

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
AUGUST 15, 2012**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on August 15, 2012, 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 Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

MINUTES OF JULY 11, 2012

Chairman Guy asked for a motion to waive the reading of the minutes of the July 11, 2012 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the July 11, 2012 meeting. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the July 11, 2012 meeting. Commissioner Briggs made a motion to approve the minutes from the July 11, 2012 meeting. Motion Passed.

CONFLICTS OF INTEREST

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

I. HEARING CASES - 65

Assistant Counsel Timothy W. Morse stated that the first case to be heard was contested case #1, Dawson Street Mini Mart. Assistant Counsel LoRita K. Pinnix represented the Commission at the Administrative Hearing. Ms. Pinnix stated that Mr. Lovell Glover, the applicant, was present to speak.

Mr. Glover stated he had applied for permits and the location was denied permits. He went on to state that an Alcohol Law Enforcement agent had visited the location and told him what he needed to do. He complied but the location was denied. He ended by stating that he felt he was being penalized because of the previous owners.

Ms. Pinnix agreed that the location was denied and not the applicant. Several Wilmington Police Officers had testified that there had been problems with loitering, trash and drug use over a period of several years at the location. She further stated that Mr. Glover had made some improvements, but the officers testified that there were still problems. Part of the problem was that there was a lot of loitering behind the business and Mr. Glover had put up a fence, but it wasn't enough to get rid of all the concerns of the police officers and the local government representative. Administrative Law Judge Randall J. May upheld the North Carolina ABC Commission's recommendation to deny the application.

Commissioner Briggs made a motion to adopt the recommended decision of Administrative Law Judge Randall J. May. Motion Passed.

Mr. Morse stated that the next case to be heard was contested case #2, Central Mini Mart. Mr. Morse asked if there was anyone present to speak on behalf of the business. No one was present. Mr. Morse stated that notice of the Commission Meeting was sent to the Respondent. Administrative Law Judge Donald W. Overby recommended a penalty of a 7-day suspension and \$500.00 fine.

In compliance with the administrative law judge's Final Decision, Chairman Guy made a motion that the monetary penalty of \$500.00 be due no later than September 7, 2012, and the seven day suspension would begin September 14, 2012. Motion Passed.

Assistant Counsel Morse stated that the next case to be heard was contested case #3, G K Mart. Mr. Morse stated that initially Administrative Law Judge Beecher R. Gray dismissed the case in error, by confusing the ABC Commission with the Respondent. Judge Gray issued an order amending that decision. Administrative Law Judge Gray recommended a 60-day suspension and \$500.00 fine.

Commissioner Briggs made a motion to adopt the Findings of Fact and Conclusions of Law and uphold the recommended decision of the Administrative Law Judge. Motion Passed.

Assistant Counsel Morse stated that the next case to be heard was contested case #4, Woogies. Mr. Morse asked if there was anyone present to speak on behalf of the business. No one was present. Administrative Law Judge Beecher R. Gray granted a Motion for Sanctions since the Respondent failed to respond to the judge's orders. Mr. Morse went on to state that Administrative Law Judge Gray left the penalty up to the Commission.

Chairman Guy asked Mr. Morse if he had a recommendation. Mr. Morse stated that even though he had recommended a revocation of the ABC permits in the petition, he felt that a revocation would be too harsh and was only trying to get the permittee's attention, which didn't happen. A suspension of the Mixed Beverage Permit for one year might be best.

Commissioner Briggs made a motion to modify the recommended decision of Administrative Law Judge Beecher R. Gray to a one-year suspension of the Mixed Beverage Permit, based upon the recommendation of Assistant Counsel Timothy W. Morse. Motion Passed.

Assistant Counsel Morse stated that Ms. Katherine Ward, owner of hearing case # 24, Corner Tavern and Grill, was present to speak on behalf of the business.

Ms. Ward apologized and asked the Commission for leniency. She went on to state that she fired the manager at this location, all the managers at the other locations were signed up to attend an education class and she has taken a more active role as an on-site manager at the business.

Chairman Guy asked Ms. Pinnix if she wished to say anything in regard to the case.

Ms. Pinnix stated that since Ms. Ward had taken steps to have her staff take the education classes, there was some flexibility in the fine and the active suspension.

Commissioner Briggs made a motion to reduce the penalty from \$4,000.00 to \$3,500.00 and to waive the active suspension. Motion Passed.

Assistant Counsel stated that Mr. Dwayne Simmons, owner of hearing case #39, Shark Bar, was present to speak on behalf of his business.

Mr. Simmons stated that he will not have any more late reports submitted to the Commission and he brought his accountant with him if the Commission had any questions for her. He went on to state that the accountant has had some health issues and brought that documentation with her and that was the reason why the reports were not submitted on time. He asked the Commission for some leniency.

Ms. Pinnix stated that this has been the third year that this problem has occurred, but it did appear that they have a handle on things and is some flexibility in the penalty. In exchange for taking the RASP Class, a 25% reduction could be made.

Commissioner Briggs made a motion reduce the penalty of \$900.00 by 25%, upon the stipulation that the RASP Class be taken within 30 days. Motion Passed.

Assistant Counsel Morse stated that Mr. Mark Rizek, manager of hearing case #54, Marks Food Market, was present to speak on behalf of the business.

Mr. Rizek stated that his twin sons and their friends came into the store. One son went and got a bottle of wine and the other son went behind the counter and made a sandwich and they left the store. The officer pulled the car over, found the alcohol and brought them back to the store to look at the monitor. The monitor showed that the sons basically stole the wine and the sandwich. After this occurred his son did community serve and was sent to an education class. The son is barred from the store.

Mr. Morse stated that everything Mr. Rizek stated was true and his son did admit to taking the alcohol.

Chairman Guy made a motion to reduce the \$2,400.00 penalty by 25%, upon the stipulation that the RASP Class be taken within 30 days. Motion Passed.

Assistant Counsel Morse stated that Mr. Glenn Lassiter, attorney for hearing case #41, Stancils Amoco Food Shop 3, was present to speak on behalf of the business.

Mr. Lassiter stated that this company only has three locations, so it's a small company. He talked with the owner of the company as to what they could do to try and prevent these violations from occurring. All the employees were sent to both the ABC Commission and ALE classes. He asked the Commission to waive the active suspension and possible reduction in the penalty.

Commissioner Briggs made a motion to waive the active suspension only. Motion Passed.

Assistant Counsel Morse stated that hearing cases #58, Quik Mart and #63, Overtime Sports Pub be continued to the October 10, 2012 Commission Meeting.

II. OTHER BUSINESS – PUBLIC HEARING OF THE RULES PUBLISHED IN VOLUME 27, ISSUE 02 OF THE NC REGISTER (04 NCAC 02S .0525, 04 NCAC 02S .0708, 04 NCAC 02S .0901, 04 NCAC 02S .1011, 04 NCAC 02T .0104, 04 NCAC 02T .0714 AND 04 NCAC 02T .0715)

Rules Coordinator Bob Hamilton asked the rules and fiscal analyses be entered into the record.

Chairman Guy asked if there was anyone present to speak regarding the published rules. Mr. Kris Gardner, attorney with the Beer and Wine Wholesalers Association, expressed his support to the Commission for the change in Rule 04 NCAC 02T .0104, dealing with the French Wine Bordeaux issue. He also expressed his thanks to Mr. Keith Kapp, Ms. Jennifer Morgan and the ABC Commission staff for helping to work through the rule changes.

Chairman Guy asked if there was anyone else present that wished to speak.

Mr. John McMillian, attorney with Manning, Fulton and Skinner stated that they represent Anheuser Bush. He went on to state that they support the changes to the rules.

Chairman Guy asked if there was anyone else present who wished to speak in regard to the changes to the rules.

No one else was present to speak in regard to the Rules changes.

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

With no further business, the meeting adjourned.

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

Respectfully submitted by,

Tiffany Goodson, Legal Division