

TOBACCO CONTROL BOARD MEETING MINUTES

JULY 7, 2005

The Tobacco Control Board met on Thursday, July 7, 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 6 - Board members present - Dr. J. Neal Beaton, Mr. Mark Carter., Mr. John Hauge, Mr. Ken Milburn, Mr. Gene McKissic, who arrived after the meeting began, and Mr. Ronald Rivers, 1 - Board member absent - Mr. Vince Macy, and 1 - Open position.

Mr. Ken Milburn, Chairman, called the meeting to order and opened with a "Welcome" to those attending. He introduced Mr. Brent Gasper, serving as Hearing Officer and Ms. Lydia Williams, as Court Reporter.

The Chairman called on Mr. Arnie Jochums to give a Court Update. Mr. Jochums report included the Court ruling on Walcott Enterprises, Inc. dba Kelly's Kwik Mart in Paragould, AR, and Kelly's Subway/Pizza Pro located in Piggott, AR. At the October 16, 2003, Disciplinary Hearing both locations were found in violation of §26-57-226 and given a \$1,000.00 fine and a 15-day suspension of permit at each store location. Mr. Kelly Jones, the owner, had paid the fines but was contesting the 15-day suspension of permit at each location.

The Judge upheld the Board's decision but stated the Board could reconsider the suspension of permits. The Board opted to take no action.

Mr. Milburn turned the meeting over to Mr. Gasper to proceed with the Disciplinary Hearing segment of the meeting. He called the following cases before the Board:

Default Judgment List

Dated July 7, 2005

Mr. Roland Darrow, Attorney, proceeded with a roll call of the stores listed on the Default Judgment List with no one responding as being present. He asked for a motion to find those listed in Default.

A motion was made and approved to accept the recommendation of counsel, which was to find those listed on the July 7, 2005, Default List in default and issue maximum fines on all Sales to Minors cases and issue \$100 fine for the No Server Awareness violation with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

**Case 2005-0643 Shane Smith Enterprises dba
Tobacco Outlet of Sherwood**

**VIOLATION: §4-75-708(a) & (b) Selling below minimum,
1st Offense, \$500 fine**

Mr. Keith Williams, the District Manager, represented the store location.

After hearing all testimony a motion was made and approved to find Tobacco Outlet of Sherwood in violation of §4-75-708 (a) & (b) and accept the recommendation of Council, which was a \$500 fine with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Case 2005-0753 Mapco Express, Inc. #3181 Little Rock, AR

**VIOLATION: §5-27-227(a)(1) Sale to Minor, 4th Offense
\$1,000 fine and 7-day
suspension of permit**

There was no one present to represent Mapco Express at the store location even though a Hearing was requested.

A motion was made and approved to find Mapco Express #3181 in violation of §5-27-227(a)(1) and issue a maximum fine of \$2,000 and 14- day suspension of permit with 5 – Yes votes, 1 – Abstention, 1 – Member absent, and 1 – Open position.

Case 2005-0600 Williams General Store #2 Conway, AR

**VIOLATION: §26-57-226 Selling on a suspended permit,
1st Offense, \$750 fine and 7-day
suspension of permit**

Mr. Brian Williams, the owner, represented the store location.

A motion was made to find Williams General Store #2 in violation of §26-57-226 and levy a fine of \$250 and a 1-day suspension of permit with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

Case 2005-0601 Bob Allison dba A/C Stores #1 Searcy, AR

**VIOLATION: §26-57-226 Selling on a suspended permit,
1st Offense, \$750 fine and
7-day suspension of permit**

There was no one present to represent the store location even though a Hearing was requested.

After all testimony was presented a motion was made and approved to find A/C Stores #1 in violation of §26-57-226 and levy a \$750 fine and 7-day suspension of permit with 6 – Yes votes, 1 – Member absent and 1 – Open position.

**Case 2005-0528 True North Management dba
BP Amoco Forrest City, AR**

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

**Case 2005-0692 True North Management dba
BP Amoco Forrest City, AR**

**VIOLATION: §5-27-227(a)(1) Sale to Minor, 3rd Offense,
\$400 Fine and 2-day
suspension of permit**

These two cases were heard together. These violations were against the same store in the previous Hearing and owned by Mr. Salamat Shaw.

A motion was made and approved to find BP Amoco in violation of §5-27-227(a)(1) on a 2nd Offense Selling to a Minor, issue a maximum fine of \$500 and 2-day suspension of permit. On the 3rd Offense find BP Amoco in violation of §5-27-227(a)(1), levy a \$1,000 fine and a 7-day suspension of permit with 6 – Yes votes, 1 – Member absent and 1 – Open position.

**Case 2005-0602 Short Stop Enterprises dba
Furlow Grocery Lonoke, AR**

**VIOLATION: §5-27-227(a)(1) Sale to Minor, 3rd Offense,
\$400 fine and 2-day
suspension of permit**

The business location was represented by Mr. Joe Bailey, owner.

A motion was made and approved to find Furlow Grocery in violation of §5-27-227(a)(1) and §26-57-257 and levy a \$200 fine with no suspension of permit with 5 – Yes votes, 1 – Abstention, 1 – Member absent, and 1 – Open position.

**Case 2005-703 Douglas Etheridge dba
E & M Oil, LLC El Dorado, AR**

**VIOLATION: §5-27-227(a)(1) Sale to Minor, 3rd Offense, \$400
fine, 2-day suspension of permit**

Mr. Doug Etheridge, the General Partner of E & M Oil, LLC, represented the company in this matter.

After all testimony was presented a motion was made to find E & M Oil, LLC in violation of §5-27-227(a)(1), levy a \$150 fine and 1-day suspension of permit. The motion was withdrawn.

A second motion was made and approved to find E & M Oil in violation of §5-27-227(a)(1), levy a \$200 fine with no suspension of permit with 6 – Yes votes, 1 – Member absent and 1 – Open position.

Case 2005-0695

**Ben Malone dba
Jaxx Phillips 66**

Truman, AR

VIOLATION:

**§5-27-227(a)(1) Sale to Minor, 3rd Offense,
\$400 fine, and 2-day
suspension of permit.**

Even though a Hearing was requested no one was present to represent the business location.

A motion was made and approved to find Jaxx Phillips 66 in violation of §5-27-227(a)(1) and accept the recommendation of Counsel, which was a \$1,000 fine and 7-day suspension of permit with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

Case 2005-767

**D & D Trammell, Inc. dba
Handy Mart**

Decatur, AR

Default Judgment List dated July 7, 2005

Ms. Denise Trammell, representing Handy Mart, called the agency office shortly after the Board meeting began and stated she would accept the penalty in Case 2005-767 and overnight a check for the \$300 in fines, if the Board would allow it.

After discussion a motion was made and approved to reduce the fines previously set to a total of \$300 as shown on the Default List, if payment was overnighed to the agency office as stated by the owner on Case 2005-767 with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Mr. Darrow stated a representative of A/C Stores #1 called the agency office at 11:58 a.m. and said he had forgotten his Hearing scheduled for the Board meeting. The case had already been heard and a

determination made. The Board opted to take no further action on this case.

The Disciplinary Hearing segment of the agenda was closed by the Hearing Officer and the meeting was turned back over to the Chairman.

Mr. Milburn asked for approval of the meeting minutes for June 2, 2005. A motion was made and approved to that effect with 5 – Yes votes, 2 – Members absent and 1 – Open position.

Mr. Maurice Gilmore asked for approval of “New Retail Permit Applications issued from June 2, 2005 through July 6, 2005.” A motion was made and approved to that effect with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

The Acting Director reviewed the Complaints Report from June 2, 2005 through July 7, 2005. He reported the Rules and Regulations adopted by the Board at the May 5, 2005, meeting went before the Subcommittee on Administrative Rules and Regulations of the Arkansas Legislative Council on Tuesday, July 5th for review. There were no questions asked nor comments made. The next step in the process is to file these with the Secretary of State’s Office and State Library, as required by law. They will become effective on August 1, 2005.

He shared information about a new requirement by the Office of Personnel Management that all Board and Commission members are to be hired on by the State as employees in order that all payments to them can be tracked for 1099 reporting to the federal government.

Renewal for Fiscal Year 2006 has ended. Every thing went smoothly and he recognized Tabitha Musgrove and Chanda Mallory for their efforts in this process.

Mr. Gilmore attended the Tobacco Tax Conference from June 20th through the 22nd and shared information with the Board on the agenda.

He then asked Mr. Greg Sled, Enforcement Agent Supervisor, to report on the Sales to Minors activity of the enforcement agents. He also reviewed the Sales to Minors Charts, which are prepared each month. He reported two enforcement agents have resigned—Mr. Phil Jones and Mr. Arvard Brown.

Mr. Gilmore reviewed and asked for approval of the “Offers of Settlement accepted by the permittee on the report dated July 7, 2005”. A motion was made and approved to accept the “Offers of Settlement accepted by the permittee as listed on the July 7, 2005 Report” with 5 – Yes votes, 1 – Open position and 2 – Members absent.

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, August 4, 2005.

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

Janis L. Campbell

Minutes prepared by _____
Janis L. Campbell

July 15, 2005