

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
FEBRUARY 11, 2005**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on February 11, 2005. The meeting was tape-recorded and the tape is on file at the ABC Commission in the Legal Division.

**ROLL CALL**

Chairman Douglas A. Fox and Commission Members Mike Joyner and Ricky Wright were present at the meeting.

**MINUTES OF JANUARY 14, 2005 MEETING**

Commissioner Joyner made a motion to waive the reading of the minutes from the January 14, 2005, meeting into the record. Seconded by Commissioner Wright. So ordered. Commissioner Joyner made a motion to approve the minutes from the January 14, 2005, meeting. Seconded by Commissioner Wright. So ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order Number One, Chairman Fox asked Commissioners Joyner and Wright if 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. Both Commissioner Joyner and Commissioner Wright replied that they had no conflicts of interest. Chairman Fox recused himself from ruling on the following cases:

Hearing Case #16 – Buffaloe’s Grocery  
Hearing Case #17 – Cody’s Pub  
Hearing Case #21 – Tommy’s Mini Mart 3  
First Offense Case #6 – Han Dee Hugo’s 26

**I. HEARING CASES- 48 Listed**

Chief Deputy Counsel Fred A. Gregory stated that several permittees were present at the meeting and wished to address the Commission regarding their cases.

Hearing Case #16 – Buffaloe’s Grocery – Attorney John Collins addressed the Commission on behalf of the permittees regarding charges of underage sales that took place at Buffaloe’s Grocery on August 28, 2004. Mr. Collins stated that the employees involved in the violations were terminated immediately and that there had been no subsequent violations since August 28, 2004. In addition, all employees of Buffaloe’s Grocery attended an ABC training seminar in January, conducted by Agent Ted Carlton. Mr. Collins had asked Agent Carlton if he or his agency considered Buffaloe’s Grocery to be a problem outlet, and Agent Carlton had replied that

they did not. In light of these facts, Mr. Collins requested that the penalty of 45 days suspension with ten days active suspension and a fine of \$3,500.00 be reconsidered.

Commissioner Joyner asked how Mr. Collins would categorize Buffaloe's Grocery. Mr. Collins replied that the location is a local community grocery store, offering a full range of grocery products, and had been operated by the Buffaloe family for over 28 years. Commissioner Joyner asked if the owners worked in the store, and Mr. Collins replied that they typically open the store in the morning and work until the afternoon, when other employees arrive. Commissioner Joyner asked if the owners were present on the premises at the time the violation took place, and Mr. Collins replied they were not.

Chairman Fox asked Mr. Collins what he wanted Buffaloe's Grocery's penalty to reflect. Mr. Collins requested that the ten days active suspension be waived, possibly in lieu of a higher fine. Commissioner Joyner made a motion that the active suspension be waived and the fine increased to \$4,000.00. Seconded by Commissioner Wright. So ordered.

Hearing Case #12 – Winn Dixie Store 2008 – Attorney Judson Welbourne and District Manager Michelle Sandeval addressed the Commission on behalf of Winn Dixie regarding a charge of underage sale that took place at Winn Dixie Store 2008 on May 6, 2004.

Mr. Welbourne provided introductory remarks and provided materials to the Commission members, including an Associate's Agreement that each employee of Winn-Dixie must sign, indicating that they have read, reviewed and understand the alcohol sales policies at Winn-Dixie stores, and a Job History Report indicating that the employee responsible for Winn-Dixie's violation, Maria Consuelo, was terminated the day of the violation. Mr. Welbourne stated that all Winn-Dixie employees receive regular training in sales of alcoholic beverages.

Mr. Welbourne requested that the penalty of a 30-day suspension with a five-day active suspension and a fine of \$3,000.00 be reconsidered. He wished for the active suspension to be waived, and stated that Winn-Dixie would be willing to pay a higher fine and hold an ABC training seminar at the Charlotte location.

Mrs. Sandeval then addressed the Commission to elaborate on Winn-Dixie's current alcohol training programs. She stated that all newly-hired employees undergo a three-hour orientation, where all policies and procedures are explained to the employee. In addition, all cashiers review alcohol and tobacco sales policy every thirty (30) days.

Chairman Fox asked how often Winn Dixie stores undergo training by officials outside of the company. Mrs. Sandeval stated that other than the monthly alcohol and tobacco training within the company, she was not aware of any such training. Commissioner Joyner asked if Winn Dixie's cash registers required a birth date to be entered before allowing sale of alcoholic beverages, and Mrs. Sandeval stated that they do require a birth date to be entered and that the cashier has the option to override the birth date entry. Commissioner Joyner asked why an override feature exists, and Mrs. Sandeval stated that the feature was purely for the benefit of patrons who are clearly over the legal purchase age.

Chairman Fox made a motion that the active suspension be waived in lieu of an increased penalty of \$3,500.00 on the condition that Winn Dixie Store 2008 undergo an ALE training session within thirty days. Seconded by Commissioner Wright. So ordered.

Hearing Case #6 – Jeff’s Bucket Shop – Permittee Jeffrey Laria was present to speak to the Commission regarding a charge of refilling a container of spirituous liquor with contents from another alcoholic beverages on July 16, 2004. He stated that on the night of the violation, he refilled a bottle of Captain Morgan rum in preparation for a Customer Loyalty party he was hosting on Sunday, July 18, 2004. He requested that his fine be mitigated since his location is a small neighborhood bar, and a seven-day suspension would cause him to lose many loyal customers. He stated that since the violation he has held training classes with Mecklenburg County ABC Officer L.R. Lowe, and that he has another scheduled with ALE Agent Charles Fuller, and would be willing to schedule regular classes, if this would mitigate his penalty.

Commissioner Joyner asked if most of Mr. Laria’s revenue was generated by alcohol sales, and he stated that it was. Mr. Laria had originally opened Jeff’s Bucket Shop as a restaurant, but was unable to comply with the 30% food requirement, so he changed the business over to a private club. Chairman Fox asked how many members Mr. Laria’s club had, and he stated that the club had approximately 100 members.

Assistant Counsel Renee Cowick stated that Mr. Laria had been very cooperative with ABC Officer Lowe during the incident.

Commissioner Wright made a motion that the Offer in Compromise be amended to reflect no active time and an increased penalty of \$3,500.00. Seconded by Commissioner Joyner. Chairman Fox added the further stipulation that Jeff’s Bucket Shop hold another training course within the next six months.

Commissioner Joyner made a motion to approve the Offers in Compromise for Hearing Cases #16, #17 and #21. Seconded by Commissioner Wright. So ordered.

Chairman Fox made a motion to approve the balance of the Offers in Compromise for the hearing cases. Seconded by Commissioner Wright. So ordered.

## **II. FIRST OFFENSE CASES – 22 listed**

The following is a list of first offense violation cases, in which Final Agency Decisions were signed by the Chairman on February 10, 2005, pursuant to the Commission’s authorizing resolution dated November 8, 2002:

Bucktom Food Mart - 2294 Smokey Park Hwy, Candler, NC 28715  
Coulwood Amoco - 8111 Belhaven Boulevard, Charlotte, NC 28216  
Eckerd Drugs 2880 - 1728 South Boulevard, Charlotte, NC 28203  
Exxon Express - 4235 Providence Road, Charlotte, NC 28211  
Godfrey’s Steak and Seafood and Cajun Grill - 2337 Hwy 70 SE, Hickory, NC 28602  
Han Dee Hugos 26 - 5675 Carolina Beach Road, Wilmington, NC 28401

Ivan's Restaurant and Bar and Strikers Sports Center - 80 Finley Road, Marion, NC 28752  
Jerry's Texaco Service - 8700 Mount Holly Road, Charlotte, NC 28214  
Q A Express Mart - 5632 Farm Pond Lane, Charlotte, NC 28212  
Snappy Foods - 10100 Moores Chapel Road, Charlotte, NC 28214  
Tabor City I G A - 806 East Fifth Street, Tabor City, NC 28463  
Wilco 261 - 648 Hendersonville Road, Asheville, NC 28803  
Wilco 344 - 140 US 321 NW, Hickory, NC 28603  
Wilco 346 - 1835 Hwy 64/70 SE, Hickory, NC 28603  
Wilco 349 - 122 Turnersburg Hwy, Statesville, NC 28677  
Zippers Restaurant and Lounge - 475 North Generals Boulevard, Lincolnton, NC 28092  
Cruizers 31 - 3601 Raleigh Road, Wilson, NC 27893  
Food Lion 115 - 1060 Lillington Hwy, Spring Lake, NC 28390  
Food Lion 900 - 805-A East 4<sup>th</sup> Avenue, Red Springs, NC 28377  
Food Lion 2100 - 638 Patterson Street, Maxton, NC 28364  
Pantry 3134 - 501 West 3<sup>rd</sup> Street, Pembroke, NC 28372  
Quick Stop 3011 - 2820 Lillington Hwy, Spring Lake, NC 28390

Commissioner Joyner made a motion to accept the Offer in Compromise for First Offense Case #6. Seconded by Commissioner Wright. So ordered.

Chairman Fox made a motion to approve the balance of the Offers in Compromise for the First Offense cases. Seconded by Commissioner Wright. So ordered.

### **III. ABC STORE LOCATION – DURHAM COUNTY ABC BOARD**

Administrator Michael Herring addressed the Commission concerning the relocation of an ABC store in Durham, North Carolina. On December 23, 2004, the ABC Commission received a letter from Durham County ABC Board General Manager Randy Mills requesting permission to relocate an ABC store located on Hwy 55. On December 30, 2004, the ABC Commission requested that Alcohol Law Enforcement conduct an inspection of the proposed location, and on January 13, 2005, ALE Agent J.C. Batten began the investigation.

The Durham ABC Board currently leases property on Hwy 55, and wishes to purchase property to build a 3,500 square foot store. The property is owned by Prostar Land Development LLC, and the purchase price for the property is \$350,000.00 for 1.4 acres. The investigation found no conflict of interest between the Durham County ABC Board and the property owner.

The nearest church is the Lowes Grove Baptist Church, located 1.2 miles from the proposed location. The nearest school is the Lowes Grove Middle School, located 1.3 miles from the proposed location. Pursuant to ABC Commission regulations, Notice of Intent to Open an ABC Store was posted on the property for thirty days, and to date no objections have been received.

Mr. Herring recommended that the ABC Commission approve the site.

Commissioner Joyner asked what motivated the Durham County ABC Board to relocate the store. Mr. Herring replied that the new store would be larger than the existing store, and would provide the Board the opportunity to own property as opposed to leasing a location.

Chairman Fox made a motion to approve the location. Seconded by Commissioner Wright. So ordered.

## **VI. OTHER BUSINESS**

Hearing Case #3-1 - McKenzie's Restaurant Pub – Permittee Sharon McCloud was present to speak to the Commission regarding a matter continued from the January 14<sup>th</sup>, 2005, meeting. Before Ms. McCloud addressed the Commission, Commissioner Wright recused himself from hearing the matter due to the business being located in Wake Forest, thereby creating the appearance of a conflict of interest.

Ms. McCloud stated that she had already paid the fine agreed to and ratified at the January meeting, and she had an additional ten days of active suspension to serve. She requested that the active suspension be waived in lieu of an increased fine.

Chairman Fox asked for information regarding a prior offense of allowing fighting to occur on the licensed premises. Ms. McCloud stated that her boyfriend at the time was in charge of the licensed premises on the night of the violation while Ms. McCloud was participating in a food drive for the Wake County Food Bank. Her boyfriend attempted to close the business down early on the night of the violation, and when Ms. McCloud arrived on the licensed premises, they engaged in an altercation. A police officer was eating dinner with his family at the time of the altercation and he called the Wake Forest Police Department to intervene.

Commissioner Joyner made a motion to increase the penalty from \$3,600.00 to \$4,000.00 and waive the active suspension. Chairman Fox seconded the motion with the added stipulation that McKenzie's Restaurant Pub host an ABC training seminar within the next 30 days. So ordered.

Hearing Case #32-1 – Cavern – Mr. Gregory addressed the Commission on behalf of the permittees. He stated that the Offer in Compromise for The Cavern had been ratified at the January 14, 2005, meeting, but that the management of The Cavern had not realized that their five-day active suspension would occur over the Valentine's Day weekend in February, and that they had planned and arranged entertainment for a Valentine's Day party on the night of Sunday, February 13, 2005. Therefore, they requested that the Final Agency Decision and Order of Compromise be amended to reflect the February meeting's compliance dates.

Chairman Fox made a motion to amend the Final Agency Decision to reflect the new dates. Seconded by Commissioner Joyner. So ordered.

Hearing Case #61-1 – Valdese Post 234 – Assistant Counsel LoRita K. Pinnix addressed the Commission regarding this case. She stated that the permittee requested that the active suspension for the location begin on Sunday, February 13, 2005, as opposed to Friday, February 11, 2005.

Commissioner Joyner made a motion to amend the Final Agency Decision to reflect a starting date of February 13, 2005, for the active suspension. Seconded by Commissioner Wright. So ordered.

Hearing Case #65-1 – Currituck Sports Two – Mr. Gregory addressed the Commission concerning this case. The permittee for Currituck Sports Two had addressed the Commission at the January 14, 2005, meeting, and the penalty for her violation had been waived in lieu of a written warning on the condition that she host an ABC training seminar within thirty (30) days of the meeting. Mr. Gregory stated that the class had been conducted.

Chairman Fox made a motion to waive the penalty for Currituck Sports Two in lieu of an official Notice of Warning. Seconded by Commissioner Joyner. So ordered.

Hearing Case #16-1 – K’s Korner Stop – Mr. Gregory addressed the Commission concerning this case. The permittee for K’s Korner Stop had addressed the Commission at the January 14, 2005, meeting, and the penalty for her violation had been reduced on the condition that she host an ABC training seminar within thirty days of the meeting. Mr. Gregory stated that he class had been conducted.

Commissioner Joyner made a motion to adopt the amended offer in compromise for K’s Korner Stop. Seconded by Chairman Fox. So ordered.

Hearing Case #8-1 – Mike’s Knightdale Amoco – Mr. Gregory addressed the Commission concerning this case. The permittee for Mike’s Knightdale Amoco had addressed the Commission at the January 14, 2005, meeting, and the penalty for his violation had been reduced on the condition that he host an ABC training seminar within thirty days of the meeting. Mr. Gregory stated that he class had not been conducted, as Mr. Whalen refused to attend the class. The Final Agency Decision was restored to reflect the original penalty of a 20-day suspension or payment of a fine of \$2,000.00.

Hearing Case #46-11 – Our Place – Ms. Pinnix confirmed that Our Place, originally brought before the Commission at its November 10, 2004, meeting, had conducted an ABC training program within thirty days of the November meeting, and therefore was issued a written warning.

Representatives from the Mecklenburg County offices of ALE District VIII were present at the hearing. Chief Executive Officer Calvin McDougall addressed the Commission to introduce new staff members. He introduced Alcohol Education Director Mary Ward and Budget Director Mike Tully. Also in attendance were Mecklenburg County ABC Law Enforcement Director Bill Cox, as well as Officers Eric Alfred and Tony Chesser.

Mr. Herring addressed the Commission concerning several alcoholic beverage products disapproved for sale in North Carolina by the staff at the ABC Commission:

Tooters - Tooters are a wine-based product produced by Mango Bottling Company, based in Florida. The beverage is packaged in test tube-shaped bottles and is targeted towards a home-use market as opposed to being sold in restaurants and bars. As such, the product would be sold in grocery stores. The Commission's staff disapproved the product based on the colorful packaging, which the staff deemed too similar to packaging for popular childrens' products. Mr. Herring provided some select childrens' products bearing similar packaging themes. Furthermore, the packaging was not marked substantially to indicate the alcoholic nature of the product, which the staff decided would further confuse children. Mr. Herring recommended that the ABC Commission disapprove the product.

Commissioner Joyner asked Mecklenburg County ABC Board's Alcohol Education Director Mary Ward if she wished to comment on the product. Ms. Ward stated that when Mr. Herring originally presented all the items, including the non-alcoholic childrens' products, she initially believed that all the products were alcohol-related, so she could understand how a child might be confused by the Tooters' packaging.

Chairman Fox made a motion to disallow the availability of Tooters in North Carolina. Seconded by Commissioner Wright. So ordered.

Happy- Happy offers a variety of spirituous liquor products and wishes to sell them in North Carolina. Mr. Herring presented a bottle of Happy Vodka to the Commission and stated that the rest of the products come in similar containers, which were largely unmarked save for a "smiley face" icon on the bottle. Mr. Herring stated that the staff believed that the packaging would prove enticing to underage individuals, and that there were no responsible messages at all on either the containers themselves or the accompanying point-of-sale materials. Mr. Herring recommended that the ABC Commission disapprove the product.

Commissioner Joyner asked Mr. Herring if other ABC Control states carried the products mentioned. Mr. Herring stated that Tooters were available in 35 states, but were not carried in Pennsylvania, Vermont, New Hampshire and Maine. Happy products were still relatively new, but were already carried in Alabama. Commissioner Joyner asked if disallowing the products would have any measurable effect on revenues, and Mr. Herring stated that this year, approximately 250 items would be submitted to the ABC Commission for approval for sale in the State, and he felt there was certainly opportunity to allow products of comparable quality and price to make up for any revenue lost by disallowing these products.

Chairman Fox made a motion to refuse the products for sale in North Carolina. Seconded by Commissioner Joyner. So ordered.

With no further business, the meeting adjourned.

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

Respectfully submitted by

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Jason Hall, Legal Division