

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
March 25, 2010
1:30 p.m.

The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Thursday, March 25, 2010 in Nashville, Tennessee at 1:30 p.m. Chairman Jones, Commissioner Mathews and Commissioner Cynthia Bond were present. Executive Director Danielle Elks, Assistant Director Carolyn Smith, CLEO Mark Hutchens and SAC Al Watson were present.

1. **The Minutes for February 16, 2010 Commission Meeting were approved.**

2. **A. RETAIL**

1. **THE CROSSINGS WINE AND SPIRITS
DONELSON, TENNESSEE (DAVIDSON COUNTY)**

Applicant: James Paul Little

Before the Commission is a request for a new retail store to be located at 2306 Lebanon Pike in Donelson, Tennessee. Mr. Little proposes to invest \$40,000 from personal savings. Mr. Little is sub-leasing the property from Fort Sill National Bank (owner of property is Boyle Shady Grove Southwest, LLC) through May, 2011. Monthly rent is \$2300. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Use and Occupancy permit;
- c. Acknowledgement of the rules/regulations;
- d. Sub-lease signed by Fort Sill;
- e. Resignation from Main Street Liquors.

Discussion/Action Taken:

James Paul Little was present. Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the following documentation:

- a. TABC Inspection;
- b. Use and Occupancy permit;
- c. Acknowledgement of the rules/regulations;
- d. Sub-lease signed by Fort Sill;
- e. Resignation from Main Street Liquors.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**2. BUCCANEERS IMPORTED WINE AND SPIRITS
PORTLAND, TENNESSEE (SUMNER COUNTY)**

Applicant: BCAL, Inc.
Stockholder: Howard Austin

Before the Commission is a request for an extension of time to open for the new retail store to be located at 6074 Highway 31 West North in Portland, Tennessee. Mr. Austin was approved for the store at the Commission's November, 2009 meeting. TABC staff approved a 30 day extension on March 17, 2010. Mr. Austin is requesting his last 30 day extension.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval.

Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion and it passed with 3 ayes.

**3. MOON WINE AND SPIRITS
BRENTWOOD, TENNESSEE (WILLIAMSON COUNTY)**

Applicant: Edward O. Moon, Jr.

Before the Commission is a request for a new retail store to be located at 6910 Moores Lane in Brentwood, Tennessee. Mr. Moon wishes to initially invest \$390,000. Financing is based upon a loan with Wilson Bank and Trust (\$300,000) and existing personal funds. Mr. Moon is leasing the property from MAB Investment Properties for ten years with three, five year options. Monthly rental is approximately \$7000/month. It should be noted that Mr. Moon's brother-in-law has an interest in a licensee in Mt. Juliet, and his brother-in-law owns Sparta Pike Spirits in Lebanon. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules and regulations;
- c. Use and Occupancy permit
- d. Copy of actual loan;
- e. Actual lease;

- f. Written acknowledgement that the retail stores must be operated independently of the other.

Discussion/Action Taken:

Edward O. Moon, Jr. was present. Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the following documentation:

- a. TABC Inspection;
- b. Acknowledgement of the rules and regulations;
- c. Use and Occupancy permit
- d. Copy of actual loan

Chairman Jones stated for the record that he is friends with Edward Moon's sister. Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**4. MAURY PACKAGE STORE INC.
COLUMBIA, TENNESSEE (MAURY COUNTY)**

Licensee: Maury Package Store, Inc.
Stockholders: Alice Gay Bobo

Before the Commission is a request for a transfer of location for the retail store currently located at 1907 Carmack Boulevard, Suite E and F in Columbia, Tennessee. Ms. Bobo wishes to move to 2002-A Carmack Boulevard in Columbia because the new location is larger with better security. Ms. Bobo's current lease expires on February 28, 2013. The landlord at the proposed location is Marty Erwin, who will sub-lease the property to Ms. Bobo at \$1500/month. (Owner of property is Burchell Property, LLC.) All documentation has been submitted with the exception of the following:

- a. TABC Inspection.

Discussion/Action Taken:

Alice Gay Bobo was present. Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the TABC Inspection.

Commissioner Mathews made a motion to approve upon submission of the pending document. Commissioner Bond seconded the motion and it passed with 3 ayes.

**5. MOUNTAIN WINE AND SPIRITS
SPENCER, TENNESSEE (VAN BUREN COUNTY)**

Licensee: Mountain Wine and Spirits, LLC
Members: James Adcock, Jr.
Applicant: Mountain Liquor, LLC
Member: Jeffrey Pettit

Before the Commission is a request for a transfer of ownership of the retail store located at 16972 State Route 111 in Spencer, Tennessee. Mr. Jeffrey Pettit wishes to purchase the store from James Adcock, Jr. for \$800,000 (includes the real estate--\$550,000—to be held by Piney Creek Resource Management, LLC. Piney Creek Resource Management is owned by Jeffrey Pettit.). Financing is based upon two bank loans (\$600,000 with Citizens Bank of Spencer and \$150,000 with First National of Tennessee), as well as \$50,000 of existing personal funds. The applicant LLC will be leasing the property from Resource Management for a period of 10 years; rent is currently unknown. All documentation has been submitted with the exception of the following:

- a. Deed to Piney Creek Resource Management;
- b. Lease completed and signed;
- c. Actual loan agreements with Citizens Bank of Spencer and First National of Tennessee.

Discussion/Action Taken:

Director Elks reviewed the application to the Commissioners and recommended approval upon submission of the following documentation:

- a. Deed to Piney Creek Resource Management;
- b. Lease completed and signed;
- c. Actual loan agreements with Citizens Bank of Spencer and First National of Tennessee.

Commissioner Mathews made a motion to approve upon submission of the pending documentation. Commissioner Bond seconded the motion and it passed with 3 ayes.

**6, STATION WINE AND SPIRITS
SPRING HILL, TENNESSEE (MAURY COUNTY)**

Licensee: Vandeley Holdings, Inc.
Stockholders: Randy Wilkes

Before the Commission is a request for a transfer of location of the retail store currently located at 4910 Main Street, Suite 118, in Spring Hill, Tennessee. The new location would be 4825 Main Street, Suite 7 in Spring Hill, Tennessee. The request is based upon the fact that the store was located beside a chain grocery store; however, the grocery store ceased operating at that location. A church has leased the property, and will soon be occupying the space. The licensee's lease contained a provision that would allow the licensee to break the lease if a grocery store ceased operations beside the retail store. Tanyard Springs Partners is leasing the new location to the licensee for a period of five years with monthly rent beginning at \$2063.33, and increasing to \$2579.17 through the course of the lease. All documentation has been submitted with the exception of the following:

- a. TABC Inspection.

Discussion/Action Taken:

Randy Wilkes was present at the meeting. Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of the TABC Inspection.

Commissioner Mathews made a motion to approve upon submission of the pending document. Commissioner Bond seconded the motion and it passed with 3 ayes.

3. WHOLESALE MATTERS

**A. 100% ITALIANO, INC.
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Licensee: 100% Italiano, Inc.
Stockholder: Maria Pia De Pasquale

Before the Commission is a request for a transfer of location for the wholesale business currently located at 325 Plus Park Boulevard, Suite 103. Ms. De Pasquale wishes to move to 1650 Elm Hill Pike, Suite 6, in Nashville, Tennessee because they have out-grown their current location, and the new location includes a loading dock. The licensee is in a year-to-

year lease which appears to expire in June, 2010. The proposed new location is owned by First Industrial, LP, and the monthly rent is for 3 ½ years at approximately \$1912/month. All documentation has been submitted.

Discussion/Action Taken:

Andrea Danti and Charles Reed, attorney was present at the meeting. Director Elks reviewed the matter to the Commissioners and recommended approval upon submission of the TABC Inspection.

Commissioner Mathews made a motion to approve upon submission of the pending document. Commissioner Bond seconded the motion and it passed with 3 ayes.

4. WINERY MATTERS

**A. MONTEAGLE WINERY, LLC
MONTEAGLE, TENNESSEE (GRUNDY COUNTY)**

Licensee: Monteagle Winery, LLC

Members: Tony and Carolyn Johnston, and Mike and Denise Nunley

Proposed Members: Mike and Denise Nunley

Before the Commission is a request for a partial transfer of ownership of the winery located at 847 West Main Street in Monteagle, Tennessee. Mike and Denise Nunley wish to purchase Tony and Carolyn Johnston's interest in the business for \$14,000: the Nunleys would then own 100% of the business. It should be noted that during a review of the proposed sale, thirteen additional individuals provided loans to the Johnstons and Nunleys when the initial application came before the Commission for approval: none of these loans were disclosed to the Commission at that time. A regulatory investigation is currently on-going. All documentation related to the sale between the Johnstons and the Nunleys have been submitted.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval.

Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion and it passed with 3 ayes.

**B. STONEHAUS WINERY
CROSSVILLE, TENNESSEE (CUMBERLAND COUNTY)**

Licensee: Stonehaus Winery, Inc.
Stockholders: Lloyd Hassler, Jamie McGuire, Robert R. Ramsey and Robert J. Ramsey
Proposed Stockholders: Robert Ramsey, Sarah Belle Ramsey, Robert J. Ramsey and Kimberly Wheeler

Before the Commission is a request for a partial transfer of ownership of the winery located at 2444 Genesis Road, #103 in Crossville, Tennessee. Mr. Robert R. Ramsey, along with his wife Sarah Belle Ramsey (proposed new stockholder) wish to purchase the stock currently held by Lloyd Hassler and Jamie McGuire for \$500,000 each, in addition to assuming the total liability of a bank loan with First Tennessee Bank in the amount of \$503,112. Upon the approval of the purchase of the stock, Robert and Sarah Ramsey would own 80% of the stock. They then wish to give their son, Robert J. Ramsey, five additional shares and their daughter Kim R. Wheeler (proposed new stockholder), five shares. All documentation has been submitted.

Discussion/Action Taken:

Director Elks reviewed the matter to the Commissioners and recommended approval.

Commissioner Mathews made a motion to approve. Commissioner Bond seconded the motion and it passed with 3 ayes.

5. CONTESTED HEARINGS

**A. 1. TABC v. BUCK WILD SALOON, LLC D/B/A BUCK WILD SALOON
License No. 52321**

The purpose of this hearing is to determine whether License No. 52321 should be revoked. Tenn. Code Ann. § 57-4-102(27)(A) sets forth the definition of a "restaurant" as an entity that can hold an on-premise liquor-by-the-drink license. Prior to being amended on July 1, 2009, the "restaurant" definition required that the establishment operate at least four days a week and that the serving of meals be the principal business conducted. Two food audits conducted by TABC agents in 2007 and in 2009 disclosed that Buck Wild is not meeting the requirements of a "restaurant" because food sales were only 1.2% and 2.44%, respectively, of the total sales. It is the position of the TABC staff that the license should be suspended or revoked.

Discussion/Action Taken:

Assistant Director Carolyn Smith stated that the licensee has retained William Cheek, III as their attorney and that William Cheek requested that the matter be continued to the April meeting so he would have time to review the application to meet with his client and meet with the staff.

Commissioner Mathews made a motion to defer the matter to the April meeting. Commissioner Bond seconded the motion and it passed with 3 ayes.

2. TABC v. AMAL MEHTA

The purpose of this hearing is to determine whether the retail employee permit application submitted by Amal Mehta to work at Northside Discount Liquors should be denied. T.C.A. §57-3-703 prohibits anyone seeking an employee permit to have been convicted of any felony within five years of the date of the application. T.C.A. §39-16-702 sets forth that a person commits an offense of perjury, when “with an intent to deceive, (1) Makes a false statement under oath;...(2) Makes a false statement, not under oath, but on an official document required or authorized by law to be made under oath and stating on its face that a false statement is subject to the penalties of perjury.”

It is the position of the TABC staff that Mr. Mehta’s employee permit application should be denied because he was convicted of two felony counts of Filing False Income Tax Returns in January, 2005. On employee permit applications dated August 5, 2005; July 18, 2007; January 1, 2008; February 4, 1009 and January 15, 2010, Mr. Mehta failed to disclose his felonies.

Discussion/Action Taken:

Director Elks stated that this matter and the next matter are in conjunction with each other. One matter was Amal Mehta was an employee of the retail package store, but the staff believes he is the actual owner of Northside Discount Liquors. Director Elks stated that yesterday, Mrs. Rita Mehta came to the office and surrendered the retail package store license. Director Elks stated that because of the surrendering of the license and Mr. Mehta’s failure to appear, these cases are now moot and no action by the Commission is required.

3. **TABC v. RITA MEHTA, d/b/a NORTHSIDE DISCOUNT LIQUORS**
License Number: 3363

The purpose of this hearing is to determine whether the retail license held by Rita Mehta, d/b/a Northside Discount Liquors, (License Number 3363) should be revoked for violations of the following statutes:

T.C.A. §57-3-104(c)(2) sets forth that:

The commission shall have and exercise the following functions, duties and powers:

(2) Refuse to issue a license or permit if, upon investigation, the commission finds that the applicant for a license or permit has concealed or misrepresented in writing or otherwise any material fact or circumstance concerning the operation of the business or employment, or if the interest of the applicant in the operation of the business or employment is not truly stated in the application, or in case of any fraud or false answering by the applicant touching any matter relating to the operation of the business or employment. If a license or permit has been issued, the commission shall issue a citation to the licensee or permittee to show cause why the license or permit should not be suspended or revoked. All data, written statements, affidavits, evidence or other documents submitted in support of any application are a part of the application....

T.C.A. §57-3-208 requires that a certificate of compliance be issued to the applicant for an off-premise consumption license certifying that the “applicant or applicants who are to be in actual charge of the business have not been convicted of a felony within a ten-year period immediately preceding the date of application....

T.C.A. §57-3-210(c) sets forth that “No ... retailer shall be a person who has been convicted of a felony involving al turpitude within ten (10) years prior to the time the person or the concern with which the person is connected shall receive a license....”

T.C.A. §57-3-210(f)(1) sets forth the following:

It is unlawful for any person to have ownership in, or participate in, either directly or indirectly, the profits of any wholesale or retail business licensed under this chapter, unless the interest in such business and the nature, extent and character thereof shall appear on the application;....

T.C.A. §57-3-215 sets for the following:

New license after revocation. (a) Where a license is revoked, no new license shall be issued to permit the sale of alcoholic beverages on the same premises until after the expiration on one (1) year from the date such revocation becomes final and effective.

T.C.A. §39-16-702 sets forth the following:

(a) A person commits an offense who, with an intent to deceive:

- (1) Makes a false statement under oath; ...
- (2) Makes a false statement, not under oath, but on an official document required or authorized by law to be made under oath and stating on its face that a false statement is subject to the penalties of perjury.

TABC Rule 0100-3-.20 sets forth the following:

- (1) Employer Responsible for Employee's Action. Licensees are at all times responsible for the conduct of their business and are at all times directly responsible for any act or conduct of any employee which is in violation of the T.C.A. or the rules and regulations of the commission, whether the licensee be present at any such time or not. This section is defined to mean that any unlawful, unauthorized, or prohibited act on the part of an agent or employee shall be construed as the act of the employer, and the employer shall be proceeded against as though he were present and had an active part in such unlawful, unauthorized, or prohibited act, and as if having been at the employer's direction and with his knowledge.
- (2) In Disciplinary Action. In disciplinary proceedings, it shall be no defense that an employee or agent of a licensee acted contrary to order, or that a licensee did not personally participate in the violating action or actions.
- (3) Any manufacturer, importers, or representative of the same, and any wholesaler or retailer or employee of the same, who shall evade, or render direct or indirect assistance in the evasion of, the payment of the taxes imposed in sections 57-3-302, 57-3-303, and 57-6-201, T.C.A, or who shall violate or in any manner aid or abet or participate in any scheme to violate the local option law, or fails or neglects to comply with any regulations here in before set out, shall be deemed to

- (4) have given cause for suspension or revocation of his license, or permit, or if holding no license or permit, to have given cause for withdrawal or suspension of any privilege granted in Tennessee, as the Commission in its discretion.

It is the position of TABC Staff that License Number 3363 should be revoked because Ms. Rita Mehta is not the true owner/operator of the retail business. Specifically, her husband, Mr. Amal Mehta is the true owner/operator of the business, and he is prohibited from having any ownership interest in the business because of his two felony convictions in 2005 for Filing False Income Tax Returns. Further, Mr. Mehta transferred ownership of the business to his wife in October, 2003, to avoid having his license revoked. However, since that time, Mr. Mehta has continued to operate all aspects of the business, and in no documentation submitted to the TABC since 2005 on behalf of the retail store has Mr. Mehta's convictions been disclosed—including license renewal applications and renewal employee applications. Nor, has Mr. Mehta's ownership interest in the business been disclosed to the TABC. Thus, both Mr. and Mrs. Mehta have submitted false information to the TABC—upon which the TABC has relied upon when renewing licenses and permits.

Discussion/Action Taken:

Discussion/Action Taken:

Director Elks stated that this matter and the next matter are in conjunction with each other. Director Elks stated that yesterday, Mrs. Rita Mehta came to the office and surrendered the retail package store license. Director Elks stated that because of the surrendering of the license and Mr. Mehta's failure to appear, these cases are now moot and no action by the Commission is required.

6. BUDGET

7. CONSENT ORDERS

8. PENDING MATTERS LIST

9. MISCELLANEOUS

- A. Monthly Summary of TABC Activity** – Chairman Jones requested that the Monthly Summary be sent to the Legislative Body. Director Elks stated that the Monthly Summary could be placed on the web-site.

Server Training Information – Assistant Director Smith stated that an agreement was reached between Brad Green, trainer, and the staff.

Assistant Director Smith stated that the staff will allow trainers to drop off applications and then trainers will be allowed to pick up the server permit cards for servers who sign a written authorization allowing the trainer to do so. Servers will have a choice to either mail their own application in, visit a TABC office or sign an authorization allowing a trainer to drop off their application and deliver their \$5.00 and pick up their server permits. Assistant Director Smith stated that by doing this, the staff will have a written trail where the staff will see that a server permit has been issued to a trainer who is now responsible to giving the server permit back to the server. Assistant Director stated that other individuals will not be allowed to pick up the server permits because the staff will have no recourse against third party.

Assistant Director Smith stated that the staff will send a notice to all trainers stating the staff will be making this effective April 15 so that all trainers are aware of this and can start at the same time.

B. Legislative Update

- 10. DATE OF NEXT MEETING** – Thursday, April 22 and Thursday, May 20, 2010 at 1:30 p.m.

John A. Jones
Chairman

Shari Danielle Elks
Executive Director