

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JANUARY 17, 2018**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission meeting held at 400 East Tryon Road in Raleigh, North Carolina on January 17, 2018, 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 stated his appreciation for the employees of the ABC Commission and their work for the ABC Commission. Chairman Guy called the meeting to order.

MINUTES OF DECEMBER 13, 2017 COMMISSION MEETING

Chairman Guy asked for a motion to waive the reading of the minutes of the December 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 December 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 reviewed the agenda and found no conflicts of interest. Chairman Guy stated he found no conflicts of interest.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 63

Chief Counsel Renee C. Metz requested case number 2 be removed from the agenda as the permittee had turned in its permits for cancellation. Chairman Guy asked if it was a summary suspension. Mrs. Metz confirmed it was.

Mrs. Metz stated a representative of the permittee for case number 37, Bad Daddys Burger Bar, was present to address the Commission. David Richards, the manager of the location stated they take responsibility for the violation and it would not happen again. He explained it had been a busy night and they ran out of a product and he asked an employee to purchase it.

Commissioner Herring asked Mr. Richards how long the business had been operating. Mr. Richards responded six months, but he had been in the area with other businesses for six years. Chairman Guy inquired if they had received other violations. Mr. Richards stated they had not.

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

Mrs. Metz stated a representative of the permittee for case number 29, J C Ace, was present to address the Commission. Chong Oh, the owner of the business was present to request a reduction of the penalty. This case was assigned to Assistant Counsel Lorita Pinnix. Ms. Pinnix explained the violation was discovered during an inspection and they were cited for failure to maintain the invoices on the premises. Ms. Oh stated she kept the invoices at her home. Ms. Pinnix added two bottles of rice wine were also found on the licensed premises and the business did not have the proper permit. Ms. Pinnix stated it was the first violation for the business and there could be some flexibility with the penalty.

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

As no one else was present regarding a case, Mrs. Metz asked the Commission to ratify the remaining Offers in Compromise. Commissioner Herring made a motion to ratify the remaining Offers in Compromise with the exclusion of case number 2. Chairman Guy seconded the motion. Motion Passed.

II. EXEMPTION REQUEST – G.S. § 18B-1116(b) – BERKSHIRE HATHAWAY, INC. AND NATIONAL INDEMNITY COMPANY

Mrs. Metz stated attorneys Dave Cannon and Dan Boyce were present on behalf of the petitioners. Mr. Boyce stated they were requesting an exemption under NCGS § 18B-1116(b). Mr. Boyce explained they were representing all of the petitioners and directed the Commission to the chart attached to the petition. Mr. Boyce explained Berkshire Hathaway purchases smaller companies throughout the United States and are 100% owners of McClane Company, Inc., a logistics and delivery service. In turn, McClane Company purchased and owned 100% of Kahn Ventures, Inc. which owned 100% of Empire Distributors. Mr. Boyce stated Berkshire Hathaway had essentially purchased Empire Distributors, the wholesaler, in 2010.

Mr. Boyce referenced the Pilot Travel Centers, LLC of which 51% is owned and managed by Pilot Corporation. Pilot Travel Centers, LLC partnered with Speedway, LLC in the ownership of PFJ Southeast, LLC a retail business. Mr. Boyce explained PFJ Southeast owns and operates 16 retail businesses in North Carolina, of which 15 purchase beer from other distributors and one purchased from Empire Distributors. Mr. Boyce stated Berkshire Hathaway owns a minority interest in PFJ Southeast through National Indemnity Company which purchased Pilot Travel Centers, LLC in October 2017. Mr. Boyce stated to ensure everything was correct, the sixteen retail businesses ceased beer sales, even though Empire only serviced one store.

Mr. Boyce stated his clients request an exemption to allow both Empire Distributors and PFJ Southeast to continue their operations and will not allow Empire Distributors to act as wholesaler to any of the PFJ Southeast retail locations.

Commissioner Herring inquired if this also included Empire Distributors not selling products to Speedway, LLC. Mr. Cannon stated the agreement was Empire Distributors would not be selling beer to PFJ Southeast retail stores. Mr. Boyce stated their understanding is Speedway is owned by Marathon Petroleum and they own stores throughout the Midwest, but they do have an ownership interest in PFJ Southeast on the east coast. Mr. Cannon explained this exemption is for PFJ Southeast which holds the permits for retail businesses.

Mrs. Metz stated ABC staff has worked with them and spoken with the North Carolina Wholesalers Association and all have reached an understanding.

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

III. EXEMPTION REQUEST – G.S. § 18B-1116(b) – THE BARN AT BROADSLAB, LLC; BROADSLAB DISTILLERY, LLC; JEREMY NORRIS AND SHELLY NORRIS

Mrs. Metz stated no one was present regarding the exemption request related to The Barn at Broadslab, LLC or Broadslab Distillery. Mrs. Metz explained Jeremy Norris and Shelly Norris are husband and wife. Mr. Norris owns 100% of the distillery and Mrs. Norris owns 100% of the Barn at Broadslab which is an event venue and intends to apply for retail permits. Mrs. Metz explained marital couples have joint interests, therefore require an exemption. The distillery's products would be sold through the NC ABC Store system with no direct sales. Mrs. Metz stated this was a standard exemption.

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

IV. PUBLIC HEARING ON PROPOSED TEMPORARY AUCTION SALES OF CERTAIN ALCOHOLIC BEVERAGES RULES. RULES 14B NCAC 15A .2201 - .2205

Walker Reagan, the rules coordinator, provided drafts of the proposed temporary rules to the Commission. Mr. Reagan stated the Commission proposed temporary rules regarding auction sales in November. Mr. Reagan explained, during the last session the Legislature passed a new law for a special permit to allow auctioneers to sell certain alcoholic beverages, specifically collections of wine, decorative decanters of spirituous liquor and antique spirituous liquor. Mr. Reagan stated in order to implement the new law, a set of rules is required to clarify and define certain terms and procedures for that process.

Mr. Reagan stated there are two processes for the sale of these types of alcohol by private parties. One set of statutes is for special one-time permits allowing alcohol to be sold due to ownership through estates, bankruptcies and foreclosures and by nonprofit agencies at fundraising events. These permits also apply to retail establishments holding alcohol permits which are going out of business, private individuals with alcohol collections, and local government and nonprofit organizations holding fundraising events.

Mr. Reagan explained the two processes are being combined as auctioneers may also be hired to conduct these private sales as an agent. The new rules apply to auctioneers selling the products themselves.

Mr. Reagan stated a public hearing was scheduled for the temporary auction rules proposed during the November 15, 2017 ABC Commission meeting. Mr. Reagan added, on November 16, 2017, the proposed temporary rules were submitted to the Office of Administrative Hearings. Additionally, the proposed temporary rules, notice of public hearing and written comment period were posted on the OAH website and the ABC Commission website and emailed to the ABC rulemaking committee email list on November 22, 2017.

Mr. Reagan explained the public hearing was noticed for January 17, 2018 at 10:00 am and the public comment period was noticed to run through January 10, 2018. Mr. Reagan stated a written comment was received from Mathew Price, President-Elect of the Auctioneers Association of North Carolina. Mr. Price

withdrew his objection after conversations and correspondence with staff and further changes recommended by staff. No other written comments were received.

Chairman Guy announced the public hearing on the temporary auction rules was open. Chairman Guy asked if anyone was present who wished to comment. As no one was present, Chairman Guy closed the public hearing.

V. OTHER BUSINESS – CONSIDERATION OF ADOPTION OF TEMPORARY AUCTION SALES OF CERTAIN ALCOHOLIC BEVERAGE RULES

Mr. Reagan stated, as the public hearing was closed, staff recommended the Commission adopt the Temporary Auction Sales rules as published in the NC Register with additional language added to Rule 14B NCAC 15A .2204, as presented today and to adopt temporary rules to implement the provisions of § 18B-1002.1.

Mr. Reagan requested the rules be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and publication in the NC Administrative Code. Additionally, Mr. Reagan requested the Commission to allow staff to make non-substantive changes to the adopted rules as needed prior to publication.

Chairman Guy made a motion to adopt the temporary Auction Sales Rules as amended and presented with recommendations by staff. Commissioner Herring seconded the motion. Motion Passed.

VI. OTHER BUSINESS – CONSIDERATION OF PERMANENT OFF-SITE STORAGE RULE – RULE 14B NCAC 15C .0505

Mr. Reagan provided drafts of the proposed permanent Off-Site Storage Location rule to the Commission. Mr. Reagan explained rules were passed by the General Assembly during the past summer to allow breweries, wineries and distilleries to store the alcoholic products they produce at off-site storage facilities with approval from the federal government. Additionally, those sites would be treated as if they were part of the original permitted premises with notification to the ABC Commission. The rules proposed in October defined the process for the notification and the conditions under which the off-site locations could be operated. The rules were proposed by the ABC Commission during its October 11, 2017 Commission meeting. The proposed rules were also submitted to the Office of Administrative Hearings on October 11, 2017. The proposed rules, the notice of public hearing and notice of the public written comment period were published in the NC Register on November 1, 2017. The proposed rules were posted on the ABC Commission's website and emailed to the ABC Commission rulemaking committee on November 1, 2017.

Mr. Reagan stated the public hearing was properly noticed and held on December 13, 2017 at 10:00 am. The public comment period was noticed to end on January 3, 2018. Mr. Reagan added the ABC Commission has complied with the statutory time periods for holding the public hearing and receiving written comments.

Mr. Reagan stated one comment was received at the public hearing from Laura Collier on behalf of the NC Craft Brewers Guild in support of the rule and thanking the Commission for its work on the rule. No written comments have been received since the proposed rule was published.

Mr. Reagan stated the Commission was now able to consider the adoption of the rule during this January 2018 Commission meeting. Mr. Reagan recommended the Commission adopt the Permanent Off-Site Storage Location rule as published in the NC Register as presented. Mr. Reagan requested the rule be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and publication in the NC Administrative Code. Additionally, Mr. Reagan requested the Commission to allow staff to make non-substantive changes to the rule as needed prior to publication.

Chairman Guy made a motion to follow staff's recommendations. Commissioner Herring seconded the motion. Motion Passed.

VII. OTHER BUSINESS

Mrs. Metz and Mr. Hamilton stated there was no further business. Chairman Guy thanked the employees of the NC ABC Commission for their dedication.

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

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

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division