

TOBACCO CONTROL BOARD MEETING MINUTES

MARCH 3, 2005

The Tobacco Control Board met on Thursday, March 3, 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. Neal Beaton, who arrived after the meeting began, Mr. Mark Carter., Mr. John Hauge, Mr. Ken Milburn, Jr., Mr. Vince Macy, and Mr. Ronald Rivers, 1 - Board member absent - Mr. Gene McKissic, and 1 - Open position.

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

He introduced Mr. Charlie Moulton, serving as Hearing Officer and Ms. Lydia Williams, as Court Reporter. Mr. Moulton opened the Disciplinary Hearing segment of the meeting and called the following cases before the Board for consideration:

Default Judgment List

Dated February 3, 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 to approve the Default Judgment List dated February 3, 2005, issue the maximum fines on all Sales to Minors cases and issue the recommended fines on all other cases as listed. The motion passed with 5 - Yes votes, 2 - Members absent, and 1 - Open position.

Default Judgment List

Dated March 3, 2005

Mr. Darrow again called all the stores listed with no one responding as being present. He asked for a motion to find those listed in Default.

A motion was made to approve the Default Judgment List dated March 3, 2005, issue a maximum fine on all Sales to Minors cases and issue the recommended fine on all other cases. The motion was approved with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

The following cases were found in violation of §5-27-227(a)(1) Selling to a Minor, 2nd Offense:

E-Z Mart #427	Heber Springs, AR
Bailey's Conoco #2	Fordyce, AR
Broadway Food Store	Little Rock, AR
Discount Tobacco #3	El Dorado, AR
Cracker Box #15	Calion, AR
Cracker Box #2	Monticello, AR
Bob's Market	Jasper, AR

Mr. Darrow asked if the parties present to represent these locations would agree to a \$200.00 fine with the suspension of permit being waved. All agreed and Mr. Darrow asked for a motion to that affect.

A motion was made and approved to find E-Z Mart #427, Bailey's Conoco #2, Broadway Food Store, Discount Tobacco #3, Cracker Box #15, Cracker box #2, and Bob's Market in violation of §5-27-227(a)(1) and §26-57-257, levy a fine of \$200 and wave the suspension of permit as stated by Counsel with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

E-Z Mart #44

Waldo, Arkansas

VIOLATION:

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

Rules & Reg 4.1 No Server Awareness Form, \$100 fine

The store location was represented by Mr. George DeLoach.

After the Board heard all testimony a motion was made and approved to find E-Z Mart #44 in violation of §5-27-227(a)(1) and §26-57-257, levy a fine of \$400 and no suspension of permit. Also in violation of Rules and Regulations 4.1 No Server Awareness form with a \$100 fine with 5 – Yes votes, 2 – Members absent and 1 – Open position.

Tystar Petroleum Corp.

Mountain Home, AR

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

The store location was represented by Mr. Edwin McMahon, President.

All testimony in this matter was presented and after discussion by the Board a motion was made and approved to find Tystar Petroleum Corp. in violation of §5-27-227(a)(1) and §26-57-257, levy no fine or suspension of permit and be known as a Warning with 5 – Yes votes, 2 – Members absent, and 1 – Open position.

Cherrytree Food Mart

Blytheville, AR

VIOLATION: §26-57-248(a) Possession of untaxed product, 1st offense, \$13,100 and destruction of confiscated product.

§26-57-228 Purchasing from an unlicensed dealer, \$1,000 fine and destruction of product.

The business location was represented by Mr. Jeff Priebe, Attorney, and the store owner, Mr. Kuldip Dhaliwal.

After hearing all testimony and Board discussion a motion was made to find Cherrytree Food Mart in violation of §26-57-228 and

§26-57-248(a) and accept the recommendation of the Director. The motion failed as there was not a Second made for the motion.

A second motion was made and approved to find Cherrytree Food Mart in violation of §26-57-228, levy a \$1,000 fine for buying from an unlicensed wholesaler, confiscate the product, and in violation of §26-57-248(a), levy a \$4,000 fine for possession of untaxed product and destroy the product with 5 – Yes votes, 1 – Abstention, 1 – Member absent, and 1 – Open position.

Pilot Travel Centers LLC, #332

North Little Rock, AR

**VIOLATION: §5-27-227(a)(1) Sale to a Minor, 5th Offense
\$2,000 fine and 60 – Day
suspension of permit.**

Pilot Travel was represented by Mr. Jess Askew, Attorney with Williams & Anderson and Mr. Tom Hills, the Regional Manager for Pilot.

All testimony was presented in the case and after Board discussion a motion was made to find Pilot Travel Center LLC #332 in violation of §5-27-227(a)(1) Sale to a Minor, levy a fine of \$2,000 and revoke their license. There was not a Second, therefore, the motion failed.

A second motion was made and approved to find Pilot Travel Center LLC #332 in violation of §5-27-227(a)(1) Sale to a Minor, levy a fine of \$2,000 and 60 – day suspension of permit with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

J & P Flash Market #126

Cabot, AR

VIOLATION: §5-27-227(a)(1) Sale to a Minor, 4th Offense, \$600 and 3 – Day suspension of permit.

The store location was represented by Mr. Dwayne Jones and Mr. Ricky Hunter.

A motion was made and approved to find J & P Flash Market #126 in violation of §5-27-227(a)(1) Sale to a Minor, levy a \$500 fine and 1 – week suspension of permit with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

J & P Flash Market #126

Cabot, AR

VIOLATION: §5-27-227(a)(1) Sale to a Minor, 5th Offense, \$2,000 Fine and 30 – day suspension of permit.

The store location was represented by Mr. Dewayne Jones and Mr. Ricky Hunter.

After hearing all testimony a motion was made and approved to find J & P Flash market #126 in violation of §5-27-227(a)(1) Sales to a Minor, levy a \$500 fine and 23 – day suspension of permit to be served consecutively with the 4th offense suspension of permit with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

E-Z Mart #342

Monticello, AR

VIOLATION: §5-27-227(a)(1) Sale to a Minor, 4th Offense, \$2000 fine and 14 – day suspension of permit.

The store location is represented by Mr. George DeLoach, Mr. Mike Thompson, and Mr. Cedrick Beraud.

All testimony was heard by the Board. After discussion a motion was made and approved to find E-Z Mart #342 in violation of §5-27-227(a)(1) Selling to a Minor, levy a \$1,000 fine and 7 – day suspension of permit with 5 – Yes votes, 1 – No vote, 1 – Member absent and 1 – Open position.

Silver Star

Jonesboro, AR

VIOLATION: §26-57-248(a) Possession of Untaxed Product, \$23,025 and destruction of product

§26-57-213 Failure to maintain invoices, \$500 fine and 5 – day suspension of permit.

Rules & Regs 4.1 No Server Awareness forms Warning

The store location was represented by Mr. Illiad, the store owner.

After hearing all the evidence presented to the Board a motion was made and approved to find Silver Star in violation of §26-57-248(a), levy a

\$23,025 fine, destroy the confiscated product, find in violation of §26-57-213 Failure to maintain invoices, levy a \$500 fine and 5 – day suspension of permit, in violation of Rules and Regulation 4.1 No Server Awareness forms and issue a Warning with 5 – Yes votes, 1 – Abstention, 1 – Member absent, and 1 – Open position.

Kelly Hwy. Superstop

Fort Smith, AR

VIOLATION: **§26-57-248(a) Possession of Untaxed Product, \$3,675 fine and destroy product.**

§26-57-213 Failure to maintain invoices, \$500 fine and 5 – day suspension of permit.

The store was represented by Mr. Steve Hurst, the Night Manager and Mr. Imran, the Assistant Manager.

A motion was made and approved to accept the recommendation of the Director, which is to find Kelly Hwy. Superstop in violation of §26-57-248(a) Possession of Untaxed Product, levy a \$3,675 fine with destruction of product. Also find them in violation of §26-57-213 Failure to maintain invoices, levy a \$500 fine and 5 – day suspension of permit with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

A & S Quik Mart #1

Pine Bluff, AR

VIOLATION: **§26-57-213 Failure to Maintain Invoices, \$500 fine and 5 – day suspension of permit.**

The store location was represented by Mr. Mohamed Rawaid.

After hearing all testimony a motion was made and approved to find A & S Quick Mart #1 in violation of §26-57-213 failure to maintain invoices, levy a fine of \$500 and 5 – day suspension of permit with 5 – Yes votes, 1 – Abstention, 1 – Member absent, and 1 – Open position.

Super Stop #8

Arkadelphia, AR

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

A full Hearing before the Board was requested but no one was present to represent Super Stop #8.

The Hearing Officer continued with a Hearing in this matter. After the Board heard all the testimony presented a motion was made and approved to find Super Stop #8 in default, issue a fine for \$500 and 2 – day suspension of permit with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

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 January 6, 2005, and February 3, 2005. A motion was made and approved to that affect with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

Mr. Maurice Gilmore asked for approval of “New Retail Permit Applications issued from January 6, 2005, through March 2, 2005” after reviewing the report with the Board. A motion was made and approved to that affect with 6 – Yes votes, 1 – Member absent, and 1 – Open position.

Mr. Gilmore then “Addressed the Board”. He presented and reviewed the Complaints Report from January 6, 2005, through March 3, 2005. He reported on the activity at the Capitol by discussing Bills of interest to the Board.

Next he called on Mr. Greg Sled, Enforcement Agent Supervisor. Mr. Sled introduced Mr. Arvard Brown, who had been hired as an Enforcement Agent replacing Mr. Denny Foster. 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. Gilmore reviewed and asked the "Offers of Settlement accepted by the permittee on the report dated February 3, 2005, be approved. A motion was made and approved to accept the "Offers of Settlement accepted by the permittee as listed on the February 3, 2005, report with 6 – Yes votes, 1 – Open position and 1 – Member absent.

The Chairman continued with "Legislation" on the agenda. The Board discussed having a simple majority vote versus requiring a quorum of 5 members present to conduct business. Also discussed was considering changes to the structure of the Board membership. Legislation is being drafted to help alleviate these on going problems of the Board.

The Board members were given a draft of Rules and Regulations as recommended for consideration from the Rules and Regulations Committee at their previous meeting held on December 14, 2004.

There were presentations regarding Sections 15, 16, and 17 in the Rules and Regulations of the Board. Those addressing the Board were Mr. Clifford Block, representing McLane Company, Mr. Grant Fortson, representing Wholesalers, and Mr. Arnie Jochums, representing the Board.

Once the presentations were completed a motion was made to take the original draft of the Rules and Regulations handed out at today's meeting from the Director's Office be sent to Public Hearing. This is the same draft that came out of the Rules and Regulations Committee for Board consideration and was sent to all board members accompanied with a letter dated December 14, 2004. The motion was approved with 6 – Yes votes, 1 – Member absent, and 1 – Open Position.

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

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Announcements included the next meeting date of the Board on Thursday, April 7, 2005.

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

Minutes prepared by _____
Janis L. Campbell

March 23, 2005