

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
OCTOBER 7, 2020**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission Meeting held via teleconference at 400 East Tryon Road in Raleigh, North Carolina on October 7, 2020, beginning at 10:00 AM. The meeting was recorded, and a copy of the recording is on file at the NC ABC Commission within the Legal Section.

ROLL CALL

Chairman A.D. Zander Guy, Jr. welcomed those who were joining the teleconference and called the October 2020 ABC Commission Meeting to order. Chairman Guy reminded the participants the remainder of the 2020 ABC Commission Meetings would also be conducted virtually, in keeping with the Governor's Office and the Executive Orders.

Chairman Guy thanked the ABC Commission employees as, though the building is not open to the public, the staff has been extremely busy providing customer service during the pandemic. Chairman Guy also thanked ALE for their partnership. Chairman Guy stated ALE Director Bryan House, the Branch Head of ALE, was unable to join the meeting, but thanked Assistant Director for Operations Israel Morrow for joining the meeting.

Chairman Guy greeted Commissioner Karen L. Stout and Commissioner Norman A. Mitchell, Sr. who were joining the meeting via teleconference. He also thanked them for their service.

Chairman Guy expressed his appreciation to all those who were joining the virtual meeting and the industry members who were consistently interested in and participated in the Commission Meetings.

MINUTES OF THE SEPTEMBER 9, 2020 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the September 9, 2020 Commission Meeting into the record. Commissioner Stout seconded the motion. Motion Passed.

Commissioner Stout made a motion to approve the minutes of the September 9, 2020 Commission 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. Chairman Guy stated he found no conflicts of interest. 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.

I. CONTESTED CASES AND OFFERS IN COMPROMISE – 42

Chairman Guy recognized General Counsel Stacey Carter-Coley. Mrs. Carter-Coley stated agenda case number 1 was a contested case assigned to Assistant Counsel Rachel Spears. Mrs. Carter-Coley explained the case was a sanctions case for failure to file a prehearing statement as requested by the Administrative Law Judge. The Final Decision imposed a \$500.00 penalty which would be due by October 30, 2020 and a 10-day suspension of the ABC permits to begin on November 6, 2020. Mrs. Carter-Coley stated staff recommended the imposition of the decision of the Administrative Law Judge.

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

Mrs. Carter-Coley asked if anyone wished to be heard by the Commission on behalf of the remaining agenda cases. No one was present to address the Commission regarding a case. Mrs. Carter-Coley stated staff recommended approval and requested ratification of the Offer in Compromise cases.

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

II. EXEMPTION REQUEST PURSUANT TO G.S. §18B-1116(b) – STANDARD BEER & FOOD, LLC T/A STANDARD BEER & FOOD; WHITNEY BAKER; ANDREW SCHNITZER

Mrs. Carter-Coley explained this exemption request to allow common ownership interest between Standard Beer and Bond Brothers Beer Company. Mrs. Carter-Coley stated the request was submitted by attorney John Szymankiewicz on behalf of his clients. Mrs. Carter-Coley explained they were requesting an exemption to allow each brewery to sell its products to the other brewery through an independent third-party wholesaler.

Mrs. Carter-Coley stated staff recommended approval of the exemption.

Commissioner Mitchell made a motion to grant the exemption based upon staff recommendation. Commissioner Stout seconded the motion. Motion Passed.

III. CONSIDERATION OF PROPOSAL OF PERMANENT MIXED BEVERAGES PERMITTEE TRANSPORT & DELIVERY RULES – 14B NCAC 15A .1405, .1802, .1903, .1904 AND 15B .0501

Chairman Guy stated the matter before the Commission was consideration of the proposal of the Mixed Beverages Permittee Transport and Delivery Rules and recognized Walker Reagan, the rules coordinator, to provide an overview of the proposed rules for consideration. Mr. Reagan previously provided drafts of the proposed rules to the Commission.

Mr. Reagan explained, in 2019, the General Assembly amended G.S. §18B-303 exempting mixed beverages permittees and their employees, and employees of a local board, from having to obtain a Purchase-Transportation permit before transporting quantities of spirituous liquor or fortified wine to the mixed beverages permittee, in excess of the quantities for which a permit is required under §18B-303(a).

Mr. Reagan stated, also in 2019, the General Assembly amended G.S. §18B-701(a) authorizing local boards to provide delivery of spirituous liquor to mixed beverages permittees using the local board's employees or an independent contractor hired by the local board. Mr. Reagan explained the local boards were also authorized to charge a fee to the permittee for those deliveries. Additionally, the statute was amended to allow a mixed beverages permittee to contract with an independent contractor to pick up their spirituous liquor orders from the local board and deliver them to the mixed beverages permittee.

Mr. Reagan explained Section 25(b) of S.L. 2019-182 directed the Commission to adopt rules to implement these changes including the fee local boards are allowed to charge for these deliveries, and the requirements independent contractors must meet to provide deliveries from the local board to the mixed beverages permittees, either as a local board contractor, or the contractor of the mixed beverages permittee.

Mr. Reagan stated, to implement the new laws, rules were needed. Mr. Reagan explained a rule was needed to establish the conditions under which local boards may deliver spirituous liquor to mixed beverages permittees, either by use of their own employees or an independent contractor, including the hours deliveries can be made and the responsibility for the spirituous liquor while in transit between the board and the mixed beverages permittee's location.

Mr. Reagan stated rules were needed to set the conditions under which an independent contractor may be used to make deliveries, including holding a motor vehicle carrier certification and carrying indemnity and fidelity insurance insuring the spirituous liquor during the delivery. Mr. Reagan explained the rules were needed to establish the process for a local board to determine a fee structure for fees charged for deliveries made by the local board to mixed beverages permittees. Additionally, the rules would establish the conditions a mixed beverages permittee and their independent contractor must meet before the independent contractor is allowed to pick up the mixed beverages permittee's orders from the local board and deliver them to the mixed beverages permittee.

Mr. Reagan explained the amendments to the statutes became effective September 1, 2019. Mr. Reagan stated staff recommends the Commission propose the Mixed Beverages Permittee Transport and Delivery Rules as presented. Mr. Reagan requested the Commission direct the proposed rules be filed with the Office of Administrative Hearings for publication in the NC Register and copies of the proposed rules be sent to persons on the ABC Rulemaking emailing list and posted on the ABC Commission's website.

Mr. Reagan requested the Commission schedule a public hearing on the proposed rules to be held at the Commission's meeting on December 9, 2020 and set a public comment period on the proposed rules to be open until at least 60 days from the date of publication of the proposed rules in the NC Register. Mr. Reagan added, if the proposed rules were published in the NC Register by November 1, 2020, the public comment period would run through, approximately, January 4, 2021. Additionally, Mr. Reagan requested the Commission authorize staff to make any non-substantive changes in the proposed rules as needed.

Chairman Guy asked if anyone had questions regarding the proposed rules. As there were no questions, Commissioner Stout made a motion that the ABC Commission propose the Mixed Beverages Permittee Transport and Delivery Rules as presented to the Commission and the recommendations of staff regarding the rules. Commissioner Mitchell seconded the motion. Motion Passed.

IV. OTHER BUSINESS

Mrs. Carter-Coley requested the Commission consider dates for future Commission Meetings. Mrs. Carter-Coley proposed Wednesday, January 13, 2021 as the date of the January meeting and Wednesday, February 10, 2021 as the date of the February meeting.

Chairman Guy asked the Commissioners if the proposed dates were agreeable. As both Commissioners confirmed the dates, Commissioner Mitchell made a motion to approve January 13, 2021 and February 10, 2021 as dates for the Commission Meetings. Commissioner Stout seconded the motion. Motion Passed.

Chairman Guy stated there was a possibility these future meetings would also be held virtually depending upon any future Executive Orders and Governor Cooper's recommendations. Chairman Guy added the scheduling information would be shared when the Commission was notified.

Chairman Guy asked Mrs. Carter-Coley and Administrator Agnes C. Stevens if there was any other business. They stated there was no other business. Chairman Guy thanked Kris Gardner of the Wine and Beer Wholesalers Association for participating. Mr. Gardner stated he looked forward to resuming the Commission's in-person meetings.

Chairman Guy thanked all those participating in the virtual meeting and again thanked ALE for their great work during this difficult time. The October ABC Commission Meeting was adjourned.

Approved at the November 4, 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