

## **ARKANSAS TOBACCO CONTROL MEETING MINUTES**

**DECEMBER 4, 2014**

The Arkansas Tobacco Control Board met on Thursday, December 4, 2014 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 119. There were 6 – Board members present. Those attending were Ms. Carol Dyer, Mr. John Hauge, Dr. J.J. Lacey Jr., Chairman Mr. Steve Lightle, Mr. Sam Stathakis Jr. and the newest board member Dr. Brad Mayfield. We had 2 member absent – Mr. Kevin Case, Dr. Shabbir Dharamsey,

Mr. Lightle began the meeting with a “Welcome” to those attending. He then introduced Mr. Greg Kirkpatrick serving as the Hearing Officer, Ms. Nicole Hartwick, serving as Court Reporter.

Mr. Lightle asked for a motion to approve the board meeting minutes from November 6th, 2014. The minutes were approved with a blanket vote of 6 yes votes and 2 members absent.

The default list dated December 4<sup>th</sup>, 2014 was read aloud by Attorney Roland Darrow. The list was approved with a blanket vote of 6 yes votes and 2 members absent.

The Hearing Officer then opened the Disciplinary Hearings and asked Mr. Darrow, to present the following:

**CONSENT ORDERS**

There were no consent orders to be presented before the board.

**FULL HEARING**

**Case #2014-647    Permit #01364-02    Country Stores    Texarkana, AR**

**Violation: Failing to abide by terms of and approved Offer of Settlement**

Mr. Greg Kirkpatrick called on Attorney Roland Darrow and asked for him to present his case. Attorney Darrow addressed the board with the case concerning the Country Store and stated they have failed to fulfill the terms of an approved Offer of Settlement that was made at the last board meeting. Mr. Darrow stated that the owner was notified by certified mail sent to them by Mrs. Mandy Miller, Tobacco Control Education Trainer.

Mr. Greg Kirkpatrick called on Mrs. Miller to confirm that she had indeed sent them notification. She said yes and presented to the board proof of the signed receipt/confirmation she received. Mr. Kirkpatrick then called on the defendants and asked for them to state their names and how they are affiliated with the Country Store.

First to speak was friend/translator for the store owner. His name is Nokon Heo. Second to speak was the store owner Yong Seok. They presented their case and reason as to why they did not comply to the Offer of Settlement. Mr. Nokon stated that the owner, Mr. Seok, said that the letter was not very clear and he did not understand what it was talking about. Mr. Nokon said the Mr. Seok's english is very limited and that there was lack of understanding on his part as a result. Mr. Nokon stated that Mr. Seok said that they have complied and done everything they were asked minus attending the merchant education training.

Mr. Kirkpatrick then addressed Attorney Darrow and asked if he had anything further to add. Mr. Darrow addressed the defendants and asked about the hiring process for store employees. The owner goes over the application with each new employee. Mr. Darrow stated that if Mr. Seok's english is good enough to read the application to his new employees then he could understand the information on the letter he signed for that was sent to him by Mrs. Miller.

Attorney Darrow asked that the board take this into consideration when making their final decision. He also asked for the maximum sentence and fine.

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Mr. Seok in closing presented to the board that if he was given a second chance he would do the merchant training and ensure that this would not happen again. Mr. Kirkpatrick then turned it over to the board for a final decision.

Upon the decision of the board, Mr. Kirkpatrick then addressed the defendants and read to them their sentence. A \$2,500 dollar fine and merchant education training for all employees and the owner Mr. Seok as well. The motion passed with a blanket vote of 6 yes votes and 2 members absent.

Before moving on to the next case Mr. Mark Ohrenberger addressed the board and asked that they take into consideration changing the document for the Country Store due to improper wording. The motion passed with a blanket vote of 6 yes votes and 2 members absent.

Then Mrs. Pat Dykes called roll, with all members called on being present.

### **LENIENCY HEARINGS**

**Case #2014-640    Permit #05262-05    Maumelle Quick Mart    Maumelle, AR**

**Violations: §5-27-227 (a)(1)    Sales to Minor (5th offense)**

Mr. Greg Kirkpatrick called on Attorney Roland Darrow and asked for him to present his case. Mr. Darrow addressed the board with the case concerning Maumelle Quick Mart. Mr. Darrow stated that this store has been fined and failed their compliance checks 5 times with 4 of those being in this year alone. He stated that this was the highest number of offense a store could commit. He also stated that this store's employees have not attended any merchant training ever. He asked the board to consider the maximum penalty when making their decision in regards to this case due to the intensity of the offense.

Mr. Kirkpatrick then addressed the defendants and asked for them to state their names and how they are affiliated with the store. First to speak was Aswini Gupta managing member. Second was his wife and member as well Anil Gupta.

They presented their case to the board. Mr. Gupta stated that they were made aware of the fines and offense that the store made. He stated that they spoke with the cashier that sold to the minor and she did not care about the charges that resulted in her doing so. Both Mr. and Mrs. Gupta said this is the kind of attitude that they deal with, with their cashiers. Mr. Gupta also stated to the board that they are not at this store all the time to monitor what happens.

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Mrs. Gupta then addressed the board and stated that upon hiring, they make sure to go over the rules with each new employee and make sure that the cashier knows of the consequences of selling to a minor. She also stated that they make sure that all their employees sign the Tobacco Awareness Form and comply to it. Mr. and Mrs. Gupta both stated that they are not sure why their cashiers keep selling to minors.

They presented to the board a picture of the system they have put in place to help the cashiers not sell to minors. Mr. and Mrs. Gupta stated that there was a power surge and it messed up that system. Mr. Gupta said he was not made aware of it until just a few weeks ago. He then went to the store to make sure that the program was back up and running properly. They then presented to the board a picture of the sign they have sitting on the counter stating they do not sell to minors. Mrs. Gupta added that there is also a little sticker on each cash register as well.

Mr. Gupta stated to the board that the reason why none of the employees have attended merchant training is due to the quick turn over that they have in the store. He said he cannot send his cashiers to training when most of them are only there a week.

Mr. Gupta said that they take full responsibility for the charges against the store and if given a second chance they would comply and make sure that all their employees attend merchant training. Mr. Kirkpatrick then turned it over to the board for a final decision.

Upon the decision of the board, Mr. Kirkpatrick then addressed the defendants and read to them their sentence. A \$2,000 dollar fine with a 14 day suspension and merchant education training within the next 6 months for all employees and managers. The motion passed with a blanket vote of 6 yes votes and 2 members absent.

Then Mrs. Pat Dykes called roll, with all members called on being present.

**Case #2014-622    Permit #01123-01    Brookshire Food Store    Pine Bluff, AR**

**Violations: §5-27-227 (a)(1)    Sales to Minor (3rd offense)**

Mr. Greg Kirkpatrick called on Attorney Roland Darrow and asked for him to present the third and final case. Mr. Darrow addressed the board with the case concerning Brookshire Food Store. He stated that this store has failed their compliance checks and has sold to minors 3 times. He asked that the board consider the regular penalty when making their decision.

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Mr. Kirkpatrick then addressed the defendants and asked for them to state their names and how they are affiliated with the store. First to speak was Leo Stevenson, managing director. Second was Daniel Vallance, director.

They presented their case to the board. Mr. Stevenson stated that they were made aware of the fines and offense that the store made. He stated that he is not sure why they have taken place 3 times. He presented to the board pictures of the system they now have in place to help the cashiers not sell to minors. He stated that they have taken very quick action to ensure that this does not happen again in the future. He stated that now the cashiers have to get a manager to open the tobacco case and that they are trying to put in place a similar system that is used in stores for WIC. He feels confident that these changes will keep them from having issues in the future.

Mr. Leo addressed the board and stated that they would accept the fine of \$500 dollar fine. He also asked that they have favor with them and wave the 3 day suspension. Mr. Kirkpatrick then turned it over to the board for a final decision.

Upon the decision of the board, Mr. Kirkpatrick then addressed the defendants and read to them their sentence. A \$500 dollar fine with a 2 day suspension and merchant education training for all cashiers and managers. The motion passed with a blanket vote of 6 yes votes and 2 members absent.

Then Mrs. Christi Harper called roll, with all members called on being present.

The Disciplinary Hearings were concluded and the meeting was turned back over to the Chairman, Mr. Steve Lightle.

Director Thomas asked the Board to review the "The New Retail Permits" report dated from November 5th through December 5th, 2014 and approve as submitted. The motion was approved with a blanket vote of 6 yes votes and 2 members absent.

The Director then asked the Board to review the "Accepted Offers of Settlement for Board Approval" report dated December 4<sup>th</sup>, 2014. The board reviewed and the motion passed with a blanket vote of 6 yes votes and 2 members absent.

Deputy Director Greg Sled gave a brief update on the Sales to Minor division activities. He then gave an introduction of the newest employee Jody Dotson, Enforcement Agent.

Deputy Director Owens gave a brief on the activities in the FDA Division.

Director Thomas gave a brief update concerning the lawsuit that is still pending with the agency. He said that a final decision will be coming soon.

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In closing, Mr. Lightle announced the next Board Meeting will be February 5th, 2015, wished everyone a Merry Christmas and then the meeting was adjourned.

Minutes prepared by

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Christi Harper

December 8, 2014