

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
AUGUST 14, 2013**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on August 14, 2013, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the ABC Commission in the Legal Division.

ROLL CALL

Chairman James C. Gardner and Commissioners Joel L. Keith and Kevin M. Green were present at the meeting. Chairman Gardner called the meeting to order.

MINUTES OF JULY 17, 2013

Chairman Gardner asked for a motion to waive the reading of the minutes of the July 17, 2013 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the July 17, 2013 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the July 17, 2013 meeting. Commissioner Green made a motion to approve the minutes from the July 17, 2013 meeting. Commissioner Keith seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Chairman Gardner asked if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Keith stated he had found no conflicts of interest. Commissioner Green stated he had found no conflicts of interest. Chairman Gardner stated he had found no conflicts of interest.

I. HEARING CASES – 47

Deputy Agency Counsel K. Renee Cowick stated there were two contested cases. Ms. Cowick stated hearing case number 1, Circle Mart, was a sanctions case as the permittee had failed to file a prehearing statement. The Administrative Law Judge had issued a decision for the permittee to pay a \$1,000.00 penalty and serve a 30-day suspension. Ms. Cowick stated the penalty should be paid by September 13, 2013 and the 30-day suspension should begin on September 20, 2013.

Commissioner Green made a motion accept the Administrative Law Judge's decision and set the penalties for the presented dates. Commissioner Keith seconded the motion. Motion Passed.

Ms. Cowick stated hearing case number 2, Tienda Avilez, was also a sanctions case as the permittee had failed to file a prehearing statement. The Administrative Law Judge had issued a decision for the permittee serve a 75-day suspension to begin on September 20, 2013 and to pay a \$500.00 penalty. Ms. Cowick stated if the \$500.00 penalty was not paid, the permittee shall serve an additional five-day suspension.

Commissioner Keith made a motion accept the Administrative Law Judge's decision and set the penalties for the presented dates. Commissioner Green seconded the motion. Motion Passed.

Ms. Cowick stated William Satterfield was present to speak on behalf of hearing case number 13, Hurricane Alleys. Mr. Satterfield stated the owner of the business has another business with ABC permits. Mr. Satterfield stated he picks up the orders for both businesses at the same time and one bottle of spirituous liquor was delivered to the wrong establishment. The bottle was tax-stamped and it was mistakenly delivered to the wrong business. Mr. Satterfield asked for consideration on the penalty.

Assistant Counsel LoRita Pinnix stated the ALE Agent's report confirmed there are two locations and the report supported Mr. Satterfield's statement that the incident appeared to be a mistake due to sorting a large order and not an attempt at wrongdoing. Ms. Pinnix stated there was flexibility regarding the penalty.

Commissioner Keith asked if there were any previous violations at this location. Ms. Pinnix stated this violation occurred while the business was under temporary permits. Commissioner Keith asked if the other location had had any violations. Mr. Satterfield responded there had been two previous violations which had occurred several years prior.

Commissioner Keith made a motion to issue a Written Warning. Commissioner Green seconded the motion. Motion passed.

Ms. Cowick stated hearing cases #28 and #38 were to be continued to the September NC ABC Commission Meeting.

Commissioner Green made a motion to ratify the remaining offers in compromise. Commissioner Keith seconded the motion. Motion Passed.

II. OTHER BUSINESS – ABC STORE LOCATION – DARE COUNTY ABC BOARD

Chief Administrator Michael Herring stated on July 11, 2013, the NC ABC Commission received a letter from Fields Scarborough, Dare County ABC Board Project Manager, requesting approval to temporarily relocate Dare County ABC Store #2 in Nags Head, North Carolina to a location within a shopping center in the same township. Mr. Scarborough stated it is the intention of the Dare County ABC Board to rent a building from Rebkee Partners Satterfield, LLC while the main store is demolished and rebuilt. The temporary location will offer their customers access to an ABC store until the main store is reopened on June 1, 2014.

On July 16, 2013, ALE Special Agent J. Eric Swain began an investigation and found the proposed location for the temporary Dare County ABC Board store was 2210 South Croatan Highway, Nags Head, North Carolina. The building is in a shopping center adjacent to a TJ Maxx store.

The proposed lease is a one-year lease between the Dare County ABC Board and Rebkee Partners Satterfield, LLC. The rent for the property would be \$4,000.00 per month. The Dare County ABC Board hopes to open the temporary store on September 16, 2013. The property is approximately 4000 square feet.

All Dare County ABC Board Members submitted financial disclosure forms regarding the property owned by Rebkee Partners Satterfield, LLC and have no conflicts of interest.

Mr. Herring stated the nearest church is located approximately .4 miles from the proposed location. The nearest school is located approximately 1.4 miles from the proposed location. Notice of Intent to open an ABC store at the site was properly posted on July 10, 2013.

As no objections had been received, Mr. Herring recommended the ABC Commission approve the proposed location as a suitable temporary location.

Commissioner Keith made a motion to approve the proposed location. Commissioner Green seconded the motion. Motion Passed.

III. OTHER BUSINESS – ABC STORE LOCATION – JOHNSTON COUNTY ABC BOARD

Mr. Herring stated on July 2, 2013 the ABC Commission received a letter from Swade Carroll, the General Manager of the Johnston County ABC Board, requesting approval to open a new ABC Store in Princeton, North Carolina.

On July 23, 2013, ALE Special Agent Clay Joyner began an investigation. The proposed site is located at 9576 US Hwy 70 East in Princeton, North Carolina. The Johnston County ABC Board proposes to sign a lease with Hwy Investors, Inc. to add to the existing Dollar General store at this location. Mr. Herring stated the proposed location is owned by Hwy Investors, Inc. A 30-foot by 80-foot building would be added to the existing building.

All Johnston County ABC Board Members submitted financial disclosure forms indicating no financial interest in the property.

Other businesses in the area include convenience stores, a realty office, a furniture store and an LP gas supply business. The property is zoned Agriculture and Residential. Mr. Herring stated he spoke with Special Agent Joyner on August 13, 2013 and confirmed the site is also zoned Commercial and suitable for an ABC Store.

The proposed location is approximately 10.7 miles from an existing ABC Store located at 103 South Pollack Street, Selma, North Carolina.

The nearest church is located approximately 3 miles from the proposed site. The nearest school is located approximately 1.35 miles from the proposed location.

Notice of Intent to open an ABC store at the site was properly posted on July 2, 2013. Mr. Herring stated the estimated annual sales for the proposed location were \$600,000.00. As no objections had been received regarding the proposed store, Mr. Herring recommended the ABC Commission approve the proposed location.

Commissioner Green made a motion to approve the proposed location. Commissioner Keith seconded the motion. Motion Passed.

IV. OTHER BUSINESS – LB & B ASSOCIATES PROPOSAL FOR BILLING AND PAYMENT SERVICES FOR LOCAL ABC BOARDS

Mr. Herring stated earlier this year, members of the North Carolina Association of ABC Boards requested LB & B Associates provide a check writing service for payment to the distillers for products LB & B

delivers to the boards. Each ABC Board would deliver one check each month to LB & B for the product received and LB & B would, in turn, write one check to each of the over one hundred distillers and suppliers. Mr. Herring stated that at year-end June 30, 2012, the cost of goods sold to the ABC Board exceeded \$400,000,000.00. With 168 local ABC Boards writing checks to each of the 100-plus distillers and suppliers, this proposal would be create more efficiency in labor, postage and materials.

Mr. Herring stated Graham Thompson, Project Manager of LB & B, and Ben Thompson, attorney for LB & B, were present. Also present were members of the NC Association of ABC Boards and others who wished to speak regarding the proposal.

Mr. G. Thompson stated local ABC Boards asked several years ago about writing one check for products. Mr. G. Thompson stated it was not possible at the time because there were so many different suppliers involved. However, in March 2013, LB & B met with some of the ABC Boards and 40-50 local boards expressed interest in a billing and payment services program. Currently, LB& B makes approximately 300 deliveries a month of products from over one hundred distillers and suppliers.

Mr. G. Thompson stated LB & B would continue to process the orders as they do currently; however, each board, rather than receiving an invoice from each distillery, would receive one total invoice summarizing all products. The ABC Board could then forward one check to LB & B for product and a check for each bailment and surcharge. LB & B would write one check to each distillery or supplier for the total of all products sold to all NC ABC Boards.

Mr. G. Thompson stated currently the ABC Boards have a 30-day period to make payment once invoiced, but this time would be reduced to approximately 25 days to allow LB & B time to make the payment to the distillers.

LB & B created the proposal for this service at the request of the ABC Boards and NC ABC Commission to assist their working partners. LB & B is willing to assume the risks involved due to the large financial responsibility to provide better service and modernize the business.

Chairman Gardner asked how many ABC Boards are interested in this service now. Mr. G. Thompson responded earlier this summer at the conference, 60-70 local boards expressed interest. Mr. G. Thompson stated ABC Boards that were hesitant earlier have now expressed interest, increasing the number of local ABC Boards to 80-100.

Commissioner Keith stated he had heard from some of the larger ABC Boards regarding concern over the management of breakages, shortages and overages and asked how these would be managed. Mr. G. Thompson stated currently for the military bases and tribal councils, a credit/debit memo is issued for shortages and overages which can be applied to the next shipment's payment. There is a 20-25 day window before payment is due to allow an ABC Board to determine if there were any issues with a product delivery. Breakages are handled slightly differently. Mr. G. Thompson also stated sales representatives for the distillers sometimes handle these issues as they are in the field working with the ABC Boards. Mr. G. Thompson also added this system is currently in place, on a smaller scale, for the military bases and tribal councils.

Commissioner Green stated this business plan should be for all the ABC Boards or not utilized, as it would not be effective or efficient to operate two separate systems. Mr. G. Thompson agreed stating the proposal is for the whole system rather than a portion of the Boards. However, he also acknowledged the proposed check writing service would be more beneficial to the smaller ABC Boards than to the larger ABC Boards which already have staff dedicated to accounts payable.

Mr. B. Thompson explained an escrow account, much like an attorney's trust fund would be established through a partner bank, First Citizens, and would be a zero-balance account. The vast majority of payments would be electronic, managed by LB & B employees. Mr. B. Thompson stated LB & B would maintain fidelity bond coverage of \$2,000,000 for each employee with access to the escrow accounts. Mr. B. Thompson stated, because LB & B manages \$400,000,000.00 worth of spirituous liquor products each year for the NC ABC Commission and ABC Boards, they are able to offer this service at the proposed cost. As a stand-alone service, the fee would be much higher. Mr. B. Thompson reiterated the proposal reflected all ABC Boards utilizing the service.

Chairman Gardner asked if this service would be cost-saving to the ABC Boards. Mr. G. Thompson stated it would be cost-saving for the small to medium-sized ABC Boards as it would save accounting and administrative time, as well as supplies and postage. Each ABC Board would be able to write three checks to LB & B each month rather than checks to over one hundred distillers and suppliers each month.

Sara Brewer, President of the NC Association of ABC Boards, was present to speak on behalf of the association. Ms. Brewer stated the majority of the ABC Boards supports LB & B providing this service. Ms. Brewer stated it would be much simpler for a local Board manager such as herself to write three checks to LB & B for the product, bailment and the surcharge than to spend hours issuing checks for the bailment and surcharge as well as to the over one hundred distillers and suppliers. Ms. Brewer stated the Boards hope the cost can be paid from the excess in the bailment surcharge fees or by the out-of-stock fees. Ms. Brewer stated there are over 90 one-store ABC Boards where the manager wears many hats and the payment process currently is very time-consuming. Ms. Brewer stated she often writes 45 checks for one monthly shipment.

Ms. Brewer stated the primary concerns of ABC Boards are the issues regarding breakages, shortages and overages which can be worked out and the cost. Ms. Brewer stated her ABC Board currently sends a breakages/overages/shortages report once a quarter to Laurie Lee of the NC ABC Commission and suggested, under this proposal a monthly report be sent to LB & B.

Ms. Brewer further stated some of the local ABC Boards fear an increase of the bailment fees and the Association does not want this to occur. She asked if the fee could be incorporated in 2016 when the contract expires. In a Board Association meeting earlier this year, Ms. Brewer stated the Boards were asked what was the one thing that they would like to see changed or offered by LB & B to make product purchasing better and the strongest response was for the one-check for product service. Ms. Brewer stated even though a per-case cost had not yet been determined, over 50 boards were willing to sign up for a one-year test program. Ms. Brewer stated the Association hopes the NC ABC Commission would be able to develop a feasible plan that would be affordable to all ABC Boards. The ABC Association understands the larger ABC Boards have staff to manage payables, but the benefit in time saved for the smaller ABC Boards would be significant.

Chairman Gardner asked if LB & B would be interested in a one-year test program. Mr. G. Thompson stated LB & B would need at least a three-year program as the software necessary for the system, as well as staff and administrative costs, would be expensive.

Craig Pleasants, General Manager of the Wake County ABC Board, was present and stated the larger ABC Boards were already automated. Mr. Pleasants stated of the 300 deliveries that LB & B made last month, 40 were delivered to the Wake County ABC Board. Mr. Pleasants stated oftentimes pallets of products are delivered that may take up to six weeks to open and issues may not be discovered within a 20 to 25-day timeframe. The issue of breakages, shortages and overages could not be determined in the shorter timeframe described earlier.

Mr. Pleasants stated he had spoken with Paul Stroup of the Mecklenburg County ABC Board and the service would only save a small amount of time. Mr. Pleasants also stated the larger ABC Boards do not want to give up control or accountability and do not need the service being proposed by LB & B. However, Mr. Pleasants agreed the proposed service would be beneficial to the small and medium-sized ABC Boards. Mr. Pleasants stated the larger Boards would like the option to utilize or not utilize the service.

Mr. Herring stated he had also spoken with Mr. Stroup of the Mecklenburg County ABC Board and the Mr. Stroup would like to see this as a menu item that may be added as an incidental service by Boards opting to do so and paying for the service. Mr. Stroup was concerned the bailment charges would increase to fund the service. Mr. Stroup indicated he wished for the bailment fees to decrease.

Commissioner Keith asked if the current bailment fees would pay for the proposed service without an increase. Mr. Herring stated currently monies are available that could pay for the service; however, it would be difficult to determine if current bailment charges would be enough to cover the costs as there are plans for other initiatives in the future.

Commissioner Keith asked that Mr. Herring and the NC ABC Commission staff meet with the ABC Association, LB & B and the larger ABC Boards. The proposal would be revisited at the next NC ABC Commission meeting.

V. OTHER BUSINESS – CONSIDERATION OF PROPOSED TEMPORARY AND AMENDMENTS TO PERMANENT RULES 04 NCAC 02S .0102 APPLICATIONS FOR PERMITS: GENERAL PROVISIONS; 04 NCAC 02T .0302 LABELS TO BE SUBMITTED TO COMISSION; 04 NCAC 02T .0303 LABEL CONTENTS: MALT BEVERAGES; 04 NCAC 02T .0308 GROWLERS; AND, 04 NCAC 02T .0309 GROWLERS: CLEANING, SANITIZING, FILLING AND SEALING

Deputy Administrator Robert Hamilton stated following the August NC ABC Commission Meeting, during which the Commission postponed adoption of the proposed rules, he met with parties interested in filling growlers and the Retail Merchants Association. Mr. Hamilton stated some adjustments were made to Rule 04 NCAC 02S .0102 regarding in-stand malt beverage sales and wearing or carrying/displaying alcoholic beverage advertising. Any necessary adjustments can still be made to the Rules.

Mr. Hamilton stated there were no changes to 04 NCAC 02T .0302 and 04 NCAC 02T .0308 pertaining to growlers. Mr. Hamilton stated 04 NCAC 02T .0303 Label Contents: Malt Beverages was changed to allow a label to be affixed to the growler containing the Federal health warning or to be a permanent part of the growler if produced with the permittee's information. Adjustments were made to allow any size label or a tag could be affixed to the growler upon refilling and allowed for a font size not smaller than three millimeters in height and not more than twelve characters per inch.

Mr. Hamilton stated 04 NCAC 02T .0309 Growlers: Cleaning, Sanitizing, Filling and Sealing was amended after discussions with the Retail Merchants Association regarding removal of the beer line cleaning requirement. The beer line cleaning would be self-policed rather than required. The sections pertaining to manual and mechanical washing were refined to become easier for permittees to comply.

Commissioner Keith asked if the ABC Commission could leave the enforcing of cleaning and sanitizing the growlers to the health departments. Mr. Hamilton stated growler refilling is contrary to FDA food

codes due to cross-contamination risks during the refilling and conflicts with local and state health department codes.

Andy Ellen, President and General Counsel of the North Carolina Retail Merchants Association was present to speak on behalf of the association. Mr. Ellen stated he spoke with Larry Michael of the NC Department of Health and Human Services, Division of Public Health. Mr. Ellen presented a photo of a bottle washer nozzle to be used for manual washing. Mr. Ellen stated this device is used by breweries for bottle washing and could be a variance for the 3-sink sanitizing. Mr. Hamilton stated the Health Department was given information about this device and agreed it could be helpful, but would need to be used with the 3-sink sanitization process.

Mr. Ellen also referenced the refillable soda and coffee mugs that were sold by retail outlets that were allowed as long as there was not risk for cross-contamination. Mr. Ellen asked about switching out the refilling tube. Mr. Ellen also commented that North Carolina was the only state that would require the business to clean or sanitize the growler not the customer. Mr. Ellen asked that the retailer/permittee give the option of three sanitizing methods – commercial machine, 3-sink sanitizing or the nozzle with changing the refilling tubes and sanitization of the tubes.

Hardy Lewis, a Raleigh attorney who represents Total Wine and More was present to speak on behalf of retailers. Mr. Lewis stated his client currently fills growlers in six or seven other states. Mr. Lewis stated other states do not place the onus of sanitation on the retailer.

Mr. Hamilton stated the Health Department currently does not inspect off premise locations. Regarding the refilling of growlers, it is unclear if Alcohol Law Enforcement would inspect these businesses. Any on premise businesses would already have the means to sanitize the growlers. Standards could not be lower for the off premise businesses without lowering those for on premise businesses. Mr. Hamilton stated he would verify with the Health Department if switching the hose with each refilling of a growler and then sanitizing each hose would comply with the Health Department codes.

Commissioner Green asked if under 04 NCAC 02S .0102 Applications for Permits: General Provisions, regarding the in-stand sales, items 12 (1)(2) and (1)(3) could be removed and allow salespersons in the stands to carry branded items so consumers could easily see brands of malt beverages.

Kris Gardner, an attorney with Tharrington Smith, representing the North Carolina Beer and Wine Wholesalers Association was present to speak regarding the in-stand sales of malt beverages. Mr. Gardner stated a poll of the Board of Directors and some association members revealed all are comfortable with the proposed changes to rule 04 NCAC 02S .0102 and would not want sections (1)(2) and (1)(3) deleted. The intent of the rule is to have non-branded carrying trays so industry members could provide the trays to retailers. The trays average \$100.00 each and industry members are not allowed to give equipment and can only give branded items of small value such as coasters. The association is comfortable with the rule as it is written and with in-stand sales advertising the products carried and price. Mr. Gardner encouraged leaving sections (1)(2) and (1)(3) in the proposed rule.

Chairman Gardner asked how soon the rules could be enacted. Mr. Hamilton stated it would require two months for temporary rules in order to have a public hearing and submit the proposed permanent rules for publishing in the Register. The Rules Review Commission would also need time to review the proposed rules. The proposed rules could become permanent 5-6 months once the process began. Mr. Hamilton stated the proposed rules needed to be submitted by January 1, 2014.

Commissioner Keith made a motion to adopt the proposed regulations as presented, but allowing for the third option for sanitizing the growlers, the bottle washer nozzle and changing filling tubes as long as they meet the minimum State health codes. Commissioner Green seconded the motion. Motion Passed.

VI. OTHER BUSINESS – EXEMPTION REQUEST – G.S. § 18B-1116 – OLD CHICAGO RESTAURANT

Deputy Counsel Cowick stated Sandy Sands, an attorney with Nexsen Pruet, was present on behalf of Old Chicago Restaurant to request an exemption be granted by the NC ABC Commission. Mr. Sands stated Wadsworth Old Chicago, Inc. is a direct subsidiary of Rock Bottom Restaurants, Inc. and an indirect subsidiary of CraftWorks Restaurant & Breweries, Inc. Subsidiaries of CraftWorks operate 75 brewpubs in the United States and Old Chicago operates 34 restaurants in the United States which do not include brewpub operations.

Mr. Sands requested an exemption for an Old Chicago Restaurant to be granted permits in Chapel Hill, North Carolina. Old Chicago Restaurant would not sell products produced by any of its affiliated or parent company's breweries.

Ms. Cowick stated there were no objections to an exemption as long as none of the products produced by the affiliated or parent companies was sold.

Commissioner Green made a motion to grant the exemption. Commissioner Keith seconded the motion. Motion Passed.

VII. OTHER BUSINESS – EXEMPTION REQUEST – G.S. § 18B-1116 – DEVIL'S DISTILLERY, LLC

Deputy Counsel Cowick stated Andrew Zeman of Benjamin Vineyards and Winery, LLC and Will Alphin of Parallel Partners, LLC d/b/a Foundation were present to request an exemption be granted by the NC ABC Commission.

Ms. Cowick stated Mr. Zeman and Mr. Alphin are members of Devil's Distillery, LLC, which plans to own and operate Devil's Distillery, an artisanal micro-distillery which will be located in Pittsboro, North Carolina.

Mr. Zeman and Mr. Alphin asked that their exemption request be carried over to the September NC ABC Commission meeting as their attorney was unable to be present.

VIII. OTHER BUSINESS – SPECIAL ONE-TIME PERMITS

Deputy Counsel Cowick requested the Commission consider the issuance of Special One-Time Permits. Ms. Cowick stated there are questions regarding Special One-Time Permits which can be issued under five circumstances. The two most significant is issuance to a non-profit allowing them to sell alcohol or serve at a ticketed event for a fundraising event. A separate statute states alcohol cannot be sold on public school property unless through an alumni association, hotel or certain performing arts centers. The Attorney General's office has stated a school may get one Special One-Time Permit but not for a series of events such as football games or concert series. Exemptions have been added regarding the schools of the

University of North Carolina system. Ms. Cowick asked for a definition to be applied to Special One-Time.

Ms. Cowick also stated in some instances nonprofits are being used to obtain permits for purposes that are not true fundraisers organized by and benefitting the nonprofit. In addition, some groups are obtaining many permits (30 or more). Ms. Cowick asked that the Commission consider some guidelines for the issuance of Special One-Time Permits.

Chairman Gardner stated he would like the Legal Division to make recommendations and address the issue at the September NC ABC Commission Meeting.

IX. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Mr. Herring recommended the Commission approve Wednesday, October 16, 2013, as the date of the October 2013 NC ABC Commission Meeting and Wednesday, November 13, 2013, as the date of the November 2013 NC ABC Commission Meeting. Commissioner Green made a motion to approve these dates as future NC ABC Commission meeting dates. Commissioner Keith seconded the motion. Motion passed.

Chairman Gardner announced the next ABC Commission meeting will be held on Wednesday, September 18, 2013.

Commissioner Green made a motion to adjourn. Commissioner Keith seconded the motion. With no further business, the meeting adjourned.

Approved at the September 18, 2013 Commission Meeting

/S/ James C. Gardner
James C. Gardner, Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

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