

ARKANSAS TOBACCO CONTROL MEETING MINUTES

NOVEMBER 3, 2011

The Arkansas Tobacco Control Board met on Thursday, November 3, 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, with Ms Dyer departing early, Mr. John Hauge, Mr. Steve Lightle, Dr. J.J. Lacey, Jr., Mr. Danny Tate, Dr. Tommy Wagner, and 1 – Member absent, Dr. Laura Sisterhen. Mr. Jim Wooten sat in to vote on the Heathcott Associates, Inc. wholesale permit application.

Mr. Steve Lightle, the Chairman, began the meeting with a “Welcome” to those attending. The Chairman asked for a motion to approve the October 6, 2011 board meeting minutes. A motion was made and approved with 7 – Yes votes and 1– Member absent.

Mr. Lightle then moved on to “Old Business”. At the October 6, 2011 meeting, a wholesale permit application was presented to the Board for Heathcott Associates, Inc. The Board was in agreement to move this application to the November 3, 2011 board meeting for consideration.

Mr. Roland Darrow, Staff Attorney, presented the Wholesale Permit Application for Heathcott Associates, Inc. in Little Rock. A motion was made to approve the new wholesale permit application with 6 – Yes votes, 1 – No vote and 1– Member absent. Mr. Jim Wooten sat in for Mr. Kevin Case.

The Chairman moved on to “New Business” and “Disciplinary Hearings”. The Chairman 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:

USE AND BENEFIT ORDER

Mr. Darrow presented a Use and Benefit Order for Case #2008-370, 2008-419, 2009-136, 2009-137, 2009-138, 2009-139 and 2011-157. He asked the Board for approval to use these products for educational

purposes, training or other appropriate law enforcement uses. Once the products are no longer suitable for these purposes they will be destroyed at the direction of the Director. A motion was made to approve the Use and Benefit Order as presented with 7 – Yes votes and 1 – Member absent.

Case #2011-243 Star One Food Mart Forrest City, AR

VIOLATION: R & R 4.2 Selling single cigarettes, 2-Counts, \$1,000 fine and 30-day suspension of permit per count.

Mr. Nasr Nagi, the owner, and his attorney, Mr. Alvin Sims, appeared Before the Board in the matter.

After hearing testimony, a motion was made to find Star One food Mart in violation of R & R 4.2, Selling single cigarettes, levy a \$500 fine and 15 –day suspension of permit per count for a total fine of \$1,000 and the 30 – day suspension of permit is to be served consecutively. The motion was approved with 7 – Yes votes and 1 – Member absent.

Case #2011-245 Easy Mart Forrest City, AR

VIOLATION: R & R 4.2 Selling single cigarettes, 3 – Counts, \$1,000 fine and 30 – day suspension of permit per count.

Mr. Mohammed Alnami, the owner, and his Attorney, Mr. James Miller, appeared before the Board.

A motion was made to find Easy Mart in violation of R & R 4.2 Selling single cigarettes, levy a \$500 fine and 15 – day suspension of permit per count for a total fine of \$1,500 and 45 – day suspension of permit. The motion was approved with 7 – Yes votes and 1 – Member absent.

Case #2011-292 Merchants Wholesale Grocery, Co. Little Rock, AR

VIOLATION:	§26-57-245	Selling untaxed tobacco products.
	§4-75-708	Providing rebates to reailers.
	R & R 11.1	Violating federal law in connection of cigarette or tobacco sales.
	R & R 11.1	Assisting others to violate state law in connection of cigarette or tobacco sales.
		No recommended penalty for violations.

Those appearing before the Board were Mr. D. Shane Smith, owner, represented by Mr. Benjamin D. Brenner and Mr. Jess Askew III of Williams & Anderson, PLC and Mr. David R. Thompson, co-owner, represented by Mr. Jack Lassiter of Lassiter & Cassinelli. Merchants Wholesale Grocery Co., Inc. was represented by Mr. Brenner and Mr. Askew. After the case was called by the Hearing Officer but before any evidence was marked and received, Mr. Brenner requested and received permission to make an offer of plea to the Board for consideration prior to the commencement of the case in chief. Mr. Brenner, on behalf of Merchants Wholesale Grocery Co., Inc. (Merchants), stated that Merchants would admit to the violations alleged against it in the Notice of Hearing and would agree to the following penalties:

1. Merchants would plead guilty to not less than fifty (50) violations nor more than one hundred (100) violations, the exact number of which would be worked out between Mr. Brenner and the ATC Attorney, Mr. Darrow, in the next week or so. For each violation, Merchants would pay the maximum fine available to the Board (due to the time period of the violations) of One Thousand Dollars (\$1,000.00), resulting in a fine of not less than Fifty Thousand Dollars (\$50,000.00) nor more than One Hundred Thousand Dollars (\$100,000.00) and that fine amount would be consistent with the

appellate case of Hackney v. Davis. Said fine would be paid within thirty (30) days of the entry of the Order.

2. Merchants would serve a thirty (30) day suspension of its Wholesale Cigarette and Wholesale Tobacco Permits during the next year, said suspension to be served in ten (10) day increments, one per month.

3. Acceptance of the plea would resolve any and all violations, currently alleged or not, against any cigarette or tobacco permit held by D. Shane Smith or David R. Thompson prior to January 1, 2011.

Mr. Brenner went on the state that this plea offer was to bring the matter to a close and to avoid a lengthy appeal process which would generate a significant amount of uncertainty for Merchants, the Board and Arkansas Tobacco Control as well.

The Board then discussed the merits of accepting the offered plea and debated the matter. At the conclusion of the discussion, Board Member Dr. J.J. Lacy made a motion that the Board accept the offered plea. The motion was seconded by Board Member Kevin Case. The vote was then held with five board members voting for the motion, two voting against the motion and one member absent. The motion passed with five votes in favor of it.

Case #2011-320 Clem Wholesale Grocer, Inc. Texarkana, AR

VIOLATION:	§26-57-245	Selling untaxed tobacco
	R & R 11.1	Violating federal law in connection of cigarette or tobacco sales.
	R & R 11.1	Assisting others to violate state law in connection of cigarette or tobacco sales.
		No recommended penalty.

Continued to the December board meeting upon request by Jeff Harrelson, attorney for Patrick Patton, dba Clem Wholesale Grocer, Inc.

Case #2011-244 Happy Mart Fayetteville, AR

VIOLATION: R & R 4.2 Selling single cigarettes, 2 Counts,
\$1,000 fine and 30 – day
suspension of permit per count.

Mr. Amin Babakr was present to represent the business location.

After hearing testimony, a motion was made to find Happy Mart in violation of R & R 4.2 Selling single cigarettes, levy a \$500 fine and 15 – day suspension of permit per count for a total of a \$1,000 fine and 30 – day suspension of permit with the suspensions being served 10 days per month for 3 months. The motion was approved with 5 – Yes votes, 2 – No votes and 1 – Member absent.

Case #2011-255 The Flying Dog Fayetteville, AR

VIOLATION: §26-57-226 Selling on an expired permit, \$250
fine.

Ms. Carol Day was present to represent the store location.

After hearing testimony, a motion was made and approved to issue a Warning with 7 – Yes votes and 1 – Member absent.

Case #2011-285

Crossover Corner

Fayetteville, AR

VIOLATION: §5-27-227(a)(1) Selling to a minor, 3rd offense, \$400 fine and 2 – day suspension of permit and mandatory training.

Mr. Manish Patel represented the business location.

A motion was made to find Crossover Corner in violation of §5-27-227(a)(1) Selling to a minor, levy a \$400 fine and 2 – day suspension of permit and mandatory training with 7 – Yes votes and 1 – Member absent.

Case #2011-294

Kum & Go #381

Harrison, AR

VIOLATION: §5-27-227(a)(1) Selling to a minor, 4th Offense

No recommended penalty

There was no one present to represent the business location.

Mr. Darrow presented the case to the Board. A motion was made to find Kum & Go #381 in violation of §5-27-227(a)(1) Selling to a minor, levy a \$2,000 fine and 14 – day suspension of permit with 7 – Yes votes and 1 – No vote.

WHOLESALE PERMIT APPLICATIONS

Mr. Darrow presented the following wholesale permit applications to the Board:

Bates Distributors Russellville, AR

A Change of Ownership was submitted for Bates Distributors. A motion was made to accept the application and approved with 6 – Yes votes and 2 – Members absent.

Mian Distributors Fort Smith, AR

A motion was made and approved to table this application until a later date with 6 – Yes votes and 2 – 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 October 6, 2011 through November 2, 2011” with 6 – Yes votes and 2 – Members absent.

The Director then asked the Board to review the “Accepted Offers of Settlement for Board Approval” reports dated November 3, 2011. A motion was made to approve the “Accepted Offers of Settlement” report dated November 3, 2011 with 6 – Yes votes and 2 – Members absent.

Mr. Thomas then called on Deputy Director Greg Sled to give his update on enforcement activity and merchant education. The Director then asked Dr. Casey Carder, Deputy Director of the FDA program, to share her monthly report to the Board.

Page 8

The Chairman asked for a Court Update. Neither Mr. Arnie Jochums, Assistant Attorney General, nor Mr. Roland Darrow, Staff Attorney, had anything to report.

Mr. Lightle announced the next meeting date of December 1, 2011. All business of the Board had been conducted. A motion was made and approved to adjourn with 6 – Yes votes and 2 – Members absent.

Minutes prepared by

Janis L. Campbell

November 21, 2011