

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 16, 2018**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on May 16, 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 expressed his appreciation for the hard work and diligence of the ABC Commission employees. Chairman Guy stated he was proud of the Commission staff and proud to work with them.

MINUTES OF APRIL 18, 2018 COMMISSION MEETING

Chairman Guy asked for a motion to waive the reading of the minutes of the April 18, 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 April 18, 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 – 80

Chief Counsel Renee C. Metz stated case number 1, Press Box Bar and Grille, was a contested case and no one was present on behalf of the permittee. Mrs. Metz stated Assistant Counsel Rachel Spears went to hearing for this case regarding the failure to qualify as a restaurant and falsifying 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 revocation of the permittee's ABC mixed beverage permit.

Commissioner Herring inquired if the revocation would affect the malt beverage and wine permits. Mrs. Metz stated the Commission has the authority to also revoke the malt beverage and wine permits, but they do not have to be included in the revocation. A revocation would prevent the permittee for applying for those permits for three years.

Commissioner Herring made a motion to uphold the Administrative Law Judge's decision of a revocation of the mixed beverage permit. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated a representative was present on behalf of case number 46, Elevated Grains. Mrs. Metz added the case was assigned to Assistant Counsel Missy Welch. Michael Cheek stated he was present to request leniency. Mr. Cheek stated they did not buy champagne from a wholesaler as they were not planning to sell it, but were giving it away on New Year's Eve. He added they were a new business and did not understand all the rules, but acknowledged they had made a mistake.

Chairman Guy asked Mrs. Welch for her comments. Mrs. Welch stated, as the permittee had only held permits for five months, she could not further reduce the penalty and suggested Mr. Cheek address the Commission.

After conferring with Chairman Guy, Commissioner Herring made a motion to reduce the penalty from \$700.00 to \$350.00. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated a representative was present on behalf of case number 38, Citgo Food Mart, which was also Mrs. Welch's case. Mukund Patel stated an employee had sold alcohol to an underage person and he was present to request a reduction of the penalty. Mr. Patel explained the business has held permits for 18 years without a violation.

Chairman Guy asked Mrs. Welch for her comments. Mrs. Welch stated, as the penalty had been reduced from \$2,000.00 to \$1,000.00 because the permittee had held permits since 1999 without a violation; however, Mr. Patel wanted additional reductions. Mrs. Welch explained the violation occurred during a compliance check with local law enforcement and the clerk did not ask the 18 year-old purchaser for identification.

Chairman Guy stated the Commission takes underage sales very seriously and because the penalty had already been reduced by 50%, it could not be further reduced.

Commissioner Herring made a motion for the penalty to remain as stated in the Offer. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated there were two additional matters which were not included on the agenda and asked the Commission if they would be willing to address them. Chairman Guy granted the request to address the matters.

Mrs. Metz stated Bob Nauseff was present on behalf of his client, Local 22. Mrs. Metz explained the offer had been approved during the April Commission Meeting. The violation was regarding premixing without prior approval and possession of a bottle of spirituous liquor with a tax stamp belonging to another business. Mrs. Metz explained Mr. Nauseff had requested reconsideration. Mrs. Metz added, as the penalty compliance dates were not yet in effect, the dates would not change if the penalty was adjusted.

Mr. Nauseff stated the circumstances were unusual as two restaurants, operating side-by-side under connected ownership, also had the same bar manager. Mr. Nauseff stated a patron at one of the businesses wanted an unusual drink and as the business did not have the necessary spirituous liquor, the bar manager retrieved a bottle of Dekuyper Buttershots from the location next door. Law enforcement found the bottle with another business' tax stamp and the bar manager admitted it was from their other business.

Mr. Nauseff explained the business was being proactive and had already held training sessions at both locations with Keith Whitfield for all the employees. As the business had been 13 years without a violation with the last occurring in 2005, Mr. Nauseff asked if the penalty could be reduced by half.

Commissioner Herring asked if this was the first premixing request for the business. Mr. Nauseff stated they had used premixes in the past. Commissioner Herring asked if premixing requests had been previously submitted for approval. Mr. Nauseff stated approval had been requested for those premixes. Mr. Whitfield stated the businesses offered specialty premixed drinks regularly in the past, but have since decided to eliminate these drinks from the menu. Commissioner Herring asked if the bottle of spirituous liquor with the wrong tax stamp was part of the premix. Mr. Nauseff stated it was not, but the patron had been adamant so the bar manager obtained the bottle from the other business and then kept it at that location. Commissioner Herring asked if the bar manager was still employed. Mr. Nauseff confirmed to his knowledge, he was still employed.

Commissioner Herring made a motion to reduce the penalty from \$1,000.00 to \$750.00. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated the second add-on case was also from the April Commission Meeting agenda. Mrs. Metz explained it was regarding Buffaloes Grocery located in Wilmington. Mrs. Metz stated there was a pending sentencing in Federal Court and the permittee's attorney explained they had agreed to surrender the permit upon the sentencing. Mrs. Metz added the permittee was attempting to earn money for the restitution. Mrs. Metz requested the compliance dates be continued to reflect the June Commission Meeting compliance dates to correspond with the June sentencing date.

Commissioner Herring made a motion to continue the matter to correspond with the June court date. 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.

Chairman Guy thanked the legal staff for their work.

II. ABC STORE LOCATION – ROWAN/KANNAPOLIS ABC BOARD

Administrator Robert A. Hamilton stated the Rowan/Kannapolis ABC Board asked for approval to lease property to open and operate an ABC Store at 322-326 Oak Avenue Mall Drive in Kannapolis, North Carolina. The proposed store will replace the existing store located approximately 150 feet away in the same shopping center. The new location would provide an additional 2,000 SF in anticipation of growth in the area. Mr. Hamilton stated, if approved, the store would open on October 1, 2018.

Mr. Hamilton stated the property had been approved with an order for certificate of nonconformity by the City of Kannapolis, as an adjustment had been made to the zoning the previous night to allow for an ABC Store.

Mr. Hamilton stated the property is owned by Atlantic American Properties, Inc. There are no shared interests between the owners and the Rowan/Kannapolis ABC Board and all Board members submitted financial disclosure statements. The lease price for the property is \$7.73 per SF, totaling

\$2,383.42 per month, with an annual increase of 3%. Mr. Hamilton added the proposed space is approximately 3,700 SF of which 60-80% will be used for retail sales.

The nearest school is approximately .6 miles from the proposed location. The nearest church is approximately 900 feet from the proposed location. The ABC Store located 150 feet away will be closed upon the opening of this store. The next nearest ABC Store is located 2.2 miles away and is also operated by the Rowan/Kannapolis ABC Board.

Mr. Hamilton stated the sign was properly posted on April 10, 2018 and there have been no calls or objections to the location. The anticipated first year sales are \$1.8 million. Mr. Hamilton added Terry Osborne, the General Manager of the Rowan/Kannapolis ABC Board, was present if the Commission had any questions. Mr. Osborne thanked Mr. Hamilton and Audit Investigator Edwin Strickland for their assistance.

Commissioner Herring asked if the church located approximately 900 feet from the proposed location had any objections or concerns. Mr. Osborne stated no objections had been received and the new location was in the same shopping center as the existing store. Mr. Osborne added a new ballpark was being constructed nearby and there was much growth in the downtown area.

Mr. Hamilton stated staff recommends approval of the location. Commissioner Herring made a motion to approve the proposed location upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

III. EXEMPTION REQUEST – G.S. § 18B-1116(b) – SPONSORSHIP AGREEMENT BETWEEN CAROLINA BREWING COMPANY, LLC AND THE HOLLY SPRINGS BASEBALL CLUB, LLC FOR ADVERTISING AT TING PARK STADIUM IN HOLLY SPRINGS

Mrs. Metz stated attorney Laura Collier was present on behalf of her client. Ms. Collier stated her client, Carolina Brewing Company, had received an exemption in 2015 to purchase advertising space at the Holly Springs Park. The ownership of both the Holly Springs Salamanders baseball team and the concessionaire has changed since the exemption was granted. Ms. Collier also explained, in February 2018, an exemption was granted to Bull City Hospitality and Capitol Broadcasting Corporation, Inc. Ms. Collier stated this exemption request is to allow Carolina Brewing to enter into a sponsorship agreement with Holly Springs Baseball, which includes advertising placed at Ting Park Stadium. Ms. Collier stated malt beverage products would be purchased through a third-party wholesaler.

Mrs. Metz stated staff recommended approval of the exemption request.

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

IV. RECONSIDERATION OF EXEMPTION REQUEST – G.S. § 18B-1116(b) – CAROLINA BACKYARD BBQ, INC. AND PETROPOULOS IMPORTS, INC.

Mrs. Metz stated this request was a continuation from the April Commission Meeting agenda for Petropoulos Imports and Carolina Backyard BBQ. Mrs. Metz explained when the exemption request

was presented, Kris Gardner of the NC Beer and Wine Wholesalers Association, had concerns and requested the matter be continued to the May Commission Meeting to allow discussions regarding the exemption. Mrs. Metz stated Petropoulos Imports, Inc. has agreed not to sell any of the imported wholesale products to the retail business. Mrs. Metz recommended approval of the exemption request with this condition.

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

V. CONSIDERATION OF READOPTION AND ADOPTION OF PROPOSED PERMANENT RULES FOR APPLICATIONS FOR PERMITS AND OTHER RELATED RULES – 14B NCAC 15A .0102; 14B NCAC 15A .0104, 14B NCAC 15B .0113; 14B NCAC 15B .1104

Walker Reagan, the rules coordinator, explained the rules were proposed by the NC ABC Commission at its meeting on February 14, 2018, as well as submitted to the Office of Administrative Hearings on that date. Mr. Reagan stated the proposed rules were posted on the ABC Commission's website on February 19, 2018. The proposed rules, the notice of public hearing, and notice of the public written comment period were published in the NC Register on March 15, 2018, and emailed to the ABC Commission rulemaking list on April 11, 2018.

Mr. Reagan stated the public hearing was properly noticed and held on April 18, 2018 at 10:00 am and the public comment period was noticed to end on May 14, 2018. Mr. Reagan explained the statutory time periods of holding a public hearing at least 15 days after publication in the Register and allowing written comments for at least 60 days after publication have been complied with. Mr. Reagan stated no public comments or written comments have been received.

Mr. Reagan recommended the Commission readopt the permanent application for permits rules as published in the NC Register and as presented. Also, Mr. Reagan recommended the Commission direct these rules be filed with the Office of Administrative Hearings for approval by the Rules and Review Commission and publication in the NC Administrative Code; and, authorize staff to make non-substantive changes as needed.

Commissioner Herring made a motion to readopt and adopt the rules as recommended by staff. Chairman Guy seconded the motion. Motion Passed.

VI. CONSIDERATION OF READOPTION OF PROPOSED PERMANENT RULE FOR PROHIBITED STATEMENTS IN ADVERTISING OR ON LABELS RULE. 14B NCAC 15B .1003

Mr. Reagan explained the rules regarding Prohibited Statements in Advertising or on Labels permanent rules were proposed by the NC ABC Commission at its meeting on February 14, 2018, as well as submitted to the Office of Administrative Hearings on that date. Mr. Reagan stated the proposed rules were posted on the ABC Commission's website on February 19, 2018. The proposed rules, the notice of public hearing, and notice of the public written comment period were published in the NC Register on March 15, 2018, and emailed to the ABC Commission rulemaking list on April 11, 2018.

Mr. Reagan stated the public hearing was properly noticed and held on April 18, 2018 at 10:00 am and the public comment period was noticed to end on May 14, 2018. Mr. Reagan explained the statutory time periods of holding a public hearing at least 15 days after publication in the Register and allowing written comments for at least 60 days after publication have been complied with. Mr. Reagan stated no public comments were received; however, one written comment had been received from the Wine Institute concerning the proposed language in 15B .1003(a)(4) which relates to advertising and labels which may be directed to persons under the age of 21. Based upon these comments, staff recommends the changes as set forth in the version of the rule being considered, as the Wine Institute believes the changes resolve its concerns.

Mr. Reagan recommended the Commission readopt the prohibited statements in advertising or on labels rules as published in the NC Register with the changes just presented. Also, Mr. Reagan recommended the Commission direct these rules be filed with the Office of Administrative Hearings for approval by the Rules and Review Commission and publication in the NC Administrative Code; and, authorize staff to make non-substantive changes as needed.

Chairman Guy made a motion to readopt the permanent prohibited statements in advertising or on labels rules as published in the NC Register with the changes just presented with the recommendation of staff. Commissioner Herring seconded the motion. Motion Passed.

VII. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Mr. Hamilton requested the Commission consider and confirm Wednesday, August 8, 2018, Wednesday, September 12, 2018 and Wednesday, October 10, 2018 as the dates of the August, September and October 2018 NC ABC Commission Meetings.

Chairman Guy made a motion to approve those dates as future meeting dates. Commissioner Herring seconded the motion. Motion Passed.

Chairman Guy thanked those in attendance, as well as the ABC Commission staff. With no further business, the meeting adjourned.

Approved at the June 13, 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