

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 13, 2016**

The following narrative and summary describes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road, Raleigh, North Carolina on April 13, 2016, beginning at 10:00 AM. The meeting was recorded and the disc is on file at the NC ABC Commission within the Legal Division.

ROLL CALL

Chairman James C. Gardner and Commissioners Kevin M. Green and Michael C. Herring were present. Chairman Gardner called the meeting to order.

MINUTES OF MARCH 9, 2016

Chairman Gardner asked for a motion to waive the reading of the minutes of the March 9, 2016 meeting into the record. Commissioner Herring made a motion to waive the reading of the minutes. Commissioner Green seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the March 9, 2016 meeting. Commissioner Green made a motion to approve the minutes. Commissioner Herring 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 which 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 Herring stated he found no conflicts of interest. Chairman Gardner found no conflicts of interest.

I. HEARING CASES – 79

Chief Counsel Renee C. Metz stated hearing cases number 1, 2 and 3 were sanctions cases. Hearing case number 1, Baileys Tavern, was regarding failure to file audit reports. The permittee also failed to file prehearing statements, resulting in a motion for sanctions. A suspension of the permittee's Mixed Beverage Restaurant ABC permit was granted; however, it has been amended to reflect a suspension of the permittee's Mixed Beverage Private Club ABC permit beginning on May 13, 2016.

Commissioner Herring made a motion to impose the one-year suspension of the permittee's Mixed Beverage Private Club ABC permit effective May 13, 2016. Commissioner Green seconded the motion. Motion Passed.

Mrs. Metz stated hearing case number 2, Country Market and Deli, was regarding a sale to underage violation. The permittee failed to respond to the Administrative Law Judge's requests for prehearing statements, which resulted in a motion for sanctions. The Administrative Law Judge granted the sanctions motion and issued a decision of a 20-day suspension of the permittee's ABC permits, as well as a

\$1,000.00 penalty. Mrs. Metz asked that the penalty of the Judge's decision be imposed with the suspension to begin on May 13, 2016 and the penalty of \$1,000.00 due before May 6, 2016.

Chairman Gardner asked if the penalty issued by the Judge was the same penalty as set by the ABC Commission. Mrs. Metz stated it was the same as the proposed penalty. Mrs. Metz added there are limits on the Judge regarding the amount of the monetary penalties. The Judge did order the permittee to serve the suspension, as well as pay a penalty.

Commissioner Green made a motion to impose the penalty of the Administrative Law Judge's decision with a suspension to begin on May 13, 2016 and the penalty paid by May 6, 2016. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz stated hearing case number 3, La Cueva, was regarding after hours consumption and failure to clear tables. The permittee failed to respond to the Administrative Law Judge's requests for prehearing statements, which resulted in a motion for sanctions. The Administrative Law Judge granted the motion and issued a decision of a 20-day suspension of the permittee's ABC permits and a \$500.00 penalty. The suspension is to begin on May 13, 2016 and a penalty of \$500.00 is due before May 6, 2016.

Commissioner Herring made a motion to impose the penalty of the Administrative Law Judge's decision. Commissioner Green seconded the motion. Motion Passed.

Mrs. Metz stated Wade Gabel was present on behalf of his business, hearing case number 53, River Twist. The hearing case was regarding sale to underage violations. Mr. Gabel stated his business made every effort to do the right thing; including subsidizing cab fares and partnering with charities. Mr. Gabel stated the kids come in with fake ID's and are able to beat the system. He thanked the Commission for the opportunity to speak before them and said his business was willing to pay the penalty. However, Mr. Gabel did ask if there could be any leniency on the penalty.

Chairman Gardner asked if the employees had received training. Mr. Gabel stated they had participated in the ALE training program. He added the business had aimed for 35 and older customers; however they are close to High Point University and the students do come to the establishment. The incidents occurred on a Thursday night; following the violations, the business began closing at 10:00 pm on Thursdays to discourage the younger crowd, even with a loss of revenue.

Chairman Gardner asked Mr. Gabel about their procedure for checking ID's. Mr. Gabel stated there is a door person, an officer and sometimes a deputy at the door checking ID's. Recently a machine had been purchased to further assist in the detection of fake ID cards by reading the barcodes. Mr. Gabel stated ALE had a machine with the ability to quickly detect fake ID cards; however, they had informed him it was not available to him. In addition, Mr. Gabel stated they used wristbands and admitted the bartenders also need to check ID's. However, he stated, if it is a good false ID, the bartender would also think it was real.

Chairman Gardner asked Mr. Gabel if he believed underage individuals would be deterred if they knew they would receive penalties, such as losing their drivers licenses and paying fines. Mr. Gabel agreed this would help. He added the underage individuals involved in the violations at his business did have a penalty imposed. Mr. Gabel asked again if he could purchase the tool to detect the fake ID's.

Commissioner Green stated he appreciated Mr. Gabel attending the Commission Meeting and his efforts to prevent underage sales. Commissioner Green stated fake ID's are a serious problem and if there is any question of an ID's validity, the person should be turned away. He also stated the ABC Commission is

very stringent on fines in order to have the owners of the establishments assist in the battle against underage drinking. Commissioner Green stated he knew Mr. Cabel had made efforts and cares about operating a proper business.

Mr. Cabel asked if he would be able to purchase the system ALE uses to identify fake ID's. Administrator Robert A. Hamilton stated it is not possible to obtain the ALE system as the requirements to obtain it are so strict, even some other law enforcement agencies cannot be approved. The systems are being so tightly controlled to keep them out of the hands of those who create the fake ID's.

Chairman Gardner stated the ABC Commission has researched new equipment with law enforcement agencies. Mecklenburg County has new equipment which looks promising. Chairman Gardner acknowledged Shelly Willingham, a member of the NC House of Representatives, as well as the head of the NC Association of ABC Boards was also in attendance and was helping in this fight. Chairman Gardner stated they were working to enforce punishments such as losing one's driver's license for using a fake ID.

Mrs. Metz asked the Commission to ratify the remaining hearing cases, if there were no further questions.

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

II. ABC STORE LOCATION – LAKE WACCAMAW ABC BOARD

Mr. Hamilton stated the Lake Waccamaw ABC Board had requested approval to relocate and operate a new ABC Store at 102 Top Tobacco Road in Lake Waccamaw, North Carolina. The new store would replace an existing store located at 104 Old Hwy 74/76 in Lake Waccamaw. The existing store is a counter store and the proposed store would be a self-service store.

The proposed store would be located in an existing structure currently shared with two other businesses, Waccamaw Speedy Mart and Waccamaw Outdoors. Waccamaw Speedy Mart does possess ABC permits. The property is zoned commercial business and allows for an ABC Store.

The proposed property is owned by Waccamaw Outdoor Supply, LLC. There are no personal or financial interests shared between the property owners and the Lake Waccamaw ABC Board members. Financial disclosure forms have been provided by the Lake Waccamaw ABC Board members.

The proposed rent for the property will be \$800.00 per month with a prepayment of \$9,600.00 for the first twelve months' rental. The landlord will up fit and manage the renovations. The cost of the renovations, approximately \$10,000.00, would be added to the lease and paid in monthly installments over years 2-5 of the lease. The renovated property will be 1,000 SF, of which 780 SF will be used for retail space.

The nearest school, Flemington Academy, is located approximately .5 miles away. The nearest churches, Lake Waccamaw Presbyterian and First Baptist Church are each approximately .5 miles away. After the existing ABC Store is replaced by the proposed ABC Store, the next nearest ABC Store is located approximately 12.8 miles away in Whiteville and is operated by the Whiteville ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was posted at the site on February 11, 2016. As of this date, eleven calls had been received regarding the new

store, five of which opposed the new store. One caller stated people would be able to better see him enter the new ABC store.

Mr. Hamilton stated the estimated sales were \$331,000.00 for the first year. Mr. Hamilton stated staff recommended approval of the new location.

Commissioner Herring inquired as to how many counter stores remained in the state. Moniqua McLean of the Local ABC Board Audit and Pricing division replied there were approximately 20 counter stores in existence in the state. Mr. Hamilton added the self-service stores provide faster and more efficient sales; however, some stores remained counter stores for security against theft. Chairman Gardner observed the store lost \$5,000.00 in the previous year. Mr. Hamilton stated that may have been due to insurance or rental cost increases.

Commissioner Green inquired about item number 16 in the proposed lease pertaining to designated parking; and, if the ABC Store and its customers would be secondary to the existing businesses. Commissioner Green expressed concern the parking may become an issue in the future. Mr. Hamilton stated the lease stated “as much as possible” and would most likely not be legally enforceable. Mr. Hamilton added the landlord is one of the other tenants of the building.

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

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, May 4, 2016.

Commissioner Green made a motion to adjourn. Commissioner Herring 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