

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JUNE 12, 2019**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on June 12, 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 June 2019 ABC Commission Meeting to order and welcomed those in attendance. Chairman Guy introduced Commissioner Norman A. Mitchell, Sr. and himself, explaining they had been appointed by Governor Cooper and were proud to serve. Chairman Guy stated the Commission prides itself on customer service, adding the employees of the Commission work hard to address concerns in a timely manner, and thanked the employees.

Chairman Guy recognized Harry Riegel of Representative Chuck McGrady's office, explaining Rep. McGrady is the co-chair of the ABC Commission Committee in the House of Representatives. Chairman Guy added the Commission appreciates all the Committee does for the Commission.

MINUTES OF THE MAY 8, 2019 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the May 8, 2019 meeting into the record. Chairman Guy seconded the motion. Motion Passed.

Commissioner Mitchell made a motion to approve the minutes of the May 8, 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 – 102

Chief Counsel Renee C. Metz explained agenda case number one, X Press Mart, was a contested case which was heard in the Office of Administrative Hearings with Assistant Counsel Rachel Spears representing the ABC Commission. Mrs. Metz stated Administrative Law Judge J. Randolph Ward heard the case and found in part for the Commission and also in part for the respondent. Mrs. Metz explained the Final Decision was a \$500.00 penalty to be paid by July 5, 2019, but the suspension of permits was eliminated.

Chairman Guy made a motion to impose the Administrative Law Judge's decision of a \$500.00 penalty to be in effect as recommended by staff. Commissioner Mitchell seconded the motion. Motion Passed.

Mrs. Metz requested agenda case number 53 be continued as the Offer in Compromise required a correction.

Chairman Guy made a motion to follow staff's recommendation and continue case number 53. Commissioner Mitchell seconded the motion. Motion Passed.

Mrs. Metz stated agenda case 101 included a charge related to the sale of cigarettes. Mrs. Metz explained the ABC Commission does not regulate the sale of cigarettes and requested the Commission remove this charge from the Offer in Compromise for case 101 and the remaining offer be ratified.

Chairman Guy made a motion to remove the cigarette related charge and the offer in compromise be ratified following staff's recommendation. Commissioner Mitchell seconded the motion. Motion Passed.

Mrs. Metz stated three individuals were present on behalf of agenda cases. Mrs. Metz stated Patrik Patel was present on behalf of case number 97, Petro USA. Mrs. Metz added the case was assigned to attorney Walker Reagan, but Assistant Counsel Missy Welch would answer questions on his behalf. Mr. Patel stated he was a member of Jalaram Mart, LLC which owned the business. Mr. Patel explained he was present regarding an underage sale. Mr. Patel stated the business had taken actions since the violation, including removing the employee and the two remaining employees had taken the online training. Mr. Patel added, randomly once a month, they choose a date to check the ID of every customer regardless of their age. Mr. Patel asked for leniency regarding the \$2,000.00 penalty.

Chairman Guy asked Mrs. Welch how long they held permits. Mrs. Welch stated the business had only held permits since 2017 and confirmed she did receive copies of the training certificates. Mrs. Welch explained the penalty was in line for a first offense of this type.

Chairman Guy conferred with Commissioner Norman then explained, because this was a first violation and they had taken training, the penalty would be reduced to \$1,750.00 or the suspension. Chairman Guy encouraged Mr. Patel to stress the importance of preventing underage sales to his employees. Chairman Guy expressed the Commission's concern with underage drinking and the work of the Underage Initiative.

Mrs. Metz stated Sharif Hatoum was present on behalf of case number 85, Still Life Greenville, adding this was Mrs. Welch's case. Chairman Guy stated he had previously met Mr. Hartoum with Alan Thomas. Mr. Hartoum stated the business had received the infraction because a new manager took it upon himself to purchase beer from a Harris Teeter. Mr. Hartoum explained the new manager had purchased the beer because he was afraid they would run out. Mr. Hartoum stated two cases of beer would not make a difference as they sell thousands of beers a week. Mr. Hartoum stated Agent White, the agent who issued the citation, had sent an email to Ms. Welch regarding a dismissal of the violation. Mr. Hartoum added they used this as a training experience with the manager, and since then the manager has operated above board.

Mrs. Welch stated she did receive an email from the Agent recommending a Written Warning, but the violation had already been sent to the Commission and was on the agenda. Mrs. Welch added the penalty was in line for a first offense of this type and she had suggested Mr. Hatoum attend the meeting and address the Commission. Chairman Guy asked Mrs. Welch if she recommended a dismissal. Mrs. Welch stated she would defer to the Commission. Mrs. Welch explained the location had held permits since March 2017, approximately 20 months and the individual actually purchased four cases of malt beverages.

After conferring with Commissioner Mitchell, Chairman Guy thanked Mr. Hatoum for attending. Chairman Guy made a motion to reduce the penalty by half. Commissioner Mitchell seconded the motion. Motion Passed.

Mrs. Metz stated Glenn Lassiter was present on behalf of his client, Food Lion 1544, for agenda case number 16. Mrs. Metz added this case was assigned to Assistant Counsel Rachel Spears. Mr. Lassiter thanked the Legal Staff for their work, especially as the number of violations and permits throughout the state has grown substantially in recent years. Mr. Lassiter stated he understood this was the business' third violation for sale to underage within three years, but the lengthy 50-day suspension would really hurt the store's business. Mr. Lassiter acknowledged underage sales are an issue with some of the Food Lion stores.

Mr. Lassiter stated he wished to explain the circumstances of the violation. Mr. Lassiter stated using a new system, the ID of the underage buyer was scanned by the cashier and the ID was rejected twice. The cashier called a manager for an override. The manager scanned the ID and it was again rejected twice causing the manager to do an override allowing the sale to be made to an underage person. Mr. Lassiter explained overrides now require the manager to enter a date of birth. Mr. Lassiter stated the date was entered improperly, but the system has since been adjusted to help prevent an incorrect entry. Mr. Lassiter stated he believed scanning IDs was not enough and people still need to check the IDs. Mr. Lassiter asked for some kind of mercy regarding the penalty, stating Food Lion was willing to do what the Commission required. Mr. Lassiter explained additional training was already provided to employees through internal training, not ALE training.

Chairman Guy conferred with Commissioner Mitchell then stated stopping underage sales is very important to the Commission. Chairman Guy explained, with the problems the store has had in the past, the \$5,000.00 penalty would stand and an offer in compromise for a \$1,000.00 penalty for a failure to supervise violation would be added instead of the suspension of the permits.

As no one else was present regarding a case, Mrs. Metz 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 – PITT COUNTY ABC BOARD – 260 EASY STREET, GREENVILLE, NC

Chairman Guy recognized Administrator Agnes C. Stevens and the Administrator of the Pitt County ABC Board, Teresa Campbell. Ms. Stevens stated the Pitt County ABC Board had submitted approval requests

for two proposed ABC Store locations. Ms. Stevens stated on May 1, 2019, the Pitt County ABC Board requested approval from the NC ABC Commission to operate an ABC Store at 260 Easy Street in Greenville, North Carolina. Ms. Stevens explained this proposed store would replace the existing store in Bethel, North Carolina which would be closed upon the opening of the new store.

Ms. Stevens stated the property is zoned Heavy Commercial and allows for an ABC Store. The property is currently owned by Greenfield North Plaza, LLC. On May 23, 2019, ABC Commission Audit/Investigation Division Assistant Director James Casteen and Compliance Officer Jason Daughtry began the investigation. Mr. Casteen confirmed with the real estate agent there were no shared financial interests between the property owners and the Pitt County ABC Board members. Financial disclosure forms have been provided by the Board members.

Ms. Stevens stated the nearest school, Welcome Middle School, is located at 3101 North Memorial Drive in Greenville approximately 1.3 miles from the proposed location. Ms. Stevens stated the nearest church, Kingdom Hall of Jehovah's Witnesses, is located at 400 Staton House Road in Greenville approximately .5 miles from the proposed location. Ms. Stevens explained the nearest ABC Store, located at 2305 South Memorial Drive in Greenville, is approximately 4.4 miles from the proposed location and is operated by the Pitt County ABC Board.

Ms. Stevens stated the notice to the public was properly posted at the location on April 29, 2019. The sign was witnessed by Mr. Casteen on May 7, 2019 and he confirmed it was in compliance with ABC Commission rules. Ms. Stevens stated the Pitt County ABC Board had received one objection regarding the proposed store referring to the location as a quiet community. Ms. Stevens added staff recommended approval of the proposed location.

Chairman Guy asked if any additional objections had been received and Ms. Stevens stated none had been received. Chairman Guy asked Ms. Campbell, as the existing store was underperforming were they concerned with the new location and the projected \$200,000.00 in sales. Ms. Campbell stated the bypass had greatly affected the Bethel location. Ms. Campbell explained the new location would be in a shopping center which includes a Food Lion, so the traffic would increase.

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

III. ABC STORE LOCATION – PITT COUNTY ABC BOARD – 3136 EAST TENTH STREET, GREENVILLE, NC

Ms. Stevens stated on May 1, 2019, the Pitt County ABC Board requested approval from the NC ABC Commission to operate an ABC Store at 3136 East 10th Street in Greenville, North Carolina. Ms. Stevens stated on May 6, 2019, Mr. Casteen contacted Ms. Campbell to begin the investigation. On May 7, 2019, Mr. Casteen and Mr. Daughtry met with Ms. Campbell, who informed them the store would replace an existing store located around the corner.

Ms. Stevens stated the property is zoned General Commercial and allows for an ABC Store. The property is owned by Greenville Marketplace, LLC. There are no shared interests with the members of the Pitt County ABC Board and they have submitted financial disclosure forms.

Ms. Stevens stated the nearest school, Trinity Christian School, located at 3111 Greenville Boulevard in Greenville, is approximately .6 miles from the proposed location. Ms. Stevens stated the nearest church,

Trinity Free Will Baptist Church, is also located at 3111 Greenville Boulevard and is approximately .6 miles away.

Ms. Stevens stated the nearest ABC Store, located at 3196 East 10th Street, is approximately 800 feet from the proposed location and will be closed upon its opening. The next nearest ABC Store, located at 2305 South Memorial Drive in Greenville, is approximately 4.2 miles from the proposed location and is also operated by the Pitt County ABC Board.

Ms. Stevens stated the notice to the public was properly posted at the location on April 29, 2019. The sign was witnessed on May 7, 2019 by Mr. Casteen 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.

Chairman Guy questioned Ms. Campbell about the loading dock which had been found to be an incorrect height. Ms. Campbell stated the Board had not yet consulted with LB&B about the height requirements for deliveries, but intended to do so.

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

IV. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – JOSHUA W. PATTON, TRIUMPH COCKTAILS, LLC AND WOODEN ROBOT BREWERY, LLC

Mrs. Metz explained Joshua Patton is a Manager and CEO of Wooden Robot Brewery and is also a 50% owner of WR Managers, LLC which is the 52% owner of Wooden Robot Brewery. Mr. Patton is also a 50% owner of Triumph Cocktails which does not currently hold ABC permits, but intends to apply for retail permits.

Mrs. Metz explained exemptions have become simpler since House Bill 363 was signed by Governor Cooper at the end of May. It prohibits the sale of a brewery's products by a retail business under a different ownership with shared financial interests. Mrs. Metz explained this exemption is to allow the joint ownership, but Wooden Robot Brewery Products cannot be sold by Triumph Cocktails once it receives ABC retail permits Mrs. Metz stated their attorney is in agreement with this and staff recommends approval of the exemption.

As no one was present to comment on the exemption request, Commissioner Mitchell made a motion to follow staff's recommendation and approve the exemption request. Chairman Guy seconded the motion. Motion Passed.

V. PUBLIC HEARING ON PROPOSED PERMANENT GENERAL RULES REVIEW – CHAPTER 15A SECTIONS .0100 THROUGH .0800 RULES – ABC COMMISSION GOVERNANCE

Walker Reagan, the rules coordinator was not present, so upon opening the public hearing, Chairman Guy recognized Mrs. Metz to provide an overview. Mrs. Metz provided drafts of the proposed rules to the Commission. Mrs. Metz explained on March 13, 2019, the ABC Commission proposed the permanent Commission Operations General Rules Review rules. Mrs. Metz stated the proposed rules; the notice of public hearing; and, notice of public written comment period were filed with the Office of Administrative

Hearings on March 21, 2019 and were published in the NC Register on April 15, 2019. Mrs. Metz stated copies of the notice of text and the proposed rules were posted on the ABC Commission website and emailed to the ABC Commission rulemaking mailing list on March 27, 2019.

Mrs. Metz stated the public hearing was properly noticed for June 12, 2019 at 10:00 a.m. and the public comment period was noticed to be open through June 14, 2019. Mrs. Metz explained the statutory time period after publication for the public hearing of at least 15 days had been complied with. Mrs. Metz stated no written comments have been received since the proposed rules were published. Mrs. Metz explained, as the public comment period runs through June 14, 2019, the Commission could not consider the adoption of the rule during the June meeting, but would be able to do so at its July 2019 meeting.

Chairman Guy asked if there was anyone present who wished to address the Commission regarding the proposed rule. As no one was present, Chairman Guy closed the public hearing and restated the public comment period does not close until June 14, 2019.

VI. CONSIDERATION OF PROPOSAL OF PERMANENT GENERAL RULES REVIEW – CHAPTER 15A, SECTIONS .0900 THROUGH .1400 RULES – LOCAL ABC BOARD ADMINISTRATION

Chairman Guy stated the matter before the Commission is a consideration of the proposal of the Local Board Administration Rule Amendments. Chairman Guy recognized Mrs. Metz to provide an overview.

Mrs. Metz provided drafts of the rule revisions to the Commission. Mrs. Metz explained, in 2017, the Commission legal staff began a comprehensive review of the ABC Commission's rules for the purposes of updating, modernizing and conforming the Commission's rules to the operations of the ABC Commission. Many of these rules had not been amended since 1984, and some not since 1982. Mrs. Metz explained the proposed amendments to the rules in Chapter 15A, Section .0900 through .1400 presented were the second set of proposed changes arising from the review.

Mrs. Metz explained most of the proposed changes were technical, clarifying or conforming to current law or Commission policy or practice. None of the proposed changes made any significant substantive changes to the current rules.

Mrs. Metz stated the three most significant proposed changes were the clarification of when local board rules are deemed approved by the Commission; the local boards are responsible for the costs of required audits and examinations of records; and, the increase in required advance notice to the Commission of a new store request by a local board. Mrs. Metz explained the proposed changes to 15A .1102 specify local board rules become effective 15 days after notice is given to the Commission unless the Commission disapproves the rules or notifies the local board that the Commission has delayed the effective date of the local rules until a later time. The proposed changes to 15A .1103 clarify that the local board will bear the cost of being audited or examined as required by law. The proposed changes to 15A .1203 will require a local board to give 45 (instead of 30) days notice to the Commission when seeking approval to open a new ABC store.

Mrs. Metz added copies of the proposed amendments were circulated to the ABC Commission rulemaking mailing list on April 22, 2019, and since that time, only one question and no comments had been received.

Mrs. Metz stated staff recommends the Commission propose the Local Board Administration Rule Amendments as presented. Mrs. Metz recommended the Commission direct the proposed rules be filed with the Office of Administrative Hearings for publication in the NC Register. Mrs. Metz recommended the Commission direct copies of the proposed rules be sent to persons on the ABC Rulemaking email list and be posted on the ABC Commission's website. Mrs. Metz also recommended the Commission schedule a public hearing to be held at the Commission's meeting on September 11, 2019 and set a public comment period on the proposed rules to be open until September 13, 2019. Mrs. Metz also recommended the Commission authorize staff to make non-substantive changes to the proposed rules as needed.

Commissioner Mitchell made a motion that the ABC Commission propose the Local Board Administration Rule Amendments as presented and the recommendations of staff regarding the rules. Chairman Guy seconded the motion. Motion Passed.

VII. OTHER BUSINESS – TTB INDUSTRY CIRCULAR

Mrs. Metz stated at the May 2019 Commission Meeting the recently issued TTB industry circular, 2019-1 Hemp Ingredients in Alcohol Beverage Formulas was presented to the Commission. Mrs. Metz had asked the Commission to consider adopting this policy as the ABC Commission policy pending further guidance from the NC Department of Agriculture.

Mrs. Metz explained in December 2018 the Federal Government passed the Farm Bill which excluded "hemp" from the definition of Controlled Substance Act. Mrs. Metz added the TTB, the Federal equivalent of the ABC Commission, is in the process of updating its guidance. Even if an ingredient derived from cannabis is not a controlled substance; because it meets the new definition of hemp, the TTB will continue to consult with the USFDA because of their rules regarding adding hemp to food products. Mrs. Metz explained the TTB has determined, at this time, it will return for correction any applications for formulas containing hemp ingredients other than ingredients derived from hemp seeds or hemp seed oil. In the interim, TTB has noted alcohol products including hemp ingredients, including alcohol beverages sold exclusively in intrastate commerce, continue to require formula approval under TTB regulations.

Mrs. Metz explained if the Commission adopted this policy, anything containing any ingredient derived from hemp seed or hemp seed oil must be approved by the TTB, and then could be submitted to the NC ABC Commission for approval for sale in North Carolina. Mrs. Metz stated, hopefully, this year there will be additional guidance provided by the North Carolina Department of Agriculture and the TTB.

Chairman Guy stated Deputy Administrator Terrance Merriweather, the former ALE Branch Head, had reached out to the current Branch Head Agent House, but has not received a response. Mrs. Metz confirmed a response has not yet been received.

Mrs. Metz explained the Commission had put a hold on any products with added hemp ingredients. Mrs. Metz stated the recommendation was the Commission be allowed to approve products which have already been approved by the TTB, based on its analyses of the ingredients derived from hemp seed and hemp seed oil. Mrs. Metz added the labels would still be subject to the Commission's label approval process, but the addition of ingredients derived from hemp seed or hemp seed oil would not prohibit approval.

Chairman Guy stated this policy would be in place, even if on a temporary basis, until the General Assembly enacted a policy. Commissioner Mitchell made a motion to approve the recommendation of the staff until there is a General Assembly decision. Chairman Guy seconded the motion. Motion Passed.

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, as well as the legal staff, 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