

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 10, 2017**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on May 10, 2017, 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 A.D. Zander Guy, Jr. and Commissioner Michael C. Herring were present. Chairman Guy introduced himself, Commissioner Mike Herring and Administrator Robert A. Hamilton. Chairman Guy called the meeting to order.

MINUTES OF APRIL 12, 2017

Chairman Guy asked for a motion to waive the reading of the minutes of the April 12, 2017 meeting into the record. Commissioner Herring made a motion to waive the reading of the minutes. Chairman Guy seconded the motion. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the April 12, 2017 meeting. Commissioner Herring made a motion to approve the minutes. Chairman Guy seconded the motion. Motion Passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. § 138A-35, Chairman Guy 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. Chairman Guy stated he found no conflicts of interest.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 99

Chief Counsel Renee C. Metz asked case numbers 23 and 57 be removed from the Agenda and continued to the next ABC Commission Meeting.

Commissioner Herring made a motion to continue the cases to the next Commission Meeting. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated case number 1 was a contested case and was assigned to Assistant Counsel Missy Welch. Mrs. Metz stated the permittee in this case was Dollar General Store 2949 and it was regarding a sale to underage. Mrs. Metz explained the permittee failed to respond to any of the Administrative Law Judge's orders to produce paperwork. The judge then issued a sanctions order which imposed a decision

of a \$500.00 penalty due by June 2, 2017 and a 30-day active suspension of the permittee's ABC permits to begin June 9, 2017.

Commissioner Herring made a motion to impose the Administrative Law Judge's decision of a \$500.00 penalty and 30-day suspension to begin on June 9, 2017. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated case number 99 was an add-on to the agenda and permittee Adel Hadwan, was present on behalf of his business, Mar Mac Express.

Mr. Hadwan stated this was the business' first violation. Mr. Hadwan explained he was willing to pay the \$5,000.00 penalty; however, he was asking the Commission to remove the active suspension.

Assistant Counsel LoRita Pinnix stated the violation was two underage sales which occurred at the same time. Ms. Pinnix explained there had been three 17 year olds involved, but one had been in the restroom at the time of the sales. Ms. Pinnix explained ID's were not checked and added the penalty was higher than the usual first offense penalty. Ms. Pinnix stated, in this case the underage individuals consumed alcohol at one of their homes then decided to go to another of their homes. They continued drinking beer in the car and had an automobile accident on the way to the second home. Ms. Pinnix explained the car left the road for approximately 250 feet. All three individuals were taken to a hospital to be treated for their injuries, but none were too serious as ALE officers were able to interview them at their homes the following day. Ms. Pinnix stated she would consent to a higher penalty to remove the active suspension as the fine is significant for a first offense.

After conferring with Commissioner Herring, Chairman Guy stated the Commission would be willing to remove the 10-day active suspension with an increase of the fine to \$7,000.00. Ms. Pinnix explained the statutory limit was \$5,000.00 for one Offer in Compromise; however, the two violations could be separated creating two offers, each with a \$3,500.00 penalty.

Chairman Guy asked Mr. Hadwan if he would accept the two offers. Mr. Hadwan asked if he had another option. Chairman Guy stated he could take the 10-day suspension. Mr. Hadwan responded he would pay the penalties to avoid the active suspension. Ms. Pinnix explained to Mr. Hadwan he would receive two Final Agency Decisions, each with a penalty of \$3,500.00 to be paid by a later designated date.

Mrs. Metz stated attorney Glenn Lassiter was present on behalf of his client, Food Lion 486, case number 74. Mrs. Metz explained the case had been assigned to Assistant Counsel Rachel Spears who was unavailable due to a hearing in Fayetteville.

Mr. Lassiter explained he was present on behalf of Food Lion 486 located in Greenville and also wished to speak about "stings" in general. Mr. Lassiter stated the case involves an underage sale. Mr. Lassiter provided documents to Chairman Guy and Commissioner Herring. Mr. Lassiter stated, as a father, he applauds the Commission on increasing the fines for underage sales. He said he believed the people of the Commission thought about the problem of underage drinking and what could be done. He explained he had no qualms with it nor did his client, Food Lion. Mr. Lassiter explained he believes Food Lion is absolutely as committed as the NC ABC Commission to never selling alcohol to underage individuals if they can possibly avoid it.

He added most of Food Lion's violations for underage sales occur during a law enforcement "sting" and on these occasions, employees did not follow procedure. He explained the employees override the age, misread identification or may even know the purchasers.

Mr. Lassiter asked the Commission to think about the purpose of "stings" and how they are done. Mr. Lassiter questioned the methods law enforcement use during these operations. He believed Durham, Charlotte, Wake County and the larger ABC Boards were conducting more because of the higher penalties. He added with the "sting" operations, it is harder for Food Lion to defend themselves. Mr. Lassiter stated law enforcement is handling these operations differently. Mr. Lassiter explained in this case, the underage individuals had previously been arrested for possessing false ID's and as a result, they agreed to assist the Pitt County ABC.

Mr. Lassiter referenced the documents he submitted to the Commission as ALE guidelines and Texas guidelines. Mr. Lassiter stated they did not know if the teens were lying or if they had ever visited the store prior to this event. He continued by stating the two underage individuals each bought a single beer in separate transactions and suggested this would be entrapment as this was different from a usual sale. In addition, 18 and 19 year olds would not walk into a grocery store and buy single bottles of beer, but would usually buy two or three cases; so by using a different transaction there was an element of unfairness.

Mr. Lassiter stated Food Lion finally agreed to the Offer in Compromise rather than continue the process to trial. Mr. Lassiter suggested what had transpired may not have been against the law. Mr. Lassiter expressed his concern over using underage people who have previously been charged and why they are using two people instead of one. Mr. Lassiter continued to question the purpose and guidelines of "stings". Mr. Lassiter suggested the purpose of "stings" was in order to seek Federal grant money, you must show you need the money, therefore you must catch people.

Mr. Lassiter maintained this case was different because it was a "sting" and the underage individuals did not actually go out and drink the beer. He added the location's previous violations had also occurred during "stings". He added ABC Commission counsel has discretion on the penalties and asked if the 3-day active suspension could be avoided with the payment of a larger penalty.

Commissioner Herring asked if ID's were checked. Mr. Lassiter stated ID's had been checked. Commissioner Herring asked if the ID's presented were the individuals' ID's and not fake ID's. Mr. Lassiter stated the ID's belonged to the underage individuals. Mr. Lassiter continued, explaining there are at least six different dates on a driver's license. The clerk had been fired as part of Food Lion's policy. The employee, in her statement, said she did not know why she did not look at the DOB. Mr. Lassiter suggested it did not look like an underage sale case to her as they were not nervous because they were drinkers and used to buying alcohol with fake ID's.

Mr. Lassiter added Food Lion has recently invested a great deal of money in ID scanners to be placed in every store so ID's would be swiped at the time of sale. Mr. Lassiter expressed he was not a fan of these scanners as the best way to keep alcohol out of the hands of underage people was for someone to look at the ID and compare it to the person.

Commissioner Herring asked Mrs. Metz how old the underage individuals were. Mrs. Metz replied they were 18 and 19 years old. Mrs. Metz explained in their statements, they stated they were asked for identification; the employee then looked at the ID's, typed something into the register, told them how

much and completed the sales. Mrs. Metz added the clerk acknowledged she did not look at the date of birth.

Chairman Guy stated the ABC Commission does not dictate how ALE conducts their investigations, but perhaps they could discuss it within the legal staff. Chairman Guy added the ABC Commission feels very strongly about underage drinking. Chairman Guy stated the active suspension would be waived upon the increase of the penalty to \$5,000.00. Mr. Lassiter thanked the Commission.

Mrs. Metz stated the permittee was present on behalf of his business for add-on case number 98, Capis Lloyds. Charles Abed stated he was embarrassed to be before the Commission. He recognized they had made a mistake and wished to fix it. He added since the violation for this case, the business has received a second violation.

Mr. Abed stated the clerk entered the wrong date, realized her mistake and tried to catch the underage individual, but was too late. Mr. Abed explained since then, they have invested in a new point of sale system with an ID scanner. Now they check the ID, compare it to the individual and then scan it before the sale.

Mr. Abed asked if he could serve the 12-day suspensions for the two violations concurrently during the suspension beginning on Friday. Ms. Welch stated there was no objection to a penalty of a \$2,100.00 fine and a 12-day suspension. Ms. Welch stated the suspension was 12 days for the first violation scheduled to start this Friday. Ms. Welch stated the penalty for the second violation was also 12 days and she did not have an objection to serving them concurrently.

Chairman Guy stated the Commission would allow the combined Offer in Compromise.

Mrs. Metz stated no one was present on behalf of the remaining cases on the agenda and asked the Commission to ratify the remaining Offers in Compromise.

Commissioner Herring made a motion to ratify the Offers in Compromise as proposed. Chairman Guy seconded the motion. Motion Passed.

II. ABC STORE LOCATION – LAKE LURE ABC BOARD

Mr. Hamilton requested the Lake Lure ABC Board's new store consideration be held to the next Commission Meeting to allow time to gather additional documentation.

Commissioner Herring made a motion to continue their request to the next Commission Meeting. Chairman Guy seconded the motion. Motion Passed.

III. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD

Mr. Hamilton stated the Mecklenburg County ABC Board had requested approval to purchase property to open and operate a new ABC Store at 10796 Golf Links Drive in Charlotte, North Carolina. The Board tentatively plans to open the new store near the end of 2018.

Mr. Hamilton explained the property is zoned MUDD-O and allows for an ABC Store. Mr. Hamilton stated the proposed location is owned by Star City Partners, LLC of Charlotte. Financial disclosure forms have been provided by the Mecklenburg County ABC Board members. There are no personal or financial interests shared between the property owners and the Mecklenburg County ABC Board members.

The purchase price for the property is \$1,500,000.00 and the Board will pay an additional \$125,000.00 towards development costs. The proposed building will be between 7,000 SF and 9,000 SF of which the Board plans to use approximately 65% for retail sales. The Board also plans to have mixed beverage account service at this location.

The nearest school is located approximately 1.4 miles away. The nearest church is located approximately 1.2 miles away. The nearest ABC Store is 3.3 miles away in Matthews, North Carolina and is also operated by the Mecklenburg County ABC Board.

Mr. Hamilton stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted on February 28, 2017. Mr. Hamilton stated no objections have been received.

Mr. Hamilton stated the projected first year sales are \$2,640,000.00. Mr. Hamilton stated staff recommends approval and added a representative from the Mecklenburg County ABC Board was present if there were any questions.

Commissioner Herring asked about the previous year's sales and the number of stores in the system. Jason Hughes, CEO of the Mecklenburg County ABC Board, stated the previous year's sales were \$140,000,000.00. Mr. Hughes stated including this store and two additional stores in progress, the total number of ABC stores would be 28.

Commissioner Herring made a motion to uphold the staff recommendation and approve the proposed location. Chairman Guy seconded the motion. Motion Passed.

IV. EXEMPTION REQUEST – G.S. § 18B-1116(b) – FOOTHILLS DISTILLERY, LLC; STANDARD OYSTER BAR, INC. AND ZACHARY CHARLES CRANFORD

Mrs. Metz stated attorney Keith Kapp was present on behalf of his client to request an exemption to allow concurrent 50% ownership in a distillery and 50% ownership in an oyster bar. Mr. Kapp explained Zachary Cranford is an owner of Foothills Distillery and Standard Oyster Bar. Mr. Kapp added Mr. Cranford did not realize he could not have concurrent ownership in the two businesses without an exemption.

Mr. Kapp explained Mr. Cranford does not have anything to do with the ordering of alcohol for the restaurant, as it is the responsibility of the general managers. Mr. Kapp added the distillery products would be sold through the NC ABC system. He explained the distillery products currently account for 2.7% of the alcohol sales total and 8.8% of the spirituous liquor sales at the retail location. Mr. Kapp explained his client is willing to take a condition the reasonable market shares will continue.

Commissioner Herring stated they had no questions and made a motion to approve the exemption request. Chairman Guy seconded the motion. Motion Passed.

V. OTHER BUSINESS

Chairman Guy asked if anyone else was present who wished to address the Commission. As no one responded, Commissioner Herring made a motion to adjourn. Chairman Guy seconded the motion. Motion Passed. With no further business, the meeting adjourned.

[SIGNED]

A.D. "Zander" Jr., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

[SIGNED]

Caroline Y. Washburn for the Legal Division