

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 14, 2010**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on October 14, 2010, 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 and Commissioner Zander Guy were present at the meeting.

MINUTES OF AUGUST 19, 2010

Chairman Williams asked for a motion to waive the reading of the minutes from the August 19, 2010 meeting into the record. Commissioner Guy made a motion to waive the reading of the minutes from the August 19, 2010 meeting. Seconded by Chairman Williams. So Ordered. Chairman Williams asked for a motion to approve the minutes from the August 19, 2010 meeting. Commissioner Guy made a motion to approve the minutes from the August 19, 2010 meeting. Seconded by Chairman Williams. So Ordered.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-15, Chairman Williams asked Commissioner Guy 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. Chairman Williams and Commissioner Guy both stated they found no conflicts of interest.

II. OTHER BUSINESS – EMPLOYEE SERVICE AWARDS PRESENTATION

Chairman Williams, Commissioner Guy and Administrator Michael Herring presented three ABC Commission employees with service awards for the following years of service to the State of North Carolina:

Tiffany Goodson – Ten years of service.

Sally Blackmon – Ten years of service.

Vera Smith – Twenty-Five years of service.

I. HEARING CASES – 81

Chief Counsel Fred Gregory stated contested case #1, Petro Mart 6, was the first case to be heard. Assistant Counsel Renee Cowick represented the Commission at the administrative hearing. The permittee failed to appear at the administrative hearing and Administrative Law Judge Joe L. Webster recommended that the Commission suspend the permits for seven days and pay a \$750.00 fine. Commissioner Guy made a motion to adopt the recommended decision of the administrative law judge. Seconded by Chairman Williams. So Ordered.

Chief Counsel Gregory stated that contested case #3, Scooby's Bar and Restaurant was the next case to be heard. Ms. Cowick stated that this was an application case. Local objections were submitted with the

application because of the past history of the location as a private club. The application for Malt Beverage On Premise and Mixed Beverage Private Club was denied, and Ms. Sherri Bridgeman filed a petition for an administrative hearing. Administrative Law Judge Beecher Gray heard the case in Fayetteville. Without making findings of fact regarding the issues presented in the Petition, ALJ Gray recommended that the Commission grant a temporary Mixed Beverage Restaurant permit for six months with any applicable conditions necessary to protect the neighborhood.

Ms. Cowick filed exceptions to ALJ Gray's Decision and argued to the Commission that the Commission does not have statutory authority to grant a temporary permit for other than that which was applied for, nor does the Commission have statutory authority to place conditions on temporary retail permits. Ms. Cowick recommended that the Commission adopt the exceptions to ALJ Gray's Decision and the Findings of Fact of the Decision but not adopt the Conclusions of Law or recommendation of the Decision.

Chairman Williams stated that the Commission had received and reviewed the transcripts of the hearing.

Chairman Williams made a motion to adopt the Exceptions, not adopt the Decision and deny the application. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Seth Woodall, attorney for hearing case #99, Crossroads Exxon, was present to speak on behalf of the business. The three underage sale violations occurred when an owner who had a 30% share in the store was overseeing the day to day operation of the business. After the violations occurred, his clients renegotiated the terms of the buy-out contract and are now the sole owners of the business and the permits are in their names only.

Mr. Woodall further stated that there is signage posted through the store and the employees have taken classes. He asked the Commission to eliminate the active suspension of their permits.

After conferring with Commission Guy, Chairman Williams made a motion to waive the active suspension, in light of the fact that the sole owners, are now active daily managers and the employees have taken training. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Jim Radle, owner of hearing case #112, 22 North, was present to speak on behalf of the business. Mr. Radle stated that the case was dismissed in criminal court. He asked the Commission for a Written Warning.

Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$600.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel stated that Mr. John Shore owner of hearing case #29, Deac N Dive, was present to speak on behalf of the business.

Assistant Counsel LoRita K. Pinnix stated that the violation report indicated that the alcohol was bought from an ABC store to the business.

Mr. Shore stated that he knew that what he did was wrong and all his employees have taken classes with ABC Officer Eddie Fernandez. He went on to state that there have been four businesses near his location that have closed. He asked the Commission to waive the active time.

Chairman Williams asked Mr. Shore how many people he employed. Mr. Shore stated that he had eight employees.

Chairman Williams made a motion to waive the active suspension. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Andrew Brothers and Ms. Alecia Mitchell, owners of hearing case #161, Whiskey, were present to speak on behalf of the business.

Mr. Brothers stated that the intoxicated buyer, a Marine, just returning from Afghanistan, had been to other bars before coming to his establishment. He went on to state that the buyer took two shoots of alcohol and did not appear to be intoxicated. Mr. Brothers concluded by saying that his staff has taken classes.

Chairman Williams made a motion to reduce the penalty from \$ 1,200.00 to \$900.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Chris Butler, owner of hearing case #5, Bob's Convenient Mart, was present to speak on behalf of his business.

Mr. Butler stated that his family has been in business for 39 years. They support the community and train their employees.

On this particular occasion his employee who sold the alcohol had received a phone call from her doctor informing her that she was pregnant. She was going through a divorce and this was an unplanned pregnancy. Her husband did not take the news well and she showed up to work upset. Mr. Butler asked her if she wanted to go home, but she declined and stated that she would work her shift. The underage buyer came into the store and purchased alcohol. The employee told him that she glance at the identification and thought that the buyer she was old enough. He asked the Commission for some leniency and to reduce the penalty.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$2,400.00 to \$1,200.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Ms. Susan Young, owner of hearing case #74, Cody's Pub, was present to speak on behalf of the business. The intoxicated individual was known to be loud even when he was not drunk. Alcohol Law Enforcement came to the business and send a report to the Commission for knowingly selling to an allowing and intoxicated person to consume. Ms. Young asked the Commission for some leniency.

Chairman Williams asked Ms. Young if her employees had taken any training. Ms. Young stated that they had just attended a training class before this incident occurred. After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the active time from 15 days to 10 days. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Javier Ortiz, owner of hearing case #75, Congos Latin Club, was present to speak on behalf of his business.

Mr. Ortiz stated that he and his wife run the business and regularly provide refresher classes for every employee. All employees sign a statement that they understand and have attended the classes.

Mr. Ortiz stated that alcohol sales stop at 2:00 A.M., and, by 2:30 A.M., there are no open containers or bottles in the club. There was one empty cup left out on the bar after 2:30 A.M. He went on to state that he previously complained to the ABC Board about missing tax stamps on the bottles. He stated that he was given a letter from the local ABC Board regarding tax stamps sticking to the box. He concluded by asking the Commission for some leniency regarding the penalty.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$1,100.00 to \$550.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Scott Cox, owner of hearing case #11, Carolina Coffee Shop, was present to speak on behalf of his business. Mr. Cox stated that the employee who sold to the underage person no longer works at the business. The employee did attend the BARS class and his case was dismissed.

Mr. Cox asked the Commission for some leniency.

Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Mark Burnett, manager of hearing case #11, He's Not Here, was present to speak on behalf of the business. Mr. Burnett stated that he attended the BARS Class and learned a lot. Mr. Burnett told the Commission that they usually check identification at the door and assume that the employees do their job correctly. They will only check the identification at the bar if there is a question of the age. He admitted that wasn't necessarily the right way.

Chairman Williams made a motion to reduce the penalty from \$600.00 to \$400.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Brian Noel, owner of hearing case #150, Outriggers Offshore Bar and Grill, was present to speak on behalf of the business.

Mr. Noel stated the business is a small seafood restaurant that seats about 50 people. He and his wife recently moved here from Maryland, where they managed a convenience store. He went on to state that he was familiar with the ABC laws, but there were differences. They have two people who work at night till closing. Mr. Noel and his wife went to the business around midnight to help close out. waiting for the last few customers to leave, he drank one beer and half of another. His wife took a few sips from a wine cooler and closed the blinds on one side. Mr. Noel took the trash from the bartender and turned one light off. He stated that he did not know that they couldn't do any operations in regard to the business after consuming alcohol. He has completed the BARS Class since then and his bartender had previously attended the BARS Class. Mr. Noel asked the Commission for some leniency.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$2,200.00 to \$200.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Eli Ellsworth with hearing case #131, Barbary Coast, was present to speak on behalf of the business. Mr. Ellsworth stated that an Alcohol Law Enforcement Agent had allegedly followed a patron from one establishment to his business. He went on to state that there is a huge contrast in the violation report that was submitted and the bartender's report. The bartender wasn't cited and is still employed at the business and his employee have taken the RASP Class.

Chairman Williams asked Mr. Ellsworth how big the business was. Mr. Ellsworth stated that the business holds 70 people. The doorman did not notice any type of impairment when the patron entered the business. With regards to the other violation, the employee did admit to the violation.

Chairman Williams asked Mr. Ellsworth if had considered having the case heard by the Office of Administrative Hearings. Mr. Ellsworth stated that he felt that it would be redundant and waste of time and money.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$2,500.00 to \$1,750.00, upon the stipulation that the Commission has received verification that the RASP Class has been taken. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Richard Moose, owner of hearing case #56, Getaway Pub, was present to speak on behalf of his business. Mr. Moose stated that the employee was a patron of the bar who needed a job and he hired him. Agents searched the employee twice with his consent and found cocaine.

Mr. Moose stated that he fired the employee and would not allow that type of activity to take place in his business.

Chairman Williams asked the legal staff if they had anything to add. Assistant Counsel LoRita K. Pinnix stated that based on the fact of where the drugs were found, that indicates that the business is not a problem business.

After conferring with Commission Guy, Chairman Williams stated that there would be no change in the penalty. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Glenn Gordon, owner of hearing case #159, Tomato Jakes Pizzeria, was present to speak on behalf of the business. Mr. Gordon stated that the employee and the underage person were in a relationship and the employee gave the underage person alcohol. Mr. Gordon asked the Commission if they would waive the suspension and he would pay the penalty.

Chairman Williams stated that he did not have an active suspension. He had the choice or taking the suspension or paying the fine. He was not required to do both.

Mr. Gordon apologized and stated that he misunderstood. The penalty on the offer was not changed.

Chief Counsel Gregory stated that Ms. Denise Russ, owner of hearing case #103 Fubar, was present to speak on behalf of the business. Ms. Russ stated that with regard to the violation of failure to clear, she did not know, nor could she find the law in the North Carolina General Statute, which states there is a time limit to have the tables cleared during business hours. The other violation involved an intoxicated individual and. Ms. Russ stated that the individual was not dunk. Ms. Russ also had a question about a 32 ounce pitcher being served to one person. Ms. Russ asked the Commission for some clarification on the statutes because she was unable to find it in the North Carolina General Statutes. Ms. Russ stated that she and her staff have taken the classes.

Chairman Williams asked Ms. Russ if she wanted to have her case heard by the Office of Administrative Hearings. Ms. Russ said no, she would let the Commission decide.

Ms. Pinnix stated that she would speak with Ms. Russ regarding the violation and then come back before the Commission.

After speaking with Ms. Russ, Ms. Pinnix asked the Commission to continue the case to the November 18, 2010 Commission Meeting.

Chairman Williams made a motion to continue the case the November 18, 2010 Commission meeting. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. James Hughes, owner of hearing case #60, Mugsys Pub, was present to speak on behalf of his business. Mr. Hughes stated a festival going on; he had worked 70 hours and had visited different establishments consuming alcohol. He went back to his office, not intending to work and but didn't realize he couldn't work after consuming alcohol. Mr. Hughes stated that he and his employees have taken a RASP Class. He asked the Commission for some leniency.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Marno Diaz, owner hearing case #165, Azteca Sports Bar, was present to speak on behalf of the business. Mr. Diaz stated the business has never had any violations, nor has he had any problems with the ABC Officers. He went on to state that the case was dismissed in criminal court.

Chairman Williams asked Mr. Diaz if his staff has attended a RASP Class. Mr. Diaz stated that they had.

Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00, upon the verification of the RASP Class. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Greg Saldanha, owner of hearing case #20, Sandys Steaks and Subs, was present to speak on behalf of his business. Mr. Saldanha stated that the employee that sold to the underage person checked a Canadian identification card and thought the buyer was of age.

Mr. Saldanha asked the Commission for some leniency.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$2,400.00 to \$1,500.00, based upon the stipulation that the employees attend a RASP Class. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Ms. Kimberly Neal, owner of hearing case #52 Exprezit Convenience Store 2805, was present to speak on behalf of the business. Ms. Neal stated that her employee sold to the underage person. The employee Alex Little, was present and stated that on the night of the incident, the store was very business. He sold the alcohol to the individual based upon the fact that the individual looked over 21 years of age. He further stated that he should have known better and is responsible for what happened.

Ms. Neal stated that the employees have taken the training online at least twice a year and after this incident happened, the Education Trainer came out and trained the entire staff.

Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00, based upon the fact that the business has taken the RASP Class. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Yogesh Patel, owner of hearing case #84, J P Mart, was present to speak on behalf of his business. Mr. Patel stated that the employee thought it was Monday instead of Sunday. Once she realized that it was Sunday and before 12:00 p.m., she immediately went outside to stop the buyer to try and refund their money. Mr. Patel asked the Commission for a reduction in the penalty. The employee no longer works at the business.

After conferring with Commissioner Guy, Chairman Williams made a motion to reduce the penalty from \$500.00 to \$300.00. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that Mr. Sean Tobin, owner of hearing case #65, Rhino Club, was present to speak on behalf of his business.

Assistant Counsel Timothy W. Morse stated that undercover Alcohol Law Enforcement Agents were admitted into the club without being members of the establishment. The agents witnessed marijuana being used opening and on February 28, 2010, the business exceeded its capacity.

Chairman Williams asked Mr. Tobin about the capacity of the business. Mr. Tobin stated there is an outside area that has a capacity of 125 and the inside has a capacity of 180 persons.

Mr. Tobin stated that he had never received any notification violations; he had only received the notification letter from the Commission. He went on to state that the Alcohol Law Enforcement Agents were not asked to sign in or show identification because they knew who the agents were. Mr. Tobin stated that he didn't believe that marijuana was being smoked at the establishment. When the agent brought it to his attention and that a violation would be submitted to the Commission, Mr. Tobin asked him to arrest the individual(s). Mr. Tobin stated that the agent told him that he didn't have to. Mr. Tobin stated that he thought about having an administrative hearing, but decided against that since he understood that he would have to serve active time and pay a penalty.

After hearing all the information provided and conferring with Commissioner Guy, Chairman Williams stated that there would be no change to the penalty.

Ms. Cowick stated that the permit holder of hearing case #77, Dive Restaurant Bar and Grill, was unable to be present at the meeting and sent a letter to the Commission asking for some consideration.

After reviewing the letter, Chairman Williams made a motion to reduce the penalty from \$1,200.00 to \$900.00 upon the stipulation that all of the employees attend a RASP Class. Seconded by Commissioner Guy. So Ordered.

Chief Counsel Gregory stated that the following cases were to be continued: contested case #2, Road Runner Express and hearing case # 151, Petro Express 3958.

Chairman Williams made a motion to approve the remaining offers in compromise, with the exception of the previously ratified cases. Seconded by Commissioner Guy. So Ordered.

II. ABC STORE LOCATION – WEST CLOUMBUS ABC BOARD

Administrator Michael Herring addressed the Commission regarding opening a new ABC Store in Chadbourn North Carolina. On August 13, 2010, the Commission received a request from Mr. Tony Freeman, Chairman of the West Columbus ABC Board requesting Commission approval to open an ABC Store in Chadbourn, North Carolina. On August 17, 2010, ALE Agent Kenneth Simma conducted an

investigation and found that the West Columbus ABC Board plans to build a new ABC Store, which would be located approximately 100 yards south of the present ABC Store. The proposed ABC Store will be approximately 3,500 square feet. The purchase price is \$67,000.00.

The property is current owned by Ms. Amanda R. Worley. The investigation found that no conflict exists between the property owner and the West Columbus ABC Board.

The nearest school is the Chadbourn Elementary School and is two miles from the proposed site.

The nearest church is the Church of God Prophecy and is approximately one mile from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on August 12, 2010, in compliance with the ABC Commission's 30-day requirement.

Mr. Herring recommended that the Commission approve the ABC Store location.

Chairman Williams made a motion to approve the store location. Seconded by Commissioner Guy. So Ordered.

III. ABC STORE LOCATION – CUMBERLAND COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission regarding opening a new ABC Store in Fayetteville, North Carolina. On August 12, 2010, the Commission received a letter from Mr. Gene Webb, Director of the Cumberland County ABC Board requesting Commission approval to open an ABC Store in Cumberland County. On August 16, 2010, ALE Agent Ashley Weaver conducted an investigation and found that the proposed site is located at 7621 S. Raeford Road, Fayetteville, North Carolina 28304.

The Cumberland County ABC Board is negotiating to purchase the land for approximately \$1.5 million and plans to open the new proposed store on November 1, 2010.

The investigation found that no conflict exists between the Cumberland County ABC Board and the owners of the property.

The nearest school is New Century Elementary School and is 3.4 miles away.

The nearest church is West Fayetteville Baptist Church and is approximately 0.4 of a mile from the proposed site.

Pursuant to ABC Commission Rules, Notice of Intent was properly posted on August 12, 2010, in compliance with the ABC Commission's 30-day requirement.

The Commission has received some objections to the proposed site. Mr. John Gillis III, was present to speak against the proposed ABC Store location. Mr. Gillis stated that his family has farmed their land for years and now give tours to the public of the farm land. He went on to state that putting an ABC Store that close to the community would be a detriment to the community. Mr. Gillis provided the Commission with a petition from the surrounding community in opposition to building an ABC Store near their community and read a statement regarding the impact on the community.

Mr. Dan Wilkerson was also present and spoke to the Commission. Mr. Wilkerson asked the Commission to deny building the new ABC Store because there's an ABC Store about one mile away. Mr. Wilkerson stated that there were people that he knew of who were struggling with alcoholism and for them to be faced with a sign advertising ABC Store, would be a battle.

Mr. Herring stated that he did not think there was enough evidence presented to disapprove the location based on the statutory guidelines for ABC store locations. Mr. Herring pointed out that the Commission had the authority to approve ABC store signage and could limit signage making it less obvious that the building was an ABC store.

Commissioner Guy stated that he was in favor of the proposal and if signage could be limited that it would be evidence that we met those opposed halfway. Chairman Williams seconded and characterized the approval as conditional approval of the location subject to review of the signage. So Ordered.

V. OTHER BUSINESS - REVIEW AND CONSIDERATION OF THE RULES REVIEW (COMMISSION'S REQUEST FOR TECHNICAL CHANGES AND STAFF OPINIONS – 04 NCAC 02R)

Chairman Williams stated that Mr. Bob Hamilton recommended that the Commission approve the technical changes in **04 NCAC 02R. 0103, .0303, .0304, 0601, .0603, .0701, .0905, .0907, .1005, 1008, 1103, .1203, 1301, .1405, .1407, .1502, .1701, .1708, .1710, 1801, .1802, .1803 and .1902**

Chairman Williams made a motion to accept the technical changes. Seconded By Commissioner Guy. So Ordered.

Chairman Williams made a motion to accept the recommended changes made in reference to the Rules Review Commission's Opinions of **04 NCAC 02R .0701 and .1008**. Seconded By Commissioner Guy. So Ordered.

Mr. Hamilton recommended that no changes be made in reference to Rules Review Commission's Opinions of the rules **04 NCAC 02R .0701 and .1008**.

Chairman Williams made a motion to not accept the recommended changes to Rules Review Commission's Opinions of the rules **04 NCAC 02R .0701 and .1008**. Seconded By Commissioner Guy. So Ordered.

VI. OTHER BUSINESS - PUBLIC HEARING FOR RULES PUBLISHED IN VOLUME 25, ISSUE 06 OF THE NC REGISTER – (04 NCAC 02R AND 02S)

Chairman Williams asked if anyone was present to speak in regard to the rules **04 NCAC 02R AND 02S** to be published in the NC Register. No public comments were made.

Chairman Williams made a motion to officially close the public hearing regarding rulemaking. Seconded by Commissioner Guy. So Ordered.

VII. OTHER BUSINESS

Mr. Herring provided the Commission with information regarding the warehouse contract with LB&B Associates. Mr. Herring stated that on July 2006, the Commission entered into a five year contract with LB&B Associates for warehouse services. That contract is set to expire on June 30, 2011. There is a

provision in the contract that allows for two one-year extensions. Mr. Herring recommended that the Commission exercise its right to extend the contract for one year and increase compensation by five percent. Which would give the Commission another 20 months of service from LB&B Associates.

Commissioner Guy asked Mr. Herring when the extension would be effective. Mr. Herring stated that it would be effective July 1, 2011. He went on to state that Mr. Morse had prepared a memorandum to exercise that right.

Chairman Williams made a motion to approve the extension. Seconded by Commissioner Guy. So Ordered.

Proposed Commission meeting dates for February 16, 2011 and March 16, 2011 were approved.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division