

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
OCTOBER 5, 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 October 5, 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 SEPTEMBER 7, 2016**

Chairman Gardner asked for a motion to waive the reading of the minutes of the September 7, 2016 meeting into the record. Commissioner Green made a motion to waive the reading of the minutes. Commissioner Herring seconded the motion. Motion Passed. Chairman Gardner asked for a motion to approve the minutes of the September 7, 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 Herring stated he found no conflicts of interest. Commissioner Green stated he found no conflicts of interest. Chairman Gardner found no conflicts of interest.

**I. CONTESTED CASES AND OFFERS IN COMPROMISE – 91**

Chief Counsel Renee C. Metz stated there were no contested cases; however, representatives were present regarding two Offer in Compromise cases.

Bill Coddington and Ed Theriault were present on behalf of case number 33, American Legion Post 10. Mr. Coddington stated the ALE Agent came into the canteen prior to opening one day and found a basket which would be raffled for charity. The basket contained alcohol which had been purchased on Camp Lejeune and did not have the proper labels. The ALE Agent confiscated the alcohol. The Agent also found two bottles of spirituous liquor which had been brought in under the brown bagging permit in a member's locker which was unlocked. These bottles were not properly labeled.

Mr. Coddington stated the Agent found a bottle of Jagermeister in a cooler and it did not have a label. Mr. Coddington also stated the Agent informed him the gaming machines on the premises were illegal. He added the officer stated the bartender could sell the phone cards behind the bar, but could not use the machines.

Assistant Counsel LoRita Pinnix explained the Agent had discovered the phone cards were being used with the gaming devices. She stated the Agent had explained the cards could be sold by the bartender, but the machines were illegal and should be removed. Ms. Pinnix added the establishment has held ABC permits since 1976, and this was the first violation they had received.

Mr. Coddington stated an ABC officer comes by once a year to make sure they are operating properly and the officers do not find any issues. Mr. Coddington explained they were asking for leniency and a reduction of the penalty.

Chairman Gardner thanked them for attending the meeting and providing further explanation. Commissioner Herring stated 40 years without a violation was commendable.

After the Board members conferred, Commissioner Herring made a motion to reduce the monetary penalty from \$1,700.00 to \$700.00. Commissioner Green seconded the motion. Motion Passed.

Chairman Gardner thanked the gentlemen for their service to our country. Mr. Coddington added the post had been established in 1919 and was nearing its 100 year anniversary.

Mrs. Metz stated representatives were present for case number 67, Carolina Ale House. Attorney Chris Moutos was present on behalf of his client with Douglas Bessers, the Director of Operations. Mr. Moutos stated they were present regarding the signed Offer in Compromise. He stated there had been some confusion regarding the meeting dates and asked their case be moved to the following month's ABC Commission Meeting. Mr. Moutos explained they wanted to speak about the suspension and the facts surrounding the violation. He added he was prepared to speak about it during the current meeting as well. Mr. Moutos also stated the next month would be a better date for them for business purposes.

Chairman Gardner asked if his client had agreed to the Offer in Compromise. Mr. Moutos stated they had but maybe he misunderstood the dates when discussing the offer with ABC staff. Commissioner Herring asked when the business had opened and if there had been any previous violations. Mr. Moutos stated the business had opened in October of the previous year and confirmed the business had a violation during this time.

Chairman Gardner observed the business had two sales to underage violations within a short time.

Mr. Moutos explained the company has 15,000 customers per day and has strict company policies with vigorous training and high standards. Mr. Moutos stated it was company policy to ask for identification from everyone. He added the company has a handbook which includes the company policies as well as alcohol policies. All employees are required to sign the handbook after reviewing it, confirming they understand a violation is terminable.

Mr. Bessers stated the business has a staff meeting twice a year with John Ruth, the Director of the NC ABC Commission Education and Training Division. He added the company has in-store training with their own handbook. Mr. Bessers stated he had been with the company for 12 years and the Chapel Hill/Franklin Street location was more challenging. He explained the bartender had been very busy that night and had requested an ID and reviewed it, but unfortunately misread the ID. He stated the past Saturday night they had collected approximately 20 fake ID's. Mr. Bessers stated they had added additional security and measures, but the college students try to violate the law and they try to catch them. He stated the company has a no tolerance policy and the manager and bartender were fired that evening.

Commissioner Green asked if the identification in this case was fake or if it had been misread. Mrs. Metz stated the violation had occurred during a campaign, therefore the ID was accurate. Mrs. Metz confirmed the business was busy due to the televised NBA Finals. The officers observed as the bartender looked at the individual's identification twice and then provided her with a glass of wine. When the officers explained the violation to the bartender, he stated he had carded her. The bartender asked to see the ID. The officers allowed the bartender to look at the identification and the individual was 18 years of age at the time of the violation.

Chairman Gardner stated he understands, but mistakes can cost lives. He explained the ABC Commission has established a strong position over the past three years regarding sales to the underage. Chairman Gardner explained it is the responsibility of the ABC Commission to ensure no sales are made to those under 21 years of age. Chairman Gardner stated he was sympathetic; however, the terms would remain as agreed to in the signed Offer in Compromise. Chairman Gardner stated he understood they are busy; however, one mistake can cause terrible damage. Commissioner Green added he appreciates the efforts of the company and hopefully this would help prevent future mistakes. He explained it may take an extra few seconds, but it could save someone's life.

Mrs. Metz asked the Commission to ratify the remaining cases. Commissioner Green made a motion to ratify the remaining Offers in Compromise. Commissioner Herring seconded the motion. Motion Passed.

## **II. ABC STORE LOCATION – WAKE COUNTY ABC BOARD**

Administrator Robert A. Hamilton stated the Wake County ABC Board requested approval to purchase property and build a new ABC Store at 5329 Rolesville Road in Wendell, North Carolina. The proposed store would tentatively open in September 2017.

The building would stand alone on the 1.85 acre property. The property is zoned Commercial Highway and allows for an ABC Store. For access to water and sewer, the property would have to be annexed into the Town of Wendell. Mr. Hamilton added the Wake County ABC Board is working with the Town to start the process.

The proposed property is owned by Capitol Funds, Inc. There are no personal or financial interests shared between the property owners and the Wake County ABC Board members. Financial disclosure forms have been provided by the Wake County ABC Board members. In the purchase agreement, the purchase price is \$717,215.00 and will be funded by the Wake County ABC Board's Capital Fund.

The proposed building will be 8,200 SF, of which 5,500 SF will be used for retail space and 2,700 SF will be used for mixed beverage sales and warehouse space. The proposed building will cost approximately \$1,000,000.00 to build.

The nearest school, East Wake High School, is located approximately .5 miles away. The nearest church, Temple of Prayer Church of God is located approximately .9 miles away. The nearest ABC Store is located 3.6 miles away in Knightdale, North Carolina and is also operated by the Wake County ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted at the site on September 2, 2016. One question was raised referencing the ownership of the property and a possible conflict of interest with a Wake County ABC Board member. Wake County

ABC Board General Manager Joel Keith addressed this with the individual and the documentation was included with the investigation report.

Mr. Hamilton stated a representative of the Wake County ABC Board was present to answer questions. Chairman Gardner greeted Mr. Keith. Mr. Keith stated Wendell is the only municipality in Wake County without an ABC Store. He added the property is located along the bypass around Knightdale between Highway 64 Business and Highway 264 beside a NC State Employees' Credit Union and across the street from a Sheetz store. He stated this was a good location and the store would do well.

Commissioner Green inquired if there would be issues with the annexation into Wendell. Mr. Keith stated it was merely a formality and was certain it would be annexed. He stated the town officials were excited about the new store.

Mr. Keith stated the store may take some business from the Knightdale ABC Store, but not enough to close it. He stated the new Wendell ABC Store will carry more products and serve the community well. He added there are plans to eventually add a shopping center to this area and a potential buyer is considering the purchase of the adjoining 30 acres.

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

### **III. MANDATORY RULES REVIEW INITIAL DETERMINATION FOR 15C**

Mrs. Metz stated the Commission staff is performing the rules review as mandated by the General Assembly, of classifications for the rules in subchapter 15C, which were formerly classified under 2T. Mrs. Metz explained at this point, they were in the process of the initial determination and if the Commission approves, they would be posted on the ABC website and the OAH website for the public comment period. In the spring, Mrs. Metz stated they would be discussed again for the final determination. Mrs. Metz stated most of the rules have been deemed to be "necessary without substantive public interest" with the exception of 14B NCAC 15C .0803. She explained it was related to taxes and the underlying statute that placed the authority for the rule no longer exists, so there is not a basis for the rule. Mrs. Metz asked with the exception of this one rule to be deemed unnecessary, the other rules to be deemed necessary without substantive public interest.

Commissioner Herring asked what the rule concerned. Mrs. Metz stated the rule is related to the ship Chandler permit.

Commissioner Herring made a motion to approve the deletion of the rule. Commissioner Green seconded the motion. Motion Passed.

### **IV. OTHER BUSINESS – FUTURE COMMISSION MEETING DATES**

Mr. Hamilton asked the Commission to consider for approval, Wednesday, January 11, 2017, Wednesday, February 8, 2017 and Wednesday, March 8, 2017 as future ABC Commission meetings.

Commissioner Green made a motion to schedule the meetings as requested. Commissioner Herring seconded the motion. Motion Passed.

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, November 9, 2016 and asked for a motion for adjournment.

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

*Approved at the November 9, 2016 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