

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

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

MINUTES OF JUNE 17, 2010

Chairman Williams asked for a motion to waive the reading of the minutes from the June 17, 2010 meeting into the record. Commissioner Guy made a motion to waive the reading of the minutes from the June 17, 2010 meeting. Seconded by Chairman Williams. So Ordered. Chairman Williams asked for a motion to approve the minutes from the June 17, 2010 meeting. Commissioner Guy made a motion to approve the minutes from the June 17, 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.

Chief Counsel Fred Gregory stated that hearing case #53, Goels Plaza would be continued and item V. on the agenda, Other Business – Exemption Request – Attorney Thomas Beckett would be continued to the August meeting.

I. HEARING CASES – 53

Chief Counsel Gregory stated Mrs. Robin Pearce, owner of hearing case #32, Wendell Mart, was present to speak on behalf of the business.

Mrs. Pearce stated that her sixteen year old daughter did not ask the underage buyer for identification. Her daughter is now in the first offenders program and if she stays out of trouble, the offense will be expunged. Since this incident, all the employees have attended a RASP Class with Mr. John Ruth. Mrs. Pearce 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, in light of the permittee having taken the RASP Class. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated Mr. Angel Berber, owner of hearing case #8, El Angel, was present to speak on behalf of the business.

Mr. Berber stated that he was out of the state when his assistant went to the ABC store and bought alcohol because he had not ordered alcohol from the ABC Board. The assistant refilled the bottles. He went on to state that the business was very slow and asked for a reduction in the penalty.

Chairman Williams stated that this case was about paying the appropriate taxes on alcohol and refilling alcohol bottles. After conferring with Commissioner Guy, Chairman Williams stated that the Commission would not reduce the penalty based on the severity of the violation. Chairman Williams told Mr. Berber that he had the option of taking the 35 day suspension or paying the \$3,500.00 penalty and taking a five day suspension.

Chairman Williams stated that the suspension would begin on August 13, 2010 and he would receive notification in the mail.

Chief Counsel Gregory stated that Mr. Masadak Jabir, owner of hearing case #6, D and D Grocery, was present to speak on behalf of the business.

Mr. Jabir stated he has no previous violations. The City of Raleigh had condemned the building where one of his other businesses was located and he needed to remove the alcohol from the condemned building. There were seven bottles of fortified wine in the inventory and D and D Grocery does not have a fortified wine permit. An employee admitted he had moved the fortified wine from inventory by mistake. When ALE Agent Morrow came in to inspect the business, the cashier did not know where the key to the office was so, Agent Morrow called him. Mr. Jabir stated that he told Agent Morrow that he could bring the key to the business, but Agent Morrow told him, no it could wait until Tuesday.

Chairman Williams asked Mr. Jabir, that even after Agent Morrow told him they could wait until Tuesday, he still cited him?

Mr. Jabir stated that Agent Morrow told him, that he has always been in compliance with them, but he had to submit the violation to the ABC Commission.

Mr. Jabir said he had two employees, the employee that committed the violation was no longer working there and one of his employees had taken a RASP Class.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00, upon the stipulation that the other employee attend a RASP Class.

Mr. Jabir stated that the store is under contract to sale and the sale should be finalized by August 15, 2010 or September 1, 2010.

After conferring with Commissioner Guy, Chairman William made a motion to rescind the previous motion and made a motion that if the sale does not go through and the permits are not turned into the Commission by September 1, 2010, the penalty will stand at \$1,200.00, but if the sale goes through before September 1, 2010, the penalty will be reduced to \$900.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Alexander Eggleston owner of hearing case #42, Mai Thai Restaurant and Bar, was present to speak on behalf of the business.

Mr. Eggleston thanked the Commission for allowing him to speak. He stated that his actions were wrong and he wanted to pay the penalty. Mr. Eggleston asked the Commission if he could make payment arrangements in order to pay the penalty.

Chairman Williams stated that the Commission does not allow for payment arrangements to be made. After conferring, the Commission decided to leave the penalty as is.

Chief Counsel Gregory stated that Mrs. Lorna Gilbreath, owner of hearing case #39, Gils Market, was present to speak on behalf of the business.

Assistant Counsel Timothy Morse stated that upon review of the permittee's file, a previous violation was mistakenly left out and that would explain the amount of the penalty.

Mrs. Gilbreath stated that they constantly tell their employees that they will be fired if they do not follow the procedures and not ask for identification. There is signage everywhere and the employees had taken the education class.

The business has two full time employees and two part time employees. They asked the Commission to eliminate the active suspension.

After conferring with Chairman Williams, Commissioner Guy made a motion to eliminate the active suspension time. Seconded by Chairman Williams. So Ordered.

Chief Counsel Gregory stated that Attorney William H. Potter was present to speak on behalf of reconsideration case #51, Tengu Japanese Steak House.

Chief Counsel Gregory and Mr. Potter conferred with the Commission regarding the case. The owner of the business does not speak English well and did not realize that he was agreeing to cancel his permits. The delinquent audit reports have been submitted to the Audit Division. Upon agreement with Chief Counsel Gregory, the previous order will be amended.

Commissioner Guy made a motion to change the penalty to \$400.00. Seconded by Chairman Williams. So Ordered.

Chief Counsel Gregory stated that Mr. Dan Dubreuil, General Manager of hearing case #33, Brier Creek Country Club, was present to speak on behalf of the business.

Mr. Dubreuil stated that a wedding ceremony was being held at the business. The supervisor on duty confiscated the bottle of alcohol from the father of the bride. The supervisor gave the bottle to the bartender, who in turn put the alcohol in with the inventory and he didn't tell anyone. Mr. Dubeuil asked the Commission for some leniency.

After conferring with Chairman Williams, Commissioner Guy made a motion to reduce the penalty from \$600.00 to \$100.00, in light of the permittee operating ten years without any violations. Seconded by Chairman Williams. So Ordered.

Chief Counsel Gregory stated that Mr. Hector Cruz and Mrs. Helen Cruz the owners of hearing case # 45, La Hacienda Mexican Restaurant, were present to speak on behalf of the business.

Mrs. Cruz stated that she would translate for her husband. An employee was refilling. The officer came in to speak with Mr. Cruz, some other people and the former employee. She went on to state that the officer never told him what he was being accused of and confused him.

Chairman Williams told Mr. Cruz that he could go before an administrative law judge and have the case heard or the case could be heard today based on what was being alleged and what he agreed to.

Mr. Cruz agreed to have the case decided at the meeting.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$4,500.00 to \$3,500.00 and 7 day active suspension or 35 day suspension. Seconded by Commissioner Guy. So Ordered.

Assistant Counsel Renee Cowick stated that the permittee for hearing case #49, Purple Onion was not present but sent a letter to the Commission explaining what happened. This case involved failing to purchase malt beverages from a place of business that holds the proper permit.

After conferring with Chairman Williams, Commissioner Guy made a motion to reduce the penalty from \$500.00 to \$200.00. Seconded by Chairman Williams. So Ordered.

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

IV. OTHER BUSINESS – PRICE ADJUSTMENT REQUEST LB&B - ABC WAREHOUSE CONTRACT

Administrator Michael Herring addressed the Commission regarding a compensation adjustment to LB&B Associates, the ABC warehouse contractor for the fiscal year 7/1/2009 to 6/30/2010. The adjustment request was broken down into two components. The first component was \$83,150.00 for additional fuel used. (*35,611 gallons at a price of \$2.69 per gallon.*) The second component was for \$52,206.71 for the additional number of cases handled and delivered during the fiscal year. (*LB&B handled 4,585,118 cases, which was a 1.2% increase over the previous year.*) The total compensation request was for \$135,357.53. After negotiation, an equitable amount of \$109,250 was reached.

Mr. Herring recommended that the Commission approve the compensation adjustment for the ABC Warehouse Contractor.

Commissioner Guy made a motion to approve the price adjustment. Seconded by Chairman Williams. So Ordered.

II. INDIAN TRAIL ABC BOARD

Administrator Michael Herring addressed the Commission regarding opening a new ABC Store in Union County. On June 14, 2010, the Commission received a letter from Leslie Hinson, board member of Indian Trail ABC Board in Union County requesting Commission approval to open their first ABC Store in Union County. On June 24, 2010, ALE Supervisor Richard Griffin conducted an investigation and found that the proposed site is located in the Union Town Shopping Center, at the intersection of Highway 74 West and Faith Church Road. The proposed site will be 4800 square feet.

The Indian Trail ABC Board wants to lease the space for a five year period. The first two years they will lease the space for \$12.50 a square foot, and the third year would be \$13.00 a square foot. The fourth year would be \$13.50 a square foot and the fifth year would be \$14.00 a square foot.

The proposed property is owned by B G Union Town LLC. The registered agent is C T Corporation System and the address is 150 Fayetteville Street, Raleigh, North Carolina 26701.

The investigation found that there is no conflict of interest between the property owner and the Indian Trail ABC Board.

The nearest church, Good Shephard Community Church, is located in the Union Town Center Shopping Center and is approximately 300 feet from the proposed location.

The nearest school is Sardis Elementary School and is 1.78 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on June 14, 2010, in compliance with the ABC Commission's 30-day requirement.

Neither the Indian Trail ABC Board nor the ABC Commission has received complaints.

Mr. Herring recommended that the Commission approve the ABC Store location.

Commissioner Guy made a motion to approve the new ABC Store location. Seconded by Chairman Williams. So Ordered.

III. OTHER BUSINESS – EASTERN BAND OF CHEROKEE INDIANS ABC COMMISSION

Chief Counsel Gregory stated that Ms. Ann Davis, Attorney for the Eastern Band of Cherokee Indians ABC Commission, was present to speak on behalf of her client. Ms. Davis asked the Commission to grant an exemption pursuant to NCGS 18B-1116(b), to allow them to name a designated area in their casino lounge, "Jack Daniel's Old No. 7 Lounge." She presented the Commission with information regarding the casino and outlining the exemption request. There would be no signage outside the casino; the casino would have to be entered before any signage would be viewed.

Chief Counsel Gregory stated that the "Daniel's" lighting might be the only obstacle.

Chairman Williams told Ms. Davis that since the ABC Commission is still in negotiation with Brown-Forman, to keep in contact with Chief Counsel Gregory.

Ms. Davis stated that she would keep the Commission informed.

After conferring with Commissioner Guy, Chairman Williams made a motion to grant the exemption request. Seconded by Commissioner Guy. So Ordered.

VI. OTHER BUSINESS – 4 NCAC 2 S RULES REVIEW

Mr. Robert Hamilton stated that there were only two rules within 4 NCAC 2S, which need to be reevaluated and possibly negotiated.

He went on to state that there were two rules in 4 NCAC 2R, which needed to be addressed. The first involved the local ABC Boards and warehouse deliveries. The other issue concerned was what thought to be a typographical error but was a missing comma that was left out of the rules in 1984. This changed the entire meaning of the sentence, so now the sentence has to be changed.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division