

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
DECEMBER 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 December 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 December 2019 ABC Commission Meeting to order and welcomed those in attendance.

Chairman Guy recognized North Carolina House Representative Shelly Willingham of Edgecombe County. Chairman Guy stated Rep. Willingham is a strong proponent of the control system and thanked him for his service.

Chairman Guy recognized the Commission staff and stated he was proud of the employees and the customer service they provide. Chairman Guy welcomed Jennifer Temple and Alice Zachary to the Legal Section.

Chairman Guy asked Deputy Director of Education Outreach Jim Van Hecke to introduce their team's newest member. Mr. Van Hecke introduced and welcomed Rodney Poole. Mr. Van Hecke explained Mr. Poole had a background in the education of young people.

Chairman Guy stated the ABC Commission is fortunate to have ALE as a partner. Chairman Guy explained the Commission and ALE share information to maintain alcohol control and responsibility. Chairman Guy acknowledged Special Agent Bryan House, the Branch Head of ALE. Chairman Guy explained Terrance Merriweather, the Deputy Director of Policy of the ABC Commission, was in Fayetteville for a court case with Assistant Counsel Rachel Spears. Chairman Guy also introduced Kelton Brown who would be assisting the Commission with technology and software issues.

Chairman Guy again welcomed those in attendance and introduced Commissioner Karen L. Stout of Black Mountain and Commissioner Norman A. Mitchell, Sr. of Charlotte. Chairman Guy wished everyone a Merry Christmas and reminded everyone to share kindness with their families and friends.

Chairman Guy also acknowledged attorney Kris Gardner and stated he enjoyed meeting with the Beer and Wine Wholesalers Association the previous day.

MINUTES OF THE NOVEMBER 13, 2019 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the November 13, 2019 meeting into the record. Commissioner Stout seconded the motion. Motion Passed.

Commissioner Stout made a motion to approve the minutes of the November 13, 2019 meeting. Commissioner Mitchell 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 – 64

As Chief Counsel Renee C. Metz was absent, Assistant Counsel Stacey Coley informed the Commission of the Contested Cases and Offers in Compromise. Mrs. Coley requested case number 2, Edenton Oyster Bar, be continued as the Administrative Law Judge had issued a stay.

Commissioner Stout made a motion to follow the staff recommendation to continue case number 2. Commissioner Mitchell seconded the motion. Motion Passed.

Mrs. Coley explained agenda case number 1, Brothers in the Hood, was assigned to Assistant Counsel Rachel Spears. Mrs. Coley explained it was a contested case and the Administrative Law Judge had issued a sanctions order for failure to file a prehearing statement. Mrs. Coley stated the underlying charges were related to gambling (3 counts), advertising, failure to superintend (no manager on duty), glass tubes/splitters (2 counts), adulterants and failure to maintain receipts. Mrs. Coley explained the Final Decision imposed by the Administrative Law Judge was a revocation of permits. Mrs. Coley requested the Commission impose the Office of Administrative Hearings' Decision with an effective date of January 10, 2020.

Commissioner Mitchell made a motion to impose the Judge's decision as recommended by staff. Commissioner Stout seconded the motion. Motion Passed.

Mrs. Coley stated attorney Dave Cannon and a representative for the permittee were present regarding case number 9, Maggiano's Little Italy. Mr. Cannon stated his firm Nexsen Pruet represented the Durham location. Mr. Cannon explained his client had signed the Offer in Compromise, but wished to provide updated information.

Mr. Cannon stated they had been in contact with ALE Special Agents Rorabaugh and Hamilton regarding the violations for defacement of tax stamps on spirituous liquor bottles and bottles of spirituous liquor which did not have affixed tax stamps. Mr. Cannon stated the staff had received additional training on December 5, 2019. The general manager, Marc Dijkas, stated management was taking the matter seriously and explained the regional manager had flown from Florida and the area director had flown from Georgia to attend the training. He added he had been with Maggiano's for nineteen years and at this location for five months.

Mr. Dijkas stated he and management are very committed to ensuring there are no further violations. The bar and cocktail team had received training, as well as the person who picks up the spirituous

liquor orders. Additionally, they have committed to have all staff receive training every Spring and Fall. Mr. Dijkas restated they are very committed to following all laws.

Mr. Cannon added a new person would be handling the alcohol purchases from the ABC store and a new manager and district manager were in place. Mr. Cannon stated his clients were taking the matter very seriously and asked for consideration regarding the penalty. Mr. Cannon stated they would pay the penalty and were willing to pay a higher penalty to remove the 3-day active suspension.

After conferring with the Commissioners, Chairman Guy stated a failure to supervise violation with an additional \$1,200.00 fine would be added for a penalty total of \$5,000.00 with no active suspension. Commissioner Mitchell made a motion to add the additional penalty and remove the suspension. Commissioner Stout seconded the motion. Motion Passed. Chairman Guy told Mr. Dijkas he appreciated his attitude regarding the violation.

Mrs. Coley stated no one was present on behalf of the permittee for case number 64, Davidson Wine Company. Mrs. Coley explained the permittee had submitted a letter to the Commission requesting return of products seized. Mrs. Coley stated the permittee had rectified the issues and obtained the proper permissions from the ABC Commission to sell the wine.

Chairman Guy stated the Commission was open to the return of the products, but had questions for the permittee. Chairman Guy stated the case would be continued until the following month as the permittee needed to appear. At that time, the Commission would address their request.

Commissioner Stout made a motion to continue the case. Commissioner Mitchell seconded the motion. Motion Passed.

As no one else was present regarding a case, Mrs. Coley asked the Commission to ratify the remaining Offers in Compromise. Commissioner Stout made a motion to ratify the remaining Offers in Compromise. Commissioner Mitchell seconded the motion. Motion Passed.

II. ABC STORE LOCATION – CRAVEN COUNTY ABC BOARD

Administrator Agnes C. Stevens stated representatives of the Craven County ABC Board were present. On October 28, 2019, the Craven County ABC Board requested approval to relocate an ABC Store. The new store would be located at the corner of East Street and East Bridge Street in Bridgeton, North Carolina along Highway US 17. Ms. Stevens stated on October 29, 2019, ABC Commission Audit/Investigation Section Assistant Director James Casteen met with the Craven County ABC Board General Manager, Paul Brown.

Ms. Stevens explained the proposed property is 1.1 acres and located on a busy thoroughfare between New Bern and Washington, which is parallel to Highway 17. The property is zoned Highway Commercial and allows for an ABC Store. Ms. Stevens added the Craven County ABC Board members submitted financial disclosure forms and there are no personal or financial interests shared with the property owners.

Ms. Stevens stated the nearest school, Bridgeton Elementary School, located at 230 Branch Canal Road in Bridgeton, North Carolina, is approximately 3 miles away. The nearest churches, Bridgeton

United Methodist Church, located at 510 B Street and Bridgeton Christian Church located at 306 New Street, are both located in Bridgeton, North Carolina and each are approximately 600 feet from the proposed location.

Ms. Stevens explained the nearest ABC Store is located at 318 South Front Street in New Bern, North Carolina, approximately 3.8 miles away from the proposed location. The next closest ABC Store is located approximately 4.3 miles away at 985 Highway 70 East in James City, North Carolina. The James City location will be closed upon the completion of the proposed store.

Ms. Stevens stated the sign announcing the ABC Board's intention to open an ABC Store was posted at the location on June 5, 2019. The sign was witnessed by Mr. Casteen on October 29, 2019. Ms. Stevens explained the sign will remain posted until a decision is made by the ABC Commission. Ms. Stevens stated at this time, no calls or objections have been reported and staff recommends approval of this store.

Chairman Guy asked if anyone was present regarding an objection to the proposal request. No one was present to object. The Chairman of the Craven County ABC Board, Chip Chagnon, and Mr. Brown were present. Mr. Chagnon thanked the Commission for their assistance.

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

III. EXEMPTION REQUEST PURSUANT TO N.C.G.S. § 18B-1116(b) – CRAFT REVOLUTION, LLC; SOUTHERN TIER BREWING COMPANY, LLC; VICTORY BREWING COMPANY, LLC; MAD SCIENTISTS BREWING PARTNERS, LLC (ADD LOCATIONS); AND, ARTISANAL BREWING VENTURES CHARLOTTE, LLC

Mrs. Coley stated Mr. Cannon and Erin Mosley were attorneys for the petitioners. Ms. Mosley explained Craft Revolution owns Mad Scientists Brewing. Mad Scientists holds a nonresident vendor permit allowing it to ship its malt beverage products to North Carolina from Memphis, Tennessee. Ms. Mosley explained Craft Revolution, had obtained an exemption from the Commission in January 2019 allowing the concurrent direct and indirect ownership interests for its subsidiaries Mad Scientists, a supplier, and Artisanal Brewing, a North Carolina brewery, holding wholesaler and retail permits.

Ms. Mosley stated this request was to amend the prior exemption which stated Mad Scientists must ship its products to an independent wholesaler to be distributed. Ms. Mosley explained Mad Scientists intend to apply for nonresident vendor permits for three additional out-of-state locations, two in Pennsylvania and one in New York. Ms. Mosley added they had spoken with Mrs. Metz who had recommended an amendment to the exemption as these three locations are not included in the exemption. Ms. Mosley explained the three additional locations would only ship to wholesalers and would not have day-to-day operational control of Artisanal Brewing. Ms. Coley stated staff recommends approval of the request to amend the exemption.

Mrs. Coley recommended the Commission approve the request with the conditions set forth in the exemption and as stated. Commissioner Mitchell made a motion to follow the staff recommendation. Commissioner Stout seconded the motion. Motion Passed.

IV. EXEMPTION REQUEST PURSUANT TO N.C.G.S. § 18B-1116(b) – CRAFT REVOLUTION, LLC; SOUTHERN TIER BREWING COMPANY, LLC; VICTORY BREWING COMPANY, LLC; MAD SCIENTISTS BREWING PARTNERS, LLC; ARTISANAL BREWING VENTURES CHARLOTTE, LLC; AND, BOLD ROCK PARTNERS LP (NEW)

Mrs. Coley requested this exemption request be continued. Mr. Cannon requested a continuation to the January Commission Meeting on behalf of Bold Rock.

Commissioner Stout made a motion to continue the exemption request. Commissioner Mitchell seconded the motion. Motion Passed.

III. CONSIDERATION OF ADOPTION OF PERMANENT INCREASE MAXIMUM RETAIL DISCOUNT RULE – 14B NCAC 15B .1004

Chairman Guy stated the matter before the Commission was the consideration of the adoption of the permanent Increase Maximum Retail Discount Rule and recognized Rules Coordinator Walker Reagan to provide an overview.

Mr. Reagan explained the ABC Commission proposed the permanent Increase Maximum Retail Discount Rule at its meeting on August 14, 2019. Mr. Reagan stated the proposed rule, the notice of public hearing, and notice of the public written comment period were filed with the Office of Administrative Hearings on August 14, 2019 and were published in the NC Register on September 16, 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 August 19, 2019.

The public hearing was properly noticed and held on November 13, 2019 at 10:00 a.m. and the public comment period was noticed to end on November 15, 2019. Mr. Reagan explained the statutory time period after publication for the public hearing of at least 15 days had been complied with and the receiving of written comments of at least 60 days have been complied with. Mr. Reagan stated comments were received at the public hearing from Andy Ellen on behalf of the NC Retail Merchants Association in support of the rule. Mr. Reagan added the only written comments were also received from the NC Retail Merchants Association in support of the rule after the proposed rule was published. Mr. Reagan stated the Commission may now consider adopting the rule.

Mr. Reagan explained staff recommends the Commission adopt the permanent Increase Maximum Retail Discount Rule as published in the NC Register with one change included in the presented draft. The correction was for one typographical error. 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 prior to publication.

Chairman Guy asked if anyone wished to comment on the rule. As no one wished to comment, Commissioner Stout made a motion that the Commission adopt the permanent Increase Maximum Retail Discount Rule as published in the NC Register, with the change presented and the recommendations of the staff regarding the rule. Commissioner Mitchell seconded the motion. Motion Passed.

IV. OTHER BUSINESS

Chairman Guy confirmed with Ms. Stevens there was no additional business and no one else was present to address the Commission. Chairman Guy stated relationships are important and reminded everyone to be kind. Chairman Guy thanked those in attendance and wished everyone a Merry Christmas. The meeting was adjourned.

Approved on January 15, 2020

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

Respectfully submitted by,

Caroline Y. Washburn for the Legal Division