

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 8, 2002**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on March 8, 2002. The meeting was tape recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commission Member Ricky Wright.

MINUTES OF FEBRUARY 8, 2002 MEETING

The Chairman asked Commission member Ricky Wright if he had any corrections or additions regarding the Commission agenda for the February 8, 2002, meeting. Commission member Wright didn't have 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 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. The Chairman stated she found no conflicts of interest with regard to herself. Commissioner Wright stated he had reviewed the agenda and found no conflict. So Ordered.

HEARING CASES - 43 listed.

I. OFFERS IN COMPROMISE

Assistant Counsel LoRita Pinnix stated that there were no contested cases.

Assistant Counsel LoRita Pinnix asked that the following cases be carried over because of no signed offers from permittees:

#37 – Red Apple Market 17

#38 – Grasshopper

Attorney Dennis Guthrie was present on behalf of his client, Uptown Cabaret cases# 20A,B&C, and Attorney Richard Carlton was present on behalf of his client, #28, Harris Teeter 240.

#20A,B&C – Uptown Cabaret – Attorney Dennis Guthrie stated that he was present with the owners of the business and wanted them to see the procedures of the Commission and the consequences. The Chairman questioned why the dates on the signed offer reflected that of the February Commission Hearing and why the dates weren't changed. Assistant Counsel Tim Morse stated that this case was supposed to be on last month's Commission Meeting and the compliance dates usually reflect that particular Commission hearing, but he would like to leave the dates as they were. The Chairman asked Mr. Guthrie if his clients were prepared to surrender their permits today. Mr. Guthrie stated that even though they had signed the offers, he thought the dates would be amended to reflect the effective date of April 5, 2002, and pay date of March 28, 2002. He also stated that they did have the money to pay the fine today. Mr. Guthrie also stated that his clients had not told their employees yet and would like to give their employees some time so they will know that they will be out of work for that period of time. The Chairman made a motion to change the compliance dates. Seconded by Commissioner Wright. So Ordered.

#28 – Harris Teeter 240 – Attorney Richard Carlton spoke on behalf of his client. He stated that Harris Teeter has one of the best programs in the country with regard to the sale of alcohol. He also stated that the employee keyed the birth date into the cash register and it did come back correct, but she keyed in the incorrect birth date. Mr. Carlton further stated that his client knew that ALE was in the parking lot and that they were trying to do everything in their power to follow the correct procedures. The Chairman asked whether they had a copy of the print out from the register showing what the employee had keyed in. Mr. Carlton stated that they did not. The Chairman stated that the employee's actions were not mitigating enough to reduce the suspension. Seconded by Commissioner Wright. So Ordered.

Assistant Counsel Tim Morse made a comment about the following case:

#7 – Robinson Food Mart – Assistant Counsel Tim Morse stated that there was an error on the offer, under the pending violation. It should be "Permittee's employee sold a malt beverage... not Employee sold a malt beverage..."

The Chairman had questions about the follows cases:

#16 – Shady Lady – Per a letter from the permittee's attorney, David T. Courie, he asked for consideration of a reduction of the \$500.00 fine in light of her more than 10 years of holding a ABC permit without any violations. The Chairman made a motion that the fine be reduced from \$500.00 to \$250.00 in accordance with the Commission's usual policy. Seconded by Commissioner Wright. So Ordered.

#19 – Southern Comfort Gentleman’s Club - Permittee wanted to close the business Easter weekend, March 29, 2002 thru April 2, 2002, for the 5 active days. The Chairman made a motion to leave the suspension dates as they were, with no changes. Seconded by Commissioner Wright. So Ordered.

REMAINING OFFERS IN COMPROMISE

Neither the Chairman nor Commissioner Wright had any questions or comments concerning any other cases as submitted. The Chairman made a motion that all the remaining cases be approved and ratified with the exception of #7, #16 and #20A,B&C which were already approved as amended. Motion seconded by Commissioner Wright. So ordered.

- II. ABC Store Location – Martin County. Administrator Michael Herring presented information regarding an ABC store relocation in Robersonville, NC. ALE District II conducted an investigation and learned that Martin County Alcoholic Beverage Control would like to replace their current store, located at 201 East Academy Street (Highway 64), in Robersonville, NC, and open a new location at the proposed site. The proposed location is at the intersection of Highway 903 & Highway 64 (Robinsonville Town Center), Robinsonville, NC. The proposed location is currently under construction, with a projected completion date of June 2002. If approved the Martin County Alcoholic Beverage Control Board would be leasing the proposed property from the property owner, Commercial Properties, out of Raleigh, NC, for \$925.00 per month. The new store location would operate as a self-service location. The lot size is 20’x60’, with approximately 1,200 square feet. The store location is properly zoned. The nearest church is approximately .8 of a mile and the nearest school is approximately 1.3 miles from the proposed location. The sign regarding notice of intent to open an ABC store has been posted for 30 days in accordance with ABC Commission regulations. The ABC Commission has not received any complaints or objections. No financial conflicts of interests exist among the parties involved in the proposed location. Mr. Herring made a recommendation to approve the location. The Chairman made a motion that the store relocation be approved, seconded by Commissioner Wright. So Ordered.

- III. ABC Store Location – Burlington-Graham ABC Board. Administrator Michael Herring presented information regarding an ABC store location in Mebane, NC. ALE District VI conducted an investigation and learned that the Burlington-Graham Alcoholic Beverage Control Board would like to open a new store in the city of Mebane. The new location would operate as a self-service store. The proposed location is approximately a 2.5 acre tract located on Third Street, in the city limits of Mebane. Construction of the location has not begun and there is currently a three-bedroom ranch style home on the proposed site. The address assigned to the home is 1409 Third Street, and the proposed ABC Store will utilize the same address. Shirley M. Holmes, a private citizen of the city of Mebane, owns the proposed property. If approved the Burlington-Graham ABC

Board plans to purchase the property for \$180,000. The proposed building will be approximately 5,000 square feet and will be constructed with brick and block. The nearest church is 1.3 miles and the nearest school is 1.8 miles north from the proposed location. On January 25, 2002, the sign regarding notice of intent to open an ABC store was posted, but did not fully comply with the Commission regulations. On February 6, 2002, the sign was replaced and complies with the 30 day notice requirement. On February 8, 2002, an investigation from ALE found that the sign was correctly posted on February 6, 2002. (It was thought, per Mr. Herring, that the agent probably had the date that the sign was posted wrong and that the sign was posted correctly). To date, no complaints had been received regarding the proposed ABC Store location. Mr. Herring made a recommendation to approve the location. The Chairman made a motion that the store location be approved, seconded by Commissioner Wright. So Ordered.

OTHER BUSINESS

The Chairman set new Commission Hearing dates for the rest of this year as follows: August 16, 2002, September 13, 2002, October 11, 2002, November 8, 2002 and December 13, 2002. Commission Member Wright had no conflict with these dates.

Attorney William Potter asked to speak to the Commission regarding a North Carolina Statute that applies to two of his cases, but was not on the Agenda. Mr. Potter stated that the Commission Staff sends out the initial Notice of Alleged Violation and then on the same day, the Commission Staff files a Petition for formal Hearing. The responsive papers have to be filed 30 days from the time the judge sends out the paper work. Once the Petition is filed there are formal things that need to be filed within that period of time. Mr. Potter made reference to G.S. 150B-122 and to a written decision by Chief Judge Julian Mann, III. Mr. Potter stated that the Agency had commenced a formal procedure before the attorney or permittee has had a chance to settle the case. The Chairman stated that the Agency doesn't conduct any procedures in which testimony is taken during that 30-day period, which is frequently extended as many as 60 days depending upon Discovery and the Notice of Hearing, which has to be 15 days. Mr. Potter stated that it was pretty usual for a Prehearing Statement notice to be extended. Mr. Potter stated that it is very difficult for him when the Agency staff's response is "It is only policy of the state and we don't have to follow that." He further stated that the time is running out on him and his client. The Chairman stated that if Mr. Potter had a case that should be settled, why wasn't it settled. Mr. Potter stated that the Commission hasn't responded on it yet. The Chairman stated that she wanted the Commission Members to have a chance to read the decision written by Judge Mann and to review the statute. She further stated the Commission's Legal Division is currently severely short staffed.

The Chairman introduced Mona Riggins. She will be a temp-fulltime assisting with Commission assignments.

No other business, new or old, was heard The Chairman made a motion to adjourn this meeting. Seconded by Commissioner Wright. So ordered.

WITH NO further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division