

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JULY 19, 2017**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on July 19, 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.

Chairman Guy added Walker Reagan, an attorney working as a contractor assisting the ABC Commission with the rules, was unable to attend the Commission meeting as his mother had passed away. Chairman Guy requested a moment of silence to honor her memory.

MINUTES OF JUNE 7, 2017

Chairman Guy asked for a motion to waive the reading of the minutes of the June 7, 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 June 7, 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 – 103

Chief Counsel Renee C. Metz asked three cases be removed from the docket. Mrs. Metz explained case number 72 should be removed as the permittee had withdrawn the Offer in Compromise and requested a hearing. Mrs. Metz stated case numbers 24 and 103 should be removed from the Agenda as the permits had been cancelled due to failure to pay the registration and renewal fees.

Chairman Guy asked Mrs. Metz to introduce an intern working with the Commission. Mrs. Metz stated Walt Tuttle, who had spent time earlier this summer with the Industrial Commission would spend the next six weeks with the ABC Commission Legal Division.

Mrs. Metz, for case number 38, Food Lion 197, drew attention to the penalty dates and stated they are in the past. Mrs. Metz explained the Offer in Compromise was not ratified the previous month when it was combined with another pending case, allowing the suspensions of the penalties to be served consecutively. Mrs. Metz stated they are currently on the fifth day of the 15-day suspension, having already served the 7-day suspension.

Mrs. Metz stated the Troutman ABC Board submitted a letter regarding case number 86, explaining a mini bottle had been placed with the restaurant's mixed beverage order as it was attached, as a vendor add-on to an item on the order. Therefore, the mini bottle did not have a tax stamp resulting in one of the violations. Mrs. Metz stated the Legal Division would not object to a reduction of the penalty. Commissioner Herring confirmed the second violation was a failure to supervise violation.

Commissioner Herring made a motion to reduce the penalty from \$1,200.00 to \$500.00 for the failure to supervise violation. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated attorney Bob Denning was present on behalf of his client regarding case number 55. Mr. Denning stated he represented Stancil Oil Company. He continued, stating Stancil Oil Company had been in business for a long time. Mr. Denning explained the violation was a Sale to Underage and the employee had since completed a training class. Mr. Denning added his client understood the seriousness of the violation and knew they must pay the penalty. Mr. Denning stated he had known Larry Stancil for 30-40 years and his father before him. Mr. Denning explained, due to his client's standing in the community, they asked if they might be able to pay a higher penalty rather than serve a suspension. Mr. Denning added this was regarding pride and their standing as leaders in the community; as these were more important to the Stancils than any monetary loss during a suspension.

Chairman Guy stated he appreciated Mr. Denning's statements and understood the importance of community. Chairman Guy made a motion to increase the penalty to \$5,000.00 without an active suspension. Commissioner Herring seconded the motion. Motion Passed.

Commissioner Herring made a motion to ratify the Offers in Compromise with the exception of case numbers 72, 24 and 103. Chairman Guy seconded the motion. Motion Passed.

Chairman Guy added he had returned to the ABC Commission on March 8th. He stated it was a pleasure to work with the Commission employees and Mr. Hamilton and he appreciated their work. He also recognized Kat Haney and her work with the Underage Initiative. Chairman Guy stated all parts of the Commission were appreciated and they are all part of one team.

II. ABC STORE LOCATION – MECKLENBURG COUNTY ABC BOARD

Mr. Hamilton stated the Mecklenburg County ABC Board had requested approval to purchase land to build a new ABC Store at 335 Huntersville Gateway Boulevard in Huntersville, North Carolina. The proposed store will replace an existing leased store located approximately .7 miles away.

Mr. Hamilton explained the property is zoned Highway Commercial Conditional and allows for an ABC Store. Mr. Hamilton stated the proposed property is owned by James P. Houser, Jr. and his wife, Patricia Courtney Cox of Okatie, South Carolina. There are no personal or financial interests shared between the property owners and the Mecklenburg County ABC Board members. Financial disclosure forms have been provided by the Board members.

The purchase price for the property is \$807,602.00 for a parcel of approximately 1.03 acres. The proposed building will be between 5,000 SF and 6,000 SF of which the Board plans to use approximately 65% for retail sales. The remaining space will be used for storage, office and mixed beverage account service. The nearest school is located approximately .5 miles away. The nearest church is located approximately .9 miles away. The nearest ABC Store is the existing store located .7 miles away and it will be closed upon the opening of the proposed store. Once that store is closed, the nearest ABC Store will be approximately 5 miles away in Cornelius, North Carolina and is also owned and 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 April 12, 2017. Mr. Hamilton stated no objections have been received.

Mr. Hamilton stated the anticipated first year sales are \$5,100,000.00. Mr. Hamilton added staff recommends approval of this store. Jason Hughes and Mike Tully of the Mecklenburg County ABC Board were present if there were any questions.

Commissioner Herring stated the Mecklenburg County ABC Board was growing rapidly. Jason Hughes, CEO of the Mecklenburg County ABC Board, stated three stores are currently under construction. He added there is time remaining on the lease for the store to be replaced, so this proposed construction project will not start soon. Mr. Hughes explained the property became available and they did not want to miss the opportunity.

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

III. EXEMPTION REQUEST – G.S. § 18B-1116(b) – GOLD LEAF DISTILLING, INC.; AVIATOR BREWING COMPANY, INC., d/b/a AVIATOR TAPHOUSE, d/b/a AVIATOR BEERSHOP; AVIATOR SMOKEHOUSE, INC.; MARK DOBLE AND LIANNA DOBLE

Mrs. Metz stated no one was present regarding the exemption request. Mrs. Metz explained Aviator Brewing Company is an established brewery located in Fuquay Varina. Aviator Brewing Company also owns a retail establishment. The exemption request is to allow co-ownership of the Gold Leaf Distillery. Mrs. Metz stated, since the spirituous liquor will be sold through the ABC Board system, staff recommends granting the exemption request as it is a standard request.

Commissioner Herring made a motion to approve the exemption request. Chairman Guy seconded the motion. Motion Passed.

IV. OTHER BUSINESS

Chairman Guy recognized Walter Jordan of Republic National Distributing Company and congratulated him on his pending retirement.

Chairman Guy introduced Mark Mullins and Mike Yates who were present on behalf of the North Carolina Spirits Association. Mr. Mullins stated he was the president and Mike Yates the Chairman of the Board of Directors. Mr. Mullins explained the Spirits Association had approached members of the ABC Commission staff requesting changes to an existing rule regarding refunds and rebate offers on spirituous liquor purchases. They requested to modernize the rules to not only allow mailed rebate forms, but also allow purchasers to make electronic submissions of the refund and rebated forms. Mr. Mullins also

requested a policy to allow for the enforcement of electronic submission of forms until the rules can be amended in the formal process.

Mr. Hamilton stated the Commission had before them, copies of the suggested verbiage changes to the rule which would provide a policy for staff in reference to enforcement of this particular rule. Mr. Hamilton explained the ABC Commission staff had worked with the Spirits Association and other industry members to develop the guidelines until the formal rules process could be completed. Mr. Hamilton added, if approved, ALE and other law enforcement agencies would receive copies of the guidelines.

Mr. Hamilton stated staff recommends approval of this policy until the formal rules can be vetted. During the formal rules process, all interested parties and the public would be able to comment. Commissioner Herring asked if these applied only to spirituous liquor. Mr. Hamilton confirmed it would only apply to bottle sales at ABC Stores and distilleries. The guidelines would not affect beer, wine or mixed beverage sales.

Commissioner Herring made a motion to approve the policy based on staff recommendation. Chairman Guy seconded the motion. Motion Passed.

V. OTHER BUSINESS

Mrs. Metz stated there were also three temporary rules which must be approved. As Walker Reagan was unable to attend, Mrs. Metz explained the rules were regarding the ability of distilleries to sell five bottles per year to customers. Mrs. Metz stated there were minor grammatical changes to G.S. § 15A .2101, .2102 and .2103 and asked for Commission approval so they may move forward in the rules process.

Commissioner Herring made a motion to approve moving forward with the rules process. Chairman Guy seconded the motion. Motion Passed.

Chairman Guy asked Mr. Hamilton if there was any other new business. Mr. Hamilton stated there was none. 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.

Approved at the August 9, 2017 Commission Meeting

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

Respectfully submitted by,

/S/ Caroline Y. Washburn
Caroline Y. Washburn for the Legal Section