

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 8, 2005**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on April 8, 2005, beginning at 10:30 a.m. The meeting was tape-recorded and the tape is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commission Member Ricky Wright were present at the meeting. Commission Member Mike Joyner was not present.

MINUTES OF MARCH 11, 2005 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the March 11, 2005, meeting into the record. Seconded by Commissioner Wright. So ordered. Chairman Fox made a motion to approve the minutes from the March 11, 2005, meeting. Seconded by Commissioner Wright. So ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Wright 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 Wright replied that he found no conflicts of interest. Chairman Fox recused himself from ruling on the following cases:

Hearing Case #20 – Gas Center 4
Hearing Case #54 – Scotchman 126
First Offense Case #15 – Han Dee Hugos 28
First Offense Case #31 – Scotchman 83
First offense Case #39 – Value Express 2

Chairman Fox requested that these cases be continued to the May 6, 2005 meeting.

I. HEARING CASES- 63 Listed

Assistant Counsel LoRita K. Pinnix provided information to the Commission regarding Hearing Case #1 – Deadwood Miniature Golf. She stated that the permittee, Ira Staten Price, Jr., had been cited for failing to supervise his business on February 7, 2004, and that a hearing had been held in the Office of Administrative Hearings on November 18, 2004 before Administrative Law Judge Beecher R. Gray. Judge Gray issued a Decision stating that there had been a failure to supervise the licensed premises, and recommended a penalty of four days suspension of the Permittee's ABC permits, with the last two days of such suspension suspended upon the permittee's payment of a fine of \$100.00. Mr. Price's attorney, David J. Irvine, filed exceptions to the decision and asked that only the monetary fine be issued. Ms. Pinnix stated that she also filed exceptions and asked that a 20-day suspension be imposed, with the last ten days of such suspension suspended upon payment of \$500.00.

Ms. Pinnix stated that Ira Staten Price, Jr. was present to speak to the Commission.

Mr. Price stated that his premises includes a four-acre parking lot, and that seven to eight weeks out of the year, all four acres are occupied, due to two bands that play at Deadwood Miniature Golf on Saturday nights. One of these bands, Chairman of the Board, draws an audience that consists primarily of college students from schools across the state. Mr. Price stated that he asked ALE to help supervise the parking lot. He insisted that ALE Agents Brandon Lanier and Russell King came to Deadwood on March 29, 2003 as a direct result of his request for their help in supervising his parking lot. There were approximately 700 to 800 patrons at Deadwood Miniature Golf to view the concert. During the visit, the agents issued 21 citations for underage possession of alcoholic beverages. The agents issued fewer citations on subsequent visits, which Mr. Price interpreted was a result of his requests that they help supervise the parking lot during concerts.

Mr. Price stated that Agent Lanier visited Deadwood Golf on February 7, 2004 and conducted an inspection of the licensed premises. After the inspection, Agent Lanier issued Mr. Price a citation for failing to supervise his parking lot, stating that Mr. Price need not worry about it and that it “wouldn’t amount to nothing(sic)”.

Mr. Price further stated that Kevin Dickerson, the ALE Agent in charge of Martin County, testified to Judge Grey that he was not aware Agents King and Lanier were operating in Martin County. He claimed that Agent Lanier told him Agent Dickerson was “busy” and had asked him to issue Mr. Price the violation for failing to supervise the business.

Ms. Pinnix stated that Agents Lanier and King had never been to Deadwood Miniature Golf or spoken to the permittees or his employees before March 29, 2003, and had only been transferred to the district shortly before that date. According to Judge Gray’s Findings of Law, they inspected the business on March 29, 2003 based solely on information that a popular band would be playing at the business, and issued 21 citations in 45 minutes. They stated that underage patrons were not buying alcohol at the business, but driving into the parking lot with open containers.

Ms. Pinnix further stated that Agents King and Lanier returned to Deadwood Miniature Golf on November 29, 2003, based again on information that a popular band would be playing that night, and not in response to any formal request for help from Mr. Price or his employees. The agents went back to the business on January 10, 2004 for the same reasons. After each visit, they spoke with Mr. Price about the problems observed in his parking lot. On February 7, 2004, Agent Lanier informed Mr. Price that he was sending a violation report to the North Carolina ABC Commission.

In March of 2004, Agent King visited Deadwood Miniature Golf based on information that a popular band would be playing. The parking lot was being actively supervised by employees of Deadwood Miniature Golf, and that conditions had greatly improved.

Mr. Price insisted that the agents were lying since they denied ever coming to Deadwood Miniature Golf until March 29, 2003. He stated that Agent King came to his business three years ago to watch a friend compete in a talent contest. Agent King allegedly asked if he could watch his friend compete, and Mr. Price replied that he could, but when Agent King remained on the licensed premises after his friend had already appeared, Mr. Price asked Agent King to pay the admission price, and Agent King left. Mr. Price posed that perhaps Agent King was holding a grudge.

Chairman Fox stated that Mr. Price had stated at his hearing that he knew he had a problem supervising his parking lot, and asked Mr. Price what steps he had taken to correct that problem. Mr. Price replied that he invited Agents Lanier and King to supervise the parking lot. He further explained that Agent Lanier stated that he had never seen any employees of Deadwood Miniature

Golf supervising the parking lot during his inspections, and Mr. Price insisted that this was false. Mr. Price explained that Agent Lanier was observed every time he entered the parking lot, and that Mr. Price and his employees did not wish to interfere with him in the performance of his duties.

Chairman Fox made a motion to fine Mr. Price \$1,000.00 with no active suspension for failing to supervise his business. Ms. Pinnix stated that, since this was Deadwood Miniature Golf's first offense, the statutory limit for monetary penalties was \$500.00. She also stated that, in light of the fact that Mr. Price did not aid Agents Lanier and King in any way while they patrolled a crowd of over 700 people, she would recommend an active suspension be issued in conjunction with the fine.

Chairman Fox amended his motion to reflect a penalty of five days suspension and payment of a fine of \$500.00. Seconded by Commissioner Wright. So ordered.

First Offense Case #38 – Tuckers - Fletcher Wilbur Hutson was present to speak to the Commission concerning an underage sale violation on December 15, 2004. He stated that his employee checked the customer's identification against a card displaying the legal dates of birth for alcohol and tobacco sales, and mistakenly used the tobacco sales date. In light of this fact, and the fact that Tuckers' alcoholic beverage sales are relatively small, Mr. Hutson asked that his penalty be mitigated.

Chairman Fox asked how large Tuckers is. Mr. Hutson replied that the store was approximately 25'x40'. Chairman Fox asked how much rent Mr. Hutson pays on the building, and Mr. Hutson replied that he pays \$1,000.00 per month.

Chairman Fox made a motion to amend the penalty to reflect a \$300.00 fine on the stipulation that Mr. Hutson arrange an ABC training class to be conducted for his employees within the next thirty days. Seconded by Commissioner Wright. So ordered.

Hearing Case #6 – Jonestown Road B P- Marvin Barnes was present to speak to the Commission concerning an underage sale violation on December 11, 2004. Mr. Barnes stated that, in light of the poor violation record at Jonestown Road B P of late, he had stepped up his employee training program, and provided materials to the Commission explaining the procedures and topics covered in his training program.

He further stated that every customer of Jonestown Road B P was required to show identification for alcoholic beverage purchases, regardless of age. Additionally, any employee caught selling alcoholic beverages to underage customers would be terminated immediately. In light of his efforts, he requested that the penalty for his violation be mitigated.

Chairman Fox asked Assistant Counsel K. Renee Cowick for information regarding the case. Ms. Cowick explained that Jonestown Road B P had a fair record until very recently, receiving four ABC violations within a 19-month period. She stated she had no objection to mitigating the penalty.

Commissioner Wright made a motion to impose a penalty of ten days active suspension and payment of a fine of \$4,000.00. Seconded by Chairman Fox. So ordered.

Chairman Fox made a motion to approve the Offers in Compromise for the balance of the hearing cases, with the exception of Hearing Case #20 – Gas Center 4 and Hearing Case #54 – Scotchman 126, which were to be carried over to the May 6, 2005 meeting. Seconded by Commissioner Wright. So ordered.

II. FIRST OFFENSE CASES – 49 listed

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on April 6, 2005, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Abarrotera La Guadalupana - 3900 South Main Street, Winston Salem, NC 27127
2. Applebee's Neighborhood Grill and Bar 12 - 8710 South Tryon Street, Charlotte, NC 28273
3. Bonefish Grill - 300 South Stratford Road, Winston Salem, NC 27103
4. Boone's Corner 2 - 1499 Smoky Park Hwy, Candler, NC 28715
5. Brawley Market - 792 Brawley School Road, Mooresville, NC 28117
6. Butner Food Mart - 208 Central Avenue, Butner, NC 27509
7. Carolina Billiards - 533 Plaza Circle, Garner, NC 27529
8. Desperados Western Mart - 602 North Second Avenue, Siler City, NC 27344
9. Eckerd Drugs 1023 - 240 South Stratford Road, Winston Salem, NC 27103
10. Eckerd Drugs 3312 - 650 South Main Street, King, NC 27021
11. Eckerd Drugs 3544 - 409 North Main Street, Kernersville, NC 27284
12. Eckerd Drugs 8598 - 945 North Harrison Avenue, Cary, NC 27513
13. Family's Soda and Cigarettes and Beer - 1201 Greenville Hwy, Hendersonville, NC 28792
14. Han Dee Hugos 28 - 5002 Market Street, Wilmington, NC 28405
15. J and J Fast Mart - 5001 Bragg Boulevard, Fayetteville, NC 28303
16. Kountry Korner - 1010 Easley Road, Walnut Cove, NC 27052
17. Lucky 32 - 109 South Stratford Road, Winston Salem, NC 27103
18. Matthews Grocery - 8695 Hwy 15, Bullock, NC 27507
19. Mills Market - 2010 Mills Road, Greenville, NC 27858
20. Monterrey Mexican Restaurant 26 - 1227 Silas Creek Parkway, Winston Salem, NC 27127
21. Mount Airy Oil Company 135 - 525 Mountain View Road, King, NC 27021
22. Mount Airy Oil 137 - 3528 NC 8 and 65 Hwy, Germanton, NC 27019
23. Neighbors 29 - 6438 South US Hwy 66, King, NC 27021
24. Parkers Stop and Shop - 4257 Reidsville Road, Winston Salem, NC 27101
25. Paul's Quick Service - South Main Street, Rosman, NC 28772
26. Red Apple Market 13 - Hwy 32 North, Edenton, NC 27932
27. Red Lobster 6206 - 1960 Westbrook Plaza Drive, Winston Salem, NC 27103
28. Rose Mart 2 - 2572 Lyon Station Road, Creedmoor, NC 27522
29. Sam's Mart 14 - 9608 University City Boulevard, Charlotte, NC 28262
30. Sam's Mart 47 - 6200 North Tryon Street, Charlotte, NC 28213
31. Scotchman 83 - 610 Eastwood Road, Wilmington, NC 28403
32. Shorts Quick Stop - 565 Turnersburg Hwy, Statesville, NC 28625
33. Smith's Grocery - 2288 Pine Hall Road, Belews Creek, NC 27009
34. Target Store T-1826 - 7900 Old Wake Forest Road, Raleigh, NC 27615
35. Thrifty Mart 2 - 213 East Washington Street, Bethel, NC 27812
36. Trade Mart 98 - 1550 NC Hwy 56, Creedmoor, NC 27522
37. Triangle Stop 209 - 2545 Chimney Rock Road, Hendersonville, NC 28739
38. Tuckers - 915 Hwy 268, Pilot Mountain, NC 27043
39. Value Express 2 - 5314 Oleander Drive, Wilmington, NC 28403
40. Wilco 378 - 2500 West Franklin Street, Gastonia, NC 28052

41. Pinnacle Pantry - 2806 North Old 52 Road, Pinnacle, NC 27043
42. Ole Time General Store - 6500 Andrew Jackson Hwy, Laurel Hill, NC 28351
43. Fuel Mate Express 3 - 2120 Juniper Lake Road, Taylortown, NC 27376
44. Lava Bistro and Bar - 8708 J W Clay Boulevard, Suite 1, Charlotte, NC 28262
45. One Stop Service - Corner of Grubb and Church Street, Hertford, NC 27944
46. Coffee Bean Jazz & Blues Café - 400 South Main Street, Dobson, NC 27017
47. Food Lion 420 - 3808 Guess Road, Durham, NC 27705
48. Heathers Grocery - 301 Cottage Street, Fairmont, NC 28340
49. Stokes Mart - 2825 NC 903 North, Stokes, NC 27884

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases, with the exception of First Offense Case #15 – Han Dee Hugos 28, First Offense Case #31 – Scotchman 83 and First offense Case #39 – Value Express 2, which were to be carried over to the May 6, 2005 meeting. Seconded by Commissioner Wright. So ordered.

III. ABC STORE LOCATION – HALIFAX COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the relocation of an ABC store in Scotland Neck, North Carolina. On March 9, 2005, the ABC Commission received a letter from Halifax County ABC Board Supervisor Joseph McAllister requesting permission to relocate the Scotland Neck ABC store. On March 9, 2005, the ABC Commission requested that Alcohol Law Enforcement conduct an inspection of the proposed location, and on March 17, 2005, ALE G. Pat Forbis began the investigation.

The Halifax County ABC Board currently operates a counter store in Scotland Neck, and wishes to purchase property to build a modern self-service ABC store approximately 2,000 square feet in size at 409 Main Street in Scotland Neck. The property is owned by Beats All Rentals, Inc., and the purchase price for the property is \$16,000.00. The investigation found no conflict of interest between the Halifax County ABC Board and the property owner.

The nearest church is the First Baptist Church, located .7 miles from the proposed location. The nearest school is the Scotland Neck Primary School, located .5 miles from the proposed location. There was a note in the investigative report stating that the property is located approximately 410 feet from a day care facility.

Pursuant to ABC Commission regulations, Notice of Intent to Open an ABC Store was posted on the property on February 28, 2005, and to date no objections have been received.

Mr. Herring recommended that the ABC Commission approve the site.

Chairman Fox made a motion to approve the request. Seconded by Commissioner Wright. So ordered.

IV. OTHER BUSINESS

Split-Case Fees – Commissioner Wright, having been absent from the March 11, 2005 Commission meeting, requested information concerning split-case fees, which were to have been discussed at that meeting. Mr. Gregory stated that the Commission had received a request for a declaratory ruling on split-case fees, but did not discuss the issue because the request had been

withdrawn. Mr. Gregory explained that ABC law does not define clear procedures on how to adjust the price of a case of wine when the case has had individual bottles removed. Some parties allege that the handling and repackaging of the product puts an added value on a single bottle. Therefore, the price of a split case would be different from the price of a whole case.

Commissioner Wright asked what the Commission needed to do to implement these changes. Mr. Gregory stated that if the Commission were to agree that the added handling involved in splitting a case added value to a bottle of wine, then a wholesaler who did not charge a retailer for that added value would be, in effect, giving the retailer a thing of value, which is not allowed under current ABC rules and regulations.

Commissioner Wright stated that he was inclined to believe such handling was a thing of value, and requested that the Commission proceed on determining a policy to ensure wholesalers charge a fair split-case fee for such a service.

General Counsel Andy Ellen of the North Carolina Retail Merchants Association was in the audience and requested to speak to the Commission concerning this matter. He stated that he knew of numerous parties who wished to be heard before the Commission made any formal ruling, and requested that they be given time to discuss the issue and determine whether they believe splitting a case is a thing of value.

Commissioner Wright requested that Mr. Gregory further pursue this matter. Seconded by Chairman Fox.

Commission Meeting Dates – Mr. Herring stated that the Legal Division had requested that formal Commission meeting dates be determined for meetings after June 2005. Chairman Fox made a motion that Commission meetings be scheduled for July 8, 2005, August 12, 2005 and September 8, 2005. Seconded by Commissioner Wright. So ordered.

Charlotte Bobcats – Chairman Fox asked Assistant Counsel Timothy W. Morse if there had been any new developments concerning an advertising signage issue with the Charlotte Bobcats. Mr. Morse stated that he knew of no current developments in this matter.

Administrator Doyle Alley stated that he had traveled to Charlotte and met with Charlotte Bobcats President Jonathan Fine on this matter. Mr. Fine stated that his organization was willing to wait for the Commission to reach an interim assessment on changes regarding spirituous liquor advertising within the premises, and that they had no pending issues in negotiation with the ABC Commission.

Concerning the presence of spirituous liquor in guest cabinets of the luxury skybox suites in the Bobcats' arena, Chairman Fox asked Mr. Morse if he had learned anything concerning other control states' policies in that matter. Mr. Morse stated that Oregon's model seemed to be the most developed and would be easy to integrate with North Carolina's rules concerning hotel guest cabinets. Mr. Fox requested that Mr. Alley and Mr. Morse keep him informed as the situations developed.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Jason Hall, Legal Division