

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 18, 2013**

The following narrative and summary describes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road, Raleigh, North Carolina on September 18, 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 AUGUST 14, 2013

Chairman Gardner asked for a motion to waive the reading of the minutes of the August 14, 2013 meeting into the record. Commissioner Green made a motion to waive the reading of the minutes from the August 14, 2013 meeting. Commissioner Keith seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the August 14, 2013 meeting. Commissioner Green made a motion to approve the minutes from the August 14, 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 Green stated he had found no conflicts of interest. Commissioner Keith 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 hearing case number 1, Grandmas Pizza, was a sanctions case as the permittee failed to file a prehearing statement. The Administrative Law Judge issued a decision requiring the permittee to serve a 12-day suspension and 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. Ms. Cowick stated the penalty should be paid by October 11, 2013 and if that is paid, the 12-day suspension should begin on October 18, 2013.

Commissioner Keith made a motion to 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 Todd Barber and Glenn Newbury Smith were present to speak on behalf of hearing case number 31, Duck and Dive. Mr. Barber stated an ALE agent visited their establishment, but they were not aware of the violations until they received the notice from the NC ABC Commission. Mr. Barber stated they were confused about the charges and penalties and asked for consideration on the penalty.

Mr. Newbury Smith stated he had been in business in Wilmington for almost twenty years without problems and produced a letter from the mayor. Mr. Newbury Smith stated they do not understand the laws.

Assistant Counsel Timothy Morse stated the ALE Special Agent was working undercover and was admitted into the private club without a membership. The ALE Special Agent observed the violations as they occurred and afterwards spoke with the bartender. Mr. Morse stated other violations were alleged to have occurred in the report; however, only the violations indicated in the notice were charged. The ALE Special Agent observed more than one drink at a time being served to an individual who appeared to be intoxicated.

Chairman Gardner stated the Commission would support the testimony from the sworn ALE Special Agent and accepted the signed offer. The penalty would remain as stated on the signed Offer in Compromise.

Ms. Cowick stated Jeanette Cinelli was present to speak on behalf of hearing case number 12, Cinellis of Cary. Ms. Cinelli stated the ALE agent found spirituous liquor in her office. She stated she had found the alcohol in her underage son's car and brought it into her office apart from the restaurant's spirituous liquor. Assistant Counsel LoRita Pinnix stated the ALE Agent's report confirmed there did not seem to be any attempt at reselling the spirituous liquor and this was reflected in the penalty.

Commissioner Keith asked Ms. Cinelli if she knowingly brought unauthorized spirituous liquor into her retail establishment. Ms. Cinelli stated she had. Commissioner Keith stated the penalty was much lighter than the possible outcome of underage possession, as well as, a possible higher ABC Commission penalty.

Chairman Gardner stated the penalty would remain as stated in the signed offer.

Ms. Cowick stated hearing case #11 was to be continued to the October 2013 NC ABC Commission Meeting.

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

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

Deputy Counsel Cowick stated Kathie Russell, an attorney with Russell Goetcheus & Associates, was present on behalf of Devil's Distillery, LLC, Parallel Partners, LLC d/b/a Foundation and Benjamin Vineyards and Winery, LLC to request an exemption be granted by the NC ABC Commission.

Ms. Russell explained Will Alphin, owner of Parallel Partners and Andrew and Nancy Zeman, owners of Benjamin Vineyards and Winery, LLC, are members of Devil's Distillery, LLC, which plans to own and operate Devil's Distillery, an artisanal micro-distillery.

Ms. Russell asked that an exemption be granted based upon the guidelines recommended by the Legal Division staff. Ms. Cowick stated neither Parallel Partners, LLC d/b/a Foundation nor Benjamin Vineyards and Winery, LLC can carry Devil's Distillery products unless they are purchased either through the ABC system for spirituous liquor products or a wholesaler.

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

III. OTHER BUSINESS – EXEMPTION REQUEST – G.S. § 18B-1116(a)(3),(b) – STADIUM FOOD AND BEVERAGE

Ms. Cowick stated this exemption request would be continued to a later NC ABC Commission meeting.

IV. OTHER BUSINESS – EXEMPTION REQUEST – G.S. § 18B-1116 – WESTGATE WINE, LLC; WILLIAM E. JACKSON TESTAMENTARY TRUST; JC JACKSON CAPITAL, LLC; ROBERT CHRISTIAN PEEL; WORLD PREMIERE SUNRISE, LLC AND MATT BAILEY

Brice Bratcher, an attorney, was present to request an exemption on behalf of Westgate Wine, LLC, World Premiere Wines, LLC and other related parties. Mr. Bratcher explained Westgate Wine, LLC is a wine retail business holding a Wine Shop ABC permit and is owned primarily by the William E. Jackson Testamentary Trust. World Premier Wines, LLC is a wine importation business holding Wine Importer and Wine Distributor ABC permits.

Mr. Bratcher stated Westgate Wine, LLC, William E. Jackson Testamentary Trust, JC Jackson Capital, LCL, Robert Christian Peel and Matt Bailey wish to form World Premiere Sunrise, LLC in order to purchase World Premiere Wines, LLC.

Mr. Bratcher stated a third party distributor/wholesaler could be contracted for the distribution in North Carolina of the existing inventory of World Premiere Wines, LLC (2,764.17 cases of wine) and any future imported wines. Westgate Wine, LLC has purchased wine from as many as ten different distributors, regularly purchasing from six distributors.

Mr. Bratcher stated if an exemption is granted, both businesses would be operated as separate entities with separate personnel; enlist a third party distributor for North Carolina distribution of any wine imported by World Premiere Sunrise, LLC; at no time will World Premiere Sunrise, LLC sell directly to Westgate Wine, LLC – sales would be through a third party distributor; Mr. Peel will divest himself of any interest in Westgate Wine, LLC or World Premiere Sunrise, LLC within 180 days of acquiring interest; and, World Premiere Sunrise, LLC will employ a general manager who is without financial interest or managerial control in Westgate Wine, LLC.

Commissioner Keith made a motion to grant the exemption based on the defined conditions. Commissioner Green seconded the motion. Motion Passed.

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 no written comments had been received regarding the proposed rules. A request to include rigid plastic containers in the definition of a growler was heard at the September 10, 2013 NC ABC Commission public hearing. Mr. Hamilton stated the North Carolina State Health Department did not have objections to the rigid plastic containers.

Mr. Hamilton requested October 9, 2013 at 10:00 am be set to consider the adoption of the proposed rules and to submit them to the Rules Review Commission.

Commissioner Keith made a motion to set the meeting for October 9, 2013. Commissioner Green seconded the motion. Motion Passed.

Chairman Gardner announced the next ABC Commission meeting will be held on Wednesday, October 16, 2013.

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

Approved at the October 16, 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