

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 8, 2013**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on May 8, 2013, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the ABC Commission in the Legal Division.

ROLL CALL

Commissioner Joel L. Keith and Commissioner Kevin M. Green were present at the meeting. Commissioner Keith called the meeting to order.

MINUTES OF APRIL 10, 2013

Commissioner Keith asked for a motion to waive the reading of the minutes of the April 10, 2013 meeting into the record. Commissioner Green made a motion to waive the reading of the minutes from the April 10, 2013 meeting. Commissioner Keith seconded the motion. Motion Passed. Commissioner Keith asked for a motion to approve the minutes of the April 10, 2013 meeting. Commissioner Green made a motion to approve the minutes from the April 10, 2013 meeting. Commissioner Green seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Commissioner Keith asked 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 Keith stated he had found no conflicts of interest. Commissioner Green stated he had found no conflicts of interest.

I. HEARING CASES – 27

Deputy Agency Counsel K. Renee Cowick stated hearing cases numbers 6, 13 and 19 were to be continued to the June 12, 2013 NC ABC Commission Meeting.

Deputy Counsel Cowick stated the first hearing case was contested case #1, Bad Dog. No one was present on behalf of the business. Deputy Counsel Cowick stated Assistant Counsel Tim Morse represented the NC ABC Commission in this matter. Mr. Morse stated the case was on the agenda because the business failed to comply with an order of the Court regarding failure to file audit reports. Administrative Law Judge Eugene Cellas's Final Decision imposed a 1-year suspension of the Permittee's Mixed Beverages Restaurant ABC permit.

In compliance with the administrative law judge's Final Decision, Commissioner Green made a motion that the 1-year suspension of Permittee's Mixed Beverages Restaurant ABC permit would begin June 7, 2013. Commissioner Keith seconded the motion. Motion Passed.

Deputy Counsel Cowick stated the next hearing case was contested case #2, Brothers in the Hood. No one was present on behalf of the business. Deputy Counsel Cowick represented the NC ABC Commission in this matter and no one was present at the hearing before Administrative Law Judge Donald W. Overby. Judge Overby's Final Decision imposed a 10-day suspension of the Permittee's ABC permits and a civil penalty of \$750.00 and if the civil penalty was not paid, an additional 7-day suspension would be added.

In compliance with the administrative law judge's Final Decision, Commissioner Green made a motion that the monetary penalty of \$750.00 be due no later than May 31, 2013, and the 10-day, or 17-day if the penalty was not paid, suspension of the Permittee's ABC permits would begin June 7, 2013. Commissioner Keith seconded the motion. Motion Passed.

Commissioner Green made a motion to approve the remaining offers in compromise. Commissioner Keith seconded the motion. Motion Passed.

II. OTHER BUSINESS – RECONSIDERATION ABC STORE RELOCATION – BREVARD ABC BOARD

Administrator Michael Herring stated on April 10, 2013, the ABC Commission deferred a decision regarding a second location for the Brevard ABC Board until after a public hearing. On April 17, 2013, the Brevard ABC Board held a public hearing regarding a second ABC store in Pisgah Forest, North Carolina. The proposed location was 61 Forest Gate Shopping Center, Pisgah Forest, North Carolina 28768 within a single-story strip shopping center, accessible by NC Highway 280 and US Highway 276.

Mr. Herring stated the Brevard ABC Board General Manager, Mike Houston, and the Brevard ABC Board Chairman, Tracey Love, were present to speak on behalf of the Board. Also representatives from the Schenck Job Corps Civilian Conservation Center were present to speak in objection to the proposed ABC Store location.

Mr. Houston presented a map illustrating the proposed ABC Store location in the midst of nine businesses within very close proximity. Some of these businesses have been licensed since 1997 to sell alcohol, include a Wal-Mart, a Bi-Lo, several restaurants and other retail outlets.

Ms. Love stated the Brevard city manager asked the Brevard ABC Board to consider opening a second store in the Pisgah Forest area. The Brevard ABC Board visited the area and found the proposed location to be the best option as this was on the very outskirts of the ETJ (Extra-Territorial Jurisdiction) corridor of the City of Brevard and the Brevard ABC Board. Ms. Love stated the intersection of NC Highway 280 and US Highway 276 is heavily trafficked and in a growing area. The number of people traveling through or visiting the Pisgah National Forest is enough to support two large chain hotels. A second store was deemed necessary to alleviate space issues at the existing store. Ms. Love stated the contributions of the Schenck Job Corps to the community are greatly appreciated and acknowledged their concerns, but felt the Brevard ABC Store would carefully control the sale of alcohol in the proposed store.

Tammy Wentland, the Center Director of the Schenck Job Corps Civilian Conservation Center, agreed there are nine other businesses in the vicinity of the proposed ABC store that sell alcohol. Ms. Wentland stated the students cannot afford to go to the other outlets to purchase alcohol. Ms. Wentland stated 12-15 people attended the public hearing; however, only eight people were able to speak in objection to the proposed store. Ms. Wentland's objection was to the proposed location not to an additional ABC store and asked the ABC Commission to consider a different location.

Charles Austin, the Executive Director for Job Corps for the State of NC was present to object to the proposed ABC Store location. Mr. Austin emphasized the amount of tax payer dollars invested in the Job Corps programs.

Larry Wentland, an employee of Schenck Job Corps, stated his objection to the proposed ABC store location. Mr. Wentland also emphasized the taxpayer dollars invested in the Job Corps. Mr. Wentland stated students would sneak out at night, timing runs through the woods to purchase alcohol at Bi-Lo. He was concerned that students would be more tempted by an ABC store in the area. Mr. Wentland also stated that the Bi-Lo was open 24 hours a day.

Dorothy Sidberry, the Outreach Coordinator for the State of NC Job Corps, also stated her objection to the proposed ABC store location as an obvious distraction to the students.

Mr. Herring stated there are three businesses in the area that can sell spirituous liquor, by the drink as mixed beverages, and six other businesses that can sell beer and wine. The other businesses can sell alcohol from 7:00 AM until 2:00 AM and the hours for an ABC store are limited to 9:00 AM through 9:00 PM and ABC stores are much more controlled. The ABC store would be closed during the late night hours when the students are sneaking out to make alcohol purchases. Mr. Herring stated ABC stores are good neighbors and are concerned with underage drinking. There are 415 ABC stores in the state of North Carolina. The Brevard ABC Board has not had an underage violation and Mr. Herring was sure they would continue to be cautious.

Mr. Herring noted the North Carolina General Statutes considers 50 feet as the necessary distance from a school and the Schenck Job Corps is over one mile from the proposed ABC store location.

Mr. Herring recommended the ABC Commission approve the proposed location for a second Brevard ABC Board store.

Commissioner Green asked the Brevard ABC Board what the proposed hours were for the second location. Ms. Love stated the hours for the proposed ABC store were 10:00 AM through 6:00 PM Monday through Saturday. At some time, if an extension of hours is necessary, 7:00 PM would be the latest the store would remain open.

Commissioner Keith asked Mr. Herring again if the Brevard ABC Board had any underage violations. Mr. Herring stated they had not. Commissioner Keith stated that the Alcohol Law Enforcement provided the enforcement. Mr. Herring confirmed this and stated the proposed location meets all statutory requirements.

After thanking those who spoke regarding the proposed ABC store location, Commissioner Green made a motion to approve the proposed location for a second Brevard ABC Board store. Commissioner Keith seconded the motion and stressed that the ABC Commission does view underage sales seriously and hoped that the Schenck Job Corps and Brevard ABC Commission maintain open communication and work together. Motion Passed.

III. OTHER BUSINESS – APPROVAL OF FUTURE COMMISSION MEETING DATES

Mr. Herring recommended the Commission approve Wednesday, July 17, 2013, as the date of the July 2013 NC ABC Commission Meeting, Wednesday, August 14, 2013, as the date of the August 2013 NC ABC Commission Meeting and Wednesday, September 18, 2013, as the date of the September 2013 NC ABC Commission Meeting. Commissioner Green made a motion to approve these dates as future NC ABC Commission meeting dates. Commissioner Keith seconded the motion. Motion passed.

Commissioner Keith announced the next ABC Commission meeting will be held on Wednesday, June 12, 2013.

With no further business, the meeting adjourned.

Joel L. Keith, Commissioner
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division