

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 11, 2019**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on September 11, 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 September 2019 ABC Commission Meeting to order and welcomed those in attendance.

Chairman Guy stated in remembrance of the lives lost on September 11th, Vickee' Armstrong the General Manager of the Greensboro ABC Board, would honor them with the singing of the National Anthem. Ms. Armstrong provided a beautiful, moving rendition of the Star Spangled Banner.

Chairman Guy introduced the newly appointed Commissioner, Karen Stout. Commissioner Stout is originally from Charlotte with many years of executive management experience with Fresh Market. Commissioner Stout also served on the Greensboro ABC Board. Representatives from the Greensboro ABC Board were in attendance in support of Commissioner Stout. Ms. Armstrong introduced attorney Rick Pinto, the Board's Legal Counsel Michael Fox, and the Assistant General Manager, Timothy Johnson. Chairman Guy added Mr. Fox is also the chairman of the NC Board of Transportation and recognized his public service. Chairman Guy thanked them for attending and stated he looked forward to working with Commissioner Stout.

Chairman Guy stated he was proud of the ABC Commission employees and explained they were making changes and innovations for better customer service. Chairman Guy also recognized Kat Haney, who served as the Public Affairs Officer during two administrations, as she would be leaving the ABC Commission.

Chairman Guy stated he was also proud of the ABC Board General Managers and recognized Larry Etheridge of the Wilson County ABC Board and Matt Williams of the Chatham County ABC Board, as well as Barry Lee of LB&B.

Chairman Guy also recognized many industry members who were present and thanked them for taking the time to attend.

Chairman Guy introduced Commissioner Norman A. Mitchell, Sr. and thanked the ABC Commission legal staff.

MINUTES OF THE AUGUST 14, 2019 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the August 14, 2019 meeting into the record. Commissioner Stout seconded the motion. Motion Passed.

Commissioner Mitchell made a motion to approve the minutes of the August 14, 2019 meeting. Commissioner Stout 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. Commissioner Stout stated she 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 – 80

Chief Counsel Renee C. Metz stated the permittee for agenda case number 48, Tienda Latina El Paso, was present with his son for assistance with translation. Atilano Cardenas Hernandez through his son, Sebastian Cardenas, explained he was present to ask for a reduction of the fine and the suspension of beer sales. Mr. Cardenas prescriptions and a pharmacy license to sell. Assistant Counsel Rachel Spears explained during the inspection, the agent found three products in boxes, which were labeled in Spanish as requiring a prescription and must be dispensed by a pharmacist.

Chairman Guy stated the business had only held permits since June 2019. Ms. Spears explained the business had been on a temporary permit at the time of the violation. Chairman Guy asked what drugs had been found. Ms. Spears stated 600 mg Ibuprofen, 500 mg Ampicillin and 500 mg Tetraciclina MK, a total of three boxes.

Chairman Guy asked what type of business they were operating. Mr. Cardenas explained it was a small grocery store specializing in Latin American products. Mr. Cardenas added the boxes were included in a shipment and they did not know they required prescriptions.

Chairman Guy asked if they questioned their supplier. Mr. Cardenas explained the supplier left and the order was not checked before he left. Chairman asked if after the order was checked, the products were put on a shelf. Mr. Cardenas stated they were not on a shelf, but behind the cash register.

Chairman Guy asked if the drugs had been found during an inspection or had they been reported. Ms. Spears stated they had been found on a shelf during an inspection and they had been seized by the ALE agent as evidence.

Chairman Guy thanked them for attending the meeting and explaining, but stated the fine had in essence already been reduced and the Offer In Compromise had been signed. Chairman Guy stated the Commission would accept ALE's recommendation and the Offer in Compromise and the penalty would not be reduced. He advised them to be more cautious in the future.

Mrs. Metz stated the permittee for case number 19, D and T Mini Mart, Anil Patel was present, adding this was also Ms. Spears' case.

Mr. Patel stated the violation was for an underage sale because an employee sold beer to an underage person during an ALE check. Mr. Patel stated he spoke with Ms. Spears as they had had a previous

violation. Mr. Patel stated the employee's case had been dismissed and he had talked to ALE. Mr. Patel stated the fine is too steep and asked for a reduction.

Chairman Guy stated the record shows the business has received four violations for underage sales, with three in 2016 and 2017. Chairman Guy explained the 7-day suspension with the \$5,000.00 fine could be adjusted by adding a failure to supervise violation with an additional \$2,000.00 fine. This additional fine would allow the 7-day suspension to be eliminated and the business would be able to continue sales.

Mr. Patel stated the employee had been dismissed and he is doing everything he can.

Chairman Guy explained, as Mr. Patel is the permittee, he is responsible and asked if he wished to add the failure to supervise violation.

Mr. Patel asked if there were any other options and if he could appeal. Mrs. Metz explained he could file an appeal and the case would go to hearing before an administrative law judge at the Office of Administrative Hearings. Mrs. Metz stated Ms. Spears would likely ask for a suspension and a penalty.

Mr. Patel asked if this would be the same penalty. Mrs. Metz explained the maximum fine allowed at the hearing would be \$1,000.00, but a suspension of 60 days would be requested.

Mr. Patel asked why the fine was \$5,000.00. Mrs. Metz explained this was the third offense within a three-year period. Mrs. Metz added the fine for a first offense is \$2,000.00, the second \$3,500.00 and the third is \$5,000.00. Mrs. Metz explained the fine is capped at \$5,000.00 by statute.

Mr. Patel asked why the employee's case was dismissed. Mrs. Metz explained the employee received criminal charges and those were managed by the local district attorney. The district attorney may have dismissed the charges through a first offenders' program, including training, community service and fees.

Mr. Patel asked if training helped. Chairman Guy stated it would help them for the future, but this underage sale is very serious. Mr. Patel stated the sale was out of his hands and the employees worked for him. Chairman Guy explained it is his responsibility and again asked Mr. Patel if he wished to take the additional fine or pay the \$5,000.00 with the 7-day suspension. Mr. Patel stated he would pay the additional fine with no suspension.

Commissioner Mitchell made a motion to impose the \$5,000 fine and add an additional fine of \$2,000.00 for failure to supervise. Commissioner Stout seconded the motion. Motion Passed.

Mrs. Metz stated John Bowman was present regarding case number 12, Bowbarr. Mr. Bowman asked for a reduction of the fine as this was the business' first violation in ten years.

Chairman Guy asked what steps have been taken to ensure the underage sale would not occur again and inquired as to the number of employees. Mr. Bowman stated there were five employees and they had taken the ALE training. Mr. Bowman added Ms. Spears had reduced the fine because of the training. Ms. Spears stated she had received a copy of the certificate as confirmation of training, but cannot confirm if it was for all employees. Mr. Bowman stated all the employees had signed the roster.

Chairman Guy inquired about employee turnover. Mr. Bowman stated this violation had occurred because the 55-year old doorman who had been with them for two years allowed the underage person to enter. This resulted in the underage sale and the waitress was charged. Mr. Bowman stated ALE had caught them off guard.

After conferring with the Commissioners, Chairman Guy confirmed they had held permits since 2010 and this was the first violation. Chairman Guy made a motion to reduce the fine to \$1,000.00. The motion was seconded by Commissioner Mitchell. Motion Passed.

Mrs. Metz stated attorney Woody Webb was present on behalf of his clients for case numbers 17 and 57. Mr. Webb stated case number 17, Circle K 2720386, was the location's fourth violation within three years. Mr. Webb explained he had been before the Commission at the April 2019 Commission Meeting regarding this location. Mr. Webb explained the employees had received training through John Ruth of the Commission's Education Outreach in addition to their in-house training.

Mr. Webb stated the corporation has more than 350 stores and only a few receive an additional violation within a short time after training. Mr. Webb explained this violation occurred prior to the April Commission Meeting in December. Mr. Webb stated in April they took the failure to supervise penalty in addition to the violation penalty to avoid suspension. Mr. Webb stated the employee was terminated and they have enacted a more stringent carding policy. Mr. Webb requested another fine rather than serving the 10-day suspension.

Chairman Guy conferred with the Commissioners and made a motion to eliminate the suspension and add the failure to supervise violation with an additional \$2,000.00 fine. Commissioner Stout seconded the motion. Motion Passed.

Mr. Webb stated with case number 57, Circle K Store 5112, the violation was the location's third within three years. Mr. Webb explained the same procedures were followed as the employee was terminated and they had held in-house training. Mr. Webb added they had contacted John Ruth to schedule training, but have not received the training yet. Mr. Webb explained the violation actually occurred in November 2018 and they had not received a violation since then.

After conferring with the Commissioners, Chairman Guy made a motion to remove the 7-day suspension with the addition of a failure to supervise violation and an additional \$2,000.00 fine. Commissioner Mitchell seconded the motion. Motion Passed. Mr. Webb thanked the Commission.

Mrs. Metz requested the Commission move case number 72 to the October agenda to allow for further investigation. Commissioner Mitchell made a motion to move the case to the October agenda. Commissioner Stout seconded the motion. Motion Passed.

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 Stout seconded the motion. Motion Passed.

II. LABEL REJECTION APPEAL – HELLO KITTY WINE

Chairman Guy recognized Administrator Agnes C. Stevens to address a label rejection appeal. Ms. Stevens stated Hello Kitty was appealing the rejection of a wine bottle label submitted to the Commission for approval. Ms. Stevens explained Commission staff evaluates labels for approval based upon the

applicable laws and rules. Ms. Stevens stated the basis for the rejection was Rule 15B .1003 Prohibited Statements in Advertising or on Labels. 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: . . . (4) promotes or encourages the sale to, or use by, persons under 21 years of age of alcoholic beverages, including any representation portraying a person under 21 years of age consuming alcoholic beverages.”

Ms. Stevens explained the rejection was based on this rule. Ms. Stevens added a brief online search for Hello Kitty as a retailer, resulted in nine pages of clothing and accessories for girls. Ms. Stevens stated staff continues to recommend a rejection of the label.

Mrs. Metz stated William Graff was present on behalf of Hello Kitty. Mr. Graff stated he had been an ambassador of Hello Kitty wines for ten years and they had been licensed in North Carolina. However, when they switched distributors, the Commission required registration of suppliers which, in turn, required label approval. Mr. Graff stated they had not had issues in 2010, 2011 or 2012 and added they were sold in 32 states in retailers such as Harris Teeter, CVS and Cost Plus World Market.

Mr. Graff provided a document packet to the Commission which included information regarding the Hello Kitty brand. Mr. Graff added, in a week Hello Kitty will be 45 years old and stated in France, the popularity is high among those between 24-58 years of age. Mr. Graff said the Hello Kitty character does not have a mouth, therefore she cannot drink.

Mr. Graff stated he understood the Commission’s concern and another state had had the same issue. Mr. Graff explained the company will not ask for complete approval, but are willing to reach a compromise. If the Commission would allow a temporary approval, they would use innovation and make adjustments. Additionally, Mr. Graff explained, not all products are marketed to children as many items cost in the \$1,000.00’s. Mr. Graff stated the wine marketing is for those 21 years of age and older and they have not received any complaints from other states.

Chairman Guy asked Mrs. Metz if she had any comments regarding the label rejection. Mrs. Metz stated Ms. Stevens had cited the rule which was the basis for the rejection.

After conferring with the Commissioners, Chairman Guy stated he appreciated Mr. Graff’s attendance, but the Commission would continue to follow the recommendation of the staff. They are not comfortable reversing the decision at the time.

III. ABC STORE LOCATION – CURRITUCK COUNTY ABC BOARD

Ms. Stevens stated on July 11, 2019, the Currituck County ABC Board requested approval from the NC ABC Commission to operate an ABC Store at 998 Ocean Trail in Corolla, North Carolina.

ABC Commission Audit/Investigation Division Assistant Director James Casteen conducted the investigation. Ms. Stevens explained the lease agreement for the proposed store will be finalized once the property and building have been approved. Ms. Stevens stated the Currituck County ABC Board is leasing the current location from the County of Currituck. Ms. Stevens explained this proposed store would tentatively open in October 2020 and the existing store would be closed upon its opening.

Ms. Stevens stated the proposed site is located at 998 Ocean Trail in Corolla. The property is located along Highway 12 between Corolla and Duck. The proposed property is 3.15 acres of a 10 acre tract. The remaining portion of the property is projected to contain a visitor center and county offices.

Ms. Stevens stated the property is zoned Single Family Outer Banks with Planned Unit Development Overlay and allows for an ABC store. The property is owned by the County of Currituck.

The proposed building will consist of approximately 6300 SF with 3500 SF for retail and 2800 SF for warehouse space. The proposed store will also service mixed beverage sales.

Ms. Stevens stated the nearest school, Water's Edge Village School, is located at 1126 Schoolhouse Lane in Corolla approximately 1.4 miles from the proposed location. Ms. Stevens stated the nearest church, Corolla Chapel, is located at 1336 Corolla Village Road in Corolla approximately 1.7 miles from the proposed location. Ms. Stevens explained the nearest ABC Store, located at 500 Hunt Club Drive in Corolla, is approximately 5.8 miles from the proposed location. The next closest ABC Store is located at 1216 Duck Road in Duck, North Carolina approximately 14.1 miles away and is part of the Dare County ABC Board.

Ms. Stevens stated the notice to the public was properly posted at the location on July 9, 2019. The sign was witnessed on July 24, 2019. Ms. Stevens stated the Currituck County ABC Board had received three calls regarding the proposed store. One caller did not realize the existing store would be closed, one objected to new development and the other caller had general questions. Ms. Stevens stated staff recommended approval of the proposed location.

Chairman Guy asked if anyone was present regarding the store and Ms. Stevens stated there was no one. Commissioner Stout made a motion to approve the proposed location upon staff recommendation. Commissioner Mitchell seconded the motion. Motion Passed.

IV. PUBLIC HEARING ON PROPOSED PERMANENT LOCAL BOARD ADMINISTRATION RULES – 14B NCAC 15A .0901 THROUGH 15A .1406

Chairman Guy opened the public hearing on the permanent Local Board Administration Rules Amendments proposed on July 12, 2019, for which notice of public hearing was posted on July 15, 2019. Chairman Guy recognized Mrs. Metz to provide an overview and she provided drafts of the proposed rules to the Commission.

Mrs. Metz explained on June 12, 2019, the ABC Commission proposed the permanent Local Board Administration Rules Amendments. 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 June 21, 2019 and were published in the NC Register on July 15, 2019. Mrs. Metz stated copies of the notice of text and proposed rules were posted on the ABC Commission website and emailed to the ABC Commission rulemaking mailing list on June 24, 2019.

Mrs. Metz stated the public hearing was properly noticed for September 11, 2019 at 10:00 a.m. and the public comment period was noticed to be open through September 13, 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 one written comment had been received since the proposed rules were published. Mrs. Metz explained, as the public comment period runs through September 13, 2019, the Commission could not consider the adoption of the rule during the September meeting, but would be able to do so at its October 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.

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, January 8, 2020, Wednesday, February 12, 2020, Wednesday, March 11, 2020, Wednesday, April 8, 2020, Wednesday, May 13, 2020, and Wednesday, June 10, 2020 as the dates of the January, February, March, April, May and June 2020 NC ABC Commission Meetings.

Chairman Guy made a motion to approve the January through April dates as future meeting dates. Commissioner Stout seconded the motion. Motion Passed.

VI. OTHER BUSINESS – CHATHAM COUNTY ABC BOARD

Ms. Stevens stated, in 2016 the Chatham County ABC Board had received approval for a new ABC Store to be located in Moncure, North Carolina. Ms. Stevens explained the Chatham County ABC Store has reported they have not yet built the store. In order to meet DOT regulations, two additional parcels would need to be added to the location.

Ms. Stevens stated regarding the two additional parcels, there were no conflicts of interest and the sign was properly posted. Ms. Stevens added two calls had been received stating there was not a need for a store in Moncure. However, the store had been previously approved. Ms. Stevens stated staff recommends approval of the additional parcels.

Chairman Guy recognized Matt Williams, the General Manager of the Chatham County ABC Board. Mr. Williams explained it was necessary to increase the road frontage of the proposed site from its original 70 feet as it is located near a highway exit. Mr. Williams stated one additional parcel added 100 feet of frontage. However, as the purchase of this parcel landlocked an additional parcel, the Chatham County ABC Board purchased this parcel as well.

Commissioner Mitchell made a motion to approve the purchase of the two parcels. Commissioner Stout seconded the motion. Motion Passed.

As no one else was present to address the Commission, Chairman Guy again welcomed Commissioner Stout and thanked those in attendance, and the meeting was adjourned.

Approved at the October 9, 2019 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