

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MAY 8, 2019**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on May 8, 2019, 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. called the May 2019 ABC Commission Meeting to order and welcomed those in attendance. Chairman Guy recognized ALE Acting Branch Head Special Agent Bryan House, as well as a representative of the Raleigh Police Department, and thanked them for their work and for their service. Chairman Guy added that ALE is a valued partner of the ABC Commission.

Chairman Guy recognized Harry Riegel of Representative Chuck McGrady's office, as well as the industry members present.

Chairman Guy expressed his appreciation for the ABC Commission staff and thanked them for their work. Chairman Guy thanked IT Director Charles Metz for installing the new sound system in the meeting room. Chairman Guy recognized Deputy Director Terrance Merriweather and introduced Commissioner Norman A. Mitchell, Sr. and welcomed Pricing Director Laurie Lee, who just returned from Egypt.

MINUTES OF THE APRIL 10, 2019 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the April 10, 2019 meeting into the record. Chairman Guy seconded the motion. Motion Passed.

Commissioner Mitchell made a motion to approve the minutes of the April 10, 2019 meeting. 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 – 71

Chief Counsel Renee C. Metz stated there were two contested cases on the agenda. Mrs. Metz explained agenda case number 1, M H New Mart, was a contested case and no one was present on behalf of the permittee. Mrs. Metz stated this was Assistant Counsel Rachel Spears' case and the underlying charge was related to the possession of counterfeit goods for sale. Ms. Spears explained the case went to hearing

and the Administrative Law Judge issued a sanctions order which imposed a fine of \$500.00 to be paid by May 31, 2019 and a 5-day active suspension of the permittee's ABC permits to begin on June 7, 2019. Mrs. Metz requested the Commission approve the Administrative Law Judge's order.

Chairman Guy made a motion to follow staff's recommendation and impose the Administrative Law Judge's decision of a \$500.00 penalty and a 5-day suspension. Commissioner Mitchell seconded the motion. Motion Passed.

Mrs. Metz stated agenda case number 2, Bardo, was also a contested case and no one was present on behalf of the permittee. Mrs. Metz explained the underlying charge was for failure to file audit reports as requested. The Administrative Law Judge issued a sanctions order to cancel the permittee's Mixed Beverages Restaurant ABC permit and it is to be surrendered by May 31, 2019. Mrs. Metz requested the Commission approve the Administrative Law Judge's order.

Commissioner Mitchell made a motion to follow staff's recommendation and impose the Administrative Law Judge's decision of a cancellation of the permittee's Mixed Beverages Restaurant permit. Chairman Guy seconded the motion. Motion Passed.

As no one was present regarding a case, Mrs. Metz asked the Commission to ratify the Offers in Compromise.

Chairman Guy made a motion to ratify the remaining Offers in Compromise as shown on the NC ABC Commission May agenda. Commissioner Mitchell seconded the motion. Motion Passed.

II. ABC STORE LOCATION – BREVARD ABC BOARD

Administrator Agnes C. Stevens stated there were two proposed ABC Store locations on the May agenda. Ms. Stevens stated on March 13, 2019, the Brevard ABC Board requested approval from the NC ABC Commission to operate an ABC Store at 83 Forest Gate Drive in Pisgah Forest, North Carolina. Ms. Stevens stated on March 15, 2019, ABC Commission Audit/Investigation Division Assistant Director James Casteen contacted Brevard ABC Board General Manager Mark Balding to begin the investigation. On April 16, 2019, Mr. Casteen met with Mr. Balding to conduct the investigation with the assistance of Compliance Officer Erik Oian.

Ms. Stevens stated the proposed property is located in the Forest Gate Shopping Center, two doors down from the existing ABC Store. Ms. Stevens explained Forest Gate Shopping Center is located in Pisgah Forest off NC Highway 280 (Asheville Highway), 3 miles from downtown Brevard. The shopping center includes a Wal-Mart and a Bi Lo, as well as numerous other businesses including restaurants. Ms. Stevens stated the property is zoned Mixed Use and allows for an ABC Store.

The property is owned by S2 Forest Gate Associates, LLC. Ms. Stevens stated on April 18, 2019, Mr. Casteen confirmed there are no conflicts between the property owners and the Brevard ABC Board members. Financial disclosure forms have been provided by the Board members.

Ms. Stevens stated the nearest schools, Davidson River School, located at 970 Ecusta Road, and Pisgah Forest Elementary, located at 1160 Ecusta Road, are both located in Brevard. The two schools are adjacent to each other and are approximately 1.3 miles from the proposed location. Ms. Stevens stated the nearest churches, Turkey Creek Baptist Church, located at 805 Old NC Highway 280 and Pisgah Forest Baptist Church, located at 494 Hendersonville Highway, are both located in Pisgah Forest and are approximately .7 miles from the proposed location.

Ms. Stevens explained the nearest ABC Store is located 50 feet from the proposed location at 61 Forest Gate Drive and will be closed upon the opening of the new store. The next nearest ABC store is located at 350 North Broad Street in Brevard. It is located approximately 3.5 miles from the proposed location and is also operated by the Brevard ABC Board.

Ms. Stevens stated the notice to the public was properly posted at the location on March 26, 2019. The sign was witnessed by Mr. Oian on March 26, 2019 and he confirmed it was in compliance with ABC Commission rules. Ms. Stevens stated no objections had been received and added staff recommended approval of the proposed location.

No one was present regarding the proposed location. Commissioner Mitchell made a motion to approve the proposed location upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

III. ABC STORE LOCATION – REIDSVILLE ABC BOARD

Ms. Stevens stated on March 13, 2019, the Reidsville ABC Board requested approval from the NC ABC Commission to purchase property to open and operate an ABC Store at Lot 1 Diesel Drive in Reidsville, North Carolina.

Ms. Stevens stated on March 22, 2019, ABC Commission Audit/Investigation Division Assistant Director Edwin Strickland met with Reidsville ABC Board General Manager Jodi Langel to gather information for the investigation report.

Ms. Stevens stated the proposed property is an undeveloped lot on a newly constructed road at an exit off US Highway 29. Ms. Stevens added there are four convenience stores with ABC off-premise permits, three hotels, a fast-food restaurant, a medical care unit and an industrial park in the area.

Ms. Stevens stated the property is zoned Highway Business and allows for an ABC Store. The property is jointly owned by Rockingham County and the City of Reidsville. The members of the Reidsville ABC Board have submitted financial disclosure forms.

Ms. Stevens stated the nearest school, Community Baptist School, located at 509 Triangle Road in Reidsville, is approximately 2.2 miles away. Ms. Stevens stated the nearest church, Eastside Baptist Church, located at 1859 Barnes Street in Reidsville, is approximately .8 miles away.

Ms. Stevens stated the nearest ABC Store, located at 102 Durwood Road in Reidsville, is approximately 4.1 miles from the proposed location. It is also operated by the Reidsville ABC Board.

Ms. Stevens stated the notice to the public was properly posted at the location on March 14, 2019. The sign was witnessed on March 22, 2019 by Mr. Strickland and determined to be in compliance with ABC Commission rules. Ms. Stevens stated no objections have been received and staff recommended approval of the proposed location.

No one was present to speak regarding the proposed location. Commissioner Mitchell made a motion to approve the proposed location upon staff recommendation. Chairman Guy seconded the motion. Motion Passed.

IV. CONSIDERATION OF PROPOSAL OF PERMANENT REFUND OFFER REDEMPTION RULE REVISIONS – 14B NCAC 15B .1013

Chairman Guy stated the matter before the Commission is a consideration of the proposal of the Refund Offer Redemption Rule revisions. Chairman Guy recognized Walker Reagan, the rules coordinator, to provide an overview.

Mr. Reagan provided a draft of the rule revisions to the Commission. Mr. Reagan explained Rule 14B NCAC 15B .1013 was last amended on July 1, 1992 and defines the circumstances and processes for manufacturers of spirituous liquor to be allowed to offer refunds or rebates to purchasers of certain spirituous liquors. Mr. Reagan explained, currently a consumer may only submit a refund request form by mail. The proposed changes to this rule would allow consumers to also submit redemption forms electronically. Mr. Reagan added, other than allowing for electronic submission, the substance of this rule would remain the same.

Mr. Reagan stated, on April 18, 2019, copies of the proposed amendments were circulated to the ABC Commission's rulemaking mailing list. Since that time, one comment had been received from the NC Beer and Wine Wholesalers Association in which they indicated they did not have any objections to the proposed changes. Mr. Reagan stated their representative, Kris Gardner, was present.

Mr. Reagan stated staff recommends the Commission propose the Refund Offer Redemption Rule Revisions as presented. Mr. Reagan requested the Commission direct the proposed rule be filed with the Office of Administrative Hearings for publication in the NC Register. Mr. Reagan requested the Commission direct copies of the proposed rule be sent to persons on the ABC Rulemaking email list and be posted on the ABC Commission's website. Mr. Reagan also requested the Commission schedule a public hearing to be held at the Commission's meeting on July 10, 2019 and set a public comment period on the proposed rule to be open until August 13, 2019. Mr. Reagan also requested the Commission authorize staff to make non-substantive changes to the adopted rule as needed.

Chairman Guy asked if anyone was present who wished to make a comment regarding the proposed rule revision. No one was present to make a comment. Commissioner Mitchell made a motion for the ABC Commission propose the Refund Offer Redemption Rule Revisions as presented and the recommendations of staff regarding the rule. Chairman Guy seconded the motion. Motion Passed.

V. OTHER BUSINESS – FUTURE NC ABC COMMISSION MEETING DATES

Mrs. Metz asked the Commission to consider dates for future Commission Meetings so offers in compromise are able to be prepared. Mrs. Metz proposed the Commission consider and confirm Wednesday, July 10, 2019, Wednesday, August 14, 2019, Wednesday, September 11, 2019, Wednesday, October 9, 2019, Wednesday, November 13, 2019, and Wednesday, December 11 as the dates of the July, August, September, October, November and December 2019 NC ABC Commission Meetings.

Chairman Guy made a motion to approve those dates as future meeting dates. Commissioner Mitchell seconded the motion. Motion Passed.

VI. OTHER BUSINESS – TTB INDUSTRY CIRCULAR

Mrs. Metz stated she had one other item, not specifically for discussion, but wished to provide an update. Mrs. Metz stated producers, mostly beer producers, wish to add hemp derived products to their beer products. Mrs. Metz explained as she was not comfortable with this request, she conducted additional research on the subject, including the differences between hemp and cannabis products. Mrs. Metz stated the TTB recently issued an industry circular, 2019-1 Hemp Ingredients in Alcohol Beverage Formulas, on this topic. Mrs. Metz stated she wished to present the circular to the Commission for their consideration of the policy. Mrs. Metz added, if the Commission wished to adopt the policy, it could be added to a future Commission Meeting agenda. Chairman Guy stated the circular would be reviewed.

Ms. Stevens and Mrs. Metz both stated there was no further business and no one else was present to address the Commission. Chairman Guy thanked those in attendance and the meeting was adjourned.

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

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division