

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 10, 2013**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on April 10, 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, Commissioner Joel L. Keith and Commissioner Kevin M. Green were present at the meeting. Chairman Gardner called the meeting to order.

MINUTES OF MARCH 20, 2013

Chairman Gardner asked for a motion to waive the reading of the minutes of the March 20, 2013 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the March 20, 2013 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the March 20, 2013 meeting. Commissioner Green made a motion to approve the minutes from the March 20, 2013 meeting. Commissioner Keith seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by North Carolina General Statute 138A-35, Chairman Gardner asked Commissioner Green and Commissioner Keith 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 – 42

Deputy Agency Counsel K. Renee Cowick stated contested case #1 was to be continued to the May 8, 2013 NC ABC Commission Meeting as the OAH judge had not yet issued an order for sanctions. Deputy Counsel Cowick stated hearing cases # 9, 10, 12, 15 and 38 were also to be continued to the May 8, 2013 NC ABC Commission Meeting.

Deputy Counsel Cowick stated Joseph Tumminelli, the owner of hearing case #7, Cueva de Lobos Mexican Restaurant, was present to speak on behalf of the business with the new bar manager. Mr. Tumminelli asked for leniency regarding the fines and suspension as he had taken corrective actions and signed up for training through the NC ABC Commission. Mr. Tumminelli stated the employee responsible for the violations had been terminated. Deputy Counsel Cowick stated the penalty was higher due to the four separate purchases of untaxpaid liquor from ABC stores, a retail outlet purchase and changing the alcohol in a recipe preapproved by the NC ABC Commission.

Chairman Gardner asked Mr. Tumminelli about the four violations the business had previously incurred. Deputy Counsel Cowick stated these were for failure to file financial reports which could be indicative of sloppy management.

Commissioner Keith made a motion to leave the penalty as stated in the Offer in Compromise. Commissioner Green seconded the motion. Motion passed.

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

II. OTHER BUSINESS – ABC STORE RELOCATION – BREVARD ABC BOARD

Administrator Michael Herring stated on February 22, 2013, the ABC Commission received a letter from Tracy Love, the Chairman of the Brevard ABC Board requesting approval to open a second ABC store in Pisgah Forest, North Carolina.

On March 4, 2013, ALE Special Agent David A. Miller began an investigation and found the proposed location for the second Brevard ABC Board store was 61 Forest Gate Shopping Center, Pisgah Forest, North Carolina 28768. The property is in a single-story strip shopping center and is accessible by NC Highway 280 and US Highway 276.

The proposed location is owned by CWT Properties, LLC. All Brevard ABC Board Members have submitted financial disclosure forms indicating no financial interest in the property owned by CWT Properties, LLC. This location would be rented by the Brevard ABC Board for \$2,114.68 per month for a term of three to five years.

The proposed space is 1750 square feet, with approximately 1550 feet of retail floor space and the remainder as office space, storage and restrooms.

The nearest church is located approximately .8 miles from the proposed site. The nearest school is located approximately 1.5 miles from the proposed location. Notice of intent to open an ABC store at the site was properly posted on February 19, 2013.

Mr. Herring stated the Brevard ABC Board general manager had received one telephone call in objection. The caller objected to the proposed store as his family shops at Wal-Mart. Also, five letters had been received from the Schenck Job Corps Civilian Conservation Center which is managed by the US Forest Service, in objection to the proposed ABC Store location. The letters expressed concern about the students walking from the facility to the proposed ABC Store which would be located a mile away. Mr. Herring stated other businesses in this area hold ABC permits and the ABC store would be more regulated than the retail outlets.

Judy Westrate, a volunteer at Schenck Job Corps Civilian Conservation Center was present to express her objection to the proposed ABC Store location. Ms. Westrate stated the young people at the center came from all types of situations and were often at-risk. The center provided a last opportunity to gain a GED or trade such as carpentry, welding or culinary arts. The participants were 16-24 years of age and allowed to participate for up to 2 years. Ms. Westrate stated the proposed ABC store location was a three to five minute walk through the woods and would provide a temptation to the participants. The center has a zero tolerance policy for alcohol. Ms. Westrate acknowledged there are other places to buy alcohol near the center.

The Executive Director of NC Job Corps in Raleigh, NC was also present to voice an objection to the proposed Brevard ABC Board location. He asked the ABC Commission to consider another location further from the center.

Mr. Herring stated as the Brevard ABC Board had not heard concerns from the public in a public meeting, he recommended the ABC Commission defer its decision on the proposed location until the Brevard ABC Board has conducted a public hearing.

Commissioner Keith made a motion to defer the decision. Chairman Gardner seconded the motion. Motion Passed.

III. OTHER BUSINESS – EXEMPTION REQUEST – KOJI KIN, LLC d/b/a BEN’S TUNE-UP SAKE BREWERY; WALLACE ROBINSON, LLC d/b/a THE ADMIRAL RESTAURANT; AND JONATHAN R. ROBINSON

Deputy Counsel Cowick stated Jennifer Morgan, an attorney with Williams Mullen and Jonathan R. Robinson, the owner of Admiral Restaurant, were present to request an exemption be granted by the NC ABC Commission. Ms. Morgan stated Ben’s Tune-Up Sake Brewery will be a new sake brewery in Asheville, North Carolina. It will be regulated by the NC ABC Commission as it will produce wine and had acquired the necessary Federal permits. Ms. Morgan stated Jonathan Robinson is a 50% owner of the Admiral Restaurant and will have a 25% ownership of the sake brewery if the exemption is granted. Mr. Robinson stated sake sales are a very small percentage of alcohol sales at the restaurant and the retail business would not sell products produced by the brewery.

Deputy Counsel Cowick stated there were no objections to an exemption.

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

IV. OTHER BUSINESS – EXEMPTION REQUEST – UNITED OIL OF THE CAROLINAS, INC.; LOCAL MARKET, INC.; AND STANDARD DISTRIBUTORS, INC.

Deputy Counsel Cowick stated Kris Gardner, an attorney with Tharrington Smith was also present to request an exemption be granted by the NC ABC Commission. Mr. Gardner stated he was requesting the continuation of exemptions previously granted by the NC ABC Commission to the owners of United Oil of the Carolinas, Inc. and Standard Distributors, Inc. and to extend those exemptions to a new company, Local Market, Inc. which was created to establish greater distance between the other two entities owned by members of the same family.

Deputy Counsel Cowick stated United Oil had previously leased the business to others, but now United Oil would be operating the businesses and Standard Distributors would be the landlords. Deputy Counsel Cowick recommended continuing the exemptions.

Mr. Gardner stated there had been no complaints or concerns expressed by any distributors.

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

Chairman Gardner confirmed May 8, 2013 as the date of the next NC ABC Commission meeting.

With no further business, the meeting adjourned.

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

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division