

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
FEBRUARY 12, 2008**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on February 12, 2008, beginning at 10:10 AM. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox, Commissioner Mike Joyner and Commissioner John Lyon were present at the meeting.

MINUTES OF JANUARY 15, 2008, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the January 15, 2008, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the January 15, 2008, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox asked Commissioner Lyon and Commissioner Joyner 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 Joyner and Commissioner Lyon both stated that they found no conflicts of interest. Chairman Fox stated that he had no conflicts.

I. HEARING CASES – 51

Chief Counsel Fred A. Gregory stated that there was a contested case #1, El Pujido, and the respondent was not present. Assistant Counsel Renee Cowick represented the Commission at the administrative hearing on November 29, 2007, in High Point, North Carolina.

Chairman Fox made a motion to adopt the Findings of Fact and Conclusions of Law of Administrative Law Judge Donald W. Overby. Seconded by Commissioner Lyon. So Ordered.

Mr. Richard Jenkins, owner of hearing case #11, Bench Tavern, was present to speak on behalf of the business. Mr. Jenkins stated he and his wife bought the business in September, 2006 and when they took over the business the machines were in operation. Mr. Jenkins said the vendor of the machine did not explain the situation to them. The business was raided on the night of the violation and he said he didn't know they had done that much harm. Mr. Jenkins stated that since the raid, the machines were out and they have changed vendors. Mr. Jenkins said they should had been more knowledgeable about the machines and asked for leniency because they had cleaned the place up and tried to make it a respectable business.

Commissioner Joyner asked Mr. Jenkins if the agents took the machines and Mr. Jenkins replied they took the machines, the safe and operating money in the safe, etc.

Chairman Fox asked Mr. Jenkins how often did the vendor unload the money from the machines. Mr. Jenkins replied every two weeks.

Chairman Fox asked Mr. Jenkins how he would make a payoff to someone who had won and Mr. Jenkins stated they were paid in money.

Chairman Fox stated he had a hard time understanding that anybody in business would not know that they could not make cash payouts.

Mr. Jenkins stated that the machines were a very limited income because they were small and made \$50.00 - \$60.00 a week. Chairman Fox stated that one machine had \$386.00 in it. Mr. Jenkins stated the business kept 40% of the money in the machines. Chairman Fox stated the officers found approximately \$700.00 in the machines and 40% of that would be close to \$300.00. Mr. Jenkins stated that some of that was in their safe and was operating money. Chairman Fox found it difficult to believe he didn't understand what he was doing and he had the use and benefit of the money.

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

Mr. Ken Wise, owner of First Offense case #19, Wild Wing Café, was present to speak on behalf of the business regarding service to an underage person. Mr. Wise said the business opened June of last year and has had two training classes. Mr. Wise said he went through the RASP class along with the employees.

Commissioner Lyon asked Mr. Wise if the underage person was carded. Mr. Wise stated the person was carded and the date on the license was 1988. The bartender read 1980 and he is colorblind. Mr. Wise stated the bartender had admitted what he had done and the Agent felt he was sincere and the bartender went to the RASP class after this incident.

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

Mr. Haresh Italia, manager of hearing case #15, Curve View Quick Stop, was present to speak on behalf of the business. Mr. Italia stated he had just hired an employee and was training him. Mr. Italia told the employee to check the I.D. of the underage person. The employee checked his I.D. but did not calculate the date. The employee plead guilty and was released from the job.

Mr. Italia has taken the RASP class.

The underage sale was the result of an underage campaign by the Shelby Police Department. Assistant Counsel Cowick replied non-ALE campaigns are a little different.

Chairman Fox made a motion to reduce the penalty to \$600.00 upon giving the benefit of having taken the RASP class. Seconded by Commissioner Joyner. So Ordered.

Mr. Victor Llamas, manager of First Offense case #22, El Parral Mexican Restaurant 4, was present to speak on behalf of the business. Mr. Llamas stated that one of the waiters sold to an underage person on November 9, 2007 around 7:55 PM, a busy time in the restaurant. The waiter said he saw the driver's license but did not see the age well. Mr. Llamas said the waiter probably has a problem with his sight and needs to get glasses. Mr. Llamas stated he attended a RASP training course.

Chairman Fox made a motion to reduce the penalty to \$600.00 based upon completing the RASP class. Seconded by Commissioner Lyon. So Ordered.

Ms. Diane Augusto, district manager of the WilcoHess stores, First Offense case #10, Wilco 1904 and First Offense case #15, Wilco 1870, was present to speak on behalf of the business. Both of the stores are located in Clayton, North Carolina. Ms. Augusto asked for additional consideration on the cases. The employee in the 1904 store had been employed for three years. Ms. Augusto stated the violation occurred at 5:00 PM which was at one of their peak times. Ms. Augusto said they have twelve pumps and were having problems with their credit card servers. Ms. Augusto stated the clerk did check the I.D.

Ms. Augusto stated the employee in the 1870 store had been employed for three years. The employee was cited at 11:00 PM and failed to ask for identification. Ms. Augusto stated they were trying to be proactive with the policies and laws at all locations and they have some training tools for the stores. One is an Alcohol Policy and Procedure handout which has guidelines and is signed prior to an employee starting a shift at all locations. Also, they have a handout which is laminated and is on top of the registers.

Commissioner Joyner asked Ms. Augusto if they had the registers which the date was typed in. Ms. Augusto replied "they do."

Ms. Augusto stated that twelve of their employees attended the RASP program and received certificates.

Commissioner Lyon asked Mr. Gregory if this was the same undercover person used in some cases who had facial hair. Ms. Augusto responded "yes" and stated these campaigns were completed by the Clayton Police Department.

Chairman Fox made a motion to reduce the penalty to \$600.00 on each of the stores. Seconded by Commissioner Joyner. So Ordered.

Chief Counsel Fred A. Gregory stated that hearing case #4 – Side Trax and Grill and hearing case #46 – Royal Player Sport Bar & Billiards Grill will be carried over to the March 13, 2008, Commission meeting.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of hearing case #15, Curve View Quick Stop, which had been ratified earlier. Seconded by Commissioner Lyon. So Ordered.

The following was an Add-On Hearing case:

#51 – Cocos Food Mart

II. FIRST OFFENSE CASES - 34

The following is a list of offense violation cases in which Final Agency Decisions were signed by the Chairman on February 12, 2008, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Fresh Air Galaxy 3 – 3339 1st Avenue SW, Hickory, NC 28602
2. Todds Cash and Carry – 1318 South Main Street, Wake Forest, NC 27587
3. Sandhus – 1225 Amelia Church Road, Clayton, NC 27520
4. Stallings Store – 4708 Old US 64 Hwy, Zebulon, NC 27597
5. Pizza Hut 2847 – 593 South Stratford Road, Winston Salem, NC 27104
6. Petro Express 3975 – 9424 South Tryon Street, Charlotte, NC 28273
7. Rite Aid Store 11480 – 8532 University City Boulevard, Charlotte, NC 28213
8. Clayton Food Town – 421 East Second Street, Clayton, NC 27520
9. Good Store – 7065 Hwy 50 North, Benson, NC 27504

10. Wilco 1904 – 8060 US Hwy 70 West, Clayton, NC 27520
11. Spirit Food Mart – 504 College Street, Clinton, NC 28328
12. J Ms Mart – 629 East Woodlawn Road, Charlotte, NC 28209
13. Matts Chicago Dog – 19732 One Norman Boulevard – Suite 330, Cornelius, NC 28031
14. Little Tokyo – 4045 Premier Drive – Suite 107, High Point, NC 27265
15. Wilco 1870 – 291 NC Hwy 42 East, Clayton, NC 27520
16. Hilton Garden Inn – 4025 Sycamore Dairy Road, Fayetteville, NC 28303
17. Main Street Tavern – 102-A South Main Street, Catawba, NC 28609
18. Thai Grille – 1350 NC Hwy 50 – Suite 107, Surf City, NC 28445
19. Wild Wing Café – 110 Hanes Square Circle, Winston Salem, NC 27103
20. New Terrys Discount Grocery – 1020 South Main Street, High Point, NC 27260
21. Clemmons B P – 2500 Lewisville Clemmons Road, Clemmons, NC 27012
22. El Parral Mexican Restaurant 4 – 1406 South Scales Street, Reidsville, NC 27320
23. Pantry Shop 11 – 1421 West English Road, High Point, NC 27262
24. Kangaroo Express 3005 – 5617 Rockfish Road at Hwy 59, Hope Mills, NC 28348
25. J Butlers of Lewisville – 1335 Lewisville Clemmons Road, Lewisville, NC 27023
26. Applebees Neighborhood Grill & Bar 05 – 137 Norman Station Boulevard, Mooresville, NC 28117
27. Petro Express 3922 – 7208 East Independence Boulevard, Charlotte, NC 28212
28. Shell – 2517 Park Road, Charlotte, NC 28203
29. Spring Garden Texaco – 1614 Spring Garden Street, Greensboro, NC 27401
30. Mountain View Market – 3297 Hwy 127 South, Hickory, NC 28602
31. Moes Southwest Grill – 11088 US Hwy 15-501 – Suite 700, Aberdeen, NC 28315
32. Mi Pueblo International Cuisine – 155 Northcross Lane, Statesville, NC 28625
33. T J Mart – 4044 Old Linwood Road, Lexington, NC 27292
34. Tommys Food Mart – 117 Brentwood Street, High Point, NC 27260

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense case #19, Wild Wing Café, First Offense case #22, El Parral Mexican Restaurant 4, First Offense case #10, Wilco 1904 and First Offense case #15, Wilco 1870, which had been ratified earlier. Seconded by Commissioner Lyon. So Ordered.

III. OTHER BUSINESS -

A. Commission Activity

Administrator Michael Herring presented the Commission activity for the month of January, 2008. The Permit Division was very active. The Permit Division received 675 applications compared to 589 applications in January, 2007. There were 418 wines approved compared to 337 wines in January, 2007. There were 50 beers approved compared to 22 beers in January, 2007. Money posted was \$354,410 compared to \$474,088 last year. The Legal Division received 92 violations compared to 203 in January, 2007. The enforcement had not been sending a lot of violations and that was the reason for being down in the Legal Division. The Education/Training Division had 96 RASP Programs compared to 69 RASP Programs in January, 2007. The warehouse's monthly shipments in January, 2008, were 333,569 compared to 262,857 cases in January, 2007. Warehouse shipments were up about 26.90% and from year-to-date 70,712 cases up.

B. Ocean Isle ABC Board

Administrator Michael Herring addressed the Commission concerning Ocean Isle ABC Board selling special order products at the retail price. Mr. Herring stated the problem had been taken care of by taking inventory of the special orders. Mr. Herring said in order to dispose of the special orders they allowed Ocean Isle ABC

Board to sell the special orders. Mr. Herring stated they were making progress of the 1,431 bottles on hand at the time the audit. They have sold 347 bottles to date and it is hoped to be depleted by fall.

C. Wake County ABC Board

Administrator Michael Herring addressed the Commission concerning Wake County ABC Board store at Sandy Forks Road. Mr. Herring stated the Wake County ABC Board was not pursuing to lease any of the property. Mr. Herring stated he spoke with Craig Pleasants and was informed they will possibly bulldoze the building down. Mr. Pleasants informed Mr. Herring that they will probably build a new store.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Dottie L. Taylor, Legal Division