

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
SEPTEMBER 7, 2011**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on September 7, 2011, beginning at 10:00 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, Commissioner Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

**MINUTES OF AUGUST 10, 2011**

Chairman Williams asked for a motion to waive the reading of the minutes of the August 10, 2011 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the August 10, 2011 meeting. Motion Passed. Commissioner Guy made a motion to approve the minutes from the August 10, 2011 meeting. Motion Passed.

**CONFLICTS OF INTEREST**

As required by North Carolina General Statute 138A-35, Chairman Williams asked Commissioner Guy and Commissioner Briggs 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 Guy and Commissioner Briggs stated that they had found no conflicts of interest. Chairman Williams stated that he had no conflicts of interest.

**I. HEARING CASES – 81**

Chief Counsel Fred Gregory stated that the first case to be heard was contested case #1, La Poblanita. No one was present to speak on behalf of the business.

Assistant Counsel LoRita K. Pinnix represented the Commission at the hearing. Ms. Pinnix stated that Administrative Law Judge J. Randall May granted the Commission's request for revocation of permits. The permittee failed to comply with the judge's orders to file Prehearing Statements and failed to appear at the administrative hearing.

Chairman Williams made a motion to adopt the recommended decision of the administrative law judge. Motion Passed.

Chief Counsel Gregory stated that contested case #2, Touch, was the next case to be heard. No one was present to speak on behalf of the business.

Assistant Counsel K. Renee Cowick represented the Commission at the hearing. Ms. Cowick stated that a patron was shot while standing in line outside the establishment. A summary suspension was signed by the Chairman and a petition filed as to the suitability of the location to hold ABC permits. Chief Administrative Law Judge Julian Mann, III, agreed that the business was no longer suitable to hold ABC permits. The judge recommended a revocation and suspension of the ABC permits. Ms. Cowick stated that the Commission could not comply with the penalty based upon the North Carolina General Statutes. The Commission could adopt a revocation or a suspension of ABC permits.

Chairman Williams stated that if the Commission chose to revoke the ABC permits, all the permittee's businesses would be revoked at any location and after three years the permittee could re-apply for ABC permits. If suspended it would prohibit the permittee from having permits at this location. Likewise, during those three years, if the business is no longer operating, anyone else could apply for ABC permits at that location, as long as there was no connection to the permittee. But the Commission could still deny the permits.

Ms. Cowick stated that the Permit/Compliance Division has a Hot List. Anytime an applicant applies for a permit, the Permit staff checks the list to make sure that the applicant is not on the list as being ineligible or the location is not a problem location.

Chairman Williams made a motion to suspend the ABC permits for three years beginning the date of the Summary Suspension, October 22, 2010. Motion Passed.

Chief Counsel Gregory stated the next case to be heard was contested case #3, GK Mart. No one was present on behalf of the business.

Ms. Cowick stated that this was an underage violation. The permittee did not show up at the administrative hearing. Administrative Law Judge Beecher R. Gray recommended a penalty of a 12 day suspension and fine of \$500.00.

Commissioner Guy made a motion to adopt the judge's recommendation. Motion Passed.

Chief Counsel Gregory stated that Mr. Daniel Mustian, owner of hearing case #28, Rumors, was present to speak on behalf of the business.

Mr. Mustian stated that the law enforcement officers that ran the sting were from out of town. He went on to state that the officers told him that they had observed the underage buyer buy a wristband from another patron and when they tried to apprehend him, he slipped away. A half hour later the underage buyer was found with a beer in his hand. Law enforcement told him that they saw the underage buyer get served by a bartender. They went outside, wrote up the ticket and came back in and asked the underage buyer to identify the person who served him the beer. The bartender, who was identified as the server, was also a manager.

Mr. Mustian stated that he reviewed the tape and the bartender didn't serve anyone any beer for a half hour before or after the ticket was written. Mr. Mustian went on to state that he went outside and told the officers about the video. He further stated that he wasn't denying that the underage buyer did buy alcohol, but this was his first ticket in five and half years. He asked the Commission for some leniency and stated that his employees would be scheduled to take a class with Pitt County ABC Board, once he was fully staffed.

Chairman Williams made a motion reduce the penalty by 25% upon proof that all his employees had taken the class with Pitt County ABC. Motion Passed.

Chief Counsel Gregory stated that Mr. David Cole, owner of hearing case #13, Dive Restaurant and Grill, was present to speak on behalf of the business.

Mr. Cole stated that he had hired some guys to put in new flooring for him. He had purchased the bottles of alcohol to give to the guys, once they finished installing the new floors. The bottles were locked in the storage area and not in the bar area. He asked the Commission for leniency since his employees had taken the ALE Bars Class and the local ABC Class.

Ms. Cowick stated that she usually would ask for a \$600.00 penalty for possessing spirituous liquor not bearing mixed beverage tax stamps, but because of the large volume of bottles found, she asked for a \$3,500.00 penalty.

Chairman Williams made a motion to reduce the penalty to a six- day suspension or \$600.00 fine. Motion Passed.

Chief Counsel Gregory stated that Mr. Gregory Patino, owner of hearing case #54, Toreros Mexican Restaurant, was present to speak on behalf of the business.

Mr. Patino stated that the employee who sold to the minor was a good employee and had been with the business for a long time. He further stated that he didn't know why the employee didn't ask for identification. All the employees know that they should check the identifications. The employees have taken a class since this incident.

Chairman Williams made a motion to reduce by 25% in recognition of having taken the class. Motion Passed.

Chief Counsel Gregory stated that Dr. Richard Wolf, owner of hearing case #80, Winery at the Blueberry Farm, was present to speak on behalf of the business.

Assistant Counsel Timothy Morse stated that ALE Agent Buchanan had done a permit application inspection at High County Beer and Wine and as he was looking through the invoices he saw an invoice from Winery at the Blueberry Farm. He noticed some irregularities on the invoice, there wasn't sufficient information on the invoice as required by the North Carolina General Statutes and there was a 10% discount.

Mr. Moore further stated that an employee, who had delivered the wine, did not have a driver salesman permit. She had either mistakenly or without authority conducted a tasting and used an unlabeled bottle of wine to do so.

Mr. Wolf stated that he and his wife were out of town and the employee got excited that a local store would be selling their wine and took it upon herself to deliver the wine personally. Mr. Wolf said that he didn't know why the bottle didn't have a label on it. The only explanation he could think of was that the label fell off. The employee no longer works with the business. He went on to state that law enforcement showed them how to properly fill out the invoices and his employees have taken a class. He asked the Commission for a reduction in the penalty.

Mr. Morse stated that the violations fall under the trade practice rules. The penalty is an estimated amount.

Chairman Williams made a motion to reduce the penalty to \$200.00. Motion Passed.

Chief Counsel Gregory stated that Mr. John Johnson, owner of hearing case #52, Tavern on the Green, was present to speak on behalf of the business.

Mr. Johnson stated that he and the other two business owners took over the business, not to make money, buy to keep it operating since they all live near the business. The pending violation occurred because it was a simple lapse in judgment. Law enforcement conducted an inspection and found a bottle of liquor in the closet. There are other events that happen at the business and sometimes the owner just store things in

that liquor closet. The bottle wasn't at the bar. The bartender had served a young patron and law enforcement asked him for identification. The bartender stated that she thought it was ok because she had seen him drink on the golf course on previous occasions.

Mr. Johnson asked the Commission for a reduction in the penalty.

Chairman Williams stated that even though the business wasn't operated to make a profit, but as a service for the community, the rules still need to be followed and it had to be run like a business.

Chairman Williams made a motion to reduce the penalty by 25%, upon the stipulation that all the employees attend an RASP Class. Motion Passed.

Chief Counsel Gregory stated that there was one add-on case, Margarita Town, to be heard. Mr. Humberto Rodriguez was present to speak on behalf of the business. The offer in compromise was signed but the Commission had not received it yet.

Mr. Rodriguez stated that he asked his son to come help out at the business because he had thought that there was going to be a big crowd of people for Cinco DeMayo. He stated that his son drank alcohol but never sold beer or went behind the bar. His son had alcohol on the table when law enforcement came into the business. Mr. Rodriguez stated his son was not working that day. He had asked him to come in and help only because he thought that he would have a lot of customers that night, but he didn't. His son went to court and the case was dismissed.

Ms. Pinnix stated that law enforcement described the son as being behind the bar area. That typically would be a place where employees would go and he was holding alcohol in his hand.

Chairman Williams asked Mr. Rodriguez if his son was on his payroll. Mr. Rodriguez stated that his son was on his payroll, but at another restaurant. Chairman Williams confirmed with Mr. Rodriguez that he called in his son in case he was needed for work. Mr. Rodriguez stated that he did.

Chairman Williams asked Ms. Pinnix if she had any suggestion as to the penalty. Ms. Pinnix stated that 20 days or \$2,000.00 was the standard penalty for an employee possessing.

Chairman Williams made a motion to reduce the penalty by 25%, upon the stipulation that all the employees attend a RASP Class. Motion Passed.

Chairman Williams made a motion to approve the remaining offers in compromise, with the exception of the previously ratified cases. Motion Passed.

## **II. OTHER BUSINESS – EXEMPTION REQUEST – SMARTZCO. INC**

Chief Counsel Gregory stated that Mr. Joel Hartzler, was present to ask the Commission for approval to apply for an additional permit to authorize him to operate a distillery, pursuant to NCGS §18B-1105.

Mr. Hartzler stated that he would like to have a micro distillery in his restaurant.

Chairman Williams stated that there would need to be rules in place in regulating distilleries. He expressed concerns about safety.

Mr. Hartzler stated that the operation would be small and would be done in the kitchen on the stove.

Chief Counsel Gregory asked Mr. Hartzler if he had spoken with the Federal Trade & Tax Bureau, which should be his first step. Mr. Hartzler stated that he had not.

Chairman Williams stated that there needs to be a lot of dialogue before the Commission can grant the exemption request and the Commission needs specific information. He warned Mr. Hartzler that this process could take months. The Chairman asked him to stay in contact with the Legal Division.

Chairman Williams stated that the request would be continued.

### **III. OTHER BUSINESS – EXEMPTION REQUEST – JAMES RIPPE**

Chief Counsel Gregory stated that the Commission had received an exemption request from Mr. James Rippe, asking for approval to be a vendor representative in North Carolina. Mr. Rippe is the vice president of Mooden Inc, dba Bub O'Malley's in Chapel Hill, North Carolina and maintains no stock in the company. He does hold a vendor representative permit in the State of Georgia.

Mr. Rippe would like to represent Strangford Lough Brewing Company in the North Carolina.

Chairman Williams made a motion to grant the exemption request, upon the stipulation that the product not be sold in Bub O'Malley's. Motion Passed.

### **IV. OTHER BUSINESS – EXEMPTION REQUEST – MOTHER EARTH BREWING LLC**

Chief Counsel Gregory stated that Mr. Stephen Hill and Mr. Trent Mooring, operators Mother Earth Brewing LLC and were present to ask the Commission to approve an exemption request to obtain a brewery, salesman and wholesale license. This would allow them to operate their brewery, tap room and wholesale operations in Kinston North Carolina. Mr. Hill owns an interest in Hillco, Ltd ("Hillco"). Among Hillco's holdings is Snow Hill Plumbing, Heating & Air Conditioning Co., Inc. ("SH"), which is a wholly owned subsidiary of Hillco. SH operates the Golden Harvest Community Mart, dba, Community Mart ("CM"), which sells currently holds ABC permits.

Chairman Williams asked Mr. Kris Gardner with the North Carolina Beer and Wine Wholesalers Association, if he had any questions or concerns about granting the exemption request.

Mr. Gardner stated that he did not have a problem as long as the Mother Earth products not be sold at the convenience store, Community Mart.

Chairman Williams made a motion to grant the exemption request upon the stipulation that they the Mother Earth products not be sold in the convenience store. Motion Passed.

### **V. OTHER BUSINESS – SPECIAL COMMISSION MEETING**

Chief Counsel Gregory stated that a special meeting needed to be scheduled for a public hearing for the adoption of the following regulations: 04 NCAC 02R .0902, .0173, .1706, .1711, AND 04 NCAC 02S .0201, .1010 AND .1011.

### **VI. OTHER BUSINESS – ABC BOARD ETHICS TRAINING**

After some discussion with Chairman Williams, Commissioner Guy and Commissioner Briggs set the meeting for September 14, 2011 at 11:30 A.M. Both Commissioners had previous commitments and would be present via teleconference. Chairman Williams will be present.

Chief Counsel Gregory stated that there were 18 board members who haven't taken the mandatory ethics training class. Of the 18 board members, three resigned. That leaves 15 board members who have not taken the mandatory ethic training class.

Chairman Williams stated that the next class is scheduled for September 26, 2011. Any remaining board members that do not attend that class will no longer be eligible to sit as a board member. Any board members that do not attend the class can come to the October 6, 2011 Commission meeting to be heard.

With no further business, the meeting adjourned.

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

Respectfully submitted by

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Tiffany Goodson, Legal Division