

The Banks County Board of Commissioners held a called meeting on December 14, 2010 at 5:00 p.m. in the Wilson Shoals Training Room of the Banks County Courthouse Annex to consider alleged business license and alcohol license ordinance violations by Sam's Food Mart. Present were Chairman Milton Dalton, Vice Chairman Joe Barefoot and Commissioners Ernest Rogers and Charles Turk. Commissioner Rickey Cain was absent. County Attorney Randall Frost was also present. Representing Sam's Food Mart was owner Junaid Hameed and Attorney Dylan Wilbanks.

Ch. Dalton called the meeting to order and turned the hearing over to the county attorney. Atty. Frost entered a copy of the show-cause letter issued from Ch. Dalton to Mr. Hameed dated December 7, 2010 as attachment to minutes P-1 and a copy of House Bill 1309 as attachment P-2. ***(Copy of the attachments filed in Attachment to Minutes Book 9-2)***

Investigator Brian Lord was sworn in by Atty Frost. Inv. Lord stated that on December 6, 2010 off -duty Banks County deputies notified him that they had observed K2 – Schedule I narcotic as regulated by the HB1309 of the Georgia Drug Act on the night before. He stated an informant purchased incense sold as fake weed and the clerk offered a pipe to smoke the substance. The informant also purchased the pipe. Inv. Lord stated a search warrant was then obtained and the store was searched and the clerk from the night before showed the officer where the K2 was and the drug with other suspicious substances were taken into custody by the Banks County Sheriff's Department. Atty Wilbanks asked what specific chemicals were regulated by HB1309. Inv. Lord stated there was a whole list and distributed HB1309 to those in attendance at the hearing. He also stated the substance was sold to be smoked and the package clearly states "not for human ingestion". Atty Wilbanks stated the chemical content of the substance had not yet been determined. Inv. Lord stated the substance was labeled K2 and that K2 is an illegal substance in the state of Georgia as stated in HB1309. He also stated that Mr. Hameed had received evidence from the manufacturer of the substance that there was no illegal chemicals in the substance that was sold. He also asked Inv. Lord if the crime tape that was placed on the building was removed, would it be a violation. Inv. Lord stated no. Atty Wilbanks then asked if the county had any confidential informants that reported redeeming any gaming winnings for either cash or alcohol. Inv. Lord stated no. Atty Wilbanks asked how much cash was seized from the machines. Inv Lord stated \$900 from the safe and then copies of receipts. He stated \$4,000 plus all together.

Major Joey Chapman was sworn in by Atty Frost. Major Chapman stated that on December 6, 2010 he saw several receipts that were discovered that had a place for people to sign stating they did not receive a payout of the gaming device winnings. He stated he received testimony from a former employee stating the establishment had paid out cash for winnings to certain customers on the gaming devices. Major Chapman stated the Sheriff's Office did not seize the gaming devices because of lack of storage space. He stated there were pictures of seven receipts in different monetary increments of winnings.

Mr. Hameed gave an unsworn statement that it was not a practice of the establishment to pay out cash for game winnings. He further stated he had no problem getting rid of the gaming machines. He stated he had spoken with the company that provided the K2 substance. He said the company had given him information stating the incense contained no illegal substance. He stated it was not the practice of the business to advise people to smoke the incense. Atty Wilbanks then presented copies of the report to the Commissioners. ***(Copy of the attachment marked as attachment P-3 and filed in Attachment to Minutes Book 9-2)***

Mr. Hameed stated he had not been in the convenience store in about 1½ months due to travel outside the country. Atty Wilbanks stated the lab report shows good faith that Mr. Hameed was trying to do the right thing. Comm. Rogers asked how long the board had to make a decision. Atty Frost stated a hearing must be held within 30 days. Comm. Rogers also asked how long it would take to get the lab results back from the state crime lab. Major Chapman stated 30 to 60 days depending on how far behind the lab is currently. Atty Frost suggested suspending the hearing and temporarily returning the business license until the lab results are received. Atty Wilbanks stated the risk of Mr. Hameed losing his license for the sale of a substance that is not illegal and being penalized for something that did not happen. He stated the business had already been closed for several days. Comm. Turk stated K2 was listed on the label and that the substance was sold as K2. Mr. Hameed stated yes. Vice Ch. Barefoot stated HB1309 clearly lists K2.

Atty Wilbanks stated all that is known at this time is that a substance was sold but the legality is not known at this time. Comm. Rogers stated concerns that it was sold as K2 on the label.

Vice Ch. Barefoot stated the business appears to have a history with the Sheriff's department and had just completed probation in April 2010 from the sell of alcohol to a minor. He also stated he concurred with the opinion that if the substance is labeled K2 - then it is K2. He then made a motion to retain the business license until the lab results from the alleged narcotic sold is received. Comm. Turk seconded. Four aye votes and motion passed.

Vice Ch Barefoot stated the gaming issue would be a moot point until the other issue is resolved. Atty Wilbanks objected to holding the license and stated they would not waive the 30 day time limit in order to provide time to receive the results. Comm. Rogers stated they would not make a ruling on the gaming issue at this time. The hearing ended at 5:59 p.m.

Chairman

County Clerk
