

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 12, 2006**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on October 12, 2006, beginning at 10:10 a.m. The meeting was tape-recorded and the tape(s) are on file at the ABC Commission in the Legal Division.

ROLL CALL

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

MINUTES OF SEPTEMBER 7, 2006 MEETING

Chairman Fox made a motion to waive the reading of the minutes from the September 7, 2006, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the September 7, 2006, meeting. Seconded by Commissioner Lyon. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order One, Chairman Fox asked Commissioner Joyner and 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 Joyner and Commissioner Lyon both stated that they found no conflicts of interest. Chairman Fox recused himself from hearing case #81, Wilmington Ale House.

CLOSED SESSION – ONLY FOR COMMISSION, ATTORNEYS AND LEGAL STAFF

Chairman Fox made a motion to go into closed session pursuant to G.S. 143-318.11(a)(6).

OPEN SESSION

Commissioner Lyon made a motion to go back into open session. Seconded by Commissioner Joyner. So Ordered.

I. HEARING CASES – 91 Listed

Chief Counsel Fred Gregory stated that Tim Meyer and Robert Boorum were present to speak for hearing cases #77a-h- Anton Airfood of NC Terminal C. Mr. Meyer stated they were there regarding the incident which occurred on July 3, 2006. Mr. Meyer stated that since that time all of their associates have been enrolled in the Responsible Server Training class. Mr. Meyer stated that any employee serving alcohol would have to enroll in training classes. Mr. Meyer stated that two of their most qualified and experienced associates were on duty at the time of the July 3 incident.

Chairman Fox stated the incident could have made headlines with an 18-year old Marine with a .41 blood alcohol content. Chairman Fox stated the Marines knew to go to this particular bar to be served and this young man was there with six other Marines.

Chairman Fox made a motion to approve the eight Offers in Compromise upon the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Kevin Michael Smith, DAB 27 Chapter Commander and Ed Furr were present to speak for hearing case #74- Concord Chapter 27. Mr. Smith disputed allegation #1 on the Offer in

Compromise and stated the video poker machines were licensed by the Cabarrus County Sheriff's Department, unplugged and not in use at the time. Mr. Smith stated he called Ms. Cowick and the employees went through RASP training. Mr. Smith stated Ms. Cowick said they might get the fine reduced. Mr. Smith asked for a reduction in the fine.

Chairman Fox stated there had been some gambling issues in the past.

Mr. Joyner asked if the machines were confiscated. Mr. Smith stated they were confiscated.

Chairman Fox asked about the punch boards or the punch cards. Mr. Furr stated they couldn't dispute that.

Chairman Fox asked if they had been to class lately. Mr. Smith said they had. Chairman Fox asked if they would take another class with ALE or ABC staff. Mr. Smith stated that Charles Fuller presented a class.

Chairman Fox made a motion to reduce the penalty to \$1,000.00 based upon their military service. Seconded by Commissioner Joyner. So Ordered.

Mr. Gregory stated that Patricia O'Connor and John O'Connor, Owners, were present to speak for hearing case #35- Long Island Pizzeria. Mrs. O'Connor stated they had been the owners for three years and she was the cook until she became ill. Mrs. O'Connor hired two people from another restaurant in Surf City and they would try new recipes and some of those recipes contained fortified wine. Mrs. O'Connor stated the inspector went through the restaurant and found a dusty half bottle of brandy sitting on the back of the counter. Mrs. O'Connor stated that they didn't even know the bottle was still there. Mr. O'Connor stated they were not at the store when the inspection was made and he couldn't explain to the officer the situation. Mr. O'Connor stated he did not know they needed a culinary permit to cook with fortified wine.

Commissioner Joyner made a motion to eliminate the penalty upon the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Chairman Fox. So Ordered.

Mr. Gregory stated that Michael Horton, Owner, was present to speak for hearing case #78- Chicos Mexican Restaurant. Mr. Horton stated they had no violations. Mr. Horton stated that on the night of the incident an experienced bartender carded a patron and must have miscalculated the age. Mr. Horton stated they terminated the bartender on that day. Mr. Horton stated his servers and bartenders take the BARS course offered by Greg Murphy with ALE.

Mr. Horton stated he was there to seek relief. Commissioner Lyon demonstrated the stoplight chart and emphasized for them to get one to help them check age.

Chairman Fox made a motion to reduce the penalty to \$500.00 upon the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Gregory stated that Joey Allabach, permittee's employee, was present to speak for hearing case #52- Zely and Ritz. Mr. Allabach stated he was not there to dispute the violation but to explain what occurred on the evening of July 6, 2006. Mr. Allabach stated they were closed up for the night, his staff had clocked out and they had a beer. Mr. Allabach stated he joined them in having a beer when two officers came by. Mr. Allabach stated he received a violation for the half glass of beer. Mr. Allabach stated the officer explained that his employees having a drink at the end of the night were considered his customers and he could not consume.

Commissioner Lyon made a motion to reduce the penalty to \$500.00 upon the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Chairman Fox. So Ordered.

Assistant Counsel Timothy W. Morse stated that he had an Add-on case #91, Lauri Rubenstein and Katherine Davis, Owners of Red-Eye Sports Grill, were present to speak. Ms. Davis stated Red-Eye is a restaurant which they have had for two years in High Point. Commissioner Joyner asked them if they worked at the restaurant. Ms. Davis stated they are the general managers now because of the violation.

Ms. Davis stated the general manager was no longer with them. Ms. Rubenstein stated they were having a large event that evening and they needed extra inventory, food and liquor. Ms. Rubenstein stated she called the general manager prior to the event, asked him if he needed anything and he said no. Also, Ms. Rubenstein's husband asked the manager the same thing and he again said no. Ms. Rubenstein said the general manager then went out and purchased spirituous liquor illegally. Ms. Davis said Detective Nordstrom came in the night of the event and asked if they bought bottles at the liquor store without the stamp on it. Ms. Davis told him absolutely not. Ms. Davis stated she called Detective Nordstrom afterwards and told him the five bottles on the shelf with a receipt were purchased by their general manager. Ms. Rubenstein stated they were not disputing that the Red-Eye management did the wrong thing, but they were there asking for mercy. Ms. Davis said they were open to an ABC class.

Chairman Fox made a motion to eliminate the penalty upon the stipulation that all the employees attend a RASP class within the next 45 days. Seconded by Commissioner Joyner. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise, with the exception of hearing cases #77a-h- Anton Airfood of NC Terminal C, hearing case #74- Concord Chapter 27, hearing case #35- Long Island Pizzeria, hearing case #78- Chicos Mexican Restaurant, hearing case #52- Zely and Ritz and Add-on case #91- Red-Eye Sports Grill, which had been ratified earlier. Seconded by Commissioner Lyon. So Ordered.

Commissioner Lyon made a motion to ratify hearing case #81- Wilmington Ale House. Seconded by Commissioner Joyner. So Ordered.

Chief Counsel Fred Gregory stated that remanded case #1- Club Deep Oros, hearing case #65- Pine Lake Country Club and hearing case #68 Lees Lounge will be continued.

Assistant Counsel Renee Cowick stated that hearing case #49- Tasty Bar and Grill will be continued.

II. FIRST OFFENSE CASES – 24 Listed

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on October 12, 2006, pursuant to the Commission's authorizing resolution dated November 8, 2002:

1. Beachcomber Campground & Food Mart – Hwy 12, Ocracoke, NC 27960
2. Kangaroo Express 890 – 215 West Third Street, Ayden, NC 28513
3. Wilco 1838 – 1122 North Raleigh Street, Rocky Mount, NC 27801
4. Wilco 207 – 3950 Ward Boulevard, Wilson, NC 27893
5. 7 Eleven Store 19919 – 610 Hwy 264, Manteo, NC 27954
6. U S A Mart – 1155 Salisbury Road, Statesville, NC 28677
7. Stallings Store – 4708 Old US Hwy 64, Zebulon, NC 27597
8. Quick Shop – 108 North Tradd Street, Statesville, NC 28677
9. Bi Lo 520 – 1620 East Roosevelt Boulevard, Monroe, NC 28112
10. Summit Texaco – 3101 Summit Avenue, Greensboro, NC 27403
11. Southern Convenience 191 – 2650 Soco Road, Maggie Valley, NC 28751

12. Short Stop 26 – 1717 Owen Drive, Fayetteville, NC 28304
13. Outer Banks Fishing Pier – 8901 Old Inlet Road, Nags Head, NC 27959
14. Fishing Unlimited Seafood and Bait Shop – 7659 Virginia Dare Trail, Nags Head, NC 27959
15. Bi Lo 437 – 1555 East Union Street, Morganton, NC 28655
16. Shuckers Alley – 313 South Green Street, Greensboro, NC 27401
17. Six Forks Fast Fare – 7124 Six Forks Road, Raleigh, NC 27615
18. Manns Red and White – 2991 Hwy 345, Wanchese, NC 27981
19. Texaco Food Mart – 3223 Battleground Avenue, Greensboro, NC 27408
20. Exxon Shop 16 – 4760 Apex Hwy, Durham, NC 27713
21. Kangaroo Express 920 – 2606 North William Street, Goldsboro, NC 27530
22. Food Lion 1532 – 1720 Croatan Hwy, Kill Devil Hills, NC 27948
23. Food Lion 254 – 2210 South Croatan Avenue, Nags Head, NC 27959
24. Food Lion 2503 – 5200 Croatan Hwy, Nags Head, NC 27959

Commissioner Lyon made a motion to approve the Offers in Compromise for the First Offense cases. Seconded by Commissioner Joyner. So Ordered.

III. ABC STORE LOCATION – TOWN OF ANGIER

Administrator Michael Herring stated this ABC Store location would be continued. Angier ABC Board is unsure where they want to locate a store and are currently looking at different property in the Wake County area. There is a question as to if they can locate a store there.

IV. ABC STORE LOCATION – CARTERET COUNTY ABC BOARD

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Carteret County. On August 29, 2006, the Commission received a letter from Robert Ship, Administrator, requesting approval to build and open a new store in Beaufort, North Carolina. On September 5, 2006, ALE Agent Matt Knight began an investigation and found that the ABC Board wanted to purchase 8.7 acres of property with a lot of it being in the wetlands in Beaufort. The board will use the property to build a modern ABC store and relocate their administrative offices. They also plan to build a warehouse at a later date to store liquor for all the stores in Carteret County. The proposed location is two adjoining lots located at 1791 and 1787 Live Oak Street on the northeast side of Beaufort.

The property was purchased from Lynwood and Mary Daughtry and also Martha Chadwick and her husband, Leslie King.

No conflict of interest exists between the Carteret County ABC Board and the property owners.

The new ABC store building will be 6,000 square feet and 1,500 of that would be used as a warehouse in the rear of the building.

The nearest church is First Free Will Baptist Church in Beaufort and is approximately one half mile from the proposed location.

The nearest public schools are Beaufort Elementary and Beaufort Middle Schools. Both schools are located off Highway 101 and are approximately one half mile west from the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on July 17, 2006, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections on this location.

Mr. Herring recommended the ABC Commission approve this request for the relocation of the store. Chairman Fox made a motion to approve the relocation of the store. Seconded by Commissioner Joyner. So Ordered.

V. OTHER BUSINESS -

Administrator Michael Herring welcomed three members of LB&B Associates and asked Mr. Graham Thompson, Project Manager for LB&B to come forward and introduce the newest staff.

Mr. Thompson introduced Ms. Jessica Fuller, Service Representative, communicating with the local ABC boards. Mr. Barry Lee, Operations Manager, will be over the day-to-day operations of the shipping and receiving, mainly over the warehouse and the transportation department.

There was some discussion and questions on the special meeting for November 8, 2006.

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