

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
JULY 10, 2019**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on July 10, 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 July 2019 ABC Commission Meeting to order and welcomed those in attendance. Chairman Guy introduced Commissioner Norman A. Mitchell, Sr. and himself. Chairman Guy thanked the employees of the NC ABC Commission. Chairman Guy explained they were making innovative changes and creating opportunities for talent to expand.

MINUTES OF THE JUNE 12, 2019 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the June 12, 2019 meeting into the record. Chairman Guy seconded the motion. Motion Passed.

Commissioner Mitchell made a motion to approve the minutes of the June 12, 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 – 52

Chief Counsel Renee C. Metz requested the Commission remove case numbers 30, 37 and 50 from the July agenda and add them to the August agenda.

Chairman Guy made a motion to move case numbers 30, 37 and 50 to the August Commission Meeting agenda. Commissioner Mitchell seconded the motion. Motion Passed.

Mrs. Metz explained agenda case numbers one and two were contested cases assigned to Assistant Counsel Missy Welch. Mrs. Metz stated no one was present regarding case number one, Flavors Restaurant and Bar. Mrs. Metz explained the charges were related to possession of alcohol for sale without a permit and interfering with a law enforcement officer. Mrs. Metz stated the Administrative Law Judge issued a sanctions order for failure to respond. Mrs. Metz explained the Final Decision included a

\$500.00 penalty to be paid by August 2, 2019 and a 20-day suspension of the ABC permits to begin August 9, 2019. Mrs. Metz requested the Commission impose the Judge's decision.

Commissioner Mitchell made a motion to impose the suspension and penalty as recommended by staff. Chairman Guy seconded the motion. Motion Passed.

Mrs. Metz stated no one was present on behalf of the permittee for agenda case number 2, Rena J's Lounge. Mrs. Metz explained the underlying charge was for failure to file audit reports as requested and it was also a sanctions case for failure to respond to the Judge's orders. The Administrative Law Judge ordered a suspension of the permittee's Mixed Beverages Private Club ABC permit, but did not specify the length of the suspension. Mrs. Metz asked Mrs. Welch for her recommendation.

Mrs. Welch stated she recommended a suspension of at least ninety days of the Mixed Beverages permit, as the business has a history of failure to file audit reports in a timely manner. Mrs. Welch explained she and the Audit Division staff had attempted to work with the permittee, also giving the permittee the opportunity to file the reports and only pay a monetary fine. Mrs. Welch stated the permittee had been unwilling and had also appeared Pro Se.

Chairman Guy made a motion to follow staff's recommendation and impose the 90-day suspension. Commissioner Mitchell seconded the motion. Motion Passed.

Mrs. Metz stated attorney Michael Boyer was present on behalf of agenda case number 52, Sycamore Brewing, which was assigned to attorney Walker Reagan. Mr. Boyer explained he was present on his client's behalf to request a reduction of the penalty. Mr. Boyer added he also wished to gain clarification regarding Rule 15B .0223, the Happy Hours regulations; but, added he would address this with the Legal Division staff outside the meeting.

Mr. Boyer stated ALE had been active in Charlotte lately and Special Agent Matthew Stemple had visited his client's business in October 2018 and January 2019. Mr. Boyer stated the underlying offense in January stemmed from a Facebook post, posted by someone within the organization responsible for social media marketing. The post had been brought to the attention of Special Agent Stemple. The original post was regarding an event during which, if you brought a dog to the event, you received a discount on a malt beverage. The operating manager, Igor Rodriguez, realized this was a Happy Hour violation and told staff to disregard the dog requirement and give everyone the discount equally. Mr. Boyer explained Special Agent Stemple had gone to the taproom and asked a bartender what was the discount. After the bartender gave it to him, Special Agent Stemple identified himself and explained it was a Happy Hour issue. Special Agent Stemple spoke with Mr. Rodriguez who had recognized him from the October visit. Mr. Boyer stated the underlying issue was interpretation.

Mr. Boyer stated Mr. Rodriguez worked with Special Agent Stemple and showed him texts he had sent telling staff to disregard the promotion. Mr. Boyer added the owner of Sycamore Brewing explained to Special Agent Stemple by telephone the original intent of the promotion was to donate \$1.00 from the sale of every beer to the SPCA. Mr. Boyer stated the intent was not for the consumer to experience a reduction of price, but to operate in a completely different way. Mr. Boyer stated the employees of the company met with Special Agent Stemple, as the enforcement activity in the Charlotte market had become more elevated recently. Mr. Boyer stated the ownership of the company wanted the staff to become more comfortable with the regulations, including tap takeovers, social media marketing, and promotions and discounts. Mr. Boyer explained they had him underwrite a compliance policy and that the company does not give themselves room for error as they are a larger brewery and know the contact with

enforcement will continue. Mr. Boyer stated he was requesting a reduction of the penalty based upon the circumstances and his involvement. Mr. Boyer again stated he would discuss the Happy Hour rules further with Mrs. Metz.

Chairman Guy asked Mr. Boyer what reduction he was requesting. Mr. Boyer stated that would be at the discretion of Chairman Guy, but asked for recognition of the substantial effort undertaken by his client, including his presence at the Meeting.

Chairman Guy stated the penalty would be reduced to \$500.00.

Mr. Boyer was also present on behalf of agenda case number 16, Press Box Bar and Grille, which was assigned to Assistant Counsel Rachel Spears. Mr. Boyer again stated he was present to request a reduction of the penalty. Mr. Boyer explained the business had problems in 2017 regarding a failure to qualify as a restaurant, resulting in the cancellation of their Mixed Beverages Restaurant permit. The effect of this was not felt until this went into effect in August 2018.

Mr. Boyer continued, explaining the sale of liquor is a big part of business for this location. Mr. Boyer stated they had met with ABC Auditor/Investigator Edwin Strickland and were able to reapply for the mixed beverage permit as a private club. Mr. Boyer stated they had established memberships through the BarMembership.com software, installing four terminals so everything is automated in respect to record keeping and oversight mechanisms for ongoing compliance. Mr. Boyer explained they had also made an investment in the Berg System, a software and operational mechanism system which includes tips to be attached to the liquor bottles.

Mr. Boyer explained this system comes with programmable tips which allow the monitoring of pours and other controls through the POS system. Each pour is inventoried through the POS system. Mr. Boyer explained the staff had felt uncomfortable with removing the tips when the bottles were empty, resulting in two violations for failure to deface and dispose of the empty spirituous liquor bottles. Mr. Boyer stated they did not immediately deface and dispose because they had to remove the tips, reprogram them, and then apply them to other spirituous liquor bottles. Mr. Boyer stated the staff had been instructed to deface the bottles when empty and remove the tips later. Mr. Boyer asked the Commission to consider consolidating the two failures to deface and dispose violations into one violation.

Chairman Guy asked Mr. Boyer about the violation in which an employee gave alcoholic beverages to an intoxicated person. Mr. Boyer explained the employee had stated the person did not seem intoxicated to her. Mr. Boyer stated the permittee did not find this an acceptable response; and knowing their difficulties with the mixed beverage permit in the past and the work required to reestablish a permit, the employee was terminated.

Chairman Guy stated the ABC Commission takes offenses regarding underage drinking seriously. Chairman Guy conferred with Commissioner Norman then explained the penalty would be reduced to \$2,700.00.

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. LABEL REJECTION APPEAL – HELLO KITTY WINE

Mrs. Metz requested this matter be continued to the August 2019 Commission Meeting to allow representatives to be present.

III. LABEL REJECTION APPEAL – POLYGAMY BEER

Mrs. Metz requested this matter be continued to the August 2019 Commission Meeting to allow representatives to be present.

IV. EXEMPTION REQUEST PURSUANT TO G.S. § 18B-1116(b) – MOON BREW, LLC; THE FULL MOON, INC.; RHR, LLC; FM HOLDINGS, LTD.; ET AL

No one was present on behalf of Moon Brew. Mrs. Metz explained this exemption request was actually a request for an amendment to a prior exemption. Mrs. Metz stated the request was to expand beyond the number of allowed affiliated retailers. Mrs. Metz explained she had communicated with the permittee and their attorney, stating she would recommend the ABC Commission not grant the exemption request.

Mrs. Metz stated, in approximately 2013, the first break from the traditional exemption, i.e. no brewery products sold at any affiliated business was limited to four affiliated retail locations. This was what was granted in the prior exemption. Mrs. Metz stated the Commission has been consistent with this policy in exemption orders. Mrs. Metz stated the original exemption order clearly stated the additional retail outlets would not be allowed to sell the brewery's products. Mrs. Metz explained Session Law 2019-18 makes it clear the General Assembly intends to restrict the number of affiliated affiliated retailers who may sell the affiliated brewery's products to three. Mrs. Metz stated, although the original exemption was grandfathered, it would be inconsistent with the policy of the Commission and the General Assembly to expand the exemption beyond the four retail establishments listed currently.

Chairman Guy stated the Commission has received calls regarding concerns with this rule and explained he and Commissioner Mitchell had reviewed the rules and statutes and conferred with Mrs. Metz several times. Chairman Guy stated he wished to help businesses when he could, but it was necessary to establish a line.

Chairman Guy made a motion to follow staff's recommendation and deny the exemption request. Commissioner Mitchell seconded the motion. Motion Passed.

V. PUBLIC HEARING ON PROPOSED PERMANENT REFUND OFFER REDEMPTION REVISIONS RULE – 14B NCAC 15B .1013

Chairman Guy recognized Walker Reagan, the rules coordinator, to provide an overview. Chairman Guy opened the public hearing on the permanent Refund Offer Redemption Revision Rule proposed on May 8, 2019, and noticed for public hearing on June 3, 2019. Mr. Walker 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 for July 10, 2019 at 10:00 a.m. and the public comment period was noticed to be open through August 13, 2019. Mr. Reagan explained the statutory time period after publication for the public hearing of at least 15 days had been complied with. Mr. Reagan stated no written comments had been received since the proposed rules were published. Mr. Reagan explained, as the public comment period runs through August 13, 2019, the Commission could not consider the adoption of the rule during the July meeting, but would be able to do so at its August 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.

VI. CONSIDERATION OF ADOPTION OF PERMANENT GENERAL RULES REVIEW – CHAPTER 15A, SECTIONS .0100 THROUGH .0800 RULES – ABC COMMISSION GOVERNANCE

Chairman Guy stated the next matter before the Commission is a consideration of the adoption of the permanent Commission Operations General Rules Review Rules. Chairman Guy recognized Mr. Reagan to provide an overview.

Mr. Reagan provided drafts of the rules to the Commission. Mr. Reagan explained on March 13, 2019, the ABC Commission proposed the permanent Commission Operations General Rules Review rules. Mr. Reagan stated the proposed rules were submitted to the Office of Administrative Hearings on March 21, 2019. The proposed rules, the notice of public hearing, and notice of public written comment period were posted on the ABC Commission website and emailed to the ABC Commission rulemaking mailing list on March 27, 2019 and were published in the NC Register on April 15, 2019.

Mr. Reagan stated the public hearing was properly noticed and held on June 12, 2019 and the public comment period was noticed to end on June 14, 2019. Mr. Reagan explained the statutory time periods after publication for holding a public hearing of at least 15 days and the receiving of public 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 have been received since the proposed rules were published. Mr. Reagan stated the Commission may now consider the adoption of the rules.

Mr. Reagan stated staff recommends the Commission adopt the Permanent Commission Operations General Rules Review rules as published in the NC Register and as presented, with one technical change to Rule 14B NCAC 15A .0501 changing a comma to a period. Mr. Reagan recommended the Commission direct the rules 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 proposed rules as needed.

Commissioner Mitchell made a motion that the ABC Commission adopt the Permanent Commission Operations General Rules Review rules as published in the NC Register and the recommendations of staff regarding the rules. Chairman Guy seconded the motion. Motion Passed.

VII. OTHER BUSINESS –

Ms. Stevens stated she had no further business. Mrs. Metz asked the Commission to issue a Destruction Order for evidence for a bottle seized from the Carmel Country Club. Mrs. Metz explained an old bottle of Remy Martin Louis XIII had been locked in a cage for years and just recently found. Mrs. Metz stated they were unable to verify the origins of the bottle, therefore it was seized. Mrs. Metz explained there had been no criminal charges or violations and requested the order be finalized.

As 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