

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 8, 2005**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on September 8, 2005, beginning at 10:00 a.m. The meeting was tape-recorded and the tapes are on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commissioner Mike Joyner were present at the meeting.

MINUTES OF AUGUST 12, 2005 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the August 12, 2005, meeting into the record. Seconded by Commissioner Joyner. So Ordered. Chairman Fox made a motion to approve the minutes from the August 12, 2005, meeting. Seconded by Commissioner Joyner. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, Chairman Fox 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. Commissioner Joyner stated that he found no conflicts of interest. Chairman Fox stated that he found no conflicts.

Chief Deputy Counsel Fred A. Gregory stated that hearing case #47, Pantry 112 was to be carried over to the next Commission meeting.

I. HEARING CASES - 61 Listed

Chief Deputy Counsel Fred Gregory stated that Mr. Jose Moncada, the manager of hearing case #50, La Fogata, was present to speak on behalf of the business. Mr. Moncada stated that he was not at work the day of the violation. He went on to state that three bottles of alcohol without tax stamps were found. He had purchased one of the bottles of alcohol for himself from an ABC store and put that bottle in the kitchen. Someone then moved that bottle of alcohol and put it in the bar. Mr. Moncada stated that he didn't know where the other two bottles came from.

Chairman Fox asked what type of business it was. Mr. Moncada stated that it was a Mexican restaurant.

Commissioner Joyner about asked why they failed to keep the wholesaler receipts. Mr. Moncada stated that he always sends out his reports quarterly but, the assistant manager was there the day of the violations and he didn't know where the reports were. Commissioner Joyner asked Mr. Moncada what was he going to do prevent these violations from occurring in the future. Mr. Moncada stated that the assistant manager had admitted to him that he put the two bottles on the bar and Mr. Moncada fired him.

Chairman Fox asked Assistant Counsel Renee Cowick if she had any suggestions. Ms. Cowick stated that there was an administrative hearing scheduled but the judge did not show up. The case was supposed to be re-docketed but in the meantime, they were able to reach an agreement. She went on to state that she would request that the Commission stay at the same penalty as agreed to. She further stated that regarding the management change violation, which occurred a year ago, still has not been clear up.

Chairman Fox asked Mr. Moncada if he understood what Ms. Cowick stated. Mr. Moncada stated that he did. Chairman Fox asked if there was some reason why the management change paperwork has not been changed. Mr. Moncada stated that since they have had so many problems with the restaurant, they would probably be closing it next year and until then the owner was going to be running it. Since the owner would be running it they never changed the paperwork from its original state.

Chairman Fox made a motion to reduce the fine to \$500.00 on the stipulation that the restaurant and the other locations attend an education class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that Mr. Bryan Dozier, President Montgomery Foods, Inc. was present to speak on behalf of 1st Offense case #30, Food King 5. Mr. Dozier stated that the employee was a high school cashier who looked at the license and keyed in the wrong birthdate and sold beer to a minor. He went on to state that the cash register will not scan an alcoholic beverage unless you key in a birthdate that would make a person 21 years old. The company has extensive training and testing. Bulletins are sent out monthly. Mr. Dozier said that the employee was fired the next day. They went to court and the judge dismissed the case. Mr. Dozier stated that they are asking the Commission for a reduction in penalty.

Commissioner Joyner asked Mr. Dozier if they had any previous violations. Mr. Dozier stated that he wasn't aware of any.

Chairman Fox asked Mr. Dozier how many warning did they have. Mr. Dozier stated he wasn't aware of any for that store. He had not personally received any warnings. Chairman Fox stated that there were two warnings in the file. Chairman Fox asked how many stores did they have. Mr. Dozier stated that they have five super market stores about 1,300-1,400 square feet.

Commissioner Joyner stated that selling alcohol was a privilege. He did commend Mr. Dozier on the their good record, equipment and training.

Chairman Fox made a motion to waive the seven days on the stipulation this store along with the other four locations attends an education class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox stated that in the past he has not ruled on cases in New Hanover County, but has reviewed the cases and have found no conflict.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of the hearing case #50, La Fogata, which had been earlier ratified. Seconded by Commissioner Joyner. So Ordered.

II. FIRST OFFENSE CASES – 37 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on September 8, 2005, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. O'Tuels Food and Fuel – 1004 South Long Street, Rockingham, NC 28379
2. Scotchman 92 – 1321 Blowing Rock Road, Boone, NC 28607
3. Fuel Warehouse – 1101 West New Bern Road, Kinston, NC 28501
4. Eckerd Drugs 8546 – 1019 North Breazeale Avenue, Mount Olive, NC 28365
5. Best Fuels – 980 Hwy 710 North, Pembroke, NC 28372
6. Alco 12 – 638 East Broad Avenue, Rockingham, NC 28379
7. El Paso – 2300 South Sterling Street, Morganton, NC 28655
8. Acropolis Café and Grill – 20657 Catawba Avenue, Cornelius, NC 28031
9. Eckerd Drugs 1248 – 100 South Berkley Boulevard, Goldsboro, NC 27534
10. Lowes Foods 176 – 17001 Kenton Drive, Cornelius, NC 28031
11. Monte de Rey of Cornelius – 19601 Liverpool Parkway, Cornelius, NC 28031
12. Melting Pot – 230 East W T Harris Boulevard, Suite C-1, Charlotte, NC 28262
13. Outback Steakhouse 3432 – 1015 Chancellor Park Drive, Charlotte, NC 28213
14. Rite Stop – 507 North Graham Hopedale Road, Burlington, NC 27217
15. Wilco 156 – 801 West Fairfield Street, High Point, NC 27263
16. Bi Lo 156 – 8620 Camfield Street, Charlotte, NC 28277
17. Discount Bait and Tackle – 776 Hwy 74 West, Rockingham, NC 28379
18. Handy Mart 2 – 1094 North Breazeale Avenue, Mount Olive, NC 28365
19. Jackson Park Short Shop – 1091 Old Charlotte Hwy. Concord, NC 28207
20. Matts – 3643 Hwy 220 North, Norman, NC 28367
21. Meeting Place Market – 3363 US Hwy 1, Hoffman, NC 28347
22. Tequila Mexican Restaurant – 360 Harper Avenue NW, Lenoir, NC 28645
23. Quik Chek 33 – 2271 North Main Street, Ellerbe, NC 28338
24. O'Charleys 298 – 521 Huffman Mill Road, Burlington, NC 27215
25. Reids Grocery – 159 Airport Road, Rockingham, NC 28379
26. One Stop II – 6641 Styers Ferry Road, Clemmons, NC 27012
27. Lowes Foods 208 – 7036 Brighton Park Drive, Mint Hill, NC 28227
28. P K Food Mart – 1510 Goldsboro Street, Wilson, NC 27893
29. Stop and Shop 2 – 1404 Old Snow Hill Road, Kinston, NC 28501
30. Food King 5 – 305 East Washington Street, Rockingham, NC 28379
31. Food Lion 408 – 125 Old US 70 East, Black Mountain, NC 28762
32. Heena Corner – 369 Mill Road, Rockingham, NC 28379
33. Gate Service Station 408 – 4501 Delta Lake Drive, Raleigh, NC 27612
34. A M F Centennial Lanes 77 – 4501 South Boulevard, Charlotte, NC 28209
35. Beverage Barn – 120 Main Street, Vass, NC 28394
36. Neighborhood Mini Mart – 325 East Bright Street, Kinston, NC 28501
37. King Mart – 3575 Grainger Station Road, Grifton, NC 28530

Chairman Fox made a motion to approve the remaining Offers in Compromise for the First Offense cases, with the exception of 1st Offense case #30 Food King 5, which was ratified earlier. Seconded by Commissioner Joyner. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that there were two add on cases to the agenda, hearing case #61, Montego Bay and 1st Offense case #38, Pollo Rico Restaurante. Chairman Fox made a motion to approve the two add-on cases. Seconded by Commissioner Joyner. So Ordered.

III. ABC STORE LOCATION – DURHAM COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC store in Durham, North Carolina. On July 22, 2005, Randy Mills, General Manager of the Durham County ABC Board, submitted a letter to the Commission requesting approval of a proposed site. On August 4, 2005, Alcohol Law Enforcement Agent Ron Gilliard conducted an investigation and found that the Durham County ABC Board plans to consolidate their operations in Northern Durham County at 5234 North Roxboro Road. The selling price is \$485,000.00. No conflict of interest exists between the owners of the property and Durham County ABC Board.

The nearest church is Greater Baptist Church and is 2 miles from the proposed location. The nearest school is Eno Valley Elementary School located at 1.8 miles from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on July 22, 2005, in compliance with the ABC Commission's 30-day requirement and to date no objections had been received by the ABC Commission.

Mr. Herring recommended that the ABC Commission approve the proposed store location. Chairman Fox made a motion to approve the location. Seconded by Commissioner Joyner. So Ordered.

IV. NORTH CAROLINA WINE AND GRAPE COUNCIL

Margo Knight, Executive Director of North Carolina Wine and Grape Council was present to speak to the Commission. Ms. Knight introduced some of the members of the North Carolina Wine Industry Community. Mr. Charles Shelton, owner of Shelton Vineyards in Dobson, NC, Mr. Chuck Whitehead, Vice-President of wine sales for Biltmore Estate Wine Company in Asheville, NC and Mr. David Fussell, Chairman of the Board for Duplin Winery in Rosehill, NC. Ms. Knight presented the Commission with some handouts and a slideshow regarding the wine industry. Mr. Fussell narrated the slide show.

Chairman Fox asked what constituted a North Carolina wine. Mr. Whitehead stated that the grapes have to be grown in North Carolina on your property.

Mr. James Fain, Secretary of Commerce was present and stated that he is happy with the affiliation with the North Carolina Wine and Grape Council.

SPONSORSHIP AGREEMENT – MILLER BREWING COMPANY

Harold Bynum, attorney for Miller Brewing Company was present to speak regarding a sponsorship agreement that Miller Brewing Company has negotiated with the Carolina Panthers Organization. Mr. Bynum went on to state that the agreement is essentially the same as the original agreement that was signed with the Carolina Panthers in 1996. The agreement has been modified to share exclusivity with Anheuser-Busch.

Chairman Fox made a motion to approve the sponsorship agreement. Seconded by Commissioner Joyner. So Ordered.

SPONSORSHIP AGREEMENT – ANHEUSER-BUSCH-CAROLINA BOBCATS

Mr. Jay Golder, Associate General Counsel for Anheuser-Busch was present along with Mr. Bob Fryhod, Director of the Wholesaler and Retailer Development for Anheuser Busch's Consumer, Awareness and Education Department and Jonathan Fine, General Counsel for the Charlotte Bobcats.

Mr. Golder asked the Commission to extend the exemption for the new Charlotte Arena. He went on to state that the new Charlotte Arena would have an independent concessionaire. There will be a variety of brands sold at the arena and the concessionaire will have complete independence as to the brands, taps and point of sale advertising near the concessions.

Mr. Fryhod stated that Anheuser-Busch has invested ½ million dollars since 1992 to promote responsible. He went on to state that "good sport" pre-game messages are run on the matrix board. Posters are posted and identifications are checked. There is a Designated Driver sign up program at two guest services stands at each game. Each participant who signs up to be a designated driver receives a wrist band, a key chain, a free soft drink coupon (upon approval of the concessionaire) and a chance to win one prize package for each game. During the game there is a random drawing.

Commissioner Joyner asked Mr. Fryhod for specific information on what the Charlotte Bobcats have done this year. Mr. Fryhod stated that he didn't have specific information on what the Charlotte Bobcats have done. Mr. Fine stated that he did have information on what the Charlotte Bobcats have done. He stated that they are doing more responsible drinking messages than any vendor in North Carolina. They will have signage at fan service desks. Directional signage will be posted in the building, there will be pre-game messages on the matrix board and they are working on putting something on their website.

Commissioner Joyner asked how would the Commission would know that they are implementing the responsible messages. Mr. Fine stated that they are willing to come back and state what they are doing and the Commission or representative for the Commission could come view the responsible messages. Commissioner Joyner asked if he receives a number of emails from parents regarding intoxicated kids, whom would he speak with. Mr. Fine stated that he would need to speak with Bill Wilson, who is the manager of Levy's Restaurant, retailer concessionaire and permit holder. Mr. Golder stated that Mr. Gregory and Mr. Morse have his direct number and can contact him at any time.

Chairman Fox stated that he felt that this agreement is totally different from the one approved last year and Mr. Golder has not touched on the exclusivity issue. Mr. Golder stated that the category of exclusivity does not attempt to persuade the owner of the Charlotte Bobcats on what beers to pour

and how many taps are going to be there. It's a common provision to secure that you are the leader in the industry. Chairman Fox stated that he is not trying to tell anyone how to spend their advertising money, but what you are asking the Commission to do is to preclude anyone from having that right to go to the Charlotte Bobcats to pursue sponsorship advertising. Mr. Golder stated that it does secure advertising exclusivity for Anheuser-Busch in the venue. Mr. Fine stated that the Charlotte Bobcats control all the advertising inventory throughout the building but have pledged contractually that they will not have the ability to dictate what alcohol beverage advertising is at the point of sale. Chairman Fox stated that he had read the agreement and it stated that the Charlotte Bobcats have the right to approve all point of sale signage. Mr. Fine stated that was certainly not the intent and he didn't have the agreement right in front of him.

Mr. Fine said that at the point of sale the Charlotte Bobcats will have no say as to what the retail concessionaire puts at the point of sale in terms of advertising and it has never been their intent to do so. He further stated that he is willing to put that in the contract.

Chairman Fox stated that he didn't like the category of exclusivity from a public interest standpoint especially and for a six or seven window. Chairman Fox asked what is the time frame that we are looking at. Mr. Fine stated that we are looking at a short time frame. Mr. Golder stated that this agreement is the same as the one that was approved last year. It's a new arena, but the agreement is the same.

Chief Deputy Counsel Fred Gregory stated that with regard to the agreement approved last year and the exclusivity that was for malt beverage only. This agreement covers everything. Commissioner Joyner stated that he felt that was a significant difference.

Commissioner Joyner stated that he is looking for some responsibility, something he can see.

Chairman Fox stated that the Commission needed more time to discuss and review the agreement and stated that it would be carried over to next month's meeting.

Chief Deputy Counsel Fred Gregory stated that we needed new dates, or at least dates for the January 2006 Commission. Chairman Fox asked Administrative Assistant Theresa Avery to send him some dates and he would review and get back with her.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division