

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
FEBRUARY 10, 2009**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on February 10, 2009, beginning at 10:10 AM. The meeting was recorded and the disk in on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas A. Fox and Commissioner John Lyon were present at the meeting.

MINUTES OF JANUARY 13, 2009, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the January 13, 2009, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the January 13, 2009, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

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

I. HEARING CASES - 60

Chief Counsel Fred A. Gregory stated that there was a contested case #1, El Mariachi Gordo. Assistant Counsel LoRita K. Pinnix represented the Commission on November 3, 2008, in Swansboro, North Carolina. Ms. Pinnix's witness was there but the respondent did not appear. The Administrative Law Judge issued a decision and recommended a penalty of \$500.00 and a 50-day active suspension of permits.

Chairman Fox made a motion to adopt the Findings of Fact and Conclusions of Administrative Law Judge Joe L. Webster. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Jameel Ali, owner of hearing case #5, M and M Mini Mart, was present to speak on behalf of his business. Mr. Ali stated that he was called at home by an employee about the ABC officer wanting the cassette out of the recorder. Mr. Ali said the employees did not know how to get it out because there was a special button to push on the machine. Mr. Ali gave instructions about how to get the cassette out to the ABC officer.

Chairman Fox asked Mr. Ali if the business was charged with anything. Mr. Ali replied that they were charged with not cooperating. Chairman Fox said that the officer stated that the employee interfered with getting the cassette.

Chairman Fox asked Mr. Ali if he had been in business since 1997. Mr. Ali responded yes and they had no violations and always cooperate; it was just an incident that happened.

Chairman Fox made a motion to waive the penalty with the stipulation that all employees attend a RASP class. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Ms. Sun Mi Lee, owner of First Offense case #14, Snack and Soda, was present. Ms. Lee had a translator to help her speak on behalf of her and the business. Ms. Lee had an underage violation and they had already taken the class last month.

Chairman Fox stated the permit was issued in 2008.

Commissioner Lyon asked if they had training before the permit was issued and Ms. Lee replied yes.

Chairman Fox stated that in this case an eighteen year old bought Smirnoff Ice Strawberry and no one asked her for an I.D.

Chairman Fox made a motion to ratify the Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Ms. Bong Lee, owner of First Offense case #15, Spot, was present. Ms. Lee had a translator to help her speak on behalf of her and the business. Ms. Lee's husband was the employee who checked the I.D.

Chairman Fox stated according to the officer, Mr. Lee checked the Oklahoma I.D. and it had a picture of the underage buyer and showed that he was 22 years old. The young person stated he purchased the fake I.D. through the U.S. mail for sixty dollars.

Chairman Fox asked if they had taken the class. They responded that everybody had taken the class.

Chairman Fox asked Mr. Gregory if he had any suggestions. Mr. Gregory stated that the I.D. cards from other states are not acceptable forms of I.D. Mr. Gregory said that the fraudulent Oklahoma I.D. was used and not a driver's license.

Chairman Fox made a motion to issue a Written Warning. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Ms. Maureen Ashworth, owner of First Offense case #7, Hurricane Mo's Beachside Bar and Grill, was present to speak on behalf of her business. Ms. Ashworth stated the bartender read the I.D. and misread it. Ms. Ashworth said they were more of a family restaurant than a bar.

Ms. Ashworth said she had the local distributors bring calendars that show the date to legally buy alcohol the day of the citation. Ms. Ashworth stated they took the Commission's class. She knew they made the mistake and it was a first offense.

Chairman Fox made a motion to reduce the penalty to \$600.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Ms. Jeannette Congdon, attorney for hearing case #32, Tenampa Bar, was present to speak on behalf of her clients, Ramon and Aleja Almanzar, the owners of the business.

Ms. Congdon stated she was asking for the Commission's approval of the Proposed Stipulation and Offer in Compromise which was entered into December 29, 2008.

Ms. Congdon stated her clients were charged with pending violations of the permittee being intoxicated while on the licensed premises. Ms. Congdon said he was in the bar, had been drinking but was not working. Ms. Congdon stated his manager was on duty and working. Ms. Congdon said she explained the law to him and he should not be on the premises, drinking or intoxicated.

Ms. Congdon stated the second violation was that the permittee's employee knowingly allowed violations of a controlled substance statute to occur on the licensed premises. Ms. Congdon stated her client said he did not employ the person; however, she was in the bar and presented herself as an employee to patrons. Ms. Congdon said her client knows he needs to be vigilant in knowing what transpires in his place of business and will remove anyone suspected of doing any criminal activity.

Ms. Congdon stated the third violation was that permittee gave away or sold alcoholic drinks at a price different from the usual price for less than the entire business day. Ms. Congdon stated that the permittee admitted to the investigator of his actions and was not aware he was violating this rule. Ms. Congdon stated she explained this to him and he understands his responsibilities pertaining to this rule.

Ms. Congdon stated the permittee had been forthcoming in admitting his role and has tried to resolve the violations. Ms. Congdon said they believe what was proposed in the Offer in Compromise is very fair and asked that the Commission approve the suspension for 45 days beginning March 13, 2009. The last 40 days of such suspension can be avoided upon the permittee's payment of a penalty of \$4,000.00 on or before March 6, 2009.

Ms. Congdon stated the permittee appreciated their consideration and approval of the Proposed Stipulation and Offer in Compromise.

Commissioner Lyon asked if they had classes. Ms. Congdon replied no.

Chairman Fox made a motion to approve the settlement with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Jack Nichols, attorney for hearing case #37, Walnut Creek Amphitheater, was present to speak on behalf of his client. Mr. Nichols said the Proposed Stipulation and Offer in Compromise was signed on behalf of the client. Mr. Nichols asked that the black-out period begin the next day and he had the monetary fine with him. Mr. Nichols said the violation occurred because the Leesville High Booster Club was operating a concession stand and the individual made the sale to the minor. Mr. Nichols stated that the Commission staff reduced the original Offer in Compromise where it is now and the client accepted.

Chairman Fox made a motion to ratify the signed Offer in Compromise as is. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Wendel Hutchins, attorney for First Offense case #25, Roper Food Mart was present to speak on behalf of his client. Mr. Hutchins stated his client recently purchased the Roper Food Mart from Red Apple Enterprises. Mr. Hutchins said the owner hired the employees who were there.

Mr. Hutchins stated that his client was hit heavily for a first offense and he thought there might be a misunderstanding about the narrative from all of the events that Agent Parker sent so he made some inquiry.

Mr. Hutchins stated there was reference to an accident that occurred shortly after the sale. He obtained a copy of the accident report and Mr. Hutchins spoke with Trooper Chris Williams who investigated and contacted Agent Parker about the minor sale. Mr. Hutchins said the minor involved in the sale was in the back seat of the vehicle involved in the accident. The car containing the minor was hit by a car that ran through a stop sign near the business and there were no injuries. Mr. Hutchins said that when Trooper Williams investigated the accident, he found that the young man in the back seat had malt beverages and that produced the report.

Mr. Hutchins stated that when he saw the penalty amount, he thought it didn't seem to be in line with ordinary first offenses. Mr. Hutchins stated that the owner and his employees had taken the RASP class as of February 5, 2009. The employee acknowledged she had sold alcohol to the underage buyer. She thought he was 22 years old, he came into the place regularly, so she sold to him. Mr. Hutchins stated he came begging for the mercy of the Commission.

Commissioner Lyon asked Mr. Gregory if he had comments on the fine. Chief Counsel Gregory stated the fine was the amount it was because of the wreck and the Commission did not have all the information.

Commissioner Lyon made a motion to reduce the penalty to \$1,200.00. Seconded by Chairman Fox. So Ordered.

Chief Counsel Gregory stated that Ronnie Skinner, owner of First Offense case #22, One Stop Mart, was present to speak on behalf of his business. Mr. Skinner stated they were cited for selling alcohol to a minor. Mr. Skinner introduced his employee, Travis.

Chairman Fox asked Mr. Skinner if Travis was still working for him. Mr. Skinner said he was and that Travis is his nephew. Mr. Skinner said they were asking for a reduction in fine. Mr. Skinner said Travis had taken a few classes.

Chairman Fox made a motion to reduce the penalty to \$800.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Anthony Basile, manager of First Offense case #24, Mamma Mias Italian Restaurant, was present to speak. Mr. Basile stated his employment began December 9, 2008 and was not aware this violation had occurred until Jane Humble contacted him at the restaurant. Mr. Basile said they set up classes with RASP and the staff attended the ABC training. Mr. Basile said the restaurant pled no contest in this matter.

Chairman Fox asked if Ms. St. John was still working. Mr. Basile replied she was.

Chairman Fox made a motion to reduce the penalty to \$800.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Regan Khan, manager of First Offense case #21, Kings Convenience Mart, was present to speak. Mr. Khan stated they were asking for a reduction in the fine in spite of the employee's mistake. Mr. Khan said the employee had been terminated and they all took classes.

Chairman Fox asked Mr. Khan how long the employee worked for him. Mr. Khan replied about three years.

Commissioner Lyon asked Mr. Khan if they were near the campus. Mr. Khan said they were not that near.

Commissioner Lyon asked Mr. Khan if they had taken the ABC Commission classes. Mr. Khan replied he had.

Commissioner Lyon made a motion to reduce the penalty to \$600.00. Seconded by Chairman Fox. So Ordered.

Chief Counsel Gregory stated that Mr. Milton Brooks, owner of add-on hearing case #60, Mr. Stix Billiard, was present to speak on behalf of his business. Mr. Brooks came to speak about an employee consuming a beer while on duty. Mr. Brooks said under normal circumstances he would fire an employee for doing this but Lilly was an outstanding employee. Mr. Brooks asked for a reduction in fine.

Commissioner Lyon made a motion to reduce the penalty to \$500.00 with the stipulation that Mr. Brooks and all employees attend a RASP class. Seconded by Chairman Fox. So Ordered.

Chief Counsel Gregory stated that Mr. Bryan Noble, owner of First Offense case #17, Cross Creek Convenience, was present to speak on behalf of his business. Mr. Noble stated he has had the business for about two years. Mr. Noble said that on October 3, 2008, employee Matthew Champeau sold to a minor. Mr. Noble stated that the minor frequented the store and the employee was certain he had checked his I.D. before. Mr. Noble said the minor came in one night and the employee did not ask for his I.D. Mr. Noble said Officer Patterson carded him and he thought the minor was 20 years old. Mr. Noble stated that Mr. Champeau went to the class and received a certificate. Mr. Noble asked for a reduction in fine.

Chairman Fox made a motion to reduce the penalty to \$800.00 with the stipulation that all employees attend a RASP class. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Chris Lane, manager of First Offense case #37, Brierwood Golf Club, was present to speak. Mr. Lane stated that on December 13, 2008, the manager of the snack bar, sold to an undercover agent after checking her identification but then misfiguring the date. Mr. Lane stated they had been in business since 1995 and this was the first violation and all three employees in the snack bar had the class since the violation.

Commissioner Lyon made a motion to reduce the penalty to \$600.00. Seconded by Chairman Fox. So Ordered.

Chief Counsel Gregory stated that Mr. Janak Marhatta, owner of First Offense case #33, J P Food Mart, was present to speak on behalf of his business. Mr. Marhatta stated they checked the underage person's identification but sold anyway.

Commissioner Lyon asked if they had any classes from the Commission and Mr. Marhatta replied yes.

Chairman Fox made a motion to reduce the penalty to \$600.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that the following cases be continued: add-on hearing case #59, Crowleys Old Favorites and hearing case #43, Spartacus Restaurant, First Offense case #5, Stop and Shop and First Offense case #8, Fast Pass. Chairman Fox made a motion to continue. Seconded by Commissioner Lyon. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of hearing case #5, M and M Mini Mart, hearing case #37, Walnut Creek Amphitheater, hearing case #32, Tenampa Bar and add-on hearing case #60, Mr. Stix Billiard. Seconded by Commissioner Lyon. So Ordered.

The following were Add-On Hearing cases:

- #53 – Kangaroo Express 926
- #54 – Pizzazz Pizza
- #55 – High Point Country Club
- #56 – Rumba D Cache
- #57 – Sushi Blues Café
- #58 – Club Kryptonite
- #59 – Crowleys Old Favorites
- #60 – Mr. Stix Billiards

The following were Add-On First Offense cases:

- #37 – Brierwood Golf Club
- #38 – Quality Mart 4

II. FIRST OFFENSE CASES - 38

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on February 10, 2009, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Fortune Palace Chinese Restaurant – 2815 Brentwood Road, Raleigh, NC 27604
2. Ruby Tuesday 4296 – 3510 South Memorial Drive, Greenville, NC 27834
3. Circle K 1935 – 1809 East Arbors Drive, Charlotte, NC 28262
4. Big Johns Grocery – 4210 Big Johns Store Road, Pleasant Hill, NC 27866
5. Stop and Shop – 4628 High Point Road, Greensboro, NC 27407
6. B and B Grocery – 647 North Main Street, Warrenton, NC 27589
7. Hurricane Mo's Beachside Bar and Grill – 120 East Kitty Hawk Road, Kitty Hawk, NC 27949
8. Fast Pass – 402 South Fayetteville Avenue, Siler City, NC 27344
9. East Market Street Family Fare 217 – 2300 East Market Street, Greensboro, NC 27401
10. Nhu Y Vietnamese Restaurant – 3821-R High Point Road, Greensboro, NC 27407
11. Palisades Country Club – 13417 Grand Palisades Parkway, Charlotte, NC 28278
12. Randleman Road Family Fare 396 – 2600 Randleman Road, Greensboro, NC 27406
13. Stop One – 109 Martin Luther King Drive, La Grange, NC 28551
14. Snack and Soda – 1409-A South Elm Eugene Street, Greensboro, NC 27406
15. Spot – 435 South Tate Street, Greensboro, NC 27403
16. Shop N Go Gas and Grill – 11585 NC Hwy 42 East, Middlesex, NC 27557
17. Cross Creek Convenience – 3834 Guess Road, Durham, NC 27705
18. Falls Landing – 18 East Main Street, Brevard, NC 28712
19. Food Lion 263 – 3123 Dallas High Shoals Hwy, Dallas, NC 28034
20. Food Lion 981 – 11560 NC Hwy 55 East – Unit 14, Grantsboro, NC 28529
21. Kings Convenience Mart – 912 Martin Luther King Drive, Greenville, NC 27834
22. One Stop Mart – 1600-A Phillips, Greensboro, NC 27405
23. Murphys Express 8509 – 4201 West Vernon Avenue, Kinston, NC 28504
24. Mamma Mias Italian Restaurant – 701 Whittier Avenue, High Point, NC 27260
25. Roper Food Mart – 7103 US Hwy 64 East, Roper, NC 27970
26. Turtle Island Restaurant and Catering – 6220 East Oak Island Drive, Oak Island, NC 28465
27. Friendly B P – 5601 West Friendly Avenue, Greensboro, NC 27410
28. C V S Pharmacy 7029 – 2042 Rankin Mill Road, Greensboro, NC 27405
29. Isy Bells Café – 1045 North Main Street, Mooresville, NC 28115
30. Levy Premium Concessions T-16 – 5555 Concord Parkway South, Concord, NC 28027
31. Levy Restaurants at Lowes Motor Speedway – 5555 Concord Parkway South, Concord, NC 28027
32. Food Lion 515 – 1931 Cotton Grove Road, Lexington, NC 27292
33. Food Lion 1291 – 1914 Turnbury Drive, Greenville, NC 27834
34. Food Lion 893 – 7071 Raeford Road, Fayetteville, NC 28304
35. Petro Express 3955 – 1115 Randolph Street, Thomasville, NC 27360
36. Myrick Hills Country Club – 810 Golf Course Road, Littleton, NC 27850

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense case #15, Spot, First Offense case #7, Hurricane Mo's Beachside Bar and Grill, First Offense case #25, Roper Food Mart, First Offense case #22, One Stop Mart, First Offense case #24, Mamma Mias Italian Restaurant, First Offense case #21, Kings Convenience Mart, First Offense case #17, Cross Creek Convenience, First Offense case #37, Brierwood Golf Club and First Offense case #33, J P Food Mart. Seconded by Commissioner Lyon. So Ordered.

III. ABC STORE LOCATION – ASHEVILLE ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store location in Asheville, North Carolina. Mr. Herring stated it is located on Old Charlotte Highway. The sign was not posted properly and will be reposted. This approval will probably come before the Commission at its meeting.

IV. ABC STORE LOCATION – ASHEVILLE ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store Location in Asheville, North Carolina. Mr. Herring stated there were local objections due to its distance from the Fletcher ABC store. The Board was trying to negotiate a merger with Fletcher ABC Board. This request will probably come back to the Commission at its next meeting.

V. ABC STORE LOCATION – MARION ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store location in Marion, North Carolina. Mr. Herring stated the sign was not posted properly and the Local Board had no plans at this time to post the sign. The board is trying to work out an arrangement with a property owner. This approval will come before the Commission at a future meeting.

VI. ABC STORE LOCATION – WAYNESVILLE ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store location in Waynesville, North Carolina. Mr. Herring stated that the board had withdrawn its request for a second ABC Store.

VII. OTHER BUSINESS -

Administrator Michael Herring addressed the Commission concerning a request from the Orange County ABC Board. Mr. Herring stated that on February 2, 2009, a letter was received from the Board with a proposal and a request to sell re-useable bags in its ABC stores. The purpose of this is to reduce the board's cost because it spends \$25,000.00 annually on bags and they feel their customers will use recyclable bags if they can purchase them. The Board would like to establish a pilot program with the Commission's approval where it would purchase 1,000 bags. It would sell the bags to customers at cost, hopefully around \$1.00 plus tax. It would track the useage of those bags and report back to the Commission within 120 days on whether or not these recyclable bags are a viable program for Orange County. It has figured out the boards are spending about \$473,000.00 a year in bags.

Mr. Herring recommended that the Commission approve the Orange County ABC Board's request as it was outlined in their letter and have them report back to the Commission within 120 days of their findings.

Commissioner Lyon made a suggestion to put on one side of the recyclable bag "Don't Drink and Drive" or something that the Board could consider.

Commissioner Lyon made a motion to approve the Orange County ABC Board's request. Seconded by Chairman Fox. So Ordered.

Administrator Michael Herring addressed the Commission concerning two proposed adjustments to the Warehouse contract. Mr. Herring stated that under Part Three, Paragraph 8, subparagraph b, a previous adjustment to that paragraph doesn't seem to be working. Mr. Herring spoke about the first adjustment was

“Multiple Delivery Point Shipments” (Part Three, Paragraph 8, subparagraph b). Mr. Herring said that in 2007 this was addressed and at the time it was 20 cents per case and the Commission adjusted it to 50 cents per case. The Boards are required to a minimum truck of 1,050 cases. The truck is sometimes tied up most of the day by going to five or six locations in a county making multiple deliveries. It increases the cost to the contractor for the driver and the helper. The time it takes to go from one store to another store is not worth it for the contractor and the contractor is losing money. Mr. Herring stated it appeared that \$1.00 per case would work better.

Commissioner Lyon asked Mr. Herring to report back to them in 60-90 days and let them know if it has had its desired effect. Mr. Herring replied yes sir.

Commissioner Lyon made a motion to approve the adjustment to the contract. Seconded by Chairman Fox. So Ordered.

Mr. Herring addressed the Commission concerning the second requested amendment to the contract which falls in this same section. Mr. Herring stated it addresses “Drivers Helpers” (Part Three, Paragraph 8, subparagraph c). Mr. Herring stated the contract currently reads that the contractor should provide two persons for each truck – a driver and a helper except palletized loads and deliveries where it is mutually agreed by the local board and contractor that a helper is not required. The contractor has four helpers that they send out on certain trucks to help certain boards. There are a lot of boards that are taking product on pallets. The contractor pays the board for a helper. Mr. Herring stated that the Boards are not providing helpers. The driver is helping with the off-loading of it and the board is providing one or two people to help and not off-loaded in a timely manner. After it is off-loaded the Board is looking for their \$20-\$25 fee, but have not provided a helper. Mr. Herring stated he was proposing in this amendment that the responsibility of off-loading these trucks on the boards and not the contractor.

Chairman Fox asked what the penalty was if the truck is not off-loaded within 90 minutes on a full truck delivery and 45 minutes on a delivery of 0 to 600 cases. Mr. Herring stated the penalty was that the contractor shall report to the Commission each occasion where the off-loading exceeds these time limits. Mr. Herring stated he would place a call or send a letter to the ABC board telling them they need to provide help. Mr. Herring said the delivery schedule could be changed.

Chairman Fox made a motion to approve the amendment brought to the Commission meeting with the stipulation as to Paragraph 8, subparagraph c, that a sentence would be added relating to the penalty phase in Section d changes. Seconded by Commissioner Lyon. So Ordered.

Commissioner Lyon said it was frustrating to him that we are still hearing the same excuse about looking at licenses and doing the math wrong or looking at licenses and selling.

Commissioner Lyon asked Mr. Herring to talk to the Education Division to make sure that they make people aware of the chart.

Mr. Herring stated that the chart with the new driver’s license has been updated.

Ms. Burna Mattocks explained that the trainers have the charts in their presentations.

Mr. Herring stated that the Commission would increase their efforts to get the chart to every permittee who comes through our door.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Dottie L. Taylor, Legal Division