

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 15, 2017**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on November 15, 2017, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the NC ABC Commission within the Legal Division.

ROLL CALL

Chairman A.D. Zander Guy, Jr. and Commissioner Michael C. Herring were present. Chairman Guy called the meeting to order.

Chairman asked Vera Smith, the Audit Director, to introduce the division's new employee. Ms. Smith introduced Erik Oian.

MINUTES OF OCTOBER 11, 2017 COMMISSION MEETING

Chairman Guy asked for a motion to waive the reading of the minutes of the October 11, 2017 meeting into the record. Commissioner Herring made a motion to waive the reading of the minutes. Chairman Guy seconded the motion. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the October 11, 2017 meeting. Commissioner Herring made a motion to approve the minutes. Chairman Guy seconded the motion. Motion Passed.

MINUTES OF OCTOBER 26, 2017 SPECIAL MEETING

Chairman Guy asked for a motion to waive the reading of the minutes of the October 26, 2017 Special Meeting into the record. Commissioner Herring made a motion to waive the reading of the minutes. Chairman Guy seconded the motion. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the October 26, 2017 Special Meeting. Commissioner Herring made a motion to approve the minutes. Chairman Guy seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

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

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 82

Chief Counsel Renee C. Metz requested case number 7 be moved to the December 2017 ABC Commission meeting.

Chairman Guy made a motion to move the case to the December agenda. Commissioner Herring seconded the motion. Motion Passed.

Chief Counsel Renee C. Metz requested case number 23 be removed from the agenda as the permittee had turned in its permits for cancellation on November 14, 2017.

Commissioner Herring made a motion to remove the case from the agenda. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated representatives of the permittee for case number 16, TGI Fridays, were present to address the Commission. Thomas Miles, the Director of Operations for TGI Fridays, and Richard Bastien, the general manager of the location, were present. Mr. Miles stated the violations occurred when it was found the business possessed bottles of spirituous liquor on which the tax stamps were not legible and empty bottles in the recycling bin which did not have defaced labels.

Mr. Miles stated they take the violations very seriously and do not deny they occurred. Mr. Miles added they had added new procedures to ensure the mistakes did not occur again.

Chairman Guy inquired as to what they were requesting of the Commission. Mr. Miles stated they wished to inform the Commission of how seriously they considered the violations and to ask for leniency regarding the penalty.

Assistant Counsel LoRita Pinnix stated the business has held ABC permits since 2006 and this was the first violation. Mrs. Pinnix explained the ALE Agent's report indicates the violations occurred due to employee error and were not intentional. Chairman Guy asked Ms. Pinnix if leniency regarding the penalty would be acceptable and Ms. Pinnix confirmed it would.

After conferring with Chairman Guy, Commissioner Herring made a motion to change the penalty to a written warning. Chairman Guy seconded the motion, commending them on having permits since 2006 without violations. Motion Passed.

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

II. ABC STORE LOCATION – BURNSVILLE ABC BOARD

Administrator Robert A. Hamilton stated the Burnsville ABC Board had requested approval to purchase property to open and operate a new ABC Store at 51 West Boulevard in Burnsville, North Carolina. The new store would replace the existing leased store located at 683 West US Hwy 19E Bypass. The construction of the proposed store would begin in 2020.

Mr. Hamilton added the property is zoned Commercial-2 and allows for an ABC Store. Mr. Hamilton stated the proposed property is owned by EB Investments Company, LLC. He added there are no personal or financial interests shared between the property owners and the Burnsville ABC Board members. Financial disclosure forms have been provided by the Board members.

The proposed purchase price for the property, which is listed as .56 acres, is \$350,000.00. The Board tentatively plans to construct a store of 4,800 SF of which the Board plans to use approximately 2,800 SF for retail sales and 2,000 SF for mixed beverages, office and storage. The approximate construction cost is \$650,000.00.

The nearest school is located approximately 2.1 miles away. The nearest church is located approximately 750 feet away. The nearest ABC Store is located .6 miles away and will be closed upon the opening of the new store. The next nearest ABC Store is located 14 miles away and is operated by the Spruce Pine ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on October 16, 2017. Mr. Hamilton stated no objections have been received.

Mr. Hamilton stated the anticipated first year sales in 2020 are \$1,321,510.00. Mr. Hamilton added General Manager Brian Franklin was present if there were any questions.

Commissioner Herring asked, as the First Baptist Church was located 750 feet from the proposed location, did the church have any objections. Mr. Franklin stated the church did not have any objections. Mr. Franklin added there are other businesses between the proposed store and the church and the store would not be visible from the church.

Mr. Hamilton added staff recommends approval of the purchase of property.

Commissioner Herring made a motion to approve the purchase upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

III. ABC STORE LOCATION – HALIFAX COUNTY ABC BOARD

Mr. Hamilton stated the Halifax County ABC Board had requested approval to purchase property to construct and operate an ABC Store on Parcel #07-01629, an unaddressed property on South Main Street in Littleton, North Carolina. The proposed store would replace the existing store located 325 feet away at 211 ½ East South Main Street. The existing store would be sold upon the opening of the new store.

Mr. Hamilton added the property is zoned Commercial and allows for an ABC Store. Mr. Hamilton stated the proposed property is owned by Matt Johnston, William Johnston, and Mr. and Mrs. Gerald Witt. He added there are no personal or financial interests shared between the property owners and the Halifax County ABC Board members. Financial disclosure forms have been provided by the Board members.

The proposed purchase price for the property which is listed as .366 acres is \$137,000.00. The Board tentatively plans to construct a store of 2,500 SF of which approximately 1,900 SF will be used for retail sales and they will be able to offer mixed beverage sales in the future. The Board estimates the construction costs for the new store to be \$360,000.00.

The nearest school is located approximately 5.3 miles away. The nearest church is located approximately .2 miles away. The nearest ABC Store is the existing store which will be closed upon the opening of the proposed store. The next nearest ABC Store is approximately 10 miles from the proposed store and is operated by the Warren County ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on October 11, 2017. Mr. Hamilton stated no objections have been received.

Mr. Hamilton stated the projected first year sales are approximately \$521,590.00. Mr. Hamilton added staff recommends approval of this store. General Manager Joseph McAllister was present if there were any questions.

Commissioner Herring asked Mr. McAllister, as the cost of the property and the building construction were approximately \$500,000.00 and the projected sales were only \$500,000.00, with expenses would the store make money or is it a service to the community.

Mr. McAllister stated the current location was slowly failing as it did not have sufficient parking or access. Mr. McAllister added the store needed to be moved and explained the access from Highway 158 and the increasing lake traffic will provide sales. He stated they expected the sales to be somewhat limited when they first open, but the projected sales were also very conservative.

Commissioner Herring made a motion to approve the proposed location upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

IV. ABC STORE LOCATION – ORANGE COUNTY ABC BOARD

Mr. Hamilton stated the Orange County ABC Board had requested approval to lease and operate an ABC Store at 602-F Jones Ferry Road in Carrboro, North Carolina. The proposed store would replace the existing store located approximately .7 miles away at 106 NC Hwy 54 in Carrboro. The proposed store would operate for approximately six months as the existing store, which is owned by the Board, undergoes extensive repairs and remodeling. The tentative opening date for the proposed store is February 2018.

Mr. Hamilton explained the Orange County ABC Board has been granted approval by the Town of Carrboro for zoning to allow the operation of an ABC Store. Mr. Hamilton stated the proposed property is owned by Dreamy Hollow Apartment Company of New York, New York in care of Lennox Hill Station in care of the Rosen Group. He added there are no personal or financial interests shared between the property owners and the Orange County ABC Board members. Financial disclosure forms have been provided by the Board members.

Mr. Hamilton stated the proposed lease term is for one year at \$20.00 per SF or \$36,000.00 per year with an additional TICAM of \$3.33 per SF or \$5,994.00 per year. The space is 1,800 SF of which the Board plans to use approximately 90% for retail sales and the remainder for storage and an office.

The nearest school is located approximately 1 mile away. The nearest church is located approximately .8 miles away. The nearest ABC Store is located .7 miles away and will not be operational during the existence of the proposed store. The next nearest ABC Store is located 4.4 miles away in Chapel Hill and is also operated by the Orange County ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on September 28, 2017. Mr. Hamilton stated no objections have been received.

Mr. Hamilton stated the projected six month sales are \$1,050,000.00. Tony DuBois, General Manager of the Orange County ABC Board, was present if there were any questions. Mr. Hamilton added staff recommends approval of this proposed store.

As there were no questions, Commissioner Herring made a motion to approve the proposed location upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

V. OTHER BUSINESS – RESCHEDULING THE JANUARY 2018 NC ABC COMMISSION MEETING

Mr. Hamilton requested the Commission change the date of the January NC ABC Commission meeting from Wednesday, January 10, 2018 to Wednesday, January 17, 2018.

Commissioner Herring made a motion to approve the date change. Chairman Guy seconded the motion. Motion Passed.

VI. EXEMPTION REQUEST – G.S. § 18B-1116(b) – SPONSORSHIP AGREEMENT CROWN IMPORTS, LLC AND HORNETS BASKETBALL, LLC AND CHARLOTTE ARENA OPERATIONS, LLC FOR ADVERTISING AT CHARLOTTE SPECTRUM CENTER

Mrs. Metz stated attorney Laura Collier was present on behalf of her client. Mrs. Metz added the exemption was for a sponsorship agreement and is typical of those granted in the past. Mrs. Metz explained the team and owner of the facility wished to have an advertising agreement with an industry member. Mrs. Metz stated there is an independent third party concessionaire to clarify the relationship between the non-permitted parties and the retailer. Mrs. Metz stated it is typical of other exemptions granted to large sports facilities.

Mrs. Collier stated her client, Crown Imports, LLC had requested an exemption to allow a sponsorship agreement. Mrs. Collier stated the concessions at the facility are managed by an independent third party concessionaire to separate where the advertisements are placed and the flow of money, with those benefits going to the Charlotte Hornets and none to the independent concessionaire.

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

VII. OTHER BUSINESS – PUBLIC HEARING – DISTILLER SALES RULES AND ANTIQUE SPIRITUOUS LIQUOR RULES

Walker Reagan, the rules coordinator, provided drafts of the proposed permanent rules to the Commission. Mr. Reagan explained a public hearing was scheduled for the adoption of the permanent distillery sales rules.

Commissioner Herring made a motion to open the public hearing. Chairman Guy seconded the motion. Motion Passed.

Mr. Reagan explained, in 2015, the General Assembly allowed NC distilleries to sell one bottle of their spirituous liquor to a visitor at their distillery upon completion of a tour. In 2017, the General Assembly amended this rule allowing distilleries to sell up to five bottles over a 12-month period to a customer upon completion of a tour. The permanent rules to be adopted ensure the distilleries notify the ABC Commission when they begin these practices and to provide guidelines to allow the distilleries to sell their spirituous liquor during the same hours as an ABC Store. In addition, records of the sales must be kept and available for inspection by alcohol law enforcement officers or employees of the Commission.

Mr. Reagan stated the rules were proposed by the Commission in the July 2017 Commission Meeting. The proposed rules were published in the NC Register on August 15, 2017, posted on the ABC Commission's website on August 30, 2017 and emailed to the ABC Commission rulemaking committee

on September 5, 2017. Mr. Reagan stated no comments had been received. Mr. Reagan added one change had been made to 15A .2101, stating a distillery could only sell the products distilled at its facility and no others.

Commissioner Herring asked if this change would make it necessary to begin the process again. Mr. Reagan stated it had been determined to be a clarifying change which made it a non-substantive change.

Chairman Guy asked if anyone was present who wished to comment. As no one was present, Commissioner Herring made a motion to close the public hearing. Chairman Guy seconded the motion. Motion Passed.

Mr. Reagan stated a public hearing was necessary for the proposed rules regarding the sale of antique spirituous liquor.

Chairman Guy made a motion to open the public hearing. Commissioner Herring seconded the motion. Motion Passed.

Mr. Reagan explained earlier in 2017, the General Assembly had enacted a law allowing the sale of liquor which had not been in production or bottled for more than 20 years, was not owned by a distillery and is not available in the ABC stores. Mr. Reagan stated the Commission had adopted the proposed rules during the August 2017 Commission Meeting. Mr. Reagan explained the proposed rules had been published in the NC Register on September 1, 2017, posted on the ABC Commission's website on August 30, 2017 and emailed to the ABC Commission rulemaking committee on September 5, 2017. Mr. Reagan explained the rules allowed the antique spirituous liquor to be sold directly to the ABC Boards. Additionally, it allowed businesses with Mixed Beverage permits to obtain an antique spirituous liquor permit to purchase and sell the antique liquor as mixed drinks.

Mr. Reagan stated one comment had been received from Nick Hawthorne-Johnson and added Mr. Johnson had discussed his concerns with the Legal Division staff.

Mr. Johnson was present and addressed the Commission. Mr. Johnson thanked the Commission for allowing the comments and encouraged the Commission to consider making rules to allow easier oversight of the ABC Boards to ensure they are providing good customer service. Mr. Johnson stated he had worked with Laurie Lee, the Pricing Director, regarding his difficulties with the Durham County ABC Board and placing special orders. He asked there be consistency in the ordering process even with staff changes.

Chairman Guy agreed customer service is important. Chairman Guy asked if anyone else wished to address the Commission. As no one else was present, Commissioner Herring made a motion to close the public hearing. Chairman Guy seconded the motion. Motion Passed.

Mr. Reagan recommended the Commission adopt the permanent Antique Spirituous Liquor Sales rules as published in the NC Register in rule 15A .2101. The rules could then be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and publication in the NC Administrative Code. Additionally, Mr. Reagan asked the Commission to allow staff to make non-substantive changes to the adopted rules as needed before publication.

Chairman Guy made a motion to follow staff's recommendation regarding the Antique Spirituous Liquor Sales rules. Commissioner Herring seconded the motion. Motion Passed.

Mr. Reagan stated 15A .1403, rules regarding Special Orders needed to be readopted without further amendments. Mr. Reagan stated the rules could then be filed with the Office of Administrative Hearings

for approval by the Rules Review Commission and publication in the NC Administrative Code. Additionally, Mr. Reagan recommended the Commission allow staff to make non-substantive changes to the adopted rules as needed before publication.

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

VIII. OTHER BUSINESS – CONSIDERATION OF PROPOSED PERMANENT AND TEMPORARY RULES

Mr. Reagan provided drafts to the Commission of the proposed temporary rules regarding Auction Sales of certain alcoholic beverages. Mr. Reagan explained in 2017, the General Assembly had passed a law allowing licensed auctioneers to auction collections of wine, decorative decanters and antique spirituous liquor and to allow private sales between two collectors. If it is a private sale, the seller must obtain a permit and if it is being sold at auction, the auctioneer must obtain a permit for that auction. The auctioneer's permit would be a one-time permit for that auction and has a \$750.00 fee. The rules also include descriptions of the conditions under which the sales could take place. The proposed rule also provided guidance regarding the quantities of alcohol allowed to be sold.

Mr. Reagan requested the Commission direct the temporary rules to the Office of Administrative Hearings for publication on the OAH website; a copy be posted on the ABC Commission website; and, copies be sent to the individuals on the ABC Rulemaking committee email list. Mr. Reagan requested the Commission schedule a public hearing to be held on January 17, 2018 with the public comment period to be open until January 10, 2018. Additionally, Mr. Reagan recommended the Commission authorize the staff to make non-substantive changes to the proposed rules as needed.

Commissioner Herring made a motion to follow staff's recommendation. Chairman Guy seconded the motion. Motion Passed.

IX. OTHER BUSINESS

Mr. Hamilton stated there was no further business. Chairman Guy asked again if anyone wished to address the Commission. As no one was present, Chairman Guy thanked the employees of the NC ABC Commission on behalf of Mr. Hamilton, Commissioner Herring and himself.

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

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

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division