

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 9, 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 November 9, 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 OCTOBER 5, 2016

Chairman Gardner asked for a motion to waive the reading of the minutes of the October 5, 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 October 5, 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. HEARING CASES – 122

Chief Counsel Renee C. Metz asked for case number 58, Loma Bonita, to be continued to the December 2016 Commission Meeting. Mrs. Metz explained an additional violation report had been submitted regarding the same evening and the violations would be combined in one Offer in Compromise.

Commissioner Green made a motion to hold the case over. Commissioner Herring seconded the motion. Motion Passed.

Mrs. Metz stated Bobby Alzer was present on behalf of case number 3, Bobbys 2. Mr. Alzer commended Chairman Gardner on his television commercial. Mr. Alzer stated the incident occurred on July 22, 2016 during an ALE campaign verifying if clerks checked identification prior to selling alcohol. Mr. Alzer stated the clerk made a mistake because he was distracted by a telephone call from the hospital regarding his mother and sold the alcohol without checking identification. Mr. Alzer stated they received the letter regarding the \$2,000.00 fine or 20-day suspension. He stated the case had been dismissed at the courthouse in Halifax County. Mr. Alzer asked for a dismissal or a lower penalty, explaining they had been in business for 29 years and this was the first violation.

Chairman Gardner thanked Mr. Alzer for speaking to the Commission, but stated if Mr. Alzer had seen the television commercial, he understood the Commission's position on underage drinking and what they were trying to accomplish. Chairman Gardner stated he understood it was difficult to operate a business and depend upon your personnel; but the ultimate responsibility to never sell to anybody under the age of 21 is with the permit holder. Chairman Gardner stated the Commission decided to take a very hard position regarding underage sales as it is a serious issue in North Carolina as one person is lost each week to underage drinking. He added the issue also costs the State a tremendous amount of money. Chairman Gardner added, in almost every case, just as Mr. Alzer stated, the employee made a mistake and the employee was terminated. However, Chairman Gardner stated the Commission feels, in order to get the message out, it must start with the permit holders that under no circumstances can alcohol be sold to anybody underage.

Mr. Alzer stated he supported this 100%, as well as respecting law enforcement, but asked for consideration because it was the first offense. Chairman Gardner explained had it been a second offense, a suspension would also be required.

Commissioner Green agreed with Chairman Gardner and added he appreciated the fact the business had operated 29 years without a violation. Commissioner Green explained in order to tackle this issue, they needed to work together and the penalty must count. He thanked Mr. Alzer for attending and Mr. Alzer thanked the Commission too.

Mrs. Metz called for anyone present on behalf of case number 11, Randy Spencer or Farm and Garden Center. No one was present on behalf of the case.

Mrs. Metz stated Johnny Parker, Jr. was present on behalf of case number 68, Smithfield Market. Mr. Parker stated he was the employee who made the mistake. He added he took the job six months prior to help support his extended family. Mr. Parker stated they had worked hard to clean up the store in regard to underage sales, as well as drug dealers both inside and outside the business. Mr. Parker explained he was present regarding the discussion about the penalty at another location and he understood the severity of the consequences of selling to underage, immature adults. He stated the incident also occurred during a campaign and he also sold to an underage person without checking identification, but has since taken the class. Mr. Parker stated the store struggles financially and probably sells more alcohol than groceries. He added he could not personally afford to pay the penalty and did not know if he would have a job if the store closed or shut down alcohol sales. Mr. Parker stated he heard the Commission's previous comments, but still asked for forgiveness and appreciated their time.

Chairman Gardner stated he appreciated Mr. Parker attending the meeting; however, almost everyone who comes before the Commission basically says the same. Chairman Gardner explained the Commission cannot take the position that everybody makes mistakes and it does not make a difference. Instead, this Commission has taken the opposite position and cannot allow alcohol to be sold to underage persons.

Chairman Gardner asked if the permit was in Mr. Parker's name. Mr. Parker stated it was in the owner's name, who also owns three other stores. Mr. Parker stated again the store was struggling financially.

Chairman Gardner asked if the owner agreed to the \$2,000.00 fine. Mr. Parker stated he himself had signed the paperwork and returned it with a similar explanation. Chairman Gardner stated he appreciated Mr. Parker attending the meeting and hoped he understood the Commission's position. He explained the possible consequences of an underage person becoming intoxicated and harming

someone. It is important for those who hold permits in North Carolina to understand alcohol cannot be sold to anybody under the age of 21 and it is the permit holder's responsibility to check identification. Chairman Gardner added losing one person a week is too much and hoped Mr. Parker would be able to stay at the business and overcome this incident.

Mr. Parker asked if they could change the dates so the permits would not be suspended during the holidays. Commissioner Green explained the penalty was a 20-day suspension or a payment of a \$2,000.00 penalty to avoid the suspension, not both. Mr. Parker asked about the deadline and Commissioner Green stated it was December 2, 2016 and explained if the penalty was paid there would not be a suspension and the business would be able to sell alcohol during the holidays. Commissioner Green stated there was too high a level of underage sales in North Carolina and the Commission must continue to make strides to slow or stop the sales.

Chairman Gardner stated over half of the 122 cases on the agenda were underage sales. Commissioner Herring asked if a combination of the suspension and penalty would be helpful. Mr. Parker stated it would not, but appreciated the offer.

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

II. EXEMPTION REQUEST – N.C.G.S. § 18B-1116 – HUNTINGTON'S OF CARRBORO, INC., T/A TYLER'S TAPROOM; PIT BOSS, INC., T/A TYLER'S TAPROOM; T-3 RESTAURANTS, INC., T/A TYLER'S TAPROOM AND TWO DOORS DISTILLING, LLC, TYLER HUNTINGTON, DANIEL KULENIC AND ROBERT STOVER, JR.

Mrs. Metz asked that this case be continued to the December meeting. Mrs. Metz stated the client deemed his attorney lacked information and will re-evaluate the request.

Commissioner Green made a motion to continue this exemption request to the December meeting. Commissioner Herring seconded the motion. Motion Passed.

III. EXEMPTION REQUEST – N.C.G.S. § 18B-1116(b) – THREE STACKS DISTILLING CO., LLC; SOCIAL HOUSE VODKA, LLC AND GUARAVKUMAR PATEL

Mrs. Metz stated attorney, Jennifer Morgan was present on behalf of Three Stacks Distilling Company, Social House Vodka and G. Patel. Mr. Patel was also present to answer questions.

Mrs. Morgan stated Three Stacks Distilling and Social House Vodka were starting a distillery in downtown Kinston. They have purchased an old power plant and are working with the City and others to revitalize it and turn it into a distillery. Mrs. Morgan added the community is excited about it and what it will bring to the area.

Mrs. Morgan explained Mr. Patel is requesting the exemption because he is a part owner in the distillery through his 25% ownership of an entity which is a 14% owner of the distillery, making Mr. Patel an approximate 4% owner of the distillery. Mrs. Morgan explained Mr. Patel is the owner of Eschelon Hospitality which owns six restaurants in the Raleigh-Durham area. These businesses are owned by different LLC's under the Eschelon Hospitality umbrella. There is a COO, general manager and site manager at each of these establishments.

Mrs. Morgan stated Mr. Patel is asking for the exemption as he will be a minority owner of the distillery and has the interests in the retail establishments. She added N.C.G.S. § 18B-1116(b) prohibits the cross-tier ownership without an exemption. Mr. Patel is requesting the exemption to allow partial ownership in the distillery. She stated he also has a role in the marketing of the product for the distillery. Mrs. Morgan stated there are no issues about exclusivity or exclusive sales purchases as the distillery has the Federal TTB permits, but still needs the State permit; needs to meet with Mr. Hamilton and the ABC Commission for approval for the product to be listed with the State; and also the local Boards must decide if the product will be offered in their stores. The restaurants will be led by general managers who will have day to day operational control and if they did purchase the vodka produced by the distillery, it would be at the local ABC stores. There would not be any direct purchases or exclusivity.

Mrs. Morgan stated she had worked with Mrs. Metz to confirm the restaurants would have day to day operations by someone other than Mr. Patel and they would have a reasonable selection of competitors' products. If they decided to purchase the products, it would be through the local Boards and at the same State mandated pricing as other businesses.

Chairman Gardner asked Mrs. Metz if there were any objections. Mrs. Metz stated she would like to make one amendment to the drafted order. She stated there is a minority percentage owner of the distillery who would be unable to represent Three Stacks Distilling or Social House Vodka brands in his role as a broker representative for Southern Glazer's Wine & Spirits. Chairman Gardner asked Mrs. Metz if this would be added. Mrs. Metz stated it was a standard exemption and it would be added.

Commissioner Herring asked what percentage the individual owned. Mrs. Morgan responded Mr. Mark Mullens had about a 5% ownership.

Mrs. Metz stated she had no other objections. Commissioner Green asked if there would be any problems with this addition. Mrs. Morgan stated to their knowledge it was fine because he is in a different division of the brokerage.

Commissioner Green made a motion to grant the exemption with the amendment stating Mark Mullens cannot represent the distillery in selling this product. Commissioner Herring seconded the motion. Motion Passed.

IV. CONSIDERATION OF A WAREHOUSE CONTRACT ADJUSTMENT AND CONTRACT AMENDMENT

Administrator Robert A. Hamilton stated there were two items on the Agenda. The first was a price adjustment to LB&B Associates, Inc. contract for the period of 2011-2016. Mr. Hamilton stated LB&B had requested a price adjustment in June. LB&B is asking for a price adjustment of \$250,000.00. Mr. Hamilton explained the basis for the request was the tremendous growth in the case shipments at the warehouse. In the last year, there was an increase of 269,559 additional cases shipped from the warehouse to the local ABC Boards. Mr. Hamilton commended LB&B Associates and the local ABC Boards for their ability to move the products out of the stores. They also expended an additional 27,000 gallons of fuel.

Mr. Hamilton explained in the past five years, the number of cases shipped from the ABC warehouse has grown by one million cases. Last year, the total case shipment was 5,687,108 cases. Mr. Hamilton added, for perspective, it took only five years to increase the number of cases shipped by one million. Previous to these five years, it took 22 years to gain a growth of a million cases. Staff recommends the

approval of this equitable price adjustment of \$250,000.00. Mr. Hamilton stated with the addition of the 269,559 cases shipped, the \$1.50 bailment per case would provide the funds for this adjustment and requested approval of this recommendation.

Chairman Gardner confirmed with Mr. Hamilton the increase over the last five years was one million cases and prior to this period, it took 22 years to reach one million cases. Mr. Hamilton confirmed this and added the current growth rate projects it will be four years for another million case growth, if the trends stay the same.

Mr. Hamilton added this increase has put the Commission in a better position with some of the liquor suppliers as the growth has surpassed other states in sales. Mr. Hamilton commended the ABC Boards; at the end of June 2016, they surpassed one billion dollars in sales.

Chairman Gardner recognized Mr. Mike Myrick, manager of the Wayne County ABC Board and Secretary/Treasurer of the North Carolina Association of ABC Boards. Chairman Gardner commended Mr. Myrick, the Association and the Boards for the great job done across the State of North Carolina.

Commissioner Green asked if there have been previous adjustments to the contracts with the warehouse. Mr. Hamilton replied there was an adjustment in 2008 of \$444,000.00 and in the following year there was a \$133,000.00 adjustment and in 2010, a \$107,000.00 adjustment. Mr. Hamilton stated during the current five year contract of 2011-2016, there have been no requests for adjustments.

Commissioner Herring stated the contract does allow for LB&B to request an annual adjustment. Mr. Hamilton confirmed this provision.

Mr. Hamilton stated the funds for this adjustment request would come from the bailment receipts. Commissioner Herring asked if this was a one-time request and Mr. Hamilton confirmed it was.

Commissioner Herring made a motion to approve the price adjustment request. Commissioner Green seconded the motion. Motion Passed.

Mr. Hamilton stated the next item was in reference to a contract amendment. Mr. Hamilton stated this past spring he had sent a request to LB&B for recommendations which would enable the Commission to offer more services to the Commission, the Boards and to the citizens of North Carolina. Mr. Hamilton stated in a review of the two warehouses, Raleigh as the shipping warehouse and Clayton as the bulk storage warehouse; LB&B and the Commission determined some procedures could become more efficient, as well as address the few complaints the ABC Boards have had regarding ordering. The proposal was to make the surplus warehouse available for ordering. Currently, when the Boards are placing orders, only product in the Raleigh warehouse is available. By opening both warehouses for ordering, the Boards would be able to see the product in both warehouses as a combined inventory, available for ordering as long as there are no allocations. After a regular order, if a Board wished to place an add-on order, the Clayton warehouse would not be available and only product in the Raleigh warehouse could be added on. Mr. Hamilton explained this will take the onus off the Commission and the warehouse regarding product in storage which cannot be made available to the Boards because of the ordering procedures.

LB&B would provide another tractor, two warehouse employees, a driver, one administrative employee, another stretch wrap machine, electric pallet jacks and conduct information technology upgrades. The technology upgrades would be in addition to the \$250,000.00 worth of information technology upgrades currently being added to bring LB&B up to date. This additional information technology upgrade would enable the ordering process from the two warehouses to be done accurately.

This would alleviate the ABC Boards from being unable to order product not available in the Raleigh warehouse. This will also force the suppliers to make sure their product is available and take that burden off LB&B and the Commission.

The layouts of the two warehouses will also be reviewed. In the bulk storage warehouse in Clayton, changes to space usage would be made to allow the Commission to add products. Currently, to add new products, suppliers must trade one for one on products in order to maintain space. The changes would help the ABC Boards in their ordering process and more products would be available for both the Boards and the citizens. The cost for the additional service to be added to the current contract with the Commission, beginning July 1, 2016 through June 30, 2021, is \$550,000.00 for the first year and \$300,000.00 for each year thereafter. The amended contract price in 2016 would be \$8,300,000.00; in 2017 \$8,050,000.00; in 2018 \$8,100,000.00; in 2019 \$8,150,000.00; and 2020 \$8,200,000.00.

Mr. Hamilton stated staff recommends approval of this contract amendment. He added this would also help with the case growth. Mr. Hamilton stated when the Commission reaches the five-year point of this contract it will not have enough space in both the warehouses. This will allow the Commission more time to review options in the future as the Commission will have more products and also be shipping more products at that time.

Chairman Gardner asked if by 2020, Mr. Hamilton expects the Commission to be shipping an additional one million more cases. Mr. Hamilton replied that was correct and added the amendment will help with that growth until the additional warehouse space can be secured.

Commissioner Green asked if this was the beginning phase of the second phase of five years and not a brand new contract. Mr. Hamilton stated it was the same contract with an amendment for an additional five years.

Mr. Benjamin N. Thompson, attorney for LB&B Associates, commended Chairman Gardner and the Commission for the Initiative ad shown on television. Mr. Thompson thanked Chairman Gardner, Commissioner Green and Commissioner Herring for the approval of the adjustment. He stated they had not made a request for an equitable adjustment since fiscal year 2010 as the contract negotiated was a very fair contract. Mr. Thompson stated the million more cases in the past five years when the last request was made is a significant impact. Mr. Thompson stated when the warehouse in Clayton was negotiated, it was a necessity. Mr. Thompson explained the Commission has wrestled over a solution for years because the location of the current principal warehouse is challenged geographically. He stated when space became available in Clayton, an additional 200,000 square feet was added with an extension to the contract. Mr. Thompson stated the Commission must continue to review this because of the anticipated continuous growth of cases per year.

Mr. Thompson agreed with Mr. Hamilton that this adjustment would allow the Commission the time to consider its options. Mr. Thompson stated it was the common goal of LB&B and the Commission to provide whatever the local Boards need. He stated LB&B would be implementing software changes to Windows 365, a cloud based system which would allow for real-time inventory. The local Boards would know what is available in both warehouses. Mr. Thompson stated LB&B enjoyed their relationship with Mr. Hamilton and the Commission and believed they have reached an amendment fair to both parties.

Commissioner Herring asked how many cases the Commission was up since the end of the fiscal year and if they were on track to reach another 225,000 cases this year-end on June 30th. Graham Thompson stated they were currently up 217,000 cases.

Mr. Hamilton stated this amendment would not increase the bailment cost for the Boards. The increase in the cases will cover the expenses and will provide the funds to cover this for the next five years. Commissioner Green asked if more warehouse space would be needed in 2020. Mr. Hamilton stated if the trend stays the same, more warehouse space would be needed. Commissioner Green asked if there was any thought to obtaining a warehouse more central in the state to cut down on fuel cost, time and add efficiency. Mr. Hamilton stated they have started looking at options. However, he stated this amendment has proved the most economical solution. One large warehouse had been considered, but the additional expenses would be much greater. Mr. Hamilton stated it is not needed with this adjustment option. The Commission will be able to maintain with this option until the point is reached when a larger warehouse is needed.

Commissioner Herring introduced Paul Criscuolo representing Southern Glazer's Wine & Spirits, the largest brokerage in the state. He asked if Mr. Criscuolo saw benefits in what is proposed in the contract. Mr. Criscuolo replied he did see benefits as the President of the North Carolina Spirits Association. Mr. Criscuolo stated the ability for their customers to be able to get their products with this information would help the flow of the sales as they are increasing. He added North Carolina is exhibiting exceptional growth, more than the national average, which has added pressure to the ability of the warehouse to keep the flow moving. Mr. Criscuolo stated they believed this change would give them more opportunity to provide additional products.

Chairman Gardner asked if any local Boards would like to comment. Mr. Myrick stated their relationship with LB&B is better than with any of the previous contractors at the warehouse. Mr. Myrick added LB&B's customer service looks after the small Boards as well as the large Boards. The total number of cases is preventing the need for a bailment increase and is good news for the Association. He stated LB&B does a great job.

Mr. Hamilton stated the staff recommendation is approval of this contract amendment.

Commissioner Herring made a motion to approve the staff's recommendation to approve the contract amendment. Commissioner Green seconded the motion. Motion Passed.

V. OTHER BUSINESS – URBAN REDEVELOPMENT AREAS:

1. OLD GARNER ROAD MART

2. PJ'S GROCERY

Mrs. Metz explained that an urban redevelopment area is a zoning issue in which the local municipalities determine the urban redevelopment areas. There are certain additional requirements of an ABC permittee in those urban redevelopment areas. Mrs. Metz stated a municipality can ask the Commission to do an audit of a particular location and a request has been made in this case. She explained if the Commission finds the business is not complying with those conditions, the Commission shall, according to the statute, summarily suspend or revoke the permit. Mrs. Metz made a recommendation to pass a resolution to give that authority to that initial order to Mr. Hamilton or whoever is in the Administrator position. Mrs. Metz added if, within 30 days of receiving notice of Mr. Hamilton's order, the permittee can request a hearing and it would become before the Commission.

Mrs. Metz recommended that the Commission pass a resolution that the ABC Administrator, in conjunction with the Legal Division staff, ensure that procedures are in place to comply with the statute and that the ABC Administrator will have the authority on behalf of the Commission to issue the initial summary suspension or revocation order. She also recommended that the resolution shall include that the ABC Administrator, in conjunction with the Legal Division staff, ensure that proper notice is given

to all interested parties and the permittee is informed of the right to request a hearing before the full ABC Commission.

Commissioner Green made a motion to approve as presented. Commissioner Herring seconded the motion. Motion Passed.

VI. OTHER BUSINESS

Chairman Gardner announced the next NC ABC Commission meeting will be held on Wednesday, December 7, 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]

Dottie L. Taylor, Legal Division