

## **ARKANSAS TOBACCO CONTROL MEETING MINUTES**

**FEBRUARY 7, 2013**

The Arkansas Tobacco Control Board met on Thursday, February 7, 2013 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 6 - Board members present with Dr. Tommy Wagner arriving after the meeting began. Those attending were Ms. Carol Dyer, Mr. John Hauge, Mr. Steve Lightle, Dr. J.J. Lacey Jr., Dr. Laura Sisterhen, who left the meeting early, and Dr. Tommy Wagner with 2 - Members absent - Mr. Kevin Case and Mr. Danny Tate.

Mr. Steve Lightle, the Chairman, began the meeting with a "Welcome" to those attending. The Chairman then asked for a motion to approve the December 6, 2012 and January 3, 2013 board meeting minutes. The minutes were approved with 6 - Yes votes and 2 - Members absent.

The Chairman reminded the Board they have to vote on receiving expense reimbursement for calendar year 2013. He asked for a motion. A motion was made and approved for the board members to receive expense reimbursement for calendar year 2013 with 6 - Yes votes and 2 - Members absent.

Mr. Lightle then moved on to "New Business" as there wasn't any "Old Business" to address. He introduced Mr. Greg Kirkpatrick serving as the Hearing Officer, and Ms. Lydia Williams Heroman, as Court Reporter.

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

### **Default List**

Mr. Darrow advised the Board that Quick Stop, Inc. of North Little Rock and USA Drug #2 in Pine Bluff were to be removed from the list. He then read off the Default List dated February 7, 2013 asking if anyone was present from those business locations. Since there was no response, a motion was made and approved to accept the Default List as submitted with Quick Stop and USA Drug #2 being removed and issue the maximum penalty on all Sales to Minors cases with 6 - Yes votes and 2 - Members absent.

**Case #2012-045 through 051      Discount Tobacco of Fort Smith & Little Rock, AR      Ft. Smith & Little Rock**

**VIOLATION:                      §4-75-708(c)                      Accepting rebates  
No recommended  
penalty.**

Ms. Brenda Shirley, Respondent and Secretary of the Corporation, Mr. Rob Engster, President and CEO, along with their legal representation Mr. Jess Askew and Mr. Alec Gaines were present to represent the business location. Ms. Jackie Houser was also present to testify for the agency.

An Objection of Hearing was presented by Mr. Askew, which was denied.

After hearing testimony, a motion was made to find Ms. Brenda Shirley dba Discount Tobacco of Fort Smith in violation of §4-75-708(c) Accepting a rebate, levy a \$31,090 fine and no suspension or revocation of permit. There was no second to this motion.

After discussion, a second motion was made to find Ms. Brenda Shirley dba Discount Tobacco of Fort Smith in violation of §4-75-708(c) Accepting a rebate, levy a \$31,950 fine and no revocation or suspension of permit. There were 4 – Yes votes, 2 – No votes and 2 – Members absent. The motion failed, as 5 – Yes votes are required for a motion to pass.

A third motion was made to find Ms. Brenda Shirley dba Discount Tobacco of Fort Smith in violation of §4-75-708(c) Accepting a rebate, levy a fine of \$107,000 and 3 – months suspension of permit. There was no second to the motion, therefore, the motion failed.

A fourth motion was made to find Ms. Brenda Shirley dba Discount Tobacco of Fort Smith in violation of §4-75-708(c) Accepting a rebate, levy a fine of \$42,600 and no suspension or revocation of permit. The motion passed with 6 – Yes votes and 2 – Members absent.



No one was present to appear before the Board in this matter.

After hearing testimony, a motion was made to find Lucky Mart in violation of §5-27-227(a)(1) Selling cigarettes to a minor, levy a \$2,000 fine and 14-day suspension of permit and mandatory training is required within the next 6 – months for all employees. The motion was approved with 5 – Yes votes and 3 – Members absent.

<b>Case #2012-414</b>	<b>Tobacco Town, Inc. dba Discount Tobacco of Hot Springs</b>	<b>Hot Springs, AR</b>
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<b>VIOLATION:</b>	<b>§5-27-227(a)(1)</b>	<b>Selling cigarettes to a minor, 3rd Offense, \$400 &amp; 2-day suspension of permit.</b>
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Ms. Becca Kirby and Mr. Bryant Terry were present to appear before the Board.

A motion was made and approved to find Tobacco Town, Inc. dba Discount Tobacco of Hot Springs in violation of §5-27-227(a)(1) Selling to a minor, impose a \$500 fine and no suspension of permit with 5 – Yes votes and 3 – Members absent.

The Disciplinary Hearings were concluded and Mr. Kirkpatrick turned the meeting back over to the Chairman. Mr. Lightle continued by asking the Director, Mr. J.R. Thomas, to present his reports to the Board.

Mr. Thomas asked the Board to review the “New Retail Permit” report and approve as submitted. A motion was made to approve the “New Retail Permits Issued” list dated December 6, 2012 through February 6, 2013 as submitted” with 5 – Yes votes and 3 – Members absent.

Mr. Roland Darrow, Staff Attorney, presented a wholesale permit application for Sam's East, Inc. dba Sam's Club Distribution Center #8234 in Searcy, AR to the Board. A motion was made to approve the wholesale application as submitted. The motion passed with 5 – Yes votes and 3 – Members absent.

The Director then asked the Board to review the "Accepted Offers of Settlement for Board Approval" report dated January 3, 2013 and February 7, 2013 as submitted. A motion was made to approve the "Accepted Offers of Settlement" report dated January 3, 2013 and February 7, 2013 with 5 – Yes votes and 3 – Members absent.

Mr. Thomas then called on Deputy Director Greg Sled to give his update on enforcement activity and merchant education. Mr. Sled stated in December there were 321 checks with a violation compliance rate of 8.1%. In January there were 285 checks with a violation rate of 8.42% for an average of 9.67%.

There will be merchant education in Hope, AR on February 21st and Pine Bluff on February 27<sup>th</sup>.

Mr. Sled introduced Mr. Daniel Heflin, who was working for the FDA Division, and has taken an Enforcement Agent position in Central Arkansas.

He also announced Mr. Glenn Redding is moving from being the Criminal Investigation Supervisor to taking an Enforcement Agent position in North Central Arkansas.

A replacement for Mr. Gary Vlcek, who was an Auditor/Investigator will be advertised on the State of Arkansas Job Site along with the position being vacated in CID and an open position in Northeast Arkansas.

Two videos were shown on electronic cigarettes. A Blu electronic cigarette was passed around to the board members.

The Director then asked for the FDA program report. Dr. Casey Carder reported the FDA has levied 13 civil monetary penalties. She shared a handout with the Board that was a retailer fact sheet concerning "Tobacco Retailer Warning Letters". The position vacated by Mr. Daniel Heflin will be listed on the state's job site seeking a replacement for him.

The Chairman asked for a Court Update. Mr. Mark Obrenberger, Assistant Attorney General, didn't have anything to report. Mr. Darrow, Staff Attorney, reported in the case of J & J Discount Tobacco in Boonville, AR, the Court held an emergency Hearing and stayed the revocation of their permit pending the Court's review of the Administrative Hearing. Another appeal has been filed for Town & Country Food & Fuel in Blytheville, AR.

The next meeting date will be March 7, 2013. All the board members were in agreement to adjourn.

Minutes prepared by

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Janis L. Campbell

March 4, 2013