

MINUTES

ALCOHOL AND TOBACCO COMMISSION

JULY 15, 2014

**CALL TO ORDER/NOTING OF QUORUM**

Chairman Huskey called the meeting to order and noted the quorum and the attendance. Present were Vice Chairman Johnson, Commissioner Coxey and Commissioner Grubb. Also in attendance were Executive Secretary Rothenberg, Staff Attorney Allen, Prosecutor Mader, Superintendent Strittmatter and Master Officer Bedwell.

Jim Purucker, Matt Brase, Alex Barnstead, Lisa McKinney, Steve Badger, Bart Herriman, Mike Maxwell, Greg Genrich, Keith Johnson, Mark Webb and Jenny Drewry were present as observers.

**DISPOSITION OF MINUTES**

Commissioner Grubb moved to approve the minutes for the July 1, 2014 meeting. Commissioner Coxey seconded. The motion was unanimously approved.

**PROSECUTOR'S RECOMMENDATIONS**

PARTIES' AGREED DISPOSITIONS – Prosecutor Mader recommended the Commission approve the Parties' Agreed Dispositions that were submitted.

Commissioner Grubb moved to approve the Dispositions that were submitted for the July 15, 2014 meeting. Commissioner Coxey seconded. The motion was unanimously approved.

**HEARING JUDGE'S RECOMMENDATIONS**

No Hearing Judge's Recommendations

**CONSIDERATION OF APPLICATIONS**

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permits for renewal, either with or without a quorum at the local board meeting, which have been recommended by local boards and reviewed by our staff with the authority of the Commission. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permit applications for a new permit, or applications for changes in location or ownership or both of existing permits, which were either recommended by local boards or where a quorum was not present, and reviewed by at least two Commissioners. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permit applications for catering. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve and incorporate by reference these lists of permits to be placed in escrow for not more than five years, which have been reviewed and recommended by a Commissioner as appropriate for escrow. Commissioner Grubb seconded. The motion was unanimously approved.

Vice Chairman Johnson moved to approve the renewal and new applications for Direct Wine Shipper permits. Commissioner Grubb seconded. The motion was unanimously approved.

Seven hundred eighty-one (781) renewals approved, fifty-two (52) new and/or transfer applications approved, twelve (12) permits approved for catering, four (4) permits approved for first year escrow, six (6) permits approved for second year escrow, three (3) permits approved for third year escrow, one (1) permit approved for fourth year escrow, one (1) permit approved for sixth year escrow, forty-eight (48) direct shipper renewals approved and five (5) new direct shipper permits approved.

### **RENEWAL LETTERS AND WAIVER OF FEES**

Commissioner Grubb moved to approve the renewal and fee waived letters of extension for the preceding weeks. Commissioner Coxey seconded. The motion was unanimously approved.

### **APPLICATIONS FOR DISCUSSION**

RR45-30532 LA ESTRELLA LLC – Vice Chairman Johnson noted this is a transfer application with the local board voting 2-2. The Excise officer recommended approval.

Vice Chairman Johnson moved to approve the transfer of this permit. Commissioner Grubb seconded. The motion was unanimously approved.

RR45-30459 LA FOGATA, INC. – Vice Chairman Johnson noted this is a new application with the local board voting 3-1 to approve.

Vice Chairman Johnson moved to uphold the local board and approve the new permit. Commissioner Grubb seconded. The motion was unanimously approved.

RR49-30652 EL CENTENARIO LLC – Vice Chairman Johnson noted this is a transfer application with the local board voting 2-1 to deny and one abstention. The Excise officer recommended approval.

Vice Chairman Johnson moved to table this matter until he can listen to the recording of the local board meeting and speak with the Excise officer. Commissioner Grubb seconded. The motion was unanimously approved.

### **INACTIVE FILES**

Commissioner Grubb moved to make twenty-five permits inactive. Twenty-one permits are not subject to auction and four are subject to auction. Commissioner Coxey seconded. The motion was unanimously approved.

## OLD BUSINESS

WH49-29931 SPIRITED SALES, LLC – See attached transcript.

## NEW BUSINESS

### REVOCACTION OF EMPLOYEE PERMITS

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: John A. Williams, permit #BR1678654. Mr. Williams will not be eligible to hold an employee permit until June 24, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Connie L. Pabey, permit #BR1669918. Ms. Pabey will not be eligible to hold an employee permit until January 10, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Katherine R. Francis, permit #BR1632621. Ms. Francis will not be eligible to hold an employee permit until June 7, 2015.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: John H.D. Richardson, permit #BR1432547. Mr. Richardson will not be eligible to hold an employee permit until June 22, 2017.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Sadie Bennett-Boggs, permit #BR1560028. Ms. Bennett-Boggs will not be eligible to hold an employee permit until March 16, 2020.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Abigail Risica, permit #BR1704054. Ms. Risica will not be eligible to hold an employee permit until June 12, 2017.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

--- Commissioner Grubb stated the following permittee was convicted of a disqualifying crime after this employee permit was issued: Eamonn F. Welch, permit #BR1745161. Mr. Welch will not be eligible to hold an employee permit until August 3, 2014.

Commissioner Grubb stated after conducting an investigation of the permittee, Senior Officer Rich Swallow recommended the Commission revoke the permit.

Commissioner Grubb moved to uphold the recommendation of Officer Swallow and revoke the employee permit. Commissioner Coxey seconded. The motion was unanimously approved.

### **POLICY DETERMINATIONS**

No Policy Determinations

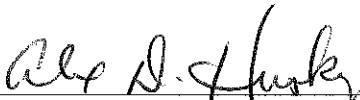
### **ANNOUNCEMENTS**

No Announcements

### **ADJOURNMENT**

Commissioner Grubb moved to adjourn the meeting. Commissioner Coxey seconded. The motion was unanimously approved.

Approved this 5<sup>th</sup> day of August, 2014.

  
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ALEX HUSKEY, CHAIRMAN

  
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DAVID JOHNSON, VICE CHAIRMAN

  
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DALE GRUBB, COMMISSIONER

  
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MELISSA COXEY, COMMISSIONER

Dave Johnson Mr. Chairman, in regard to WH49-29931, the application of Spirited Sales, LLC, for a liquor wholesaler's permit. I now move hereby move that commission members, Alex Huskey, Dale Grubb and myself be removed as hearing officers for consideration of said application. I further move that David Rothenberg, the executive secretary and hearing officer for this agency, be appointed as hearing judge to consider this application and all other issues related to this application and this process.

Dale Grubb Second.

Alex Huskey Motion by Mr. Johnson. Second by Mr. Grubb. Is there further discussion needed? Seeing there is none, all those in favor?

Johnson Aye.

Grubb Aye.

Huskey Opposed? Motion carries. Also, let the record reflect for the spirit of the goodwill of this permit application, I am effectively withdrawing myself from any consideration. I'm recusing myself of any consideration on this application matter.

David Rothenberg At this point I think I'd like to address a couple of things on Spirited Sales. The hearing today is at 1 o'clock. Last night, late night, I ruled on the Motion to Disqualify the chairman. I denied that Motion to disqualify, on the basis...well, I sent out the Order to almost everybody that's involved. In case anybody wants to see the Order, I have it. I can send it to

anybody in the public who's interested in reading it. I won't go over the entire order. I also wanted to issue an order on the Motion to Quash that is out there. There is a Motion to Quash the testimony of Jessica Norris, as well as Betsy Burdick Wiley. These are two people, of which there are a total of five, that the commission issued courtesy subpoenas to, as Spirited Sales asked for those subpoenas to be issued. These two individuals got representation and the Motion to Quash was submitted. The Reply was submitted. Sur Reply. Sur Reply. It's kind of gone back and forth. I realize that I don't have enough time to issue a written ruling, but a written ruling will follow. I just wanted to make an oral ruling here, if I could. Part of the reason why these were, these witnesses were being called, was to show bias on the part of especially Chairman Huskey, his impartiality. At this point, since he recused himself, that's no longer the issue. The second reason listed was to speak about past decisions that have been made by the commission and potentially their involvement in those decisions. Spirited Sales has submitted many examples of what they consider past decisions concerning the establishment of various corporations. In addition, there's testimony of other witnesses and, of course, there's attorney argument. I've already stated that at the end of this whole process, I would like the two sides, or if not the two sides, but the remonstrators and Spirited Sales to tender Briefs on this, as well, where arguments can be made. I ask for a, an

explanation of relevancy from both the remonst...well, from both the party that turned in the Motion to Quash, as well as Spirited Sales. I did receive some information back on that and I just listed that information. The relevancy would be the biasness and the past decisions. At this point and time, I'm going to rule that neither Jessica Norris, nor Betsy Burdick Wiley, needs to appear at this hearing. I will certainly allow Spirited Sales to proffer, to make a proffer of evidence, to make a record of what they believe these people would have said and how it would be relevant to this decision making process. I don't believe I've got anything else. Does the commission have any questions for me?

Melissa Coxey

I just have a procedural question. If two of the commissioners have now recused themselves from consideration on the application, once proposed findings are submitted by you, who will consider those proposed findings?

Rothenberg

In the end the commission will because the commission, listed in 7.1, is not allowed to give up their ultimate, decision-making authority. There needs to be quorum, though. I think between now and the time I make a recommendation, the Attorney General's Office is going to have to do some research to find out the correct procedure on what happens in these circumstances. I did have a brief discussion about this, in general, with the AG's Office and they told me they would have to do some research into it. I don't think it's addressed in 7.1. AOPA doesn't apply to us, so it's...that's not really



determinative. This is not a trial, so the Indiana Rules of Trial Procedure wouldn't really cover this. It's going to have to be something that the Attorney General does research into. So I don't have an answer for that now, but it's not going to have an effect until I have a recommendation, which isn't going to be probably...well, which isn't going to be until sometime in August, given that I'm giving the sides time to turn in Briefs and whatnot. But, I'm sure the Attorney General is already working on trying, Matt Light is trying to figure out what the right procedure is in this case. I know it's new to us.

Huskey

Thank you.