

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JULY 16, 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 July 16, 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 JUNE 18, 2014

Chairman Gardner asked for a motion to waive the reading of the minutes of the June 18, 2014 meeting into the record. Commissioner Keith made a motion to waive the reading of the minutes from the June 18, 2014 meeting. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the June 18, 2014 meeting. Commissioner Green made a motion to approve the minutes from the June 18, 2014 meeting. Commissioner Keith 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 – 55

Chief Counsel K. Renee Cowick stated David Gundrum was present on behalf of hearing case #20, Robertos Pizzeria.

Mr. Gundrum stated he was not present to contest the violations or penalty, as he was accepting responsibility for his actions. Mr. Gundrum explained his business had operated for 15 years without violations and he was present to explain his actions leading to the recent violations. Mr. Gundrum stated he must purchase spirituous liquor for his business at the Brunswick County ABC Store located approximately 17 miles from his location even though there are two closer ABC Stores, approximately 1 mile and 1 ½ miles from his business respectively. A new bartender informed him late on a Friday afternoon the supply of three of the most popular spirituous liquor brands was low. Mr. Gundrum acknowledged he made a bad decision and purchased spirituous liquor from a local ABC Store.

Mr. Gundrum asked if he could pay a higher monetary penalty and eliminate the active suspension. Mr. Gundrum explained the monetary penalty would penalize only him, not the employees and customers.

Assistant Counsel LoRita K. Pinnix stated the penalty was consistent with other penalties for similar violations and confirmed these violations were the first for the business since it received permits in 1998. Ms. Pinnix also stated the legal staff would not object to a modification of the penalty.

Commissioner Keith made a motion to increase the penalty to \$5,000.00 and eliminate the active suspension. 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 – GASTONIA ABC BOARD

Administrator Michael C. Herring stated on June 6, 2014, the NC ABC Commission received a letter from Larry Beck, Executive Director of the Gastonia ABC Board, requesting approval to open and operate an ABC Store at 2290 Jett Lanier Drive in Gastonia, North Carolina. On June 17, 2014, ABC Audit/Investigator Edwin Strickland met with Mr. Beck and began an investigation.

Mr. Strickland found the proposed property was approximately 1.33 acres and located at 2290 Jett Lanier Drive, Gastonia, North Carolina 28054. The proposed property is currently vacant and located adjacent to a large shopping center between US Highway 29 and Interstate 85. The proposed location is approximately .3 miles from the existing ABC Store located at 401 Cox Road in Gastonia, North Carolina. The existing store is owned by the Gastonia ABC Board and an exchange for the two properties is proposed.

On June 25, 2014, Mr. Strickland confirmed with Drew Pearson, Land Use and Zoning Administrator for the City of Gastonia, the property is zoned C-3 and is approved for ABC retail sales.

The property is owned by PP-Franklin Blvd, LLC of Gastonia, North Carolina. All Gastonia ABC Board members submitted financial disclosure forms regarding the property and have no direct financial interest in the ownership of the property. The Gastonia ABC Board and the property owners have proposed an exchange of properties with no funds changing hands in accordance with N.C.G.S. § 160A-271 Exchange of Property. The proposed property has a tax value of \$502,527 and an appraisal value of approximately \$600,000. The current owners have agreed to an additional estimate of improvements to be provided in the sum of \$565,000 for a total value, inclusive of additional improvements, of \$1,165,000. The current ABC Store owned by the Gastonia ABC Board at 401 Cox Road has been appraised at approximately \$645,000. The Board had previously budgeted \$300,000 for a necessary uplift and improvements.

The building to be constructed by the current owner is planned to be 5,000 SF, utilizing 3,300 SF as retail space, 2,200 SF for mixed beverage sales, office and warehouse space.

The nearest school, Gardner Park Elementary, is located approximately 1.1 miles from the proposed location. The nearest church, Meyers Memorial United Methodist Church, is approximately .9 miles from the proposed location.

The nearest ABC Store is located approximately .3 miles from the proposed site at 401 Cox Road, Gastonia, North Carolina and will be closed upon the new store's opening. The next nearest ABC Store is located at 348 West Long Avenue, Gastonia, North Carolina and is approximately 2.9 miles away. The projected annual sales of the proposed ABC Store are approximately \$3 million.

Mr. Herring stated notice to the public was properly posted on June 16, 2014. To date, no objections have been received by the Gastonia ABC Board or the NC ABC Commission.

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

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

III. OTHER BUSINESS – CONSIDERATION OF THE ADOPTION OF THE 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 stated the public comment period regarding the proposed rules ended on July 14, 2014 with no comments to the NC ABC Commission. Mr. Hamilton stated the staff recommendation was for the adoption of the proposed rules.

Commissioner Keith made a motion to adopt the proposed rules. Commissioner Green seconded the motion. Motion Passed.

IV. OTHER BUSINESS – RECONSIDERATION – 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 with his client, William M. Kotis, on behalf of Pig Pounder, LLC, Kotis Holdings, LLC and the 2012 William M. Kotis, III Irrevocable Trust.

Ms. Cowick stated neither Mr. Kotis nor herself were present at the June 18, 2014 NC ABC Commission Meeting at which the exemption request had been granted. Following the Commission Meeting, the parties experienced confusion as to the specifics of the exemption and its allowances. Ms. Cowick requested the exemption be revisited for clarification.

Ms. Cowick explained the three-tier system of the NC ABC Commission was established to eliminate exclusivity, ensuring one brand or company is not the only one represented in a retail establishment. Though the system and rules were enacted approximately 80 years prior at the end of Prohibition, the rules are revisited frequently to ensure the efficacy of the system.

Ms. Cowick stated in 2009, six brewery permits were issued by the NC ABC Commission. In the years 2010 through 2012, there were nine, six, and seventeen permits issued each year respectively. In 2013, 29 brewery permits were issued as the industry continues to grow explosively.

Ms. Cowick provided a chart illustrating N.C.G.S. §18B-1104 Authorization of a Brewery Permit and N.C.G.S. §18B-1116 Exclusive Outlets Prohibited (Tied House). Ms. Cowick stated under §18B-1104, a brewery may operate a brewery, a tasting room with a retail permit, and also have three locations away from the brewery as long as other malt beverage products are sold. Ms. Cowick further explained §18B-1116 prohibits a brewery from any direct or indirect financial interest in an alcoholic beverage retailer to maintain the three-tier system. However, exemptions may be granted considering public welfare; the quantity and value of articles involved; established trade customs not contrary to the public interest; and, the purposes of §18B-1116.

The exemption granted at the June 2014 NC ABC Commission meeting allowed four locations with joint interests to sell Pig Pounder products as long as there is a good faith effort for the products to be sold through an independent wholesaler, or Pig Pounder must obtain a wholesaler permit, and other malt beverage products must be offered. The four locations must also have an independent General Manager. Other businesses owned by unrelated entities which lease properties owned by Kotis Properties, LLC may sell Pig Pounder products as long as purchased through a wholesaler and other products are offered. The exemption may be maintained as long as Pig Pounder does not produce more than 5,000 barrels annually.

Ms. Cowick clarified Pig Pounder, LLC may operate three locations owned by this corporate entity selling the Pig Pounder products. Any additional businesses with common ownership interests may apply for permits by requesting exemptions be granted as long as they do not sell the Pig Pounder products.

Kris Gardner, attorney for the North Carolina Beer and Wine Wholesalers Association stated the Tied House Rule requires a brewery to choose between being a brewery/wholesaler or a retailer, not both. Mr. Gardner stated historically the NC ABC Commission has granted exemptions to allow the associated retail business to obtain an ABC permit as long as the brewery's products were not sold. Mr. Gardner added the association would be opposed to an open-ended exemption, but would support exemptions granted on a case by case basis.

Upon Ms. Cowick's clarification of the exemption and Statutes §18B-1104 and §18B-1116, Mr. Kotis was satisfied he would be able to operate additional businesses within the state.

Chairman Gardner announced the next NC ABC Commission meeting was scheduled for August 13, 2014.

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

[SIGNED]

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

Respectfully submitted by,

[SIGNED]

Caroline Y. Washburn for the Legal Division