

TOBACCO CONTROL BOARD MEETING MINUTES

JANUARY 6, 2005

The Tobacco Control Board met on Thursday, January 6, 2005, for its monthly meeting in the Main Street Mall building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 9:00 a.m. in Conference Room "C". There were 5 - Board members present - Dr. Neal Beaton, Mr. Mark Carter., Mr. John Hauge, Mr. Ken Milburn, Jr., and Mr. Ronald Rivers, 2 - Board members absent - Mr. Vince Macy and Mr. Gene McKissic, and 1 - Open position.

The Chairman, Mr. Ken Milburn, opened the meeting with a "Welcome" to those attending.

Mr. Milburn asked for a motion to approve the December 1, 2004, Rules and Regulations Committee meeting minutes, the December 2, 2004, Board Meeting Minutes, and the Rules and Regulations Committee meeting minutes of December 14, 2004. A motion was made and approved with 5 - Yes votes, 2 - Members absent, and 1 - Open position.

The Chairman announced the Board would go into an Executive Session to discuss a personnel matter and asked everyone to leave the meeting room except board members and Mr. Maurice Gilmore.

After discussion the Board came out of Executive Session and asked everyone to return to the meeting room. The Chairman shared with those present that the Director, Mr. Charlie Davis, has been called to active duty with the United States Coast Guard Reserve and it was felt the agency office should have someone in the position of Interim Director.

Mr. Maurice Gilmore is currently employed by the agency as Senior Auditor/Investigator with approximately 11 years experience working with Cigarette and Tobacco Laws for the State of Arkansas. On previous occasions when Mr. Davis has been called up on active duty, Mr. Gilmore has acted as the lead person on the agency staff.

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A motion was made and approved to write a letter to the Governor requesting Maurice Gilmore be appointed as Interim Director during the absence of Charlie Davis with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Mr. Milburn then explained that the Board has to approve receiving expense reimbursements for the current calendar year and asked for a motion. A motion was made and approved to receive expense reimbursements for 2005 with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Mr. Maurice Gilmore asked for approval of “New Retail Permit Applications issued from December 1, 2004 through January 5, 2005” after reviewing the report with the Board. A motion was made and approved to that effect with 5 – Yes votes, 1 – Open position, and 2 – Members absent.

Mr. Gilmore thanked the Board for their vote of confidence and assured them he would do his best in representing the Board and agency.

He then reviewed the Complaints Report from December 2, 2004, through January 6, 2005. He announced the agency office would be closed on Monday, January 17th for Martin Luther King, Jr. Day. He reviewed the procedure with the Board when filing their Statement of Financial Interest Forms, which is required by the Secretary of State’s Office and due by January 31st of each year.

Next he called on Mr. Greg Sled, Enforcement Agent Supervisor, to report on the activity of the enforcement agents in the field. Mr. Sled introduced Mr. Jim Massie, who had been hired as an Enforcement Agent replacing Mr. Al Miller. He reviewed the monthly Sales to Minors Compliance Reports and explained the activity of the enforcement agents in the field.

Mr. Arnie Jochums, Board Attorney, gave the Board a “Court Update”.

Mr. Milburn reported to the Board that the Rules and Regulations Committee met on Tuesday, December 14, 2004, and has a proposed draft, which will be presented to the full board at the February 3, 2005, board meeting for consideration. There will also be presentations made regarding Section 15, 16 and 17 of the Rules and Regulations of the Board, and will also be considered at the meeting.

Mr. Gilmore reviewed and asked the “Offers of Settlement accepted by the permittee on the report dated January 6, 2005 be approved. A motion was made and approved to accept the “Offers of Settlement accepted by the permittee as listed on the report dated January 6, 2005” with 5 – Yes votes, 1 – Open position and 2 – Members absent.

Mr. Milburn introduced Ms. Misty Borkowski, serving as Hearing Officer, and Ms. Donna Kelso, as Court Reporter. Ms. Borkowski opened the Disciplinary Hearing segment of the meeting and asked Roland Darrow, Attorney for the Board, to present his first case. Mr. Darrow called the following cases before the Board:

**Case #2005-0314 Tobacco Town, Inc. dba Discount Tobacco
Malvern, Arkansas**

Contact Person: Will Wetzel

VIOLATIONS: §5-27-227(a)(1) Sale to Minor, 2nd Offense, \$200
fine and 1-day suspension of permit.

Mr. Will Wetzel represented the store location.

After testimony and discussion a motion was made and approved to find Tobacco Town, Inc., dba Discount Tobacco Malvern in violation of §5-27-227(a)(1) and §26-57-257, levy a \$100.00 fine and wave the suspension of permit with 5 – Yes votes, 2 –Members absent, and 1 – Open position.

violation of §4-75-708(c)(2) accepting a rebate and issue a Warning letter with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Case 2005-0298 Minit Shop Crossett, Arkansas

Contact Person: Rex Dodson

VIOLATION: §4-75-708(c)(2) Accepting a rebate, \$500 fine and
14-day suspension of permit.

The store location was represented by Mr. Rex Dodson, owner. Mr. Ken Caldwell, President, of Caldwell Wholesale and Mr. Edward Morris, Sales Manager, for Caldwell Wholesale also testified.

Testimony was presented to the Board and after discussion a motion was made and approved to find Minit Shop in violation of §4-75-708(c)(2) accepting a rebate and issue a Warning letter with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

The following cases was presented by Mr. Roland Darrow:

The following stores admitted guilt and were asking for leniency

**Case 2005-0328 E-Z Mart Store, #344
Crossett, Arkansas**

**Case 2005-0300 Tobacco Superstore #23
Jacksonville, Arkansas**

**Case 2005-0226 Murphy USA #6800
Ash Flat, Arkansas**

**Case 2005-0263 Conway Superstop
Conway, Arkansas**

**Case 2005-0076 Jaxx Phillips 66
Trumann, Arkansas**

VIOLATION:§5-27-227(a)(1) Selling to a Minor, 2nd offense, \$200 fine and 1-day suspension of permit.

Everyone representing these store locations agreed to a \$200 fine and to have the suspension waved. Therefore, a motion was made and approved to find these store locations in violation of §5-27-227(a)(1), issue a \$200 fine and wave the suspension of permit with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Mr. Jochums presented the following cases:

Case 2005-0252 Freddie’s Deli North Little Rock, Arkansas

Contact Person: Sameireh N Al Saiedi, owner

VIOLATION: §26-57-228 Purchasing tobacco products from an unlicensed dealer, \$1,000 fine and confiscation & destruction of products.

The store location was represented by Ms. Sameireh N Al Saiedi, the owner who did not speak English, and her husband.

After hearing testimony a motion was made and approved to find Freddie’s Deli in violation of §26-57-228 and levy a \$1,000 fine, confiscate the product and destroy with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Case 2005-0358 Neighborhood Grocery Little Rock, Arkansas

Contact Person: Young Kim, owner

VIOLATIONS: §26-57-228 Purchasing tobacco products from

an unregistered and/or unlicensed dealer, \$1000 fine.
§26-57-213 Failure to maintain invoices for 3-years, \$500 fine and 5-day suspension of permit.

The store location was represented by the owner, Mr. Young Kim.

The Board heard the testimony and after discussion a motion was made to find Neighborhood Grocery in violation of §26-57-228 purchasing tobacco products from an unlicensed dealer, levy a \$1,000 fine, and in violation of §26-57-213 failure to maintain invoices for 3-years, issue a \$500 fine and 1-day suspension of permit with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Mr. Darrow presented the next 3 cases before the Board:

Case 2005-0306 C-Way Convenience Store Warren, Arkansas

Contact Person: Jacob Callaway or Judy Cargile

VIOLATIONS: §5-27-227(a)(1) Sale to a Minor, 4th Offense, \$600 fine and 3-day suspension of permit.
Rules & Reg. 4.1 No Server Awareness Form, 2nd offense and \$100 fine.

The store location was represented by Mr. Jacob Callaway and Ms. Judy Cargile, Co-Owners.

After all testimony was presented a motion was made and approved to find C-Way Convenience Store in violation of §5-27-227(a)(1), issue a \$600 fine and 3-day suspension of permit, and in violation of Rule and Regulation 4.1 No Server Awareness Form, levy a \$100 fine with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

fine, in violation of §26-57-213 failure to maintain invoices for 3-years, levy a \$500 fine and 5-day suspension of permit, in violation of Rule and Regulation 4.1 No Server Awareness form, issue \$100 fine, find them in violation of §26-57-226 selling on an expired permit, levy a \$250 fine and destruction of confiscated products with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Case 2005-0199 Fast Mart Marion, Arkansas

Contact Person: Eyard Amro, Owner

VIOLATION:	§26-57-213	Failure to maintain invoices for 3-years, \$500 fine and 5-day suspension of permit
	Rule & Reg 4.1	No Server Awareness Form, \$100 Fine

The store location was represented by Mr. Eyard Amro, the owner.

A motion was made to find Fast Mart in violation of §26-57-213, issue a \$500 fine and no suspension of permit, and in violation of Rule and Regulation 4.1 No Server Awareness form and issue a \$100 fine with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Mr. Darrow presented a letter from Mr. Shane Smith, owner of Shane Smith Enterprises, Inc., requesting the Board reconsider a Default Judgment ruling issued at the December 2, 2004, board meeting. The Board declined to act on this request.

He also presented a letter from Mr. Steve Turner of Petromark, Inc., asking the Board to reconsider a previous Default Judgment ruling issued at the December 2, 2004, board meeting. The Board also declined to act on his request.

Mr. Darrow continued by presenting the Default Judgment List dated January 6, 2005. After a roll call of the cases listed and no one responding, he asked the Board to find those persons in Default, issue a

maximum fine on all Sales to Minors cases and levy recommended fines on all other cases as listed. A motion was made and approved to find those cases listed in Default and accept the recommendation of Counsel with 5 – Yes votes, 1 – Open position and 2 – Member absent.

The Hearing Officer, Ms. Borkowski, called the Disciplinary Hearing segment of the meeting to a close and turned the meeting over to the Chairman, Mr. Ken Milburn.

He continued with “Legislation” on the agenda. The Board discussed considering changing the structure of the Board membership. Therefore, after discussion the Board agreed to send this to the Legislative Committee for discussion and a recommendation to the full Board. A meeting date could not be reached at that time but notices would be sent out to all interested parties once a date was set.

Next on the agenda was “Open Forum for Board Member Discussion” followed by “Open Forum for Comments from the Audience”.

Announcements included the next meeting date of the Board on Thursday, February 3, 2005.

All business of the Board had been conducted and the meeting was adjourned.

Minutes prepared by _____
Janis L. Campbell

January 25, 2005