

TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

**MINUTES
THURSDAY, FEBRUARY 25, 2016
1:30 pm**

Chairperson McDaniel, Commissioner Jones and Commissioner Kaegi were in present. Executive Director, Keith Bell, Assistant Director, Ginna Winfree, Staff Attorney, Joshua Stepp were in attendance.

1. APPROVAL OF THE JANUARY, 2016 COMMISSION MEETING MINUTES –

Discussion/Action Taken: Commissioner Jones motioned for approval and Commissioner Kaegi seconded the motion; the motion passed with 3 ayes.

2. RETAIL MATTERS

A. OLD BUSINESS

B. NEW BUSINESS

**1. KEN'S LIQUOR STORE (LICENSE NO. 0214)
CHATTANOOGA, TENNESSEE (HAMILTON COUNTY)**

Applicant: Charles R. Williams, Sole Proprietor

Charles R. Williams and Terrell ("Terry") Williams (informal partnership) were the licensed owners of the retail package store (license no. 0214) doing business at 6015 Dayton Boulevard, Chattanooga, TN 37415. Mr. Terrell Williams ("Terry") passed away in late 2015; his widow has agreed to sell his interest in the business and real property to Charles Williams for \$400k. Charles Williams is now seeking approval to operate the store as a sole proprietorship. The TABC staff recommends conditional approval of this request, subject to receipt of the following:

a. ~~renewal inspection and renewal fee~~

Discussion/Action Taken: Item (a) was received prior to the meeting. Commissioner Jones motioned for approval and Commissioner Kaegi seconded the motion; the motion passed with 3 ayes. **Update: database shows Charles R. Williams as owner**

**2. DIXIE LEE WINES & LIQUORS (LICENSE NO. 1064)
FARRAGUT, TENNESSEE (KNOX COUNTY)**

Applicant: Dixie Lee Wines & Liquors, Inc.

Shareholders July of 2015¹ Proposed

¹ Shareholder and shareholder interest change that was conditionally approved at the July 21, 2015 Commission meeting.

Samuel H. Taylor, President & Director	00.000 %	00.000 %
Linda G. Taylor	25.916 %	34.640 %
Ellen T. Jones	18.521 %	16.340 %
Melanie J. Brown	18.521 %	16.340 %
Sam Taylor III	18.521 %	16.340 %
Andrew Taylor	18.521 %	16.340 %

The licensee doing business at 13044 Kingston Pike in Knoxville, Tennessee was conditionally approved for a change in shareholders and shareholder interest at the July 21, 2015 Commission Meeting; however, after the transfer was approved but before the transfer was consummated, there were changes in the amounts of stock transferred. The applicant is now seeking approval for those changes. The TABC staff recommends approval of this request.

Discussion/Action Taken: Commissioner Jones motioned for approval and Commissioner Kaegi seconded the motion; the motioned passed with three ayes.

**3. JACKSON LIQUORS (LICENSE NO. 3936)
ASHLAND CITY, TENNESSEE (CHEATHAM COUNTY)**

Applicant: Jackson Liquors, Inc.

Shareholder(s): Linda Jackson 50 %
Claude Jackson 50 %

Current Location: 1317 Hwy 12 South, Ashland City, Tennessee 37015
Proposed Location: 1319 Hwy 12 South, Ashland City, Tennessee 37015

Before the Commission is a request for approval of a transfer of location as specified above. The Jackson's own the real property where the business is being transferred to and are leasing the premises to the corporation for \$2,500 per month. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC Inspection (after build-out)

Discussion/Action Taken: Michael Jackson, Linda Jackson, and Claude Jackson were in attendance. Commissioner Jones motioned for conditional approval, subject to receipt of any missing items, Commissioner Kaegi seconded the motion and it passed with three ayes. **Update: database updated with new address**

**4. LEGACY WINE & SPIRITS
SMYRNA, TENNESSEE (RUTHERFORD COUNTY)**

Applicant: Reyan Inc.²

² Shareholders: Garurang Patel,43%; Chirag Patel, 30%; Tejal Patel,20%; Dipakkumar Patel,3%; Jigna Patel, 4%

The applicant was conditionally approved for licensing at the October 20, 2015 Commission meeting.³ The applicant requested and received an initial thirty day extension (extended until February 23, 2016) from the Director on January 5, 2016. Due to weather delays, the applicant is now requesting a second thirty day extension (until March 25, 2016) which must come before the full Commission. The TABC staff recommends approval of the request for an extension to become operational.

Discussion/Action Taken: Gaurang Patel and Chirag Patel were in attendance. Commissioner Jones motioned for approval of the extension, Commissioner Kaegi seconded the motion and it passed with 3 ayes. **Update: inspection requested 3.14.16**

**5. RIVERBEND WINE AND SPIRITS (LICENSE NO. 3445)
CLARKSVILLE, TENNESSEE (MONTGOMERY COUNTY)**

Applicant: Beach Liquors, LLC

Member(s): William Gordon Beach 50 %
William Gordon Beach II (Bill) 50 %

Pre-Approval	%	Proposed	%
William G. Beach	50	William G. Beach	50
Katherine A. Beach	50	William Gordon Beach (Bill)	50

Before the Commission is a request for approval of a partial transfer of membership interest in the LLC doing business at 1206 Highway 48, Suite A, in Clarksville, TN 37040. Bill Beach is purchasing his mother's interest in the store for approximately \$350k via seller financing.⁴ The TABC staff recommends approval of this request.

Discussion/Action Taken: Commissioner Kaegi motioned for approval and Commissioner Jones seconded the motion and it passed with 3 ayes. **Update: database updated**

**6. GORDINS WINE & LIQUOR SHOPPE
MEMPHIS, TENNESSEE (SHELBY COUNTY)**

Applicant: Gordin LLC⁵

Member(s): Michael Gordin 75 %
Toby M. Gordin 25 %

Current: William Benson, Sole Proprietor d/b/a Frayser Wine & Liquor (License No. 0563)

Proposed: Gordin LLC d/b/a Gordins Wine & Liquor Shoppe

³ The applicant was conditionally approved for licensing subject to receipt of the license fee, inspection, acknowledgment of Rules & Regulations, and Certificate of Occupancy. The license fee has since been paid.

⁴ The purchase will be paid back in monthly installments over ten years.

⁵ Gordin, LLC (dba Gordin's Wine & Liquor Shoppe Cost Plus) has a retail license (license no. 3952) at 1781 S. Prescott, ste 101, Memphis, TN 38111.

Before the Commission is a request for approval of a complete transfer of ownership regarding the retail store located at 3234 Thomas Street, Memphis, Tennessee 38127. Financing for the business has been verified by TABC staff, and if approved, the applicant will purchase the business from the seller for approximately \$137k.⁶ The applicant will lease the premises from landlord, Memphis Northgate Commons, LLC, for a term of five years at approximately \$2,500 per month. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. ~~Sales tax number for this location (received)~~
- b. ~~Alcohol Dealer Registration Form (for this new location)~~
- c. ~~Acknowledgment of TABC Rules & Regulations~~
- d. ~~TABC Inspection~~
- e. License Fee
- f. Resolution of outstanding citation for current owner re storage of liquor on second floor (***not listed on published agenda)

Discussion/Action Taken: Items a-d were received prior to the meeting. Item e is still needed. Item f came to the attention of staff after the agenda was published. Commissioner Jones motioned for conditional approval, subject to receipt of missing items and Commissioner Kaegi seconded the motion; the motion was approved with 3 ayes. **Update: citation paid; retail license # 4066 issued 3.14.16.**

**7. LIQUOR LOCKER
FAYETTEVILLE, TENNESSEE (LINCOLN COUNTY)**

Applicant: AANSHI 12 AARNA 23, LLC

Member(s): Vimarsh C. Patel, 100%

Current: William Clint & Janice Marie Caldwell, d/b/a The Liquor Locker (license no. 3010)

Proposed: Aanshi 12 Aarna 23, LLC d/b/a Liquor Locker

Before the Commission is a request for approval of a complete transfer of ownership regarding the retail package store located at 1604 Huntsville Hwy, Fayetteville, TN 37334. The applicant will purchase the business, including the commercial building and inventory, for a purchase price of \$275k.⁷ Financing for the business will come from a bank loan and funds gifted by relatives, as verified by TABC staff. Mr. Patel is purchasing the real property where the store is located and he will lease the premises to the applicant for a term of five years at a monthly rental rate of \$2,000. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

⁶ In accordance with Tennessee law, Sellers are to transfer title and possession of the liquor inventory to the applicant via TABC licensed wholesalers' involvement.

⁷ In accordance with Tennessee law, Sellers are to transfer title and possession of the liquor inventory to the applicant via TABC licensed wholesalers' involvement. The purchase price may be adjusted based on inventory value at closing.

- a. TABC Inspection
- b. Acknowledgment of TABC Rules & Regulations

Discussion/Action Taken: Vimarsh Patel was in attendance. Commissioner Kaegi motioned for conditional approval, subject to receipt of missing items, Commissioner Jones seconded the motion and it passed with three ayes. **Update: License # 4061 issued 3/2/2016.**

3. WINERY MATTERS -

A. OLD BUSINESS

B. NEW BUSINESS

1. BLUE SLIP WINERY (W-67) KNOXVILLE, TENNESSEE (KNOX COUNTY)

Applicant: Blue Slip Winery, LLC

Member(s):	B. Linn Slocum	40 %
	Paxton J. Gaylon	40 %
	Marvin L. House	10 %
	The Southern Station of Tennessee, LLC ⁸	10 %

The Southern Station of Tennessee, LLC (“Southern Station”) holds 10% ownership interest in the winery (winery license W-67) doing business at 300 W. Depot Street, Knoxville, Tennessee 37917, Knoxville, TN. The applicant is requesting approval for the addition of Ms. Sara Yoakley as a 5% (non-voting) member of Southern Station making her a .5% (one-half percent) owner in the winery. Additionally, three current members of Southern Station would increase their membership interest in Southern Station.⁹ The TABC staff recommends approval.

Discussion/Action Taken: Commissioner Jones motioned for approval and Commissioner Kaegi seconded the motion, it passed with three ayes.

2. WHITE SQUIRREL WINERY KENTON, TENNESSEE (OBION COUNTY)

Applicant: Bill Sanderson

Location: 115 N. Main St., Kenton, Tennessee 38233.

⁸ The Southern Station of TN, LLC: Voting Members: B. Linn Slocum, 10%; Paxton J. Gaylon, 10%; Marvin House, 10%. Non-voting members: Marvin House, 30%; Dan & Martha Raper, 5%; Ned & Alice Belt, 5%; Darryl & Melissa Jones, 5%; Claud Monroe, 5%; Tom McCarly & Densie Mortz, 5 %; David Dugger, 5%; B. Linn Slocum; 2.5%, Paxton Gaylon; 2.5% and Sara Yoakley, 5%.

⁹ B. Linn Slocum and Paxton Gaylon’s membership interest in The Southern Station of Tennessee, LLC will increase from 10% to 12.5% each (10% voting plus 2.5% non-voting) and Marvin House’s membership in The Southern Station of Tennessee, LLC will increase from 20% to 40% (10% voting plus 30% non-voting).

*Blue Slip was incorrectly numbered #4 on the published agenda.

White Squirrel Winery has been licensed as a farm-winery (FW-60) at 3804 Concord Rd. in Kenton, Tennessee; however, Mr. Sanderson is now requesting approval for licensing as a winery at 115 N. Main St., in Kenton, TN. The applicant is investing personal funds into the business and a lease is not required as Mr. Sanderson is the owner of the real property where the licensed winery will be located. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC Inspection
- b. TN Dept. of Agriculture approval

Discussion/Action Taken: Commissioner Jones motioned for conditional approval, subject to receipt of any missing items and Commissioner Kaegi seconded the motion; it passed with three ayes. **Update: license W-105 issued 03/01/2016**

4. FARM WINERY MATTERS -

5. WHOLESALE MATTERS

A. NEW BUSINESS

6. DISTILLERY/BREWERY

A. NEW BUSINESS

**1. TENNESSEE LEGEND
SEVIERVILLE, TENNESSEE (SEVIER COUNTY)**

Applicant: Crystal Falls Spirits, LLC
Member(s): Jay Holeman, 100%

D/b/a name before Commission approval: Crystal Falls Spirits
Requested D/b/a name: Tennessee Legend

Before the Commission is a belated request for approval of a d/b/a name change for the distillery licensee (license#124) doing business at 2874 Newport Hwy, Sevierville, Tennessee 37876. The TABC staff recommends conditional approval of this request, subject to receipt of the following:

- ~~a. resolution of outstanding citations (RI's 1475 & 1476) payment received~~
- ~~b. Payment of renewal fee received~~

Discussion/Action Taken: items (a) and (b) were received prior to the meeting. Commissioner Jones motioned for approval and Commissioner Kaegi seconded the motion and it passed with three ayes. **Update: database updated with new d/b/a name**

**2. YEE-HAW BREWING, LLC
JOHNSON CITY, TENNESSEE (WASHINGTON COUNTY)**

Applicant: Yee-Haw Brewing, LLC

Member(s): Baker Gift Trust, Charles R. Edwards, Jr. Trustee	64.66 %
Virginia J. Baker	6.52 %
Joseph A. Baker	6.51 %
John C. Cottongim	12.28 %
Charles R. Edwards, III	5.44 %
Sarah Edwards	3.48 %
John Edwards	1.11%

The brewery located at 126 Buffalo Street, Johnson City, Tennessee 37604 is requesting licensing from the TABC to manufacture high-gravity beer at that location. No additional funds are planned to be invested at this time as this is an existing business; however, the initial financial investment in the business was approximately \$800k, as verified by TABC staff. The applicant is leasing the premises of the real property from East TN, LLC for \$3,000 per month.¹⁰ The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. ~~Documentation of location approval by Johnson City~~
- b. ~~Distance requirement letter~~
- e. ~~TABC Agent Inspection~~
- d. ~~Acknowledgement of TABC Rules & Regulation~~
- e. ~~License Fee~~

Discussion/Action Taken: Attorney Rob Pinson was in attendance. All items listed were received prior to the meeting. Commissioner Jones motioned for approval and Commissioner Kaegi seconded the motion and it passed with three ayes. **Update: license no. 136 issued 02/29/2016**

**3. NEW HEIGHTS BREWING
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

Applicant: New Heights Brewing Company, LLC

Member(s): Tracey J. Fountain	50 %
Jeffrey T. Fountain	50 %

Before the Commission is request for licensing of a new brewery to be located at 928 5th Avenue South, Nashville, Tennessee 37203. Financing for the business has been verified by TABC staff and the applicant members are investing approximately \$800k using personal funds and a bank loan. The applicant will lease the premises from Gil Fuqua, Jr. for an initial term of five years at a monthly rental rate of

¹⁰ The initial term of the lease will expire in 2024; the lease includes option to renew.

approximately \$3500.¹¹ The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. TABC Agent Inspection
- b. Acknowledgment of TABC Rules/Regulations
- c. License Fee

Discussion/Action Taken: Tracy Fountain was in attendance with another representative of the company. Commissioner Kaegi motioned for conditional approval, subject to receipt of missing items and Commissioner Jones seconded the motion; the motion passed with three ayes. **License not issued as of 3.16.16**

7. PRIVATE CLUBS

A. NEW BUSINESS

1. AMERICAN LEGION POST 60 CLUB PULASKI, TENNESSEE (GILES COUNTY)

Applicant: American Legion Post 60 Club
Commander & Manager: Henry Damron, Commander
Terry Willoughby, Manager

Before the Commission is a request for licensing of not-for-profit private club located at 425 Legion Drive, Pulaski, Tennessee 38478. The applicant is a nonprofit organization organized and existing under the laws of the state of Tennessee. The club - organized and operated exclusively for pleasure, recreation and other non-profit purposes - has 226 members each paying approximately \$35.00 in annual dues. A lease is not required as the applicant is the owner of the real property. The TABC staff recommends conditional approval of this request, subject to receipt of the following items:

- a. ~~Sales tax #~~ (received)
- b. ~~TABC Inspection~~ (received)
- c. ~~Acknowledgement of TABC Rules & Regulations~~ (received)
- d. License Fee

Discussion/Action Taken: Items a-c were received prior to the meeting. Commissioner Kaegi motioned for conditional approval, subject to receipt of missing item and Commissioner Jones seconded the motion; the motion passed with three ayes. **Update: license no. 99486 issued 2/29/2016**

8. INITIAL ORDERS TO BE REVIEWED BY THE COMMISSION –

In the Matter of:

¹¹ Monthly rental rate will have increase to approximately \$3900 by year five of the term. The lease includes options to renew for two additional terms of five years each.

S&S Family Entertainment, LLC
D/b/a Hermitage Strike & Spare

Docket: 33.01-130587J

On August 11, 2015 a contested case was heard in Nashville, Tennessee before Administrative Judge Kim Summers. Joshua Stepp represented the TABC and Lauren Wells, Esq. represented the Respondent. Pursuant to the Initial Order issued on November 5, 2015, Judge Summers determined that the TABC did show “by a preponderance of the evidence a violation of Tenn. Code Ann § 57-4-203(b)(1)(B) for which suspension of Hermitage Strike and Spare’s liquor license is warranted.” Judge Summers ordered the Respondent’s liquor license to be suspended for a period of five (5) days. On or about November 17, 2015, the TABC staff filed a Notice of Appeal of Initial Order. Pursuant to Tenn. Code Ann. § 4-5-315(d)¹² the TABC, upon review of the initial order “shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing.” Such review shall not be limited, except as provided in Tenn. Code Ann § 4-5-319(d)¹³, and any portion of the I/O may be reviewed by the Commission, including, but not limited to, the imposition of a 5 day suspension, whether or not a longer suspension period is appropriate, and whether or not the TABC’s costs associated with the hearing and/or appeal should be awarded to the TABC pursuant to Tenn. Code Ann § 57-1-213.

Disc/Action/Taken:

This matter was a review of an Initial Order and the Commission afforded each side an opportunity to address the commission. General Manager, Linda Frizzel, attended the meeting on behalf of the licensee.

The Commission has great respect for the Administrative Procedures Division but determined that the five day suspension for Hermitage Strike and Spare ordered by the Administrative Law Judge to be more lenient than proper. In accordance with the historical precedent of the Commission, the seriousness of violations of T.C.A. § 57-4-203 regarding sales to minors, the social harm that may be inflicted through sales of alcoholic beverages and beer to minors, and the specific facts of this case, the Commission determined that a suspension of Respondent’s license for a period of 10 days is proper. Commissioner Kaegi motioned for a ten (10) day suspension of the license and to impose court costs upon Respondent. Commissioner Jones seconded the motion and it passed with three (3) ayes. A Final Order, modifying the I/O in accordance with the motion, will be filed with the Administrative Procedures Division. See the attached Initial Order and Final Order.

9. SERVER APPEALS - none

10. MISC – Business Wizard Demo: Chris Kim and Sheila Leslie presented a demo after the meeting.

¹² Tenn. Code Ann. § 4-5-315(d): The person reviewing an initial order shall exercise all the decision-making power that the agency would have had to render a final order had the agency presided over the hearing, except to the extent that the issues subject to review are limited by rule or statute or by the agency upon notice to all parties

¹³ Tenn. Code Ann. § 4-5-319(d): Except to the extent that this chapter or another statute provides otherwise, the agency record shall constitute the exclusive basis for agency action in adjudicative proceedings under this chapter, and for judicial review thereof.

11. NEXT MEETING – Tuesday, March 22, 2016 at 1:30 p.m.

12. UPCOMING MEETINGS

- Tuesday, March 22, 2016 at 1:30 p.m.
- Tuesday, April 26, 2016 at 1:30 p.m.
- May Commission Meeting date – **Tuesday, May 24, 2016 at 1:30 pm(set at the February Commission meeting)**

APPROVED FOR ENTRY UPON THE MINUTE BOOKS OF THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION THIS THE 22nd DAY of March 2016.



Mary McDaniel
Chairperson



Keith Bell
Executive Director

BEFORE THE TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

IN THE MATTER OF:

**TENNESSEE ALCOHOLIC BEVERAGE
COMMISSION,
*Petitioner,***

v.

**S&S FAMILY ENTERTAINMENT, LLC
d/b/a HERMITAGE STRIKE & SPARE,
*Respondent.***

License No. 105305

DOCKET NO: 33.01-130587J

INITIAL ORDER

This contested case was heard in Nashville, Tennessee on August 11, 2015, before Administrative Judge Kim Summers, assigned by the Secretary of State, Administrative Procedures Division, to sit for the Alcoholic Beverage Commission (ABC). Joshua Stepp, Staff Attorney, represented the ABC in this matter. The Respondent was represented by Lauren Wells, Esq.

The issue in this matter is the Respondent's alleged violation of Tenn. Code Ann. § 57-4-203. After consideration of the entire record, it is determined that the alleged violations have been proven by a preponderance of the evidence. This determination is based upon the following Findings of Fact and Conclusions of Law.

SUMMARY OF EVIDENCE

Five individuals provided witness testimony: Reginald McCullough, Special Agent with the Alcoholic Beverage Commission; Juan Gomez, Assistant Special Agent in Charge with the ABC; Ginna Winfree, ABC Assistant Director; Linda Frizzel, General Manager of Hermitage

Strike and Spare; and Sheila Moore, employee of Hermitage Strike and Spare, who testified that the date of birth on the driver's license at issue was 1993 and there was no red bar on the license indicating that the individual was under the age of majority.¹

Ten Exhibits were entered into evidence – EXHIBIT NO. 1, Regulatory Citation from March 17, 2015; EXHIBIT NO. 2, Regulatory Citation from December 12, 2014; EXHIBIT NO. 3, Pictures of Sheila Moore; EXHIBIT NO. 4, Pictures of the Confidential Informant; EXHIBIT NO. 5, Driver's License for Confidential Informant; EXHIBIT NO. 6, Internet Article from Channel 2 News; EXHIBIT NO. 7, Penalty Schedules; EXHIBIT NO. 8, Grant Document from the Governor's Highway Safety Office; EXHIBIT NO. 9, May 26, 2015 Letter from Mark Hutchens; EXHIBIT NO. 10, Penalty Guidelines.

FINDINGS OF FACT

1. Hermitage Strike and Spare is owned by S&S Family Entertainment and is licensed as a retail establishment for the resale of alcoholic beverages.
2. On December 12, 2014, Hermitage Strike and Spare was issued a citation and assessed a \$1500 civil penalty for selling an alcoholic beverage to a nineteen year old who was participating with the ABC on a compliance check. The offending employee was terminated, and Ms. Frizzel reinforced with the other employees the requirements for liquor sales.
3. Ms. Frizzel is a certified trainer for TIPS [Training for Intervention ProcedureS] and provides this training to employees of S&S Family Entertainment.
4. Pursuant to the grant from the Governor's Highway Safety Office, a compliance recheck must be done within ninety days of a violation.

¹ The Confidential Informant was not available to testify at the hearing because he died in an accident on or about July 15, 2015.

5. On March 17, 2015, Reginald McCullough and Juan Gomez with the ABC conducted a compliance check on fifteen licensed retail establishments along with an eighteen-year-old confidential informant.

6. In preparation for the compliance checks, the confidential informant was asked to remove all items from his pockets other than the marked currency provided by the ABC and his actual driver's license which clearly showed his date of birth as April 10, 1996, and the red bar stating that he will not be 21 until April 10, 2017.

7. During the March 17, 2015, recheck on Hermitage Strike and Spare, an alcoholic beverage was sold to the confidential informant by employee Sheila Moore. Reginald McCullough and Juan Gomez observed the sale and verified the identification used by the confidential informant.

8. Hermitage Strike and Spare was very busy on March 17, 2015, and Ms. Moore was filling in as a bartender, which was not her usual work assignment.

9. At the time of the sale, Ms. Moore had a server permit from the ABC, had been employed by S&S Family Entertainment for about a year, and had been stationed with Hermitage Strike and Spare for about one month.

10. A successful compliance recheck was conducted at Hermitage Strike and Spare on May 26, 2015.

11. The law limits a civil penalty to a maximum of \$1500. Accordingly, it is the internal policy of the ABC to suspend the retail license of any establishment that sells to a minor two times within a three-year period. If the second sale occurs during the 90-day recheck period, it is the internal policy of the ABC to impose a fifteen-day suspension. If the second sale occurs within three years but outside the 90-day recheck period, it is the internal policy of the ABC to

impose a ten-day suspension. This internal ABC policy has not been promulgated in a regulation or otherwise been incorporated into any document that is available to the public.

APPLICABLE LAW

1. RULE 1360-4-1-.02(3) of the Uniform Rules of Procedure for Hearing Contested Cases before State Administrative Agencies states, in pertinent part:

The “petitioner” in a contested case proceeding is the “moving” party, i.e., the party who has initiated the proceedings. The petitioner usually bears the ultimate burden of proof.

2. Tenn. Code Ann. § 57-4-203(b)(1)(B) provides the following prohibition with respect to the sale of alcohol to minors –

(B) Any licensee engaging in business regulated hereunder or any employee thereof who sells, furnishes, disposes of, gives, or causes to be sold, furnished, disposed of, or given any beer or malt beverage as defined in § 57-6-102 to any person under twenty-one (21) years of age is guilty of a Class A misdemeanor.

3. Tenn. Code Ann. § 57-4-202 provides the following penalties –

The commission shall have authority to revoke or suspend any permit granted herein for the violations of any applicable provision of this chapter, and any person aggrieved by the action of this commission in revoking or suspending a permit, or in refusing to grant a permit, may have such action reviewed as provided by the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

4. Pursuant to Tenn. Code Ann. § 57-1-201(b)(1)(A), the Commission may impose a maximum fine of one thousand five hundred dollars (\$1,500) against a retailer licensed under § 57-3-204.

ANALYSIS and CONCLUSIONS OF LAW

1. The ABC has shown by a preponderance of the evidence the two alleged violations of Tenn. Code Ann. § 57-4-203(b)(1)(B) by employees of Hermitage Strike and Spare.

The testimony of Ms. Moore regarding the driver's license used by the confidential informant during the recheck on March 17, 2015, was found to be self-serving and lacking in credibility.

2. The Commission **HAS** shown by a preponderance of the evidence a violation of Tenn. Code Ann. § 57-4-203(b)(1)(B) for which suspension of Hermitage Strike and Spare's liquor license is warranted.

3. Because the March 17, 2015 compliance recheck was conducted ninety-five days after the initial violation, the second violation did not occur within the 90-day recheck period. Accordingly, the Commission **HAS NOT** shown that Hermitage Strike and Spare would be subject to a fifteen day suspension pursuant to the internal ABC policy.

4. Since the two violations of Tenn. Code Ann. § 57-4-203(b)(1)(B) occurred within three years, Hermitage Strike and Spare would be subject to a ten day suspension pursuant to the internal ABC policy. However, this policy is not controlling in this administrative proceeding since the policy has not been publicized or formalized in the law, and the Commission **HAS NOT** otherwise shown that the ten-day suspension is warranted under the circumstances.

5. The termination of the offending employee after the first violation showed that Hermitage Strike and Spare understood the gravity of the situation and should have conveyed to the remaining employees the potential serious consequences of another violation. The record does not show what specific remedial measures Hermitage Strike and Spare may have taken to reinforce this message.

6. Because the offending employee was terminated after the first violation and the second violation occurred outside of the 90-day recheck period, it is determined that a five-day suspension of the liquor license is warranted and justified under the facts and circumstances of this particular case.

7. Accordingly, the Commission's decision to suspend the liquor license of Hermitage Strike and Spare is **UPHELD, in part**. Hermitage Strike and Spare's liquor license shall be **SUSPENDED** for a period of **FIVE DAYS**.

It is so **ORDERED**.

This INITIAL ORDER entered and effective this the 5TH day of NOV. 2015.



KIM SUMMERS
ADMINISTRATIVE JUDGE
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

Filed in the Administrative Procedures Division, Office of the Secretary of State, this the 5TH day of NOVEMBER 2015.



J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE

APPENDIX A TO INITIAL ORDER

NOTICE OF APPEAL PROCEDURES

Review of Initial Order

This Initial Order shall become a Final Order (reviewable as set forth below) fifteen (15) days after the entry date of this Initial Order, unless either or both of the following actions are taken:

(1) A party files a petition for appeal to the agency, stating the basis of the appeal, or the agency on its own motion gives written notice of its intention to review the Initial Order, within fifteen (15) days after the entry date of the Initial Order. If either of these actions occurs, there is no Final Order until review by the agency and entry of a new Final Order or adoption and entry of the Initial Order, in whole or in part, as the Final Order. A petition for appeal to the agency must be filed within the proper time period with the Administrative Procedures Division of the Office of the Secretary of State, 8th Floor, William R. Snodgrass Tower, 312 Rosa L. Parks Avenue, Nashville, Tennessee, 37243. (Telephone No. (615) 741-7008). See Tennessee Code Annotated, Section (T.C.A. §) 4-5-315, on review of initial orders by the agency.

(2) A party files a petition for reconsideration of this Initial Order, stating the specific reasons why the Initial Order was in error within fifteen (15) days after the entry date of the Initial Order. This petition must be filed with the Administrative Procedures Division at the above address. A petition for reconsideration is deemed denied if no action is taken within twenty (20) days of filing. A new fifteen (15) day period for the filing of an appeal to the agency (as set forth in paragraph (1) above) starts to run from the entry date of an order disposing of a petition for reconsideration, or from the twentieth day after filing of the petition, if no order is issued. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Initial Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

Review of Final Order

Within fifteen (15) days after the Initial Order becomes a Final Order, a party may file a petition for reconsideration of the Final Order, in which petitioner shall state the specific reasons why the Initial Order was in error. If no action is taken within twenty (20) days of filing of the petition, it is deemed denied. See T.C.A. §4-5-317 on petitions for reconsideration.

A party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. See T.C.A. §4-5-316.

YOU WILL NOT RECEIVE FURTHER NOTICE OF THE INITIAL ORDER BECOMING A FINAL ORDER

A person who is aggrieved by a final decision in a contested case may seek judicial review of the Final Order by filing a petition for review in a Chancery Court having jurisdiction (generally, Davidson County Chancery Court) within sixty (60) days after the entry date of a Final Order or, if a petition for reconsideration is granted, within sixty (60) days of the entry date of the Final Order disposing of the petition. (However, the filing of a petition for reconsideration does not itself act to extend the sixty day period, if the petition is not granted.) A reviewing court also may order a stay of the Final Order upon appropriate terms. See T.C.A. §4-5-322 and §4-5-317.



STATE OF TENNESSEE
ALCOHOLIC BEVERAGE COMMISSION
DAVY CROCKETT TOWER, 3RD FLOOR
NASHVILLE, TENNESSEE 37243-0755



PHONE 615.741.1602

FAX 615.741.0847

IN THE MATTER OF:)

TENNESSEE ALCOHOLIC BEVERAGE)
COMMISSION)

Petitioner)

v.)

S&S FAMILY ENTERTAINMENT, LLC)

d/b/a/ HERMITAGE STRIKE & SPARE)

3436 LEBANON ROAD)

HERMITAGE, TN 37076)

LICENSE # 105306)

Respondent)

DOCKET NO. 33.01-130587J

FINAL ORDER AMENDING IN PART THE INTIAL ORDER

This matter came to be heard by the Tennessee Alcoholic Beverage Commission (“the TABC” or “the Commission”) during a regularly scheduled meeting of the Commission on February 25, 2015, as a properly filed appeal from an Initial Order executed by Judge Kim D. Summers of the Tennessee Administrative Procedures Division (APD) on November 5, 2015. The meeting was held in full compliance with the open meetings laws, compiled in title 8, chapter 44 of the Tennessee Code Annotated (T.C.A.), and a quorum of the Commission was present with all members being present. The statements made in this order are consistent with the statements made at the commission meeting on February 25, 2015, and are hereby rendered in writing in accordance with T.C.A. § 4-5-315.

Pursuant to T.C.A. § 4-5-315(e), the Commission afforded each party an opportunity to present briefs and an opportunity to present oral argument. After considering the entire record, Commissioner Bryan Kaegi made a proper motion to suspend the license of Respondent for a period of 10 days, impose court costs upon Respondent pursuant to an affidavit of costs to be filed by staff of the TABC, and to modify the Initial Order executed on February 25, 2015 in accordance with this motion and the comments of the Commission. That motion was seconded by Commissioner John Jones and that motion was voted in the affirmative and approved by all members of the Commission. The findings of Judge Kim D. Summers (attached hereto as Exhibit A) have been affirmed by the Commission, except with regards to the following paragraphs which are hereby amended as follows:

- Paragraph 11 of “FINDINGS OF FACT” is hereby rewritten to instead read as follows: The Commission has full authority to suspend or revoke the licenses of licensees found to have been in violation of the laws of this state and/or the rules of this Commission, or, in the alternative, to impose civil penalties of up to \$1500 against licensees such as Respondent. A determination of the appropriate penalty to impose for such a violation is the sole purview of the Commission, subject to appeal in accordance with the law.
- A new Paragraph 12 is hereby added to “FINDINGS OF FACT”, and such paragraph 12 shall read as follows:
 - o 12. While the Commission has great discretion in such cases, historically, the Commission has imposed a suspension of at least 10 days for multiple violations of T.C.A. § 57-4-203 regarding sales to minors.
- Paragraphs 3 – 7 of “ANALYSIS and CONCLUSIONS OF LAW” are hereby removed and rewritten to instead read as follows:
 - o 3. The Commission **HAS SHOWN AND FOUND** that a suspension of Respondent’s license for a period of 10 days is proper, in accordance with the historical precedent of the Commission, the seriousness of violations of T.C.A. § 57-4-203 regarding sales to minors, the social harm that may be inflicted through sales of alcoholic beverages and beer to minors, and the specific facts of this case.
 - o 4. A penalty of less than 10 days is determined by the Commission to be more lenient than proper in this case. Notwithstanding this, the Commission gives great deference to the wisdom and judgement of the APD, and has considered the arguments and findings of the Initial Order in making it’s determination and in finding that a penalty of more than 10 days suspension would not be proper in this case.
 - o 5. The 10 day suspension of Respondent’s license, license # 105306, shall begin on Tuesday, April 26, 2016 at 12:01 a.m. and will conclude on Thursday, May 5, 2016 at 11:59 p.m. On days of suspension no sales of alcoholic beverages shall occur, no orders for alcoholic beverages shall be placed with wholesalers, and no deliveries of alcoholic beverages shall be accepted.
 - o 6. The Commission **HAS SHOWN AND FOUND** that the assessment of applicable court costs against Respondent pursuant to T.C.A. § 57-1-213. Respondent shall pay to the Commission \$1115 in court costs, including transcription services, as detailed and itemized in the affidavit of costs attached to this Final Order as Exhibit B. Such costs shall be paid to the Commission no later than July 22, 2016.
 - o 7. Accordingly, the Commission hereby orders that the license of Hermitage Strike and Spare, license #105306, be **SUSPENDED** for a period of **TEN DAYS** in the manner specified in this order, and that **COURT COSTS** as specified in this order shall be **ASSESSED TO HERMITAGE STRIKE AND SPARE**.

As specified in Appendix A to the Initial Oder of Judge Kim D. Summers, the Respondent has fifteen (15) days after the initial order becomes a Final Order to petition for reconsideration of the Final Order, and pursuant to T.C.A. § 4-5-316, a party may petition the agency for a stay of the Final Order within seven (7) days after the entry date of the order. Pursuant to T.C.A. § 4-5-322, parties may file a petition for review in the chancery court of Davidson county within sixty (60) days after the entry of the Final Order.

It is so **ORDERED**,

This FINAL ORDER AMENDING IN PART THE INITIAL ORDER entered and effective this the 22 day of March, 2016.


CHAIRMAN MARY MCDANIEL


COMMISSIONER BRYAN KAEGI

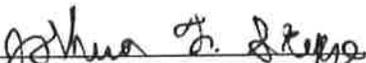

COMMISSIONER JOHN JONES

This Final Order has been filed Administrative Procedures Division, Office of the Secretary of State by hand delivery on this the 23 day of March, 2016, by:


Joshua Stepp
Staff Attorney
Tennessee Alcoholic Beverage Commission
(615)741-8916

CERTIFICATE OF SERVICE

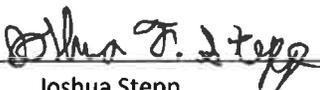
I certify that a true and exact copy of the ^{Final Order} ~~Notice of Hearing~~ was sent by U.S. Certified Mail, Return Receipt Requested, to S&S Family Entertainment LLC at 3436 Lebanon Road, Hermitage, Tennessee 37076 on this 23 day of March, 2016.


Joshua Stepp, Staff Attorney

AFFIDAVIT OF COSTS

I, Joshua Stepp, after being duly sworn, do hereby depose and state as follows:

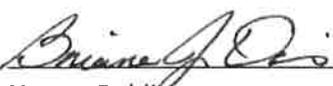
1. I am the staff attorney of the Tennessee Alcoholic Beverage Commission (TABC), and as such, I am authorized pursuant to Rule 0100-04-.02(3) to file a sworn affidavit setting forth an itemized statement of the services rendered regarding a contested matter. This affidavit is presented in relation to TABC v. S&S Family Entertainment, LLC docket number 33.01-130587J.
2. On January 26, 2015, the TABC was invoiced \$415 for transcription services by Court Reporter Pam Billingsley.
3. The TABC has been assessed and billed by Tennessee Administrative Procedures Division (APD) for the following court and court-related costs in this matter, totaling \$700.
 - a. \$200 for the initial docketing fee for this matter;
 - b. \$90 for .9 hours billed by the APD for the hearing of this matter on 08/11/2015;
 - c. \$450 for 4.5 hours billed by the APD for the preparation of the Initial Order on 11/03/2015;
 - d. An additional \$50 for .5 hours billed by the APD for the preparation of the Initial Order on 11/04/2015; and
 - e. \$10 for preparation of the technical record on 12/08/2015.


Joshua Stepp

State of Tennessee

County of Davidson

Subscribed and sworn to before me this 16th day of March, 201~~5~~⁶ by _____.


Notary Public

My Commission Expires: 1-6-20

