



OPERATIONS MANUAL

Alcoholic Beverage Control Boards
(Board Members, General Managers and Finance Officers)

North Carolina Department of Public Safety
Alcoholic Beverage Control Commission

August 2017



Operations Manual Acknowledgement of Receipt and Understanding

I acknowledge that I have carefully read and understand the contents of this Operations Manual in order to carry out the duties and responsibilities of my position.

PRINT NAME

POSITION

NAME OF BOARD

CITY/COUNTY OF BOARD

SIGNATURE

DATE

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INTRODUCTION

1.0 INTRODUCTION

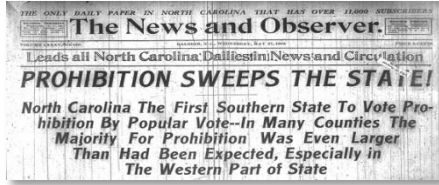
The Operations Manual contains detailed information on the laws, rules, duties, responsibilities and ethical principles necessary to fulfill the duties of an ABC board member, general manager and finance officer in a legal and ethical manner. It is intended to be a “living” document containing the most current information needed to assist you in performing your duties and responsibilities.

1.1 Authorized Use Permission

Any reproduction of materials used in this manual have been approved by their author.

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HISTORY OF
NORTH
CAROLINA'S
ABC
SYSTEM**

2.1 PROHIBITION



On May 26, 1908, by a referendum vote of 62% to 38%, North Carolina became the first southern state to enact statewide prohibition of alcoholic beverages. For the next 25 years North Carolina prohibited alcoholic beverages from being sold legally.

2.2 OPEN vs. CONTROL

In 1933, the 21st Amendment of the United States' Constitution not only repealed prohibition but, coupled with the 10th Amendment, in which powers are reserved to the states, gave the states, what we thought, was complete control over alcohol beverage policy. To help the states determine what alcohol control policies to adopt, Mr. John D. Rockefeller, Jr. commissioned a study entitled "Toward Alcohol Control". Mr. Rockefeller stated, "Only as the profit motive is eliminated is there any hope of controlling the liquor traffic in the interest of a decent society. To approach the problem from any other angle is only to tinker with it and insure failure. This point cannot be too heavily stressed." This study recommended the control system model based on their research conducted globally.

Four states voted to remain "dry," at least for a time and twenty-nine states chose to resume the legal sale of alcohol beverages through licensed private sellers, now called license states or control states. Seventeen (later eighteen states and a few counties) opted for the "control state" system. Seven decades later, those jurisdictions are still "control states."



In 1935 the NC legislature appointed a commission to study control of alcoholic beverages and make recommendations to the 1937 General Assembly. The commission looked at two types of control over the sale of alcohol; the state licensing system and the state monopoly system.

2.3 LOCAL OPTION

In 1937 a control plan was also created to allow voters in cities and counties to determine if they want alcoholic beverages sold in their communities. This "local option" is still in effect today.

2.4 ABC BOARDS

On July 2, 1935, the first ABC store in North Carolina was opened at 311 Nash Street in Wilson. According to the Wilson Daily Times, dated June 22, 1935, the vote was 4,147 in favor of authorizing liquor sales and 428 against.

In 1937, an Alcoholic Beverage Control bill was enacted by the North Carolina General Assembly that created the foundation for the system of control we operate under today. This Act allowed voters in each county to determine whether or not spirituous liquor should be sold at retail. If approved by the local voters, the Act provided for the establishment of a local ABC board that has the authority and duty to operate one retail ABC store. If disapproved at the county level, local towns or municipalities could then

vote on the issue. The Act also provided for the establishment of a State ABC Commission to have oversight authority with respect to each local ABC Board.

As of December 2010, there are 169 county and municipal ABC systems in the State that operate approximately 422 retail stores. Fiscal year ending June 30, 2010, the retail and mixed beverage sales totaled approximately \$727 Million. County and municipal ABC Boards in North Carolina are local independent political subdivisions of the State. They operate as separate entities establishing their own policies and procedures.

Each local ABC Board consists of a Chairman and two to six (depending on the Board size) board members appointed by their city, town or county governing authority. They retain authority to set policy and adopt rules in conformity with ABC Laws and Commission Rules.



1st ABC Store, 1935, Wilson, NC

2.5 ALCOHOLIC BEVERAGE CONTROL COMMISSION

The North Carolina Alcoholic Beverage Control Commission is comprised of a Chairman and two associate members appointed by the Governor. The primary responsibility of the ABC Commission is to insure the proper administration of the ABC laws in order to protect the health, safety and welfare of North Carolina’s citizens.

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ABC
BOARDS**

BC BOARDS

3.1 NEW ABC REFORM LAWS

In December of 2007, the North Carolina General Assemblies Program and Evaluation Division (PED) was tasked to evaluate the effectiveness of the Alcohol Beverage Control (ABC) system and identify improvement options for the entire system. The focus of the study was to evaluate local ABC boards, review other state ABC systems and identify options for improving the effectiveness and efficiency of North Carolina's Alcoholic Beverage Control System.

One year later, on December 10, 2008, the final report (#2008-12-01) to the Joint Legislative Program Evaluation Oversight Committee was delivered.

The general theme of the report was that North Carolina's Alcohol Beverage Control System was outdated and needed modernization. There are numerous recommendations contained in the report. A few significant findings included:

- North Carolina's ABC system has not kept pace with demographic and economic changes in the state
- State statutes limit the ability of the North Carolina ABC Commission to effectively and efficiently manage the ABC system
- North Carolina has not clearly defined the mission of local boards in the statutes and rules

In 2009 there were a series of ABC Board investigations statewide that created even more public and legislative scrutiny on North Carolina's ABC system. As a result of the PED report coupled with the negative attention brought on by the ABC Board investigations, the legislature was ready to act.

The 2010 ABC reform legislation (SESSION LAW 2010-122; HOUSE BILL 1717) signed into law in July 2010 requires new focus on performance and accountability by everyone involved with the ABC system.

This manual provides guidance and information on the laws, rules, duties and responsibilities of ABC Boards, board members, general managers and finance officers. The next sections contain the exact language contained in Articles 7 and 8 of General Statute 18B. These articles reflect all of the new changes and new laws passed in the 2010 session of the legislature.

3.2 MISSION STATEMENT

General Statute 18B-700 reads, "The mission of local ABC boards and their employees shall be to serve their localities responsibly by controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores."

3.3 ARTICLE 7. N.C.G.S. 18B

3.3.1 Appointment and organization of local ABC boards

§ 18B-700. Appointment and organization of local ABC boards.

(a) Membership. – A local ABC board shall consist of three or five members appointed for three-year terms, unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. If the board is a three-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. If the board is a five-member board, one member of the initial board of a newly created ABC system shall be appointed for a three-year term, two members for two-year terms, and two members for one-year terms. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. If a board is initially a three-member board and the appointing authority determines a five-member board is preferable, the terms of the two new members shall be for three years. If a local board has five members and the appointing authority determines a three-member board is preferable, the appointing authority shall not reduce the size of the board except upon the expiration of a member's term and only with the approval of the Commission. The appointing authority shall designate one member of the local board as chairman.

(a1) Mission. – The mission of local ABC boards and their employees shall be to serve their localities responsibly by controlling the sale of spirituous liquor and promoting customer-friendly, modern, and efficient stores."

(b) City Boards. – City ABC board members shall be appointed by the city governing body, unless a different method of appointment is provided in a local act enacted before the effective date of this Chapter.

(c) County Boards. – County ABC board members shall be appointed by the board of county commissioners, unless a different method of appointment is provided in a local act enacted before the effective date of this Chapter.

(d) Qualifications. – The appointing authority shall appoint members of a local board on the basis of the appointees' interest in public affairs, good judgment, knowledge, ability, and good moral character.

(e) Vacancy. – A vacancy on a local board shall be filled by the appointing authority for the remainder of the unexpired term. If the chairman's seat becomes vacant, the appointing authority may designate either the new member or an existing member of the local board to complete the chairman's term.

(f) Removal. – A member of a local board may be removed for cause at any time by the appointing authority. Local board members are subject to the removal provisions of G.S. 18B-202.

(g) Compensation of Board Members. – A local board member shall receive compensation in an amount not to exceed one hundred fifty dollars (\$150.00) per board meeting unless a different level of monetary compensation is approved by the appointing authority. If a different level is approved by the appointing authority, the appointing authority shall notify the Commission of the approved level of compensation in writing. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. No local board member shall receive any nonmonetary compensation or benefits unless specifically authorized by this section.

(g1) Compensation of General Managers of Local Boards. – The salary authorized for the general manager, as defined in G.S. 18B-101, of a local board shall not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated unless such compensation is otherwise approved by the appointing authority. The local board shall provide the appointing authority's written confirmation of such approval to the Commission. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. The general manager of a local board may receive any other benefits to which all employees of the local board are entitled. The salary authorized for other employees of a local board may not exceed that of the general manager.

(g2) Travel Allowance and Per Diem Rates. – Approved travel on official business by the members and employees of local boards shall be reimbursed pursuant to G.S. 138-6 unless the local board adopts a travel policy that conforms to the travel policy of the appointing authority and such policy is approved by the appointing authority. The local board shall annually provide the appointing authority's written confirmation of such approval to the Commission and a copy of the travel policy authorized by the appointing authority. Any excess expenses not covered by the local board's travel policy shall only be paid with the written authorization of the appointing authority's finance officer. A copy of the written authorization for excess expenses shall be submitted to the Commission by the local board within 30 days of approval.

(h) Conflict of Interest. – The provisions of G.S. 18B-201 shall apply to local board members and employees.

(i) Bond. – Each local board member and the employees designated as the general manager and finance officer of the local board shall be bonded in an amount not less than fifty thousand dollars (\$50,000), secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of the bond for any member who does handle board funds.

(j) Limited Liability. – A person serving as a member of a local ABC board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

- (1) Was not acting within the scope of his official duties;
- (2) Was not acting in good faith;

- (3) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;
- (4) Derived an improper personal financial benefit from the transaction; or
- (5) Incurred the liability from the operation of a motor vehicle.

The immunity in this subsection is personal to the members of local ABC boards, and does not immunize the local ABC board for liability for the acts or omissions of the members of the local ABC board. (1981, c. 412, s. 2; c. 747, s. 50; 1981 (Reg. Sess., 1982), c. 1262, s. 10; 1989, c. 800, s. 19.)

(k) Nepotism. – Members of an immediate family shall not be employed within the local board if such employment will result in one member of the immediate family supervising another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees. For the purpose of this subsection, the term 'immediate family' includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

(l) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards.

3.3.2 Powers and duties of local ABC boards

§ 18B-701. Powers and duties of local ABC boards.

- (a) Powers. - A local board shall have authority to:
- (1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
 - (2) Adopt rules for its ABC system, subject to the approval of the Commission;
 - (3) Hire and fire employees for the ABC system;
 - (4) Designate one employee as manager of the ABC system and determine his responsibilities;
 - (5) Require bonds of employees as provided in the rules of the Commission;
 - (6) Operate ABC stores as provided in Article 8;
 - (7) Issue purchase-transportation permits as provided in Article 4;
 - (8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
 - (9) Borrow money as provided in G.S. 18B-702;
 - (10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;
 - (11) Invest surplus funds as provided in G.S. 18B-702;
 - (12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and

- (13) Perform any other activity authorized or required by the ABC law.

- (b) Duties. – A local board shall have the duty to comply with all rules adopted by the Commission pursuant to this Chapter and meet all standards for performance and training established by the Commission pursuant to G.S. 18B-203(a)(20) and (21). Failure to comply with Commission rules shall be cause for removal.

3.3.3 Financial operations of local boards

§ 18B-702. Financial operations of local boards.

- (a) Generally. – A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

- (b) Budget Officer. – The general manager of the local board shall be the budget officer for the local board. In the absence of a general manager, a local board may impose the duties of budget officer on the chairman or any member of the local board or any other employee of the board.

- (c) Annual Balanced Budget. – Each local board shall operate under an annual balanced budget administered in accordance with this section. A budget is balanced when the sum of estimated gross revenues and both restricted and unrestricted funds are equal to appropriations. Expenditures shall not exceed the amount of funds received or in reserve for the purpose to which the funds are appropriated. It is the intent of this section that all monies received and expended by a local board should be included in the budget. Therefore, notwithstanding any other provision of law, no local board may expend any monies, regardless of their source, SL2010-0122 Session Law 2010-122 Page 7 except in accordance with a budget adopted under this section. The budget of a local board shall cover a fiscal year beginning July 1 and ending June 30.

- (d) Preparation and Submission of Budget and Budget Message. – Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer, the budget officer shall prepare a budget for consideration by the local board in such form and detail as may have been prescribed by the budget officer or the local board. The budget, together with a budget message, shall be submitted to the local board, the appointing authority, and the Commission not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board. The budget message should contain a concise explanation of the goals fixed by the budget for the budget year, explain important features of the activities anticipated in the budget, set forth the reasons for stated changes from the previous year in appropriation levels, and explain any major changes in fiscal policy.

- (e) Filing and Publication of the Budget. – On the same day the budget officer submits the budget to the local board, the budget officer shall make a copy for public inspection, and it shall remain available for public inspection until the budget is adopted. The budget officer shall make a copy of the budget available to all news media in the county. The budget officer shall also publish a statement that the budget has been submitted to the local board and is available for public inspection in the office of the general manager of the local board. The statement shall also give notice of the time and place of the budget hearing required by subsection (f) of this section.
- (f) Budget Hearings. – Before adopting the budget, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear.
- (g) Adoption of Budget. – Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the local board shall adopt a budget making appropriations for the budget year in such sums as the board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget shall authorize all financial transactions of the local board. The budget may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source. The following directions and limitations shall bind the local board in adopting the budget:
- (1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.
 - (2) The full amount of any deficit in each fund shall be appropriated.
 - (3) Working capital funds set aside pursuant to G.S. 18B-805 shall be established by rule of the Commission. "Working capital" means the total of cash, investments, and inventory less all unsecured liabilities. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S. 18B-805(b)(2), (3), (4), and (5). Any expenditure to be charged against working capital funds shall be authorized by resolution of the local board, which resolution shall be deemed an amendment to the budget setting up an appropriation for the object of expenditure authorized. The local board may authorize the budget officer to authorize expenditures from working capital funds subject to such limitations and procedures as it may prescribe. Any such expenditure shall be deemed an amendment and reported to the board at its next regular meeting and recorded in the minutes.
 - (4) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year.

- (5) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the local board the right to limit or not to make such appropriation.
- (6) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

The budget shall be entered in the minutes of the local board and within five days after adoption, and copies thereof shall be filed with the finance officer, the budget officer, the appointing authority, and the Commission.

- (h) Amendments to the Budget. – Except as otherwise restricted by law, the local board may amend the budget at any time after adoption, in any manner, so long as the budget, as amended, continues to satisfy the requirements of this section. The local board by appropriate resolution may authorize the budget officer to transfer monies from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the local board at its next regular meeting and shall be entered in the minutes. Amendments to the adopted budget shall also be provided to the appointing authority and the Commission.
- (i) Interim Budget. – In case the adoption of the budget is delayed until after July 1, the local board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local board for the interval between the beginning of the budget year and the adoption of the budget. Interim appropriations so made shall be charged to the proper appropriations in the adopted budget.
- (j) Finance Officer. – Except as otherwise provided, the local board shall designate (i) a part-time or full-time employee of the board other than the general manager or (ii) the finance officer of the appointing authority with consent of the appointing authority to be the finance officer for the local board. The Commission, for good cause shown, may allow the general manager of a board also to be the finance officer. Good cause includes, but is not limited to, the fact that the board operates no more than two stores, and any approval for the general manager also to be the finance officer shall apply until the board operates more than two stores; in any event, the approval shall be effective for 36 months.
- (k) Duties and Powers of the Finance Officer. – The finance officer for a local board shall:
 - (1) Keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.

- (2) Disburse all funds of the local board in strict compliance with this Chapter, the budget, pre-audit obligations, and disbursements as required by this section.
 - (3) As often as may be requested by the local board or the general manager, prepare and file with the board a statement of the financial condition of the local board.
 - (4) Receive and deposit all monies accruing to the local board, or supervise the receipt and deposit of money by other duly authorized employees.
 - (5) Maintain all records concerning the debt and other obligations of the local board, determine the amount of money that will be required for debt service or the payment of other obligations during each fiscal year, and maintain all funds.
 - (6) Supervise the investment of idle funds of the local board pursuant to subsection (t) of this section. The finance officer shall perform such other duties as may be assigned by law, by the general manager, budget officer, or local board, or by rules and regulations of the Commission.
- (l) Accounting System. – Each local board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget originally adopted and subsequently amended.
- (m) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget unless the budget includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project unless the budget authorizes the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection. The certificate, SL2010-0122 Session Law 2010-122 Page 9 which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the local board, shall take substantially the following form:
- "This instrument has been preaudited in the manner required by G.S. 18B-702.
- _____
(Signature of finance officer)."

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

- (n) Disbursements. – When a bill, invoice, or other claim against a local board is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget or a capital project or a grant project authorized by the budget, the finance officer may approve the claim only if:
- (1) The finance officer determines the amount to be payable; and
 - (2) The budget includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.
A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (o) of this section, by the local board. The finance officer shall establish procedures to assure compliance with this subsection.
- (o) Local Board Approval of Bills, Invoices, or Claims. – The local board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local board that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The local board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.
- (p) Checks or Drafts Signed by Finance Officer. – Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer. The chairman of the local board or general manager of the local board shall countersign these checks and drafts. The Commission may waive the requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.
- (q) Payment of a Bill, Invoice, Salary, or Claim. – A local board may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository or by a bank wire transfer from an official depository. Except as provided in this subsection, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the local board (or signed by the chairman or some other member of the board pursuant to subsection (o) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved in the manner required by G.S. 18B-702.

(Signature of finance officer)."

No certificate is required on payroll checks or drafts on an imprest account in an official depository if the check or draft depositing the funds in the imprest account carried a signed certificate. No certificate is required for expenditures of fifty dollars (\$50.00) or less from a petty cash fund, provided the expenditure is accounted for by a receipt for the expended item.

- (r) **Borrowing Money.** – A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.
- (s) **Audits.** – A local board shall submit to the appointing authority and Commission an annual independent audit of its operations, performed in accordance with generally accepted Page 10 Session Law 2010-122 SL2010-0122 accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the appointing authority or the Commission.
- (t) **Deposits and Investments.** – A local board may deposit moneys monies at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.
- (u) **Compliance with Commission Rules.** – The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a budget officer, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds. The Commission may vary these rules and regulations according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. The Commission has the authority to inquire into and investigate the internal control procedures of

a local board and may require any modifications in internal control procedures which, in the opinion of the Commission, are necessary or desirable to prevent embezzlements or mishandling of public monies.

- (v) Penalties. – If a board member or employee of a local board incurs an obligation or pays out or causes to be paid out any funds in violation of this section, the member or employee and the sureties on the official bond are liable for any sums so committed or disbursed. If the finance officer or any properly designated deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, the finance officer and the sureties on the official bond are liable for any sums illegally committed or disbursed thereby.
- (w) Applicability of Criminal Statutes. – The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon.
- (x) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards.

3.3.4 Merger of local ABC operations

§ 18B-703. Merger of local ABC operations.

- (a) Conditions for Merger. – Any city governing body or board of county commissioners may merge its ABC system with the system of one or more other cities or counties if:
 - (1) Stores operated by the systems of those jurisdictions serve the same general area or are in close proximity to each other; and
 - (2) The merger is approved by the Commission.
- (b) Appointment of Board. – Upon merger of ABC systems, the local boards for those systems shall be replaced by one board appointed jointly by the appointing authorities for the previous boards.
- (c) Distribution of Profits. – Before merger, the cities or counties involved shall agree upon a formula for distribution of the profits of the new merged ABC system, based as closely as practicable on the distribution previously authorized for the separate systems. This formula for distribution shall be subject to approval by the Commission.
- (d) Enforcement. – Local officers hired by the local ABC board for the merged ABC system shall have the same territorial jurisdiction that officers for each of the merged boards would have.
- (e) Dissolution. – With the approval of the Commission, the cities or counties that have merged their ABC systems may dissolve the merged operation at any time and resume their prior separate operations.
- (f) Other Details Negotiated. – Issues not addressed in this section concerning the

merger or dissolution of ABC systems, such as the method of appointment of the merged board, the size of the merged board, or the procedure for dissolution, may be negotiated by the affected cities and counties, subject to the approval of the Commission.

- (g) Operation Follows General Law. – Except as otherwise provided in this section, the authority and operation of any local board established under this section shall be the same as for any other local board.
- (h) Agreement for Joint Store Operations. – With the approval of the Commission, two or more governing bodies of counties and/or municipalities with ABC systems may enter into a written agreement whereby one or more ABC stores located within the counties and/or municipalities that are parties to the agreement shall be controlled and operated by the local ABC board specified in the agreement, even though said ABC store or stores are located outside the boundaries of the county or municipality of the local ABC board that will be operating the ABC store or stores that are subject to the agreement. The provisions of this section shall be effective as to such agreements insofar as is applicable. Issues not addressed in this section shall be negotiated by the parties, subject to the approval of the Commission.

3.3.5 Removal of local board members and employees

§ 18B-704. Removal of local board members and employees.

- (a) Improper Influence. – Neither the Commission nor its individual members shall attempt to coerce any appointing authority to appoint a particular person as a member of a local board or attempt to coerce a local board to employ any particular applicant.
- (b) Purpose. – This section is intended to provide a uniform system of removal for appointing authorities and the Commission.
- (c) Cause for Removal. – (i) Disqualification of a local board member or employee under the law, (ii) a violation of the ABC laws, (iii) failure to complete training required by this Chapter or the Commission, or (iv) engaging in any conduct constituting moral turpitude or which brings the local board or the ABC system into disrepute is cause for the Commission to remove any member or employee of a local board. The employment or retention of any employee who is known to be disqualified under the law to hold a position with a local board is cause for the Commission to remove the board members involved.
- (d) Removal Process. – The Commission or appointing authority shall provide, in writing, to the local board member or employee the findings of fact upon which the decision for removal is based. The Commission or appointing authority shall also provide the local board member or employee with notice of the availability of a hearing before the Commission to review the removal.

- (e) **Removal Hearing.** – Any local board member or employee removed from office or discharged by the Commission or the appointing authority may request a hearing before the SL2010-0122 Session Law 2010-122 Page 11 Commission. Such a request operates to stay the action of the Commission or the appointing authority with regard to the matter until after the hearing, unless the Commission finds that the public interest requires immediate action. At the hearing, the employee or the employee's counsel may examine all evidence used against the employee and present evidence in the employee's own behalf. A removal hearing is not subject to the provisions of Chapter 150B of the General Statutes. All hearings shall be conducted informally and in such manner as to preserve the substantial rights of the parties.
- (f) **Hearing Procedure.** – The Commission shall hold the hearing required by subsection (e) of this section within 15 days of the member's or employee's request for a hearing. The standard of review by the Commission is de novo. The Commission or appointing authority shall be represented by a Commission hearing officer. The Commission shall discharge the member or employee if two-thirds of the Commission's members vote for removal. The Commission shall make findings of fact. The Commission may adopt the findings of fact of the Commission or the appointing authority, may add new findings of fact to the original findings of fact, or may substitute new findings of fact for the original findings of fact. The Commission shall make conclusions of law and shall issue a written decision to the member or employee of the local board, and to the appointing authority, within 15 days of the hearing.
- (g) **Commission Authority.** – The Commission shall have the sole power, in its discretion, to determine if cause exists for removal of a local board member or employee who has requested a hearing before the Commission. The Commission's decision in a removal hearing is final.
- (h) **Appeal.** – A local board member or employee may appeal the Commission's final decision to the Court of Appeals. The standard of review for an appeal shall be abuse of discretion. The sole remedy for a local board member or employee shall be the reinstatement of the board member or employee to the local board with back pay. All awards for back pay shall be paid by the local board from which the board member or employee was removed.
- (i) **Removal Hearing Not a Substitute for Termination of Employee.** – Nothing in this section replaces or is intended to replace a local board's policy regarding the termination of an employee for personnel reasons. The removal process under this section is reserved solely for the appointing authority or the Commission to remove a board member or employee for cause.
- (j) **Local Acts.** – Notwithstanding the provisions of any local act, this section applies to all local boards.

3.3.6 Compliance with performance standards; remedies**§ 18B-705. Compliance with performance standards; remedies.**

- (a) **Local Board Compliance.** – The Commission shall establish performance standards pursuant to G.S. 18B-203(a)(20). The Commission shall ensure that all local boards comply with established performance standards by conducting regular or special audits, conducting performance evaluations, or taking other measures, which may include inspections by Commission auditors or alcohol law enforcement agents.
- (b) **Performance Improvement Plans.** – The Commission, upon determining that a local board is failing to meet performance standards established pursuant to G.S. 18B-203(a)(20), shall meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority, in consultation with the Commission and the local board, shall develop and deliver a performance improvement plan to the local board within 60 days of the meeting with the Commission. The performance improvement plan shall include, but not be limited to, recommendations for improved performance based on the performance standards established by the Commission. The plan shall also state a period of time in which the performance improvements are to occur and what action will be taken by the Commission if performance standards are not met within the given time limits. The appointing authority shall allow up to, but no more than, 12 months' time to the local board to implement and show improvement under the performance improvement plan. The local appointing authority, in consultation with the Commission and upon good cause shown, may allow up to an additional six-month period of time for the local board to meet all requirements in the performance improvement plan and to establish that the performance standards established by the Commission are met.
- (c) **Remedies.** – If the Commission determines that the established performance standards identified in the statement of findings cannot be met after a performance improvement plan has been implemented and adequate time has been given, but in no case less Page 12 Session Law 2010-122 SL2010-0122 than 12 months, the Commission shall take appropriate action to avoid insolvency. This action may include closing the board pursuant to G.S. 18B-801(d), closing a store or multiple stores, or merging the local board with another local board in order to maintain solvency. The Commission may also seize the assets of the local board and liquidate any assets necessary to satisfy any debt in order to maintain the solvency of the local board. Prior to taking action pursuant to this subsection, the Commission shall issue a notice of intent to take such action to the appointing authority and the local board.
- (d) **Local Acts.** – Notwithstanding the provisions of any local act, this section applies to all local boards.

3.3.7 Ethics requirements for local boards**§ 18B-706. Ethics requirements for local boards.**

- (a) Each local board shall adopt a policy containing a code of ethics, consistent with the provisions of G.S. 18B-201, to guide actions by the local board members and employees of the local board in the performance of their official duties. The policy shall address at least all of the following:
- (1) The need to obey all applicable laws regarding official actions taken as a local board member or employee.
 - (2) The need to uphold the integrity and independence of the local board member or employee's position.
 - (3) The need to avoid impropriety in the exercise of official duties.
 - (4) The need to faithfully perform the duties of the position.
 - (5) The need to conduct the affairs of the board in an open and public manner, including complying with all applicable laws governing open meetings and public records.
- (b) Each member of a local board shall receive a minimum of two hours of ethics education within 12 months after initial appointment to the office and again within 12 months after each subsequent appointment to the office. The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct for local ABC boards. The education may be provided by the Commission or another qualified source approved by the Commission. The local board shall maintain a record verifying receipt of the ethics education by each member of the local board. The local board may require appropriate ethics training and education for employees of the local ABC board.
- (c) The Commission shall develop a model ethics policy that local ABC boards may adopt to be in compliance with this section.

3.4 ARTICLE 8. N.C.G.S. 18B

3.4.1 Sale of alcoholic beverages in ABC stores

§ 18B-800. Sale of alcoholic beverages in ABC stores.

- (a) Spirituous Liquor. – Except as provided in Article 10 of this Chapter, spirituous liquor may be sold only in ABC stores operated by local boards.
- (b) Fortified Wine. – In addition to spirituous liquor, ABC stores may sell fortified wine. ABC stores may also sell wine products, irrespective of alcohol content by volume, which were classified as fortified wine by the ABC Commission prior to July 7, 2004.
- (c) Commission Approval. – No ABC store may sell any alcoholic beverage which has not been approved by the Commission for sale in this State.

3.4.2 Location, opening, and closing of stores

§ 18B-801. Location, opening, and closing of stores.

- (a) Number of Stores. – Each local board shall have the authority and duty to operate one ABC store. Additional stores may be operated with the approval of the Commission.
- (b) Location of Stores. – A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:
 - (1) Whether the health, safety, or general welfare of the community will be adversely affected.
 - (2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.
 - (3) The proximity of the new location to existing ABC stores operated by the local board or any other board.
- (b1) Notwithstanding subsection (b) of this section, no local board may establish an ABC store at any location within the corporate limits of a municipality if the governing body of the municipality has passed a resolution objecting to the location of the proposed ABC store and the resolution is based upon information and evidence presented to the governing body of the municipality at a public hearing. If a municipality objects to the location of a proposed ABC store, the local board may request the Commission to approve the proposed ABC store location notwithstanding the objection of the municipality. The Commission shall have final authority to determine if the operation of an ABC store at the contested proposed location is suitable.

Upon notice given to the Commission by an affected municipality, any statutory and administrative time limits allowed for objections to, or public hearings

concerning the location of, an ABC store shall be extended by 45 days to allow a municipality sufficient time to conduct a public hearing and submit its objection and resolution to the Commission.

- (c) Closing of Stores. – Subject to the provisions of subsection (a) of this section, a local board may close a store, or the Commission may order a local board to close any store when the local board or the Commission determines that:
 - (1) The store is not operated in accordance with the ABC law; or
 - (2) The continued operation of that store will adversely affect the health, safety, or general welfare of the community in which the store operates.

3.4.3 When stores operate

§ 18B-802. When stores operate.

- (a) Time. – No ABC store shall be open, and no ABC store employee shall sell alcoholic beverages, between 9:00 P.M. and 9:00 A.M. The local board shall otherwise determine opening and closing hours of its stores.
- (b) Days. – No ABC store shall be open, and no ABC store employee shall sell alcoholic beverages, on any Sunday, New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day. A local board may otherwise determine the days on which its stores shall be closed.

3.4.4 Store management

§ 18B-803. Store management.

- (a) Manager. – A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.
- (b) Bonding of Manager. – Each store manager shall be bonded in an amount not less than fifty thousand dollars (\$50,000) secured by a corporate surety, for the honest performance of his duties. A public employees' blanket position bond, honesty form, in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of bond required for store managers under this subsection.
- (c) Bonding of Other Employees. – A local board or the appointing authority may require any of its other employees who handle funds to obtain bonds. The amount and form of those bonds shall be determined by the local board.
- (d) Local Acts. – Notwithstanding the provisions of any local act, this section applies to all local boards

3.4.5 Alcoholic beverage pricing

§ 18B-804. Alcoholic beverage pricing.

- (a) Uniform Price of Spirituous Liquor. – The retail price of spirituous liquor sold in ABC stores shall be uniform throughout the State, unless otherwise provided by the ABC law.
- (b) Sale Price of Spirituous Liquor. – The sale of spirituous liquor sold at the uniform State price shall consist of the following components:
 - (1) The distiller's price.
 - (2) The freight and bailment charges of the State warehouse as determined by the Commission.
 - (3) A markup for local boards as determined by the Commission.
 - (4) The tax levied under G.S. 105-113.80(c), which shall be levied on the sum of subdivisions (1), (2), and (3).
 - (5) An additional markup for local boards equal to three and one-half percent (3 1/2%) of the sum of subdivisions (1), (2), and (3).
 - (6) A bottle charge of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.
 - (6a) The bailment surcharge.
 - (6b) An additional bottle charge for local boards of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.
 - (7) A rounding adjustment, the formula of which may be determined by the Commission, so that the sale price will be divisible by five.
 - (8) If the spirituous liquor is sold to a mixed beverage permittee for resale in mixed beverages, a charge of twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities.
 - (9) If the spirituous liquor is sold to a guest room cabinet permittee for resale, a charge of twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities.
- (c) Sale Price of Fortified Wine. – The sale price of fortified wine shall include the tax levied by G.S. 105-113.80(b), as well as State and local sales taxes.

3.4.6 Distribution of revenue

§ 18B-805. Distribution of revenue.

- (a) Gross Receipts. – As used in this section, "gross receipts" means all revenue of a local board, including proceeds from the sale of alcoholic beverages, investments, interest on deposits, and any other source.
- (b) Primary Distribution. – Before making any other distribution, a local board shall first pay the following from its gross receipts:
 - (1) The board shall pay the expenses, including salaries, of operating the local ABC system.

- (2) Each month the local board shall pay to the Department of Revenue the taxes due the Department. In addition to the taxes levied under Chapter 105 of the General Statutes, the local board shall pay to the Department one-half of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9).
 - (3) Each month the local board shall pay to the Department of Health and Human Services five percent (5%) of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9). The Department of Health and Human Services shall spend those funds for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse.
 - (4) Each month the local board shall pay to the county commissioners of the county where the charge is collected the proceeds from the bottle charge required by G.S. 18B-804(b)(6), to be spent by the county commissioners for the purposes stated in subsection (h) of this section.
- (c) Other Statutory Distributions. – After making the distributions required by subsection (b), a local board shall make the following quarterly distributions from the remaining gross receipts:
- (1) Before making any other distribution under this subsection, the local board shall set aside the clear proceeds of the three and one-half percent (3 1/2%) markup provided for in G.S. 18B-804(b)(5) and the bottle charge provided for in G.S. 18B-804(b)(6b), to be distributed as part of the remaining gross receipts under subsection (e) of this section.
 - (2) The local board shall spend for law enforcement an amount set by the board which shall be at least five percent (5%) of the gross receipts remaining after the distribution required by subdivision (1). The local board may contract with the ALE Division to provide the law enforcement required by this subdivision. Notwithstanding the provisions of any local act, this provision shall apply to all local boards.
 - (3) The local board shall spend, or pay to the county commissioners to spend, for the purposes stated in subsection (h), an amount set by the board which shall be at least seven percent (7%) of the gross receipts remaining after the distribution required by subdivision (1). This provision shall not be applicable to a local board which is subject to a local act setting a different distribution.
- (d) Working Capital. – After making the distributions provided for in subsections (b) and (c), the local board may set aside a portion of the remaining gross receipts, within the limits set by the rules of the Commission, as cash to operate the ABC system. With the approval of the appointing authority for the board, the local board may also set aside a portion of the remaining gross receipts as a fund for specific capital improvements.
- (e) Other Distributions. – After making the distributions provided in subsections (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to the general fund of the city or county for which the board is established, unless some other distribution or some other schedule is provided for by law. If the

governing body of each city and county receiving revenue from an ABC system agrees, those governing bodies may alter at any time the distribution to be made under this subsection or under any local act. Copies of the governing body resolutions agreeing to a new distribution formula and a copy of the approved new distribution formula shall be submitted to the Commission for review and audit purposes. If any one of the governing bodies later withdraws its consent to the change in distribution, profits shall be distributed according to the original formula, beginning with the next quarter.

- (f) **Surcharge Profit Shared.** – When, pursuant to G.S. 18B-603(d1), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located outside the city, the local board operating the store at which the sale is made shall retain seventy-five percent (75%) of the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) and the remaining twenty-five percent (25%) shall be divided equally among the local ABC boards for all other cities in the county that have authorized the sale of mixed beverages.

When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located at an airport outside the city, the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided equally among the local ABC boards for all cities in the county that have authorized the sale of mixed beverages.

- (g) **Quarterly Distributions.** – When this section requires a distribution to be made quarterly, at least ninety percent (90%) of the estimated distribution shall be paid to the recipient by the local board within 30 days of the end of that quarter. Adjustments in the amount to be distributed resulting from the closing of the books and from audit shall be made with the next quarterly payment.
- (h) **Expenditure of Alcoholism Funds.** – Funds distributed under subdivisions (b)(4) and (c)(3) of this section shall be spent for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse. The minutes of the board of county commissioners or local board spending funds allocated under this subsection shall describe the activity for which the funds are to be spent. Any agency or person receiving funds from the county commissioners or local board under this subsection shall submit an annual report to the board of county commissioners or local board from which funds were received, describing how the funds were spent.
- (i) **Calculation of Statutory Distributions When Liquor Sold at Less Than Uniform Price.** – If a local board sells liquor at less than the uniform State price, distributions required by subsections (b) and (c) shall be calculated as though the liquor was sold at the uniform price.

3.4.7 Damaged alcoholic beverages

§ 18B-806. Damaged alcoholic beverages.

- (a) Owned by Local Board. – All damaged alcoholic beverages owned by a local board shall be destroyed, given to a public or private hospital for medicinal use only, or given to the Commission.
- (b) Not Owned by Local Board. – The Commission shall dispose of all damaged alcoholic beverages which are:
 - (1) Owned by the Commission;
 - (2) Damaged while in the State warehouse; or
 - (3) Damaged while in transit between the State warehouse and a local board. The Commission shall dispose of the alcoholic beverages by giving them to a public or private hospital for medicinal use only, by selling them to a military installation, or by destroying them.
- (c) Sale Procedure. – If damaged alcoholic beverages are sold under subsection (b), sale shall be by:
 - (1) Advertisement for sealed bids;
 - (2) Negotiated offer, advertisement and upset bids; or
 - (3) Exchange.

Funds derived from the sale of damaged alcoholic beverages shall be paid to the general fund of the State.

- (d) Records. – Local boards and the Commission shall keep detailed records of all disposals of damaged alcoholic beverages, including brand, quantity and disposition.

3.4.8 Rules

§ 18B-807. Rules.

The Commission may adopt rules concerning the organization and operation of self-service ABC stores, the size of ABC store signs, the display of alcoholic beverages, solicitation in and around ABC stores, and any other subject relating to the efficient operation of ABC stores.

3.4.9 Warning signs

§ 18B-808. Warning signs regarding dangers of alcohol consumption during pregnancy required; posting.

- (a) Each ABC store shall display or cause to be displayed warning signs that meet the requirements of this section on the store's premises to inform the public of the effects of alcohol consumption during pregnancy.

- (b) The Commission shall develop the warning signs in accordance with subsection (c) of this section and provide for their distribution and replacements to local ABC boards subject to the requirement of this section. The Commission may charge a reasonable fee, not to exceed twenty-five dollars (\$25.00), for each sign, including replacement signs.
- (c) The signs required by this section shall:
 - (1) Be composed of black, capital letters printed on white paper at the minimum weight of one hundred ten pound index. The letters comprising the word "WARNING" shall be highlighted black lettering and shall be larger than all other lettering on the sign.
 - (2) Contain the message: "WARNING Pregnancy and alcohol do not mix. Drinking alcohol during pregnancy can cause birth defects."
 - (3) The size of the sign shall be at least eight and one-half inches by 14 inches.
 - (4) Contain a graphic depiction of the message to assist nonreaders in understanding the message. The depiction of a pregnant female shall be universal and shall not reflect a specific race or culture.
 - (5) Be in both English and Spanish.
- (d) A local ABC board shall ensure that each ABC store manager displays the warning sign in an open and prominent place in the store within 30 days of receipt of the sign from the Commission.

**INSERT
TAB
BOARD
MEMBER
DUTIES
&
RESPONSIBILITIES**

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4.0 BOARD MEMBER DUTIES AND RESPONSIBILITIES

4.1 General duties and responsibilities

As ABC board members, you are appointed by your elected county or municipal leaders and you have authority over administration or real estate, personnel and retail sales of liquor in your community. You are an independent unit of government, and your community is counting on you to be a good steward of public funds and to maintain safe and orderly sales of liquor.

As ABC board members you also have a responsibility to be familiar with and to operate within the boundaries of the laws and rules that apply to alcohol in your community and the state.

“A board member cannot delegate his duty of oversight. It is the board member who holds the General Manager and the employees of the system to the highest standard in reporting every facet of the collection and distribution of public monies. It is the board member’s duty to make sure that public confidence and trust in the ABC system is preserved.”¹

4.1.1 Appointment of board members

N.C.G.S. 18B-700 provides for the appointment and organization of local ABC Boards.

4.1.1.1 Membership

A local ABC board shall consist of three or five members appointed by the local appointing authority unless the board is a board for a merged ABC system and a different size membership has been negotiated during the merger. The appointing authority shall designate one member of the local board as chairman.

4.1.1.2 Qualifications

Appointments shall be made based on the appointees’ interest in public affairs, good judgment, knowledge, ability, and good moral character.

4.1.1.3 Removal

A board member may be removed for cause at any time by the appointing authority, a judge or the State ABC Commission.

4.1.1.4 Salary

A local board member shall be compensated in an amount not to exceed one hundred fifty dollars (\$150.00) per board meeting unless a different amount of

¹Quote from ABC Commission Administrator Michael C. Herring

compensation is approved by the appointing authority. No other compensation may be provided by the local ABC board.

4.1.1.5 Conflict of Interest

A board member shall not have any direct or indirect interest in any ABC enterprise or personally benefit financially in any manner while acting on behalf of the ABC board. The ABC Commission may grant exceptions in cases where the public interest would not be placed in jeopardy.

4.1.1.6 Bond

Each board member, store manager, and/or other board employee who handles funds shall be bonded in an amount not less than \$50,000 and secured by a corporate surety. A public employee's blanket position bond in the required amount is satisfactory.

4.1.2 Powers

N.C.G.S. 18B-701 enumerates specific statutory powers to ABC boards.

A local board shall have the following powers:

1. Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
2. Adopt rules for its ABC system, subject to the approval of the ABC Commission;
3. Hire and fire employees for the ABC system;
4. Designate one employee as manager of the ABC system and determine his/her responsibilities;
5. Require bonds of employees;
6. Operate ABC stores;
7. Issue Purchase-Transportation Permits;
8. Employ local ABC officers or contract with state or local law enforcement for enforcement;
9. Borrow money;
10. Buy and lease real and personal property and receive property bequeathed or given necessary for the operation of the ABC system;
11. Invest surplus funds;
12. Dispose of property; and
13. Perform any other activity authorized or required by law.

4.2 Statutory Mandates

4.2.1 Financial operations

“Every dollar that comes into the ABC system in this state is a dollar that belongs to the public. The public’s money is not what is left over at the end. It is public the moment it is handed over the counter. Any expenditure of board funds for any good or service not related to the operation of the ABC board system is a misappropriation of public funds. The funding of parties, gifts, or non-member/employee travel is strictly prohibited”²

4.2.1.1 Accounting system (§ 18B-204)

Each board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues and expenses. All boards are encouraged to use the chart of accounts prescribed by the Commission.

4.2.1.2 Borrowing money (§ 18B-702(r))

A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A city or county whose local governing body appoints a local board shall not in any way be held responsible for debts incurred by the board.

4.2.1.3 Audits (§18B-703(s))

Local boards are required to submit an independent annual audit to the appointing authority and Commission. Audits are due to the appointing authority and Commission 90 days after the end of the fiscal year (on or before September 30).

4.2.1.4 Deposits (§18B-703(t))

Deposits shall be made daily. All monies are public funds and shall be governed by rules of the ABC Commission and laws of the State of North Carolina.

4.2.1.5 Working Capital (§18B-805(d))

A board’s total cash, investments and inventory less all unsecured liabilities shall not exceed four (4) months average gross sales of the latest fiscal year.

4.2.1.6 Annual Balanced Budget (§18B-702(c))

Local boards are required to operate under an annual balanced budget. A budget is balanced when the sum of estimated gross revenues and both restricted and unrestricted funds are equal to appropriates. No local board may expend any monies, regardless of their source, except in accordance with a budget adopted under law.

² Quotes from ABC Commission Chairman Jonathan Williams

4.2.2 Performance standards

§18B-705. Compliance with performance standards; remedies

The Commission shall establish performance standards pursuant to §18B-203(a)(20). The Commission shall ensure that all local boards comply with established performance standards by conducting regular or special audits, conducting performance evaluations, or taking other measures, which may include inspections by Commission auditors or alcohol law enforcement agents.

If the Commission determines that established performance standards have not been met after an improvement plan has been implemented and adequate time has been given (not to exceed 12 months), the Commission shall take appropriate action to avoid insolvency. This action may include closing the board, closing a store or multiple stores or merging the local board with another local board. The Commission may also seize the assets of the local board and liquidate any assets necessary to satisfy any debt in order to maintain the solvency of the local board.

More information on specific performance standards is contained in the “Commission mandates” section.

4.2.3 Nepotism

§18B-702(k). Nepotism

Members of an immediate family shall not be employed within the local board if such employment will result in one member of the immediate family supervising another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees.

For the purpose of this subsection, the term 'immediate family' includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

4.3 Regulatory mandates

4.3.1 Travel policies (ABC rule 2R.0909)

Each local board is required to adopt and adhere to rules establishing travel policies adhere to by either the local appointing authority or the Office of State Budget and Management and shall file a certified copy with the ABC Commission.

4.3.2 Personnel manual (ABC rule 2R.1009)

Each local board shall establish policies and rules to include, but not limited to those set out in 2R.1009, using the policies adopted by their appointing authority as a guide. An up-to-date copy of the manual shall be on file with the Commission. Any time the manual is updated or amended, a copy of the proposed changes shall be submitted to the Commission for approval.

4.3.3 Payment (ABC rule 2R.1407)

“All local ABC board monies are public funds for the ultimate benefit of the local city or county and should only be spent as needed for the operation of the ABC system.”³

Bailment fees, (which fund the State ABC Warehouse operations), and distillers’ invoices shall be paid within⁴ 30 days, upon receipt of product.

Bailment surcharge fees, which fund the operations of the State ABC Commission, shall be paid within 15 days.

4.3.4 Special purchase allowances (ABC rule 2R.1503)

On a monthly basis, the Commission reduces the price of certain products to reflect importer or manufacturer special reductions. The retail price reduction will stay in effect for 30 days.

In addition to the quarterly price lists published in February, May, August and November, the Commission publishes a monthly Supplemental Price List. These *shall be made* available in all ABC stores, and all reduced prices *shall be posted* to notify customers of the reductions.

A local board that sells a product selected for a temporary price reduction *shall sell* that product at the reduced price for the entire period the lower price is in effect.

4.3.5 Employment age requirement (ABC rule 2R.1004)

A person employed by a local board shall be at least 18 years of age unless waived by the ABC Commission

4.3.6 Removal of beverages from ABC stores (ABC rule 2R.1701)

Spirituous liquor may only leave the ABC store after being sold to a customer or returned to the State ABC Warehouse due to damage. *Any liquor leaving a local board, except under these condictions, is prohibited.*

³ Quote from ABC Commission Administrator Michael C. Herring

⁴ “Within” means the payment shall be received by the supplier in the number of days stated; a check “in the mail” is not in compliance.

4.4 Board Meetings

Regularly scheduled ABC Board meetings are held so members of a board of directors can make decisions regarding personnel, operational and other matters. The board is comprised, of the Chairman and other appointed board members. There may be additional staff members or others present during these meetings.

General Statute 143-319.10 requires that all official meetings of public bodies shall be open to the general public. ***ABC boards are considered public bodies and therefore board meetings must be held publicly***, though frequently only the board and staff members attend. Board members vote on decisions regarding personnel and operations matters and there normally must be a quorum in order for the meeting to be considered legal. A quorum, unless otherwise defined by the board represents at least half of the board members.

“Official meeting” means a meeting, assembly, or gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of the members of a public body for the purpose of conducting hearings, participating in deliberations, or voting upon or otherwise transacting the public business within the jurisdiction, real or apparent, of the public body.

4.4.1 Public notice of official meetings (G.S. 143-318.12)

North Carolina General Statute 143-318.12 requires the following from public bodies:

- a) Must have regular meetings
- b) Post schedule with the Clerk of the Board of County Commissioners or City Clerk (if the regular schedule changes, notice must be given to the clerk)
- c) If a meeting is to be held at a time other than the regular time
 - 1) Announce the time and place during a meeting or
 - 2) Written notice stating the purpose – bulletin board, and notice mailed to the media and interested persons who have requested notice
 - 3) Notice given at least 48 hours in advance
 - 4) If an emergency meeting is called because of generally unexpected circumstances that require immediate attention, then notice to the media and interested persons shall be made by telephone or other means
- d) If a meeting is held by electronically or by telephone conferences, notice and opportunity for interested persons to listen is required.

4.4.2 Closed Sessions (G.S. 143-318.11)

Closed sessions can only be held to permit a public body to act in the public interest. A closed session may be held only upon a motion duly made and adopted at an open meeting. A public body may hold a closed session and exclude the public under the following conditions:

- 1) To prevent disclosure of privileged or confidential information
- 2) To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award
- 3) To consult with an attorney retained by the board in order to preserve attorney-client privilege
 - a) General policy cannot be discussed
 - b) Presence of attorney not dispositive

- c) Board can instruct attorney concerning a claim
- d) If board decides to settle a claim, must say so in open session and enter into the official minutes
- 4) To instruct staff or discuss the board position relating to:
 - a) Price, terms of a contract or proposed contract to buy, or lease real property
 - b) Discuss terms of an employment contract
- 5) Personnel matters
 - a) To consider qualifications for a prospective employee
 - b) To hear or investigate a complaint or grievance
 - c) Final action regarding an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting
 - d) To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct

4.5 Board Minutes

ABC boards are required to keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to G.S. 143-318.11. Minutes are usually in written form but may be in the form of sound or video. Information which should not be included in the minutes includes:

- 1) The opinion or interpretation of the secretary
- 2) Judgmental phrases
- 3) Discussion: Minutes are a record of results of the meeting, not the details of what was discussed at the meeting
- 4) Motions that are withdrawn
- 5) Generally the name is recorded of the member who introduced a main motion, but not of the seconder

Committee reports, employee reports, written motions and correspondence should be attached to the original signed copy of the minutes.

When the board meets in closed session, it shall keep a general account of the closed session so that a person not attending the meeting would have a reasonable understanding of what transpired. The minutes from a closed session may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session.

The minutes should be approved at the beginning of the next meeting and signed by the Chairman.

Minutes should be maintained in a "book" and reside with the secretary. The minutes are the property of the board and are the official record viewable by the public.

4.6 Conducting a Board Meeting

The Chairman or another board member in his/her absence presides over the meeting. Members of the board cannot speak out of turn and can only speak if given permission by the meeting regulator or board chairman.

Board meeting should be conducted in a formal manner and follow a written agenda. Each board member should receive a copy of the agenda prior to the meeting. The first part of the agenda calls for a roll call of the members and attendees. The second part of the agenda calls for the approval of the minutes from the previous meeting. *It is suggested that the Chairman ask if any of the members have any conflicts of interest with any of the topics slated to be discussed on the agenda. Board members may need to recuse themselves from any voting if a conflict of conflicts exist.*

The agenda spells out what topics are to be discussed and allows a slotted time for public comments.

In an effort to avoid possible conflicts of interest it is recommended at the beginning of each meeting the Chairman ask fellow board members if there are any potential conflicts of interest. This can be done by reading the following ethics reminder:

In accordance with General Statute 18B-201, it is the duty of every Board member to avoid both conflicts of interest and appearances of conflicts.

Does any member have any known conflict of interest or appearance of conflict with respect to any matters coming before the Board today?

If so, please identify the conflict or appearance of conflict and refrain from any undue participation in the particular matter involved.

This ethics reminder should be included in the written minutes of each meeting.

Typically old business is discussed in the beginning of the meeting followed by any new business. After the new business is discussed staff members or the general manager would present their operations reports. These reports may include a finance report, general manager report, law enforcement activities report or personnel report.

At any point during the meeting, the Chairman or other members can make a motion to go into closed session if the subject matter requirements are met.

At the conclusion of the meeting, the Chairman makes a motion to adjourn the meeting.

4.7 Oversight

4.7.1 General Controls

Appointed officials have a responsibility to provide taxpayers with reasonable assurance that board finances are adequately controlled. Whether an ABC board has strong or weak internal controls directly reflects the reliability of its accounting records and financial statements. Strong internal controls aid in the prevention of fraud and in the detection of accidental errors in the accounting process.

Extensive segregation of duties is not always possible for smaller boards. In such cases, duties should be separated as much as possible and alternative controls put in place to compensate for the lack of segregation. Board members must be called upon to provide some of these controls.

The ABC Commission encourages all boards to review their internal controls on a regular basis. After reviewing your current controls, a careful reading of these procedures may aid in finding ways to further strengthen your controls.

"All local ABC board monies are public funds for the ultimate benefit of the local city or county and should only be spent as needed for the operation of the ABC system." ³

A plan of organization should be developed and communicated to all parties involved (board members, general manager, finance officer and all other employees). This plan should include:

- (1) Clear lines of authority and responsibility
- (2) List of positions
- (3) Duties of each position

All boards should employ personnel with the ability and experience required to perform satisfactorily the responsibilities assigned to them. This includes continuing education for present employees. (Responsible Seller/Server classes for store personnel, budget preparation for general managers, ethics training for board members, etc.)

Active participation by the board in key functions is necessary for good internal controls.

Monthly reports must be presented to the board and reviewed by the board. These reports at a minimum should reflect the budget and actual revenues and expenditures and should include original documents generated by the computer/POS system.

All employees should be required to take annual vacations. During their absence, their duties should be performed by another person.

**INSERT
TAB
GENERAL
MANAGER
DUTIES
&
RESPONSIBILITIES**

ES

5.1 General

All local ABC boards are required to designate one employee as the general manager.

5.2 Definitions (G.S.18B-101(7a))

"General Manager" means the local board employee who is responsible for the oversight of daily operations of the ABC system and any other duties assigned by the local board or Commission. The board may designate only one employee to be the general manager.

5.3 Summary

This section will outline major duties and responsibilities of this position.

5.4 Compensation of General Managers of Local Boards (G.S. 18B-700(gl))

Compensation of General Managers of Local Boards. — The salary authorized for the general manager, as defined in G.S. 18B-101, of a local board shall not exceed the salary authorized by the General Assembly for the clerk of superior court of the county in which the appointing authority was originally incorporated unless such compensation is otherwise approved by the appointing authority. The local board shall provide the appointing authority's written confirmation of such approval to the Commission. Any change in compensation approved by the appointing authority shall be reported to the Commission in writing within 30 days of the effective date of the change. The general manager of a local board may receive any other benefits to which all employees of the local board are entitled. The salary authorized for other employees of a local board may not exceed that of the general manager.

5.5 Bond (G.S. 18B-700(i))

Bond. — Each local board member and the employees designated as the general manager and finance officer of the local board shall be bonded in an amount not less than fifty thousand dollars (\$50,000) secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may also increase the amount of the bond required for any member or employee who handles board funds.

5.5.1 Bonding of Manager (G.S.18B-803(b))

Bonding of Manager — Each store manager shall be bonded in an amount not less than fifty thousand dollars (\$50,000) secured by a corporate surety, for the honest performance of his duties. A public employees' blanket position bond, honesty form, in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may increase the amount of bond required for store managers under this subsection.

5.5.2 Bonding of Other Employees (G.S.18B-803(c))

Bonding of Other Employees — A local board or the appointing authority may require any of its other employees who handle funds to obtain bonds. The amount and form of those bonds shall be determined by the local board.

5.6 Board Structure

5.6.1 Board Members

Each board is comprised of three to five members appointed by the city council or county commissioners. They serve for three-year terms unless the board is for a merged system. One board member is designated as Chairman by the appointing authority. Board members are not salaried employees but receive compensation not to exceed one hundred fifty dollars (\$150.00) per board meeting unless the local appointing authority authorizes a different amount. Board members do not receive benefits.

Board members are responsible for oversight of the entire ABC system. Specific duties of this position are outlined in section 4.0 of this manual.

5.6.2 General Manager

The general manager is an employee who reports directly to board members. This position manages, supervises and directs daily operations of the system. Under certain circumstances, the Commission may allow the general manager to assume the position of finance officer until it is filled by another employee.

5.6.3 Finance Officer

The finance officer may be a part-time or full-time employee. This position should be an employee other than the general manager. This position is responsible for keeping the accounts of the local board, receiving and depositing receipts, disbursing funds, and any other duties assigned by the local board or Commission. Specific duties of this position are outlined in section 6.0 of this manual. This position is supervised by the general manager.

5.6.4 Budget Officer

The budget officer is responsible for seeing that the budget is completed and presented to the board in a timely manner. The budget officer is responsible for determining the amount of salary increases and adjustments that will be recommended to the board. The general manager is designated as the “budget officer” and is responsible for the duties outlined in section 7.0 of this manual.

5.6.5 Store Manager(s)

Each ABC store is required to have a store manager. This position is responsible for overseeing the operations of the ABC store and store clerks. This position may be full-time or part-time. This position is supervised by the general manager.

5.6.6 Clerk(s)

Each ABC store hires clerks who are responsible for alcohol sales and other duties assigned by the store manager. This position may be full-time or part-time. This position is supervised by the store manager.

5.6.6.1 Other Potential Positions

ABC system positions vary from board to board. Other potential positions supervised by the general manager may include:

- (1) Office Manager
- (2) Accounting Clerk
- (3) Warehouse Manager
- (4) Mixed Beverage Warehouse Manager
- (5) Law Enforcement ABC Chief
- (6) Human Resources Manager
- (7) Operations Manager

5.7 Duties and Responsibilities of the General Manager

Although duties and responsibilities of general managers can vary from board to board, the following are essential duties and responsibilities:

- (1) Supervise board operations
- (2) Manage department heads and senior management
- (3) Provide direction, coordination and evaluation of each department
- (4) Direct the execution of short and long term goals
- (5) Evaluate financial considerations for opening and closing stores
- (6) Conduct research, consults and negotiates with vendors
- (7) Assist in planning and directs investigations and negotiations pertaining to board assets and acquisitions
- (8) Establish and implement board policies and procedures for employees and system operations
- (9) Conduct and review performance evaluations
- (10) Monitor, evaluate and adjust store operations
- (11) Provide written, spoken and multi-media reports to the board, appointing authority and others
- (12) Establish and maintains good community relations
- (13) Insure all employees are properly trained in all aspects of board operations, and personnel matters
- (14) Ensure board operations are carried out in compliance with federal, state, and local laws and ABC Commission rules
- (15) Set board meeting agenda to comply with Open Meeting Laws
- (16) Serve as the board secretary during board meetings
- (17) Plan for future growth and fiscal stability of the ABC system
- (18) Develop and oversee marketing strategy to facilitate the boards objectives and goals
- (19) Insure the board operates in accordance with the statutory mission
- (20) Insure employees are adequately supervised
- (21) Insure all financial and regulatory obligations are met in a timely manner
Implement the salary and benefits plan recommended by the board
Conduct staff meetings
- (22) Consistently communicate with supervisors and employees
- (23) Responsible for approving the hiring of new personnel
- (24) Supervise the administration of accounting and revenue collections
- (25) Monitor monthly sales, cash receipts, and deposit reports
- (26) Monitor the purchase and on-hand inventory of alcoholic beverages
- (27) Monitor reports on distressed liquor and breakage
- (28) Responsible for new product listings and system "delists"
- (29) Supervise the preparation of monthly and annual fiscal statements and other reports required by the Commission
- (30) Provide the appointing authority with copies of audits
- (31) Review and resolve audit questions
- (32) Supervise preparation of the annual budget
- (33) Coordinate with other agencies on board related matters
- (34) Hear and respond to employee grievances
- (35) Negotiate property leases, acquisitions, renovations, new construction and divestments

- (36) Function as media spokesperson and contact
- (37) Participate in conferences, workshops, and meetings
- (38) Perform other duties assigned by the board

5.8 Administrative Operations

5.8.1 Hiring Employees

Boards should insure there are adequate policies in place to hire qualified, honest and trustworthy applicants. Applicants should be screened at a minimum for criminal convictions, potential conflicts of interest and breaches of trust. It is recommended that a policy be included in your personnel manual requiring employees to report any real or potential conflicts of interest.

5.8.1.1 Nepotism (G.S.18B-700(k))

Nepotism -Members of an immediate family shall not be employed within the local board if such employment will result in one member of the immediate family supervising another member of the immediate family, or if one member of the immediate family will occupy a position which has influence over another member's employment, promotion, salary administration, or other related management or personnel considerations. This subsection applies to local board members and employees. For the purpose of this sub- section, the term 'immediate family' includes wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and grand- daughter. Also included are the step-, half-, and in-law relationships. It also includes other people living in the same household, who share a relationship comparable to immediate family members, if either occupies a position which requires influence over the other's employment, promotion, salary administration, or other related management or personnel considerations.

5.8.1.2 Applicability of Criminal Statutes (G.S.18B-702(w))

Applicability of Criminal Statutes.-The provisions of G.S. 14-90 and 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or 14-254 shall be punished as a Class H felon.

5.8.1.3 Financial Interest Prohibited (G.S. 18B-201(a))

Financial Interest Prohibited. No local board member or employee shall have any direct or indirect interest in any manner whatsoever in any firm, corporation, company or enterprise that manufactures, produces, buys, mixes, bottles, sells, stores or transports spirituous liquor.

5.8.1.4 Dealing for Family Members (G.S. 18B-201(c))

Employment of Relative- No local board shall employ in any capacity any person related to a local board member or member of any other authority that appoints members of the local board by blood to a degree of first cousin or closer, nor shall the spouse of any board member be employed by the board.

5.8.2 Employee Work Status

No employee should be allowed to conduct board business “off-the-clock”. Allowing or requiring employees to conduct board business without being on the clock is unethical, illegal and risky.

5.8.3 Personnel Manual

ABC rule 14B NCAC 15A .1006 requires each board to establish a personnel manual.

5.8.4 Travel Policy (G.S.18B-700(g2))

Travel Allowance and Per Diem Rates – Approved travel on official business by the members and employees of local boards shall be reimbursed pursuant to G.S.138-6 unless the local board adopts a travel policy that conforms to the travel policy of the appointing authority and such policy is approved by the appointing authority. The local board shall annually provide the appointing authority’s written confirmation of such approval to the Commission and a copy of the travel policy authorized by the appointing authority. Any excess expenses not covered by the local board’s travel policy shall only be paid with the written authorization of the appointing authority’s finance officer. A copy of the written authorization for excess expenses shall be submitted to the Commission by the local board within 30 days of approval.

5.8.5 Checks and Balances

Policies and procedures should be developed to insure there are adequate checks and balances for all aspects of board operations. These checks and balances will help insure the integrity of processes and help to promote public trust in how the board conducts business.

5.9 Financial Operations

5.9.1 Maintenance of Working Capital (14B NCAC 15A .0902)

- (a) "Working Capital" means the total of cash, investments and inventory less any unsecured liabilities.
- (b) Information about working capital requirements is contained in section 8 under Performance Standards.

5.9.2 Deposits and Investments

Information about deposits and investments is contained in section 6 under the finance officers duties and responsibilities.

5.9.3 Daily Deposits (14B NCAC 15A .0905)

- (a) Each officer whose duty it is to collect or receive moneys of the local board shall deposit into an official depository the collections and receipts daily. If the local board gives its approval, deposits shall be required only when the moneys on hand are equal to or are greater than two hundred fifty dollars (\$250.00), but in any event a deposit shall be made on the last business day of the month. All deposits shall be made in an official depository. Deposits in an official depository shall be reported to the finance officer by means of a duplicate deposit ticket.
- (b) A change fund necessary for daily operation of an ABC store shall be established by each local board and maintained in a secure place on the store's premises and shall not be subject to the daily deposit rule. Each change fund shall be maintained in the amount and place established by the local board.
- (c) The finance officer may at any time audit the records maintained by any employee collecting sales revenue and may prescribe the form and detail of these records. (Payment should be in the hands of the distiller, not in the mail, within 30 days.)
- (d) The Commission shall waive or alter the daily deposit requirement for any local board where adequate security for the funds involved is demonstrated.

5.9.4 Payment (14B NCAC 15A .1406)

- (a) Local boards shall remit full payment of bailment fee within 30 days of receipt of the statement.
- (b) Local boards shall remit full payment of bailment surcharge within 15 days of receipt of the statement.
- (c) Local boards shall remit full payment of the distiller's invoice within 30 days of delivery of the liquor.
- (d) Local boards that obtain spirituous liquor from another local board pursuant to 04 NCAC 02R .1302€ shall remit full payment within 15 days of the transaction.

5.9.5 Annual Independent Financial Audit (14B NCAC 15A .0907)

- (a) Each local board shall have its accounts audited after the close of each fiscal year by an independent certified public accountant. The auditor shall be selected by and report to the local board. The audit contract shall be on a form provided by the Commission. The audit report is due to the Commission ninety days after the end of the fiscal year. The financial officer shall file one unbound copy of the audit report and management letter with the Commission.
- (b) Each officer and employee of the local board having custody of public money or responsibility for keeping records of financial or fiscal affairs shall produce books and records requested by the auditor or the Commission and shall divulge any information relating to fiscal affairs that they request. If any member of the local board or any employee conceals, falsifies or refuses to deliver or divulge any books, records, or information with intent to mislead the auditor or impede or interfere with the audit, he is subject to removal for cause pursuant to G.S. 18B-203(a)(8).
- (c) Disclosure of the distribution of profits shall include every element that is applicable under G.S. 18B-805 in a schedule prepared for inclusion with the annual audited financial statements. In addition the schedule shall be supported by a listing of each person who receives moneys from the local board, the date of payment and, if applicable, the purpose for which the payment was made and restrictions on use of the payment. The listing shall be so designated to provide the same totals as were used in the schedule for each type of distribution.

5.10 Store Operations

5.10.1 Approval of New Stores (14B NCAC 15A .1203 (a)(b))

Notice to Commission. The opening of any new ABC stores shall not be approved by the Commission unless at least a 30 day notice is given to the Chairman as to the intended location of the store and until a public notice of the intention to open such ABC store has been posted for 30 days at such location.

Sign Requirements. In order to meet the public notice requirements of Paragraph (a) of this Rule, the local board shall post at least one sign at the proposed new store site in accordance with all the following requirements:

- (1) Dimensions of the sign shall total at least nine square feet;
- (2) The board shall state on the sign its intention to open an ABC store on the site and shall state the entity and its phone number to provide public comments;
- (3) Lettering shall be at least four inches in height and background colors shall be of sufficient contrast so that the notice shall be legible to passersby; and
- (4) The sign shall be posted within 10 feet of the property line that is parallel to the public road or sidewalk that will be in front of the proposed store, or if the proposed store will be in an existing shopping center, the sign shall be posted on the front exterior of the existing storefront or building. Lettering on the sign shall face the public road or sidewalk, or if within an existing shopping center, the lettering shall face the exterior of the existing storefront or building.

5.10.2 Location of Stores (G.S. 18B-801(b))

Location of Stores.- A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

- (1) Whether the health, safety, or general welfare of the community will be adversely affected.
- (2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.
- (3) The proximity of the new location to existing ABC stores operated by the local board or any other board.

5.10.3 Closing of Stores (G.S.18B-801(c))

Closing of Stores. -Subject to the provisions of subsection (a) of this section, a local board may close a store, or the Commission may order a local board to close any store when the local board or the Commission determines that:

- (1) The store is not operated in accordance with the ABC law; or
- (2) The continued operation of that store will adversely affect the health, safety, or general welfare of the community in which the store operates.

5.10.4 Store Management (G.S.18B-803)

Manager -A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.

5.10.5 Types of alcohol sold

In accordance with G.S.18B-800, only spirituous liquor and fortified wine which has been approved by the Commission may be sold in ABC stores. (Stores may also sell the few remaining mixers that were grandfathered in when the definition of fortified wine was changed.) The Commission publishes a quarterly price list four times per year which contains all spirituous liquor approved for sale in North Carolina.

5.10.5.1 Purchase-transportation Permits (14B NCAC 15A .1706)

A copy of all Purchase-Transportation Permits shall be maintained by local boards for a period of one year following issuance. A copy of all Mixed Beverages Purchase-Transportation Permit/Invoice forms shall be retained by the local board for a period of at least three years.

5.10.5.1.1 Purchase-transportation Permits: Wine: Liquor (14B NCAC 15A .1801(a) (b))

- (a) *Form.* The Purchase-Transportation Permit shall be issued on a printed three-part form and shall specify the following information on the face of the permit:
 - (1) the name and location of the store from which the purchase is to be made;
 - (2) whether the purchase is for unfortified wine, fortified wine or spirituous liquor
 - (3) destination of the alcoholic beverages including name and address of location;
 - (4) Special Occasions Permit number of a location, if alcoholic beverages are purchased for a special occasion;

- (5) Time and date of commencement and conclusion of special occasion, if any;
- (6) Quantity and type of alcoholic beverages purchased;
- (7) Signature of local ABC official issuing the permit;
- (8) Name, address and driver's license number of purchaser.

The form shall contain a statement that the permit is valid for only one purchase on the date shown and will expire at 9:30pm on the date of purchase and a further statement that the permit shall accompany the beverages during transport and storage and be exhibited to any law enforcement officer upon request.

- (b) A local board issuing a Purchase-Transportation Permit shall retain one copy of the permit in its files for a period of one year and give the purchaser two copies one of which the purchaser shall give the store from which the alcoholic beverages are purchased.

5.10.6 Special orders (14B NCAC 15A .1403)

Spirituos liquor products that are not listed on the approved state price list may be special ordered. A spirituous liquor special order is made when a customer contacts your board and requests to purchase one or more cases of spirituous liquor. The Board then makes a request to the ABC Commission. The Commission contacts the vendor for the price(s) and advises the local board, who then advises the customer.

A spirituous liquor special order must be prepaid by the customer to the local ABC Board, which places the order with the Commission. The Commission transmits the Special Order to the supplier who then ships the order to the State Warehouse for delivery to your board and then the customer.

The board should establish a method for informing the public on how to place special orders. This can be accomplished via website or printed material placed at the store(s).

5.10.7 Commemorative Bottles (14B NCAC 15A .1404)

The Commission shall approve local boards' orders and sales of specially designed bottles commemorating particular events, occasions, or ceremonies, provided advertising borne upon commemorative bottles is limited to commemorating historical events of the local board and non-profit, charitable enterprises (i.e., ordinary profit-oriented businesses are not permitted to advertise themselves or their products via commemorative bottles.

5.10.8 Removal of Beverages from ABC stores (14B NCAC 15A .1701)

- (a) Spirituous liquor, either distressed or otherwise, shall not leave the custody of a local board after receipt unless:
 - (1) The spirituous liquor is sold at retail;
 - (2) The liquor is returned to the state ABC warehouse; or

- (3) The liquor is purchased, exchanged, or otherwise obtained by another local board as provided by 14B NCAC 15A .1301(e).

Any spirituous liquor otherwise leaving the local board is non-tax paid spirituous liquor.

- (b) *Distressed Liquor.* Distressed liquor shall be given to a public or private hospital for medicinal purposes only or destroyed and the destruction witnessed by the manager or his designee and a distiller representative. A Destruction of Unsalable Merchandise Report shall be completed and signed by the witnessing parties. A written copy of the report shall be sent to the distiller and a written or electronic copy shall be sent quarterly to the Commission. The original shall be retained by the local board for a period of three years.

When possible, Unsaleable Merchandise Reports should be scanned or emailed to the Commission rather than sending hard copies. The following schedule should be followed when sending these reports to the Commission:

| Forms Signed | Due to the Commission |
|--------------------|-----------------------|
| July – September | October 15 |
| October – December | February 15 |
| January – March | April 15 |
| April – June | July 15 |

- (c) No sales of alcoholic beverages shall be made to employees, board members or other retail customers on credit. This does not prohibit purchases made by the use of credit cards.

5.10.9 Determining Hours of Operation

Boards may operate stores anytime between the hours of 9:00AM-9:00PM. When determining hours of operation, consideration should be given to the following:

- (1) Convenience of patrons
- (2) High traffic time periods
- (3) Day of the week
- (4) Holidays and special events
- (5) Location of store

Every effort should be made to insure stores are open as many hours as possible to allow maximum opportunity or patrons to shop.

Store managers should remind employees not to enter stores when they are not open for business unless they obtain permission from the manager.

5.10.10 Performance Standards

The Commission has established minimum standards for the operation of stores. Information on performance standards is contained in section 8.0.

5.10.11 Customer Service

General Managers should stress to all employees the importance of good customer service. The difference in patrons shopping at your store or another board's may be the type of service they receive. Employees should be courteous, knowledgeable, professional, and prompt.

Employees should be familiar with the products they sell. Customers expect employees to have a working knowledge of products in the store. It is permissible for employees to make recommendations to patrons.

It is recommended that stores have an area set aside for product and alcohol awareness education. This area may contain recipes, educational material, posters or POS provided for customers by the industry. All store employees should be trained in how to courteously handle requesting ID's, denying a purchase to some- one who appears intoxicated, addressing a price difference between the shelf and the register, and enforcing other store policies as determined by the board.

5.11 Sales to Underage and Intoxicated Patrons

All employees should receive training in responsible beverage sales (RBS) prior to selling alcohol.

G.S. 18B-122 states in part, "Proof of good practices (including but not limited to, instruction of employees as to laws regarding the sale of alcoholic beverages, training of employees, enforcement techniques, admonishment to patrons concerning laws regarding the purchase or furnishing of alcoholic beverages...is admissible as evidence that the permittee was not negligent."

Failing to train employees would be an aggravating factor in any dram shop lawsuit should one occur.

5.12 Media Relations

Boards should have a written policy on employee contact with the media. It is recommended that all media inquiries be directed to the general manager and no employees provide interviews unless specifically approved by the general manager or board.

5.13 Community Relations

ABC stores operate within the communities they serve and are stewards of the public's money. Every effort should be made by the board and employees to foster good community relations. The support or condemnation of the community is a reflection of how well or how poorly the board and employees foster this relationship.

**INSERT
TAB
FINANCE
OFFICER
DUTIES
&
RESPONSIBILITIES**

ES

6.1 General

All local ABC boards are required to designate a part-time or full-time employee of the board other than the general manager as the finance officer.

6.2 Definitions (G.S.18B-101(6a))

"Finance officer" means the local board employee, other than a general manager, who is responsible for keeping the accounts of the local board, receiving and depositing receipts, disbursing funds, and any other duties assigned by the local board or Commission.

6.3 Finance Officer (G.S.18B-702(j))

Finance Officer. — Except as otherwise provided, the local board shall designate (i) a part-time or full-time employee of the board other than the general manager or (ii) the finance officer of the appointing authority with consent of the appointing authority to be the finance officer for the local board. The Commission, for good cause shown, may allow the general manager of a board also to be the finance officer. Good cause includes, but is not limited to, the fact that the board operates no more than two stores, and any approval for the general manager also to be the finance officer shall apply until the board operates more than two stores; in any event, the approval shall be effective for 36 months.

6.4 Duties and Powers of the Finance Officer (G.S.18B-702(k))

The finance officer has the authority to delegate some tasks to another employee and supervise the employee. The financier cannot delegate the tasks of "auditing purchases" and "approving disbursements" except to the deputy finance officer.

The finance officer for a local board shall:

- (1) Keep the accounts of the local board in accordance with generally accepted principles of governmental accounting and the rules and regulations of the Commission.
- (2) Disburse all funds of the local board in strict compliance with this Chapter, the budget, pre-audit obligations, and disbursements as required by this section.
- (3) As often as may be requested by the local board or the general manager, prepare and file with the board a statement of the financial condition of the local board.
- (4) Receive and deposit all monies accruing to the local board, or supervise the receipt and deposit of money by other duly authorized employees.
- (5) Maintain all records concerning the debt and other obligations of the local board, determine the amount of money that will be required for debt service or the payment of other obligations during each fiscal year, and maintain all funds.
- (6) Supervise the investment of idle funds of the local board pursuant to subsection (t) of this section.
- (7) The finance officer shall perform such other duties as may be assigned by law, by the general manager, budget officer, or local board, or by rules and regulations of the Commission.

6.5 Accounting System (G.S.ISB-702(1))

Accounting System -Each local board shall establish and maintain an accounting system designed to show in detail its assets, liabilities, equities, revenues, and expenditures. The system shall also be designed to show appropriations and estimated revenues as established in the budget originally adopted and subsequently amended.

6.5.1 Accounts and Reports-(G.S.18B-205(a))

Accounts and Reports -The Commission may require local boards to submit quarterly mixed beverage reports, quarterly and annual audits, monthly sales records, and any other reports or audits relating to the operations of the local ABC systems.

6.5.2 Accounting System-(G.S.18B-205(b))

Accounting System -The Commission may require local boards to use generally accepted accounting standards and a chart of accounts prescribed by the Commission in the operation of ABC Stores, and to record all information necessary and useful to the Commission in auditing the operation of ABC systems and administering the ABC law. (The prescribed chart of accounts can be found on the Commission's website.)

6.6 Incurring Obligations (G.S.18B-702(m))

Incurring Obligations.-No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget unless the budget includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project unless the budget authorizes the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. If an obligation is evidenced by a contract or agreement requiring the payment of money or by a purchase order for supplies and materials, the contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been pre-audited to assure compliance with this subsection. The certificate, which shall be signed by the finance officer or any deputy finance officer approved for this purpose by the local board, shall take substantially the following form:

"This instrument has been pre-audited in the manner required by G.S.18B-702.

(Signature of finance officer)."

An obligation incurred in violation of this subsection is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this subsection.

6.6.1 Expenditures for Condolence/Flower

The state does not allow public money to be spent on condolences.

6.7 Disbursements (G.S.18B-702(n))

Disbursements -When a bill, invoice, or other claim against a local board is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget or a capital project or a grant project authorized by the budget, the finance officer may approve the claim only if:

- (1) The finance officer determines the amount to be payable; and
- (2) The budget includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (o) of this section, by the local board. The finance officer shall establish procedures to assure compliance with this subsection.

6.8 Local Board Approval of Bills, Invoices, or Claims (G.S.18B-702(o))

Local Board Approval of Bills, Invoices, or Claims - The local board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local board that has been disapproved by the finance officer. It may not approve a claim for which no appropriation appears in the budget, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The local board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the board or some other member designated for this purpose shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

6.9 Checks or Drafts Signed By Finance Officer (G.S.18B-702(p))

Checks or Drafts Signed by Finance Officer -Except as otherwise provided by law, all checks or drafts on an official depository shall be signed by the finance officer or a properly designated deputy finance officer. The chairman of the local board or general manager of the local board shall countersign these checks and drafts. The Commission may waive the requirements of this subsection if the board determines that the internal control procedures of the unit or authority will be satisfactory in the absence of dual signatures.

6.10 Payment of a Bill, Invoice, Salary, or Claim (G.S.18B-702(q))

Payment of a Bill, Invoice, Salary, or Claim -A local board may not pay a bill, invoice, salary, or other claim except by a check or draft on an official depository or by a bank wire transfer from an official depository. Except as provided in this subsection, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the local board (or signed by the chairman or some other member of the board pursuant to subsection (o) of this section). The certificate shall take substantially the following form:

"This instrument has been approved in the manner required by G.S.18B-702.

(Signature of finance officer)."

No certificate is required on payroll checks or drafts on an imprest account in an official depository if the check or draft depositing the funds in the imprest account carried a signed certificate. No certificate is required for expenditures of fifty dollars (\$50.00) or less from a petty cash fund, provided the expenditure is accounted for by a receipt for the expended item.\

6.11 Borrowing Money (G.S. 18B-702 (r))

Borrowing Money – A local board may borrow money only for the purchase of land, building, equipment, and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

6.12 Audits (G.S. 18B-702(s))

Audits – A local board shall submit to the appointing authority and Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the appointing authority or the Commission.

6.13 Deposits and Investments (G. S.18B-702(t))

Deposits and Investments -A local board may deposit monies at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S.147-69.3.

6.13.1 Investment Management

The finance officer shall supervise the investment of idle funds pursuant to G.S. 18B-702(t). The investment program shall be so managed that investments and deposits can be converted to cash when needed.

Boards should adhere to the following procedures:

- (1) Boards should make sure their investments are in compliance with G.S. 159-30.
- (2) Boards should have physical custody of securities.
- (3) Access to securities should be restricted to personnel authorized by the board.
- (4) Investments should be adequately safeguarded.
- (5) Securities should be in the board's name.

6.13.2 Cash Management

The finance officer is responsible for authorizing all wire transfers and reviewing bank accounts for proper collateralization.

6.13.3 Cash Disbursements- Non-payroll

NOTE: Sections 6.13.3 and 6.13.4 address segregation of duties between the accounting clerk and finance officer.

If the board does not have an accounting clerk, the finance officer is responsible for the following:

- (1) Review and approve invoice by signing pre-audit certification. (G.S. 18B-702(m))
- (2) Prepare and review check.
- (3) Review documentation and sign check.
- (4) Present invoice, check and addressed and stamped envelope for second signature.

If the board does have an accounting clerk, they are responsible for numbers two and three above and the finance officer in addition to numbers one and four is also responsible for initiating the purchase.

6.13.4 Cash Disbursements - Payroll

Every employee should have a personnel file that includes authorization for hiring, salary history, hours authorized to work, federal and state withholding forms, health insurance and retirement information, when applicable, and support for any other payroll deduction.

All paychecks should be supported by time sheets that are reviewed and approved by signature.

If the board does not have an accounting clerk, the finance officer is responsible for the following:

- (1) Prepare personnel file and keep updated.
- (2) Review and approve (by signature) time sheets and leave records.
- (3) Prepare checks from authorized salary and time sheets and review work.
- (4) Review payroll for reasonableness and sign checks-first signature.
- (5) Present check for second signature.

If the board does have an accounting clerk, they are responsible for numbers two and four above and the finance officer in addition to numbers three and five is also responsible for distributing checks.

6.14 Compliance with Commission Rules (G. S.18B-702(u))

Compliance with Commission Rules - The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital investments, appointment of a budget officer, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds. The Commission may vary these rules and regulations according to any other criteria reasonably related to the purpose or complexity of the financial operations involved. The Commission has the authority to inquire into and investigate the internal control procedures of a local board and may require any modifications in internal control procedures which in the opinion of the Commission are necessary or desirable to prevent embezzlements or mishandling of public monies.

6.15 Penalties (G. S.18B-702(v))

Penalties -If a board member or employee of a local board incurs an obligation or pays out or causes to be paid out any funds in violation of this section, the member or employee and the sureties on the official bond are liable for any sums so committed or disbursed. If the finance officer or any properly designated deputy finance officer gives a false certificate to any contract,

agreement, purchase order, check, draft, or other document, the finance officer and the sureties on the official bond are liable for any sums illegally committed or disbursed thereby.

6.15.1 Personal Liability

"The finance officer, or person acting in that capacity, can be held personally liable for any obligations made that are not in accordance with the budget ordinance as it stands at the time the obligation is incurred. Therefore, if an obligation is made in excess of the budgeted appropriation, a violation of G.S. 159-28(a) has occurred, even if the ordinance is later amended to authorize the obligation and the resulting expenditure." ¹

6.16 Applicability of Criminal Statutes (G. S.188-702(w))

Applicability of Criminal Statute -The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S.14-254 shall be punished as a Class H felon.

6.17 Local Acts (G. S. 18B-702(x))

Local Acts -Notwithstanding the provisions of any local act, this section applies to all local boards.

¹ Department of State Treasurer. Policies Manual. Budgeting Section. Section 10. Page 30

**INSERT
TAB
BUDGET
PROCESS**

PROCESS

7.1 General

All local ABC boards are required to operate under an annual balanced budget. This budget must be adopted on or before July 1 of the fiscal year that it covers. All budgets cover a fiscal year beginning July 1 and ending June 30.

No board may expend any monies, regardless of their source, except in accordance with a budget adopted under the statutes.

7.1.1 Financial Operations of Local ABC Boards (G.S.18B-702(a))

Generally -A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S.159-7(b)(10).

7.2 Budget Officer (G.S.18B-702(b))

Budget Officer -The general manager of the local board shall be the budget officer for the local board. In the absence of a general manager, a local board may impose the duties of budget officer on the chairman or any member of the local board or any other employee of the board.

7.2.1 Responsibilities

The budget officer is responsible for seeing that the budget is completed and presented to the board in a timely manner. The budget officer is responsible for determining the amount of salary increases and adjustments that will be recommended to the board.

When appropriate, the budget officer will:

- (a) After receiving departmental budget requests, ensure that all expenses continued from the previous year are valid
- (b) Ensure that all new expense items are documented and justified
- (c) Ensure that any new capital spending is documented and reasonable

Once the budget has been prepared as outlined above, the budget officer will submit it and a budget message to the board not later than June 1.

7.3 Annual Balanced Budget (G.S.18B-702(c))

Annual Balanced Budget -Each local board shall operate under an annual balanced budget administered in accordance with this section. A budget is balanced when the sum of estimated gross revenues and both restricted and unrestricted funds are equal to appropriations.

Expenditures shall not exceed the amount of funds received or in reserve for the purpose to which the funds are appropriated. It is the intent of this section that all monies received and expended by a local board should be included in the budget. Therefore, notwithstanding any other provision of law, no local board may expend any monies, regardless of their source, except in accordance with a budget adopted under this section.

7.4 Preparation and Submission of Budget and Budget Message (G.S.18B-702(d))

Preparation and Submission of Budget and Budget Message.-Upon receipt of the budget requests and revenue estimates and the financial information supplied by the finance officer, the budget officer shall prepare a budget for consideration by the local board in such form and detail as may have been prescribed by the budget officer or the local board. The budget, together with a budget message, shall be submitted to the local board, the appointing authority, and the Commission not later than June 1. The budget and budget message should, but need not, be submitted at a formal meeting of the board.

7.4.1 Revenue Estimates

All revenue estimates should be made conservatively to avoid overextending available resources.

7.4.2 Expenses

Expenses should be broken down by administration, store(s), warehouse, and law enforcement (when applicable). The board may budget up to 5% of total expenses for contingencies (i.e. miscellaneous expense).

7.4.3 Budget Message

The budget message should include, but is not limited to the following:

- (a) Goals for the budget year
- (b) An explanation of the principal budget items
- (c) An outline of the board's experience during the past year and the reasons for any changes from the previous year's expenditure levels
- (d) An explanation of any major changes in fiscal policy

7.5 Filing and Publication of the Budget (G.S.18B-702(e))

Filing and Publication of the Budget - On the same day the budget officer submits the budget to the local board, the budget officer shall make a copy for public inspection, and it shall remain available for public inspection until the budget is adopted. The budget officer shall make a copy of the budget available to all news media in the county. The budget officer shall also publish a statement that the budget has been submitted to the local board and is available for public inspection in the office of the general manager of the local board. The statement shall also give notice of the time and place of the budget hearing required by subsection (f) of this section.

7.5.1 Budget Available for Public Review

Means by which the budget may be made available for public review include:

- (a) Email to interested parties; publish on website; keep a hard copy at the office
- (b) A notice should be sent to the media announcing that the budget has been submitted to the board, that a copy is available for inspection in the office of the general manager, and that a public hearing will take place. Give the time and location of the hearing.

7.6 Budget Hearing (G.S.18B-702(f))

Budget Hearings -Before adopting the budget, the board shall hold a public hearing at which time any persons who wish to be heard on the budget may appear.

7.6.1 Changes in Budget

During the period between the presentation of the budget and adoption, the board may review the budget and make changes as the review is conducted or make all changes at the end of the budget process including the public hearing. This review may take place during special meetings or regular monthly meetings. The notice requirement under the open meetings law (N.C.G.S. 143-318.12) must be complied with in relation to budget meetings.

7.7 Adoption of Budget (G.S.18B-702(g))

Adoption of Budget -Not earlier than 10 days after the day the budget is presented to the board and not later than July 1, the local board shall adopt a budget making appropriations for the budget year in such sums as the board may consider sufficient and proper, whether greater or less than the sums recommended in the budget. The budget shall authorize all financial transactions of the local board. The budget may be in any form that the board considers most efficient in enabling it to make the fiscal policy decisions embodied therein, but it shall make appropriations by department, function, or project and show revenues by major source. The following directions and limitations shall bind the local board in adopting the budget:

- (1) The full amount estimated by the finance officer to be required for debt service during the budget year shall be appropriated.
- (2) The full amount of any deficit in each fund shall be appropriated.
- (3) Working capital funds set aside pursuant to G.S.18B-805 shall be established by rule of the Commission. "Working capital" means the total of cash, investments, and inventory less all unsecured liabilities. Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S.18B-805(b)(2), (3), (4), and (5). Any expenditure to be charged against working capital funds shall be authorized by resolution of the local board, which resolution shall be deemed an amendment to the budget setting up an appropriation for the object of expenditure authorized. The local board may authorize the budget officer to authorize expenditures from working capital funds subject to such limitations and procedures as it may prescribe. Any such expenditure shall be deemed an amendment and reported to the board at its next regular meeting and recorded in the minutes.
- (4) Estimated revenues shall include only those revenues reasonably expected to be realized in the budget year.
- (5) Sufficient funds to meet the amounts to be paid during the fiscal year under continuing contracts previously entered into shall be appropriated unless such contract reserves to the local board the right to limit or not to make such appropriation.
- (6) The sum of estimated net revenues and appropriated fund balance in each fund shall be equal to appropriations in that fund. Appropriated fund balance in a fund shall not exceed the sum of cash and investments minus the sum of liabilities, encumbrances, and deferred revenues arising from cash receipts, as those figures stand at the close of the fiscal year next preceding the budget year.

The budget shall be entered in the minutes of the local board and within five days after adoption, and copies thereof shall be filed with the finance officer, the budget officer, the appointing authority, and the Commission.

7.8 Amendments to the Budget (G.S.18B-702(h))

Amendments to the Budget -Except as otherwise restricted by law, the local board may amend the budget at any time after adoption, in any manner, so long as the budget, as amended, continues to satisfy the requirements of this section. The local board by appropriate resolution may authorize the budget officer to transfer monies from one appropriation to another within the same fund subject to such limitations and procedures as it may prescribe. Any such transfers shall be reported to the local board at its next regular meeting and shall be entered in the minutes. Amendments to the adopted budget shall also be provided to the appointing authority and the Commission.

7.9 Interim Budget (G.S.18B-702(i))

Interim Budget. -In case the adoption of the budget is delayed until after July 1, the local board shall make interim appropriations for the purpose of paying salaries, debt service payments, and the usual ordinary expenses of the local board for the interval between the beginning of the budget year and the adoption of the budget. Interim appropriations so made shall be charged to the proper appropriations in the adopted budget.

7.10 Budget Administration¹

"The budget document, as of the first day of the fiscal year, becomes the primary instrument of decision within the local unit of government. Its real worth can be realized only if it is respected and followed."

7.11 Personal Liability²

"The finance officer, or person acting in that capacity, can be held personally liable for any obligations made that are not in accordance with the budget ordinance as it stands at the time the obligation is incurred."

¹ Department of State Treasurer Policies Manual — Budgeting Section 10, page 27,4/2003

² Department of State Treasurer Policies Manual — Budgeting Section 10, page 30,4/2003

**INSERT
TAB**

**PERFORMANCE
STANDARDS**

8.1 Powers and duties of the Commission (G.S.18B-203(20))

Powers - The Commission shall have the authority to:

Promulgate rules to establish performance standards for local boards. Performance standards established pursuant to this subdivision shall include, but not be limited to standards that address enforcement of ABC laws, store appearance, operating efficiency, solvency, and customer service.

8.2 Compliance with performance standards remedies (G.S.18B-705)

- (a) *Local Board Compliance.* -The Commission shall establish performance standards pursuant to G.S. 18B-203(a) (20). The Commission shall ensure that all local boards comply with established performance standards by conducting regular or special audits, conducting performance evaluations, or taking other measures, which may include inspections by Commission auditors or alcohol law enforcement agents.
- (b) *Performance Improvement Plans* -The Commission, upon determining that a local board is failing to meet performance standards established pursuant to G.S. 18B-203(a) (20), shall meet with the chair of the local board and the appointing authority and issue a statement of findings. The appointing authority in consultation with the Commission and the local board shall develop and deliver a performance improvement plan to the local board within 60 days of the meeting with the Commission. The performance improvement plan shall include, but not be limited to, recommendations for improved performance based on the performance standards established by the Commission. The plan shall also state a period of time in which the performance improvements are to occur and what action will be taken by the Commission if performance standards are not met within the given time limits. The appointing authority shall allow up to but no more than 12 months' time to the local board to implement and show improvement under the performance improvement plan. The local appointing authority, in consultation with the Commission and upon good cause shown may allow up to an additional six-month period of time for the local board to meet all requirements in the performance improvement plan and to establish that the performance standards established by the Commission are met.
- (c) *Remedies* – If the Commission determines that the established performance standards identified in the statement of findings cannot be met after a performance improvement plan has been implemented and adequate time has been given, but in no case less than 12 months, the Commission shall take appropriate action to avoid insolvency. This action may include closing the board pursuant to G.S. 18B-801 (c1), closing a store or multiple stores, or merging the local board with another local board in order to maintain solvency. The Commission may also seize the assets of the local board and liquidate any assets necessary to satisfy any debt in order to maintain solvency of the local board. Prior to taking action pursuant to this subsection, the Commission shall issue a notice of intent to take such action to the appointing authority and the local board.

8.3 MAINTENANCE OF WORKING CAPITAL

- (a) As used in this Rule, "working capital" means the total of cash, investments and inventory less all unsecured liabilities.
- (b) A local board shall set its working capital requirements at not less than two weeks' average gross sales of the latest fiscal year nor greater than:
 - (1) four months of the latest fiscal year for boards with gross sales less than one million five hundred thousand dollars (\$1,500,000):
 - (2) three months of the latest fiscal year for boards with gross sales greater than or equal to one million five hundred thousand dollars (\$1,500,000) and less than fifty million dollars (\$50,000,000): and
 - (3) two months of the latest fiscal year for boards with gross sales equal to or greater than fifty million dollars (\$50,000,000).

Gross sales means gross receipts from the sale of alcoholic beverages less distributions as defined in G.S.18B-805(b) (2),(3), and (4).

- (c) A local board is considered insolvent if all of the following conditions apply:
 - (1) the local board does not adhere to the working capital requirements as stated in Paragraph (b) of this Rule;
 - (2) the local board's current assets are less than the local board's current liabilities and the current portion of long term debt;
 - (3) the local board is unable to pay its debts as they fall due: and
 - (4) the Commission believes that continued operation of the local board will not lead to profits in the next fiscal year.
- (d) As used in this Rule, "long term debt" means the loans and financial obligations lasting over one year.

*History Note: Authority G.S.18B-100; 18B-203(a) (20); 18B-702(u):18B-805(d);
Eff. January 1, 1982; Amended Eff. November 1, 2011; July 1, 1992;
June 1,1988; May 1, 1984.*

8.4 STORES: APPEARANCE AND STATE LIST

- (a) Interior Appearance of Stores. Stores shall meet the following standards:
- (1) Stores shall be well lit so as an average customer can shop safely and be free of trash;
 - (2) Floors shall be clean;
 - (3) Bottles and shelves shall be clean;
 - (4) Signs and displays shall not be faded or worn;
 - (5) Televisions that are on shall be tuned to a news, weather or community service channel when not providing liquor related information and the volume shall be kept low enough so as not to interfere with sales;
 - (6) Smoking shall not be permitted in any stores, warehouses or storage areas; and
 - (7) Security systems shall be functional.
- (b) Exterior Appearance of Stores. Stores shall meet the following standards:
- (1) Areas around stores shall be well lit and free of trash; and
 - (2) Signs shall not be faded or worn.
- (c) State List to be Available. Every store shall make available for its customers' inspection a copy of the most current complete state price list and any supplemental price lists. A local board may draw up and post its own price list for items or brands sold in its stores, provided the items and prices listed on the local list are also listed on the complete state list.

History Note: Authority G.S.18B-100; G.S 18B-102(a); 18B-203(a) (20); 18B-807; Eff. January 1, 1982; Amended Eff. November 1, 2011; July 1, 1992; May 1, 1984.

8.5 CUSTOMER SERVICE

- (a) The manager and the employees in every store shall see that customers are waited on professionally and as soon as possible to reduce customers' wait time. The manager and the employees shall not allow people without the intent to purchase to loiter.
- (b) If a local board has a price discrepancy between the price on the shelf or bottle and the cash register, and the price on the shelf or bottle is lower, the local board shall sell the item at the shelf or bottle price and correct the shelf or bottle price to match the Commission's published price.
- (c) If a customer inquiries about a product that a local board does not carry, the local board's manager or employee shall inform the customer that a case of the product can be special ordered. The manager or employee shall also inform the customer what guidelines must be followed to place the special order.

History Note: Authority G.S.18B-100; 18B-203(a) (20); 188-807; Eff. January 1, 1982; Amended Eff. November 1, 2011.

8.6 SHELF MANAGEMENT

- (a) Each local board shall establish and maintain a shelf management plan. The local board shall establish policies within its plan that incorporates the following concepts:
- (1) set the higher priced items on the upper shelves at eye level and set the lower priced items on the bottom shelves;
 - (2) block categories in vertical sets per their category;
 - (3) arrange bottle sizes so they increase left to right of the same item;
 - (4) create brand billboard by stacking all brand sizes together;
 - (5) set shelf space for products considering the following factors;
 - a. market share;
 - b. promotions
 - c. traffic patterns
 - d. seasonal sales; and
 - e. cross merchandising;
 - (6) set and maintain all bottles at the front of the shelf; and
 - (7) discontinue low profit slow moving items.
- (b) Each local board shall keep a copy of its shelf management plan at each store location and, upon request, provide a copy to a Commission representative.

History Note: Authority G.S. 18B-100; 18B-203 (a) (20); Eff. December 1, 2011

8.7 LOCAL BOARD TRAINING

8.7.1 Local Board Members and Employees

- (a) All board members, finance officers, and general managers of local boards shall complete a Commission training course for local boards by August 2, 2011. Completion of a Commission training course for local boards prior to May 2, 2011, is acceptable. Thereafter:
- (1) All board members shall complete a Commission training course for local boards within 12 months of their initial appointment. All board members shall complete a Commission training course for local boards within 12 months of any subsequent appointment.
 - (2) All finance officers and general managers shall complete a Commission training course for local boards within 12 months of their initial employment.
 - (3) After taking the initial Commission training course for local boards, all finance officers and general managers shall complete a Commission training course for local boards every three years that they are employed by a local board.
- (b) Non-Commission training courses are not acceptable forms of training and do not meet the requirements of this Rule.
- (c) Board members, finance officers, and general managers of local boards who do not meet the requirements of this Section are subject to removal by the Commission as referenced by G.S.18B-704(c) (iii).

History Note: Authority G.S. 18B-100; 18B-203(a) (21); JBB-701(b); 18B-704(c)(iii); 18B-706(b); Temporary Adoption Eff. May 2, 2011; Eff. August 1, 2011.

8.7.2 Local Board Training Courses

All Commission training courses for local boards shall consist of two hours of ethics as a subject matter and no more than two hours of other subject matter.

History Note: Authority G.S.18B-100; 18B-203(a)(21); 18B-701(b); 18B-704(c)(iii); 18B-706(b); Temporary Adoption Eff. May 2, 2011; Eff. August 1, 2011.

- 8.7.3 Participation standards and attendance requirements:
- (a) Instructors shall require that participants comply with the following participation standards:
 - (1) Attendees shall direct their attention to the instruction being provided and refrain from engaging in activities unrelated to the instruction.
 - (2) Attendees shall refrain from engaging in any activities which are distracting to other participants or the instructor, or which otherwise disrupt the orderly conduct of a class.
 - (b) Instructors may dismiss from a training course any attendee who fails to comply with the participation standards prescribed in Paragraph (a) of this Rule.
 - (c) Instructors shall not issue a training course completion certificate to any attendee who fails to comply with the participation standards set forth in Paragraph (a) of this Rule, nor shall instructors include the name of such attendee on their reports verifying completion of a training course. Instructors shall submit to the Commission with their reports for the training course a written statement which includes the name of the attendee and the name of the attendee's local board for whom the instructor does not report course credit, details concerning the attendee's failure to comply with the participation standards, and names of other persons in attendance at the class who witnessed the attendee's conduct.
 - (d) Attendees must complete at least 90 percent of a Commission local board training course to be issued a local board training course completion certificate. Attendees shall not be admitted to a scheduled local board training course after 10 percent of the allotted time has elapsed. Instructors may not make any exceptions to the attendance requirement.

History Note: Authority G.S. 18B-100; 18B-203(a) (21); 18B-701(b); 18B-704(c)(iii); 18B-706(b); Temporary Adoption Eff. May 2, 2011; Eff. August 1, 2011.

INSERT

TAB

LAW

ENFORCEMENT

9.1 General

Local ABC boards have several options regarding law enforcement. Boards may contract with state or local law enforcement agencies or hire their own enforcement personnel. ABC boards do have the authority to set enforcement priorities, develop goals and implement policy for ABC law enforcement officers hired by the board. Board members and general managers must, however, keep in mind that officers are bound by many laws and regulations; internal policies and requests should not conflict with these laws and regulations. For example, a board member asking their ABC officer to run a license tag on a neighbor would be in direct violation of the laws and policies governing access to the Division of Criminal Information network enforced by the North Carolina State Bureau of Investigation.

9.2 Discharge upon conviction (G.S.18B-202)

In addition to imposing any other penalty authorized by law, a judge may remove from office or discharge from employment any Commission or local board member or employee, or any ALE agent, who is convicted of a violation of any provision of this Chapter or of any felony and may declare that person ineligible for membership or employment with the Commission, any local board, or the ALE Division, for a period of no longer than three years. Conviction of a crime under this Chapter or of any felony shall also be grounds for the Commission to remove from office or discharge from employment any local board member or employee. In addition to imposing any other penalty authorized by law, a judge may prohibit an individual convicted of a violation of this Chapter, or of any felony, from participating in any contract to enforce the ABC laws for a local board if that individual is a designated officer of an agency which holds a contract to enforce the ABC laws for a local board. A judge may also prohibit an individual convicted of a violation of this Chapter, or of any felony, from being designated as an officer that enforces the ABC law under a contract with any local board for a period of no longer than three years

9.3 Local ABC officers (G.S.18B-501)

- (a) *Appointment* - Except as provided in subsection (f), each local board shall hire one or more ABC enforcement officers. Local ABC enforcement officers shall be designated as "ABC Officers." The local board may designate one officer as the chief ABC officer for that board.
- (b) *Subject Matter Jurisdiction* -After taking the oath prescribed for a peace officer, a local ABC officer may arrest and take other investigatory and enforcement actions for any criminal offense; however, the primary responsibility of a local ABC officer is enforcement of the ABC laws and Article 5 of Chapter 90 (The Controlled Substances Act).
- (c) *Territorial Jurisdiction* -A local ABC officer has jurisdiction anywhere in the county in which he is employed except that a city ABC officer's territorial jurisdiction is subject to any limitation included in any local act governing that city ABC system. A local ABC officer may pursue outside his normal territorial jurisdiction anyone who commits an offense within that jurisdiction, as provided in G.S. 15A-402 (d).
- (d) *Assisting Other Local Agencies* – The local ABC officers employed by a local board shall constitute a "law-enforcement agency" for purposes of G.S. 160A-288, and a local board shall have the same authority as a city or county governing body to approve cooperation between law-enforcement agencies under that section.

(e) *Assisting State and Federal Enforcement* – A local ABC officer may assist State and federal law-enforcement agencies in the investigation of criminal offenses in North Carolina, under the following conditions:

- (1) The local board employing the officer has adopted a resolution approving such assistance and stating the conditions under which it may be provided;
- (2) The State or federal agency has made a written request for assistance from that local board, either for a particular investigation or for any investigation that might require assistance within a certain period of time;
- (3) The local ABC officer is supervised by someone in the requesting agency; and
- (4) As soon as practical after the assistance begins, an acknowledgement of the action is placed in the records of the local board.

A local ABC officer shall have territorial jurisdiction throughout North Carolina while assisting a state or federal agency under this section. While providing that assistance the officer shall continue to be considered an employee of the local board for purposes of salary, worker's compensation, and other benefits, unless a different arrangement is negotiated between the local board and the requesting agency.

(f) *Contracts with Other Agencies.* -Instead of hiring local ABC officers, a local board may contract to pay its enforcement funds to a sheriff's department, city police department, or other local law-enforcement agency for enforcement of the ABC laws within the law-enforcement agency's territorial jurisdiction. Enforcement agreements may be made with more than one agency at the same time. When such a contract for enforcement exists, the designated officers of the contracting law-enforcement agency shall have the same authority to inspect under G.S. 18B-502 that an ABC officer employed by that local board would have. An agency contracted to provide ABC law enforcement shall designate no more than five officers to conduct inspections pursuant to this section and G.S. 18B-502. If a city located in two or more counties approves the sale of some type of alcoholic beverage pursuant to the provisions of G.S.18B-600(e4), and there are no local ABC boards established in the city and one of the counties in which the city is located, the local ABC board of any county in which the city is located may enter into an enforcement agreement with the city's police department for enforcement of the ABC laws within the entire city, including that portion of the city located in the county of the ABC board entering into the enforcement agreement.

(g) *Discharge* – Local ABC officers and the designated officers of agencies which contract with local boards for enforcement of the ABC laws are subject to the discharge and ineligibility provisions of G.S. 18B-202.

9.4 Accountability: Enforcement Reports (G.S.18B-501(f1))

All board ABC officers and those law enforcement agencies contracted to conduct ABC enforcement activities are now required to report their enforcement activities to their appointing authority and the ABC Commission.

The 2010 session of the legislature added this new reporting requirement. It reads:

To ensure accountability to the appointing authority and the Commission, every local board's ABC officers and those law enforcement agencies subject to an enforcement agreement entered into pursuant to subsection (f) of this section shall report to the local board, by the fifth business day of each month, on a form developed by the Commission, the following:

- (1) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at ABC permitted outlets.
- (2) The number of arrests made for ABC law, Controlled Substance Act, or other violations, by category, at other locations.
- (3) The number of agencies assisted with ABC law or controlled substance related matters.
- (4) The number of alcohol education and responsible serve programs presented.

The local board shall submit a copy of the enforcement report to the appointing authority and the Commission not later than five business days after receipt of the enforcement report by the local board. The Commission shall publish this information, by local board and enforcement agency, on a public Internet web site maintained by the Commission.

9.5 Oversight

One of the most important functions of any board is oversight. ABC boards with their own law enforcement employees must insure all aspects of their law enforcement operations are in strict compliance with state and federal laws. In addition, law enforcement officers carry out their duties and responsibilities under strict guidelines from the North Carolina Criminal Justice and Training Standards Commission. The North Carolina Criminal Justice Education and Training Standards Commission, through N.C.G.S. Chapter 17C, establishes' minimum employment, training and retention standards for the State's criminal justice officers. Officers not complying with these standards risk losing their law enforcement certification.

To avoid problems and insure accountability, ABC boards should develop strong internal controls and written policies pertaining to: officer code of conduct, evidence, undercover money, use of board equipment, use of force, and operation of patrol vehicles at a minimum.

Boards should monitor contracts with law enforcement agencies to insure goals and services outlined in the contract are being met.

**INSERT
TAB
CODE
OF
ETHICS
&
CONDUCT**

CONDUCT

10.1 General

"It is frequently stated that a key to success in any endeavor is education. Maintaining a high ethical standard in public service is no exception."¹

The goal of any code of ethics and conduct is to help insure transparency and avoid conflicts of interest or perceived conflicts of interest. Codes of conduct help to maintain integrity and impartiality of those boards, committees or persons following the code.

ABC board employees follow the lead of managers and board members. It has been said that the best way to avoid conflicts of interest and unethical practices is through self-accountability.

Every organization experiences the phenomenon commonly referred to as the code of silence. This code refers to the bond of loyalty. Employees who spend a considerable amount of time working together tend to become loyal toward each other. "The real challenge is to mold the culture to where loyalty to honor and integrity truly becomes more important than peer pressure and loyalty to another person."²

"The only gains you should seek from public employment are salaries, fringe benefits, respect, and recognition for your work. Your personal gains may also include the pleasure of doing a good job, helping the public, and achieving your career goals. No elected or appointed servant should borrow or accept gifts from staff or any corporation which buys services from, or sells to, or is regulated by, his or her governmental agency."

American Society for Public Administration

10.2 Purpose and applicability

This code of ethics and conduct section covers a wide range of board practices and behaviors. It does not cover every issue that may arise, but it sets out basic principles to guide ABC board members, general managers and other employees.

ABC boards should commit their member to ethical, professional and lawful conduct, including proper use of authority and responsibility in carrying out its fiduciary responsibilities.

10.3 Powers and duties of the Commission (G.S.18B-203(21))

(a) *Powers* -The Commission shall have authority to:

Promulgate rules to establish mandatory training requirements for local board members, finance officers, and general managers. If personal attendance is required, the Commission shall not require more than four hours of training and shall provide up to two hours of training at convenient locations around the State in conjunction with ethics training.

10.4 Statutory mandates

10.4.1 Ethics requirements for local boards (G.S.18B-706)

- (a) Each local board shall adopt a policy containing a code of ethics, consistent with the provisions of G.S. 18B-201, to guide actions by the local board members and employees of the local board in the performance of their official duties. The policy shall address at least all of the following:
- (1) The need to obey all applicable laws regarding official actions taken as a local board member or employee.
 - (2) The need to uphold the integrity and independence of the local board member or employee's position.
 - (3) The need to avoid impropriety in the exercise of official duties.
 - (4) The need to faithfully perform the duties of the position.
 - (5) The need to conduct the affairs of the board in an open and public manner, including complying with all applicable laws governing open meetings and public records.
- (b) Each member of a local board shall receive a minimum of two hours of ethics education within 12 months after initial appointment to the office and again within 12 months after subsequent appointment to the office. The ethics education shall cover laws and principles that govern conflicts of interest and ethical standards of conduct for local ABC boards. The education may be provided by the Commission or another qualified source approved by the Commission. The local board shall maintain a record verifying receipt of the ethics education by each member of the local board. The local board may require appropriate ethics training and education for employees of the local ABC board.
- (c) The Commission shall develop a model ethics policy that local ABC boards may adopt to be in compliance with this section. (See the Appendix for a sample ethics policy.)

"Public trust is merely a state of mind. In cynical times, it is difficult to create and easy to destroy."

Michael Josephson 1998

10.4.2 Conflicts of interest

Conflict of interest; gifts (G.S.18B-201)

- (a) *Financial Interests Restricted.* -No person shall be appointed to or employed by the Commission, a local board, or the ALE Division if that person or a member of that person's family related to that person by blood or marriage to the first degree has or controls, directly or indirectly, a financial interest in any commercial alcoholic beverage enterprise, including any business required to have an ABC permit. The Commission may exempt from this provision any person, other than a Commission member, when the financial interest in question is so insignificant or remote that it is

unlikely to affect the person's official actions in any way. Exemptions may be granted only to individuals, not to groups or classes of people, and each exemption shall be in writing, be available for public inspection, and contain a statement of the financial interest in question.

- (b) *Self-dealing* – The provisions of G.S. 14-234 shall apply to the Commission and local boards.
- (c) *Dealing for Family Members* – Neither the Commission nor any local board shall contract or otherwise deal in any business matter so that a member, member's spouse or any person related to the member by blood to a degree of first cousin or closer in any way financially benefits, directly or indirectly, from the transaction unless:
 - (1) The member who financially benefits from the transaction or whose spouse or relative financially benefits from the transaction abstains from participating in any way, including voting, in the decision;
 - (2) The minutes of the meeting at which the final decision is reached specifically note the member who is financially benefited or whose spouse or relative is financially benefited and the amount involved in each transaction;
 - (3) The next annual audit of the Commission or local board specifically notes the member and the amount involved in each transaction occurring during the year covered by the audit; and
 - (4) If the transaction is by a local board, the Commission is notified at least two weeks before final board approval of the transaction.
- (d) *Gifts Generally.* -The provisions of G.S.133-32 shall apply to the Commission and local boards.
- (e) *Conflicts of Interest for the Commission* – The provisions of Article 4 of Chapter 138A of the General Statutes shall apply to the Commission.
- (f) *Conflicts of Interest for Local Boards* – Except as permitted under subsection (h) of this section, a local ABC board member shall not knowingly use the local ABC board member's position on the board in any way that will result in financial benefit to the local ABC board member, the local ABC board member's spouse, any person related to the local ABC board member by blood to a degree of first cousin or closer, or any business with which the local ABC board member is associated.
- (g) For purposes of subsection (f) of this section, 'business with which associated' shall have the same meaning as in G.S.138A-3(3). For purposes of this section, 'financial benefit' shall mean a direct pecuniary gain or loss, or a direct pecuniary loss to a business competitor.
- (h) Notwithstanding subsection (f) of this section, a local ABC board member may participate in an action of the local ABC board under any of the following circumstances except as specifically limited:

- (1) The financial benefit that accrues to the local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that is accrued as a member of a profession, occupation, or general class and is no greater than that which could reasonably be foreseen to accrue to all members of that profession, occupation, or general class.
 - (2) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is associated is one that would be enjoyed to an extent no greater than that which other citizens of the State would or could enjoy.
 - (3) The financial benefit derived by a local ABC board member, the local ABC board member's spouse or any person related to the local ABC board member by blood to a degree of first cousin or closer, or a business with which the local ABC board member is so remote, tenuous, insignificant, or speculative that a reasonable person would conclude under the circumstances that the local ABC board member ability to protect the public interest and perform the local ABC board member's duties would not be compromised.
 - (4) When an action affects or would affect the local ABC board member's compensation as a local ABC board member.
 - (5) Before the local ABC board member participated in the action, the board member requested and received from the ABC Commission a written advisory opinion that authorized the participation. In authorizing the participation under this subdivision, the ABC Commission shall consider the need for the local ABC board member's particular contribution, such as special knowledge of the subject matter and the effective functioning of the local ABC board.
 - (6) When action is ministerial only and does not require the exercise of discretion.
 - (7) When the local ABC board records in its minutes that it cannot obtain a quorum in order to take the action because the local ABC board member is disqualified from acting, the local ABC board member may be counted for purposes of a quorum but shall otherwise abstain from taking any further actions.
- (i) Nothing in this section shall allow participation in an action prohibited by G.S. 14-234 or G.S. 133-32.
 - (j) A local board member shall not improperly use or improperly disclose any confidential information.
 - (k) A local board member shall have an affirmative duty to promptly disclose in writing to the local board any conflict of interest or potential conflict of interest.

10.4.3 Limited liability (G.S.18B-700ij))

A person serving as a member of a local ABC board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

- (1) Was not acting within the scope of his official duties;
- (2) Was not acting in good faith;
- (3) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;
- (4) Derived an improper personal financial benefit from the transaction; or
- (5) Incurred the liability from the operation of a motor vehicle.

The immunity in this subsection is personal to the members of local ABC boards, and does not immunize the local ABC board for liability for the acts or omissions of the members of the local ABC board.

"An ethical person often chooses to do more than the law requires and less than the law allows. The ethical person is concerned with what is right to do, not with what she has a right to do."

Josephson Institute of Ethics

10.5 Definitions

10.5.1 Ethics

Webster's Dictionary defines ethics as, "the study of standards of conduct and moral judgment; moral philosophy; the system or code of morals of a particular person, religion, group or profession."

Ethics is not an easy thing to define. Almost everyone wants to live an ethical life, but knowing what that means is not as simple as it sounds. At times there can be two contrasting ideas that may seem ethical, but it is hard to determine which actually is the right course of action. The answers to ethical questions depend on your definition of ethics.

10.6 Things of Value

Board members and employees shall not demand, require or accept anything from any vendor, industry member, contractor, retailer or anyone associated with or who may conduct business with the board.

"When it comes to public trust, perception is reality. It is not enough that we do no wrong, we must also try to assure that others believe we have done no wrong."

Michael Josephson

**INSERT
TAB
APPENDIX**

Code of Ethics for the
[Board's Official Name] of
[Name of City, County,]
North Carolina

Adapted from *A Model Code of Ethics for North Carolina Elected Officials with Guidelines and Appendixes, 2010*, by A. Fleming Bell, II, and distributed with permission of the School of Government. This copyrighted material may not be reproduced in whole or part without the express written permission of the School of Government, CB# 3330 UNC Chapel Hill, Chapel Hill, North Carolina 27599-3330; telephone: 919-966-4119; fax 919-962-2707; Web Address: www.sog.unc.edu.

PREAMBLE

WHEREAS, the Constitution of North Carolina, Article I, Section 35, reminds us that a “frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty,” and

WHEREAS, a spirit of honesty and forthrightness is reflected in North Carolina’s state motto, *Esse quam videri*, “To be rather than to seem,” and

WHEREAS, Section 18B-706 of the North Carolina General Statutes requires local ABC boards to adopt a code of ethics, and

WHEREAS, as public officials we are charged with upholding the trust of the citizens of this [jurisdiction], and with obeying the law, and

WHEREAS, [other clauses that jurisdiction may desire]

NOW THEREFORE, in recognition of our blessings and obligations as citizens of the State of North Carolina and as public officials representing the citizens of the [type of jurisdiction] of [name of jurisdiction], and acting pursuant to the requirements of Section 18B-706 of the North Carolina General Statutes, we the [official name of ABC board] do hereby adopt the following General Principles and Code of Ethics to guide the [local ABC board], in its lawful decision-making.

GENERAL PRINCIPLES UNDERLYING THE CODE OF ETHICS

- The stability and proper operation of democratic representative government depend upon public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people upon their elected and appointed officials.
- Governmental decisions and policy must be made and implemented through proper channels and processes of the governmental structure.
- Board members must be able to act in a manner that maintains their integrity and independence, yet is responsive to the interests and needs of those they represent.
- Board members must always remain aware that at various times they play different roles:
 - As advocates, who strive to promote the controlled sale by law of spirituous liquor.
 - As trustees charged with a fiduciary duty to the public to use sound business judgment in overseeing a government-operated commercial enterprise.
 - As decision-makers, who arrive at fair and impartial quasi-judicial and administrative determinations.
- Board members must know how to distinguish among these roles, to determine when each role is appropriate, and to act accordingly.
- Board members must be aware of their obligation to conform their behavior to standards of ethical conduct that warrant the trust of their constituents. Each official must find within his or her own conscience the touchstone by which to determine what conduct is appropriate.

CODE OF ETHICS

The purpose of this Code of ethics is to establish guidelines for ethical standards for the [official name of the ABC board] (board members, general manager and employees) and to help determine what conduct is appropriate in particular cases. It should not be considered a substitute for the law or for a person's best judgment.

Section 1.

Board members should obey all laws applicable to their official actions as members of the board. Board members should be guided by the spirit as well as the letter of the law in whatever they do.

At the same time, board members should feel free to assert policy positions and opinions without fear of reprisal from fellow board members or citizens. To declare that a board member is behaving unethically because one disagrees with that board member on a question of policy (and not because of the board member's behavior) is unfair, dishonest, irresponsible, and itself unethical.

Board members should endeavor to keep up to date, through the board's attorney and other sources, about the most pertinent statutory and other legal and ethical requirements with which they must be familiar to meet their legal responsibilities. [The board should consider adopting a list of applicable laws and regulations, with appropriate commentary, as a reference document accompanying this Code. Suggested sources include; Open Meetings (NCGS Chapter 143, Article 33C), Public Records (NCGS Chapter 132), Contract Bidding Requirements (NCGS Chapter 143, Article 8), Sale and Disposition of Property (NCGS Chapter 160A, Article 12), the "Gift Ban" (NCGS § 133-32), NCGS Chapter 18B provisions and ABC Commission Rules]

Section 2.

Board members should act with integrity and independence from improper influence as they exercise the duties of their offices. Characteristics and behaviors consistent with this standard include the following:

- Adhering firmly to a code of sound values.
- Behaving consistently and with respect toward everyone with whom they interact.
- Exhibiting trustworthiness.
- Living as if they are on duty as appointed public officials regardless of where they are or what they are doing.
- Using their best independent judgment to pursue the common good as they see it, presenting their opinion to all in a reasonable, forthright, consistent manner.
- Remaining incorruptible, self-governing, and unaffected by improper influence while at the same time being able to consider the opinions and ideas of others.
- Disclosing contacts and information about issues that they receive outside of public meetings and refraining from seeking or receiving information about quasi-judicial matters outside of the quasi-judicial proceedings themselves.
- Treating other board members and the public with respect and honoring the opinions of others even when the board members disagree with those opinions.
- Not reaching conclusions on issues until all sides have been heard.
- Showing respect for their offices and not behaving in ways that reflect badly on those offices.
- Recognizing that they are part of a larger group and acting accordingly.
- Recognizing that individual board members are not generally allowed to act on behalf of the board but may only do so if the board specifically authorizes it, and that the board must take official action as a body.

Section 3a.

Board members should avoid impropriety in the exercise of their official duties. Their official actions should be above reproach. Although opinions may vary about what behavior is appropriate, this board will consider impropriety in terms of whether a reasonable person who is aware of all the relevant facts and circumstances surrounding the board member's action would conclude that the action was inappropriate.

Section 3b.

If a board member believes that his or her actions, while legal and ethical, may be misunderstood, the member should seek the advice of the board's attorney and should consider publicly disclosing the facts of the situation and the steps taken to resolve it (such as consulting with the attorney).

Section 4.

Board members should faithfully perform the duties of their offices. They should act as the especially responsible citizens whom others can trust and respect. They should set a good example for others in the community, keeping in mind that trust and respect must continually be earned.

Board members should faithfully attend and prepare for meetings. They should carefully analyze all credible information properly submitted to them, mindful of the need not to engage in communications outside the meeting in quasi-judicial matters. They should demand full accountability from those over whom the board has authority.

Board members should be willing to bear their fair share of the board's workload. To the extent appropriate, they should be willing to put the board's interests ahead of their own.

Section 5.

Board members should conduct the affairs of the board in an open and public manner. They should comply with all applicable laws governing open meetings and public records, recognizing that doing so is an important way to be worthy of the public's trust. They should remember when they meet that they are conducting the public's business. They should remember that ABC board records belong to the public and not to board members or their employees.

In order to ensure strict compliance with the laws concerning openness, board members should make clear that an environment of transparency and candor is to be maintained at all times in the governmental unit. They should prohibit unjustified delay in fulfilling public records requests. They should take deliberate steps to make certain that any closed sessions held by the board are lawfully conducted and that such sessions do not stray from the purposes for which they are called.

Section 6.

It is in the public interest to establish policies on ethical conduct which establish a code of behavior to be followed by the general manager and employees of the [official name of ABC board] that is consistent with State law, North Carolina Alcoholic Beverage Commission Administrative Rules, and the established ethics policy applicable to the members of this board.

The general manager and employees are expected to:

- Obey all laws applicable to their official actions and should be guided by the spirit as well as the letter of the law.
- Maintain and exercise the highest ethical standard of conduct in the performance of their official duties and responsibilities. Characteristics and behaviors consistent with this standard include; adhering to a code of sound values, behaving consistently and with respect toward everyone with whom they interact and exhibiting trustworthiness.
- Conduct himself or herself in a manner which upholds the integrity of the board, and which avoids or prevents all types of impropriety (including but not limited to, placement of self interest above the public interest, partiality, favoritism and undue influence).
- Avoid conflicts of interest. A conflict of interest arises when a private interest, usually of a personal, financial or economic nature, conflicts or creates an appearance of a conflict with the individual's official duties and responsibilities. An appearance of a conflict of interest exists when a reasonable person would conclude from the circumstances that the individual's ability to perform official duties is compromised by personal interest.

The general manager should comply with all applicable laws governing public records as directed by the board. The board is conducting the public's business and the general manager should be cognizant that ABC board records belong to the public and not to board members or their employees.

All employees including the general manager are expected to bear their fair share of the workload and to faithfully perform their duties to the best of their ability.

[Other expectations that jurisdiction may desire]

Oath of Office

I, _____, do solemnly and sincerely swear that I will support the Constitution of the United States; so help me God.

I, _____, do solemnly and sincerely swear that I will be faithful and bear true allegiance to the State of North Carolina, and to the constitutional powers and authorities which are or may be established for the government thereof; and that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States, to the best of my knowledge and ability; so help me God.

I, _____, do swear that I will well and truly execute the duties of the office as a member of the _____ Alcoholic Beverage Control Board according to the best of my skill and ability, according to law; so help me God.

*Those authorized by law to administer oaths:

- Secretary of State
- Any judicial authority
- Any Notary Public

Month Day Year

ABC Board

Certificate of Accountability

This document assures this Board and the State of North Carolina that the following statutory duties required of local ABC Boards have been properly performed.

1. The system has complied with all State uniform pricing requirements pursuant to NCGS §18B-804.
2. That all alcoholic beverages sold have been approved by the Commission for sale in this State pursuant to NCGS §18B-800.
3. That all “gross receipts” pursuant to NCGS §18B-805(a) have been properly accounted for and are lawful.
4. That all taxes due have been properly and timely paid pursuant to NCGS §18B-805(b)(1).
5. That all distributions pursuant to NCGS §18B-805 have been properly and timely paid.
6. That the general manager has properly performed all duties as required pursuant to ABC Commission Rule 4 NCAC 2R .0906.

General Manager

Financial Officer

Chairman

Board Member

Board Member

MEMORANDUM

TO: Local ABC boards

FROM: Tim Morse, Assistant Counsel - NC ABC Commission

RE: Sale of Real Property by Local ABC Boards

The information in this outline is limited to the sale of real property. Real property includes land and generally whatever is erected on, or attached to, the land. In addition, discussion is limited to the sale of board property that is in "private use" rather than property in "governmental use."¹ A common example of property held by a local board in private use would be a vacant ABC store location. Local boards are required to sell property in the same way as a city council under Article 12 of Chapter 160A of the general statutes. (NCGS §18B-701 (12))

Under most circumstances local ABC boards will have to use one of three methods for selling real property as set out in NCGS §160A-266². Regardless of the method used, the board must seek the highest value possible for the property as determined in a competitive process.³ Local ABC boards are political subdivisions of the State, and as such are required to carry out their business subject to the Open Meetings Law. (NCGS §143-318.9 through §143-318.12) This law requires that most aspects of the sale process take place in open session.

The three methods available to ABC boards selling real property under NCGS §160A-266(a) are:

- (1) Advertisement for sealed bids,
- (2) Negotiated offer, advertisement and upset bid, and
- (3) Public Auction.

Sealed Bids {NCGS §160A-268 and §143-129}

The sale of real property by means of sealed bids must follow the requirements of NCGS §143-129 *Procedure for Selling of Public Contracts*. An advertisement for bids must be posted at least 30 days prior to the date set for opening bids. It is best for the process to be as transparent as possible. Therefore, it is recommended that the process begin with a Board Resolution containing the following:

- -The board's authorization of the sale,
- -A description of the property,
- -The date, time and place for the opening of bids,
- -The terms of the sale,
- -A statement reserving to the board the right to reject any or all proposals,*
- -The date when the board will accept or reject the highest bid, and
- -A statement that no bid will be accepted unless a deposit of at least five percent (5%) of the bid amount is paid at the time tiling.⁴

*Proposals can be rejected for any reason determined by the board to be in the best interest of the ABC system, but cannot be rejected with the purpose to evade the requirements of the general statutes. The board can reject all bids or sell to the highest responsible bidder."⁵

The board must then publish a Notice of the Sale at least once and at least 30 days before the date set for the opening of bids. The notice must be published in a newspaper having general circulation within the political subdivision of the board. The content of the notice should repeat the content of the board's resolution and should list the name and address of the person designated by the board to receive the bids.

Under NCGS §143-129, all proposals must be opened in public and the board must make its decision to accept or reject in an open meeting on the record.

Negotiated Offer and Upset Bid NCGS §160A-269j

The board may receive, solicit, or negotiate an offer to buy real property and then advertise it for upset bids. If the board proposes to accept an offer it must require the offer or to deposit five percent (5%) of his bid. The board should designate a person to receive upset bids and collect the bid deposits. The upset bid process should begin with a Board Resolution stating the following:

- The board's authorization of the sale.
- A description of the property.
- The amount and terms of the offer the board proposes to accept,
- A notice that within ten (10) days any person may raise the bid by at least ten percent (10%) of the first one thousand dollars (\$1,000) and five percent (5%) of the remainder,
- A statement reserving to the board the right to reject any or all proposals at any time, and
- A statement that a deposit of at least five percent (5%) of the proposal is required when filing an upset bid.⁶

The board must publish a Notice of Sale by Upset Bid. The content of the notice should be essentially the same as that of the board's resolution. If the bid is upset and the deposit paid, the board's designee shall re-advertise the offer at the increased bid. This procedure is repeated until no further qualified upset bids are received. Only then may the board accept an offer by the highest bidder and sell the property.

Public Auction NCGS § 160A-270(a)j

The auction process must begin with a Board Resolution containing the following:

- The board's authorization of the sale,
- A description of the property,
- The date, time, place, and terms of the sale,
- A statement that any bid must be accepted and confirmed by the board before the sale is effective, and
- A statement that the highest bidder will be required to post a deposit. (A bid deposit is permitted but not required by the statute.)

The board must then publish a Notice of the Sale at least once and at least 30 days before the date of the sale. The notice must contain the following information:

- A description of the land sufficient to identify it,
- The terms of the sale, and
- A reference to the board resolution authorizing the sale.

The highest bid must be reported to the board. The board can accept or reject the bid, but must make its decision on the record in open session within 30 days after receiving the highest bid. If the board rejects the bid, the property may be advertised again and the sale process started over.

The board may choose any of the three methods discussed above. Regardless of the method chosen to sell the property, the ABC board must precisely follow the statutory requirements for sale.⁷

It is recommended that the board seek local legal counsel before initiating the sale process. This memo is merely an outline and not meant to be an exhaustive discussion of the issues involved in land transactions by government. Hopefully it will serve to alert ABC board members to the issues involved.

For an in-depth discussion of the topic, I strongly recommend the following legal volume by David M. Lawrence, Kenan Professor of Public Law and Government at UNC-Chapel Hill. Copies of this resource are available for sale through the Institute of Government. The phone number for the bookstore is (919) 966-4119.

D.M. Lawrence, *Local Government Property Transactions in North Carolina*, 2^d Ed., Institute of Government, UNC- Chapel Hill.

¹ D.M. Lawrence, *Local Government Property Transactions in North Carolina*, at 74-76 (2^d ed. 2000).

² *Id.* at 126

³ *Id.* at 146 4

Id. at 149 5

Id. at 150 6

Id. at 151 7

Id. at 115

ABC BOARD MEMBER FINANCIAL DISCLOSURE STATEMENT

Name of ABC Board Member:

Address:

I am a duly appointed member of the _____ ABC Board.

The _____ ABC Board is considering purchasing (or leasing) the real property located at _____ North Carolina, to build (open) a new ABC store.

I have no financial interest or other personal interest in the real property at _____ North Carolina.

VERIFICATION

I do solemnly swear (or affirm) that this ABC Board Member Financial Disclosure Statement is in all things true and correct.

Signature of ABC Board Member

SUBSCRIBED AND SWORN to (or affirmed) before me this _____ day of _____

Notary Public

My Commission Expires:
(Seal)

CONTRACT TO AUDIT ACCOUNTS

of the _____ ABC Board

This agreement, made this ____ day of _____, 20____, by and between _____ (Auditor) _____ (Address), hereinafter referred to as the Auditor, and _____ (ABC Board) as follows:

- 1. The Auditor shall examine the balance sheets, statements of revenue, expenses and changes in net assets and the statement of cash flows of the ABC board for the period beginning _____, 20____ and ending _____, 20_ except:

The Auditor shall conduct his examination and render his report in accordance with generally accepted auditing standards. The examination shall include such tests of the accounting records and such other auditing procedures as are considered by the Auditor to be necessary in the circumstances, except as follows:

- a. It is agreed that generally accepted auditing standards include a review of the ABC board’s system of internal control and accounting as same relates to accountability of funds and adherence to budget and law requirements applicable thereto; that the Auditor will make a written report, which may or may not be a part of the written report of audit, to the ABC board setting forth his findings, together with his recommendations for improvement. All matters defined as “reportable conditions” in AU 325 of the AICPA Professional Standards will be communicated to the ABC Board in writing. The Auditor shall file one unbound copy or PDF of all reports with the ABC Commission.
b. The Auditor shall, after completing his examination, submit to the ABC board a written report of audit. This report shall include, at least, the basic financial statements and notes thereto prepared in accordance with generally accepted accounting principles, supplementary information requested by the client or required for full disclosure under the law and the auditor’s opinion on the material presented. As a minimum, a schedule of the distribution of revenues in accordance with GS 18B- 805(e) will be included and additionally a listing of recipients of the profits from the ABC board, and if applicable, the purpose of the payment will be presented as supplementary information. The Auditor shall copies of the report to the ABC board as soon furnish practical after the close of the accounting as period.
c. It is agreed that time is of the essence in this contract. If all audits are not performed and the report of audit submitted by September 30,____, then this contract shall be void and of no effect, but if said 20 condition is

complied with, this contract shall be in full force and effect. **An interruption in delivery of product to the local ABC board may occur if the audit is not completed and submitted to the ABC Commission by the above date.**

- d. Should circumstances disclosed by the audit call for a more detailed investigation by the Auditor than necessary under ordinary circumstances, the Auditor shall inform the ABC board and the ABC Commission in writing of the need for such additional investigation and the additional compensation required therefore. This agreement may be varied or changed to include the increased time and compensation as may be agreed upon by the ABC board and the Auditor.
2. There are no special provisions, except:
- a. In consideration of the satisfactory performance of the provisions of this agreement, the ABC board shall pay to the Auditor a fee of: \$_____.
 - b. There are no other agreements between the parties hereto and no other agreements relative hereto shall be enforceable unless entered into in accordance with the procedure set out herein.
3. The audited financial statements are prepared in accordance with GASB Statement No. 34. The references in Item 1 to the statements shall mean the basic financial statements, management’s discussion and analysis, and required supplementary statements as defined in GASB Statement No. 34. Auditing procedures applicable to other supplementary schedules are not changed by the implementation of GASB Statement No. 34.

| | |
|------------------|--------------------|
| _____ Auditor | _____ ABC Board |
| By_____ | By_____ |

Finance
Officer

By_____

INSTRUCTIONS

1. ABC Commission approval is not required for the following types of contracts:
 - a. Auditing and preparation of financial statements between an Auditor and the ABC Board;
 - b. System improvements and similar services of a non-auditing nature.
2. The contract contemplates an unqualified opinion being rendered, Any limitations or restrictions in scope that would lead to a qualification should be fully explained in an attachment to their contract.
3. If, after being approved, the contract is varied or changed by either of the parties, the change must be reduced to writing.
4. A separate contract should not be made for each division to be audited or report to be submitted. The scope of the audit should be clearly stated and the fee stated so that the amount of fee for each report can be determined. The fee may be stated on a per diem or hourly basis. If the fee is for a fixed amount, the amount for each report should be stated separately.
5. One copy of the report of audit and any other written report by the Auditor shall be filed with the Commission. The report of audit, as filed with the Commission, becomes a matter of public record for inspection and review in the offices of the Commission. The Auditor's analysis of the system of accounting and his recommendations for improvements are intended for the Commission staff having direct responsibilities in the area of accounting and fiscal controls.
6. Multi-Year Audit Agreement. Local ABC boards may have a multi-year audit agreement with a certified public accounting firm on the basis of annual negotiation after the completion of the first year contract. Each year after negotiation has taken place, an annual contract documenting the terms of the audit will be signed. No governing board may cause or may obligate future governing boards. The remaining years of any agreement are subject to annual governing board approval.

§ 159-30. Investment of idle funds

- (a) A local government or public authority may deposit at interest or invest all or part of the cash balance of any fund. The finance officer shall manage investments subject to whatever restrictions and directions the governing board may impose. The finance officer shall have the power to purchase, sell, and exchange securities on behalf of the governing board. The investment program shall be so managed that investments and deposits can be converted into cash when needed.
- (b) Moneys may be deposited at interest in any bank, savings and loan association, or trust company in this State in the form of certificates of deposit or such other forms of time deposit as the Commission may approve. Investment deposits, including investment deposits of a mutual fund for local government investment established under subdivision (c)(8) of this section, shall be secured as provided in G.S. 159-31(b).
 - (b1) In addition to deposits authorized by subsection (b) of this section, the finance officer may deposit any portion of idle funds in accordance with all of the following conditions:
 - (1) The funds are initially deposited through a bank or savings and loan association that is an official depository and that is selected by the finance officer.
 - (2) The selected bank or savings and loan association arranges for the redeposit of funds in deposit accounts of the local government or public authority in one or more federally insured banks or savings and loan associations wherever located, provided that no funds shall be deposited in a bank or savings and loan association that at the time holds other deposits from the local government or public authority.
 - (3) The full amount of principal and any accrued interest of each deposit account are covered by federal deposit insurance.
 - (4) The selected bank or savings and loan association acts as custodian for the local government or public authority with respect to the deposit in the local government's or public authority's account.
 - (5) On the same date that the local government or public authority funds are re-deposited, the selected bank or savings and loan association receives an amount of federally insured deposits from customers of other financial institutions wherever located equal to or greater than the amount of the funds invested by the local government or public authority through the selected bank or savings and loan association.
- (c) Moneys may be invested in the following classes of securities, and no others:
 - (1) Obligations of the United States or obligations fully guaranteed both as to principal and interest by the United States.
 - (2) Obligations of the Federal Financing Bank, the Federal Farm Credit Bank, the Bank for Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, Fannie Mae, the Government National Mortgage Association, the Federal Housing Administration, the Farmers Home Administration, the United States Postal Service.
 - (3) Obligations of the State of North Carolina.
 - (4) Bonds and notes of any North Carolina local government or public authority, subject to such restrictions as the secretary may impose.
 - (5) Savings certificates issued by any savings and loan association organized under the laws of the State of North Carolina or by any federal savings and loan association having its principal office in North Carolina; provided that any principal amount of such certificate in excess of the amount insured by the federal government or any agency thereof, or by a mutual deposit guaranty association authorized by the Commissioner of Banks of the Department of Commerce of the State of North Carolina, be fully collateralized.
 - (6) Prime quality commercial paper bearing the highest rating of at least one

- nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligation.
- (7) Bills of exchange or time drafts drawn on and accepted by a commercial bank and eligible for use as collateral by member banks in borrowing from a federal reserve bank, provided that the accepting bank or its holding company is either
- (i) incorporated in the State of North Carolina or (ii) has outstanding publicly held obligations bearing the highest rating of at least one nationally recognized rating service and not bearing a rating below the highest by any nationally recognized rating service which rates the particular obligations.
- (8) Participating shares in a mutual fund for local government investment; provided that the investments of the fund are limited to those qualifying for investment under this subsection (c) and that said fund is certified by the Local Government Commission. The Local Government Commission shall have the authority to issue rules and regulations concerning the establishment and qualifications of any mutual fund for local government investment.
- (9) A commingled investment pool established and administered by the State Treasurer pursuant to G.S.147-69.3.
- (10) A commingled investment pool established by inter-local agreement by two or more units of local government pursuant to G.S. 160A-460 through G.S. 160A-464, if the investments of the pool are limited to those qualifying for investment under this subsection (c).
- (11) Evidences of ownership of, or fractional undivided interests in, future interest and principal payments on either direct obligations of the United States government or obligations the principal of and the interest on which are guaranteed by the United States, which obligations are held by a bank or trust company organized and existing under the laws of the United States or any state in the capacity of custodian.
- (12) Repurchase agreements with respect to either direct obligations of the United States or obligations the principal of and the interest on which are guaranteed by the United States if entered into with a broker or dealer, as defined by the Securities Exchange Act of 1934, which is a dealer recognized as a primary dealer by a Federal Reserve Bank, or any commercial bank, trust company or national banking association, the deposits of which are insured by the Federal Deposit Insurance Corporation or any successor thereof if:
- a. Such obligations that are subject to such repurchase agreement are delivered (in physical or in book entry form) to the local government or public authority, or any financial institution serving either as trustee for the local government or public authority or as fiscal agent for the local government or public authority or are supported by a

safekeeping receipt issued by a depository satisfactory to the local government or public authority, provided that such repurchase agreement must provide that the value of the underlying obligations shall be maintained at a current market value, calculated at least daily, of not less than one hundred percent (100%) of the repurchase price, and, provided further, that the financial institution serving either as trustee or as fiscal agent for the local government or public authority holding the obligations subject to the repurchase agreement hereunder or the depository issuing the safekeeping receipt shall not be the provider of the repurchase agreement;

- b. A valid and perfected first security interest in the obligations which are the subject of such repurchase agreement has been granted to the local government or public authority or its assignee or book entry procedures, conforming, to the extent practicable, with federal regulations and satisfactory to the local government or public authority have been established for the benefit of the local government or public authority or its assignee;
 - c. Such securities are free and clear of any adverse third party claims; and
 - d. Such repurchase agreement is in a form satisfactory to the local government or public authority.
- (13) In connection with funds held by or on behalf of a local government or public authority, which funds are subject to the arbitrage and rebate provisions of the Internal Revenue Code of 1986, as amended, participating shares in tax-exempt mutual funds, to the extent such participation, in whole or in part, is not subject to such rebate provisions, and taxable mutual funds, to the extent such fund provides services in connection with the calculation of arbitrage rebate requirements under federal income tax law; provided, the investments of any such fund are limited to those bearing one of the two highest ratings of at least one nationally recognized rating service and not bearing a rating below one of the two highest ratings by any nationally recognized rating service which rates the particular fund.

(d) Investment securities may be bought, sold, and traded by private negotiation, and local governments and public authorities may pay all incidental costs thereof and all reasonable costs of administering the investment and deposit program. Securities and deposit certificates shall be in the custody of the finance officer who shall be responsible for their safekeeping and for keeping accurate investment accounts and records.

(e) Interest earned on deposits and investments shall be credited to the fund whose cash is deposited or invested. Cash of several funds may be combined for deposit or investment if not otherwise prohibited by law; and when such joint deposits or investments are made, interest earned shall be prorated and credited to the various funds on the basis of the amounts thereof invested, figured according to an average periodic balance or some other sound accounting principle. Interest earned on the deposit or investment of bond funds shall be deemed a part of the bond proceeds.

(f) Registered securities acquired for investment may be released from registration and transferred by signature of the finance officer.

(g) A local government, public authority, an entity eligible to participate in the Local Government Employee's Retirement System, or a local school administrative unit may make

contributions to a Local Government Other Post-Employment Benefits Trust established pursuant to G.S. 159-30.1.

(h) A unit of local government employing local law enforcement officers may make contributions to the Local Government Law Enforcement Special Separation Allowance Fund established in G.S. 147-69.5. (1957, c. 864, s. 1; 1967, c. 798, ss. 1, 2; 1969, c. 862; 1971, c. 780, s. 1; 1973, c. 474, ss. 24, 25; 1975, c. 481; 1977, c. 575; 1979, c. 717, s. 2; 1981, c. 445, ss. 1-3; 1983, c. 158, ss. 1, 2; 1987, c. 672, s. 1; 1989, c. 76, s. 31; c. 751, s. 7(46); 1991 (Reg. Sess., 1992), c. 959, s. 77; c. 1007, s. 40; 1993, c. 553, s. 55; 2001-193, s. 16; 2001-487, s. 14(o); 2005-394, s. 2; 2007-384, ss. 4, 9; 2010-175, s. 1; 2013-305, s. 1.)



NORTH CAROLINA
DEPARTMENT OF STATE TREASURER
STATE AND LOCAL GOVERNMENT FINANCE DIVISION
AND THE LOCAL GOVERNMENT COMMISSION

JANET COWELL
TREASURER

T. VANCE HOLLOMAN
DEPUTY TREASURER

Memorandum # 2012-22

To: Finance Officers of Local Governments, Boards of Education, Public Authorities
and Certified Public Accountants

From: Sharon Edmundson, Director, Fiscal Management Section

Subject: Collateralization of Public Deposits and Pooling Bank List Date:

June 22, 2012

On page three of this memo you will find an updated list of the financial institutions using the Pooling Method of collateralization of public funds. The State Treasurer monitors compliance with collateralization requirements for these institutions. Any depository (and their branches) not included on this list is considered to be using the Dedicated Method of collateralization for which the finance officer has the responsibility of monitoring the pledged collateral covering the uninsured deposits.

IMPORTANT

Please review the list carefully to determine the method currently followed by each of your official depositories.

For situations where a financial institution utilizes the Dedicated Method of collateralization, the finance officer should determine that the market values of the pledged securities are at least 100% of the amount required to be collateralized at all times throughout the year and that the securities are eligible for pledging as specified by the North Carolina Administrative Code, Title 20, Chapter 7. **It is imperative that the market values of the pledged securities are checked not only at the time of the deposit of public funds, but on a continuing basis when funds exceed the federal deposit insurance limit.** This is essential due to the volatility of the pledged securities' market value and the fluctuation of the unit's bank balances. **Any occurrence of under collateralization is considered as non-compliance with G.S. 159-31.**

For eligible mortgage-backed securities that are pledged as collateral, the calculation of market values is more difficult due to their declining principal balances. The calculation of the market values of such securities should be based on the outstanding principal value, not the original face value. Therefore, it is important to require the depository to provide a) the original face value b) the current outstanding principal and c) the current market value.

In addition, there are mandatory procedures concerning collateralization that must be followed when dealing with Dedicated Method financial institutions. They are as follows:

1. There must be a **signed escrow agreement** (INV-94) with a third party escrow agent for each Dedicated Method depository that holds uninsured deposits. However, if the escrow

agent is the Federal Reserve Bank, an escrow agreement is not required since it is governed by federal regulations. The escrow agreement (federal regulations in the case of the Federal Reserve Bank) must require **timely confirmations** of pledged collateral.

2. **A file of all pledges of collateral** (INV-95) per depository must be maintained by the finance officer. There should be **no releases or substitutions** of collateral securities resulting in a decrease of the market value of pledged securities without the approval of the finance officer.
3. The depository is required to report to each public depositor the total par and market values of securities pledged at the end of each calendar quarter. Annually, as of June 30, the depository is to file an INV-98 with each public depositor. This report is a detailed listing of collateral securities pledged at each escrow bank for that public depositor. This report may be requested by the public depositor to be filed more frequently.

Without exception, if governmental units utilizing the dedicated method of collateralization do not adhere to these procedures, public funds may not be properly collateralized and consequently may be at risk.

For more detailed information, the complete regulations, procedures, and the respective N.C. Administrative Code can be found in a document called ***Collateralization of Public Deposits in North Carolina, June 2009***. It can be downloaded from the State Treasurer's website at www.nctreasurer.com under Divisions. The appropriate forms also are available from the same web page. If the booklet or forms cannot be retrieved from the web, you may contact this office. If you have any questions or need assistance, please contact Becky Dzingeleski at (919) 807-2396 or becky.dzingeleski@nctreasurer.com, or Ken Wease at (919) 807-2391 or ken.wease@nctreasurer.com.

| <i>POOLING METHOD FINANCIAL INSTITUTIONS (Updated as of June 15, 2012)</i> | | | |
|---|---------------------------|--|--|
| <i>Refer to Notes on Page 4 of this document for footnote references</i> | | | |
| <i>Name of Institution</i> | <i>Home Office</i> | | <i>Name of Institution</i> |
| | | | <i>Home Office</i> |
| American National Bank & Trust ¹ | Danville, VA | | Home Savings Bank of Albemarle |
| Anson Bank & Trust | Wadesboro | | HomeTrust Bank ³ |
| Aquesta Bank | Cornelius | | Industrial Federal Bank ³ |
| Asheville Savings Bank | Asheville | | KS Bank |
| Bank of America, N.A. | Charlotte | | Life Store Bank |
| Bank of Granite | Granite Falls | | Lumbee Guaranty Bank |
| Bank of Hampton Roads ⁵ | Norfolk, VA | | Mechanics and Farmers Bank |
| Bank of North Carolina | Thomasville | | Mountain 1 st Bank & Trust |
| Bank of Stanly | Albemarle | | Newbridge Bank |
| Bank of the Carolinas | Mocksville | | New Century Bank |
| Branch Banking & Trust | Winston-Salem | | North Carolina Bank and Trust (NCBT, NA) ^{1,4} |
| Cabarrus Bank & Trust | Concord | | North State Bank |
| Capital Bank | Raleigh | | Oldtown Bank |
| CapStone Bank | Raleigh | | Paragon Commercial Bank |
| Cardinal State Bank ² | Durham | | Parkway Bank |
| Carolina Bank | Greensboro | | Peoples Bank |
| Carter Bank & Trust ¹ | Martinsville, VA | | Piedmont Bank ² |
| Cherryville Federal Savings ³ | Cherryville | | PNC Bank (<i>formerly RBC Bank (USA)</i>) ¹ |
| Carter County Bank ^{1, 6} | Elizabethton, TN | | Providence Bank |
| Citizens Community Bank ¹ | South Hill, VA | | Randolph Bank & Trust |
| Citizens South Bank | Gastonia | | Regions Bank ¹ |
| Community One Bank, N.A. | Asheboro | | Roxboro Savings Bank |
| Crescent State Bank | Cary | | Rutherford County Bank ³ |
| East Carolina Bank | Engelhard | | Security Savings Bank |
| Fidelity Bank | Fuquay-Varina | | Select Bank & Trust |
| Fifth Third Bancorp ¹ | Nashville, TN | | Shelby Savings Bank ³ |
| First Bank | Troy | | Sound Banking Company |
| First Carolina State Bank | Rocky Mount | | Southern Bank & Trust Co. |
| First Citizens Bank & Trust Company | Raleigh | | Southern Community Bank & Trust |
| First Community Bank ¹ | Bluefield, VA | | SunTrust Bank ¹ |
| First National Bank of Shelby | Shelby | | TD Bank ¹ |
| First South Bank | Washington | | Towne Bank ¹ |
| Forest Commercial Bank | Ashville | | TrustAtlantic Bank |
| Four Oaks Bank & Trust | Four Oaks | | Tryon Federal Bank ³ |
| Great State Bank | Wilkesboro | | Union Bank & Trust |
| Harrington Bank | Chapel Hill | | United Community Bank ¹ |
| Heritage Bank | Lucama | | Wake Forest Federal Savings & Loan |
| High Country Bank ² | Boone | | Wells Fargo Bank NA |
| High Point Bank & Trust | High Point | | Yadkin Valley Bank |
| Highlands Union Bank ¹ | Abingdon, VA | | |
| Home Savings Bank ³ | Eden | | |
| | | | |
| | | | |

Notes to Pooling Method Financial Institutions listing:

- ¹ Corporate office is outside the state; branches are located in North Carolina
- ² Cardinal State Bank, High Country Bank and Piedmont Bank are owned by Yadkin Valley Bank but do business under these names
- ³ Cherryville Federal Savings, Home Savings Bank, Industrial Federal Bank, Rutherford County Bank, Shelby Savings Bank, Tryon Federal Bank are all owned by/in partnership with HomeTrust Bank of Asheville
- ⁴ North Carolina Bank and Trust (NCBT, NA) is owned by South Carolina Bank and Trust (SCBT, NA) in Orangeburg, South Carolina
- ⁵ Gateway Bank is owned by Hampton Roads Bancshares in Norfolk, Virginia
- ⁶ Carter County Bank of Elizabethton, TN (merged with Mountain Community Bank – Sugar Mountain, NC)

Dollar Thresholds in North Carolina Public Contracting Statutes



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Dollar limits and statutory authority current as of November 1, 2015

| Requirement | Threshold | Statute |
|--|---|---------------------------------|
| Formal bidding | <i>(estimated cost of contract)</i> | |
| Construction or repair contracts | \$500,000 <i>and above</i> | G.S. 143-129 |
| Purchase of apparatus, supplies, materials, and equipment | \$90,000 <i>and above</i> | G.S. 143-129 |
| Informal bidding | <i>(actual cost of contract)</i> | |
| Construction or repair contracts | \$30,000 to formal limit | G.S. 143-131 |
| Purchase of apparatus, supplies, materials, and equipment | \$30,000 to formal limit | G.S. 143-131 |
| Construction methods authorized for building projects | Over \$300,000 <i>(estimated cost of project)</i> | G.S. 143-128(a1) |
| Separate Prime | | |
| Single Prime | | |
| Dual Bidding | | |
| Construction Management at Risk (G.S. 143-128.1) | | |
| Design-Build and Design-Build Bridging (G.S. 143-128.1A; G.S. 143-128.1B) | | |
| Public Private Partnership (P3) (G.S. 143-128.1C) | | |
| Historically Underutilized Business (HUB) requirements | | |
| Building construction or repair projects | | |
| – Projects with state funding (<i>verifiable 10% goal required</i>) | \$100,000 <i>or more</i> | G.S. 143-128.2(a) |
| – Locally funded projects (<i>formal HUB requirements</i>) | \$300,000 <i>or more</i> | G.S. 143-128.2(j) |
| – Projects in informal bidding range (<i>informal HUB requirements</i>) | \$30,000 to \$500,000* | G.S. 143-131(b) |
| <i>*Note: Formal HUB requirements should be used for informally bid projects costing between \$300,000 and \$500,000</i> | | |
| Limit on use of own forces (force account work) | <i>(not to exceed)</i> | G.S. 143-135 |
| Construction or repair projects | \$500,000 (<i>total project cost</i>) <u>or</u> \$200,000 (<i>labor only cost</i>) | |
| Bid bond or deposit | | |
| Construction or repair contracts (<i>at least 5% of bid amount</i>) | Formal bids (\$500,000 <i>and above</i>) | G.S. 143-129(b) |
| Purchase contracts | Not required | |
| Performance/Payment bonds | | |
| Construction or repair contracts (<i>100% of contract amount</i>) | Each contract over \$50,000 of project costing over \$300,000 | G.S. 143-129(c); G.S. 44A-26 |
| Purchase contracts | Not required | |
| General contractor's license required | \$30,000 <i>and above</i> | G.S. 87-1 |
| Exemption | Force account work (<i>see above</i>) | |
| Owner-builder affidavit required | Force account work (<i>see above</i>) | G.S. 87-14(a)(1) |
| Use of licensed architect or engineer required | | |
| Nonstructural work | \$300,000 <i>and above</i> | G.S. 133-1.1(a) |
| Structural repair, additions, or new construction | \$135,000 <i>and above</i> | |
| Repair work affecting life safety systems | \$100,000 <i>and above</i> | |
| Selection of architect, engineer, surveyor, construction manager at risk, or design-build contractor | | |
| "Qualification-Based Selection" procedure (QBS) | All contracts unless exempted | G.S. 143-64.31 |
| Exemption authorized | Only projects where estimated fee is <i>less than</i> \$50,000 | G.S. 143-64.32 |

Records Retention Schedule for ABC Boards

A more comprehensive schedule of records retention and disposition can be found on the ABC Commission website.

| Administrative | |
|----------------------------|--|
| Agenda & meeting packets | Retain records with historical value permanently; destroy others in office when administrative value ends. |
| Board Meeting Minutes | Keep permanently. |
| Minutes (Staff Meetings) | Retain records with historical value permanently; destroy others in office when administrative value ends. |
| Correspondence & Memoranda | Retain records with historical value permanently; destroy others in office after 3 years. |
| Annual Budget | Retain records with historical value permanently; destroy others in officer after 5 years. |
| Check stubs/deposit slips | Destroy after 3 years. |
| Invoices/purchase orders | Destroy in office after 3 years. |
| Travel reimbursements | Destroy in office after 3 years. |

| Operational | |
|---|--|
| Daily & weekly store reports | Destroy in office when annual audit is resolved. |
| Destruction of Unsalable Merchandise | Destroy in office after 3 years. |
| Inventories of spirituous liquor | Destroy in office after 3 years. |
| Inventories of stock (working papers submitted periodically by store managers) | Destroy in office when annual audit is resolved. |
| Monthly law enforcement activity reports | Destroy in office after 3 years. |
| Purchasing records | Destroy in office when annual audit is resolved. |
| Receiving reports | Destroy in office when annual audit is resolved. |
| Stock difference reports | Destroy in office after 3 years. |
| Warehouse invoices & requisitions (stock transferred from local warehouse to stores) | Destroy in office after 1 year. |
| Receipts from State warehouse | Destroy in office after 1 year. |
| Transportation permits | Destroy in office after 1 year. |
| Credit card receipts | Destroy in office after 3 years. |