

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
NOVEMBER 8, 2002**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on November 8, 2002. 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 Member Mike Joyner. Commissioner Ricky Wright was unable to attend.

**MINUTES OF NOVEMBER 8, 2002 MEETING**

The Chairman asked Commission Member Mike Joyner if he had any corrections or additions regarding the Commission Agenda for the October 11, 2002, meeting. Commissioner Joyner had no corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Joyner. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order Number One, the Chairman asked Commissioner Joyner 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. Commissioner Joyner stated he had reviewed the agenda and found no conflicts of interest.

**HEARING CASES - 83 listed.**

Chief Deputy Counsel Fred Gregory stated that Naholly Kalfus, attorney for case #48, Spartacus Grille, was present to speak on behalf of her client. Mrs. Kalfus stated that her clients had signed the offer in compromise but were asking the Commission for a reduction in the penalty. Mrs. Kalfus stated that both of the partners went on vacation at the same time, which was something that they don't usually do and that was when the violation took place. She further stated that there was adequate alcohol in their locked storage and the keys to the storage were left with the night manager, who did come by after her day job. She stated that usually one of the owners was there during the hours of operation. Mrs. Kalfus stated that she would have had the employee present or an affidavit, but he had left the state. The Chairman stated that she had no problem lowering the penalty. Commissioner Joyner made a motion to reduce the penalty to \$600.00. Seconded by the Chairman. So Ordered.

The Chairman had questions about the following cases:

#19- Twins Country Mart, Inc. – Assistant Counsel Tim Morse stated that in this case, a person was thrown from a truck and died.

#20- Run In Foods 833 – The Chairman had a question about the penalty. Assistant Counsel Tim Morse stated that this was the permittee's third offense and that was the reason for the penalty.

There were two carry over cases to the December Commission meeting:

#77- El Farallon

#78- Crown NC 750

### **REMAINING OFFERS IN COMPROMISE**

The Chairman made a motion to accept all other offers in compromise with the exception of #48, #77 and #78, which had either been ratified earlier or continued. Seconded by Commissioner Joyner. So Ordered.

II. The Chairman set a new Commission Hearing date, April 11, 2003. Commissioner Joyner had no scheduling conflict. Commissioner Wright would be notified of the April 11, 2002 Commission Hearing date. So Ordered.

### **CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEYS AND LEGAL STAFF**

The Chairman made a motion to go into closed session pursuant to G.S. 143-318.11(a)(3) for the purpose of discussing the 4<sup>th</sup> Circuit case, Carandola.

**-- C O N F I D E N T I A L --**

**CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEYS AND LEGAL STAFF  
Minutes**

Carandola - Adult Entertainment Activity – The Chairman moved to go into closed session pursuant to G.S. 143-318.11(a)(3) for the purpose of discussing the Commission's options on whether or not to appeal to the Supreme Court.

Amy Yonowitz, Assistant Attorney with the Attorney General's Office, and Assistant Commission Counsel Clayton Somers were present to speak about the Carandola case. Amy stated that our statutes regarding adult entertainment were ruled to be too broad and thus, not enforceable. In this case, the Judge's objection was that the statute could be applied not only to dancing establishments but also to artistic performances such as plays, and to sporting events where alcohol is served. The language in the statute could be applied to any of those events and this would go beyond the adult entertainment found at dancing establishments. Ms. Yonowitz stated that if the language in the statute could be limited somehow to just apply to those dancing establishments, then we would be on a much stronger footing. We have 90 days from the entry of this order to apply to the Supreme Court. Because of previous cases and their holdings on the first amendment, the Chairman stated that we should suggest to the General Assembly that they could take a look at this ruling and its results and determine what they want the state policy to be on adult entertainment. The Chairman made a motion not to appeal to the Supreme Court. Seconded by Commissioner Joyner. So Ordered.

The second matter to come before the Commission is Crickett's. The Chairman recused herself from this case since she had signed the previous Order of Summary Suspension. A brief summary was given as to the events. A shooting that resulted in a death happened at the club. Law enforcement submitted affidavits and a list that showed that over a 10-month period there had been 200 plus calls involving pretty violent activities. The Chairman found that this club posed a threat to the community and ordered a summary suspension; permittee to surrender their ABC permits, pending a hearing. The permittee hired an attorney, who went to an Administrative Law Judge to stop the Commission from taking their permits. The judge agreed with the permittee. Chief Deputy Counsel Fred A. Gregory stated that the judge told him: "People get shot in bars here every weekend." Assistant Counsel Clayton D. Somers stated that the judge said that he didn't see the emergency in taking the permits. He further stated that if the Commission wants to appeal the decision, then it should be done today as opposed to waiting until Monday, to avoid the possibility that a judge will say that the permittee had the permits the whole weekend and nothing happened. The Chairman made a motion to appeal immediately. Seconded by Commissioner Joyner. So Ordered.

**END OF CLOSED SESSION  
OTHER BUSINESS**

The Chairman discussed with Commissioner Joyner the desirability of delegating authority to the Chairman so that she would be able to sign orders for first time offense cases, in order to expedite those violations. The Legal Division staff, when they have free time would prepare the orders along with separate agendas. Administrator Michael Herring stated that he had spoken with Commissioner Wright who stated that he did not have a problem with that.

Administrator Michael Herring asked if the Attorney General's office could give him an estimate of the attorney fees, so that he could encumber the necessary monies. The Chairman stated that we should seek appropriation from the General Assembly to help.

No other business, new or old, was heard. The Chairman made a motion to adjourn the meeting. Seconded by Commissioner Joyner. So ordered.

With no further business, the meeting adjourned.

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

Respectfully submitted by

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Tiffany C. Goodson, Legal Division