

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
AUGUST 12, 2005**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on August 12, 2005, beginning at 10:00 a.m. The meeting was tape-recorded and the tapes are on file at the ABC Commission in the Legal Division.

**ROLL CALL**

Chairman Douglas A. Fox and Commissioner Mike Joyner were present at the meeting. Commissioner Ricky Wright was not present.

**MINUTES OF JULY 8, 2005 MEETING**

Chairman Fox made a motion to waive the reading of the minutes from the July 8, 2005, meeting into the record. Seconded by Commissioner Joyner. So Ordered. Chairman Fox made a motion to approve the minutes from the July 8, 2005, meeting. Seconded by Commissioner Joyner. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

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

Administrator Michael Herring presented Service Awards to two of the ABC Commission employees. Audit Supervisor Vera Smith received her certificate and gift for 20 years of service. Legal Secretary Theresa Avery received her certificate and gift for 25 years of service.

Chief Deputy Counsel Fred A. Gregory stated that the following cases were to be carried over to the next Commission meeting:

Hearing cases #2, La Fogata; #36, M and J Curb Market, #45; Pantry 312 and 1<sup>st</sup> Offense Case #34, Moe's Southwest Grill.

**I. HEARING CASES - 74 Listed**

Chief Deputy Counsel Fred Gregory stated that contested case #1, Wrong Way Corrigan's has gone out of business and has cancelled their permits.

Chief Deputy Counsel Fred Gregory stated that Attorney Nahale Kalfas was present to speak on behalf of hearing case #9 Shiki Sushi Japanese Restaurant and hearing case #41, Spartacus Grille.

Mrs. Kalfas stated that in regard to case #9, Shiki Sushi Japanese Restaurant, it's typically her practice to advise her clients to accept the offer in compromise and to work with the Commission as she did in both of the cases. With regard to Shiki Sushi Japanese Restaurant, the permit holder and his younger brother, who was at the establishment when the violation occurred, have been to Durham County Criminal court regarding these charges. ABC Officer Derrick McMillan has worked diligently with Mrs. Kalfas and the owner in educating them and getting them better organized at the business. ABC Officer Derrick McMillan was also at court with the owner. Mrs. Kalfas stated that since the owners were first time offenders, they went through the first offender program, but were on probation and paid over \$800.00 in criminal fines and court costs. Mrs. Kalfas asked that the Commission take that into consideration. Mrs. Kalfas stated that the owner didn't

have any experience and he had hired a bartender who ordered basically everything she found on the paperwork, so the bar was overstocked. There was a long period of time when there was no purchase of alcohol and that was when the violation occurred. When the ABC Officer came in receipts were missing and there was some construction going on and a number of documents were lost during that period. Mrs. Kalfas went on to state that many of the non-tax stamped alcohol bottles that were found during the initial violation were there for the drinking pleasure of the brother.

Commissioner Joyner asked Mrs. Kalfas how many bottles were found. Mrs. Kalfas stated that there were three. Commissioner Joyner asked what were they. Mrs. Kalfas said that they were Remy Martin and Goldschlager. She said that she didn't have the other listed in her notes.

After reviewing the violation, Chairman Fox stated that the bottles were Paul Masson Grand Amber, Melone Melon Liqueur, Goldschlager, Captain Morgan Spiced Rum, Remy Martin and Aristocrat Rum.

Chairman made a motion to reduce the penalty to \$2,500.00, with no active time on the stipulation that the business sets up a training class with Danny Sellars and that they send in their purchase receipts for the next six months to the Commission. Mrs. Kalfas asked that they have a couple months to set up the training class and the Chairman gave them until October 1, 2005, to pay the money. Seconded by Commissioner Joyner. So Ordered.

Mrs. Kalfas stated that hearing case #41 Spartacus Grille is a family business, which she is a part. She went on to give some background information regarding the establishment. Their partner of seven years left the business about one year ago. The property management, Waverly Place, has changed hands about six different times. They were left with over \$40,000.00 in back tax debt. Her 69-year-old mother-in-law, who ran a restaurant in New York for about 25 years, took over running Spartacus Grille for them. Mrs. Kalfas stated that there are postings all over the restaurant and she trained the staff herself. They don't have a turn over with the staff; they've had the same staff for about three years.

Mrs. Kalfas stated that there was a bottle of alcohol and the waiter tried to explain and show where the bottle had been marked. The waiter was surprised because they don't sell a lot of that particular type of alcohol and she couldn't understand why it was marked higher than from where it had been previously been marked. Mrs. Kalfas said that there is no refilling going on.

Chairman Fox asked Mrs. Kalfas how important was their alcohol permits. Mrs. Kalfas stated that their wine permits were very important and they sell a lot of wine. Chairman Fox asked Assistant Counsel Timothy W. Morse what he thought. Mr. Morse stated that he thought the penalty was appropriate.

Commissioner Joyner made a motion to reduce the penalty to \$2,500.00 and reduce the active time to 3 days on stipulation that they set up a training class with Danny Sellars for both the Durham and Cary locations. Mrs. Kalfas asked that they have a couple of months to set up the training class and that they have until October 1, 2005, to pay the money. Seconded by Commissioner Joyner. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that Mr. John Largen was present on behalf to hearing cases #62, R H Barringer Dist. Company and case #63, R H Barringer Dist. Company. Mr. Largen stated that he was asking the Commission to issue a written warning in regard to both the cases. He stated that he goes out and sets up the account information. Mr. Largen went on to say that he obtained the information on Heather Hills Gold Course. He saw the temporary permit number and it is the same number that they are using today. They told him that they didn't have the permit at that time. Mr. Largen further stated that they had to have had the permit, because he saw it.

Assistant Administrator Doyle Alley went upstairs to find out when the temporary permit was issued.

Mr. Michael Crowell was present representing hearing case #69, I H Caffey Dist Company and case #70, I H Caffey Dist Company. Mr. Crowell stated that the ownership of Heather Hill Golf Course changed hands

earlier this year. Alcohol Law Enforcement went in saw that ownership had changed and that they had not obtained a new permit. They were told to get a new permit.

Mr. Gregory stated that the Commission's records show that the new owner received their temporary permits March 4, 2005. Prior to that there was another temporary permit in place by the previous permittee. Mr. Gregory recommended a written warning for hearing cases #62, #63, #69 and case #70.

Chairman Fox made a motion to issue a written warning to the above-mentioned cases. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of the ones, which had been earlier ratified. Seconded by Commissioner Joyner. So Ordered.

## **II. FIRST OFFENSE CASES – 34 listed**

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on August 12, 2005, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Brickhouse Tavern – 209 Delburg Street, Suite 210, Davidson NC, 28036
2. Eckerd Drugs 2848 – 7930 Idlewild Road, Charlotte, NC 28212
3. Eckerd Drugs 2414 – 2400 Little Rock Road, Charlotte, NC 28214
4. Davinos Restaurant and Bar – 231 Griffith Street, Davidson, NC 28036
5. Bitsy Bounty Food Mart 3 – 6307-The Plaza Road, Charlotte, NC 28215
6. Woodlake Country Club – 150 Woodlake Boulevard, Vass, NC 28394
7. Sams Mart 41 – 2901 Yorkmont Road, Charlotte, NC 28213
8. Star Mart 247 – 6908 Glenwood Avenue, Raleigh, NC 27613
9. Nancys Market – 700 Lane Street, Wilson, NC 27893
10. Romeros – 6301 South Boulevard, Charlotte, NC 28217
11. Petro Express 2 – 7208 East Independence Boulevard, Charlotte, NC 28212
12. Northcross Lanes at the Lake – 16317 Statesville Road, Huntersville, NC 28078
13. Jiffy Mart – 111, West Hines Street, Wilson, NC 27893
14. Carniceria La Mexicana Supermarket – 6129 The Plaza, Charlotte, NC 28215
15. Wilco 373 – 10207 North Tryon Street, Charlotte, NC 28262
16. Wal Mart Supercenter 5063 – 1830 Galleria Boulevard, Charlotte, NC 28270
17. Food Lion 577 – Hwy 17 and Coke Avenue, Edenton, NC 27932
18. Time Saver 2 – 10296 W R Latham Street, Clarkton, NC 28433
19. Southern Convenience Store 295 – 1307 South Sterling Street, Morganton, NC 28655
20. Picassos Sports Café-University – 230 East W T Harris Boulevard, Charlotte, NC 28262
21. Palermos Pizza Pasta and Subs – 211 North Griffith Street, Davidson, NC 28036
22. Mamasitas Restaurante Mexican and Cantina 1316 North Broad St, Edenton, NC 27932
23. Wright Way – 839 Creekway Drive N W, Lenoir, NC 28645
24. J Butlers – 3030-B South Main Street High Point, NC 27262
25. Y M C Express – 923 3<sup>rd</sup> Avenue N W Place, Hickory, NC 28601
26. Little Market Basket 18 – 6596 Hwy 16 North, Conover, NC 28613
27. Home Economist Market – 261 Griffith Street, Davidson, NC 28036
28. Express Land Food Store – 210 Charlotte, Asheville, NC 28801
29. Exxon Asheville Mall – 245 Tunnel Road Asheville, NC 28805
30. Elizabeth's Pizza – 2505 Westchester Drive, High Point, NC 27260
31. Peek A Boos Bar and Grill – 745 Ninth Street, Durham, NC 27705
32. C V Exxon – 1846 North Church Street, Burlington, NC 27217
33. Applebees Neighborhood Grill and Bar 37 – 1909-A Hwy 421, Wilkesboro, NC 28697
34. Moe's Southwest Grill – 168 Shenstone Boulevard, Garner, NC 27529 – **(Carryover)**

Chairman Fox made a motion to approve the remaining Offers in Compromise for the First Offense cases, with the exception of 1<sup>st</sup> Offense case #34 Moe's Southwest Grill, which was carried over. Seconded by Commissioner Joyner. So Ordered.

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

Administrator Michael Herring addressed the Commission concerning the proposed temporary relocation of an ABC store in Kitty Hawk, North Carolina. On July 5, 2005, Fields Scarborough, Supervisor of the Dare County ABC Board, submitted a letter to the Commission requesting approval of a temporary site. On July 13, 2005, Alcohol Law Enforcement Agent J. Eric Swain conducted an investigation and found that the Dare County ABC Board plans to build a new store at 5430 North Croatan Highway, which the Commission had already approved, but there have been construction delays at the location. The current site that they are located at is set to be demolished. The temporary proposed site is located in Shore Side Shopping Center and is about a block from the approved site. No conflict of interest exists between the owners of the property and Dare County ABC Board.

The nearest church is All Saints Episcopal Church and is 1.1 miles from the proposed temporary location. The nearest school is Kitty Hawk Elementary located at .8 miles from the proposed temporary location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on July 1, 2005, in compliance with the ABC Commission's 30-day requirement, and to date no objections had been received by the ABC Commission.

Mr. Herring recommended that the ABC Commission approve the temporary store location. Chairman Fox made a motion to approve the temporary location. Seconded by Commissioner Joyner. So Ordered.

### **IV. ABC STORE LOCATION – MOORE COUNTY ABC BOARD**

Administrator Michael Herring addressed the Commission concerning the relocation of ABC Store in Aberdeen, North Carolina. On July 1, 2005, the Commission received an email from Pamela Smith, Office Manager Moore County ABC, asking to relocate the Aberdeen Store to a more profitable and convenient location in Moore County. On July 13, 2005, Alcohol Law Enforcement Supervisor Rodney Johnson conducted an investigation and he found that the Moore County Board plans to sale their current property in Aberdeen and lease property in the Center Park Shopping Center and it's located between US Highway 1 and US Highway 15/501. The proposed location is currently owned by SFW Associates of Charlotte. No conflict of interest exists between the owners of the property and Moore County ABC Board. The nearest churches are Grace Church and Bethesda Presbyterian Church; both are located .7 miles from the proposed location. The nearest school is Southern Middle School and is located ½ mile from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on July 8, 2005, in compliance with the ABC Commission's 30-day requirement, and to date no objections had been received by the ABC Commission.

Mr. Herring recommended that the Commission approve the proposed relocation request. Commissioner Joyner made a motion to approve the location. Seconded by Chairman Fox. So Ordered.

## **RESOLUTION FOR APPROVING SPIRITUOUS LIQUOR BILLBOARD ADVERTISING**

Chief Deputy Counsel Fred A. Gregory stated that there were some people present to address the Commission regarding the resolution. Attorney Richard Carlton presented the Commission with a letter regarding regulation of Spirituous Liquor Billboard Advertising. Chairman Fox and Commissioner Joyner took a few moments to review the letter that Mr. Carlton submitted.

Chairman Fox stated that he felt that it was the Commission's responsibility to have some type of education and control and to promote responsibility. Commissioner Joyner wanted to commend them on taking the initiative to work with the Commission for many months and that was commendable.

Commissioner Joyner asked how would the resolution be managed. Mr. Gregory stated that before any billboard is put up they must first submit to the Commission a copy or picture of the proposed billboard or sign; location of the billboard or sign and the billboard or sign must include a public service message. Each one that is submitted must be approved one by one.

Chairman Fox made a motion to approve the resolution. Mr. Gregory added that Pursuant to NCGS 150(b)-21.5, " An agency is not required to publish a notice of text in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

- (2) The law under which the rule was adopted or rule itself is declared unconstitutional."

Chairman Fox made a motion to repeal that rule. Seconded by Commissioner Joyner. So Ordered. Mr. Gregory suggested the following rule change to 4 NCAC 2S.1011.

## **V. OTHER BUSINESS**

### **ANHEUSER BUSCH-CAROLINA PANTHERS EXEMPTION REQUEST**

Assistant Counsel Timothy W. Morse introduced Mr. Thigpen, General Counsel for Carolina Panthers and Mr. Jay Golder, Associated General Counsel for Anheuser Busch. Mr. Golder stated that they are urging the Commission to grant an exemption for the sponsorship agreement with the Carolina Panthers. Mr. Golder went on to add that the Carolina Panthers are not a retail licensee and Anheuser Busch is not paying any money or giving anything of value to North Carolina Retail Licensee. None of the moneys that are flowing to the Carolina Panthers will be going to the concessionaire. The Carolina Panthers have an independent concessionaire agreement. Under that agreement the Carolina Panthers have no control over the brand, the size, the amount of alcohol that is served. In Anheuser Busch's contract with the Carolina Panthers, they have no control over the amount or type of alcohol that is served. It is a routine sponsorship agreement. Mr. Golder said that he worked over the last year or so with Chief Deputy Counsel Fred A. Gregory and Assistant Counsel Timothy W. Morse, on getting their input on this agreement.

Commissioner Mike Joyner stated that he has read the agreement, but still has a lot of questions. He asked if there would be any control over the types of alcohol being sold in the concessions. Mr. Golder stated that as part of the agreement, the Carolina Panthers couldn't tell the concessions what type of beer to sell. In the agreement it states that the Carolina Panthers and the Concessionaires must offer at the stadium a variety of malt beverage products selected from all brands. Commissioner Joyner asked what he thought the value was of this contract. Mr. Golder stated that it would be in the neighborhood of \$10,000,00.00.

Mr. Golder stated that they have a Comprehensive Responsible Drinking and Designated Driver and Underage Drinking Programs. They set up a booth at the venue and they ask people to sign up and pledge to be a designated driver for the day. At the 3<sup>rd</sup> or 4<sup>th</sup> quarter they announce the name of a person stating that they are the designed driver and that person wins a Carolina Panthers T-Shirt. Mr. Golder went on to state that they are committed to promoting responsible drinking messages.

Chairman Fox asked what was the catwalk interactive area. Mr. Thigpen stated that it is an area outside of the Northgate entrance to the stadium, where sponsors and advertisers set up booths to talk to people about their products. There is usually a stage there with a band, hotdog vendor selling hot dogs; inflatable games for children and you can take pictures with the uniforms on.

Mr. Thigpen stated that they have a matrix board where they can put written messages up. They put up messages twice a game, telling them to drink responsible. They cut off alcohol sales at the end of the 3<sup>rd</sup> quarter. Public Service Announcements are also a part of them getting responsible messages out there.

Chairman Fox made a motion to approve the exemption, with the stipulation that the Commission is shown some signage and PSA's. Seconded by Commissioner Joyner. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that there were a couple of cases that needed to be cleared up. # 76, E Z Mart & Tackle, the owner had asked for mitigation on his penalty. The Commission ruled that he attend a training class. He has completed the class. Chairman Fox made a motion to amend the Final Agency Decision reflecting that \$750.00 fine and that he completed a training class. Seconded by Commissioner Joyner. So Ordered.

#75, Little Market Basket 12, the Final Agency Decision was amended to a five-day suspension and pay \$3,000.00. Chairman Fox signed the amended order.

# 77, Boardwalk Billys, permittee has already paid the money, never made it to an agenda.

Chairman Fox made a motion to approve add-on cases #75, Little Market Basket 12, and case #77, Boardwalk Billys. 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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Tiffany Goodson, Legal Division