

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
AUGUST 14, 2019**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on August 14, 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 August 2019 ABC Commission Meeting to order and welcomed those in attendance. Chairman Guy thanked the employees of the NC ABC Commission for the customer service they provide. Chairman Guy recognized the staff members who were present. Chairman Guy also recognized Alcohol Law Enforcement and the acting Director Bryan House, for the fine job they do as the enforcement arm for alcohol laws.

Chairman Guy thanked everyone for attending the meeting and introduced Commissioner Norman A. Mitchell, Sr. and Administrator Agnes C. Stevens. Chairman Guy also acknowledged the Legal Division team.

MINUTES OF THE JULY 10, 2019 COMMISSION MEETING

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

Commissioner Mitchell made a motion to approve the minutes of the July 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 – 70

Chief Counsel Renee C. Metz requested the Commission remove four cases from the August agenda. Mrs. Metz stated case number 27 should be removed as the permittee is no longer in business and the permits have been cancelled. Mrs. Metz requested case numbers 24, 56, and 64 be removed so they may be added to a future agenda. Mrs. Metz explained they may have received an additional violation and wish to negotiate the penalties together.

Chairman Guy made a motion to remove case numbers 27, 24, 56 and 64 from the July Commission Meeting agenda. Commissioner Mitchell seconded the motion. Motion Passed.

Mrs. Metz stated Mark Bateman was present on behalf of the permittee for agenda case number 57, Hot Tin Roof and this was Attorney Missy Welch's case. Mr. Bateman stated he acknowledges they were in the wrong and wished to ask for leniency regarding the fine and some help regarding the private club rules.

Mr. Bateman explained he was not present, but Alcohol Law Enforcement Agents questioned some older patrons of the bar who did not understand the questions regarding membership and did not remember signing up for memberships. Mr. Bateman stated the business understood they needed to be more open regarding the membership information and the bartenders needed to be able to access the books when asked for them. He stated they are asking for leniency because they do try to follow the rules. Mr. Bateman again expressed his desire for more clarification regarding the private club laws and inquired about the necessity for them.

Chairman Guy explained the General Assembly makes the laws; however, the ABC Commission can help educate his business with additional training. Chairman Guy stated Ms. Stevens could assist Mr. Bateman in contacting staff for training.

Chairman Guy stated the business had held permits since 2018 without any prior violations and made a motion to reduce the penalty by half to \$500.00. Commissioner Mitchell seconded the motion. Motion Passed.

Mr. Bateman thanked the Commission and Jennifer Temple of the Legal Division staff for her assistance.

Mrs. Metz stated two additional permittees were present to address the Commission. The first was case number 12, Rite Stop and Abdo Mossaid Ali and Kelly Raymond were present on behalf of the business. Ms. Raymond stated an employee sold to an underage individual. Ms. Raymond explained they had been cited for this violation before and the business complied and paid the fine. Ms. Raymond stated they were asking for leniency because the penalty was higher for this violation and business was slower. Ms. Raymond stated they were present to ask for a compromise.

Chairman Guy explained this was the third violation within three years, 2017, 2018 and 2019, and the Commission takes sales to underage persons very seriously, so they cannot offer leniency and reduce the penalty. Chairman Guy explained the resulting penalty for their third violation was the 15-day active suspension and fine. Chairman Guy asked if they would like to pay a higher fine without a suspension. Mr. Ali stated he would pay a higher fine.

Chairman Guy and Commissioner Mitchell consulted with attorney Walker Reagan. Mr. Reagan recommended the Commission waive the 15-day suspension and add a violation for failure to supervise with an additional \$2,000.00 fine.

Chairman Guy made a motion to follow staff's recommendation to increase the penalty total to \$7,000.00. Commissioner Mitchell seconded the motion. Motion Passed. Chairman Guy stated Mr. Ali and his business must do better and added the penalty funds would also go to the local Board of Education.

Mrs. Metz stated the permittee for case number 58, Howard's Mini Mart was also present. Fahad Ahmed was present on behalf of his business. Mr. Ahmed stated the business had received a 15-day suspension and a \$5,000.00 fine and requested the penalty be lowered so he could make a living.

Chairman Guy stated he understood owning a business, but this business had received additional violations for Underage Sales in 2018 and 2017 with the third in 2019. Chairman Guy explained the ABC Commission created the Underage Initiative because it takes underage sales very seriously. Chairman

Guy added the penalty could not be reduced. Chairman Guy requested Mrs. Welch and Mrs. Metz come forward for a consultation.

Mrs. Welch recommended the Commission waive the 15-day suspension and add a \$2,000.00 fine for failure to superintend. Chairman Guy made a motion for the total fine of \$7,000.00 without an active suspension. Commissioner Mitchell seconded the motion. Motion Passed.

Chairman Guy stated the business needs to do much better regarding underage sales. Mr. Ahmed stated the business wants to stop both underage smoking and drinking. He explained he was formerly a college professor and would not want his underage daughter to do either. Mr. Ahmed added employees are difficult to find and even though he tells them not to make the sales, they continue to sell to underage people. Mr. Ahmed stated he wants employees to face a fine, even if it is a token \$100.00 or \$200.00 fine. Mr. Ahmed explained they don't make much money, so maybe then they would stop making the underage sales. Mr. Ahmed added if everybody paid and if the employees had consequences, they would stop doing whatever they wanted to do.

Chairman Guy explained, as the permit holder, Mr. Ahmed is responsible for the actions of his employees and he should provide training to the employees. Mrs. Metz explained she did not know the particulars of this case, but the employees making underage sales are usually criminally cited. Chairman Guy asked ALE Special Agent Bryan House to speak with the permittee to explain the consequences of the employees.

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

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

II. LABEL REJECTION APPEAL – POLYGAMY BEER

Ms. Stevens stated the next matter was an appeal of the ABC Commission's decision to reject a label for Polygamy Beer which had been submitted to the Commission for its approval for use in the state of North Carolina. Ms. Stevens explained on May 28, 2019, staff reviewed a label approval request for Polygamy Beer. Ms. Stevens stated, based upon the authority granted to the Commission in the North Carolina Administrative Code 14B NCAC 15B .1003 Prohibited Statements in Advertising or On Labels, Commission staff rejected the label as "Polygamy is illegal. Therefore these products will not be approved."

Ms. Stevens cited a section of this Rule, (a) General Restrictions. "An advertisement or product label on any alcoholic product sold or distributed in this State shall not contain any statement, design, or representation that: . . . (2) depicts the use of alcoholic beverages in a scene that is determined by the Commission to be undignified, immodest, or in bad taste." Ms. Stevens explained something that is illegal would fall into this category.

Ms. Stevens stated the Commission staff continues to recommend the rejection of this label.

Katherine Froelicher of CANarchy and John Lee of the Utah Brewer's Cooperative, the manufacturer of Polygamy Beer were present. Ms. Froelicher provided binders with some background documents to the Commission. Ms. Froelicher stated they appreciated the Commission's time and explained they believe

the label falls in with other previously approved labels. Ms. Froelicher stated she believed the standard in question was overly broad and this affected their First Amendment right of freedom of speech.

Ms. Froelicher added it was hard to pin down what the Commission determines to be undignified, immodest or in bad taste. Ms. Froelicher requested the Commission reconsider approval of the label.

Mr. Lee stated he appreciated the opportunity to address the Commission. Mr. Lee explained the name Polygamy Beer referenced the history of the state of Utah. Mr. Lee stated this was the first governmental pushback they have received regarding this label; explaining since 2001, the product has been sold in nineteen states and internationally. Mr. Lee stated the rejection caught them off-guard.

Commissioner Mitchell requested Ms. Stevens reread the Rule defining Prohibited Statements. Ms. Stevens stated in Rule 15B .1003 Prohibited Statements in Advertising or on Labels there are seven itemized restrictions. Ms. Stevens read, “An advertisement or product label on any alcoholic product sold or distributed in this State shall not contain any statement, design, device, or representation that: (2) depicts the use of alcoholic beverages in a scene that is determined by the Commission to be undignified, immodest, or in bad taste.”

Ms. Froelicher stated there were examples of other labels in the binders she provided and reiterated the rejection was a potential First Amendment issue. Mr. Lee stated the rejection of the label stated polygamy was illegal. He stated in their research, they could not find anything in the State’s laws saying it was illegal.

Chairman Guy and Commissioner Mitchell conferred. Chairman Guy thanked Ms. Froelicher and Mr. Lee for attending the Commission meeting.

Commissioner Mitchell made a motion to uphold the staff’s rejection of the label approval. Chairman Guy stated though they were not overturning the rejection of the label, the Commission appreciated their attendance and would always welcome anyone to voice their opinion. Chairman Guy seconded the motion. Motion Passed.

III. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – FOOTHILLS DISTILLERY, LLC; CHAROLAIS STEAKHOUSE, INC. AND ZACKARY CHARLES CRANFORD

Attorney Jennifer Morgan was present on behalf of Foothills Distillery and Zack Cranford and an exemption request to allow partial ownership in a restaurant. Mrs. Morgan explained Mr. Cranford owns 100% of Foothills Distillery located in Conover, North Carolina. Mrs. Morgan explained Mr. Cranford also has a partial ownership interest in Standard Oyster Bar restaurant, pursuant to an exemption granted by the Commission in May 2017. Mrs. Morgan stated this exemption request was to allow Mr. Cranford’s 30% ownership of Charolais Steakhouse, located in Hickory, North Carolina which will apply for retail ABC permits.

Mrs. Morgan explained this is a standard exemption request as an independent manager will be hired at the restaurant to handle the ordering and purchasing of all alcoholic beverages, including spirituous liquor ordered through the ABC Board. Mrs. Morgan stated there will also be a competitive selection of bourbons and other products.

Mrs. Metz stated staff recommends approval of the exemption request. Chairman Guy made a motion to approve the exemption request. Commissioner Mitchell seconded the motion. Motion Passed.

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

Chairman Guy stated the matter before the Commission is a consideration of the Adoption of the Permanent Refund Offer Redemption Revisions Rule. Chairman Guy recognized Walker Reagan, the rules coordinator, to provide an overview. Mr. Reagan provided drafts of the proposed rule to the Commission.

Mr. Reagan explained on May 8, 2019, the ABC Commission proposed the permanent Refund Offer Redemption Revisions rule. Mr. Reagan stated the proposed rule, the notice of public hearing, and notice of public written comment period were filed with the Office of Administrative Hearings on May 8, 2019 and were published in the NC Register on June 3, 2019. Mr. Reagan stated copies of the notice of text and proposed rule were posted on the ABC Commission website and emailed to the ABC Commission rulemaking mailing list on May 8, 2019.

Mr. Reagan stated the public hearing was properly noticed and held on July 10, 2019 at 10:00 a.m. and the public comment period was noticed to end on August 13, 2019. Mr. Reagan explained the statutory time periods after publication for holding the public hearing of at least 15 days and the receiving of written comments of at least 60 days have been complied with. Mr. Reagan stated no comments were received at the public hearing and no written comments had been received since the proposed rule was published.

Mr. Reagan explained, Commission staff had requested the Rules Review Commission staff review the rule for technical changes. Mr. Reagan stated the changes recommended by the Rules Review Commission staff have been incorporated in the version of the rule presented. Mr. Reagan added the changes made were technical and non-substantive. Mr. Reagan stated the Commission may now consider adopting the rule.

Mr. Reagan stated staff recommends the Commission adopt the Permanent Refund Offer Redemption Revisions rule as published in the NC Register with the technical changes as presented. Mr. Reagan recommended the Commission direct the rule be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and publication in the NC Administrative Code. Mr. Reagan also recommended the Commission authorize staff to make non-substantive changes to the adopted rule as needed.

Commissioner Mitchell made a motion that the Commission adopt the Permanent Refund Offer Redemption Revisions Rule as published in the NC Register, with the changes after publication as presented and the recommendations of the staff regarding the rule. Chairman Guy seconded the motion. Motion Passed.

V. CONSIDERATION OF PROPOSAL OF PERMANENT INCREASE MAXIMUM RETAIL DISCOUNT RULE – 14B NCAC 15B .1004

Chairman Guy stated the next matter before the Commission is consideration of the proposal of the Increase Maximum Retail Discount Rule. Chairman Guy recognized Mr. Reagan to provide an overview.

Mr. Reagan provided drafts of the rule to the Commission. Mr. Reagan explained earlier this summer, the General Assembly enacted Section 11 of S.L. 2019-182 directing the ABC Commission to increase the allowable discounts a retail permittee can offer on beer or wine through the use of a coupon, rebate, loyalty card, discount card or membership card from 25% to 35% effective September 1, 2019. Mr.

Reagan stated the law directed the ABC Commission to amend Rule 14B NCAC 15B .1004(b) to change the maximum allowable discount from 25% to 35%, and to adopt the rule amendments by September 1, 2019. Mr. Reagan explained the session law effecting the change will remain in effect until the rule effecting the change adopted by the ABC Commission becomes effective.

Mr. Reagan stated staff recommends the Commission propose the Increase Maximum Retail Discount Rule as presented and direct that it is filed with the Office of Administrative Hearings for publication in the NC Register. Mr. Reagan stated staff recommended copies of the proposed permanent rule be sent to persons on the ABC Rulemaking emailing list and be posted on the ABC Commission's website. Mr. Reagan stated staff also recommended the Commission schedule a public hearing on the proposed permanent rule be held at the Commission's meeting on November 13, 2019 and set a public comment period to be open until November 15, 2019. Mr. Reagan also recommended the Commission authorize staff to make non-substantive changes to the proposed rule as needed.

Commissioner Mitchell made a motion that the Commission propose the Increase Maximum Retail Discount Rule as presented and the recommendations of the staff regarding the rule. Chairman Guy seconded the motion. Motion Passed.

VI. RECONSIDERATION AND WITHDRAWAL OF CERTAIN PERMANENT COMMISSION OPERATIONS RULES

Chairman Guy stated the next matter before the Commission is a reconsideration and withdrawal of certain Commission Operations Rules adopted the previous month. Chairman Guy recognized Mr. Reagan to provide an overview.

Mr. Reagan provided drafts of the rules to the Commission. Mr. Reagan explained on July 10, 2019, the ABC Commission adopted the permanent Commission Operations General Rules Review rules. Mr. Reagan stated the rules were filed with the Office of Administrative Hearings for review and approval by the Rules Review Commission.

Mr. Reagan explained as part of the Rules Review Commission review, the Rules Review Commission legal staff issues a Request for Technical Changes on certain rule drafting criteria set forth in Chapter 150B, the Administrative Procedures Act. Mr. Reagan continued stating, based on the submitting agency's response to the Request for Technical Changes, the Rules Review Commission legal staff makes recommendations as to whether adopted rules comply with Chapter 150B and whether the Rules Review Commission should approve the rules.

Mr. Reagan stated during the Request for Technical Changes review process, the Rules Review Commission staff raised questions regarding six rules, 14B NCAC 15A .0201-.0204, .0601 and .0602, adopted in July, as to whether they were necessary. This is based either on the fact the provisions of the rule existed in statute and therefore, were repetitive in violation of the Administrative Procedures Act, or dealt only with internal operations of the ABC Commission and did not apply to the regulated public which would also violate the Administrative Procedures Act

Mr. Reagan explained, after further review, the ABC Commission staff concurred with the Rules Review Commission staff's analysis and believed the rules should be further reviewed by the ABC Commission for possible future action.

Mr. Reagan stated staff recommends the Commission reconsider the vote by which certain Commission Operations Rule Amendments, namely 14B NCAC .0201 through .0204, .0601 and .0602 were adopted.

Mr. Reagan stated staff recommends the Commission withdraw these rules from consideration of approval by the Rules Review Commission and direct the Rules Review Commission be notified of this action. Mr. Reagan stated staff also recommends the Commission direct staff to review these rules in light of the Rules Review Commission's opinion and make recommendations to the Commission regarding any further action on these rules which might be needed.

Commissioner Mitchell made a motion the ABC Commission reconsider the vote by which the Commission adopted certain Permanent Commission Operations Rules, namely 14B NCAC .0201 through .0204, .0601 and .0602 as adopted at the July 2019 Commission Meeting. Chairman Guy seconded the motion. Motion Passed.

Commissioner Mitchell made a motion the ABC Commission withdraw from consideration for approval by the Rules Review Commission certain Permanent Commission Operations Rules, namely 14B NCAC .0201 through .0204, .0601 and .0602 as adopted at the July 2019 Commission Meeting and that the Rules Review Commission be so notified. Chairman Guy seconded the motion. Motion Passed.

VII. OTHER BUSINESS –

Mrs. Metz and Ms. Stevens each stated they had no further business.

Chairman Guy thanked those in attendance, as well as the staff. Chairman Guy stated life was about relationships and though permittees appeared before the Commission and fines were imposed, the Commission's duty was to protect the citizens of North Carolina. Chairman Guy also stressed the importance of the Commission's relationships with industry members, including Jason Lemansky and Steve Faltz, as well as Richard Greene of the North Carolina Craft Brewers Guild.

Mrs. Metz introduced attorney Stacy Carter Coley who is assisting the Legal Division. Mrs. Metz welcomed Ms. Coley to the Legal Division.

Chairman Guy also recognized Harry Reigel, formerly with the staff of a member of the General Assembly, as a contractor assisting with alcohol policy for six months.

As no one else was present to address the Commission, Commissioner Mitchell made a motion to adjourn. Chairman Guy seconded the motion 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