

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 4, 2012**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on April 4, 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 MARCH 7, 2012

Chairman Guy asked for a motion to waive the reading of the minutes of the March 7, 2012 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the March 7, 2012 meeting. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the March 7, 2012 meeting. Commissioner Briggs made a motion to approve the minutes from the March 7, 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. OTHER BUSINESS – EDUCATION & TRAINING DIVISION – RESULTS OF THE POSTER CONTEST FOR THE MIDDLE SCHOOL STUDENTS

Chairman Guy asked Ms. Kristin Milam, Director of Education and Training to step forward to present the winners of the poster contest.

Ms. Milam stated that April was Alcohol Awareness Month. In honor of Alcohol Awareness Month the ABC Commission hosted a middle school poster contest. The theme of the contest was “Most Don’t and I Won’t”. The students were asked to reflect that theme in developing the posters. 70% of the middle school age students in North Carolina report that they’ve never had alcohol.

Ms. Milam asked Chairman Guy and Commissioner Briggs to help present awards to the following students:

- 1st Place – Mariah Spriggs, 7th grader at HJ MacDonald Middle School in New Bern, NC
- 2nd Place – Rachel Bettendorf, 8th grader at Carolina Christian Academy (Homeschool) in Charlotte, NC
- 3rd Place – Kailyn Byers, 6th grader at HJ MacDonald Middle School in New Bern, NC

Honorable Mentions:

Samantha Hutchison, 6th grader, Brian's (Homeschool) in Concord, NC
Mary Taylor, 7th grader, Blessed Sacrament School in Burlington, NC
Katelyn McLaughlin, 8th grader, Blessed Sacrament in Burlington, NC
Marco Santos, 7th grader, Hanes Magnet in Winston-Salem, NC
Marbella Macias, 8th grader, East Burke Middle School in Connelly Springs, NC
Jonathan Herter, 7th grader, Divine Child (Homeschool) in Mebane, NC
Tristan Velez, 7th grader, HJ MacDonald in New Bern, NC
Halie Starnes, 7th grader, Sun Valley Middle School in Indian Trail, NC
Matthew Nicholson, 6th grader, First Flight Middle School in Kittyhawk, NC

Chairman Guy congratulated all the students and their parents.

II. HEARING CASES – 80

Chief Counsel Fred Gregory stated that case #1, Cueva de Lobos Mexican Restaurant, was originally a contested case, but has since been settled.

Chief Counsel Gregory stated that contested case #2, Hot Spot Convenience Store, was the next case to be heard. Mr. Gregory asked if there was anyone present to speak on behalf of the business. No one was present.

Assistant Counsel Timothy W. Morse represented the Commission and stated that Administrative Law Judge Donald W. Overby issued an order for Prehearing Statements from both parties. The respondent failed to file its Prehearing Statements. Mr. Morse stated that he filed a Motion for Sanctions for failure to submit Prehearing Statements and Administrative Law Judge Overby granted the Motion for Sanctions.

Commissioner Briggs made a motion to adopt the recommended decision of Administrative Law Judge Donald W. Overby. Motion Passed.

Chief Counsel Gregory stated that the next case to be heard was contested case #3, Ruka's Table. Mr. Gregory asked if there was anyone present to speak on behalf of the business. No one was present. Mr. Gregory stated that the respondent failed to submit the required Prehearing Statements. For failure to comply Motion for Sanctions was issued. Administrative Law Judge Donald W. Overby.

Commissioner Briggs made a motion to adopt the recommended decision of Administrative Law Judge Donald W. Overby. Motion Passed.

Chief Counsel Gregory stated that Mr. Sergio Umana, with hearing case #11, El Sombrero Azul, was present to speak on behalf of the business.

Mr. Umana told the Commission that he didn't feel like they were guilty of the violation.

Assistant Counsel K. Renee Cowick stated that in regard to one particular brand of alcohol that was referenced in violation #1; that brand has not been available in the ABC Stores for several years. She further stated that it is uncertain as to where that bottle came from. The other alcohol referenced in violation #1, was a mini bottle. The remaining violations occurred on separate dates. One violation involved four bottles that were not defaced and the other violation had six bottles that were not defaced.

Ms. Cowick went on to state that the permittee had held ABC permits since 2007, with no other violations. She stated that she had no objections to the Commission reducing the penalty and attending a training class.

After conferring with Commissioner Briggs, Chairman Guy made a motion to reduce the penalty by 25%, upon the stipulation that the permittee attend a training class. Motion Passed.

Chief Counsel Gregory stated that Attorney, Glenn Lassiter, was present to speak on behalf of hearing cases #17a, Kangaroo Express 901 and #17b, Kangaroo Express 901.

Mr. Lassiter asked the Commission for some consideration in regard to hearing case #17b. He went on to state that the manager did not comply with the policy of the operation of the store. He further stated that in 2010, for a period of three months, the corporate office was not aware of what was happening at the location. The manager ignored store policy and failed to notify the corporate office after any of the violations occurred. The corporate office only became aware of what had happened after the third violation occurred. The manager, along with several employees, was fired. The district manager was re-assigned.

Mr. Lassiter went on to state that the employees have been re-trained. He asked the Commission if they would waive the active time and his client would be willing to pay a higher penalty.

After some discussion, Commissioner Briggs made a motion to waive the active time. Motion Passed.

Chief Counsel Gregory stated that Mr. Charles Hutchison, with hearing case #21, Loafers Pizza and Sports Bar, was present to speak on behalf of the business.

Mr. Hutchison admitted to the violation. He stated that he had attended a wedding the previous weekend and since he did not like to keep liquor at his home, he mistakenly brought it to the business. He further stated that he realized that he shouldn't have done that. Mr. Hutchison asked the Commission if they would waive the active time.

After conferring with Commissioner Briggs, Chairman Guy made a motion to waive the active suspension. Motion Passed.

Chief Counsel Gregory stated that Mr. P.C. Patel, was present along with his interpreter, to speak on behalf of hearing case #52, R B Food Mart.

Mr. Patel admitted to the violation.

Ms. Cowick stated that the case was Ms. Pinnix's and per her notes, the penalty could be lowered if the permittee attend an education class.

Chairman Guy made a motion to reduce the penalty by 25% upon the stipulation that the permittee attends an education class. Motion Passed.

Chief Counsel Gregory stated that Ms. Marlane Klintworth, the owner of hearing case #28, Union, was present to speak on behalf of the business.

Ms. Klintworth asked the Commission for a reduction in the penalty. Ms. Klintworth stated that they had been contracted by a group with North Carolina State University, to host a sorority party for a group of about 100 individuals. Part of the contract stated that the group would provide three security guards and

would be escorting the 100 individuals to the event. When the bus arrived, it contained 200 people and the security officers did not enter the event. Ms. Klintworth stated that her employees did everything they could to try to keep an eye on people, but Alcohol Law Enforcement came in and discovered the violations.

She further stated that in speaking with the Agent, she learned that since they were selling soft drinks in regular cups, it was hard to tell the difference between alcohol being purchased and the soft drinks. She stated that they would no longer sell soft drinks in regular cups, but would leave them in their cans and would provide security herself.

Commissioner Briggs made a motion than reduce the penalty by 25% upon the stipulation that all the employees attend an education class. Motion Passed.

Chief Counsel Gregory stated that Mr. Dan Kolenick, owner of reconsideration case #38, McCurdys on Moonlight Bay, from the March Commission meeting, was present to speak on behalf of the business.

Mr. Kolenick asked the Commission to waive the active suspension. He stated that he received the notification in the mail, failed to thoroughly read it, but signed and returned it. He went on to state that he should have read the letter. He stated that he had been out of state opening another business and had left the manager in charge. When Alcohol Law Enforcement came in, his manager was out of town and he was at the business. That was the reason why his name was on all the violations. The manager has been fired and all the employees have attended a BARs class. He also stated that his manager had told him that he had been turned away from the ABC Board several times over the summer. They had changed their hours of operation and he wasn't always able to be there by the allotted time. The manager went out and purchased alcohol and brought it back to the business.

After conferring with Chairman Guy, Commissioner Briggs made a motion to waive the active suspension upon the stipulation that the all the employees attend an education class. Motion Passed.

Chief Counsel Gregory stated that Mr. Dan Harrer, with hearing case #78, Oak Island Elks Lodge 2769, was present to speak on behalf of the business.

Mr. Harrer stated that Oak Island Elks Lodge is a Non-Profit Organization. He went on to state that they've raised a lot of money for different charities. He further stated that in order to be able to continue their community service, the lodge would need to be able to operate and maintain events. He asked for leniency.

Ms. Cowick stated that they had drinks free during the raffle and at 9:00 p.m., when the raffle was over they started charging for drinks, that's where the "Happy Hour" violation came in. They have had their permits for a long time, but they had a conversation with Alcohol Law Enforcement about how to handle a raffle and the violation still occurred. She ended by stating that she did not have a problem with a written warning being issued.

Commissioner Briggs made a motion to issue a written warning. Motion Passed.

Chief Counsel Gregory stated that hearing case #6, Capital City Chop House, was the next case to be heard. No one was present; however, the permittee did send in a letter.

After reviewing the letter with Commissioner Briggs, Chairman Guy stated that the permittee should have been present today at the meeting to be heard. There would be no change in the penalty.

Chief Counsel Gregory stated that add on hearing case #80, Six Forks Pub, a reconsideration case from November 9, 2011 Commission meeting, was the next case to be heard. Mr. Gregory stated that the case had been settled. The Commission would need to ratify the offer in compromise.

Commissioner Briggs made a motion to accept the offer in compromise. Motion Passed.

Commissioner Briggs made a motion to approve the remaining offers in compromise, with the exception of previously ratified cases. Motion passed.

III. ABC STORE MECKLENBURG COUNTY

Chairman Guy stated the Mecklenburg County ABC store location will be continued to the May 9, 2012 Commission Meeting.

IV. OTHER BUSINESS – EXEMPTION REQUEST – ADAM DALTON DISTILLERY LLC

Chief Counsel Gregory stated that Mr. Adam Dalton was present to request an exemption from NCGS §18B-1116(a) (2). Mr. Dalton owns a restaurant and is a retail permit holder. Under NCGS §18B-1116(b), he can be a supplier and have retail permits. Under this statute, the Commission is allowed to give exemptions. If you are a brewery and a winery, you can hold a couple of retail permits. There has not been any change in the statute with regard to Distilleries who also have a restaurant.

Mrs. Joan Dalton was present and presented the Commission with some information regarding the exemption request.

Mr. Dalton stated that they have a full service, members only bar. The future goal is to becoming a distillery. The main goal is make different types of liquor and to start out with making rum. He went on to state that since he grew up in Asheville North Carolina, he would like to plant the seed and spread out to North Carolina. He further stated that he would like to have the same opportunity that brewery and wineries have, to be able to sell their product within the walls of where they make their product. He also stated that he wanted to be the first combination of bar and distillery in the State of North Carolina. The distillery would be “jail style” distillery. It would be completely blocked off from the bar and while bar is open the distillery would be closed and vice versa. There would be 300 gallon still and would make 25-30 cases a day. To start up that would be 7 days a week until they are caught up. On a high end that would be 10,000 cases and on a low end that would be about 8,000 cases.

Chief Counsel Gregory stated that there needed to be a cap on the cases that are produced. He recommended 10,000 cases as the limit of cases that could be produced. The exemption would be good as long as Mr. Dalton made less than 10,000 cases a year.

Chairman Guy told Mr. Dalton that he admired his business savvy.

Chairman Guy made a motion to approve exemption request, limiting the cases to 10,000.00 cases per year. Motion Passed.

V. OTHER BUSINESS – CONSIDERATION OF PUBLICATION OF PROPOSED PERMANENT RULE CHANGES

Rules Coordinator Bob Hamilton stated he needed approval from the Commission to allow the rules to proceed to the next step.

Chairman Guy made a motion to allow the rules to proceed to the next step. Motion Passed.

Rules Coordinator Bob Hamilton stated he needed approval from the Commission regarding the Economic Statements with the understanding that may be some changes and would not need the Commission's approval again.

Commissioner Briggs made a motion to approve the Economic Statement changes. 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