232 HAPPY HOURS REGULATED**
- .0234 PRIVATE CLUBS: GENERAL PROHIBITIONS; GUESTS**
- .0235 PRIVATE CLUBS; RECIPROCAL MEMBERSHIPS**
- .0404 RESTAURANTS: HOTELS: DISPLAY: CONTROL OF BEVERAGES**
- .0901 TASTINGS HELD BY RETAILERS FOR CONSUMERS**
- .0902 TASTINGS HELD BY INDUSTRY MEMNERS FOR ~~NON-PERMITTEES~~  
CONSUMERS**
- .0903 TASTINGS HELD BY INDUSTRY MEMBERS FOR ~~RETAILERS:~~ RETAIL  
PERMITTEES: SAMPLES**
- .1006 GENERAL PROHIBITIONS**
- .1008 ADVERTISING OF MALT ~~BEVERAGE AND~~ BEVERAGES, WINE AND  
MIXED BEVERAGES BY RETAILERS**
- .1011 ADVERTISING OF SPIRITUOUS LIQUORS**

Chairman Williams made a motion to accept the amendments, upon the stipulation that there are no more changes. Seconded by Commissioner Guy. So Ordered.

Chairman Williams stated that the following future Commission dates have been approved: October 14, 2010, November 18, 2010 and December 15, 2010.

With no further business, the meeting adjourned.

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

Respectfully submitted by

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Tiffany Goodson, Legal Division