

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 6, 2011**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on October 6, 2011, beginning at 9:58 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 SEPTEMBER 7, 2011

Chairman Williams asked for a motion to waive the reading of the minutes of the September 7, 2011 meeting and the September 14, 2011 special meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the September 7, 2011 meeting and the September 14, 2011 special meeting. Motion Passed. Commissioner Briggs made a motion to approve the minutes from the September 7, 2011 meeting and the September 14, 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. Commissioner Briggs stated that he had to recuse himself from hearing case #80, Silver Eagle LLC and hearing case #81, Silver Eagle LLC. Commissioner Guy stated that he had found no conflicts of interest. Chairman Williams stated that he had no conflicts of interest.

II. OTHER BUSINESS – EMPLOYEE SERVICE AWARDS PRESENTATION

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

Yadira Soto – Five years of service.

LoRita Pinnix – Fifteen years of service.

Tami Clifton – Twenty-five years of service.

I. HEARING CASES – 89

Chief Counsel Fred Gregory stated that Mr. Doug Terry, owner of hearing case #77, Olive or Twist, was present to speak on behalf of the business. Mr. Terry asked the Commission for leniency. He and his business partner owned the business and after the second violation occurred in 2009, Mr. Terry stated he took steps to remove his business partner. He went on to state that it was his intention to start a whole new business, but wasn't given the opportunity because of the City of Wilmington. He further stated that he would be willing to pay a higher penalty in order to avoid the active suspension. Mr. Terry also stated that he has scheduled a RASP class with Eleanor Johnson for October 12, 2011.

After speaking with Commissioner Guy and Commissioner Briggs, Chairman Williams made a motion to waive the active suspension and modify the monetary penalty to \$3,700.00. Motion Passed.

Chief Counsel Gregory stated that Ms. Cynthia Johnson, owner of hearing case #10, K and V Grocery, was present to speak on behalf of the business. Ms. Johnson asked the Commission to dismiss the violation. She stated that her business is located in a shopping center. The alcohol being consumed was not purchased at her convenience store and there were benches along the walkway where people were sitting. She went on to state that she had a signed statement from one of her employees, who had gone outside to have a smoke break. The employee did not observe the person drinking, nor did he sell the individual alcohol. Ms. Johnson stated that she also had another signed statement from a young lady who stated that she did not observe the individual drinking.

Ms. Johnson further stated that her employees have taken a RASP class.

Chairman Williams asked Ms. Johnson to approach the bench, so that she could point out where the benches were located on the site map that was submitted with the permit application.

Assistant Counsel Renee Cowick stated that she would have normally issued a written warning but the employee was from the permittee's other store location. The employee was not on duty, but had been drinking. That employee admitted that she should have known better to the law enforcement and that was why the penalty was \$500.00.

After conferring with Commissioner Briggs and Commissioner Guy, Chairman Williams made a motion to issue a written warning. Motion Passed.

Chief Counsel Gregory stated that Mr. Matt Rusinko, general manager of hearing case #62, Carolina Ale House, was present to speak on behalf of the business. Mr. Rusinko asked the Commission for a reduction in the fine and stated that a RASP class had been scheduled.

Chairman Williams made a motion to reduce the penalty by 25% upon the stipulation that all the employees attend a RASP class. Motion Passed.

Chief Counsel Gregory stated that Mr. Gary Robinson, general manager of hearing case #54, Trio, was present to speak on behalf of the business. Mr. Robinson presented the Commission with copies of information regarding the business. Included in the information, was a copy of the BARS certificate. Mr. Robinson asked the Commission for some leniency. Mr. Robinson stated that on the night of the alleged violation, the business had closed. Some of the employees of the business went to the patio in the back of the business and drank beer that had been purchased from a grocery store. Law enforcement was in the area and heard laughter coming from the back of the business and discovered the employees drinking.

Chairman Williams made a motion to reduce the penalty by 25%. Motion Passed.

Chief Counsel Gregory stated that Mr. Kurt Jones, owner of hearing case #45, Rudinos Pizza and Grinders, was present to speak on behalf of the business. Mr. Jones asked the Commission for leniency. He recognized that he made a mistake and stated that he took a class through Alcohol Law Enforcement and plans to schedule another class once he is fully staffed. He also admitted that he was the individual who transferred mixed beverage tax stamps from one spirituous liquor container to another. There was a huge wedding party that had consumed a bottle of "Fire Ball". Once that bottle was gone another bottle was purchased and the tax stamp was transferred to that bottle. He concluded by saying that he was not able to order another bottle since it was a Thursday night.

After some discussion with Commissioner Guy and Commissioner Briggs, Chairman Williams made a motion to waive the active suspension and to increase the penalty to \$4,000.00. Motion Passed.

Chief Counsel Gregory stated that Ms. Veronica Shaw was present to speak on behalf of hearing case #88, Yellow Rose Café & Billiards. Assistant Counsel Timothy Morse stated that typically when there is a refilling violation, its only one bottle of alcohol that is refilled, but with this case there was a large number of bottles that were refilled.

Ms. Shaw stated that the alcohol bottles did not have tax stamps on them when they purchased the alcohol.

Chairman Williams gave them the opportunity to rescind the signed offer in compromise and have the case heard before an administrative law judge.

Ms. Shaw declined that offer and asked that the Commission rule on the matter.

After some discussion with Commissioner Guy and Commission Briggs, Chairman Williams made a motion to waive the active suspension and increase the penalty to \$4,000.00. Motion Passed.

Chief Counsel Gregory stated that Mr. Sean Wilbur, owner of hearing case #48, Sin City NoDa, was present to speak on behalf of the business. Assistant Counsel LoRita Pinnix stated that Mr. Wilbur was not on duty on the night of the incident, but he was intoxicated. The report stated that Mr. Wilbur had pushed furniture around, his speak was slurred and his eyes were glazed over.

Mr. Wilbur did admit that he was agitated and was going through a divorce with his business partner. He further stated that he suspected that his business partner had called the police to the business.

Chairman Williams made a motion to eliminate violation #2, employee was or became intoxicated while on the licensed premises and violation #3, employee did allow the possession and or consumption of alcoholic beverages in an area of the premises other than those specifically approved by the Commission; and to reduce the penalty to a 12-day suspension or \$1,200.00. Motion Passed.

Chief Counsel Gregory stated that Mr. Patrick Parsons, owner of hearing case #19, Sams Mart, was present to speak on behalf of the business. Mr. Parsons asked the Commission for some leniency. This was the first violation for the employee in 16 years of working.

Chairman Williams made a motion to reduce the penalty by 25%, upon the stipulation that all the employees attend a RASP class. Motion Passed.

Chairman Williams made a motion to accept the signed offer in compromise for hearing case #80, Silver Eagle LLC and hearing case #81, Silver Eagle LLC. Motion Seconded by Commissioner Guy. Motion Passed.

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

III. OTHER BUSINESS – EXEMPTION REQUEST- JESSUP MARION EMPLOYMENT

Chief Counsel Gregory stated that Mr. Jessup Marion was present to request an exemption to allow him to continue to work as wine director for Wine to Water, a non-profit aid organization and work in a sales position with a North Carolina Distributor.

Chairman Williams asked Mr. Marion how big a business was Wine to Water. Mr. Marion stated that the business is growing and to date they have sold 669 cases to their wholesaler. On October 28, 2011, they will be releasing five different wines.

Chairman Williams asked Mr. Marion what was his compensation. Mr. Marion stated that he is a salaried employee at Wine to Water.

Chairman Williams asked Mr. Kris Gardner with the North Carolina Beer and Wine Wholesalers Association, if he had any questions or concerns about granting the exemption request. Mr. Gardner stated that he did not have any and questions or concerns.

Chairman Williams made a motion to grant the exemption request, as long as the cases being sold do not exceed 1,500 cases sold a year. Motion Passed.

IV. OTHER BUSINESS – PUBLIC HEARING OF THE RULES PUBLISHED IN VOLUME 26, ISSUE OF THE NC REGISTER (04 NCAC 02R .0803 AND NCAC 02S .1008)

Rules Coordinator Bob Hamilton apologized to the Commission for a typographical mistake listing (04 NCAC 02R .0803 AND NCAC 02S .1008) on the agenda. It should be (04 NCAC 02R.0802 AND NCAC 02S. 1008).

The North Carolina Register was properly listed.

Chairman Williams asked the attorneys if there was any concern with regard to how the section was list on the agenda, but properly listed on the North Carolina Register. Attorney William Potter, pointed out that 04 NCAC 02R.0802 was listed in error on the North Carolina Register. Chairman Williams stated that the Commission would notify the Office of Administrative Hearings. Mr. Hamilton stated that the deadline for the public hearing period was today, so there could be people present be heard on 04 NCAC 02R.0802 and 04 NCAC 02R.0803. Chairman Williams asked if there was anyone present to be heard.

Chairman Williams opened the public hearing. Mr. Potter asked what was the reason for taking out “permittee, which shall contain a short and plain statement of the facts alleged,”. Chairman Williams stated, that statement is already listed in the statute.

Mr. Hamilton stated that the reasoning was to eliminate redundancy in the rules.

Chairman Williams stated that the recommended changes were given to the staff to review.

Mr. Hamilton stated that there were no written comments.

Chairman Williams closed the public hearing period.

V. OTHER BUSINESS

Mr. Hamilton stated the Commission needed to approve the recommended changes to the following rules: 04 NCAC 02R .0902, Maintenance of Working Capital; 04 NCAC 02R. 1703, Stores: Appearance and State List; and 04NCAC 02R .1706, Customer Service.

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

VI. OTHER BUSINESS – LETTERS OF REMOVAL

Administrator Michael Herring stated that letters of removal were sent out to the following board members: Mr. Glenn Johnson and Mr. Jay Parker with the Wilkesboro ABC Board and Mr. Everette Pierce with the Youngsville ABC Board.

Chairman Williams stated that none of the individuals appeared to have attended any one of the 23 classes offered. All three board members were notified in writing to be heard and no one appeared today. The removal is effective immediately.

VII. OTHER BUSINESS

Chairman Williams stated that the Commission has been notified that the Federal Trade Commission has entered into a consent agreement. FourLoko will be changing their packaging to resolve the complaints that they received.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division