

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

Minutes
May 20, 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. Commissioner Harlan Mathews and Commissioner Cynthia Bond were not present; thus, a quorum was not present. Executive Director Danielle Elks, Assistant Director Carolyn Smith, CLEO Mark Hutchens were present.

Joesph Andrew Baker, Tony Wayne Breeden, John Cory Cottongim, owners of the Ole Smoky Distillery and Ole Smoky Bottle Shop were also present. They requested that their applications be heard based upon the reasons set forth below in the narrative.

Due to the circumstances set forth below regarding Ole Smoky Distillery and Ole Smoky Bottle Shop, these two applications were reviewed.

1. The Minutes for April 22, 2010 Commission Meeting were not reviewed.

2. OLD BUSINESS:

A. RETAIL

1. CORSAIR ARTISAN, LLC

Applicant: Corsair Artisan, LLC
Members: Darek Bell and Andrew Webber

Before the Commission is a request for a new retail store to be located on the premises of a new distillery, (see April 22, 2010 regular agenda). T.C.A. §57-3-204(f) allows a manufacturer to be issued a retail license to be located on the manufacturer's premises—irrespective of whether the municipality has passed a retail referendum and irrespective of residency. However, such retailer may only sell special novelty decanters in a 750ml size only. Corsair Artisan is an existing business in Kentucky; as such, Mr. Bell and Mr. Webber invested \$44,277 from personal savings in 2008. Additionally, a line of credit in the amount of \$125,000 and a loan for \$50,000 from The Bank of Nashville exists. The applicant LLC will be leasing the property from Barry Walker, d/b/a Marathon Village for a period of 4 years (with an option to renew): monthly rental will begin at \$3150 and increase to \$4200. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules/regulations;

- c. Certificate of compliance;
- d. Affidavit of publication and a copy of the newspaper notice;
- e. Copies of the line of credit and loan agreement;
- f. Bank credit check.

Action Taken April 22, 2010:

Henry Hildebrand, III objected to the issuance of the license because he has concerns that this matter was not given advance notice. Mr. Hildebrand stated that he will probably have no objection to the issuance of the distillery license; but that the retail package store at the location of the distillery did not have notice of this matter and it should be disclosed to the retail package stores within the area. His second objection was that the statute which allows Jack Daniels Distillery in Moore County to have a retail package store which was addressed by Director Elks indicates that there has to be a local option election to permit the retail package store to be located at the distillery. Mr. Hildebrand stated that he did not know if Davidson County had that referendum.

Chairman Jones made a motion to defer the matter to the May Commission meeting. Commissioner Mathews seconded the motion and it passed with 3 ayes.

2. CREATE-A-WINE PROPOSAL—JOHN MANIS

John Manis was present at the meeting. Director Elks advised the Commission that she has concerns that this business would be legally able to operate under the laws of Tennessee without a winery license. Director Elks summarized Mr. Manis's operation as a business that sells wine making equipment and other associated materials, and provides instruction for individuals on the process of how to make wine. The individuals that would come to the business and would sign a contract with Mr. Manis and would that this alcohol was not for resale and is for home consumption and home purposes only. Mr. Manis, for a charge, would sell wine making equipment to the individual and would instruct them on how to make the wine on his premises and, if necessary, would store the wine and allow it to ferment on the licensed premises until such time as the individual takes the product away.

Director Elks previously advised Mr. Manis that the staff believed he would have to obtain a winery license before this could take place because the winemaking was actually taking place away from the individual's home.

Chairman Jones made a motion to continue this matter to the May Commission meeting because this issue needed additional time for review.

3. NEW BUSINESS

1. RETAIL MATTERS

**A. LIQUOR WORLD OF LEBANON
LEBANON, TENNESSEE (WILSON COUNTY)**

Licensee/Seller: Navin Patel
Applicant/Buyer: Diana Patel

Before the Commission is a request for a transfer of ownership of the retail store located at 623 South Cumberland Street, in Lebanon, Tennessee. On January 26, 2009, Mr. Navin Patel pled guilty to two felonies—specifically, theft over \$10,000 and tax evasion. Mr. Patel received a three year sentence, but was subject to post trial diversion pursuant to T.C.A.> §40-35-313. On November 25, 2009, Mr. Patel passed away, and pursuant to his will, his wife would inherit all his assets (including the retail store). Mrs. Patel is now making application to transfer ownership. It should be noted that the store owes the Department of Revenue over \$360,000. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules/regulations;
- c. Lease/Deed to Diana Patel;
- d. Partial pay agreement with the Department of Revenue;
- e. Use and Occupancy permit.

**B. OLE SMOKY BOTTLE SHOP
GATLINBURG, TENNESSEE (SEVIER COUNTY)**

****(To be heard after Distillery Application below)**

Applicant: Ole Smoky Distillery, LLC
Members: Joesph Andrew Baker, Tony Wayne Breeden, John Cory Cottongim

Before the Commission is a request for a new distillery to be located at 903 Parkway, Suite 128 and 129, in Gatlinburg, Tennessee. Mr. Baker wishes to initially invest approximately \$154,000; Mr. Breeden and Mr. Cottongim will not initially invest any money. (Mr. Baker has loaned the LCC the \$154,000 as evidenced by promissory notes.) If approved, Mr. Baker will own 70% of the stock; Mr. Breeden and Mr. Cottongim will each own 15% of the stock. The LLC applicant is leasing the property from MacKinnon Development, LLC for a period of ten years with rent beginning

at \$1426.25/month and increasing to \$1497.56/month. In addition to the base rental amounts, the LLC is also required to pay 2% of its gross sales monthly to the landlord as additional rents. All documentation has been submitted with the exception of the following:

- a. Lease to MacKennon Development from ILM Rentals, LP.

Discussion/Action Taken:

Joseph Andrew Baker, Tony Wayne Breeden and John Cory Cottongim were present from Gatlinburg. Mr. Baker stated that they needed the application reviewed, and if possible, the license issued because the tourism season is beginning and it is the most important months to conduct business in Gatlinburg. If unable to obtain a license until June, 2010, the distillery and retail store would lose approximately 30% of their projected annual sales because of the Memorial Day Holiday and the beginning of the tourism season.

Chairman Jones stated that due to the exceptional circumstances surrounding the absence of two Commission members and the urgency associated with this application, he requested Director Elks to review the application. Director Elks reviewed the application for Chairman Jones and indicated that the application was complete and in order.

Chairman Jones gave the staff the authority to grant a conditional, temporary license to the retail package store subject to approval before a full Commission in the June Commission meeting.

4. DISTILLERY MATTERS

**A. OLE SMOKY DISTILLERY
GATLINBURG, TENNESSEE (SEVIER COUNTY)**

Applicant: Ole Smoky Distillery, LLC

Members: Joesph Andrew Baker, Tony Wayne Breeden, John Cory Cottongim

Before the Commission is a request for a new distillery to be located at 903 Parkway, Suite 128 and 129, in Gatlinburg, Tennessee. Mr. Baker wishes to initially invest approximately \$154,000; Mr. Breeden and Mr. Cottongim will not initially invest any money. (Mr. Baker has loaned the LCC the \$154,000 as evidenced by promissory notes.) If approved, Mr. Baker will own 70% of the stock; Mr. Breeden and Mr. Cottongim will each own 15% of the stock. The LLC applicant is leasing the property from MacKinnon Development, LLC for a period of ten years with rent beginning

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Action Taken:

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Chairman Jones gave the staff the authority to grant a conditional, temporary license to the retail package store subject to approval before a full Commission in the June Commission meeting.

5. CONTESTED HEARINGS

**A. TABC v. Chattanooga Restaurant Partnership, Inc. d/b/a Chattanooga Food & Drink
License No. 14826**

The purpose of this hearing is to determine whether License No. 14826 should be revoked. The revocation hearing is based on four outstanding citations, RI 09-1289, RI 09-1245, 09-0954, and RI 09-0557 and one Consent Order No. 17507, with an outstanding amount of \$12,000. The listed citations, which were not included in the consent order, were based on violations of the following statutes and agency rules:

T.C.A. §57-4-201(a)(3) applies the provision of T.C.A. §57-3-213(a) to all liquor-by-the-drink licenses. T.C.A. §57-3-213(a) and (b) set forth the following:

Each license shall expire twelve (12) months following the date of its issuance [...]. Each license issued pursuant to this chapter may be renewed upon application therefore by the licensee. The renewal application shall be accompanied by the payment of the annual fee for such license. Each license shall automatically expire twelve (12) months from the date of its issuance unless the licensee has filed a renewal application and paid the annual license fee or privilege tax required by this title.

T.C.A. §57-4-304(b)(1) sets forth the following:

When any licensee shall fail to make any return and pay the full amount of the tax as required by this chapter for as many as three (3) times during one (1) year licensing period, the commission, upon recommendation of the commissioner, may revoke or suspend the license held by such licensee in the same manner and under the same conditions as provided by §57-4-202.

T.C.A. §68-14-317(d) sets forth the following:

- (d) The most current inspection report furnished to the operator or person in charge of the establishment shall be posted in a conspicuous manner. If any violation noted on the report is required to be corrected within ten (10) days of the issuance of the report and a routine follow-up inspection shows that the violation has been corrected within the period of time, then a final report without notation of the violation shall be furnished to the operator or person in charge of the restaurant and the report shall be posted in lieu of the original report.

T.C.A. §57-4-203(h) sets forth the following:

No entity holding a license issued pursuant to §57-4-101 shall employ any person in the serving of beer, wine or other alcoholic beverages who does not possess a server permit from the commission. It is made the duty of the licensee to see that each person dispensing or serving alcoholic beverages, wine or beer in the licensee's establishment possesses such a permit, which permit must be on the person of such employee or on the premises of the licensed establishment and subject to inspection by the commission or its duly authorized agent when the employee is engaged in the performance of that employee's duties for the licensee.

Tenn. Comp. R. & Regs. 0100-1-.03(1) sets forth the following:

...[E]ach on-premise manager, assistant manager, and/or any individual working in such capacity and having duties which directly or indirectly impacts on the selling and dispensing of alcoholic beverages, must complete and submit to the Tennessee Alcoholic Beverage Commission a questionnaire prior to assuming their managerial duties.

T.C.A. §57-4-102(27)(A) set forth the requirements of a “restaurant” liquor-by-the-drink license as follows:

“Restaurant” means any public place kept, used, maintained, advertised and held out to the public as a place where meals are served and where meals are actually and regularly served, without sleeping accommodations, such place being provided with adequate and sanitary kitchen and dining room equipment and seating capacity of at least seventy-five (75) people at tables, having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests.

Tenn. Comp. R. & Regs. 0100-1-.03(5) states:

Refusal of Cooperation – Any licensee, his agent, or employee who refuses to open or disclose his records to, or furnish information to, an Agent of the Tennessee Alcoholic Beverage Commission upon any matter relating to or arising out of the conduct of the licensed premises shall subject the license to revocation or suspension.

It is the position of the TABC staff that Chattanooga Restaurant Partnership, Inc. d/b/a Chattanooga Food & Drink failed to timely renew its License No. 14826 in 2009. The corporation also failed to timely file and/or pay the liquor-by-the-drink taxes to the Tennessee Department of Revenue at least three (3) times in its 2009 licensed year. During a renewal inspection, on September 3, 2009, the establishment did not have a current health inspection posted. Also, the establishment did not have twelve (12) server permits available for inspection, and a management questionnaire was not on file with the Tennessee Alcoholic Beverage Commission for the manager, Mr. Keith Banks, on the inspection date. Additionally, the establishment did not have the proper number of indoor seats to meet the seventy-five (75) seat requirement to meet its restaurant seating requirement. Finally, the establishment failed to supply the TABC agent with the requested documentation for a food audit by the extended deadline date of January 14, 2009.

Therefore, it is the position of the TABC staff that the license should be revoked.

- 6. BUDGET**
- 7. CONSENT ORDERS**
- 8. PENDING MATTERS LIST**
- 9. MISCELLANEOUS**
 - A. Monthly Summary of TABC Activity**

10. **DATE OF NEXT MEETINGS** – Thursday, June 17 at 10:30 a.m.; Thursday, July 22 at 10:30 a.m.; Thursday, August 19, 2010 at 10:30 a.m.

John A. Jones
Chairman

Shari Danielle Elks
Executive Director