

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 11, 2017**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on October 11, 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 called the meeting to order; welcoming attendees and introducing himself, Commissioner Mike Herring, Administrator Bob Hamilton. Chairman Guy also stated his appreciation for the employees of the ABC Commission.

MINUTES OF SEPTEMBER 13, 2017

Chairman Guy asked for a motion to waive the reading of the minutes of the September 13, 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 September 13, 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 – 80

Chief Counsel Renee C. Metz stated there were no contested cases on the agenda. Mrs. Metz stated case numbers 33 and 64 were for the same business, City Kitchen located in Chapel Hill. Mrs. Metz explained the business' attorney was present to speak on behalf of his client.

Bob Nauseef stated he was present regarding two separate matters with separate alleged, now admitted, violations of sales to underage. Mr. Nauseef explained the business was under the umbrella of a conglomerate of corporations with nine establishments across the state employing over 300 people.

Mr. Nauseef stated the business takes the violations very seriously, especially as there had been prior similar violations. He added he was not involved with the previous violations and the business had not retained legal representation during those proceedings. Mr. Nauseef explained he was not present to contest the violations, but wished to explain the measures the business had taken since the violations occurred in the spring.

Mr. Nauseef was accompanied by Keith Whitfield, the former ABC Police Chief in Durham who was also involved in ABC law enforcement in Fayetteville. Mr. Nauseef stated Mr. Whitfield was asked to provide alcohol sales training to the staff of City Kitchen. Mr. Whitfield provided two sessions with the staff of City Kitchen and with other employees of the related businesses.

Mr. Nauseef stated one employee involved in a violation was no longer employed by the business. He added the other employee is still with the business, but has received additional training and understands the mistakes made. Mr. Nauseef stated they have put a system in place, but it is not infallible as mistakes may still occur.

Mr. Nauseef stated the business understands the seriousness of their position including the past violations. He explained this is demonstrated by the attendance and concentration and the efforts made during the sessions with Mr. Whitfield. They have put in place, a level of concern and education and taking time to ask for proper identification and guidelines for the employees. Mr. Nauseef added the business is also a good corporate citizen for the state of North Carolina. He stated they do charitable work with a pediatric cancer children's hospital in Durham and also work with UNC and the hospital in Chapel Hill. The business tries to put together a family of employees with guidelines for how they want the employees to act both on and off the premises. And, more importantly how they want the employees to follow the ABC Commission rules and regulations.

Mr. Nauseef explained he had worked with Assistant Counsels LoRita Pinnix and Rachel Spears regarding the violations and penalties. He stated he was now before the Commission to ask for consideration on the reduction of the active suspension. Mr. Nauseef stated the active suspension would be costly for the business in reputation as well as financially. He explained his clients were prepared to pay higher monetary penalties in order to remove the active suspension penalty as they accept their responsibilities with seriousness and have taken steps for prevention.

Chairman Guy thanked Mr. Nauseef for recapping the cases. Chairman Guy asked Mr. Nauseef to accompany Ms. Pinnix and Ms. Spears to further negotiate the penalty and the Commission would address it later during the meeting.

Mrs. Metz stated no one else was present regarding a case and asked the Commission to ratify the remaining Offers in Compromise with the exclusion of case numbers 33 and 64. Commissioner Herring made a motion to ratify the Offers in Compromise. Chairman Guy seconded the motion. Motion Passed.

II. EXEMPTION REQUEST – G.S. § 18B-1116(b) – CAROLINA HEADBOATS, INC. T/A CAROLINA PRINCESS AND MILL WHISTLE BREWING, INC. T/A MILL WHISTLE BREWING

Mrs. Metz stated Bill Cox was present on behalf of his law firm, Rawls, Scheer, Clary & Mingo, PLLC who represent Mill Whistle Brewing, Inc. Mrs. Metz explained the individual with an ownership interest in a brewing company also wishes to take part in the ownership of a boating company. Mrs. Metz added the boating company does not currently hold permits, but will apply for permits in the near future. Mrs. Metz explained Mill Whistle products will not be sold on the boating company ships.

Commissioner Herring made a motion to approve the exemption request. Chairman Guy seconded the motion. Motion Passed. Mrs. Metz presented a prepared order which she had approved granting the exemption for Chairman Guy's signature.

Chairman Guy stated, at 10:13 am the October NC ABC Commission meeting would be recessed to allow for the public hearing of the temporary growler amendment rules proposed during the September 13, 2017 NC ABC Commission meeting and submitted for publishing on that date as well.

III. PUBLIC HEARING ON PROPOSED TEMPORARY GROWLER RULES. RULES 14B NCAC 15C .0302, .0303, .0307, .0308 AND .0403

Chairman Guy recognized Walker Reagan to provide an overview of the proposed temporary rules and the timeline for consideration.

Mr. Reagan stated the General Assembly had passed legislation this year which modified the growler rules primarily to allow for non-refillable containers and wine growlers.

Mr. Reagan stated the temporary growler amendment rules proposed at the September 13, 2017 Commission Meeting were submitted to the Office of Administrative Hearings for posting on the OAH website on September 13, 2017. Mr. Reagan added the proposed rules were posted on the ABC Commission website and emailed to the ABC Commission's rulemaking committee on the same date. Mr. Reagan explained the proposed temporary rules were then published on the OAH website on September 20, 2017 along with the notice of the public hearing scheduled for October 11, 2017 at 10:00 am. The notice of the public written comment period of September 20 through October 20, 2017 was also posted on the OAH website. Mr. Reagan added to date, no comments had been received.

Mr. Reagan explained the law requires 30 business days from the date of submission to OAH before the Commission is able to adopt the proposed temporary rules, this date will expire on October 25, 2017. Mr. Reagan stated beginning October 26, 2017, the Commission can adopt the rules at any time. In addition, Mr. Reagan explained the General Assembly had allowed, on June 30, 2017, the Commission 120 days to adopt the growler laws and the deadline falls on October 28, 2017. Mr. Reagan asked the Commission to schedule a Special Meeting for October 26, 2017 to act on the proposed temporary rules.

Chairman Guy asked if anyone was present who wished to make comments. Wendy Kelly stated she was representing The Wine Institute. Ms. Kelly stated The Wine Institute is comprised of approximately 1000 California wineries and it has a national policy opposing wine in growlers. She stated they had been appreciative of the staff and Commission listening to their concerns and look forward to continuing the conversation.

Andy Ellen, President and General Counsel of the North Carolina Retail Merchants Association, was present and expressed his appreciation to the staff for making some very good changes for the current business practices of both wine growlers and beer growlers. These have expanded a number of retail businesses in the state and growing the economy. Mr. Ellen also thanked them for pushing forward with the growlers which is a new operation which will help grow a number of small businesses.

Chairman asked again if anyone present wished to make comments. Kris Gardner, attorney for the North Carolina Beer and Wine Wholesalers Association, stated the rules were well written and he had no comments.

At 10:17 am, Chairman Guy closed the public hearing and the October NC ABC Commission Meeting reconvened.

Chairman Guy made a motion to schedule a Special Meeting of the ABC Commission on October 26, 2017 at 10:00 am for consideration of the adoption of the proposed temporary growler amendment rules. Commissioner Herring seconded the motion. Motion Passed.

IV. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Administrator Robert A. Hamilton requested the Commission consider Wednesday, February 14, 2018, Wednesday, March 14, 2018 and Wednesday, April 11, 2018 as the respective dates for the February, March and April 2018 NC ABC Commission Meetings.

Commissioner Herring made a motion to approve the dates. Chairman Guy seconded the motion. Motion Passed. Commissioner Herring asked for confirmation of the dates for the December and January Meetings. Mr. Hamilton stated they were scheduled for December 13, 2017 and January 10, 2018, respectively.

V. OTHER BUSINESS – CONSIDERATION OF PROPOSED TEMPORARY RULES

Mr. Reagan provided documents to the Commission regarding the proposed permanent off-site storage rule. Mr. Reagan explained the General Assembly passed a law allowing breweries, wineries and distilleries, with the approval of the Federal Government, to maintain additional storage facilities without obtaining an additional ABC permit. However, the breweries, wineries and distilleries must provide notification to the ABC Commission regarding the location of the additional storage facilities. The additional storage facility would be under the business' existing permit and its rules.

Mr. Reagan asked the Commission to allow the Offsite Storage Location rule be filed with the OAH for publication in the NC Register. Additionally, Mr. Reagan asked the rule be posted on the ABC Commission website and be forwarded to the ABC rulemaking committee list. Mr. Reagan asked the Commission to schedule a public hearing to be held on December 13, 2017 during the Commission Meeting and to allow the public comment period to be open until January 2, 2018. Mr. Reagan also asked the Commission to authorize staff to make any non-substantive changes to the draft rule as needed, including spelling, punctuation, grammar and conforming changes and corrections.

Commissioner Herring made a motion to follow staff's recommendation and proceed with the rule making process. Chairman Guy seconded the motion. Motion Passed.

Chairman Guy recognized Graham Thompson of LB&B Associates and expressed his sympathies for the tragic loss of Mr. Thompson's wife's family member. Chairman Guy also congratulated Mr. Thompson on his recent promotion. Mr. Thompson stated he was fortunate to be able to grow with the company and be made a vice-president. He added he was looking forward to the opportunity.

VI. CONTINUATION OF OFFERS IN COMPROMISE

Mrs. Metz stated the legal staff and Mr. Nauseef had come to an agreement for the Offers in Compromise pertaining to case numbers 33 and 64, subject to the Commission's approval. Mrs. Metz asked that the active suspension be removed from the penalties of both case number 33 and case number 64. Mrs. Metz explained the maximum monetary penalty of \$5,000.00 had been reached for both offers in compromise. In order to increase the monetary penalties to be able to remove the active suspensions, a failure to

superintend violation would be added to the violations which occurred in February and March 2017. The penalty for each violation would be a \$2,500.00 fine totaling an additional \$5,000.00 penalty.

Mrs. Metz explained the total monetary penalty would be \$15,000.00. The offer in compromise for the two failure to superintend violations would be separate and ratified at the next ABC Commission meeting allowing for a separate payment date. Mrs. Metz stated \$10,000.00 of the penalty will be paid by November 3, 2017 and the additional \$5,000.00 will be due in December.

Chairman Guy stated this was a fair compromise as the penalty must be substantial considering the violations, but would also allow the business to continue operations. Commissioner Herring made a motion to approve staff's recommendation of the changes to the offers in compromise. Chairman Guy seconded the motion. Motion Passed. Mr. Nauseef thanked the Legal Division staff and the Commission.

Chairman Guy made a motion to adjourn. Commissioner Herring seconded the motion. Motion Passed. With no further business, the meeting adjourned.

Approved at the November 15, 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