

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JUNE 8, 2001**

The following highlights actions taken by the North Carolina Alcoholic Beverage Control Commission. The meeting was tape recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Chairman George F. Bason, Commission Member Howard McGlohon and Commission Member Ricky Wright were present for the entire meeting.

WAIVE READING OF MAY 11, 2001 MINUTES

Chairman Bason made a motion seconded by Commissioner Wright to approve and waive the reading of the minutes into the record. So Ordered.

EXECUTIVE ORDER 127 - CONFLICT OF INTEREST

As required by Executive Order 127 Chairman Bason asked the members whether 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. Chairman Bason stated he found no conflict of interest. Commissioner Wright stated he had reviewed the agenda and recused himself from Offer in Compromise Case #3 – Duffys, and III – Awarding of ABC Warehouse Contract. Commissioner McGlohon found no conflicts of interest. So Ordered.

HEARING CASES - 77 listed (including add-on cases).

I. CONTESTED CASE

#1 – Alliance Corp. of Fayetteville
T/A Pavillion
2527 Gillespie Street
Fayetteville, NC 28306

ABC Attorney
LoRita K. Pinnix
OAH Judge
George M. Anderson

The Petitioner was represented by Assistant Counsel LoRita K. Pinnix. The Respondent, Teabaldo Rodriguez, was present and represented by Attorney Stephen C. Stokes. Attorney Stokes argued his case opposing the Recommended Decision of the Temporary Administrative Law Judge George M. Anderson. Assistant Counsel Pinnix argued in support of the Recommended Decision. The Commissioners examined exhibits and portions of Volume I of the Transcript of Hearing. Following final arguments and discussion of evidence, Commissioner McGlohon moved that the Commission adopt the Findings of Fact, Conclusions of Law and the Recommended Decision of the Administrative

Law Judge. This motion was seconded by Commissioner Wright and adopted unanimously. So ordered.

II. Declaratory Ruling Regarding 3-Day Waiting Period.

A notice of withdrawal of the petition for a declaratory ruling on the 3-day waiting period was filed by petitioners and accepted, and will be filed with these minutes. See attachments.

III. Awarding of North Carolina ABC Warehouse Contract.

Administrator Michael Herring presented information regarding the ABC Warehouse Request for Proposal (RFP). He summarized the events leading up to today's meeting stating that on January 12, 2001, the Commission voted to place the ABC Warehouse contract out for competitive bids. Written notice was immediately given to the present Warehouse contractor, J.A. Jones Management Services, that the current contract would conclude in 180 days and that it was the Commission's intent to develop a new RFP for the Receipt, Storage, Handling and Transportation of Spirituous Liquor in North Carolina and to place it out for competitive bid.

In February 2001, the new RFP was completed by ABC Commission staff and sent to the Department of Commerce's Purchasing Office, where it was posted on the State's Website. In addition, a notice was mailed to interested companies that were on the Commission's warehouse mailing list.

On March 1, 2001, a mandatory Pre-proposal Conference was held for all interested parties. Ten companies attended the Conference that included a tour of the Warehouse facility. After the tour written questions were submitted to the Commission. Answers to these questions were posted on the Internet as an addendum to the RFP.

On March 30, 2001, the sealed Proposals were due to the Department of Commerce Purchasing Office by 2 p.m. The Purchasing Office reviewed the Proposals to ensure that they met the requirements of the RFP.

On April 2, 2001, Mr. Guy Potts, Commission Internal Auditor, picked up the sealed Proposals and returned them to the Commission. Three companies had submitted sealed packages containing Technical and Cost Proposals. The three companies are as follows:

- J. A. Jones Management Services of Charlotte, NC
- West Brothers of Raleigh, NC
- Transcontinental of Dunn, NC

On April 16, 2001, a copy of the Technical Proposals for each bidder was distributed to the ABC Commissioners. Also during the month of April Mr. Herring, with the assistance of Mr. Potts, reviewed and prepared written findings for the three Proposals.

On April 30, 2001, a copy of the Cost Proposals for each bidder was sent to the ABC Commissioners. Also included were Mr. Herring's written findings regarding the Technical Proposals. A summary of the three proposals is as follows:

First Proposal

West Brothers Transfer & Storage
PO Box 6365
Raleigh, NC 27628

- The Technical Proposal provided only the bare minimum of information necessary to determine West Brothers understanding and ability to perform the contract requirements.
- The Technical Proposal did not include a certified financial statement and lacked sufficient detail regarding warehousing and accounting procedures.
- West Brothers Technical Proposal contained a two-paragraph work plan that demonstrated that they did not have an adequate understanding of the services to be provided.
- West Brothers Cost Proposal for contract services and security was the high bid at \$3,203,749.50.

Second Proposal

Transcontinental Enterprises, Inc.
PO Box 128
Dunn, NC 28335

- The Technical Proposal provided good documentation and a good understanding of the contract requirements.
- The Technical Proposal did not adequately address shipping and accounting procedures for the military.
- Transcontinental's Technical Proposal indicated that their current experience is in providing food services,

facilities support and maintenance work and that they appeared to lack related experience in the receipt, storage and delivery of merchandise.

- The Technical Proposal indicated that they own no equipment necessary to receive, store and deliver merchandise.
- Transcontinental's Technical Proposal indicated that they did not have authority to engage in transportation as a common carrier pursuant to the regulations of the North Carolina Utilities Commission.
- Transcontinental's Cost Proposal for contract services and security was the low bid at \$3,128,475.67.

Third Proposal

J.A. Jones Management Services Inc.
6135 Park South Drive, Suite 250
Charlotte, NC 28210

- The Technical Proposal provided excellent and detailed documentation of each required task regarding the contract requirements.
- J. A. Jones Management Services, as the incumbent contractor with eleven years of service, provided the most knowledgeable warehouse management experience along with a complete understanding of all aspects of the job.
- J. A. Jones Management Services also has ten years related experience in warehouse management of functions for all distilled spirits sold in the state of Iowa.
- J. A. Jones Management Services' parent company, J.A. Jones, Inc., established in 1890, provided additional resources with corporate management and administrative support to ensure compliance and technical expertise as required.
- J. A. Jones Management Services Technical Proposal indicated that they own the majority of equipment necessary to receive, store and deliver merchandise.

- J. A. Jones Management Services Cost Proposal provided for increased effectiveness through additional staffing.
- J. A. Jones' Cost Proposal for contract services and security totals \$3,199,780.48. This bid is \$3,969.02 lower than the highest bid and \$71,304.81 greater than the low bid.

Additionally, Mr. Herring passed up to each Commission Member, for their review and consideration, a copy of numerous telephone calls and letters that had been received on behalf of J.A. Jones Management Services.

Mr. Herring concluded that based on the Cost Proposals submitted, favorable consideration is normally given to the low bid. However, due to the:

- Uniqueness of this contract;
- The merits of the technical proposals submitted;
- The cost difference of only two percent between the low bid and the next higher bid;
- The experience of the current contractor; and
- The overwhelming support the current contractor has with the ABC boards and the spirits industry . . .it was

Mr. Herring's recommendation was that J. A. Jones Management Services be awarded the three year ABC Warehouse Contract for the Receipt, Storage, and Transportation of Spirituous Liquor in North Carolina.

Chairman Bason asked the Commissioners whether they had questions. Commissioner McGlohon had no questions and Commissioner Wright recused himself. Chairman Bason then made a motion that the contract be awarded to J.A. Jones Management Services. Commissioner McGlohon seconded this motion. So ordered.

IV. OFFERS IN COMPROMISE

1. #15 – C V S Pharmacy 4431. The penalty should be a five day active suspension and \$2,500.00 monetary penalty; The suspension was listed incorrectly on the Offer in Compromise. The suspension should be a five day active suspension instead of a 25-day active suspension.
2. #52 – Cabanas. Chairman Bason commented there was no signature for this case – Assistant Counsel Pinnix advised this offer now had a valid signature.

3. #51- McNeils. Assistant Counsel Pinnix stated this case will be continued to the next Commission meeting.
4. Steve Hunt, representative of Market Basket Food Stores, Inc., addressed the Commission regarding two establishments and requested consideration and/or reduction in penalties: #33 – Little Market Basket #1 (in business 10 years with no previous violations) and #56 – Little Market Basket #16 (in business eight years with no previous violations). Chairman Bason had no objection to reducing the penalties by fifty percent (50%) and made a motion to do so seconded by Commissioner McGlohon and Commissioner Wright agreed. So ordered.
5. Assistant Counsel Pinnix spoke on behalf of the following cases asking for some consideration in these matters: #11 (in business 15 years); #17 (11 years); #53 (13 years); and #63 (11 years). Chief Deputy Fred Gregory also asked for consideration on case #74. Chairman Bason made a motion that the penalties be reduced by fifty percent (\$400.00 each) seconded by Commissioner McGlohon and Commissioner Wright agreed.
6. The Commission members had no questions nor comments concerning any other cases as submitted. Chairman Bason made a motion that all remaining cases be approved and ratified. Commissioner McGlohon seconded and Wright agreed with the exceptions of Case #3 and III. So ordered.

V. OTHER BUSINESS

No other business, new or old, to be heard.

WITH NO further business, the meeting adjourned.

George F. Bason, Chairman

Respectfully submitted by

Theresa D. Avery, Legal Division

6/27/01