

ARKANSAS TOBACCO CONTROL MEETING MINUTES

JANUARY 13, 2011

The Arkansas Tobacco Control Board met on Thursday, January 13, 2011 for its monthly meeting in the Main Street Mall building, located at 101 E. Capitol Avenue, Little Rock, Arkansas, beginning at 10:00 a.m. in Suite 401. There were 7 - Board members present – Mr. Kevin Case, Ms. Carol Dyer, Mr. John Hauge, Mr. Steve Lightle, Mr. Danny Tate, Dr. Laura Sisterhen and Dr. Tommy Wagner, and 1 – Open position.

Mr. Steve Lightle, the Chairman, began the meeting with a “Welcome” to those attending. He then asked for a motion to approve the November 4, 2010 and December 2, 2010 board meeting minutes. A motion was made and approved with 7 – Yes votes and 1 – Open position.

Mr. Lightle asked for a motion to approve board members receiving expense reimbursement for calendar year 2011. A motion was made and approved to that effect with 7 – Yes votes and 1 – Open position.

The Chairman then moved on to “New Business” and “Disciplinary Hearings”, as there was no “Old Business” to address. Mr. Lightle introduced Mr. Greg Kirkpatrick serving as the Hearing Officer, and Ms. Lydia Williams Heroman, as Court Reporter.

The Hearing Officer opened the Disciplinary Hearings by calling the following cases before the Board:

CONSENT ORDERS

Case #2010-322

I-30 Mobile

Texarkana, AR

Mr. Darrow discussed with the Board that an agreement was reached in the matter of Case #2010-322 I-30 Mobile in Texarkana, AR. After discussion a motion was made to accept the agreement reached with I-30 Mobile finding them in violation of §26-57-245 Possession of untaxed tobacco, a fine of \$9,000, in violation of §26-57-213 Failure to maintain invoices, a \$500 fine and 3-day suspension of permit and in violation of §26-57-228 Purchasing from an unlicensed dealer, a \$500 fine and

2-day suspension of permit. The motion passed with 7 – Yes votes and 1 – Open position.

Case #2010-326 Olive Street Liquor Pine Bluff, AR

Mr. Darrow presented this Consent Order to the Board and stated an agreement was reached with Olive Street Liquor of Pine Bluff, AR. After hearing the details of the agreement and discussion, a motion was made and approved to accept the Consent Order and find Olive Street Liquor in violation of §26-57-245 Possession of Untaxed Tobacco, a fine of \$38,500 and 10-day suspension of permit, in violation of §26-57-213 Failure to maintain invoices, a \$1,000 fine and 5-day suspension of permit, and in violation of §26-57-228 Purchasing from an unlicensed dealer, a \$500 fine and 5-day suspension of permit with 6 – Yes votes, 1 – Abstention and 1 – Open position.

The Hearing Officer, Mr. Kirkpatrick, continued with Disciplinary Hearings as follows----

Case #2010-326 Rick’s Express, Inc. Lake Village, AR

VIOLATION:	§5-27-227(a)(1)	Selling to a minor, 3 rd Offense, \$400 and 2-day suspension of permit, plus mandatory merchant education within 6 months of the Board’s Order.
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Ms. Deloris Brown, Manager, and Ms. Sellers, the store clerk, were representing the store location in this matter.

After testimony, a motion was made to find Rick’s Express, Inc. in violation of §5-27-227(a)(1) Selling to a Minor, a \$400 fine and 2 – day

suspension of permit, plus a mandatory merchant education class for all Arkansas employees within 6 months of the Board's Order. The motion was approved with 7 - Yes votes and 1 - Open position.

These two (2) cases were presented to the Board together and voted on separately.

Case #2010-460 Eastside Convenience Greenwood, AR

VIOLATION: §5-27-227(a)(1) Selling to a minor,
2nd Offense, \$200

Case #2010-480 Eastside Convenience Greenwood, AR

VIOLATION: §5-27-227(a)(1) Selling to a Minor, 3rd
Offense, \$400 and
2-day suspension of
permit, plus mandatory
merchant education
within 6 months of the
Board's order.

Mr. Wade Dunn, the store owner, represented the business location.

After hearing all testimony concerning Case #2010-460, a motion was made and approved to find Eastside Convenience in violation of §5-27-227(a)(1) Selling to a minor and issue a \$200 fine with 7 - Yes votes and 1 - Open Position.

In Case #2010-480 a motion was made to find Eastside Convenience in violation of §5-27-227(a)(1) Selling to a minor, issue a \$400 fine and 7 – day suspension of permit with this being suspended as long as there are no other violations during a 1 year probation period from the date of the Board’s order and mandatory training within 6 months from the Board’s order date for all employees. This motion was approved with 7 – Yes votes and 1 – Open Position.

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

Mr. Lightle then called on the Director, Mr. J.R. Thomas, who presented the “New Retail Permit” report. After review, a motion was made to approve the “New Retail Permits Issued” list dated November 4, 2010 through January 12, 2011” with 7 – Yes votes and 1 – Open position.

Next on the agenda a Wholesale Cigarette and Tobacco Permit Application for Acadia Wholesale & Tobacco Company dba Church Point Wholesale in Church Point, LA. Mr. Steven Morley, Attorney, and Mr. Casanova were present to answer questions from the Board. A motion was made and approved to accept the wholesale application for Church Point Wholesale with 7 – Yes votes and 1 – Open Position.

The Director asked the Board to review the “Accepted Offers of Settlement for Board Approval” reports dated December 2, 2010 and January 13, 2011. After review a motion was made to approve the “Accepted Offers of Settlement” reports dated December 2, 2010 and January 13, 2011 with 7 – Yes votes and 1 – Open position.

An update was given to the Board regarding Sales to Minors Compliance Checks. The agency had received an ATF report stating a loss of tax revenue in 2006 of \$5 million for Arkansas in over the counter products, which was thought to be a conservative figure. Mr. Thomas provided the Board with a sample draft of information that the FDA might be sending out to the retailers concerning compliance checks to be performed by this Agency.

Mr. Lightle then asked for a "Court Update". Mr. Arnie Jochums, Assistant Attorney General, stated the Honorable James Moody, Jr., Judge, of the Supreme Court of Arkansas had made a decision regarding No. 10-498, McLane Southern, Inc., Appellant, vs Arkansas Tobacco Control Board, Appellee. Mr. Jochums gave an overview of the decision, which is posted on the agency website in its entirety.

Mr. Lightle announced the next meeting date of February 3, 2011. There were conflicts for a few of the members on the 3rd and 10th of February. After discussion, it was decided a decision regarding the February meeting date would be made later and announced. All business of the Board had been conducted and the meeting adjourned.

Minutes prepared by

Janis L. Campbell

January 28, 2011