

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 18, 2010**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on November 18, 2010, beginning at 10:05 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 OCTOBER 14, 2010

Chairman Williams asked for a motion to waive the reading of the minutes from the October 14, 2010 meeting into the record. Commissioner Guy made a motion to waive the reading of the minutes from the October 14, 2010 meeting. Seconded by Chairman Williams. So Ordered. Chairman Williams asked for a motion to approve the minutes from the October 14, 2010 meeting. Commissioner Guy made a motion to approve the minutes from the October 14, 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.

**III. OTHER BUSINESS – REVIEW AND CONSIDERATION OF PROPOSED CHANGES
(04 NCAC 02T AND 02S)**

Chairman Williams stated that Dr. Jeffery Ingle, North Carolina State Public Health Director, was present to speak regarding caffeinated alcoholic beverages. Dr. Ingle described the dangers of the caffeinated beverages and stated that the beverages contain large amounts of alcohol and is primarily marketed as a stimulant booster. The beverages can be purchased in convenience stores and grocery stores. The combination of stimulant and depressant can lead to the following dangers:

1. Masking the level of intoxication, leading to the lack of awareness of how intoxicated the consumer is.
2. Causing a depressed respiratory system which results in vomiting while asleep when the stimulants wear off.
3. Dehydration which hinders the body's ability to metabolize alcohol, therefore, increasing alcohol toxicity.
4. Risky behavior leading to assaults and drinking and driving.

Alcohol mixed with caffeine poses a serious public health risk. Studies show that people who frequently consume caffeinated beverages drink greater quantities of alcohol. The increased exposure of alcohol

during periods, which include adolescent and young adulthood, can increase the risk of alcohol, dependence later in life.

Chairman Williams stated that the Food and Drug Administration, the Federal Trade Commission and the Trade and Tax Bureau, jointly issued letters stating that the addition of caffeine to alcohol products is not a safe food additive and the sale of caffeinated products with the combination of alcohol would be viewed as an unfair and deceptive trade practice and based on the other findings they were prepared to revoke the approval of the labels of these products.

The Commission has drafted 04 NCAC 027.0201 to require that malt beverage product labels contain the amount of stimulants per container.

Mr. Chris Valauri, representing for Four LoKo products, stated that a new reformulated product has been approved at the federal level and the production has been stopped on the old caffeinated product.

Mr. Andy Ellen, general counsel for the Retail Merchants Association, stated that they will be working diligently to comply with the FDA's 15-day deadline to stop selling alcohol beverages containing caffeine.

Mr. Tim Kent, general counsel for the North Carolina Beer and Wine Association, stated that they are working to comply with the guidelines handed down. He went on to state that they recommended that the members suspend shipment of caffeinated beverages until they receive further notification from the various regulatory officials.

Chairman Williams stated that Mr. Fred A. Gregory, Chief Counsel prepared an exemption to allow the North Carolina wholesalers who sold caffeinated malt beverages to North Carolina permittee's to credit retailers for return of the caffeinated products.

Chairman Williams read the exemption request into the record.

Chairman Williams made motion to grant the exemption request. Seconded by Commissioner Guy. So Ordered.

I. HEARING CASES – 41

Chief Counsel Gregory stated that the following cases were to be continued: hearing case #2, 5 O'Clock somewhere, hearing case #31, Lax Gentlemen's Club and hearing case #32, Petro Express 3958.

Chief Counsel Gregory stated that Mr. Michael Rosenbacher, owner of hearing case #16, Players, was present to speak on behalf of his business.

Mr. Rosenbacher asked the Commission for some leniency. He stated that they have made changes to the business. They now have new staff and nine of the thirteen employees took the BARS Class in September 2010. Mr. Rosenbacher further stated that they now have a three step process when patrons enter the business.

Commission Williams made a motion to reduce the penalty from \$2,400.00 to \$1,800.00, upon the stipulation that the remaining employees take the RASP Class within the next 45 days. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. James P. Hansen, owner for hearing case #12, Five Point B P 245, was present to speak on behalf of his business.

Mr. Hansen stated that they were not notified of the violations until after another violation occurred on the following day. Mr. Hansen stated that if they had been notified sooner, the last violation wouldn't have occurred. He further stated that this is the first violation they have received since receiving having their ABC permits in 1999. Their employees have received online training.

Assistant Counsel LoRita K. Pinnix stated that the Commission could combine the violations and treat them as 1st and 2nd violation. The penalty would be 36 days or \$3,600.00 with no active suspension.

Chairman Williams made a motion to treat the violations as two violations and reduce the penalty from a 60-day suspension with 30 days suspended upon payment of \$5,000.00 to a 36-day suspension or \$3,600.00 with no active time. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Hamant Patel, owner of hearing case #33, Stop N Shop, was present to speak on behalf of his business.

Mr. Patel stated that the clerk was a new employee. The business has now instituted a new system and the cash register now prompts the clerk to ask for identification.

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 employee attend a RASP Class. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Ms. Denise Russ, owner of hearing case #40, Fubar, was present to speak on behalf of her business.

Ms. Russ presented the Commission with the following changes that she had made in response to the violations against her business:

1. An employee has been hired for the sole purpose of clearing all tables inside and on the patio area during business hours. A cleanup crew comes in after hours.
2. All employees took an ALE class on the proper serving requirements for all customers. Another class is scheduled with ABC Officer Belvin to update all the employees, managers and the owner on the current rules and regulations.
3. No alcohol is permitted anywhere outside of the building. The patio in the back of the building, has been enclosed and is not visible to the public or the parking lot. An employee has been designated as the bouncer for this area to enforce all ABC rules on consuming alcohol on the premise.
4. All 32oz and 64 oz pitchers have been removed. Draft beer can only be purchased in a single serving plastic cup.

Ms. Russ asked the Commission to reduce the penalty.

Chairman Williams made a motion to reduce the penalty from \$1,800.00 to \$1,350.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Bill Alexander, one of the owners of hearing case #28, Family Foods of Sunbury, was present to speak on behalf of his business.

Mr. Alexander stated that they would never intentionally sell alcohol to a minor. He went on to state that the minor entered the store with an altered identification. The following actions have been taken by the business to prevent future violations:

1. The employee who sold alcohol to the underage person has been terminated.
2. Owners have met with the managers and managers can be held responsible for the actions of the employees and terminated for violations of ABC laws and regulations.
3. Identifications are checked and date of birth entered, per policy.
4. If an employee is in doubt about the patron's age, the sale does not take place.

Mr. Alexander further stated that the business only does an average daily sale of \$330.00 in alcohol.

After conferring with Commissioner Guy, Chairman William stated that because of the gravity of the situation and the loss of life, the Commission will not amend the offer in compromise. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that owner of hearing case #38, Main Street Mini Mart, was not present, but asked the Commission to reduce the penalty. The business has attended RASP Class.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Steve Rodermond, owner of hearing case #36, Rock Ola Café, was present to speak on behalf of the business.

Mr. Rodermond stated that the employees attended a RASP Class in October 2008 and then attended another on in September 2010. The employee who sold no longer works at the business.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00. Seconded by Commissioner Guy. So Ordered.

Chairman Williams made a motion to approve the remaining offers in compromise, including the four add-on cases, with the exception of the previously ratified cases. Seconded by Commissioner Guy. So Ordered.

II. ABC STORE LOCATION - MECKLENBURG COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission regarding opening a new ABC Store in Charlotte, North Carolina. On October 18, 2010, the Commission received a request from Mr. Paul A. Stroup, Chief Executive Officer of the Mecklenburg County ABC Board requesting Commission approval to relocate an ABC Store in Charlotte, North Carolina. On October 20, 2010, ALE Agent Josh Batten conducted an investigation and found that the Mecklenburg County ABC Board plans to close the store at 6350 South Boulevard, Charlotte, North Carolina and to open a new ABC Store at 9500 South Boulevard, Charlotte, North Carolina, which would be located approximately 100 yards south of the

present ABC Store. The proposed ABC Store will be approximately 5,800 square feet. The purchase price is \$1,415,500.00.

The property is currently owned by Tricor 521, LLC. There are no conflicts of interests with the property owner and the Mecklenburg County ABC Board.

The nearest church is Living Vine Church and is .8 miles from the proposed location.

The nearest school is Pineville Elementary School and is 2 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on September 15, 2010, in compliance with the ABC Commission's 30-day requirement.

The Mecklenburg County ABC Board did receive an objection to the proposed site. The objection was to the number of ABC Stores in Mecklenburg County.

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

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

IV. OTHER BUSINESS – REVIEW AND CONSIDERATION OF PUBLIC COMMENTS AND THE CONSIDERATION FOR ADOPTION OF THE RULES PUBLISHED IN VOLUME 25, ISSUE 06 OF THE NC REGISTER (04 NCAC 02R AND 02SR)

Chairman Williams made a motion to repeal **04 NCAC 02R .0701 and .1008**, due to the Rules Review Commission's official objection to the rules. Seconded by Commissioner Guy. So Ordered.

Chairman Williams made a motion to approve the following proposed rule changes and to forward them to the Office of Administrative Hearings to be published with the Notice of Text and Notice of a Public Hearing in the North Carolina Register: **04 NCAC 02R .0102; 04NCAC 02S .0512, .0518, .0519, .0520, .0612, .0616 AND .0904; AND 04NCAC 02T .0101, .0103, .0104, .0202, .0201, .0206, .0303, .0308, .0401, .0502, .0708, .0709, .0711, .0712, .0713, .0714, .0716, .0717, .0901 AND .1001**. Seconded by Commissioner Guy. So Ordered.

Chairman Williams made a motion to adopt the proposed rule changes: **04 NCAC 02R .1302, .1305, AND .1901 AND 04 NCAC 02S .0101, .0102, .0105, .0106, .0107, .0212, .0232, .0234, .0235, .0404, .0901, .0902, .0903, .1006, .1008, AND .1101**. Seconded by Commissioner Guy. So Ordered.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division