

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 14, 2004**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on May 14, 2004. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Chairman Douglas A. Fox was present for the meeting, along with Commissioner Ricky Wright and Commissioner Mike Joyner.

MINUTES OF APRIL 16, 2004 MEETING

The Chairman asked Commission Members Wright and Commission Joyner if they had any corrections or additions regarding the Commission minutes from the April 16, 2004, meeting. Neither Commissioner Wright nor Commissioner Joyner had any corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioner Wright and 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. Commissioner Wright recused himself from case #80, McKenzies Restaurant and Pub. Commissioner Joyner stated that he had no conflict of interest. The Chairman recused himself from case #13 Dominic's Downtown.

I. HEARING CASES - 83

Chief Deputy Counsel Fred A. Gregory stated that case #1, Olives Cash Service Center and case #2, Imagine, were both registration cases where the permittees failed to register their permits last year. Administrative Law Judge Beecher R. Gray issued a Summary Judgment in each case. Mr. Gregory recommended that the Commission adopt the Summary Judgment in each case. Mr. Gregory stated that it was found out after the fact that both of these establishments are now out of business. The Chairman made a motion to adopt the Summary Judgment. Seconded by Commissioner Joyner. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that Attorney Glenn B. Lassiter, Jr. was present to speak on behalf of case #5, Creekside Convenient Mart. Mr. Lassiter stated that Ms. Harris has had permits for about seven years and has been selling Fortified

Wine for those seven years. Mr. Lassiter stated that Ms. Harris does not or did not understand the difference between Fortified Wine and Unfortified Wine. He went on to state that Ms. Harris has been ordering her wine from Mutual Distributing and they have been selling and delivering it to her for several years. Mr. Lassiter stated that this was the first time that anyone has ever said anything to her about it. He further stated that Ms. Harris has agreed to turn in her wine permits so that this is never an issue again. Mr. Lassiter stated she has a small business and also asked the Commission if they would consider remitting the fine. He further stated that he believed that she didn't intent to break any laws. The Chairman made a motion to suspend the penalty of \$200.00 and that the permittee surrender her unfortified wine permit on or before June 1, 2004. Seconded by Commissioner Wright. So Ordered.

Commissioner Wright made a motion to accept the offer in compromise for case #13, Dominic's Downtown. Seconded by Commissioner Joyner. So Ordered.

The Chairman made a motion to accept the offer in compromise for case #80, McKenzies Restaurant Pub. Seconded by Commissioner Joyner. So Ordered.

The Chairman stated that he had reviewed the first offense cases as per the resolution and made a motion to adopt the orders as signed. Seconded by Commissioner Wright. So Ordered.

II. The following is a list of first offense violation cases, in which Orders were signed by the Chairman on April 16, 2004 pursuant to the Commission's authorizing resolution dated November 8, 2002:

A and C Exxon - 7202 Hwy. 64 East, Knightdale, NC 27545
Citi Stop 116 -165 Tunnel Road, Asheville, NC 28805
Drop In Food Store 1 - 809 West Main Street, Forest City, NC 28047
Duck Thru Food Store 15 – 1301 Charles Boulevard, Greenville, NC 27834
Energy Mart Store 8 – 715 Upward Road, Flat Rock, NC 28731
Exclusively Eli's – 800 South Mint Street, Charlotte, NC 28202
Exprezit Convenience Store 824 – 4301 Styers Ferry Road, Winston-Salem, NC 27106
Fast Track 127 – 5916 University Parkway, Winston-Salem, NC 27105
Fatz Café - 1235 East Dixon Boulevard, Shelby, NC 28150
G M Food Mart – 9256 Albemarle Road, Charlotte, NC 28227
Han Dee Hugos 43 – 3400 Benson Hwy. Garner, NC 27529
Kountry Corner – 9413 North Hwy. 10, Vale, NC 28168
Liberty Steakhouse and Brewery – 914 Mill Loop Road, High Point, NC 27262
New Bern Avenue B P 352 – 2120 New Bern Avenue, Raleigh, NC 27610
Resco Mart – 7200 Old Stage Road, Raleigh, NC 27603
San Jose Mexican Restaurant – 1616-A South Madison Street, Whiteville, NC 28472
T Mart Food Store 20 – 108 Hwy. 242 North, Benson, NC 27504
Tops Shell Mart 12 - 2514 High Point Mart, Greensboro, NC 27403
Wilco 205 – 801 NC Hwy 211 East, Candor, NC 27229
L A Express – 2336 Springs Road NE, Hickory, NC 28601

III. ABC STORE LOCATION – FORSYTH MUNICIPAL ABC BOARD

Administrator Michael Herring presented information regarding the proposed store location in the Town of Oak Ridge. ALE Agent Alan Fields, conducted the investigation and found that the Forsyth Municipal ABC Board plans to purchase property located at the Oak Ridge Commons Shopping Center near the intersection of NC 150 and NC 68. The board plans to operate a modern self-service ABC Store on approximately one acre of land. The purchase price for the proposed location is \$480,000.00. JPC Monroe LLC, currently owns the property. The property would be purchased through The Ellis Group, a brokerage group in Greensboro, NC. No financial conflict exists between the property owners and the Forsyth Municipal ABC Board members. The nearest church is one-half mile and the nearest school one-fourth of a mile from the proposed location. Pursuant to ABC Commission Rules, the 30-day Notice of Intent to open an ABC store was posted. The ABC Commission has not received any objections. Mr. Herring recommended that the Commission approve the request. The Chairman made a motion to approve the store location. Seconded by Commissioner Wright. So Ordered.

IV. ABC STORE LOCATION – PENDER COUNTY ABC BOARD

Administrator Michael Herring presented information regarding the proposed store location in Rocky Point, NC. ALE Agent L. Paul Jelley, conducted the investigation and found that the Pender County ABC Board plans to lease property located at the intersection of Highway 117 and Highway 210. The location address is 8206 Highway 117, Rocky Point, NC. The board plans to operate a self-service ABC Store in a multi unit building. The unit that the Board would lease is about 540 square foot. The rent per month is \$400.00. Freddy Lee Brown of Wilmington, NC currently owns the property. No financial conflict of interest exists between the property owners and the Pender County ABC Board. The nearest church is one-tenth of a mile and the nearest school is one point one mile from the proposed location. Pursuant to ABC Commission Rules, the 30-day Notice of Intent to open an ABC store was posted. The ABC Commission has not received any objections. Mr. Herring recommended that the Commission approve the request. The Chairman stated that the neighboring county had asked him if they could put a sign up. Mr. Herring stated that signage does come before the Commission and that he could make that a stipulation that the Commission approve any signage. Commissioner Joyner stated that proposed store seems “rinky dinky”, not what the Commission usually sees. Mr. Herring stated that was probably because this proposed location is in a rural area. He further stated that he imagined that they would try out this location and if it didn’t work, they would probably close the location. The Chairman made a motion to approve the store location. Seconded by Commissioner Joyner. So Ordered.

V. ABC STORE LOCATION – GREENSBORO ABC BOARD

Administrator Michael Herring presented the Commission with background information regarding a request from the Greensboro ABC Board to approval a new store location within the city limits of Greensboro. Mr. Herring requested that the Commission continue this to the next Commission meeting. He went on to state that he had received two

letters from the High Point ABC Board and Forsyth Municipal ABC Board concerning the saturation of ABC stores in the area where the Greensboro ABC board wants to locate the new store. This would be the tenth store in a ten-mile radius and approximately a thousand feet from the city limits of High Point. Both of these ABC Boards just found out about the new store location the day before the Commission meeting on Thursday, May 13, 2004, and feels it infringes upon their stores. They would like more time to study this and see if this is the appropriate location and if operating a joint store in this area is needed. They have requested that the Commission continue this to the next Commission meeting. Mr. Herring recommended that it be continued to the next meeting to allow more time to study the efficiency of operating a store this close to other stores in the area.

Commissioner Mike Joyner stated that he didn't think there was a policy or rule on how they compete with each other and he went on to ask if Administrator Michael Herring was typically the referee in these situations. Mr. Herring stated that yes typically he was. He stated that in the recent past the Commission has had some concerns about the closeness of stores. But in this case it's an additional store for Greensboro in an area where they just opened a store approximately five miles away from the one they opened last month. The city of High Point already has a store just three miles away from the proposed new location. He went on to state that it seems that we have too many stores in this area. Commission Wright made a motion to continue this matter to the next Commission meeting. Seconded by the Chairman. So Ordered.

VI. OTHER BUSINESS

Acting General Counsel Timothy W. Morse stated that Miller Brewing Company has petition for exemption to enter into a sponsorship agreement with Charlotte Motor Speedway. They have submitted the contract and a proposed order for exemption. The contract and the order have been reviewed and everything seems to be in order. The Chairman asked Mr. Morse if the contract or exemption was the same since the last exemption was granted. Mr. Morse stated that it was the same. The Commission had not received a contract or exemption request from Miller covering the period of time from 2001 up to the present. He further stated that if the Commission had any questions for Miller Brewing Company, their attorney Harold Bynum, was present answer any questions. The Chairman asked if the contract was renewing an on-going situation that Miller Brewing Company has with Charlotte Motor Speedway. Mr. Morse said that it was renewing the relationship. Mr. Morse stated that Mr. Bynum requested that the Commission treat this as a trade secret or a confidential document. The Chairman made a motion to approve the exemption and the request for confidentiality. Seconded by Commission Wright. So Ordered.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division