

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JUNE 18, 2014**

The following narrative and summary describes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road, Raleigh, North Carolina on June 18, 2014, 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. Chairman Gardner called the meeting to order.

MINUTES OF MAY 12, 2014

Chairman Gardner asked for a motion to waive the reading of the minutes of the May 12, 2014 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the May 12, 2014 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the May 12, 2014 meeting. Commissioner Green made a motion to approve the minutes from the May 12, 2014 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 – 67

Assistant Counsel Timothy Morse stated no one was present on behalf of hearing case number 1, B P 4.

Mr. Morse stated the case was petitioned and the permittee failed to respond to two requests to file a prehearing statement for the Administrative Hearing. The Administrative Law Judge granted the motion for sanctions and issued a decision requiring the permittee to serve a 24-day suspension and pay a \$1,000.00 penalty.

Mr. Morse stated no one was present on behalf of hearing case number 2, Tipsy McStaggers Pub. Assistant Counsel LoRita Pinnix stated the permittee failed to file a prehearing statement for the Administrative Hearing. The Administrative Law Judge granted the motion for sanctions and issued a decision of a one-year suspension of the Mixed Beverage Private Club ABC permit.

Ms. Pinnix stated no one was present on behalf of hearing case number 3, Town N Country 7. Ms. Pinnix stated the permittee failed to appear at the March 25, 2014 Administrative Hearing. The Administrative Law Judge granted the motion for sanctions and issued a decision to cancel the permittee's Fortified Wine Off Premise permit and requiring a 10-day suspension of the permittee's Malt Beverage Off Premise and Unfortified Wine Off Premise permits.

Commissioner Keith made a motion to impose the penalties of the Administrative Law Judges' decisions. Commissioner Green seconded the motion. Motion Passed.

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

II. OTHER BUSINESS – ABC STORE LOCATION – GREENSBORO ABC BOARD

Administrator Michael C. Herring stated on April 25, 2014, the NC ABC Commission received a request from Fred McCormick, General Manager of the Greensboro ABC Board, requesting approval to open an ABC Store in Greensboro, North Carolina. On May 14, 2014, ABC Audit/Investigator Edwin Strickland met with Mr. McCormick and began an investigation.

Mr. Strickland found the proposed location was 5701-5703 West Friendly Avenue, Greensboro, North Carolina. The proposed store will be located adjacent to the Quaker Village Shopping Center in a commercial district between two restaurants. Walmart Neighborhood Market has announced plans to open a store in Quaker Village by the end of 2014.

On May 19, 2014, Mr. Strickland confirmed with the City of Greensboro Zoning Administrator the property is zoned Commercial Medium and is approved for ABC retail sales.

The property is owned by BML Smith of Greensboro, North Carolina. The proposed rental price is \$18.00 per SF, totaling \$73,224 annually or \$6,102 monthly with a 3% escalation per year. All Greensboro ABC Board members submitted financial disclosure forms regarding the property and have no direct financial interest in the ownership of the property.

The 4,068 SF building is tentatively planned to be utilized as a 2,712 SF retail space and a 1,356 SF warehouse space.

The nearest school, Guilford College, is located directly across West Friendly Avenue with the edge of campus approximately 89 feet from the proposed location. The distance from the proposed location building to the nearest school building is approximately 121 feet. The Early College at Guilford, a magnet high school within the Guilford County Public Schools System is located on the Guilford College campus and is approximately 260 feet from the proposed location. The nearest church, New Garden Friends, is approximately .2 miles from the proposed location.

The nearest ABC Store is located approximately 2 miles from the proposed site at 4639 C West Market Street, Greensboro, North Carolina. The projected annual sales of the proposed ABC Store are approximately \$2.1 million.

Mr. Herring stated notice to the public was properly posted on April 24, 2014. To date, the Greensboro ABC Board has received four or five telephone calls of concern related to the proximity of the College or the adjoining Middle College to the proposed location. Mr. Herring stated the ABC Commission had also

received objections from a professor at Guilford College, the president of the Guilford College Alumni Association and the Chairman of the Board of Trustees of Guilford College regarding the proximity to the Quaker Village shopping center and the college and safety of the students.

Mr. Herring advised that previously ABC Store locations in close proximity to colleges had been approved without problems. Mr. Herring stated he had visited the proposed location and does not foresee problems. Mr. Herring recommended the ABC Commission approve the proposed location as suitable for an ABC Store.

Commissioner Green stated as a resident of Greensboro, he is familiar with the proposed location and does understand the concerns of Guilford College. However, Commissioner Green stated the proposed ABC Store will not stand out or change the area. Commissioner Keith agreed with Commissioner Green and stated the ABC Stores are well-regulated and the employees will be vigilant.

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

III. OTHER BUSINESS – ABC STORE LOCATION – LEXINGTON ABC BOARD

Mr. Herring stated on April 15, 2014, the NC ABC Commission received a request from Roger Tripp, the attorney for the Lexington ABC Board, requesting approval to purchase property to relocate an ABC Store in Lexington, North Carolina. On April 25, 2014, ABC Audit/Investigator Edwin Strickland met with Brenda Leonard, the General Manager of the Lexington ABC Board and began an investigation.

Mr. Strickland found the proposed location was 1705 Cotton Grove Road, Lexington, North Carolina. The proposed site is approximately .4 miles from the existing leased store. The property is approximately .55 acres and contains a free standing building of approximately 2,000 SF with a large parking area. The proposed site is located on a commercial strip of highway including restaurants and retail outlets.

On May 5, 2014, Mr. Strickland confirmed with the City Planner for the City of Lexington the property is zoned Commercial Retail and is approved for ABC retail sales.

The property is owned by Quinter, Inc. of Charlotte, North Carolina. The proposed purchase price for the property is \$400,000.00. All members of the Lexington ABC Board submitted financial disclosure forms regarding the property and have no direct financial interest in the ownership of the property.

The 2,000 SF building is tentatively planned to be utilized as a 1,000 SF retail space and 1,000 SF warehouse space.

The nearest school, Southwood Elementary School, is located at 5850 NC Highway 8, Lexington, North Carolina approximately 3.4 miles from the proposed location. The nearest church, Kingdom Hall of Jehovah's Witness, located at 198 Fuller Road, Lexington, North Carolina, is approximately .3 miles from the proposed location.

The nearest ABC Store is located approximately .4 miles from the proposed site at 1983 Cotton Grove Road, Lexington, North Carolina. The lease for this existing store will not be renewed if the proposed location is purchased. The next closest ABC Store is located at 419 North Main Street, Lexington, North Carolina. Ms. Leonard believes the annual sales will increase in the proposed location; the previous year's annual sales for the leased location were \$1,262,464.00.

Notice to the public was properly posted on May 2, 2014. Mr. Strickland observed the sign on May 5, 2014 and confirmed the sign abides by all required criteria. To date, the Lexington ABC Board has received three telephone calls of concern related to the proposed location being inconvenient.

Mr. Herring recommended the ABC Commission approve the proposed location as suitable for an ABC Store.

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

IV. OTHER BUSINESS – EXEMPTION REQUEST – N.C.G.S. § 18B-1116(a)(2) – ANDREW LEAGER, D/B/A “BOYLAN BRIDGE BREWPUB, LLC” and D/B/A “HARGETT HILL DISTILLERY, LLC”

Andrew Leager, the owner and manager of Boylan Bridge Brewpub, LLC, was present to request an exemption to install and operate a distillery as Hargett Hill Distillery, LLC. Mr. Leager stated the exemption request was self-explanatory and he was present to answer any questions which the Commission might have.

Mr. Morse stated Mr. Leager had agreed to the limitations and the Boylan Bridge Brewpub, LLC would not sell products manufactured by Hargett Hill Distillery and recommended the ABC Commission grant the exemption.

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

V. OTHER BUSINESS – EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – ROBERT L. POWERS, CROWN IMPORTS, LLC AND THREE 7-ELEVEN STORES IN NORTH CAROLINA

Jennifer Morgan and Keith Kapp attorneys with Williams Mullen were present with Robert Powers to seek an exemption regarding Mr. Powers’ direct and indirect interests in retail businesses. Ms. Morgan stated Mr. Powers recently accepted a position with Crown Imports, LLC, a division of Constellation Brands, Inc. Crown Imports holds nonresident malt beverage vendor and nonresident wine vendor permits with the NC ABC Commission.

Mr. Powers seeks a Vendor Representative permit from the NC ABC Commission under Crown Imports. As a Key Account Manager, Mr. Powers will manage beer sales to Harris Teeter, Lowes Foods and Ingles grocery store chains in North Carolina as well as in other states.

Ms. Morgan stated Mr. Powers is president of Powers Management Group, Inc. and is a 51% owner of this entity. Powers Management Group is the owner of three limited liability companies which own the franchise rights and operate three 7-Eleven Stores in North Carolina. The Powers Management Group only owns the franchise rights and the stores are leased to 7-Eleven Corp. Mr. Powers has no decision-making authority over beer and wine products sold in the three stores. The general manager of the stores follows the guidelines set by the national 7-Eleven beverage manager, following regional pricing and schematics.

The exemption requested would allow Mr. Powers to receive a Vendor Representative permit through Crown Imports while having a partial ownership in the franchise rights to the three retail outlets. Mr. Morse stated the legal staff recommends approval of the exemption as Mr. Powers would have no decision-making authority for the products sold by the 7-Eleven stores.

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

VI. OTHER BUSINESS – EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – PIG POUNDER, LLC, KOTIS HOLDINGS, LLC AND WILLIAM M. KOTIS, III

Joe Bass of the Law Offices of Charles Winfree was present on behalf of his clients, William M. Kotis, Pig Pounder, LLC, Kotis Holdings, LLC and the 2012 William M. Kotis, III Irrevocable Trust.

William M. Kotis is the manager and sole member of Pig Pounder, LLC d/b/a Pig Pounder Brewery. Mr. Bass stated an exemption was being sought to allow Pig Pounder Brewery products to be sold in four retail outlets of which Mr. Kotis, or entities in which Mr. Kotis is a member or manager, is the owner. Mr. Bass stated the Pig Pounder Brewery is a small brewery with a current capacity of 700 barrels per year and a maximum capacity of 1,500 barrels per year.

Currently, the NC General Statutes allow a brewery to sell its products in up to three retail outlets under the same ownership as that brewery. Mr. Bass stated the exemption requested would allow the sale of Pig Pounder Brewery products in four separate retail outlets owned by separate limited liability companies with common ownership interests.

Mr. Bass stated the restaurants would purchase the malt beverages properly through distributors and Mr. Kotis would not order the products, but an independent manager for each retail outlet will be responsible for the ordering of all malt beverages at each outlet.

Mr. Morse recommended limitations be placed in order for the exemption to be granted.

Kris Gardner, attorney for the North Carolina Beer and Wine Wholesalers Association, stated the issue was complex and suggested the exemption be revisited when production exceeded 5,000 barrels. Mr. Gardner also suggested the retail outlets offer other malt beverage products. Mr. Gardner stated the three outlets outlined in the General Statutes refer to entities with the same ownership structure. Mr. Gardner suggested ABC Commission adjustments rather than a legislative change to the Statutes.

Commissioner Keith made a motion to allow Pig Pounder Brewery products to be sold in the four retail outlets and, if the need arose for additional locations or if capacity exceeded 5,000 barrels, the exemption request would be revisited. Commissioner Green seconded the motion. Motion passed.

VII. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Mr. Herring stated the next Commission Meeting is scheduled for Wednesday, July 16, 2014. Mr. Herring recommended the Commission approve Wednesday, September 17, 2014, as the date of the September NC ABC Commission Meeting and Wednesday, October 15, 2014, as the date of the October NC ABC Commission Meeting.

Commissioner Green made a motion to approve the dates as future NC ABC Commission meeting dates. Commissioner Keith seconded the motion. Motion passed.

VIII. OTHER BUSINESS – PUBLIC HEARING ON RULES PUBLISHED IN VOLUME 28, ISSUE 22 OF THE NC REGISTER (04 NCAC 02S .0102, 04 NCAC 02T .0302, 04 NCAC 02T .0303, 04 NCAC 02T .0308 AND, 04 NCAC 02T .0309)

Deputy Administrator Robert Hamilton requested the NC ABC Commission open a public hearing on the proposed permanent rule changes and the Impact Analysis certified by the Office of State Budget and Management. Mr. Hamilton stated the change within the temporary rules was the addition of the word “ceramic” to the definition of a growler.

Chairman Gardner opened the public hearing. No one was present to speak regarding the rules. Chairman Gardner closed the public hearing.

Commissioner Green asked if the rules included the in-stand malt beverage sales. Mr. Hamilton stated it was included. Mr. Hamilton added the in-stand sales were added as a convenience to consumers rather than a means to increase sales.

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

Approved at the July 16, 2014 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