

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 7, 2018**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on March 7, 2018, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the NC ABC Commission within the Legal Division.

ROLL CALL

Chairman A.D. Zander Guy, Jr. and Commissioner Michael C. Herring were present. Chairman Guy stated his appreciation for the employees of the ABC Commission. Chairman Guy also added he is in the process of visiting the 168 ABC Boards across the state and those he has visited thus far have had great praise for the Commission staff.

MINUTES OF FEBRUARY 14, 2018 COMMISSION MEETING

Chairman Guy asked for a motion to waive the reading of the minutes of the February 14, 2018 meeting into the record. Commissioner Herring made a motion to waive the reading of the minutes. Chairman Guy seconded the motion. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the February 14, 2018 meeting. Commissioner Herring made a motion to approve the minutes. Chairman Guy seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. § 138A-35, Chairman Guy asked if there were any conflicts of interest or any conditions or facts which might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Herring stated he reviewed the agenda and found no conflicts of interest. Chairman Guy stated he found no conflicts of interest.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 57

Chief Counsel Renee C. Metz stated case number 1, EMZY Sushi Bar and Asian Kitchen, was a contested case and no one was present on behalf of the permittee. Mrs. Metz explained the case was for failure to file audit reports. The permittee failed to respond to the Administrative Law Judge's orders to file a prehearing statement and the judge issued a sanctions order which imposed a permanent suspension of the permittee's ABC mixed beverage permit. Mrs. Metz stated under the statutes, the mixed beverage permit could not be suspended permanently, but could be suspended for three years. Chairman Guy and Commissioner Herring inquired if the business would be able to apply for another mixed beverage permit or operate on a temporary permit. Mrs. Metz stated they would not.

Commissioner Herring made a motion to impose the Administrative Law Judge's decision of a suspension of the permittee's ABC mixed beverage permit as recommended. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated the next two cases were not included on the agenda. She explained the case for Monettes Grocery of New Bern had been on the February agenda as case number 15; however, the permittee asked if the Commission would readdress the case. Mrs. Metz stated James Monette, the permittee, was present, accompanied by his brother Jerry Monette who wished to address the Commission on his brother's behalf.

Mrs. Metz explained James Monette, Jr. had held ABC permits since 2003 without any prior violations. The violation in this case was for the possession of gambling equipment. Mrs. Metz added the Offer in Compromise had been signed on December 8, 2017, agreeing to a penalty of a 20-day suspension or the payment of a \$2,000.00 fine.

Jerry Monette stated during an inspection, ALE officers had cited the business for possession of video gaming devices. Jerry Monette added he was an elected sheriff and had experience with gaming machines and his brother's machines were not card games or poker machines. Jerry Monette stated the owner of the machines, Greg Muse was also present. Jerry Monette explained Mr. Muse had been charged criminally in Craven County approximately two years prior; however, he was found not guilty in that court.

Jerry Monette stated the business was a family business begun in 1964. The business had not received a violation prior to this one. Jerry Monette stated in the previous election he had run against a candidate who now serves as a reserve ALE officer. Additionally, his opponent's campaign manager was an ALE officer. Jerry Monette stated during that campaign cycle, a complaint was filed against the store for an underage sale. He explained after visiting the store for an investigation, an officer stated everything was being done properly. Jerry Monette suggested the violation was political in nature as it was once again election time. He presented a copy of an article printed in a local newspaper referencing sheriff's brother involved in a case.

James Monette had taken over after his father passed away without any violations. Jerry Monette stated his brother had signed the Offer in Compromise without understanding he was agreeing to the penalty. He believed by signing, he would be able to correspond with the Commission.

Mrs. Metz explained in Onslow County, a case had been ongoing since 2013, even up to the Supreme Court, for a dismissal of charges and a trial relating to the legality of gaming machines had not been begun. Mrs. Metz stated the case does not address if the machines are gambling or not. Mrs. Metz added there have been questions regarding the legality of the gaming machines for at least five years. Chairman Guy asked if there had been a violation of law. Mrs. Metz stated she did not know the particulars of the machine in question.

Mr. Muse of Eastern Amusement stated in December 2017, a judge had ruled in favor of sweepstakes machines in Onslow County. Mrs. Metz clarified; stating it had been confirmed by the attorney general's office the case would be appealed. Mr. Muse stated he believed the machines were legal. Mrs. Metz stated this case applied only to Sandhill Amusements and Gift Surplus Amusements.

After conferring with Chairman Guy, Commission Herring inquired how many machines were on the premises. Jerry Monette stated there were three machines. Commissioner Herring inquired if after the agent played on one of the machines, he received a cash payout. Both James and Jerry Monette stated there was not a cash payout.

Mrs. Metz stated the case was assigned to Assistant Counsel Rachel Spears who was not present adding the agent's violation report was included in the file. Commissioner Herring stated in the

violation report, the agent was able to leave the establishment with more money than he played in the machine. Jerry Monette stated he did not know if it was an inspection or undercover operation, but the machine did not pay money. Jerry Monette inquired if the violation report specifically addressed Monettes Grocery, Commissioner Herring stated it did. Commissioner Herring inquired if it was policy to pay out on the machines.

Mr. Muse interjected, according to the sweepstakes statutes a person could buy with an online shopping certificate then play the sweepstake game. Mr. Muse added if the player was skillful at the game and was successful, they could be awarded a prize. Commissioner Herring asked if that prize was cash. Mr. Muse confirmed it was cash.

Mrs. Metz stated two gaming machine companies; Gift Surplus and Sandhills Amusements, the two plaintiffs in the previously referenced case, have been avoided by the Commission and agents due to an injunction. Mrs. Metz stated with some of the machines, a player could pay \$5.00 and receive a code for phone time, which could then be used to play on the machine and if won, converted to cash. Mrs. Metz stated the machine at Monettes Grocery allowed the player to insert money, push buttons and receive a cash payout upon winning.

After conferring with Commissioner Herring, Chairman Guy asked the Monettes what they were requesting of the Commission. Jerry Monette stated they were requesting relief regarding the penalty and James Monette stated he wanted his name cleared. Jerry Monette stated inspections have been ok; however, he believes as the election cycle begins the inspections seem to be affected.

After conferring with Commissioner Herring and Mrs. Metz, Chairman Guy asked Mrs. Metz if she had any recommendations regarding the penalty as it appeared the legality of the machines was in question. Mrs. Metz stated she would recommend a fine of \$700.00-\$750.00. Mrs. Metz explained the lower level gambling penalties begin at \$500.00 and the ones involving machines begin at \$2,000.00. Mrs. Metz explained questions regarding the legality of the gaming machines have been debated since 2000. Mrs. Metz recommended a 7-day suspension or a payment of a \$750.00 penalty to avoid the suspension.

Commissioner Herring made a motion to reduce the penalty to a 7-day suspension or payment of \$750.00. Chairman Guy seconded the motion. Motion Passed.

James Monette stated he would ask ALE for clarity regarding the rules and guidelines. Mrs. Metz stated ALE would not likely have clarity at this time as the case goes from Onslow County to statewide, then back to Onslow County.

Mrs. Metz stated the second case to be added to the agenda was regarding Club Royale in Charlotte which was to be heard during the April 2018 Commission Meeting. Mrs. Metz explained a new applicant wished to obtain permits for the business, therefore, they asked the case be heard early so the pending case could be settled. Mrs. Metz stated the case was assigned to Assistant Counsel Missy Welch and continued by explaining the business was a private club with violations for being open to the public and failure to have each prospective member complete an application. Mrs. Metz added since obtaining the ABC permits in 2014, there were two previous violations in 2016, including possession of spirituous liquor without tax stamps and open to the public. Mrs. Metz stated today the case regarding the open to public and not completing membership applications violations would be settled with a penalty of a 7-day suspension or payment of a \$750.00 fine.

Commissioner Herring inquired if after the penalty was paid, the permittee would no longer be in business. Mrs. Metz stated the permits would be turned in allowing the new applicants to apply for permits. Commissioner Herring made a motion to follow staff's recommendation of an offer for a 7-day suspension or \$750.00 fine. Chairman Guy seconded the motion. Motion Passed.

As no one else was present regarding a case, Mrs. Metz asked the Commission to ratify the remaining Offers in Compromise. Commissioner Herring made a motion to ratify the remaining Offers in Compromise. Chairman Guy seconded the motion. Motion Passed.

II. ABC STORE LOCATION – BRUNSWICK COUNTY ABC BOARD

Administrator Robert A. Hamilton stated the Brunswick County ABC Board had requested approval to purchase property to construct and operate an ABC Store at 3660 Maco Road in Leland, North Carolina. The new store would replace an existing store located at 5211 Andrew Jackson Highway in Leland which is currently being leased. This store would be closed upon the opening of the new store.

Mr. Hamilton explained the property is a 1.5 acre parcel and is zoned C-3 which allows for an ABC Store. Mr. Hamilton stated the proposed property is owned by James and Monica Rolquin. He added there are no personal or financial interests shared between the property owners and the Craven County ABC Board members. Financial disclosure forms have been provided by the Board members. Mr. Hamilton stated a proposed purchase price of \$218,000.00 for the 1.5 acre property. Mr. Hamilton explained the Board proposes to construct a building of 3,000 SF. The cost to build the proposed building is approximately \$500,000.00.

The nearest school is located approximately .3 miles away by car; however, the distance from the property line to the school structure is approximately 600 feet. The nearest church is located approximately .3 miles away. The nearest ABC Store is approximately 3.6 miles from the proposed store and will be closed upon the opening of the proposed store. The next nearest ABC Store is located approximately 10 miles away in Belville.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was posted on January 24, 2018; however, to meet requirements, a new sign was posted on February 7, 2018. Mr. Hamilton stated the 30-day requirement for the proper posting of the sign would end on March 8, 2018. Mr. Hamilton stated no objections have been received to date. Mr. Hamilton stated the projected first year sales were \$1.3 million and staff recommended approval.

Chairman Guy asked if anyone was present who wished to speak to the Commission regarding the proposed location. The Brunswick County ABC Board Chairman, Mitchell Williams, was present. Mr. Williams explained the current ABC store had been in the building for 18 years. However, the building has severe foundation issues and with the building's proximity to the four-lane Highway 74/76, the building shakes whenever a semi-trailer passed. Mr. Williams explained a contractor stated it would not be worth the expense to repair the building; additionally, the landlord did not wish to repair the building or renew the lease. Mr. Williams added the Board could not consider properties to the west because of the proximity to Columbus County.

Commissioner Herring made a motion to approve the proposed location upon staff recommendation, contingent upon no objections being received by the close of the business day on March 8, 2018. Chairman Guy seconded the motion. Motion Passed.

III. OTHER BUSINESS – CONSIDERATION OF THE TOWN OF KENANSVILLE’S REQUEST TO CHANGE THE KENANSVILLE ABC BOARD FROM FIVE MEMBERS TO THREE MEMBERS

Mr. Hamilton stated on February 8, 2018, he received notification from the Town of Kenansville requesting the Kenansville ABC Board be granted permission to reduce the number of board members from five members to three members. Mr. Hamilton explained the statutes required the approval of the Commission to change the number of board members. Mr. Hamilton added staff recommends approval to reduce the number of board members from five to three.

Chairman Guy asked if anyone was present from Kenansville who wishes to address the Commission regarding this request. As no one was present, Chairman Guy made a motion to approve the request. Commissioner Herring seconded the motion. Motion Passed.

IV. EXEMPTION REQUEST – G.S. § 18B-1116(b) – PINNIX DISTILLERY, INC. d/b/a EDA RHYNE DISTILLERY AND CHRISTOPHER BRIAN BOWER

Mrs. Metz stated attorney Jennifer Morgan was present on behalf of the petitioner. Mrs. Morgan stated she was with the firm Williams and Mullins. Mrs. Morgan added she was accompanied by Keith Capp also of the law firm and Taylor Daughtry, a law student from Campbell University. Mrs. Morgan explained they represent Pinnix Distillery d/b/a Eda Rhyne Distillery and Chris Bower. Mrs. Morgan added the distillery, located in Asheville, intends to distill liquor from medicinal recipes using native mountainous plants.

Mrs. Morgan explained Mr. Bower is a 33% owner of the distillery, a 70% owner of Lazy Diamond, Inc. and also has 60% of the ownership of Double Crown, both establishments holding ABC retail permits. Mrs. Morgan stated the exemption was needed to allow Mr. Bower’s partial concurrent ownership in the distillery and the retail entities under G.S. 18B-1116(b) which prohibits cross-ownership.

Mrs. Morgan explained each of the retail entities has a general manager who controls the products purchased and served at that business. Mrs. Morgan added spirituous liquor must be purchased through the ABC system. Mrs. Morgan stated the distillery is small and its first-year production goal of 1,200 cases may even be ambitious.

Mrs. Metz stated staff recommends approval. Commissioner Herring asked for more information regarding the products. Mrs. Morgan stated they would be distilling sipping bitters using herbs and flowers found in the mountains. The bitters would be distilled as whiskey and vodka versions based upon family recipes.

Commissioner Herring made a motion to approve the exemption request. Chairman Guy seconded the motion. Motion Passed.

V. OTHER BUSINESS – POSSIBLE CONSIDERATION PROPOSED PERMANENT RULES

Walker Reagan, the rules coordinator, requested the Commission consider the Permanent Growler Amendment Rules. Mr. Reagan explained the Commission adopted temporary rules regarding the

growler amendments on October 26, 2017 and they went into effect on November 28, 2017. Since that date, the ABC Commission has not received comments or concerns regarding the implementation of the temporary rules in the statutes. Mr. Reagan stated it was necessary to proceed with making the rules permanent. Mr. Reagan explained the legislature stated the temporary rules would remain in effect until the Commission adopted permanent rules. On February 21, 2018, Mr. Reagan forwarded the temporary rules to the Rulemaking Committee email list to determine if there were any issues or concerns.

Mr. Reagan stated there was no opposition and the only comments received was from the NC Retail Merchants Association in support of making the rules permanent and from the Wine Institute stating they were still generally opposed to merchants being allowed to use the growlers for wine. However, the Wine Institute stated they did not have a problem with the rules as they were when temporarily adopted.

Mr. Reagan stated staff recommends the rules be filed with the Office of Administrative Hearings for publication in the NC Register. Mr. Reagan also requested the rules be emailed to the Rulemaking Committee list and posted on the ABC Commission website. Additionally, Mr. Reagan asked a public hearing be scheduled as required by law for June 13, 2018 during the Commission's meeting. Mr. Reagan also requested the public comment period be open until June 13, 2018 and the Commission allow staff to make non-substantive changes to the rules as needed.

Chairman Guy asked if anyone was present who wished to comment on the proposal. Ad no one was present, Commissioner Herring made a motion to adopt the proposed Growler Amendment Permanent Rules as presented with the recommendations of the staff. Chairman Guy seconded the motion. Motion Passed. Chairman Guy thanked Mr. Reagan on his work with the rules.

VI. OTHER BUSINESS

Mrs. Metz stated Nick Johnson addressed the Commission during its meeting on January 17, 2018. Mr. Johnson stated he had previously addressed the Commission during the public comment period regarding the special orders rules. Mr. Johnson explained the problems he had experienced with special orders from the Durham County ABC Board still continued. Mr. Johnson stated he had worked with Laurie Lee, the Pricing Director as requested; but as the problems still remained, he was present to provide an update. Mr. Johnson stated he was still having the same issues and added he believed it was a county issue.

Commissioner Herring inquired if the problems involve special orders. Mr. Johnson stated special orders placed are not forwarded to the ABC Warehouse in a timely manner which seem to be both organizational and accountability issues. Mr. Johnson stated they order quarterly and cited an occasion where the order took 87 days even though it was an item in stock in the warehouse. Commissioner Herring inquired if the problem was not delivery from the distillery, but an issue with ordering from the warehouse. Mr. Johnson stated the items were in stock at the ABC Warehouse. Mr. Johnson also referred to an order placed on August 22nd which was not submitted to the ABC Warehouse until 50 days later. Mr. Johnson added Durham County ABC Board had a new general manager who said the right things to him, but nothing has changed regarding special orders.

Commissioner Herring asked Mr. Hamilton if Ms. Lee had contacted the board regarding expediting special orders. Mr. Hamilton stated he believed she had and asked Mr. Johnson if the orders were prepaid. Mr. Johnson stated he had prepaid for the orders to create a paper trail. Mr. Hamilton asked if

the item was regularly ordered and Mr. Johnson stated it was. Mr. Johnson stated he believed staff turnover created part of the problem.

Chairman Guy requested Mr. Hamilton contact the Durham County ABC Board to discuss the complaint and determine what would be done to correct the issues.

Chairman Guy asked Mrs. Metz and Mr. Hamilton if there was any further business. Both stated there was none.

Chairman Guy made a motion to adjourn. Commissioner Herring seconded the motion. Motion Passed. With no further business, the meeting adjourned.

Approved at the April 18, 2018 Commission Meeting

/S/ A.D. "Zander" Guy, Jr.
A.D. "Zander" Guy, Jr., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

/S/ Caroline Y. Washburn
Caroline Y. Washburn for the Legal Section