

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
MARCH 11, 2020**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held at 400 East Tryon Road in Raleigh, North Carolina on March 11, 2020, 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 March 2020 ABC Commission Meeting to order and greeted those in attendance.

Chairman Guy stated he wished to update those in attendance regarding the Coronavirus and the State of Emergency declared by Governor Cooper the previous day. Chairman Guy explained the ABC Commission is taking this matter seriously, as the Commission staff and the public it serves are both very important. Chairman Guy stated meetings have been held with Administrator Agnes C. Stevens and other staff members regarding the Commission's handling of this issue.

Chairman Guy explained, by declaring the State of Emergency, Governor Cooper strengthened the state's response to the Coronavirus. Chairman Guy stated the ABC Commission is following the guidance of the Governor's Office and the Office of State Human Resources and will continue to serve the public unless directed otherwise. Chairman Guy explained, internally, the ABC Commission has provided guidelines to staff on best practices for reducing the risk of Coronavirus or other illnesses. If anyone wishes for additional information, they should contact Jeff Strickland, the communications representative for the ABC Commission.

Chairman Guy thanked the Commission staff for the commitment they make to the Commission, their work and the good customer service they provide. Chairman Guy stated the ABC Commission has strong partnerships, including the ABC Board Association with whom he recently met in Greenville, North Carolina. At this meeting, Chairman Guy stated he also had contact with several suppliers.

Chairman Guy stated law enforcement is an important partner to the ABC Commission. Chairman Guy asked ALE Director Bryan House, the Branch Head of ALE to introduce the Special Agent with him. Director House introduced Special Agent Israel Morrow, Assistant Director of Operations. Chairman Guy thanked ABC Commission Deputy Director of Policy Terrance Merriweather for establishing and maintaining the good dialogue with ALE.

Chairman Guy introduced Commissioner Norman A. Mitchell, Sr. of Charlotte and Commissioner Karen L. Stout of Black Mountain.

MINUTES OF THE FEBRUARY 12, 2020 COMMISSION MEETING

Commissioner Stout made a motion to waive the reading of the minutes of the February 12, 2020 meeting into the record. Commissioner Mitchell seconded the motion. Motion Passed.

Commissioner Mitchell made a motion to approve the minutes of the February 12, 2020 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 Stout stated she reviewed the agenda and found no conflicts of interest. 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 – 87

Chief Counsel Renee C. Metz stated agenda case number one, Texas Discotheque, was assigned to Assistant Counsel Rachel Spears. Mrs. Metz explained it was a contested case with a sanctions order for failure to file a prehearing statement as requested by the Administrative Law Judge. Mrs. Metz stated the underlying charges were related to failure to superintend, marijuana inside the business, cocaine residue in bags found in the office and unlicensed armed security guards. Mrs. Metz explained the Final Decision included a \$1,000.00 penalty to be paid by April 3, 2020 and a 20-day suspension of the ABC permits to begin April 10, 2020. Mrs. Metz requested the Commission impose the Judge's decision.

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

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

Commissioner Mitchell made a motion to ratify the remaining Offers in Compromise. Commissioner Stout seconded the motion. Motion Passed.

II. EXEMPTION REQUEST PURSUANT TO N.C.G.S. § 18B-1116(b) – PAUL CASEY; ASHEVILLE MUSIC HALL; FRENCH BROAD BREWERY, LLC d/b/a FRENCH BROAD RIVER BREWERY; FUELING ALPHA, LLC; AND EBC BREWERY, LLC d/b/a BIG BOSS BREWING COMPANY

Mrs. Metz explained the exemption request pertains to the Asheville Music Hall. French Broad, Fueling Alpha and Big Boss, which hold retail and commercial permits, requested and received an exemption in November 2018. The exemption was necessary due to Mr. Casey's concurrent ownership in the retail businesses and the parent company of the brewery. Mrs. Metz explained it was a traditional exemption, utilizing a third-party wholesaler to sell to the affiliated retailers.

Mr. Casey now also owns 50% of Asheville Music Hall, a private club with a music venue which holds temporary ABC retail permits. Mrs. Metz stated Mr. Casey will not have an active role in the day-to-day management of Asheville Music Hall. After a conversation with Kris Gardner of the Beer and Wine Wholesalers Association, it was determined because Big Boss produces over 5,000 barrels per year which is the standard cap, they will not sell to the related retail businesses. However, French Broad will be able to as long as they are below that production level. Mrs. Metz stated this was a hybrid exemption request which would not allow Big Boss to sell to the retail outlets, but French Broad would be able to if they use a third-party wholesaler and remain under the production cap. The retail businesses would require independent managers in charge of the alcohol products ordering. Mrs. Metz stated staff recommends approval of the request.

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

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

Mrs. Metz explained this exemption request was for an additional amendment to a 2013 exemption for which a first amendment had been granted in April 2018. Mrs. Metz stated in July 2019, Moon Brew requested to expand the number of allowed affiliated retailers from four to six. Mrs. Metz explained the ABC Commission was not able to grant the exemption amendment request due to recent changes made by the General Assembly. Mrs. Metz stated Moon Brew has now requested approval to exchange two of the previously approved retail locations in Southern Pines and Morrisville and replace them with two retail locations in Concord and Atlantic Beach. Mrs. Metz stated staff recommends approval of the amendment to the exemption.

Commissioner Stout made a motion to follow staff's recommendation. Commissioner Mitchell seconded the motion. Motion Passed.

IV. EXEMPTION AMENDMENT REQUEST PURSUANT TO N.C.G.S. § 18B-1116(b) – BOLD ROCK PARTNERS, LP

Mrs. Metz stated this request is for an amendment to an exemption granted to Craft Revolution, et al. during the January 2020 Commission Meeting for its mostly out-of-state companies. However, Bold Rock also has a North Carolina winery and retail location and was not addressed during the January Commission Meeting. The Wholesalers Association wished to discuss the request with Erin Mosely, the attorney for the petitioners. Mrs. Metz stated she drafted an exemption order which addressed both parties concerns and they were able to come to an agreement. The wholesaler permits in North Carolina are to be restricted. Mrs. Metz added staff recommends approval of the request.

Ms. Mosley was present and explained the request was for an amendment to the exemption allowing Bold Rock to use its wholesaler permit to ship products directly to Artisanal Brewing Ventures. Ms. Mosely spoke with Mr. Gardner and the distributor would sell throughout Mecklenburg County with the exception of this one location.

Chairman Guy asked Mr. Gardner if he had any comments on behalf of the Beer and Wine Wholesalers. Mr. Gardner stated he appreciated the opportunity to review the exemption request and keep them consistent across the board. Mr. Gardner stated there were no objections.

Commissioner Mitchell made a motion to follow the staff recommendation. Commissioner Stout seconded the motion. Motion Passed.

V. CONSIDERATION OF PROPOSAL OF PERMANENT ABC STORE SPIRITUOUS LIQUOR TASTINGS RULES – 14B NCAC 15C .1301, .1303-.1305, .1307

Chairman Guy stated the matter before the Commission was the consideration of the proposal of ABC Store Spirituous Liquor Tasting Rules and recognized Rules Coordinator Walker Reagan to provide an overview.

Mr. Reagan explained in 2019, the General Assembly amended G.S. 18B-1114.7 to allow spirituous liquor special event permittees, namely distilleries, supplier representatives and brokerage representatives, to conduct spirituous liquor tastings in ABC stores when approved by local ABC boards in addition to conducting tastings at other specified events as previously allowed. Mr. Reagan stated this amendment gave local ABC boards the discretion to decide if, when, where, and how often tastings would be allowed. The statute limits tastings to be held between the hours of 1:00 pm and 7:00 pm, to last no longer than 3 hours, and to no more than three tastings per calendar week. Mr. Reagan added it also allows local boards to impose any additional conditions on tastings held in its stores in the board's discretion. Mr. Reagan stated the General Assembly also made changes to the statute regarding spirituous liquor tastings at non-ABC store events eliminating the requirement that consumption of tasting samples be limited to a designated tasting area.

Mr. Reagan explained amendments to the existing rules are needed to eliminate the requirements for designated tasting areas and to allow authorized agents of spirituous liquor special event permittees to conduct tastings on the permittees' behalf. Mr. Reagan stated new rules are needed for ABC store tastings regarding local boards determinations on when tastings will be allowed, methods for insuring reasonable opportunities for tastings to all spirituous liquor special event permittees, proof of ABC store purchases for spirituous liquor used at tastings, and reporting requirements.

Mr. Reagan stated the amendments to the statute became effective September 1, 2019. Mr. Reagan explained staff recommends the Commission propose the ABC Store Spirituous Liquor Tasting Rules as presented. Mr. Reagan recommended the Commission direct the proposed rules be filed with the Office of Administrative Hearings for publication in the NC Register and direct copies of the proposed permanent rules be sent to persons on the ABC Rulemaking emailing list and posted on the ABC Commission website. Mr. Reagan recommended the Commission schedule a public hearing on the proposed permanent rules be held during the Commission's meeting on May 13, 2020. Mr. Reagan recommended the Commission set a public comment period on the proposed permanent rules to be open until at least 60 days from the date of publication of the proposed rules in the NC Register. Mr. Reagan also recommended the Commission authorize staff to make non-substantive changes to the proposed rules as needed.

Chairman Guy stated, since the General Assembly approved tastings being held in ABC stores in September, 50 ABC boards have held tastings at 140 ABC stores with 600 more tastings scheduled. Chairman Guy asked Director House if there had been any issues regarding the tastings which had been conducted. Director House responded ALE was not aware of any complaints.

Chairman Guy asked Mr. Reagan for clarification regarding allowing the permittee to assign an agent to be present at the tasting on their behalf. Mr. Walker confirmed it was now allowed to have employees or designated agents conduct the tastings. Mr. Walker explained this would allow the same rules for tastings at ABC stores as allowed at non-ABC store tastings. Mr. Walker stated information was added about the designation of an agent and informing the ABC Commission so both the Commission and law enforcement would be aware of those authorizations.

Commissioner Mitchell made a motion that the Commission propose the ABC Store Spirituous Liquor Tasting Rules as to the Commission presented and the recommendations of the staff regarding the rules. Commissioner Stout seconded the motion. Motion Passed.

Mrs. Metz asked the Commission to consider reopening agenda case number 25, Kurama Japanese Steak House and Sushi Bar, which had been ratified earlier in the meeting. A representative for the business had just arrived.

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

Rodney Crow explained he was present because of the two violations Kurama Japanese Steakhouse received. Mr. Crow stated he had worked for the business for years, mostly behind the bar. Mr. Crow stated ALE agents had entered the business for an inspection and he thought they were informing him of new laws regarding keeping invoices organized. Mr. Crow stated during previous inspections they looked at mixed beverage orders but was unaware beer and wine invoices must be organized and maintained onsite for three years.

Mr. Crow added the ALE agents also found a bottle in the storage area that was really old. He asked if he could take a photo but was unable to at the time. Mr. Crow stated when he contacted ALE regarding the bottle, he claimed they told him the bottle had been destroyed and a photo could not be sent.

Chairman Guy asked Director House about the matter. Director House replied he was not familiar with the case, but regulations did require all invoices must be kept for three years. Mr. Crow stated it was just for liquor. Chairman Guy asked Mr. Crow what he was asking from the Commission. Mr. Crow stated he wanted a waiver of the penalty and a warning.

Chairman Guy conferred with the Commissioners and stated no action would be taken and the matter would be deferred to the next Commission Meeting. Chairman Guy asked both Director House and Assistant Counsel Stacey Coley to investigate the matter.

VI. OTHER BUSINESS

Chairman Guy confirmed with Mrs. Metz the Commission was to consider dates for future Commission Meetings. Chairman Guy stated they would establish Wednesday, June 10, 2020 as the date of the June 2020 NC ABC Commission Meeting and Wednesday, July 8, 2020 as the date of the July 2020 NC ABC Commission Meeting.

Commissioner Stout made a motion to approve the dates for the June and July 2020 Commission Meetings. Commissioner Mitchell seconded the motion. Motion Passed.

Chairman Guy introduced Rodney Poole, a recent addition to the Education Outreach staff and welcomed Neitra Stancil to the staff of the Board Audit and Pricing Section of the ABC Commission.

Chairman Guy also welcomed Carol Shaw of the Distillers Association.

Chairman Guy thanked those in attendance and the meeting was adjourned.

Approved at the April 8, 2020 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