

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
AUGUST 13, 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 August 13, 2014, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the NC 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 JULY 16, 2014

Chairman Gardner asked for a motion to waive the reading of the minutes of the July 16, 2014 meeting into the record. Commissioner Green made a motion to waive the reading of the minutes from the July 16, 2014 meeting. Commissioner Keith seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the July 16, 2014 meeting. Commissioner Keith made a motion to approve the minutes from the July 16, 2014 meeting. Commissioner Green seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. § 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 found no conflicts of interest. Commissioner Keith stated he found no conflicts of interest. Chairman Gardner stated he found no conflicts of interest.

I. HEARING CASES – 47

Chief Counsel K. Renee Cowick stated Bryan Dozier was present on behalf of hearing case #36, Food King Super Market.

Mr. Dozier stated he was present on behalf of his company, Montgomery Foods, Inc. which operates five small grocery stores. Mr. Dozier did not dispute the violation, an underage sale, but was present to ask for consideration regarding the penalty. Mr. Dozier explained seven years ago after an underage sale, he started an in-house training program requiring new employees to pass a test regarding underage alcohol and tobacco sales and sign a statement confirming training. Mr. Dozier added the company had spent \$50,000 to install cash registers requiring the input of a birthdate to allow an alcohol or tobacco sale. In addition, mystery shoppers were utilized to test cashiers.

Mr. Dozier asked for a reduction of the penalty based upon the size of his company and the efforts made to reduce underage sales. Commissioners Keith and Green applauded Mr. Dozier for his work to prevent underage sales and stated it appeared every possible effort had been made. Chairman Gardner also

commended Mr. Dozier and thanked him for making the trip to the ABC Commission meeting. Chairman Gardner explained the only way to prevent the deaths of children due to alcohol, which occur at the rate of one a week in North Carolina, was to control alcohol sales. Chairman Gardner stated it was difficult to tell a small business the penalty must stand; however, penalties for a violation must be the same regardless of business size. Chairman Gardner stated the NC ABC Commission is making a stand against underage drinking.

Assistant Counsel Timothy Morse stated the violation occurred during a campaign by the Montgomery County Sheriff's Department with the assistance of Alcohol Law Enforcement. The violation report stated the clerk did not ask for identification from the underage purchaser.

Chairman Gardner thanked Mr. Dozier again for attending the meeting; however, the penalty remained as stated in the Offer in Compromise.

Ms. Cowick stated Michael Rosenbacher was present on behalf of hearing case #20, Players. Mr. Rosenbacher stated he was the manager of the business and was working as bartender on the date of the violation. A group of people were at the bar and someone asked for a mixed beverage; Mr. Rosenbacher prepared the drink and placed it on the bar in front of the group unsure of who had requested the beverage. An ALE officer charged Mr. Rosenbacher with serving a mixed beverage to an underage individual.

Chairman Gardner thanked Mr. Rosenbacher for attending the ABC Commission meeting, but stated the penalty would remain as stated in the Offer in Compromise.

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

II. OTHER BUSINESS – EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) HEIDE ENTERPRISES LIMITED PARTNERSHIP, d/b/a ASHEVILLE WINE MARKET, LARRY WEAVER AND KYSELA PERE ET FILS, LTD

Ms. Cowick stated the owners of Heide Enterprises, L.P. were retiring and wished to sell their business to an employee, Larry Weaver. Mr. Weaver had invited family and friends to invest as partners in the business. Fran Kysela is the primary stockholder of Kysela Pere et Fils, Ltd., a Virginia corporation and wine importer with Vendor Representative, Nonresident Malt Beverage Vendor and Nonresident Wine Vendor NC ABC permits has offered to invest 17% as a limited partner.

Ms. Cowick stated at this time, the N.C. General Statutes does not directly address an importer; however, Mr. Weaver and Mr. Kysela wished to be proactive against future statute changes by requesting an exemption. Ms. Cowick recommended granting the exemption as long as Kysela, Ltd.'s interest did not exceed 17%, Kysela, Ltd. did not have management authority over Asheville Wine Market, and any wine imported by Kysela, Ltd. would not be sold at Asheville Wine Market unless purchased through approved distributors.

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

III. OTHER BUSINESS – EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – CMRHC, INC., d/b/a B & C WINERY AND ROBERT H. CHOINSKI

Ms. Cowick stated Robert Choinski and Christine Choinski each own 50% of CMRHC, Inc. d/b/a B & C Winery. Mr. Choinski is employed as a pharmacist by the Walgreens Pharmacy in Asheville, North Carolina. Mr. Choinski does not possess any ownership interest in Walgreens; however, he does have an indirect financial interest in Walgreens as an employee. Mr. Choinski does not have or exercise any control in the selection of wines or malt beverages sold at Walgreens. Currently, there are no plans for B & C Winery products to be sold at Walgreens.

Ms. Cowick explained the exemption states Mr. Choinski would not process sales of alcohol at the pharmacy register, nor would he provide recommendations to customers regarding wine or malt beverage purchases. Ms. Cowick recommended the exemption be granted.

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

IV. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Administrator Michael C. Herring recommended the Commission approve Wednesday, November 12, 2014, as the date of the November 2014 NC ABC Commission Meeting and Wednesday, December 10, 2014, as the date of the December 2014 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.

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

Approved at the September 17, 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