

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 9, 2011**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on November 9, 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

Commissioner Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

MINUTES OF OCTOBER 6, 2011

Commissioner Guy asked for a motion to waive the reading of the minutes of the October 6, 2011 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the October 6, 2011 meeting. Motion Passed. Commissioner Guy asked for a motion to approve the minutes of the October 6, 2011 meeting. Commissioner Briggs made a motion to approve the minutes from the October 6, 2011 meeting. Motion Passed.

CONFLICTS OF INTEREST

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

I. HEARING CASES – 71

Chief Counsel Fred Gregory stated that no one was present for hearing case #1, Six Forks Pub. Chief Counsel Gregory recommended that the Commission adopt Administrative Law Judge Beecher R. Gray's Decision to impose a three year suspension of Permittee's Mixed Beverages Restaurant ABC permit and a civil penalty of \$750.00.

After conferring with Commissioner Briggs, Commissioner Guy made a motion to adopt the Administrative Law Judge's Decision. Motion Passed.

Chief Counsel Fred Gregory stated that no one was present for hearing case #2, El Patron Night Club and Bar (*formerly Zoo City Saloon*). Assistant Counsel LoRita K. Pinnix represented the Commission. Ms. Pinnix stated that Administrative Law Judge Selina M. Brooks entered a decision in this case because the permittee failed to comply with the judge's orders to file Prehearing Statements. Assistant Counsel Pinnix further stated that following the judge's decision, she was able to come to an understanding with the Permittee. The Permittee signed an Offer in Compromise and Assistant Counsel Pinnix recommended that the Commission accept the Offer in Compromise as signed.

Commissioner Briggs made a motion to accept the Offer in Compromise as signed. Motion Passed.

Jeff Lyons, manager of hearing case #3, Carolina Ale House, was present to speak on behalf of the business. Assistant Counsel Renee Cowick stated that this was a Wake Forest Police Department underage campaign. The underage went to three different bars within the business with three different bartenders, and one actually checked his ID and all three bartenders sold alcoholic beverages to the

underage persons. Though three underage sales occurred, the Permittee was only charged for one. The standard penalty of 12-days and \$1,200.00 was assessed. Mr. Lyons apologized for the incidents. He stated that this was the only violation in three years. He further stated that the employees involved were immediately terminated. Mr. Lyons stated that they took the ALE training class and asked for a reduction of the penalty.

Commissioner Briggs made a motion to reduce the penalty by 25% upon confirmation of the ALE training. Motion Passed.

Chief Counsel Gregory stated that Mr. Ghassan Farhat Saleh Al-Khalil, owner of hearing case #43, Xpress Mart 44, and his employee, Ahmed Nabil Kamal, were present to speak on behalf of the business. Assistant Counsel Pinnix stated that the violation was selling alcoholic beverages to an intoxicated person. The purchaser exited the business and walked into traffic and was killed. The alcohol that was purchased was not a factor in the accident. Mr. Al-Khalil stated that they were sorry for the loss of life. Mr. Kamal stated that he did not realize that the purchaser was drunk. Mr. Al-Khalil asked for a reduction of the penalty. Assistant Counsel Pinnix stated that the penalty was higher than the usual penalty for a first offense selling to an intoxicated individual and a reduction of the penalty to a ten-day suspension or a \$1,000.00 fine might be appropriate if the business had training for its employees.

After conferring, Commissioner Briggs made a motion to lower the penalty to \$1,000.00 with no suspension upon the completion of a RASP class. Motion Passed.

Chief Counsel Gregory stated that Mr. Charles McLeod, owner of hearing case #37, Palm Room, was present to speak on behalf of the business. Assistant Counsel Pinnix stated that this was an underage sale where an officer happened to observe the sale and the bartender did not check identification. Mr. McLeod stated that they have taken a RASP class and asked the Commission for a reduction in the fine.

Commissioner Briggs made a motion to reduce the penalty by 25% upon confirmation of the RASP class. Motion Passed.

Chief Counsel Gregory stated that Ms. Christina Bello, owner of hearing case #70, La Poblanita, was present to speak on behalf of the business for Reconsideration. Assistant Counsel Pinnix stated that in this case the financial reports were not filed and the matter was set for an administrative hearing. On the hearing date, the Permittee was not present and the Administrative Law Judge entered a Final Order. The Commission did receive the financial reports, but never received the paperwork for the Offer in Compromise. The Administrative Law Judge's Decision was placed on the agenda for the September 7, 2011 Commission Meeting. Assistant Counsel Pinnix met with the Permittee and allowed them to sign an Offer in Compromise for a three-day suspension or a \$300.00 penalty. The Permittee's permits were cancelled in October and since that time they have not sold alcohol, so Assistant Counsel Pinnix further included the suspension as time served and recommended that the Commission rescind the prior Final Agency Decision and accept the signed Offer in Compromise.

Commissioner Briggs made a motion to rescind the prior Order and accept the signed Offer in Compromise accepting the suspension already served. Motion Passed.

Chief Counsel Gregory stated that Ms. Yelena Kislyanova, owner of hearing case #30, Good Fortune Store, was present to speak on behalf of the business with a translator. Assistant Counsel Pinnix stated that this was a surveillance case because of complaints that law enforcement had received regarding underage sales at the business. The officers observed multiple transactions and were able to stop two underage purchasers. The clerk sold to the youthful customers only when there were no other customers in the business. Because of a prior violation, the incidents in the violation report were treated as two

second offenses in terms of the penalty. Ms. Kislyanova stated that the customers were together and it was not two separate sales and that she believed they were older because of facial hair. Commissioner Guy asked if identification was checked, Ms. Kislyanova did not check identification. Ms. Kislyanova attended a class and admitted that it was a mistake.

After some discussion between Commissioner Guy and Commissioner Briggs, Commissioner Briggs made a motion to reduce the suspension to 35-days or a penalty to \$3,500.00. Motion Passed.

Chief Counsel Gregory stated that there was an add-on case, Mr. Bill Bartholomew and Mr. Justin Helms were present to speak on behalf of hearing case #71, Longbranch of Raleigh. Assistant Counsel K. Renee Cowick stated two underage individuals, a male and female who were friends of the DJ, were included on the guest list. When they arrived at the door, they were allowed to enter and were not given the standard X on the back of the hand or wristband indicating they were underage. The bartender assumed they were of age because they did not have any indication of being underage. Mr. Bartholomew stated that they have had an extraordinary record over the years and have assisted law enforcement by turning in fake identifications. They further stated that the establishment is very large and they maintain strict control. Their staff has taken the RASP class and has scheduled future classes. They asked for consideration.

After some discussion between Commissioner Guy and Commissioner Briggs, Commissioner Briggs made a motion to reduce the suspension to a 3-day suspension or a fine of \$300.00. Motion Passed

Chief Counsel Gregory stated that Allen Wellons, one of the owners of hearing case #25, Country Club of Johnston County, was present to speak on behalf of the business. Mr. Wellons stated that he was one of 14 owners that had recently purchased the business. Assistant Counsel Pinnix stated that this was a violation for missing tax stamps. The investigating agents stated that there was residue, suggesting that perhaps in cleaning the tax stamps came off. There was also another bottle found in a paper bag in another location. Assistant Counsel Pinnix further stated that perhaps with training there is some flexibility in the penalty. Mr. Wellons stated that they have since hired more experienced managers that are more knowledgeable regarding country club management. The employees have taken the alcohol training. Mr. Wellons asked for whatever relief could be granted.

Commissioner Briggs made a motion to reduce the penalty by 25% upon confirmation of the RASP class. Motion Passed.

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

II. OTHER BUSINESS – Consideration of the Rules Review Commission’s Technical Change Request – 04 NCAC 02R .1711

Rules Coordinator Bob Hamilton stated that this was a minor technical change and with a motion and approval it can move to the Rules Review Commission.

Commissioner Briggs made a motion to approve the change. Motion Passed.

III. OTHER BUSINESS

Commissioner Guy stated that the only other business is the approval of the future Commission Meeting dates. Administrator Mike Herring stated that the dates were January 11, 2012 and February 8, 2012.

Commissioner Briggs made a motion to accept the dates. Motion Passed.

With no further business, the meeting adjourned.

A.D. "Zander" GUY, JR., Commissioner
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Caroline Y. Washburn, Legal Division