

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 15, 2009
9:00 AM MORNING SESSION**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on October 15, 2009, beginning at 9:10 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 J.D. Lyon and Commissioner Zander Guy were present at the meeting.

MINUTES OF APRIL 23, 2009, MEETING

Chairman Williams made a motion to waive the reading of the minutes from the April 23, 2009, meeting into the record. Seconded by Commissioner Guy. So Ordered. Chairman Williams made a motion to approve the minutes from the April 23, 2009, meeting. Seconded by Commissioner Guy. So Ordered.

ETHICS STATUTE 138A-15 REGARDING CONFLICTS OF INTEREST

As required by Ethics Statute 138A-15, Chairman Williams asked Commissioner Lyon and 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. Commissioner Lyon recused himself from hearing case #190, Crowleys Old Favorites and hearing case #281, Crowleys Old Favorites. Commissioner Guy recused himself from hearing case #71, Food Lion 1490, hearing case #83, Food Lion 57, hearing case #240, Food Lion 1421, hearing case #256, Food Lion 593, hearing case #358, Food Lion 697, hearing case #396, Food Lion 259 and hearing case #422, Food Lion 1491. Chairman Williams stated that he had no conflicts.

Chairman Williams stated the ABC Store approvals would be presented before the pending violation cases out of order of the Agenda.

III. ABC STORE LOCATION – BEAUFORT COUNTY ABC

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Beaufort County. On April 6, 2009, the Commission received a letter from JoKay Smith, General Manager of the Beaufort County ABC Board, requesting approval to relocate a store in Chocowinity, North Carolina. This matter was scheduled for the Commission's May 28, 2009, meeting which was cancelled. On May 29, 2009, the Beaufort County ABC Board could have lost \$5,000.00 in earnest money so it closed on the property. On April 13, 2009, ALE began an investigation on the property and found that the proposed location is on undeveloped property approximately one-tenth of a mile north of the existing store in Chocowinity, on Highway 17 North. The property is one parcel out of several and it has not been assigned a street address, so it is referred to as the store on Highway 17 North in Chocowinity.

The property purchased is a 1.26 acre plot with frontage on Highway 17. The property was owned by BCR Investment Group LLC and D & J Properties of Wilmington, LLC. The ABC Board purchased the property for \$150,000.00.

There were no members of the ABC Board with any financial interest in the property prior to purchasing it.

The projected sales volume at this new location will be approximately \$556,000.00 or a ten percent increase over the previous store.

The Board plans to construct a single story brick building similar to stores in Belhaven and Aurora. The building will have approximately 1,600 square feet for retail and storage space.

The nearest church is First Presbyterian Church and is located 2.5 miles from the proposed site.

The nearest school is Chocowinity Middle School and is located .8 of a mile from the proposed site.

The nearest ABC Store is in Washington and is 2.6 miles from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was posted on April 3, 2009, in compliance with the ABC Commission's 30-day requirement.

No objections have been received by the ABC Commission.

Mr. Herring recommended that the Commission approve this site.

Chairman Williams made a motion to approve the proposed relocation of the ABC Store. Seconded by Commissioner Lyon. So Ordered.

IV. ABC STORE LOCATION – PILOT MOUNTAIN ABC

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store in Surry County. On September 15, 2009, the Commission received a letter from Douglas Brannon, Chairman of the Pilot Mountain ABC Board, requesting approval to open its first ABC Store. Pilot Mountain is in Surry County and ABC Stores were approved in an election on May 6, 2008. On September 15, 2009, Alcohol Law Enforcement Supervisor Mark Senter began an investigation and found that Pilot Mountain ABC Board is planning to place their new ABC Store at 360-C Key Street in Pilot Mountain.

The nearest ABC Store would be operated by the Mount Airy ABC Board about fifteen miles away from the proposed location.

The proposed site has several adjacent businesses, including a grocery store, restaurants, a bank, a general merchandise store and other retail businesses. The property of the proposed location is currently zoned general business. The operation of an ABC Store is allowed in this zoning due to new zoning adopted during the Town of Pilot Mountain's board meeting on April 27, 2009.

The property is currently owned by Glenwood Pilot Mountain Company LLC.

The Board plans to lease the 2,600 square foot property for five years at \$7.00 a square foot or \$18,200.00 a year. The rent will increase approximately 20 cents per square foot each year of the first five years.

The nearest school is Pilot Mountain Middle School and is located approximately one mile from the proposed site.

The nearest church is The Church – The Body of Christ and is located approximately one-tenth of a mile from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was posted on September 9, 2009. The sign was posted on the exterior in a strip shop instead of the exterior of the building. The notice fell down or was removed sometime between September 9 and September 22, 2009. The Chairman of the local board posted a new sign on September 22, 2009 on the exterior of the proposed location.

On September 29, 2009, ALE Supervisor Mark Senter was asked to recheck to make sure the sign was posted properly. ALE Supervisor Senter advised the sign was posted and visible. ALE Supervisor Senter has not received any objections to the site.

The projected sales volume at this proposed site will be approximately \$500,000.00 a year.

No objections have been received by the ABC Commission.

Mr. Herring recommended that the Commission approve this site.

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

V. ABC STORE LOCATION – SPRUCE PINE ABC

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store in Mitchell County. On May 22, 2009, the Commission received a letter from Danny Burlson, Chairman of the Spruce Pine ABC Board, requesting approval to open its first ABC Store. Spruce Pine is in Mitchell County and ABC Stores were approved in an election held on March 10, 2009. On May 27, 2009, the Commission requested Alcohol Law Enforcement to investigate the proposed site. On June 9, 2009, ALE Agent W.A. Happoldt began an investigation and found that Spruce Pine ABC Board will locate its first store at 12344 Highway 226 South, Spruce Pine. The proposed site is in the city limits of Spruce Pine and is accessible from Highway 19 East and Highway 226 South.

The property is owned by McLaren Investments LLC. Charles Fulenwider is the owner of McLaren Investments.

Investigation found there were no financial conflicts between the property owner and any ABC Board members.

The ABC Board agreed to lease the property from McLaren Investments. It plans to lease 3,600 square feet of space for 60 months at a rate of \$2,775.00 per month. The rate will increase to \$3,150.00 per month beginning the sixth year.

The proposed site is zoned C-3 and is properly zoned for an ABC Store.

The nearest church is Abundant Life Outreach Church and is located .3 miles from the proposed site.

The nearest school is Greenlee Primary School and is located .6 miles from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on May 21, 2009, in compliance with the ABC Commission's 30-day requirement.

There have been some objections to this site. The Town of Spruce Pine reported objections and kept a written record of the objections that had a signed petition attached. The town manager reported that the majority of the objections came from those who disapprove of the sale of spirituous liquor and not the proposed ABC Store site.

No calls have been received by the Commission in favor or in opposition to the proposed site.

The projected sales volume at this new location will be approximately \$600,000.00 its first year.

Based upon receiving no objections at the Commission, Mr. Herring recommended that the Commission approve this site.

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

II. ABC STORE LOCATION – ASHEVILLE ABC

Administrator Michael Herring informed the Commission that this request for approval of a proposed location will come before the Commission at its meeting next month.

I. HEARING CASES - 434

Chief Counsel Fred A. Gregory stated that there were no contested cases for this meeting.

Chief Counsel Gregory stated that the following cases be continued to the next meeting: hearing cases #10, Food Lion 106, #15, Country Jeffs Grocery and Gameroom, #118, Bethelinus, #158, Mexicali Rose Restaurant, #214, Valdese Post 234, #217, Black Mountain Lodge 2220, #264, Kangaroo Express 462 and #367, Harris Teeter 178.

Chief Counsel Gregory stated hearing case #119, Pizza Hut 2832, was given a Written Warning. Also, hearing case #52, Evoo, had their permits cancelled and are out-of-business.

Chairman Williams stated that the Commission has not met for several months and the docket was unusually large.

Chief Counsel Gregory stated that Mr. Dean Vial, owner of hearing case #80, First Carolina Delicatessen, was present to speak. Mr. Vial said his store has approximately 2,000 square feet and opened in 1986. He works at the business seven days a week. Mr. Vial stated it is not a bar but is a northern delicatessen with beer and wine. Mr. Vial stated that they were guilty of selling alcohol to an agent and he had zero tolerance for selling to a minor. Mr. Vial explained that the ACC Tournament was at the Coliseum approximately one-half mile from his business, the business was packed and a new employee was at the register. Mr. Vial stated that the young lady working undercover went to the cooler, grabbed a beer and the employee rang her up.

Mr. Vial said he was suffering from the recession and trying to keep his doors open. He has received written commendations for carding patrons. Mr. Vial asked the Commission members for their consideration.

Chairman Williams asked Mr. Vial if his staff had been through additional training since they had been written up. Mr. Vial replied only the employee who sold the alcohol. Mr. Vial has 12 employees at his store.

Commissioner Lyon asked Mr. Vial how many employees did he have that sell alcohol. Mr. Vial replied he probably has 12 employees at his store. Commissioner Lyon asked had anyone of the employees attended the training. Mr. Vial stated that only the one employee in violation.

Commissioner Guy made a motion to reduce the penalty to \$600.00 with the stipulation that the remainder of his employees take a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Ms. Valerie Nordin, owner of hearing case #113, Provence, was present to speak. Ms. Nordin stated this was the first violation and asked for a waiver of the fine. Ms. Nordin said she made a mistake and they had refined their policy since the underage sale violation took place. She said the business is a French restaurant and family owned and the fine would be a sufficient burden.

Commissioner Lyon asked Ms. Nordin if she was aware under 21 was on the license. Ms. Nordin said not only did the license have under 21 on it, it was a new license and the picture was flipped. Ms. Nordin stated she miscalculated and no one ever comes to ask for a drink at the bar. Ms. Nordin said the agent was walking back and forth by her cash register and made her nervous and she wanted them out of there as quickly as possible, so she pulled the beer out and rang it up.

Chairman Williams asked Ms. Nordin if she had been through training. Ms. Nordin replied yes.

Commissioner Lyon made a motion to reduce the penalty to \$600.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Mohamad Chehaitli, owner of hearing case #7, Friendly B P, was present to speak. Mr. Chehaitli stated that the employee took the identification, misread the date and sold to a minor. Mr. Chehaitli asked to have the offense lightened but this was the third offense at the location.

Mr. Chehaitli stated that the violation occurred in February and all of the employees have attended several ALE training programs. He said the employee misread the identification and made an honest mistake.

Chairman Williams stated that according to the record there was a violation in October, 2008 and December, 2007. Chairman Williams asked Mr. Chehaitli if the business has a pending violation that took place in August, 2009. Mr. Chehaitli replied yes.

Mr. Chehaitli asked for a reduction on the suspension.

Chairman Williams made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Joseph Tumminelli, owner of hearing case #11, Cueva de Lobos Mexican Restaurant, was present to speak. Mr. Tumminelli stated he accepted responsibility on the date of the violation and had no excuses. Mr. Tumminelli said that since the incident they had gone to Harris Wholesale for training.

Commissioner Lyon asked Mr. Tumminelli what he was asking for. Mr. Tumminelli replied absolutely nothing but to show respect and accept responsibility. Chairman Williams thanked Mr. Tumminelli for making the trip and accepting responsibility.

Chief Counsel Gregory stated that Ms. Denise Russ, owner of hearing case #53, Fubar, was present to speak. Ms. Russ stated that there was confusion as to test tube shooters prepared before an order was taken.

Ms. Russ said she had been told different things from the ABC, agents and an attorney. Ms. Russ stated she did not really know what the law was on premixed mixed beverages.

Mr. Tim Morse, Assistant Counsel, left the Commission room to explain to Ms. Russ the law regarding premixed mixed beverages.

Chief Counsel Gregory stated that Mr. Josef Askew, owner of hearing case #204, L T D Club, was present to speak. Mr. Askew stated that the L T D Club was a brown bagging club. Mr. Askew said he was told from the previous owner that the bottles had to be labeled with the initials of the name of the patron. Mr. Askew stated that when the agents came in he found out that the whole name had to be written on a label and put on the bottle.

Chairman Williams asked Mr. Askew when he took over the club. Mr. Askew said he took over May, 2008.

Chairman Williams made a motion to reduce the penalty to \$700.00 with the stipulation that Mr. Askew and his employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Paul Thompson, owner of hearing case #16, Big Harrys Tavern, was present to speak. Mr. Thompson stated he had been in business eight years. He said his patrons during the day are mainly retired military and younger at night. Mr. Thompson showed the Commission members a picture of the door the patron walked out with a sign at eye level that reads alcohol not permitted past this point. Mr. Thompson said the front door has a sign too.

Mr. Thompson stated that on the night of the violation forty or more people in a group had returned from Iraq. A soldier came in, got one beer and deliberately walked out the front door with it under his shirt. Mr. Thompson said an ABC officer was across the street, came over and cited them for it.

Mr. Thompson stated he took the RASP class training last year and has requested a new class. Also, he said he had requested a class from the Cumberland County ABC Board.

Chairman Williams asked Mr. Thompson if he had any violations previous to 2005. Mr. Thompson replied he had a citation in 2002 and 2003 involving jello shooters at a Christmas party.

Commissioner Guy made a motion to issue a Written Warning. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Andres Loza, owner of hearing case #213, Tonali Restaurant, was present to speak. Mr. Loza stated on December 18 a gentleman came in and went to the bar to obtain a beer. Mr. Loza asked the patron for his identification but the lights were dim in this area. Mr. Loza stated the identification was the new type and was unfamiliar to him. He took the identification in his office and it took him a while to realize where the date of birth was located. When he came out of the office, the patron already had a beer and the officer came out. Mr. Loza said he felt they had made an honest mistake.

Mr. Loza stated he has made a commitment to make sure to call the ABC Commission to see what tools are available for training and to become familiar with the identification. Mr. Loza said he set up a training session with the ABC Commission for all of his staff.

Chairman Williams said that according to the violation report, Mr. Loza returned to the bar with the driver's license, handed it back to the individual and then he poured the beer, handed it to the individual, quoted a

price of \$4.00. Chairman Williams said the individual was 17 years of age. Mr. Loza stated he did not pour the beer for the individual.

Chairman Williams stated to Mr. Loza he appreciated his honesty about not being as attentive to the requirements and expected he would be from this point forward.

Commissioner Guy made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory revisited hearing case #53, Fubar.

Assistant Counsel Tim Morse stated that premixing and prepouring are two issues. Businesses are allowed to premix mixed drinks under certain restricted situations and prepouring of mixed beverages is not permitted under any circumstances. Mr. Morse stated that Ms. Russ asked a number of sources for advice and received conflicting information. After receiving conflicting information, Ms. Russ decided to purchase premixed drinks in the ABC Store in a bottle and not a sealed test tube shoot. Mr. Morse stated that there was no violation of premixing without a preapproved recipe but there was still prepouring.

Commissioner Lyon made a motion to issue a Written Warning. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Ms. Ann Dillard, district manager of hearing case #350, J P Asheboro, was present to speak. Ms. Dillard stated she did not deny the violation but asked that the company not be penalized for an employee's bad judgement. All employees sign a consent form on their hiring date about checking identifications. Every payday, employees received training and sign off that they understand the business' identification policy. Ms. Dillard said the employee who sold was terminated and did not ask for identification.

Ms. Dillard asked Chairman Williams what his suggestion was about checking the employees selling. Chairman Williams said to send the secret shopper into check her employees rather than to shift the burden over to law enforcement to find out if the employees were following policy.

Commissioner Guy made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Dennis Sigmon, owner of hearing case #102, Hilltop, was present to speak. Mr. Sigmon stated he was in his twenty-ninth year of operating the sportsbar. The business had been cited for having a bottle of spirituous liquor in liquor storage without a mixed beverages tax stamp. Mr. Sigmon had purchased the spirituous liquor from the local ABC Store two days before they were checked by law enforcement. He did not double check behind the store; however, there had been a few mistakes from the liquor store he had caught. Mr. Sigmon stated he took the liquor back.

Mr. Sigmon explained the other incident about the missing tax stamp. Mr. Sigmon said they were having a Christmas party and the girl took a bottle from a customer to put in the bottom cabinet of his file cabinet. It was discovered about one to one and one-half years later by law enforcement.

Commissioner Lyon asked Mr. Sigmon if he had the receipt for the spirituous liquor and if he paid the mixed beverage tax. Mr. Sigmon said he had paid the tax but he did not have the receipt.

At this time, the Commission took a recess until 11:00 AM. The Commission reconvened at 11:00 AM and continued with hearing case #102, Hilltop.

Commissioner Guy made a motion to issue a Written Warning. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that hearing case #51, Club International, is a carry-over on the Agenda.

Chief Counsel Gregory stated that Mr. Rey Arias, owner of hearing case #13, Reys, was present to speak. Mr. Arias stated this incident happened in February and the business had been inspected again with no violations. Mr. Arias is now in charge of ordering all of the alcoholic beverages at the restaurant. He said any leniency and understanding would be greatly appreciated.

Chairman Williams asked if the containers were purchased through the normal channels from the ABC Board or did someone go and buy them direct off the shelf and bring them into the restaurant. Mr. Arias said it seemed like they bought them off the shelf of the ABC Store because they did not have a mixed beverages tax stamp.

Commissioner Lyon asked Mr. Arias if he had already closed for one week based on the penalty on the Offer in Compromise but he had not paid the \$3,500.00 fine. He asked the Commission to recognize the seven days that he voluntarily closed as the seven days referred to in the offer and for leniency regarding the \$3,500.00 fine.

Commissioner Guy made a motion to give the business credit for the seven days closed and reduce the penalty to \$3,000.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Argie Boyton, owner of hearing case #101, Final Approach, was present to speak. Mr. Boyton stated on February 6, 2009, eight bottles of spirituous liquor without tax stamps were found at the business. Mr. Boyton said that one week prior to the violation there was a party at his business celebrating his birthday. Mr. Boyton planned to take the liquor home but thought it would be illegal to transport the open containers in his SUV.

Mr. Boyton stated he was familiar with the law about the mixed beverage tax stamps and he had been in business for about eleven years and this was his first violation. Mr. Boyton asked for a reduction in the suspension and the fine.

Commissioner Lyon asked where were the bottles located. Mr. Boyton replied that they were stored about forty feet from the bar area in a storage cabinet in his private office.

Commissioner Guy made a motion to reduce the penalty to \$1,000.00 with no active suspension. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Serge Fwala, owner of hearing case #344, Club Equateur, was present to speak. Mr. Fwala stated that after a prior violation, he installed seven cameras inside the club to back him up in case anything happened. Mr. Fwala said he was not at the Commission meeting to deny all of the charges and he asked for a reduction in the penalty.

Commissioner Lyon asked Mr. Fwala if they had any training from ALE or the ABC Commission. Mr. Fwala replied yes.

Commissioner Guy made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. William Potter, attorney for hearing case #122, College Beverage, was present to speak on behalf of his client. Mr. Potter stated the case had been tentatively settled by signing the Offer in Compromise but asked the Commission for some consideration. Mr. Potter said the business is on Hillsborough Street in Raleigh and it is a convenient store across the street from the largest public university in the State. The business is operated by a husband and wife who have had this particular permit for about 2 ½ to 3 years. Mr. Potter stated this was a first offense. Mr. Potter stated the wife sold and there was a line at the checkout with the agent standing behind the minor. The wife thought they were together and she made a mistake. Mr. Potter stated it is a high incidence area and asked the Commission to consider making a reduction in the fine because of the current economy.

Chairman Williams asked what was the procedural history that had kept this violation coming before the Commission for a year. Mr. Potter replied this violation had been petitioned for an administrative hearing.

Commissioner Lyon made a motion to reduce the penalty to \$700.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. William Potter, attorney, was present to speak on behalf of his client for hearing case #190, Crowleys Old Favorites. Mr. Potter stated that he was not contesting this case. Chairman Williams asked Mr. Potter if he was representing Crowleys on hearing case #190. Mr. Potter replied no.

Chief Counsel Gregory stated that Mr. William Potter, attorney for hearing case #281, Crowleys Old Favorites, was present to speak on behalf of his client. Mr. Potter said this case would have come before the Commission earlier but that Commissioner Joyner had resigned, Commissioner Lyon had a possible conflict and Chairman Fox could not handle it alone and it was continued. Chairman Williams stated he was looking at an Offer in Compromise dated September 30, 2008 signed by Mr. Green agreeing to an active five-day suspension and a payment of \$3,500.00 in order not to have a 25-day suspension. Chairman Williams asked Mr. Potter if the other pending matter involving Crowleys should be considered. Mr. Potter stated the Commission was free to consider it but he was not involved in it.

Chairman Williams asked Mr. Potter what he was asking for and what was his argument for reducing what Mr. Green agreed to last September. Mr. Potter stated he hoped the Commission would lessen or waive the active suspension time. Mr. Potter said his argument was that the two prior offenses were based on failure to determine age. Mr. Potter stated that he and Mr. Green believe that the failure of his manager on the evening of the pending violation was the two entrances (a restaurant entrance and a bar entrance). Mr. Potter stated that they have had personnel at the door of the bar to check people that come in the evenings. Some of the younger people around the area found out that they could go in the restaurant, mingle there and get into the bar without having identifications checked.

Mr. Potter asked the Commission to give consideration in eliminating or reducing the active penalty.

Commissioner Guy made a motion to reduce the penalty to \$1,750.00 with a five-day suspension. Seconded by Chairman Williams. So Ordered.

Chairman Williams made a motion to approve the remaining Offers in Compromise on the 9:00 AM Session with the exception of hearing case #80, First Carolina Delicatessen, hearing case #113, Provence, hearing case #7, Friendly B P, hearing case #204, L T D Club, hearing case #16, Big Harrys Tavern,

hearing case #213, Tonali Restaurant, hearing case #53, Fubar, hearing case #350, J P Asheboro, hearing case #102, Hilltop, hearing case #13, Reys, hearing case #101, Final Approach, hearing case #344, Club Equateur, hearing case #122, College Beverage and hearing case #281, Crowleys Old Favorites. Seconded by Commissioner Guy. So Ordered.

Chairman Williams made a motion to ratify hearing case #190, Crowleys Old Favorites. Seconded by Commissioner Guy. So Ordered.

Chairman Williams made a motion to ratify hearing case #71, Food Lion 1490 and hearing case #83, Food Lion 57. Seconded by Commissioner Lyon. So Ordered.

Chairman Williams stated that all of the 9:00 AM matters were disposed of and several of the 2:00 PM matters which were taken out of order were disposed of. Chairman Williams called a recess until 2:00 PM.

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 15, 2009
2:00 PM AFTERNOON SESSION**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on October 15, 2009, beginning at 2:00 PM. 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 J.D. Lyon and Commissioner Zander Guy were present at the meeting.

I. HEARING CASES - 434

Chief Counsel Fred A. Gregory stated that Mr. Rajendra Patel, owner of hearing case #303, Quick Shop Gas Stop 2, was present to speak. Mr. Patel stated this was their first offense. Chairman Williams stated that they had the permit for only a month and it was a temporary permit which was made permanent about the time of the offense.

Chairman Williams asked Mr. Patel if he could tell them about his business or how he tried to prevent this from happening. Chairman Williams asked if he was working the register. Mr. Patel replied no and he was a silent partner.

Chairman Williams asked Mr. Patel how his employees were trained. Mr. Patel replied that they were given a book.

Commissioner Lyon stated that according to the violation report the employee who was charged with the violation said that they didn't receive any training. Mr. Patel stated that they had the ABC Commission book. Commissioner Lyon asked Mr. Patel if he had any training by the ABC Commission or ALE or anyone in his business. Mr. Patel responded he was in the hotel business.

Chairman asked if the staff had been in any training other than the book given to them. Mr. Patel replied yes.

Commissioner Guy made a motion to ratify the Offer in Compromise as is with the stipulation that the employees take a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Pravinchandra Parikh, owner of hearing case #266, Krishna Food Mart, was present to speak. Chairman Williams stated that they reviewed the report and it was an underage sale by an employee. Mr. Parikh stated he was frustrated and he stayed with employees when they were working. Mr. Parikh said he made sure they did the right things.

Chairman Williams asked Mr. Parikh how many employees did he have. Mr. Parikh said about three employees.

Chairman Williams asked Mr. Parikh if the employee's criminal case was dismissed. Mr. Parikh replied yes.

Commissioner Lyon made a motion to reduce the penalty to \$1,800.00. Seconded by Commissioner Guy. So Ordered. Chairman Williams thanked Mr. Patel for speaking up about understanding the new license which showed he was keeping up with the changes.

Chief Counsel Gregory stated that Mr. Awwad Nekoula, owner of hearing case #383, Luxor Minimart, was present to speak. Chairman Williams stated that in reviewing the report they had an employee who sold beer to a nineteen year old and they had permits since August, 2008. Chairman Williams said the violation occurred in April, 2009, and the report stated an ALE Agent went into the business and the clerk denied questions asked by the agent to having sold the beer. Chairman Williams said the review of the security footage showed that he did sell the beer. Chairman Williams asked Mr. Nekoula what was going on. Mr. Nekoula replied the employee was in the store by himself and working all the time. Mr. Nekoula said the employee's excuse was that in the morning he checked identification and thought it was the same person who came in previously. Mr. Nekoula stated it was the employee's first time and he was sent to a training class.

Commissioner Guy made a motion to reduce the penalty to \$900.00 with the stipulation that any employees working the register attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Wade Barnes, General Manager of hearing case #235, Lowes Food Store 435, was present to speak. Chairman Williams stated it appeared from the violation report it was selling to an underage person and they held their permits for twelve years.

Mr. Barnes stated that the employee was hired on June 10, 2009 and he does all the hiring. Mr. Barnes said they have a computer based program in the office which goes through all aspects of cashier training including a training session on ALE. Mr. Barnes stated the employee signs a sheet which is the sale of alcohol and beverages and what the register does. Mr. Barnes said the registers have a prompt when the alcohol and tobacco products go through the register it will stop you and the cashier will have to check the driver's license under the age of 27. Mr. Barnes stated the employee was hired on June 10, 2009 and ALE came in on June 24, 2009 with the cashier completely disregarding the training. Mr. Barnes said they have a driver's license guidebook at every store. Mr. Barnes stated they have self inspections within the first 30 days and the employee is checked about six times. Mr. Barnes said they had to let go the young man and he was a high school student.

Commissioner Guy made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Niral Patel, owner of hearing case #385, Cape Fear Beverage and Variety Mart, was present to speak. Commissioner Lyon asked Mr. Patel how long they had been open. Mr. Patel replied four years. Mr. Patel said this was the first offense and it was a mistake. Mr. Patel stated it was closing time and they were rushing. Mr. Patel said he was there with his cousin in this family owned business. Mr. Patel stated that ALE comes every year and goes through all the rules and regulations. Mr. Patel said it happened and they forgot to check the identification. Mr. Patel stated the girl sent in looked over 35 years old. Commissioner Lyon said she was 20 years old.

Commissioner Lyon made a motion to reduce the penalty to \$900.00 with the understanding that the staff had already been trained. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Jess Backhaus, General Manager of hearing case #155, Tailwind Deli Espresso Bar, was present to speak. Mr. Gregory stated this was on the morning docket and Mr. Backhaus was not at the morning session. Chairman Williams stated this hearing was originally on for

9:00 AM and the matter was disposed but would reopen it with no objections. Commissioner Lyon and Commissioner Guy had no objections.

Commissioner Lyon asked Mr. Backhaus how long had he been in business. Mr. Backhaus replied January, 2005.

Chairman Williams asked Mr. Backhaus if he knew if the employee carded the minor or not. Mr. Backhaus replied his understanding was they were not carded.

Mr. Backhaus stated that when they first opened everyone had the classes. Mr. Backhaus said it was their fault, no excuses, that their business had grown with another restaurant and bar. Mr. Backhaus said they had added employees and did not redo the classes. Mr. Backhaus stated that classes were scheduled in June through the ABC but class was cancelled.

Commissioner Guy made a motion to reduce the penalty to \$900.00 with the stipulation that newer employees take a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Ms. Theresa Bellote, General Manager of hearing case #285, Cardinal Golf and Country Club, was present to speak. Chairman Williams stated it appeared they had permanent permits for a little over two years and July, 2009, ALE had an undercover campaign. Chairman Williams said the report stated an underage female was served. Ms. Bellote stated that they had signed the Offer in Compromise but wanted to delete the suspension portion and reduce the fine.

Ms. Bellote stated that the employee who allegedly sold the beverage was not authorized to sell beverages. Ms. Bellote said the employee had not been through their training programs and acted on their own accord. Ms. Bellote stated the agent explained to her that the employee took money in his pocket and made change out of his pocket. Ms. Bellote said they did not accept cash. Ms. Bellote stated it was a violation of their policies that he sold underage and basically it was theft from the club.

Ms. Bellote told their training consisted of three employees who participated in the serve it right program in April, 2009. Ms. Bellote said that eleven employees attended the BARS Program in July, 2009 and they were scheduled for the RASP Program on October 27.

Chairman Williams asked Ms. Bellote how many employees were authorized to sell alcohol. Ms. Bellote replied they have about eight to ten.

Commissioner Lyon asked if they accept cash from anyone. Ms. Bellote replied not on a member function night but at golf events outside they may accept cash.

Commissioner Guy made a motion to reduce the penalty to \$600.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Michael Ellis, owner of hearing case #230, Southern Pines Mobile Mart, was present to speak. Chairman Williams told Mr. Ellis it appeared he had his permanent permits since 2002. Chairman Williams stated that in the report he reviewed that his employee on August 7, 2008, sold a beer to a young woman who was working an ALE undercover campaign operation. Also, Chairman Williams stated they had a couple of previous underage sales which were in 2002 and 2005.

Chairman Williams asked Mr. Ellis to tell him about the current incident. Mr. Ellis stated he believed that the compliance check was done improperly. Mr. Ellis said he observed part of the compliance check and

listened to an audio tape. Mr. Ellis stated he believed that the employee did what he was supposed to do but made a mathematical mistake. Chairman Williams asked Mr. Ellis to explain further about the mathematical mistake. Chairman Williams stated he read that the young woman took the product to the register and was carded but then the employee sold. Mr. Ellis stated that the employee informed him that he asked the girl how old she was. Mr. Ellis said he felt ALE did not do it right because he thought that they could not do anything to mislead him to think she was old enough.

Commissioner Lyon made a motion to reduce the penalty to \$1,500.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Ayman Abuwarda, owner of hearing case #392, Martin Street Mini Mart, was present to speak. Commissioner Lyon asked Mr. Abuwarda how long had he been in business. Mr. Abuwarda replied since June, 2006. Chairman Williams stated according to the file that they had no prior ABC violations, but on May 21, 2009, there was an ALE undercover campaign. Chairman Williams said that during the operation the underage person came to the cash register with the beer, the clerk placed it in a paper bag, asked for the identification and completed the sale. Mr. Abuwarda stated they had a new employee who had been in training for only six days. Mr. Abuwarda said his brother was training him and the employee argued with the officer at the time that he didn't sell the beer to the undercover minor. Mr. Abuwarda stated that his brother witnessed the argument. Mr. Abuwarda said his brother called him and they fired the employee the same night.

Chairman Williams asked Mr. Abuwarda what kind of training had he and his brother had. Mr. Abuwarda replied he had been in the business for 17 years and his brother for 21 years.

Commissioner Lyon stated that the underage person in this report was 16 years old.

Chairman Williams asked Mr. Abuwarda what training had the new employee had on alcohol laws. Mr. Abuwarda replied they were training him.

Commissioner Lyon made a motion to reduce the penalty to \$900.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Francisca Rodriguez-Garcia, owner of hearing case #280, El Camaleon, was present to speak. Mr. Rodriguez-Garcia had a translator to help him speak on behalf of him and the business. Assistant Counsel Renee Cowick stated that there were two violations that were originally intended to go on separate Commission meeting dates. Chairman Williams stated that there were two matters which was failure to purchase beer through a wholesaler and selling to an underage person. Chairman Williams said he understood that what they were here to call about today was the failure to purchase through a wholesaler. Chief Counsel Gregory stated there was a signed Offer in Compromise on both cases. Chairman Williams asked Mr. Rodriguez-Garcia if he was interested in discussing both cases. Chairman Williams and the Commissioners looked over both cases.

Chief Counsel Gregory stated that the underage sale could be add-on hearing case #434, El Camaleon. Chairman Williams stated they had two different dates. One is three underaged people were in the bar, playing pool, who had alcoholic beverages which they said were sold to them through the bar. The translator said Mr. Rodriguez-Garcia said he only sold the beer to the one with the identification. Mr. Rodriguez-Garcia stated that he was giving the beer to the other people. Chairman Williams stated the other matter was restocking the bar with beer not purchased through a wholesaler. The translator said Mr. Rodriguez-Garcia stated they changed the delivery order, so he went to a store to purchase beer.

Chairman Williams asked if training courses were offered in Spanish. Ms. Burna Mattocks replied no sir.

Chairman Williams asked Ms. Burna Mattocks that in providing training if there was a problem with a time frame that would allow a translator to attend also. Ms. Mattocks replied no it would not be a problem.

Commissioner Guy made a motion to combine the penalties to \$1,200.00 to dispense of case #280 and #434 with the stipulation that Mr. Rodriguez-Garcia and other employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered. Chairman Williams stated that Mr. Rodriguez-Garcia would be able to bring someone to translate so all his questions could be answered.

Chief Counsel Gregory stated it would be better to reduce the fines on each Offer in Compromise which would be \$300.00 on one and \$200.00 on the other. Chairman Williams asked if there was a motion to reduce \$300.00 on the underage and \$200.00 on the wholesale. Seconded by Commissioner Lyon. So Ordered.

The Commission took a recess until 3:45 PM and continued with the remaining hearing cases.

Chief Counsel Gregory stated that Mr. Raymond Almanzar, owner of hearing case #212, Tenampa Bar, was present to speak. Chairman Williams stated that according to the violation report on January 8, 2009, an officer visited him and he did not have the appropriate license from the county and purchased beer for sale from a grocery store. Mr. Almanzar stated that the employee bought the beer for personal use because she was having a party.

Chairman Williams asked Mr. Almanzar if the employee worked for him now. Mr. Almanzar replied no and he operates the bar now. Mr. Almanzar said the employee worked only three months for him.

Commissioner Guy made a motion to ratify the Offer in Compromise as is. Seconded by Chairman Williams. So Ordered.

Chief Counsel Gregory stated that Mr. Paul Treadway, owner of hearing case #49, Brightwood Inn, was present to speak. Chairman Williams stated it was on the morning docket and with no objections it would be reopened. Commissioner Lyon and Commissioner Guy had no objections. Chairman Williams stated that in reviewing the file the business has had permits since 1989 with no previous ABC violations until March, 2009, spirituous liquor bottles not having tax stamps. Mr. Treadway stated he did not know how this occurred.

Chairman Williams asked if it was a bread and breakfast or restaurant. Mr. Treadway replied it was a restaurant. Chairman Williams asked Mr. Treadway how did the bottles come into the restaurant. Mr. Treadway stated he guessed improper supervision and did not know how he missed it.

Commissioner Guy made a motion to reduce the penalty to \$250.00 with the stipulation that Mr. Treadway and his employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered. Chairman Williams stated that the fine was reduced because of more than a 20 year record with no violations.

Chief Counsel Gregory stated that Mr. Samy Seria, owner of hearing case #185, Bio M Bos Mexican Cuisine, was present to speak. Chairman Williams stated that according to the report it appeared that the employee had bottles of liquor in the office which were for her personal use. Chairman Williams asked Mr. Seria if he could tell more about the situation. Mr. Seria stated it was his birthday the week before and the three bottles brought were left over. Mr. Seria said they had extensive training since the violation.

Commissioner Guy asked Mr. Seria how many employees did he have. Mr. Seria replied about fourteen. Commissioner Guy asked if they had all been through the training. Mr. Seria replied yes.

Commissioner Guy made a motion to reduce the penalty to \$400.00. Seconded by Commissioner Lyon. So Ordered.

Chairman Williams made a motion to ratify hearing case #240, Food Lion 1421, hearing case #256, Food Lion 593, hearing case #358, Food Lion 697, hearing case #396, Food Lion 259 and hearing case #422, Food Lion 1491. Seconded by Commissioner Lyon. So Ordered.

Chairman Williams made a motion to approve the remaining Offers in Compromise with the exception of hearing case #303, Quick Shop Gas Stop 2, hearing case #266, Krishna Food Mart, hearing case #383, Luxor Minimart, hearing case #235, Lowes Food Store 435, hearing case #385, Cape Fear Beverage and Variety Mart, hearing case #155, Tailwind Deli Espresso Bar, hearing case #285, Cardinal Golf and Country Club, hearing case #230, Southern Pines Mobile Mart, hearing case #392, Martin Street Mini Mart, hearing case #280, El Camaleon, add-on hearing case #434, El Camaleon, hearing case #212, Tenampa Bar, hearing case #49, Brightwood Inn and hearing case #185, Bio M Bos Mexican Cuisine. Seconded by Commissioner Lyon. So Ordered.

VI. OTHER BUSINESS -

Chief Counsel Fred Gregory asked Chairman Williams, Commissioner Lyon and Commissioner Guy about future dates for December and January Commission meetings. Chairman Williams, Commissioner Lyon and Commissioner Guy agreed upon Wednesday, December 16, 2009. Chairman Williams, Commissioner Lyon and Commissioner Guy agreed upon Wednesday, January 13, 2010. Chairman Williams stated that November 17, 2009, December 16, 2009 and January 13, 2010 will be the next Commission meeting dates scheduled at 10:00 AM.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Dottie L. Taylor, Legal Division