

TOBACCO CONTROL BOARD MEETING MINUTES

JUNE 7, 2007

The Tobacco Control Board met on Thursday, June 7, 2007, 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 - Mr. Kevin Case, Mr. Kevin Dedner, Mr. John Hauge, Mr. Ronald Rivers, and Mr. Vince Macy, 2 - Members absent - Mr. Mark Carter and Mr. Gene McKissic and 1 - Open Position.

Mr. Ron Rivers, the Chairman, called the meeting to order and opened with a "Welcome" to those in attendance. Next he introduced and welcomed Mr. James Miller, Special Assistant for Agency and Legislative Affairs with the Office of Governor Mike Beebe.

Mr. Rivers asked for a motion to approve the April 5, 2007 board meeting minutes, which was made and approved with 5 - Yes votes, 2 - Members absent and 1 - Open Position.

The Chairman then asked for a motion to approve the May 3, 2007 board meeting minutes. A motion was made and approved with 5 - Yes votes, 2 - Members absent, and 1 - Open Position.

There was no "Old Business" to discuss. Mr. Rivers moved on to the Disciplinary Hearings segment of the agenda. He introduced Mr. Farhan Khan, serving as Hearing Officer and Ms. Lydia Williams, as Court Reporter. Mr. Khan opened the Disciplinary Hearings.

The following Hearings were called before the Board and represented by Mr. Roland Darrow:

Case 2007-0370 Broadway Grocery & Food Mart West Memphis

VIOLATION:	§26-57-248(a)	Possession of untaxed tobacco, \$4,550 fine and Destruction of confiscated product.
	§26-57-213	Failure to maintain invoices, \$500 fine & 5 – day Suspension of permit.
	§26-57-228	Purchasing from an unlicensed dealer, 2nd Offense, \$1,000 fine and 30 – day Suspension of permit

The store location was represented by Mr. Ketema Belete, the store owner.

After all testimony was presented and Board consideration, a motion was made and approved to find Broadway Grocery & Food Mart in violation of §26-57-248(a), levy a \$4,550 fine and destruction of confiscated product, in violation of §26-57-213, issue a \$500 fine and 5 – day suspension of permit and in violation of §26-57-228, issue a \$1,000 fine and 30 – day suspension of permit with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Case 2007-0426

Flash Market #182

Van Buren

VIOLATION:

§5-27-227(a)(1)

**Selling to a minor, 4th
Offense, \$1,000.00
fine and 7 – day
Suspension of permit.**

The business location was represented by Mr. Richard Staton, the store owner.

After hearing the testimony a motion was made and approved to find Flash Market #182 in violation of §5-27-227(a)(1) Selling to a minor, issue a \$1,000.00 fine and 7 – day suspension of permit with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Case 2007-0420

Flash Market #10

West Memphis

VIOLATION:

§5-27-227(a)(1)

**Selling to a minor, 4th
Offense, \$1,000.00
Fine and 7 – day
Suspension of permit.**

Mr. Jeff Treece, Attorney, Mr. Cliff La Fitte, Regional Manager and Mr. Bruce Lemmon, General Manager, represented the store location.

After discussion a motion was made to find Flash Market #10 in violation of §5-27-227(a)(1) Selling to a minor, levy a \$2,000 fine and 10 – day suspension of permit with 4 – Yes votes, 1 – No vote, 2 – Members absent and 1 – Open Position. The motion failed.

A second motion was made to find Flash Market #10 in violation of §5-27-227(a)(1) Selling to a minor, levy a \$2,000 fine and 7 – day suspension of permit. The motion failed as there was not a Second to the motion.

A third motion was made to find Flash Market #10 in violation of §5-27-227(a)(1) Selling to a minor, issue a \$1,500 fine and 4 – day suspension of permit with all stores accepting the Tobacco Control Board training program within 90 days. If not, the fines revert to \$1,000 and 7 – day suspension of permit. The motion was withdrawn.

A fourth motion was made to find Flash Market #10 in violation of §5-27-227(a)(1) Selling to a minor, levy a \$1,000 fine and 5 – day suspension of permit with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Case 2007-0377 T & K Convenience Store Gepp, AR

**VIOLATION: §5-27-227(a)(1) Selling to a minor, 4th
Offense, \$1,000.00
fine and 7 – day
Suspension of permit.**

Ms. Beautone Mary Watson Smith was present to represent the business location.

After testimony was presented a motion was made to find T & K Convenience Store in violation of §5-27-227(a)(1) Selling to a minor, a \$1,000 fine and 7 – day suspension of permit. There was not a Second, therefore, the motion failed.

A second motion was made and approved to find T & K Convenience Store in violation of §5-27-227(a)(1) Selling to a minor, issue a \$700 fine and 5 – day suspension of permit with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Case 2007-0422

Sav-A-Trip

Siloam Springs

VIOLATION:

§5-27-227(a)(1)

**Selling to a minor, 5th
Offense, \$2,000.00
fine and 30 – day
Suspension of permit.**

The business location was represented by the owner, Mr. Max Thomas.

Following testimony and Board discussion a motion was made to find Sav-A-Trip in violation of §5-27-227(a)(1) Selling to a minor, issue a \$2,000 fine and 30 – day suspension of permit with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Case 2007-0413

Sugar Loaf 66

Heber Springs

VIOLATION:

§5-27-227(a)(1)

**Selling to a minor, 2nd
Offense, \$200.00 fine**

Mr. Tommy Gay, the owner, represented the business.

A motion was made to find Sugar Loaf 66 in violation of §5-27-227(a)(1) and issue a \$200 fine with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Mr. Arnie Jochums presented the following two cases to the Board:

Case 2007-0408

Exxon Mart, Inc.

North Little Rock

VIOLATION:

§26-57-248(a)

**Possession of untaxed
tobacco, \$9,150 fine and
Destruction of confiscated
product.**

§26-57-213

**Failure to maintain
invoices, \$500 fine &
5 – day Suspension of
permit.**

Mr. Mohammed Yafai, the owner, represented the business in this matter.

A motion was made to find Exxon Mart, Inc. in violation of §26-57-248(a), issue a \$9,150 fine and destruction of confiscated product and in violation of §26-57-213, issue a \$500 fine and 5 – day suspension of permit with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Case 2007-0407	Dermott's Superstop	Dermott
VIOLATION:	§26-57-248(a)	Possession of untaxed tobacco, \$1,737.50 fine and Destruction of confiscated product.
	§26-57-213	Failure to maintain invoices, \$500 fine & 5 – day Suspension of permit.

Mr. Mutee Yafai, the owner, represented the business. His brother, Mr. Mohammed Yafai, served as an interpreter.

After hearing all testimony a motion was made to find Dermott's Superstop in violation of §26-57-248(a), issue a \$3,475 fine and in violation of §26-57-213, issue a \$500 fine and 5 – day suspension of permit with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

This concluded the Disciplinary Hearing segment of the agenda and the Hearing Officer turned the meeting back over to the Chairman.

Mr. Rivers called on Mr. J.R. Thomas, the Director, to continue. Mr. Thomas asked Mr. Arnie Jochums, Assistant Attorney General, to give his Court Update. He reported the Honorable Collins Kilgore, Circuit Judge for Pulaski County, was going to rule against the Board regarding *McLane v. ATCB* on Rule 15 of the Board's Rules and Regulations. A document was distributed to the Board, which pointed out the areas in question based on Judge Kilgore's proposed precedent dated May 11, 2007. He found parts of Rule 15 to be unconstitutional but did not strike down the entire rule.

Mr. Jochums expects the Judge's written ruling to be very close to the proposed precedent. If the ruling does occur as expected, Mr. Jochums recommended the Board not appeal the decision but amend the areas of Rule 15 to conform to the ruling. After Judge Kilgore's final ruling, the Board will have 30-days to make a decision as to whether to direct Mr. Jochums to lodge an appeal.

Mr. Jochums deferred to Mr. Thomas to address the four Advisory Opinions that were written after a request was presented by Mr. Clifford Block, representing McLane. The Board approved these Opinions on December 12, 2005.

McLane Southern, Inc. filed a lawsuit on January 22, 2006 taking issue with the Opinions. Mr. Thomas recommended the Board, pursuant to Section 16.5, withdraw these four Opinions referred to in the minutes of December 12, 2005 as Opinion Request Letter #1, Opinion Request Letter #2, Opinion Request Letter #3 and Opinion Request Letter #4, written by then ATCB Director, Mr. Charlie Davis.

A motion was made and approved to withdraw the Opinions with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Mr. Thomas continued with “New Retail Permits Issued” and asked for approval of the report. A motion was made to approve the “New Retail Permit Application issued from April 5, 2007 through June 6, 2007” with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

The Director presented a Wholesale Change of Ownership Application for Harrison Grocer Co., Inc. dba Pippin Wholesale Company of Harrison, Arkansas. A motion was made to approve the Wholesale Change of Ownership Application for Harrison Grocer Co., Inc. dba Pippin Wholesale Company with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Next the Board reviewed the “Notice of Hearing and Offers of Settlement” list accepted by the permittee. The Director asked for a motion to approve the “Notice of Hearing and Offers of Settlement list accepted by the permittee as shown on the report dated May 3, 2007. A motion was made and approved to that effect with 5 – Yes votes, 2 – Members absent and 1 – Open Position.

Mr. Thomas made note of the “Board Rulings Report” from November 3, 2005 through April 5, 2007 in the board members folders. The Administrative and Sales to Minors Budgets had been approved for FY2008. He called on Mr. Greg Sled, Enforcement Agent Supervisor, to report on the Sales to Minors activity.

The Chairman opened the meeting for board member discussion followed by comments from the audience.

Mr. Rivers announced the resignation of Ms. Kristen Nutt. Due to her med-school schedule she will not be able to continue serving on the Board and had submitted her Letter of Resignation to the Governor, which had been received.

The next tentative meeting date of the Board is July 5, 2007.

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

Minutes prepared by Janis L. Campbell

June 14, 2007