

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES FOR RETAIL BEER AND WINE COUPONS
AND KEG TRANSPORTATION PERMIT
NOVEMBER 8, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its rulemaking hearing meeting on November 8, 2006, beginning at 10:05 a.m. The meeting was tape-recorded and the tape(s) are 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.

KEG TRANSPORTATION PERMIT

Chief Counsel Fred Gregory stated the first order of business was concerning the Keg Purchase Transportation Permit, the form to be distributed to retailers who sell kegs and the rules that go along with the form. Mr. Gregory requested that the Commission adopt the form and rules and introduced two people who wanted to speak on this matter.

Mr. Gregory stated that Ms. Dale Pratt-Wilson was present to speak. Ms. Wilson stated she coordinates the Coalition for Alcohol and Drugs for teenagers through Chapel Hill and Carrboro. Ms. Wilson stated she was present to advocate for and protect the language that appears on the bottom of the permit which makes adult purchasers of kegs responsible for making sure the kegs of beer do not end up in the hands of underage drinkers. Ms. Wilson encouraged the Commission to keep that language.

Mr. Gregory stated that Ms. Octavia Rainey was present to speak. Ms. Rainey stated she lives in southeast Raleigh and is a community activist. Ms. Rainey stated she was in support of the Keg Transportation Permit because of accountability.

Commissioner Joyner made a motion to adopt the Keg Rule and the Keg Purchase Transportation Permit form. Seconded by Commissioner Lyon. So Ordered.

RETAIL BEER AND WINE COUPONS

Chief Counsel Fred Gregory stated a petition for rulemaking was received from Mr. Andy Ellen requesting that the Commission adopt a rule allowing malt beverage and wine off-premise retailers to use coupons. Mr. Ellen stated he was the General Counsel of the North Carolina Retail Merchants Association, an organization that represents the interests of the retail segment which is comprised of approximately 25,000 stores most of which are grocery stores.

Mr. Ellen stated that General Statute 18B-105 prohibits the advertising of alcoholic beverages in North Carolina except in compliance with the North Carolina ABC Commission Rules and Regulations. Mr. Ellen also stated that ABC Commission Rule 4 NCAC 02S .1006(a) prohibits cents-off coupons as a method of advertising. Mr. Ellen stated that the Retail Merchants Association is asking the Commission to amend that policy prohibiting cents-off coupons and allow a very limited form of coupons in the State of North Carolina for wine and beer.

Mr. Ellen stated the North Carolina Retail Merchants Association has been working on this process for the past two years and a compromise was reached that only coupons issued and paid for by retailers could be issued for use in retail wine shops. Last year, the Association went to the General Assembly and members of the General Assembly thought the issue should be heard before the ABC Commission.

Mr. Ellen discussed the petition and some of the issues in letters from opponents. Mr. Ellen stated in the petition there would be no free alcoholic beverages through coupons. Also, manufacturers and wholesalers would be prohibited from issuing coupons or mailing rebates in North Carolina. Mr. Ellen stated only a business with a wine shop permit, an off-premise permit, or a business with an on-premise permit but selling for off-premise consumption could issue coupons. There would be no coupons for on-premise consumption such as a bar or restaurant. Mr. Ellen stated people could use their loyalty card but the card does not have to be used for a customer to be issued a coupon. Mr. Ellen stated there would be no collaboration between a manufacturer or a wholesaler and the retailer.

Mr. Ellen stated coupons should be approved because it would be good for consumers, it would reward consumer loyalty, would be good for retailers and North Carolina wineries and would create equity with spirits.

Mr. Ellen stated coupons would not increase general alcohol consumption or consumption by underage purchasers. Coupons would not be advertised on college campuses and would not target ethnic groups. Mr. Ellen stated that convenient stores have no opposition.

Mr. Ellen stated that the North Carolina Retail Merchants Association would not run ads in college newspapers, would put a disclaimer in any advertisement for a coupon, would not allow someone under 21 to use a coupon and a coupon could take no more than 50% off the advertised price of alcohol sold in a convenient store.

Mr. Ellen asked the Commission to support the petition. Several questions were asked by the Commission members.

Mr. Gregory stated that Ms. Octavia Rainey was present to speak. Ms. Rainey stated she was a community activist in southeast Raleigh and has studied the issues of how alcohol impacts the African American community for over 15½ years. Ms. Rainey stated the retail stores in her neighborhood already sell malt beverage and wine for 99 cents, a cheap price. Ms. Rainey presented a report from Alcohol Law Enforcement to the Commission members for Southeast Raleigh from 1999 to 2005. Ms. Rainey stated the coupons should be taken into consideration because of the low-income neighborhoods. Ms. Rainey stated she does not approve the coupon issue.

Mr. Gregory stated that Rev. Mark Creech was present to speak. Rev. Mark Creech stated he was the Executive Director of the Christian Action League of North Carolina and that he believed that granting the proposed rules change would be a prudent change in North Carolina's alcohol control measures. Rev. Creech stated studies that show consumption levels rise when businesses offer a discount on alcohol sales. Rev. Creech stated the proposed rules change would allow customers to be targeted for alcohol sales especially near a college campus.

Rev. Creech stated that the retailers have more advantages than the liquor stores and that the public health community was never consulted about this proposal. Rev. Creech read excerpts from seven authoritative voices in the public health community concerning the proposal. Rev. Creech stated the Christian Action League of North Carolina urged the Commission to reject this proposal to allow coupons by retailers for alcohol sales.

Mr. Gregory stated that Mr. Ed Cook was present to speak. Mr. Cook stated he was the Director of Wine and Beer Merchandising for Harris Teeter which operates 127 grocery stores and employs approximately 13,000 associates in North Carolina. Mr. Cook spoke on the issue of loyalty or membership pricing for wine and beer. Mr. Cook stated Harris Teeter was seeking ways to reduce the cost of doing business in North Carolina by allowing retailers in North Carolina to acquire a loyalty membership card in order for a customer to receive a promotional price on wine or beer. Mr. Cook stated that wine and beer is set up, keyed and advertised totally different from anything in the store. Mr. Cook stated that in the weekly ad the wine and beer advertised would have the same disclaimer as every other item in the ad. Mr. Cook stated that there are two additional benefits to reducing the cost in North Carolina. Mr. Cook stated they would require the VIC card for the customer to receive the sale price on beer or wine and the customer would have to show two forms of matching identification (driver's license and VIC card). Mr. Cook stated they would create a wine club and if they purchased \$500.00 of wine in a year, they would be sent a \$20.00 gift card from Harris Teeter.

Chairman Fox asked Mr. Cook what would show up when the loyalty card is swiped. Mr. Cook stated the name would show up on the screen. Mr. Cook stated the loyalty card does not trigger an age question. Mr. Cook stated if the membership card does not show the name as the fake I.D. there is a huge problem.

Chairman Fox told Mr. Cook he asked Mr. Gregory, who has a seventeen-year old son, to see if his son could get a VIC card and MVP card. Chairman Fox stated the seventeen-year old did and wrote a letter to him on how it was acquired. Chairman Fox asked if there were wine clubs now at Harris Teeter. Mr. Cook stated they have an internet e-mail club which provides information about wine. Chairman Fox asked if they have wine clubs outside of North Carolina. Mr. Cook stated it is not any different than the one in North Carolina.

Mr. Gregory stated that Mr. Ed Turlington was present to speak. Mr. Turlington stated he was with the Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P. law firm and represented the North Carolina Association of Convenience Stores. Mr. Turlington stated that almost all of the members of this association are North Carolina owned small businesses that are privately held. Mr. Turlington stated the association board voted to take a position against this petition and asked him and Mr. David Bunch to make brief comments.

Mr. Turlington talked about four areas on which they were worried about if this petition was implemented:

1. Economic impact on small businesses
2. Negative impact on consumers and citizens
3. Increase underage drinking
4. Increase alcohol consumption

Mr. David Bunch was present to speak. Mr. Bunch stated he was Vice President of Operations for E.J. Pope and Son based out of Mt. Olive, North Carolina. Mr. Bunch stated that they operate 46 convenient stores. Mr. Bunch stated he was also the President of the Board of Directors for the North Carolina Association of Convenience Stores. Mr. Bunch stated the system in place now is very equitable and serves the consumers well and that the petition could possibly create a trade channel in equity because their members are mainly small independent locations. Mr. Bunch said the convenient stores cannot afford to put in the loyalty cards and coupons electronically and it will disadvantage them because 20% to 25% of their sales are in alcohol. Mr. Bunch stated that the convenient channel sales would be impacted.

Mr. Bunch stated numerous other reasons the petition would be bad for the state and asked the Commission to deny the petition.

Mr. Gregory stated that Mr. Hardy Lewis was present to speak. Mr. Lewis stated he was a lawyer in Raleigh and represented Total Wine and More. Mr. Lewis stated Total Wine and More is a chain of stores with about 14 stores in North Carolina and is based out of Maryland. Mr. Lewis stated the reason they wanted to use coupons was because they think they have a special way of presenting and selling their product to the customers of North Carolina.

Mr. Gregory stated that Mr. Doug Diesing was present to speak. Mr. Diesing stated he was the President of the North Carolina Independent Wine Retailers Association and represents over one hundred independent North Carolina retailers in the state. Mr. Diesing stated they wanted to be able to direct consumers to brands they choose with coupons. Mr. Diesing stated they find small independent wineries and producers and try to direct customers to them and direct sales from the big box stores.

Mr. Gregory stated that Ms. Margo Knight was present to speak. Ms. Knight stated she was the Executive Director of the North Carolina Wine and Grape Council which is the advisory board to the North Carolina Department of Commerce. Ms. Knight stated that on behalf of the 59 wineries that they represent at the Council they are in support of the petition. Ms. Knight stated that they believed these coupons will help promote the North Carolina Wine Industry. Ms. Knight stated that it would allow them to give visitors to the winery a coupon to be redeemed at the winery retail shop.

Mr. Gregory stated that Ms. Dale Pratt-Wilson was present to speak. Ms. Wilson stated she thought there was a red flag with the relationship between buying alcohol on the VIC card and the coupon. Ms. Wilson stated that this would make it more enticing for the young people. Ms. Wilson urged the Commission members to protect the interest of the young people in North Carolina.

Chairman Fox stated that others were present. Mr. John McMillan stated he represented Anheuser-Busch and they had not taken a position on this proposal.

Mr. Dean Plunkett stated he represented the North Carolina Beer and Wine Wholesalers and was only there as an observer.

Mr. Harold Bynum representing Miller said his organization had not taken a position on this proposal.

Mr. Andy Ellen made some closing remarks about some of the comments made by the opposition.

Chairman Fox asked Mr. Ellen what kind of time frame were they under to respond to the petition for rulemaking. Mr. Ellen said 120 days from August 1 which would make the deadline the end of November.

Chairman Fox stated it might be a couple of weeks before a decision is made. Chairman Fox stated his biggest concern was that the industry or state did not do a good enough job recognizing the public health issue.

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