

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 15, 2008**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on October 15, 2008, beginning at 10:00 AM. The meeting was recorded and the disk in on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman Douglas Fox, Commissioner John Lyon. Commissioner Mike Joyner was present via telephone.

MINUTES OF SEPTEMBER 9, 2008, MEETING

Chairman Fox made a motion to waive the reading of the minutes from the September 9, 2008, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the September 9, 2008, 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 that he found no conflicts of interest. Chairman Fox stated that he had no conflicts of interests.

I. HEARING CASES - 82

Chief Counsel Fred A. Gregory stated that Mr. Ron Fenney, manager of hearing case #53, Greenville Hilton, was present to speak on behalf of the business. Mr. Fenney stated that he was asking the Commission for some leniency on the penalty. He further stated that 90% of the food and beverage staff has already received a RASP Class as well as training through Pitt County. Mr. Fenney showed the Commission the certificates that he has received from the alcohol training classes and stated that all new hires have to go through the Pitt County ABC training.

Chairman Fox made a motion to reduce the penalty from \$2,400.00 to \$1,800.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Donald G. Hunt Jr., attorney for contested case #1, Club N Motion, was present to speak on behalf of his client. Assistant Counsel LoRita K. Pinnix represented the Commission. Administrative Law Judge Beecher R. Gray heard the case on June 13, 2008, in Robeson County. Commissioner Mike Joyner was present via speaker phone.

Commissioner Lyon made a motion to adopt the Findings of Fact and Conclusions of Law of Judge Gray. Seconded by Commissioner Joyner. So Ordered.

Chief Counsel Gregory stated that Mr. Gib Williams, owner of hearing case #73, Mint Juleps, was present to speak on behalf of his business. Mr. Williams stated that there had been a birthday party at the business for a gentleman that had turned 60 years old. The gentleman was given a bottle of Chocolate Godiva after the party was over, the bottle of Chocolate Godiva was left and he picked it up and put the bottle behind the bar. Two bottles that were missing the mixed beverage tax stamp were taken out of inventory and placed in the display

behind the bar. Mr. Williams stated that he felt that those bottles did not have the tax stamp on them when he picked up his order at the ABC Store. The bottles of unfortified wine were bought when he first opened the business. He went on to state that at that time they had an older clientele and he had two couples who liked to have Vermouth in their Martini's. Those couples are now deceased.

Mr. Williams went on to state that he did not renew his fortified wine permit and forgot to remove the fortified wine bottles.

Chairman Fox made a motion to reduce the penalty from \$900.00 to \$600.00 upon the stipulation that all the employees attend a RASP Class. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Nassar Alrayashy, owner of hearing case #2, Save Mart, was present to speak on behalf of his business. Mr. Alrayashy asked the Commission for reduction in penalty.

Chairman Fox stated that this location had been in business for almost two years and this was the third underage sale.

Chairman Fox further stated that he would be willing to increase the penalty and take away the active time. Chairman Fox made a motion to increase the penalty from \$3,500.00 to \$5,000.00 with no active time, upon the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Bob Patel, owner of 1st Offense Case #5, Quick Buy, was present to speak on behalf of his business.

Mr. Patel gave the Commission some background information regarding the violation. He went on to state that he and his employees had taken the alcohol training class. He showed the Commission the certificates that he had received from the compliance checks.

Chairman Fox made a motion to reduce the penalty from \$1,200.00 to \$700.00. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated Mr. Ahmed Naji, owner of 1st Offense Case #32, New York Mini Mart, was present on behalf of his business. Mr. Naji had a gentleman with him who explained to the Commission what had occurred at the time of the violation. On the day of the violation, Mr. Naji had to step out and get some merchandise, so he asked his girlfriend to work in his place while he was gone. His girlfriend asked for the identification of the underage buyer, but miscalculated the age. The clerk went to court and took classes and the case was dismissed. Mr. Naji was asking for a reduction in the penalty.

Chairman Fox made a motion to reduce the penalty from \$1,200.00 to \$800.00 upon the stipulation that all the employees attend a RASP Class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Subhash Girdhiar, owner of 1st Offense Case #33, Raceway 6741, was present to speak on behalf of his business. Mr. Girdhiar stated that his employee had a phone call while he was working and was told that his grandmother had died. The employee was distracted by the news and sold to an underage person. Mr. Girdhiar showed the Commission all his certificates that he has received for not selling alcohol to a minors and he also showed the Commission his certificate from taking the RASP Class.

Commissioner Lyon made a motion to reduce the penalty from \$1,200.00 to \$500.00. Seconded by Chairman Fox. So Ordered.

Chief Counsel Gregory stated that Mr. Felnoy Crawford was present to speak regarding hearing case #60, Star Music Studio. Mr. Crawford stated that he was not disputing the violations but was asking the Commission for some leniency. He proceeded to give the Commission some background information regarding the violations. Mr. Crawford stated that there was a party at the business, alcohol was brought in and he confiscated what he could.

Chairman Fox made a motion to change the compliance date for the start of the suspension to be January 2, 2009. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that Mr. Mahrukh Butt, owner of hearing case #63, Sam's Mini Mart, was present to speak on behalf of the business. Mr. Butt gave the Commission some background information regarding the violation. He further stated that they have had taken an alcohol training class.

Chairman Fox made a motion to reduce the penalty from \$2,400.00 to \$1,800.00 upon the stipulation that all the employees take a RASP Class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Chief Counsel Gregory stated that hearing case #38, Dunhill Hotel and hearing case #48, Mammys Sports Bar will be continued to the next Commission meeting.

Chairman Fox made a motion to approve the remaining Offers in Compromise excluding cases #1 Club N Motion, # 2 Save Mart, #60 Star Music, #63 Sams Mini Mart, # 53 Greenville Hilton and #73 Mint Juleps. Seconded by Commissioner Lyon. So Ordered.

II. FIRST OFFENSE CASES - 21

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on October 15, 2008, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Circle K Store 5107 – 1300 West Sugar Creek Road, Charlotte NC 28262
2. Pub at Gateway – 710 West Trade Street, Suite E., Charlotte, NC 28202
3. San Felipe Mexican Restaurant – 1840 North Sandshills Boulevard, Aberdeen, NC 28315
4. Quick Mart – 201 West Main Street, Jamestown, NC 27282
5. Quick Buy – 2210 South Holden Road, Greensboro, NC 27407
6. One Stop Gas and Grill – 14011 Hwy 210 South, Roseboro, NC 28382
7. Exxon 40574 – 12710 South Tryon Street, Charlotte, NC 28273
8. Exxon 40553 – 9502 Mount Holly-Huntersville Road, Huntersville, NC 28078
9. Amoco Food Shop – 5520 East Independence Boulevard, Charlotte, NC 28212
10. Bi Lo 640 – 9101 Pineville Matthews Road, Pineville, NC 28134
11. Charleys Grilled Subs – 2526 Hillsborough Street, Suite 106-B, Raleigh, NC 27607
12. Solomons Restaurant – 7333 Six Forks Road, Suite F, Raleigh, NC 27615
13. Chinese Kitchen – 5607-E West Friendly Avenue, Greensboro, NC 27410
14. C Mini Mart 147 – 1200 Edwards Mill Road, Raleigh, NC 27607
15. C Mini Mart – 902-A US 64 West, Apex, NC 27502
16. Carniceria el Rey Market – 3737 Farmington Drive, Suite A, Greensboro, NC 27407
17. Cloverleaf Super Market – 133 Montlieu Avenue, High Point, NC 27262
18. 4 Exprezit 2 – 305 East Mountain Street, Kernersville, NC 27284
19. Food Lion 2511 – 120 NC 102 West, Ayden, NC 28513
20. Food Lion 1573 – 3926 Western Boulevard, Raleigh, NC 27607
21. Exxon 40596 – 8010 South Tryon Street, Charlotte, NC 28273
22. Kellys Eastchester – 1232 Eastchester Drive, High Point, NC 27265
23. Ingles Markets 34 – 2299 US Hwy 70 West, Swannanoa, NC 28778

24. S and K Mart – 800 Carolina Avenue, Washington, NC 27889
25. Cimarron Steak House – 3260 South Stratford Road, Winston-Salem, NC 27103
26. Kwik Mart – 549 East Third Street, Washington, NC 27889
27. Kyles Julian BP – 3336 Alamance Church Road, Julian, NC 27283
28. Joy Food Store – 1237 West Front Street, Statesville, NC 28677
29. Circle K 1678 – 5018 Sunset Road, Charlotte, NC 28213
30. Wholly Guacamole Mexican Grille – 3900-A Battleground Avenue, Greensboro, NC 27410
31. College Lakes Liberty – 4147 Ramsey Street, Fayetteville, NC 28301
32. New York Mini Mart – 2929 Angier Avenue, Durham, NC 27703

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases excluding cases # 5 Quick Buy, #32 New York Mini Mart and #33 Raceway 6741. Seconded by Commissioner Lyon. So Ordered.

III. ABC STORE LOCATION – ONSLOW COUNTY ABC

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store location in the Jacksonville, North Carolina. On June 11, 2008, the Commission received a request from Ms. Neta L. Grady, Administrator with the Onslow County ABC Board. On September 4, 2008, Alcohol Law Enforcement Agent Kenneth Simma began an investigation and found that the Onslow County ABC Board plans to build a new ABC Store located at 419 South Marine Boulevard, Jacksonville North Carolina.

The Onslow County ABC Board plans to purchase the properties for \$350,000.00 from Cecil Worsley III, dba/Worsley Companies, Inc and Onslow Oil Company, Inc. The proposed location will consist of an approximately 7,800 square feet building in which 4,000 square feet will be devoted to the operation of the retail business and the remaining 3,800 square feet will be devoted to the operation of a wholesale warehouse.

There is no conflict of interest between the property owners and the Onslow County ABC Board.

The nearest church is First Baptist Church and is approximately .4 mile from the proposed location and the nearest school is New Bridge School and is approximately 1.2 mile from the proposed location.

Pursuant to the 30-day requirement in the ABC Commission Rules, Notice of Intent was properly posted on August 27, 2008.

No objections were received at the Commission.

Mr. Herring recommended that the Commission approve the location.

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

IV. ABC STORE LOCATION – WAKE COUNTY ABC

Administrator Michael Herring addressed the Commission concerning the proposed location of a new ABC Store location in Wake Forest, North Carolina. On September 9, 2008, the Commission received a request from Mr. Craig Pleasants with the Wake County ABC Board. On September 15, 2008, Alcohol Law Enforcement Agent G.S. Young began an investigation and found that the Wake County ABC Board plans to build a new ABC Store located at 4501 Vineyard Pine Lane, Wake Forest North Carolina.

The Wake County ABC Board plans to purchase the land for \$505,993.00 from Barrett Ventures I, LLC.

A conflict of interest does exist between Mr. Joel Keith, with the Wake County ABC Board and the realtor who was working with the Wake County ABC Board. Mr. Keith did abstain from any discussions on the property.

The nearest church is Mt. Calvary Holiness Church and is .4 miles from the proposed location. The nearest school is Rolesville Elementary School and is 1.2 miles from the proposed location.

Pursuant to the 30-day requirement in the ABC Commission Rules, Notice of Intent was properly posted on September 9, 2008.

The ABC Commission has received no objections; however Mr. Pleasants has received some objections and Reverend Darlene Jones was present to speak in opposition to the proposed location.

Mr. Pleasant stated to the Commission the number of calls that his office had received and the reason for the objections.

Rev. Jones stated that her family and the other resident in this area are concerned about having an ABC Store in their residential area. The area was re-zoned and the first part of the road was turned into a commercial development. She went on to state that the Town of Rolesville issued a Special Use Permit to the developer and the permit does not state that a ABC Store could operate. In order for that to happen, the developer would have to come back before the Town of Rolesville and submit that proposal.

The residents of that area are very concerned about the traffic that an ABC Store would bring. Rev. Jones stated that she has a petition of 344 names of people who are in opposition to the proposed ABC Store.

Chairman Fox made a motion to continue this matter to the next meeting until the Town of Rolesville decides on the re-zoning issue. Seconded by Commissioner Lyon. So Ordered.

V. ABC STORE LOCATION – ASHEBORO ABC

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Asheboro, North Carolina. On September 12, 2008, the Commission received a request from Mr. Russell G. Walker, Jr., Chairman of the Asheboro ABC Board. On September 22, 2008, Alcohol Law Enforcement Agent Anthony C. Boles began an investigation and found that Asheboro ABC Board plans to remodel a building located at 700 South Fayetteville Street, Asheboro, North Carolina.

The Asheboro ABC Board plans to lease the property for ten years at the rate of \$12.00 per square foot. The monthly rent will be \$5,996.00. The proposed location is owned by Branson-McKenzie LLC. There is no conflict of interest between the property owners and the Asheboro ABC Board.

The nearest church is First Baptist Church of Asheboro and is .6 mile from the proposed location. The nearest school is Donna Lee Loflin Elementary School and is .5 miles from the proposed location.

Pursuant to the 30-day requirement of the ABC Commission Rules, Notice of Intent was properly posted on September 12, 2008.

No objections have been received by the Commission.

Mr. Herring recommended that the Commission approve the location.

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

Mr. Herring stated that the Greensboro ABC Board has withdrawn their request for a proposed ABC Store located at 106 through 108 Pisgah Church Road, Greensboro, NC 27455.

With no further business, the meeting adjourned.

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

Respectfully submitted by

Tiffany Goodson, Legal Division