

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
SEPTEMBER 12, 2018**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on September 12, 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 asked for a few moments of silence for protection for those experiencing the storm in our State and for our State.

Chairman Guy provided updates on events which had occurred since the August 8, 2018 ABC Commission Meeting. Chairman Guy explained, after serving as the long-time Administrator and more recently as a Commissioner for the NC ABC Commission, Mike Herring submitted his resignation on August 15, 2018. Chairman Guy wished him well and thanked him for his service.

Chairman Guy stated he wished to thank State Auditor Beth Wood for prompting the ABC Commission to take a fresh look at the way business is conducted at the Commission, through the Performance Audit released on August 9, 2018. Chairman Guy explained, as a result of the report, the Commission is examining its processes and procedures and has a renewed focus on transparency and accountability. Chairman Guy added the Commission is not looking back and looking ahead.

Chairman Guy thanked the Commission staff for the delivery of top-quality service provided to approximately 18,000 retail businesses with ABC permits, furthering North Carolina's economy. Chairman Guy explained, through the work of the Commission, the local ABC Boards offer over 2,500 different products to the public; elected officials are kept informed; and, our partner law enforcement agencies have the support they need to keep their communities safe.

Chairman Guy acknowledged ALE Special Agent Bryan House who was present and thanked him for his work.

Chairman Guy stated, because of the work of the ABC Commission, in the last year ending June 30, 2017, approximately \$400,000,000.00 went to the State's General Fund and to the communities in which the spirituous liquor was sold. Chairman Guy explained the NC ABC Commission plays an important role as the sole regulator of all alcohol in this State. Chairman Guy stated the expertise of the employees of the ABC Commission plays a vital role in making the Commission work well and thanked the staff.

Chairman Guy welcomed Bill Anderson, Jason Lemansky and Steve Faulk of Johnson Brothers Mutual Distributing who were in attendance.

Chairman Guy introduced himself and Commissioner Norman A. Mitchell, Sr.

## **MINUTES OF THE AUGUST 8, 2018 COMMISSION MEETING**

Chairman Guy asked for a motion to waive the reading of the minutes of the August 8, 2018 meeting into the record. Commissioner Mitchell 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 August 8, 2018 meeting. Commissioner Mitchell 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 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 – 78**

Chief Counsel Renee C. Metz stated no one was present on behalf of a case and if there were no questions regarding the cases, she asked the Commission to ratify the Offers in Compromise.

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

#### **II. ABC STORE LOCATION – JOHNSTON COUNTY ABC BOARD**

Administrator Agnes C. Stevens stated on August 1, 2018, the Johnston County ABC Board requested approval to lease property to open and operate an ABC Store at 36 Flowers Crossroads Way in Clayton, North Carolina. Ms. Stevens explained the proposed store would replace an existing store located at 4879 NC Hwy. 42 East. If approved, the Board has a tentative opening date of November 1, 2018.

Ms. Stevens stated the property was zoned Commercial and allows for an ABC Store. 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.

Ms. Stevens stated the nearest school, River Dell Elementary, is located approximately 1.2 miles away. Ms. Stevens added the Triangle Swim School Clayton is located approximately .6 miles away. The nearest church, Life Changers Kingdom Ministries, is located approximately 1.2 miles away and Red Hill United Church-Christ is located approximately 1.4 miles away.

Ms. Stevens explained the nearest ABC Store is located approximately .4 miles away at 4879 NC Hwy 42 East in Clayton, North Carolina and will be closed upon the opening of the new store. The next nearest ABC Store is located approximately 8.9 miles away at 12487 US Highway 70 West in Clayton, North Carolina and is also operated by the Johnston County ABC Board.

Ms. Stevens stated the notice to the public was properly posted at the location on August 1, 2018 and no objections have been received by the ABC Board.

Ms. Stevens 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. Chairman Guy asked Mr. Carroll about the projected first year sales and whether they would reach that amount. Mr. Carroll stated the new store will allow them to have a greater number of products offered and doubles the shelf space; therefore, they would be able to meet the projected sales.

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

**III. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – LACONIA ALE WORKS, LLC; MADISON COUNTY BREWING COMPANY, LLC; BRANDON EDWARDS**

Mrs. Metz asked for this exemption request to be tabled as more discussion is required because the request is not for the typical exemption.

**IV. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – CRAIG MICHAEL GEE; CRANK ARM BREWING COMPANY, INC.; WATERMANS, INC. d/b/a WATERMANS BREWING**

Mrs. Metz stated attorney John Szymankiewicz was unable to be present due to a prior commitment; however, a paralegal from the firm was present on behalf of the petitioners. Mrs. Metz explained Craig Gee owns 31% of Crank Arm, which is located in Wake County and has retail and commercial permits. Mr. Gee also owns 33.3% of Watermans, which is located in New Hanover County and has retail and commercial permits. Mrs. Metz explained the exemption is necessary due to the cross-ownership between the retailers and breweries.

Mrs. Metz stated both businesses have separate and different general managers who purchase the beer for the retail establishments. Mrs. Metz added they do not plan to sell the other brewery's products, but wish to sell the products at sanctioned special events. Mrs. Metz stated they would not be able to sell the products at special events and asked for item 19 of the exemption request to be excluded from consideration. Mrs. Metz stated staff recommends approval.

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

**V. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – SKYTOWN BEER COMPANY; BEER BARRIO COMPANY**

Mrs. Metz stated Skytown Brewery holds retail and commercial permits and Beer Barrio holds retail permits. Mrs. Metz explained the owners of Skytown Brewery, a husband and wife and the wife's parents, are also the owners of Beer Barrio and an exemption is requested to allow the concurrent ownership.

Mrs. Metz stated Skytown is a small brewery with a five-barrel system and currently serves 20 different brands in their taproom. Mrs. Metz explained Beer Barrio will not sell Skytown products at the present time, but may wish to sell a small amount in the future. Mrs. Metz stated Beer Barrio currently serves 70 different craft beers and the addition of Skytown products would not be an issue if they decide to add them in the future.

Mrs. Metz stated staff recommends approval of the exemption request regarding co-ownership without cross-sales. If Beer Barrio decides to sell Skytown products in the future, they will need to request an amendment to the exemption.

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

**VI. CONSIDERATION OF PROPOSAL OF SPIRITUOUS LIQUOR SPECIAL EVENT PERMIT RULES – RULES 14B NCAC 15C .0101; .0102; .0901; .1301-1306**

Walker Reagan, the rules coordinator, requested item number seven on the agenda be removed as it requires further discussion.

Mr. Reagan provided drafts of the proposed rules to the Commission. Mr. Reagan explained, in 2017 the General Assembly enacted G.S. 18B-1114.7. This statute authorizes supplier representatives, brokerage representatives or a distillery to obtain an annual spirituous liquor permit; which allows these permittees to conduct free spirituous liquor tastings at trade shows, conventions, street, holiday and agricultural festivals, balloon races, local fundraisers, shopping malls and other similar events.

Mr. Reagan continued, stating the General Assembly directed the ABC Commission to adopt rules to implement this statute. Mr. Reagan stated, since October 30, 2017, the ABC Commission staff has been working with industry members and interested parties to draft the rules necessary for the implementation of this statute. Additionally, Mr. Reagan explained, because the new rules involve the issuance of new permits; the new statute and rules will have an economic impact on the ABC Commission and persons seeking permits. Mr. Reagan stated the Administrative Procedures Act required the Commission to adopt and publish a fiscal analysis of the economic impact of these rules. Mr. Reagan provided a copy of the fiscal analysis to the Commission.

Mr. Reagan stated staff recommends the proposal of the rules as presented. 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 December 12, 2018; set a public comment period be open through December 14, 2018; and, authorize staff to make non-substantive changes to the proposed rules as needed. Additionally, Mr. Reagan requested the Commission adopt the Fiscal Analysis of Proposed Rules dated September 12, 2018 for the Spirituous Liquor Special Event Rules as presented.

Commissioner Mitchell made a motion to propose the Spirituous Liquor Special Event Rules and accompanying fiscal analysis as presented and the recommendations of the staff. Chairman Guy seconded the motion. Motion Passed.

**VII. CONSIDERATION OF PROPOSAL OF PERMANENT PERMITTEE SAMPLING LIMITATION RULE – RULE 14B NCAC 15B .0209**

*(Mr. Reagan earlier requested this item to be tabled.)*

**VIII. CONSIDERATION OF PROPOSAL OF PERMANENT DESTROY DISTRESSED LIQUOR AMENDMENTS RULES – RULES 14B NCAC 15A .1603; .1604; .1701**

Mr. Reagan explained earlier in 2018, the General Assembly enacted Section 2 of S.L. 2018-100 suspending the rules requiring a distiller representative be present in order for the Commission, the ABC Warehouse or local ABC Board to destroy distressed liquor. Mr. Reagan added, distressed liquor is defined in 14B NCAC 15A .0103 as liquor which is not salable due to adulteration or damage to the bottle, label or tax seal. Mr. Reagan stated the General Assembly directed the ABC Commission to adopt a rule to implement this session law provision.

Mr. Reagan stated staff recommends the Commission propose the rules as presented. Mr. Reagan requested the proposed permanent 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 December 12, 2018; set a public comment period be open through December 14, 2018; and, authorize staff to make non-substantive changes to the proposed rules as needed.

Commissioner Mitchell made a motion for the ABC Commission to propose the Destroy Distressed Liquor Amendments Rules as presented and the recommendations of staff. Chairman Guy seconded the motion. Motion Passed.

**IX. CONSIDERATION OF PROPOSAL OF PERMANENT TAX STAMP PLACEMENT RULE AMENDMENT – RULE 14B NCAC 15A .1901**

Mr. Reagan explained earlier in 2018, the General Assembly enacted Section 3 of S.L. 2018-100 suspending the rule which required mixed beverage tax stamps be placed on the original paper labeling of the container; directed from the date the law became effective that the tax stamp could be placed on any vertical portion of the container; and, further directed the ABC Commission to amend Rule 14B NCAC 15A .1901. Mr. Reagan stated the General Assembly directed the ABC Commission to adopt a rule to implement this session law provision.

Mr. Reagan stated staff recommends the Commission propose the Tax Stamp Placement Rule as presented. Mr. Reagan requested the proposed permanent 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 December 12, 2018; set a public comment period be open through December 14, 2018; and, authorize staff to make non-substantive changes to the proposed rules as needed.

Commissioner Mitchell made a motion for the ABC Commission to propose the Tax Stamp Placement Rule as presented and the recommendations of staff. Chairman Guy seconded the motion. Motion Passed.

**X. CONSIDERATION OF PROPOSAL OF PERMANENT DEFINE SPORTS AND ENTERTAINMENT VENUE RULE – RULE 14B NCAC 15B .0101**

Mr. Reagan explained in 2018, the General Assembly amended G.S. 18B-1000 and 1001 to allow stadiums, ballparks, and other similar facilities with a permanently constructed seating capacity of 3,000 or more which are not located on the campus of a school, college or university to obtain on-premises to

obtain malt beverage, unfortified wine and mixed beverages permits. Mr. Reagan stated a rule is required to define what constitutes a sports and entertainment venue and “other similar facilities”.

Mr. Reagan stated staff recommends the Commission propose the Define Sports and Entertainment Venue Rule as presented. Mr. Reagan requested the proposed permanent 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 December 12, 2018; set a public comment period be open through December 14, 2018; and, authorize staff to make non-substantive changes to the proposed rules as needed.

Commissioner Mitchell made a motion for the ABC Commission to propose the Define Sports and Entertainment Venue Rule as presented and the recommendations of staff. Chairman Guy seconded the motion. Motion Passed.

## **XI. CONSIDERATION OF PROPOSAL OF PERMANENT VISIBLE INDOOR ADVERTISING IN SPORTS ARENA RULE – RULE 14B NCAC 15B .1006**

Mr. Reagan explained in 2018, the General Assembly enacted Section 5.1 of S.L. 2018-65 making an exception to the rule which prohibits a retail permittee from displaying point-of-sale advertising for malt beverages, wine or mixed beverages inside the premises which can be viewed from outside the premises. This exception allows a sports or entertainment venue with permanently constructed seating capacity of 3,000 or more, which is not located on the campus of a school, college or university, to display point-of-sale advertising for malt beverages and unfortified wine inside the venue that is visible outside the venue. The exception also prohibits the Commission from requiring that such point-of-sale advertising be moved or removed. Mr. Reagan stated the General Assembly directed the ABC Commission to adopt a rule to implement this session law provision.

Mr. Reagan stated staff recommends the Commission propose the Visible Indoor Advertising in Sports Arenas Rule as presented. Mr. Reagan requested the proposed permanent 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 December 12, 2018; set a public comment period be open through December 14, 2018; and, authorize staff to make non-substantive changes to the proposed rules as needed.

Commissioner Mitchell made a motion for the ABC Commission to propose the Visible Indoor Advertising in Sports Arenas Rule as presented and the recommendations of staff. Chairman Guy seconded the motion. Motion Passed.

## **XII. OTHER BUSINESS**

Mrs. Metz explained there are two types of authorization to destroy alcohol which is seized by Alcohol Law Enforcement. Mrs. Metz stated a Criminal District Court Judge or a Superior Court Judge may issue an order or the ABC Commission’s Final Agency Decision may include an order. Mrs. Metz stated Hollow Rock Racquet and Swim Club in Durham received a Written Warning from the ABC Commission; therefore, an order allowing the destruction of the evidence was not issued. Mrs. Metz requested an order be issued allowing ALE to destroy alcohol seized as evidence in the violation, as it is taking space in their evidence room.

Chairman Guy made a motion to follow staff's recommendation to issue an order to allow ALE to destroy the evidence. Commissioner Mitchell seconded the motion. Motion Passed.

**XIII. OTHER BUSINESS**

Ms. Stevens stated the ABC Commission received a request from the Valdese ABC Board on August 28, 2018 for an exemption in accordance with G.S. 18B-201(a) to allow John M. Heilman to sit on the Valdese ABC Board if he is appointed by the Valdese Town Council. Mr. Heilman has a 50% ownership in his son's bottle shop and taproom located in Hickory, North Carolina. Ms. Stevens explained the business does not hold a mixed beverages permit. Ms. Stevens stated staff reviewed the request and recommends approval.

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

No one else was present to address the Commission. Chairman Guy thanked those in attendance, as well as the ABC Commission staff. Commissioner Mitchell thanked Mrs. Metz, as well as the staff, for their assistance. And with no further business, the meeting was adjourned by Chairman Guy.

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

Respectfully submitted by,

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Caroline Y. Washburn for the Legal Division