

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 12, 2001**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on October 12, 2001. The meeting was tape recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commission Members Mike Joyner and Ricky Wright.

MINUTES OF SEPTEMBER 7, 2001 MEETING

The Chairman asked both Commission members if they had any corrections or additions regarding the Commission agenda for the September 7, 2001, meeting. Neither Commission member had any corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. The Chairman moved the minutes be approved seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One (formerly Executive Order 127), the Chairman asked Commissioners Joyner and Wright if there were any known 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. The Chairman stated she found no conflicts of interest with regard to herself. Commissioners Joyner and Wright stated they had reviewed the agenda and found no conflicts of interest. So Ordered.

HEARING CASES - 91 listed.

- I. ABC Store Location – Catawba County. Administrator Michael Herring presented information regarding an ABC store location in Hickory, NC. ALE District IX conducted an investigation concerning the new store location and advised that the Catawba County ABC Board is requesting approval for a proposed site at Lot 2, Westover Plaza in the Mountain View area. The new location is properly zoned and is in accordance with ABC Commission regulations. A sign regarding notice of intent to open an ABC store has been posted over 30-days. Mr. Randy Isenhower, Chairman of the Catawba County ABC Board, spoke on behalf of the store location stating the board wanted to get away from renting, and that he had received calls both for and against the store location. Mr. James Chandler, member of the community, spoke against of the store location. Chandler presented copies of reasons the store should be denied along with an enlarged map showing where the store would be located and the

describing the traffic in the area. Mr. Herring stated traffic would not be a concern in the mornings since the store could not open before 9:00 a.m.; the majority of the business would be on Friday and Saturday nights; there would be a low volume of customers with the exception of 'rush hours'; there were similar concerns with the Newton store (which was approved) which did not materialize; and the property was zoned correctly. Mr. Herring made a recommendation to approve the location. The Chairman stated although the community had justifiable concerns, and she was sympathetic, there was not enough evidence to deny the store location, there were no ingress and egress of problems and no reason why the location would not be suitable. The Chairman made a motion that the proposed site be approved, Commissioner Wright seconded and Commissioner Joyner agreed. So ordered.

II. OFFERS IN COMPROMISE

Chief Deputy Counsel Fred Gregory stated there were several cases that had asked for consideration. There was no one present to speak on behalf of any cases listed on the agenda. They are as follows:

#54 – Mr. Charles Yarborough spoke on behalf of the Pizza Station stating he did not wish to contest the charges but was asking for consideration in reducing the penalty and/or active suspension. The business has held ABC permits since 1976 with no previous ABC violations. Commissioner Wright made a motion that the monetary penalty be reduced by 50% (\$400.00), also that the active suspension be reduced by 50% (5 days) and that the offer be approved; seconded by the Chairman. So ordered.

#53 – Pizza Hut Restaurant. Assistant Counsel Tim Morse spoke on behalf of case #53 stating the permittee had been in business for 13 years with no previous violations and was asking for some consideration in this matter. The Chairman made a motion that the monetary penalty be reduced by 50% (\$400.00) and that the offer be approved; seconded by Commissioner Wright. So ordered.

#22 - Piggly Wiggly 66. Permittee had been in business since 1986 with no previous violations. The Chairman made a motion that the monetary penalty be reduced by 50% (\$400.00) and that the offer be approved; seconded by Commissioner Wright. So ordered.

#66 - Fast Phil's 506. Permittee had been in business since 1983 with no previous violations. The Chairman made a motion that the monetary penalty be reduced by 50% (\$400.00) and that the offer be approved; seconded by Commissioner Joyner. So ordered.

#76 – Red Apple Market 16. Mr. Gregory spoke on behalf of this case stating the permittee had been in business for 18 years and was asking for some

consideration in this matter. The Chairman made a motion that the monetary penalty be reduced by \$400.00 making the total monetary penalty \$1900.00, and that the offer be approved; seconded by Commissioner Wright. So ordered.

#78 - Piggly Wiggly 33. Permittee had been in business since 1979 with no previous violations. The Chairman made a motion that the monetary penalty be reduced by 50% (\$400.00) and that the offer be approved; seconded by Commissioner Wright. So ordered.

#82 - Jerry's Market. Permittee had been in business for 34 years with no previous violations. The Chairman made a motion that the monetary penalty be reduced by 50% (\$400.00) and that the offer be approved; seconded by Commissioner Wright. So ordered.

#86 - Get Go. Permittee had been in business for 12 years with no previous violations. The Chairman made a motion that the monetary penalty be reduced by 50% (\$400.00) and that the offer be approved; seconded by Commissioner Wright. So ordered.

#90 - Main Street Food Mart. The Chairman made a motion to recuse herself from this case since she had signed a Summary Suspension Order. Commissioner Wright made a motion to accept the signed offer in compromise and that the offer be approved; seconded by Commissioner Joyner. So ordered.

#88 - Pantry 136. Assistant Counsel LoRita Pinnix spoke on behalf of this case stating there were two underage sales within a two-hour time frame but the offer was treated as a first offense. The Chairman made a motion that the offer be accepted and approved; seconded by Commissioner Wright. So ordered.

The Chairman asked if there were any carryover cases. There were none.

Neither the Chairman nor the Commission members had any questions nor comments concerning any cases as submitted. The Chairman made a motion that all other cases be approved and ratified. Motion seconded by Commissioner Joyner. So ordered.

III. CONTESTED CASE

#1 – Henry Ralph Brake
T/A Horsin' Around Country Club
3808 Driftwood Drive
Charlotte, NC 28205

ABC Attorney
Fred A. Gregory
OAH Judge
Melissa Owens Lassiter

The Chairman made a motion the Commission adopt #1 and #2 of the Conclusions of Law, adopt the Findings of Fact, and uphold the Recommended Decision of the Administrative Law Judge. The Chairman also made a motion

that #3 of the Conclusions of Law be omitted, reason being that it was made in the nature of an opinion and not a conclusion of law. This motion was seconded by Commissioner Wright and adopted unanimously. So ordered.

- IV.** ABC Store Location – Cumberland County. Administrator Michael Herring presented information regarding an ABC store location in Fayetteville, NC. ALE District V conducted an investigation concerning the new store location and advised that the Cumberland County ABC Board is requesting approval for a proposed site at 9527 Cliffdale Road. The new location is properly zoned and is in accordance with ABC Commission regulations. A sign regarding notice of intent to open an ABC store has been posted over 30-days. To date no objections had been received regarding the new location. All members of the ABC Board and the City Council were interviewed. No conflict of interest exists between the parties. There were no complaints nor questions from any of the members regarding this store location. Mr. Herring made a recommendation to approve the location. The Chairman made a motion that the proposed site be approved and Commissioner Wright seconded. So ordered.

V. OTHER BUSINESS

1. Waiver Request. The Administrator, Mike Herring, presented information via letter from Red Springs ABC Board regarding employment age requirements and a request for the store manager to employ his son. The Chairman recommended granting the waiver request and made a motion to approve the waiver provided the youth would be supervised at all times and would not be paid any more due to the fact that he was related. This motion was seconded by both Commissioner Wright and Joyner. So ordered.
2. Ratified Budget Bill. A bill was passed to restore the name of the ABC complex to the “Marvin L. Speight, Jr., NC ABC Office & Warehouse Complex”. Mr. Herring requested approval to post a sign on the side of the office building as well as the sign on the corner of Tryon and Garner Roads, in compliance with the legislation. Commissioner Wright made a motion to accept and approve the signage; seconded by the Chairman. So ordered.
3. Recognition. The Chairman recognized Deputy Director of Operations Joe Dugdale of the NC Alcohol Law Enforcement Division for his presence at the meeting and thanked him.
4. New dates were set for future Commission meetings. They are as follows: January 11, 2002; February 8, 2002; and March 8, 2002.

5. Request for Waiver Exemption – Dean Ogan and Kevin Summers. No information was received regarding this exemption. This item was continued until the next Commission meeting of November 9, 2001.

No other business, new or old, to be heard. The Chairman made a motion to adjourn this meeting; seconded by Commissioner Wright. So ordered.

WITH NO further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Theresa D. Avery, Legal Division

10/17/01