

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JULY 11, 2018**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on July 11, 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. welcomed those in attendance and called the Commission Meeting to order. Chairman Guy introduced himself and Commissioner Michael C. Herring and welcomed Commissioner Norman A. Mitchell, Sr. Chairman Guy stated Commissioner Mitchell had served on the Mecklenburg Board of Commissioners for ten years. Commissioner Mitchell is a Purple Heart recipient as a combat-wounded veteran of the Vietnam War. Chairman Guy stated Commissioner Mitchell is married with two children and had also retired from the US Postal Service. Additionally, former Treasurer Richard Moore had appointed Commissioner Mitchell to serve previously on the Government Retirement Board.

Commissioner Mitchell thanked Chairman Guy for his introduction and stated he was looking forward to serving the NC ABC Commission. Commissioner Mitchell stated after he left politics, he served as a consultant for Siemens USA. Commissioner Mitchell added he had also served on the State Board of NC Association of County Commissioners, the National Association of Counties in Washington, D.C. and the National Association of Homeland Security for the National Association of Counties.

Chairman Guy also welcomed Governor Cooper's senior advisor, Stephen Bryant. Chairman Guy expressed his appreciation for the employees of the ABC Commission, stating they all work together to face challenges.

MINUTES OF THE JUNE 13, 2018 COMMISSION MEETING

Chairman Guy asked for a motion to waive the reading of the minutes of the June 13, 2018 meeting into the record. Commissioner Herring made a motion to waive the reading of the minutes. Commissioner Mitchell seconded the motion. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the June 13, 2018 meeting. Commissioner Herring made a motion to approve the minutes. Commissioner Mitchell 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. Commissioner Mitchell 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 58, Tobacco House, be removed from the agenda. Mrs. Metz explained counsel had noticed an error in the Offer in Compromise and would submit a corrected Offer in Compromise to the permittee.

Commissioner Herring made a motion to remove case number 58 from the agenda. Commissioner Mitchell 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, including the add-on case number 64. Commissioner Herring made a motion to ratify the remaining Offers in Compromise. Commissioner Mitchell seconded the motion. Motion Passed.

II. ABC STORE LOCATION – HERTFORD COUNTY ABC BOARD

Chairman Guy recognized General Manager Clarence Jordan, Chairman Lonnie Simmons and Vice Chairman Jeri Pierce of the Hertford County ABC Board.

Administrator Robert A. Hamilton stated the Hertford County ABC Board had requested approval to relocate an ABC Store from 911 East Main Street in Murfreesboro, North Carolina to 912B West Main Street in Murfreesboro, North Carolina. Mr. Hamilton explained the existing store is a counter store and the proposed location would allow a self-service store. The proposed store would tentatively open in the spring of 2020 and the existing store would be sold upon the opening.

Mr. Hamilton explained the proposed property is a 1.08 acre parcel adjacent to a Dollar General and near a Food Lion shopping center. Both Dollar General and Food Lion possess ABC permits. The property is zoned C-2 which allows for an ABC Store. The property is owned by Sand Box, LLC with a purchase price of \$77,000.00. Mr. Hamilton stated the purchase would be funded by the Board's capital outlay fund. Mr. Hamilton added there are no personal or financial interests shared between the property owner and the Hertford County ABC Board members. Financial disclosure forms have been provided by the Board members. Mr. Hamilton explained the proposed building will be 2,865 SF with a building cost of approximately \$225,000.00. This cost will be funded by the Board's capital fund and a bank loan.

Mr. Hamilton stated the nearest school, Chowan University, is located approximately 1.2 miles away. The nearest church, Mt. Sinai Church of God, is located approximately 300 feet away. Mr. Hamilton stated the nearest ABC Store after the existing store closes, is located approximately 8 miles away in Conway, North Carolina and operated by the Northampton County ABC Board.

Mr. Hamilton stated the notice to the public was posted at the location on June 2, 2018. However, it was revised and reposted on June 11, 2018. Mr. Hamilton explained the required 30 days would be expired as of July 11, 2018. Mr. Hamilton stated 44 telephone calls have been received by the ABC Board, all of which were objections with only one in support of the store. Mr. Hamilton stated the main objections were the proximity of the proposed store to a church.

Mr. Hamilton stated the Commission had also received a petition with approximately 450 signatures. Mr. Hamilton explained many of the addresses listed were outside the town limits of Murfreesboro and some were in the state of Virginia. Mr. Hamilton stated the petition was presented to the Town Council, who made no comments or changes to their previous position in support of the new location.

Mr. Hamilton explained Hertford County voted in ABC Stores in 1965 and the Town of Murfreesboro voted in mixed beverage sales in 2004.

Mr. Hamilton stated the anticipated first year sales are \$725,000.00 which is \$131,000.00 more than the current store's sales in 2017.

Mr. Hamilton added General Statute §18B-801(b1) allows for a town to object to an ABC Store and the Town of Murfreesboro did not object to this location. Mr. Hamilton stated Clarence Jordan, the General Manager and Lonnie Simmons, the Chairman of the Hertford County ABC Board, were present to answer questions.

Mr. Jordan stated the petition of 450 names was from Mt. Sinai Church of God. Mr. Jordan explained the existing store is across the street from a church. Mr. Jordan stated many of those listed also argued the proposed location was across from a church and in a black community. Mr. Jordan explained the existing location is also in a black neighborhood with residences close by.

Mr. Jordan explained the Board had considered many other properties and he provided photographs of those properties to the Commission. Mr. Jordan added all the considered properties were across, adjacent or in close proximity to a church and all were commercial properties. Mr. Jordan stated the properties on East and West Main Street are all within close proximity to a church, but satisfy the 50 feet guideline. Mr. Jordan explained Murfreesboro is a small town with a population of approximately 3,000 residents. He added it is unavoidable to not be within close proximity to a residential area or a church, even on a commercial property.

Mr. Simmons stated he measured the distance between the church and the proposed location and the store would be 427 feet away from building to building. Additionally, Mr. Simmons explained the entrance used by the church is on another road and is not in sight of the proposed ABC Store. Mr. Simmons added the nearby Dollar General and Food Lion also sell alcoholic beverages.

Commissioner Herring inquired regarding the plans for signage at the proposed location. He asked if the sign would be affixed to the building or be free-standing near the road. Commissioner Herring added Dollar General and Food Lion have signs, but they do not reference alcohol.

Mr. Jordan stated the ABC Board plans to imitate the signage of the Ahoskie ABC Store located at 1373 East Memorial Drive. Commissioner Herring asked how that signage reads. Mr. Jordan stated they would use either "ABC Package" or "ABC Liquor Store". Chairman Guy asked if just "ABC" or "ABC Package" could be used. Commissioner Herring pointed out a package store usually refers to the counter service store which operates behind glass, so it could be just "ABC". Mr. Jordan stated the bulletproof glass had been added to the existing store after two robberies and explained security cameras had also been installed. Mr. Jordan added the proposed location, as part of a more highly visited commercial area, would have fewer security issues.

Commissioner Mitchell inquired regarding the proximity footage referenced in the statutes. Mr. Hamilton stated the guideline for permitted retail locations was 50 feet and is building to building. Mr. Hamilton added the Commission considers objections, but uses the 50 feet as a standard. Commissioner Mitchell confirmed this location was more than 400 feet from the church.

Mr. Hamilton stated staff recommended approval of the proposed location.

Commissioner Herring made a motion to approve the proposed location as presented and recommended by staff, adding limits on the signage of this location so it is not offensive to churches in the community;

including, no roadside sign or free-standing sign away from the building and the sign on the building would only read "ABC". Commissioner Mitchell seconded the motion. Motion Passed.

III. ABC STORE LOCATION – JOHNSTON COUNTY ABC BOARD

Mr. Hamilton stated the Johnston County ABC Board had requested approval to lease property to open and operate an ABC Store in Suites 101, 102 and 103 at 12524 NC Hwy 210 in Benson, North Carolina with a tentative opening date of September 1, 2018.

Mr. Hamilton stated the property was zoned Commercial and allows for an ABC Store. The property is owned by McGee's Crossing, LLC of Henderson, North Carolina. Mr. Hamilton stated the rental price is \$89,700.00 per year with a 3% increase in the annual rent each year. Mr. Hamilton added there is also an annual Common Area Maintenance fee of \$5,928.00, increasing the rental cost to \$95,628.00 per year.

Mr. Hamilton stated there are no personal or financial interests shared between the property owner and the Johnston County ABC Board members. Financial disclosure forms have been provided by the Board members.

Mr. Hamilton stated the nearest school is located approximately 1.2 miles away. The nearest church is located approximately 1 mile away. Mr. Hamilton explained the nearest ABC Store is located approximately 9.2 miles away in Garner, North Carolina and is operated by the Wake County ABC Board.

Mr. Hamilton stated the notice to the public was properly posted at the location on June 1, 2018. Mr. Hamilton added no objections have been received by the ABC Board. Mr. Hamilton stated the anticipated first year sales are \$1,500,000.00.

Mr. Hamilton stated staff recommended approval of the proposed location and added Swade Carroll, the General Manager of the Johnston County ABC Board, was present to answer questions.

Commissioner Herring asked if the proposed opening was September 1, 2018 and if they had already purchased the property. Mr. Carroll stated they hoped to open on that date or on October 1, 2018 and the property would be leased.

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

IV. CONSIDERATION OF A CHANGE TO THE MERGER BETWEEN JACKSON COUNTY AND THE TOWN OF SYLVA

Mr. Hamilton explained it is required by statute, when two jurisdictions make a change to a merger agreement, they must receive approval from the NC ABC Commission. Mr. Hamilton stated the Town of Sylva and the Jackson County Board of Commissioners have approved and signed a resolution to amend the merger agreement with the removal of board member term limits.

Mr. Hamilton recommended approval of the amendment to the merger.

Commissioner Herring made a motion to approve the resolution based on the recommendation of the staff. Commissioner Mitchell seconded the motion. Motion passed.

V. EXEMPTION REQUEST – G.S. § 18B-1116(b) – ARTISANAL BREWING VENTURES CHARLOTTE, LLC; CRAFT REVOLUTION, LLC AND SOUTHERN TIER DISTILLING COMPANY, LLC

Mrs. Metz stated attorney Dave Cannon was present on behalf of the petitioners. Additionally, Mrs. Metz explained within item 4 of the petition, Artisanal Brewing Ventures does not in fact hold the wine wholesaler permit. Mrs. Metz stated this is a quasi-typical exemption request, as there is parental co-ownership described further in Exhibit A of the exemption request.

Mrs. Metz explained Artisanal Brewing is a wholly owned subsidiary of Craft Revolution which also owns 52% of Southern Tier Distilling. The exemption is needed for the co-ownership of a distilling company and a brewing company, also holding retail permits. Mrs. Metz explained Artisanal Brewing holds both commercial and retail permits of which 90% of the retail alcohol sales are for malt beverages. Southern Tier products will be sold at Artisanal Brewing, but will only be a small percentage of the remaining 10% of alcohol sales and will be purchased through the ABC Board system.

Mrs. Metz stated with the standard condition, as long as it is a fair market share of the spirits sold in the retail business and follows the normal flow of purchases through the ABC Board system, staff recommends approval of the exemption request.

Mr. Cannon stated he was the local counsel for Artisanal Brewing, which holds temporary brewery, beer wholesaler and retail permits. Mr. Cannon explained a previous exemption had been granted pertaining to the brewery permits, but they did not realize an additional exemption for the distillery was required. Mr. Cannon added this is Craft Revolution's first and only location in North Carolina and they do not intend to open another retail establishment in the state at this time. Mr. Cannon stated the focus was on craft beer and to a lesser extent, the sale of craft distilled spirits, including those produced by North Carolina manufacturers with distilleries in Chapel Hill, Belmont, Golden Valley and Charlotte. Mr. Cannon stated they do not intend to open another establishment in North Carolina; however, if they decide to, they will request an amendment to the exemption. Artisanal Brewing plans to offer a reasonable selection of other North Carolina high-end distilled spirits and will have an independent general manager for the day to day management of the alcohol purchases. The competitors' products will be priced at market value and will be made through the ABC system. Mr. Cannon added Craft has been in business for around 20 years and this is their first venture in North Carolina.

Commissioner Herring asked what brands were carried by Southern Tier. Mr. Cannon stated they offer North Carolina brands Rūa Barrel, Quinn's Barrel, Spiced Carolina rum, Doc Porter's vodka, Defiant rye; products produced in Chapel Hill, Muddy River in Belmont and Charlotte. Southern Tier Brands include rye, straight bourbon, citrus gin, and vodka; all high-end distilled spirits to match others in North Carolina.

Commissioner Herring asked if they were all regularly listed products in NC ABC Stores. Mr. Hamilton added the Southern Tier products are not regularly listed with the ABC Boards, but are special order products. They must be ordered then shipped by the distillery to the ABC store. Mr. Hamilton added the purchases would be made in whole case quantities, so other retailers or consumers would have the opportunity to purchase the products at the ABC store.

Mrs. Metz stated staff recommended approval of the exemption request with the conditions presented.

Commissioner Herring made a motion to follow the staff recommendation and approve the exemption request. Commissioner Mitchell seconded the motion. Motion Passed.

VI. EXEMPTION REQUEST – G.S. § 18B-1116(b) – FERMENTED NONSENSE BREWING, LLC; CRAFT CENTRIC TAPROOM & BOTTLE SHOP AND MATTHEW VAUGHN

Mrs. Metz stated attorney John Szymankiewicz was present on behalf of the petitioners. Mrs. Metz explained Matthew Vaughn owns 51% of Craft Centric Taproom, a retail establishment, and 49% of Fermented Nonsense Brewing, a commercial establishment. Mrs. Metz explained the exemption is necessary due to the cross-ownership between a retailer and a brewery. Mrs. Metz stated Fermented Nonsense does not currently hold permits, but is seeking brewery, malt beverage wholesaler and malt beverage special events permits. The brewery is considered a nano-brewery, even though this is not defined in North Carolina, and is planning to produce less than 250 barrels per year in a one-barrel system.

Mrs. Metz stated the bottle shop has 21 rotating taps and will be selling other malt beverages. Fermented Nonsense will not have more than its fair market share. Mrs. Metz added, an independent manager will be in charge of ordering, not Mr. Vaughn. Additionally, before products are shipped from Fermented Nonsense to the bottle shop, a good-faith effort would be made to find an independent, third-party wholesaler.

Mr. Symankiewicz thanked Mrs. Metz for her explanation. Mr. Symankiewicz added, though nano-brewery is not defined in North Carolina, many smaller breweries are creating new definitions such as pico- and other finer gradations of smaller breweries.

Commissioner Herring made a motion to follow staff's recommendation and approve the exemption request. Commissioner Mitchell seconded the motion. Motion Passed.

VII. EXEMPTION REQUEST – G.S. § 18B-1116(b) – FERMENTATION STATION, LLC d/b/a FERMENTATION STATION AND DIABLO DISTILLERIES, LLC

Mrs. Metz explained Phillip O'Hara is the 100% owner of Fermentation Station which currently holds a temporary retail malt beverage permit and is also 100% owner of Diablo Distilleries. Mrs. Metz explained the exemption is necessary due to the joint ownership of a retail outlet and a commercial outlet and producer. Fermentation Station has not yet received its Federal brewery permit, but will apply for an ABC commercial brewery permit once it is received.

Mrs. Metz stated the retail establishment will not sell spirituous liquor and will only possess a malt beverage retail permit; therefore, there is not an issue with exclusivity of product. Mrs. Metz added, if they were to apply for a mixed beverage permit in the future, all spirituous liquor purchases would be through the ABC Board system.

Commissioner Herring asked if they would be required to return for an added exemption if they were to obtain a mixed beverage permit. Mrs. Metz stated this would be a condition of the order for this exemption and staff recommended approval.

Commissioner Herring made a motion to follow the staff recommendation and approve the exemption request. Commissioner Mitchell seconded the motion. Motion Passed.

III. CONSIDERATION OF PROPOSAL OF PERMANENT AUCTION SALES RULES. RULES 14B NCAC 15A .2201; .2202; .2203; .2204; AND .2205

Walker Reagan, the rules coordinator, provided drafts of the proposed permanent rules to the Commission. Mr. Reagan stated the Commission adopted temporary rules regarding auction sales on January 17, 2018 in order to implement the allowance of auction sales of certain alcoholic beverages authorized by the 2017 General Assembly. Mr. Reagan explained the temporary rules became effective February 23, 2018 and would remain in effect until permanent rules are adopted. Mr. Reagan stated since those rules had become effective in February, no comments have been received.

Mr. Reagan stated on June 18, 2018, an email was sent to those on the email list expressing interest in ABC Commission matters and three comments were received. The NC Auctioneer Licensing Board, the NC Association of Auctioneers and the NC Distillers Association each stated they had no issues or concerns and received no comments from their members. Mr. Reagan stated he confirmed with ABC Commission staff, no one has requested a permit nor has a permit been denied.

Mr. Reagan stated staff recommends approval of the proposed rules. Mr. Reagan requested the rules be filed with the Office of Administrative Hearings for publication in the NC Register; copies be sent to the ABC Commission rulemaking committee emailing list and, posted on the Commission website. Mr. Reagan also requested the Commission schedule a public hearing for October 10, 2018; set a public comment period be open through October 10, 2018; and, authorized staff to make non-substantive changes to the proposed rules as needed.

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

Chairman Guy introduced two temporary staff members in the Legal Division, Jennifer Temple and LaTonya Davis.

Both Mrs. Metz and Mr. Hamilton stated there was no additional business. Chairman Guy thanked those in attendance, as well as the ABC Commission staff, and with no further business, the meeting was adjourned.

Approved at the August 8, 2018 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