

## **ARKANSAS TOBACCO CONTROL MEETING MINUTES**

**OCTOBER 4, 2012**

The Arkansas Tobacco Control Board met on Thursday, October 4, 2012 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 with Dr. Laura Sisterhen leaving early. Those attending were Mr. Kevin Case, Ms. Carol Dyer, Mr. John Hauge, Mr. Steve Lightle, Dr. J.J. Lacey, Mr. Danny Tate, and Dr. Laura Sisterhen and 1 – Member absent – Dr. Tommy Wagner.

Mr. Steve Lightle, the Chairman, began the meeting with a “Welcome” to those attending. The Chairman then asked for a motion to approve the September 6, 2012 board meeting minutes. A motion was made and approved with 7 – Yes votes and 1 - Member absent.

### **Rule 16 Opinion Request for Muswick Company**

The Staff Attorney, Mr. Roland Darrow, presented a Rule 16 Opinion Request for Muswick of Little Rock. After discussion, a motion was made to accept the Muswick Rule 16 Opinion Request as submitted. The motion failed as there were 4 – Yes votes, 3 – No votes and 1 – Member absent.

It was decided the staff will review the Rule 16 Opinion and will reintroduce it at the November 1, 2012 board meeting.

Mr. Lightle then moved on to “New Business” and “Disciplinary Hearings”, as there wasn’t any “Old Business” to address. 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:

**Motion for Continuance**

**Case #2012-104                      M & M Mart                      Little Rock, AR**

Mr. Darrow presented a Motion for Continuance on behalf of M & M Mart of Little Rock. A motion was made and approved to move this case to the December 6, 2012 meeting with 7 – Yes votes and 1 – Member absent.

A second motion was made and approved to deny a motion to permit discovery with 7 – Yes votes and 1 – Member absent.

**Default List**

Mr. Roland Darrow, Staff Attorney, made a roll call of the names listed on the Default Judgments for Board Approval list dated October 4, 2012. No one answered as being present. Mr. Darrow asked the Board to approve the list as presented, with Adoosh Mini Mart of Jonesboro, Lucky Mart of Jacksonville, and Al's Fast Trax of Fayetteville being removed, and levy the maximum fine on each case as listed. A motion was made to that effect with 7– Yes votes and 1 – Member absent.

**Case #2012-056                      Happy Mart                      Forrest City, AR**

<b>VIOLATION:</b>	<b>§26-57-226</b>	<b>Selling on a suspended permit, 2 counts (\$2,500 &amp; 90 days per count for a total of \$5,000 and 180 day suspension of permit.</b>
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At the September 6, 2012 meeting the store location was represented by Mr. Amin Babakr, the owner, and his Attorney, Ms. Jessica Trail.

A motion was made to find Happy Mart in violation of §26-57-226 Selling on a suspended permit, issue a \$2,500 fine and 45-day suspension of permit per count for a total penalty of \$5,000 and 90-day

suspension of permit. The motion failed as there were 4 – Yes votes, 1 – Abstention, and 3 – Members absent.

After discussion, it was agreed four members, Mr. Carol Dyer, Mr. Steve Lightle, Mr. Danny Tate and Dr. Laura Sisterhen would recommend to the full board at the October 4, 2012 meeting the penalty that was agreed upon at the September 6, 2012 meeting.

At the October 4, 2012 board meeting, Mr. Darrow reintroduced this case. Ms Jessica Trail requested on behalf of her client Mr. Amin Babakr this case be moved to the November 1, 2012 board meeting to allow her time to file an objection regarding proposed findings. The Board was in agreement to move this case to the November meeting date.

**Case #2012-108                      Discount Tobacco Depot                      Little Rock, AR**

**VIOLATION:                      §26-57-235(d)(2)                      Selling individual  
cigarettes, 3 counts  
(\$1,000 & 30 days per  
count) Total of \$3,000  
& 90 – day suspension  
of permit.**

The store location was represented by Mr. Naser Amdallah, the owner, and his Attorney, Mr. J. Cliff McKinney.

After hearing testimony, a motion was made to find Discount Tobacco Depot in violation of §26-57-235(d)(2) Selling individual cigarettes, accept the Director's recommendation of a \$3,000 fine and 90-day suspension of permit with 7 – Yes votes and 1 – Member absent. The respondent agreed the sales did occur and was in violation of §26-57-235(d)(2).

**Case #2012-272                      Quick Stop, Inc.                      North Little Rock, AR**

**VIOLATION:                      §5-27-227(a)(1)                      Selling to a minor, 4<sup>th</sup>  
Offense, No  
recommended penalty**

Mr. Museaf Almaqulah was present the represent the business location, as the owner Mr. Mohammed Yafai was out of the country.

A motion was made and approved to find Quick Stop, Inc. in violation of §5-27-227(a)(1) Selling to a minor, levy a \$2,000 fine and 14-day suspension of permit and require mandatory training within 90 days from today's date with 7 – Yes votes and 1 – Member absent. Mr. Almaqulah admitted the sale did take place.

**Case #2012-165                      Neighborhood Grocery      Crawfordsville, AR**

**VIOLATION:                      §26-57-213                      Failure to maintain  
invoices, 2<sup>nd</sup> offense, \$1000  
fine and 15-day suspension  
of permit.**

**§26-57-228                      Purchasing from unlicensed  
dealer, 2<sup>nd</sup> offense, \$2,000  
fine and 30-day suspension  
of permit.**

**§26-57-245                      Possession of untaxed  
tobacco, \$4,975 fine and 30-  
day suspension of permit  
and destruction of  
confiscated product.**

**R & R 4.1**

**No server awareness form,  
2<sup>nd</sup> offense, \$250 fine.**

Mr. Clarence Cochran, the store owner, came before the Board in this matter.

After discussion a motion was made and approved to defer this case to the November 1, 2012 meeting with 6 – Yes votes and 2 – Members absent.

**Case #2012-211**

**Citgo of Morning Sun LLC**

**Searcy, AR**

**VIOLATION:**

**§26-57-226**

**Selling on an expired  
permit, \$250 fine**

There was no one present to represent the business location.

After hearing the case, a motion was made and approved to find Citgo of Morning Sun LLC in violation of §26-57-226 Selling on an expired permit and levy a \$1,000 fine 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 September 6, 2012 through October 3, 2012 as submitted” with 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 October 4, 2012 as submitted. A motion was made to approve the “Accepted Offers of Settlement” report dated October 4, 2012 with 6 – Yes votes and 2 – Member absent.

Mr. Thomas then called on Deputy Director Greg Sled to give his update on enforcement activity and merchant education. Mr. Sled stated in September there were 317 checks, 29 violations for a 9.15% violation rate. Year to Date there have been 1133 checks with 116 violations for a rate of 10.24%. There will be merchant training for Easy Mart in the De Queen/Ashdown area of the state on October 11<sup>th</sup>. Training will be offered in Conway on October 24<sup>th</sup> and again in Forrest City on October 30<sup>th</sup>.

The Director then asked for the FDA program report. Dr. Casey Carder reported there were 270 checks with a 22% violation rate.

The Chairman asked for a Court Update. Mr. Mark Obrenberger, Assistant Attorney General, didn’t have anything to report. Mr. Darrow, Staff Attorney, reported the Board’s decision was upheld in the case of Bottle Mart Liquor in Texarkana except for the 5 day penalty for not keeping invoices on file at the store location. In the matter of Easy Mart and Star One Food Mart both in Forrest City, the Court upheld the Board’s decision in its entirety on both cases. No activity on Clem Wholesale to report.

The next meeting date will be November 1, 2012. A motion was made and approved to adjourn with 6 – Yes votes and 2 – Members absent.

Minutes prepared by

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Janis L. Campbell

October 24, 2012