

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
NOVEMBER 4, 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 November 4, 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 November 2020 ABC Commission Meeting to order. Chairman Guy thanked the ABC Commission staff for four years of innovation and great customer service.

Chairman Guy also thanked Kelton Brown, the Commission's IT Manager, for his work to ensure the virtual meetings continue to be successful, as they are the new normal.

Chairman Guy greeted Commissioner Karen L. Stout and Commissioner Norman A. Mitchell, Sr. who were joining the meeting via teleconference. Chairman Guy stated he looked forward to working with them another four years. Chairman Guy explained serving with them has been a wonderful experience as they always have the citizens' best interests at heart.

Chairman Guy expressed his appreciation to all those who were joining the virtual meeting.

MINUTES OF THE OCTOBER 7, 2020 COMMISSION MEETING

Commissioner Mitchell made a motion to waive the reading of the minutes of the October 7, 2020 Commission Meeting into the record. Commissioner Stout seconded the motion. Motion Passed.

Commissioner Stout made a motion to approve the minutes of the October 7, 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. 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 – 53

Chairman Guy recognized General Counsel Stacey Carter-Coley. Mrs. Carter-Coley stated agenda case number 1 was a contested case and explained the Administrative Law Judge had issued a decision. The

Final Decision imposed by the Administrative Law Judge included a fine of \$750.00 and a 10-day suspension of the ABC permits. Mrs. Carter-Coley stated staff recommended acceptance of the decision of the Administrative Law Judge and setting the dates for payment and suspension.

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. The permittee for case number 2, Burlington Food Mart, Khalid Al Shaif stated he wished to speak to the Commission. Mr. Al Shaif stated staff had reduced the penalty to \$800.00 after he completed training, but he wished to ask for an additional reduction. Mr. Al Shaif explained, due to COVID, sometimes he had to close his business early. Mr. Al Shaif stated when the officer came in to his business, the employees did not have a key that was needed and requested. He stated he had asked the officer to come back at another time and the officer did, but Mr. Al Shaif stated they still received the violation.

Chairman Guy asked Mr. Al Shaif how much of a reduction he was requesting. Mr. Al Shaif suggested one-half of the penalty. Chairman Guy stated the Commission could reduce it to \$600.00.

Commissioner Stout made a motion to reduce the penalty to \$600.00. Commissioner Mitchell seconded the motion. Motion Passed.

Chairman Guy asked if anyone else was present to address the Commission regarding a case. As no one responded, Mrs. Carter-Coley stated staff recommended approval and requested the Commission ratify the remaining Offer in Compromise cases.

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

II. ABC STORE LOCATION – CATAWBA COUNTY ABC BOARD – (2310 NORTH CENTER STREET, HICKORY)

Administrator Agnes C. Stevens stated the Catawba County ABC Board had requested approval from the NC ABC Commission for a new store.

Ms. Stevens stated on September 24, 2020, the NC ABC Commission received a request from the Catawba County ABC Board, requesting approval to purchase property to relocate an ABC Store to 2310 North Center Street in Hickory, North Carolina. Ms. Stevens explained the new store would replace the store currently located at 2231 North Center Street in Hickory. On September 25, 2020, ABC Commission Field Auditor Ralph Ray contacted General Manager Ronald Kaylor to begin the collection of the information needed for the investigation.

Ms. Stevens stated there are no personal or financial interests shared between the property owner and the Catawba County ABC Board members. Ms. Stevens stated the five board members and the Chair have submitted financial disclosure forms. Ms. Stevens added the proposed building does have a loading dock.

Ms. Stevens stated the nearest school, Viewmont Elementary School located at 21 16th Avenue NW in Hickory, is approximately .8 miles from the proposed location. The nearest church, The Hills Church located at 2418 North Center Street in Hickory, is approximately 330 feet from the proposed location.

Ms. Stevens explained the next nearest ABC Store is located at 9469-A Highway 127 North in Hickory, North Carolina, approximately 4.3 miles from the proposed location. It is operated by the Alexander County ABC Board.

Ms. Stevens stated notice to the public was properly posted on September 24, 2020. It was witnessed by Mr. Ray on September 25, 2020 and determined to meet the sign requirements. Ms. Stevens stated, as of October 19, 2020, no objections had been received regarding the new store.

Chairman Guy asked if anyone from the Catawba County ABC Board was present and wished to address the Commission. As no one was present, Ms. Stevens stated staff recommended approval of the proposed location.

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

III. EXEMPTION REQUEST PURSUANT TO G.S. §18B-1116(b) – BLACKBERRY FARM, LLC AND HIGH HAMPTON INN, LLC

Chairman Guy stated the next item on the agenda was an exemption request pursuant to §18B-1116(b) from Blackberry Farm, LLC and High Hampton Inn, LLC. Mrs. Carter-Coley stated attorney Erin Mosley submitted the request on behalf of her clients and was present for the virtual meeting.

Ms. Mosley stated the exemption request was to allow common ownership interest between Blackberry Farm and High Hampton. Ms. Mosley explained, High Hampton Inn is a resort located in Cashiers, North Carolina and has been in operation since 1922. Ms. Mosley stated, in 2019, a group of investors came together to renovate and restore the resort. The 206-acre property was divided, separating the golf course and its amenities from the resort amenities, as well as creating residential opportunities. Ms. Mosley stated they wished to apply for retail permits under the new ownership.

Ms. Mosley explained Blackberry Farm, LLC owns two breweries located in Tennessee whose products are shipped to North Carolina wholesalers under their non-resident vendor ABC permit. Blackberry Farm, LLC is the 100% owner of Blackberry HH NC, LLC which is a 75% member of High Hampton Inn, LLC. Ms. Mosley stated the exemption request under §18B-1116(b) is to allow High Hampton to obtain the NC retail ABC permits and for Blackberry Farm to continue to ship products from Tennessee into North Carolina. Ms. Mosley stated they do not plan to sell Blackberry Farm products at High Hampton resort, at all.

Chairman Guy thanked Ms. Mosley. Mrs. Carter-Coley stated staff has reviewed the exemption request and recommends granting the exemption.

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

IV. PUBLIC HEARING ON PROPOSED PERMANENT ALLOW CERTAIN ORDERS OF ELIGIBLE DISTILLERY PRODUCTS RULES – 14B NCAC 15A .1304-.1305, .1403, .1407

Chairman Guy opened the public hearing on the Permanent Allow Certain Orders of Eligible Distillery Products Rules which were proposed on August 12, 2020. Chairman Guy recognized Walker Reagan, the Rules Coordinator, to provide an overview of the proposed rules for consideration. Mr. Reagan previously provided drafts of the proposed permanent rules to the Commission.

Mr. Reagan stated the public hearing was for the proposed Permanent Allow Certain Orders of Eligible Distillery Products Rules which were proposed by the Commission on August 12, 2020 and notice of the hearing was published in the NC Register on September 15, 2020. Mr. Reagan stated in 2019, the General Assembly amended G.S. §18B-800 to allow local boards to sell single bottles of spirituous liquor on the Special Order item list in quantities less than the supplier’s minimum case size, and to sell bottles it receives from a special order in excess of the bottles prepaid by the requesting customer. Mr. Reagan explained, under prior law, special order products could only be ordered in the supplier’s minimum case size and were prepaid by the customer prior to the special order being placed by the local board.

Mr. Reagan stated as a result of the legislative changes, amendments are needed to the existing rules to eliminate the requirement that a customer has to purchase special order products by the case, and to establish the conditions under which local boards may sell the special order products in excess of the bottles purchased by the customer requesting the special order.

Mr. Reagan explained, the proposed rules amend the requirements for prepayment of special orders to allow local boards the discretion to waive prepayment by the requesting customer when the local board intends to sell any bottles in excess of the requesting customer’s order. Mr. Reagan stated the proposed rules also amend the rules related to the special order sale and purchase of antique spirituous liquor to simplify the process by eliminating the requirement that the antique spirituous liquor be prepaid by the requesting customer prior to the order being placed.

Mr. Reagan stated the proposed rules include a new rule to allow local boards to authorize distiller, brokerage and supplier representatives to transport spirituous liquor owned by one local board to another local board that has purchased the liquor. This rule also defines the responsibility for the spirituous liquor during the transport. Mr. Reagan explained this rule is intended to facilitate the sale of any remainders of a special order case as directed by S.L. 2019-182, Sec. 3.(b).

Mr. Reagan explained the amendments to the special order statutes became effective September 1, 2019. Mr. Reagan stated as the public comment period for these rules is through November 16, 2020, the Commission may consider them for adoption at the December 2020 Commission Meeting.

Chairman Guy asked if anyone had any questions or public comments on the Proposed Permanent Allow Certain Orders of Eligible Distillery Products Rules. As there were no responses, Chairman Guy closed the public hearing.

V. PUBLIC HEARING ON PROPOSED PERMANENT DISTILLERIES ISSUE PURCHASE-TRANSPORTATION PERMIT RULES – 14B NCAC 15A .1706, .1801, .2103 - .2104

Chairman Guy opened the public hearing on the Permanent Distilleries Issue Purchase-Transportation Permits Rules proposed on August 12, 2020, for which notice of hearing was published September 15,

2020. Chairman Guy recognized Mr. Reagan to provide an overview of the proposed rules for consideration. Mr. Reagan previously provided drafts of the proposed rules to the Commission.

Mr. Reagan stated, in 2019, the General Assembly amended G.S. §18B-403 to allow distilleries to issue purchase-transportation permits for spirituous liquor sold by the distillery. Mr. Reagan explained, Purchase-Transportation permits are required in order for a person to lawfully purchase or transport quantities of spirituous liquor in excess of eight liters, as set out in G.S. §18B-303 and §18B-400.

Mr. Reagan stated amendments are needed to the existing rules to apply the purchase-transportation rules to distilleries selling their own spirituous liquor and to establish a procedure for the owner of a distillery to designate a distillery employee to be authorized to issue purchase-transportation permits on behalf of the distillery.

Mr. Reagan explained, in 2019, the General Assembly amended G.S. §18B-1105(a)(4) to remove the cap on the number of bottles of spirituous liquor distilled at the distillery which could be sold by the distillery to visitors who toured the distillery. Mr. Reagan added, the General Assembly also repealed the record keeping requirements for the number of bottles of spirituous liquor sold annually to each visitor who toured the distillery. Mr. Reagan stated the rules related to the maintenance of records of the number of bottles sold to visitors touring the distillery also need to be repealed to conform to the current statute.

Mr. Reagan explained the amendments to the statutes became effective September 1, 2019. Mr. Reagan stated the public comment period is through November 16, 2020 and the Commission may consider the rules for adoption at its December 2020 meeting.

Chairman Guy asked if anyone present wished to give public comments regarding the Proposed Permanent Distillers Issue Purchase-Transportation Permits rules. As there were no comments, Chairman Guy closed the public hearing.

VI. PUBLIC HEARING ON PROPOSED PERMANENT COME TO REST RULES – 14B NCAC 15C .0602 AND .0607

Chairman Guy opened the public hearing for the Permanent Come to Rest Rules proposed on September 9, 2020, and for which the notice of hearing was published in the NC Register on October 1, 2020. Chairman Guy recognized Mr. Reagan to provide an overview. Mr. Reagan previously provided drafts of the proposed permanent rules to the Commission.

Mr. Reagan explained, as part of his general review of the ABC Commission rules, and at the request of the NC Beer and Wine Wholesalers Association, staff discovered the phrase “come to rest” is used in both the malt beverages statutes and the wine statutes. Furthermore, the phrase “come to rest” had never been defined in the rules. Mr. Reagan stated, in order to have a clear standard or definition of the phrase, the Commission has proposed defining the phrase “come to rest” in a rule.

Mr. Reagan stated, G.S. §18B-1113 for malt beverages and G.S. §18B-1114 for wine, require that alcoholic beverages from nonresident malt beverage and wine vendor permittees must come to rest at the licensed premises of a malt beverage wholesaler or wine wholesaler in this State before being resold to a retailer.

Mr. Reagan stated the recommended definition of “come to rest” as proposed, requires that all malt beverages and wines intended for sale, delivery or shipment to retail permittees must first come to rest at the wholesalers permitted premises. Mr. Reagan explained come to rest is achieved when the alcoholic

beverages are unloaded from the delivery vehicle and placed on the wholesaler's floor so that the entire weight of the product is supported by the floor; and the product is inventoried, inspected and verified for taxes by the wholesaler.

Mr. Reagan explained because certain wineries are allowed to serve as the wholesaler of their own products under G.S. §18B-1101 and certain breweries are allowed to serve as the wholesaler of their own products under G.S. §18B-1104, these come to rest provisions will not apply to them.

Mr. Reagan stated the public comment period for these rules is through November 30, 2020 and the Commission may consider the rules for adoption at its December 2020 meeting.

Chairman Guy asked if Terri Beirne of The Wine Institute, Kris Gardner or Tim Kent of the NC Beer and Wine Wholesalers Association or Andy Ellen of the NC Retail Merchants Association were present and wished to comment.

As no one wished to address the Commission regarding the Come to Rest Rules, Chairman Guy closed the public hearing. Chairman Guy thanked Mr. Reagan for his work on the rules.

VII. OTHER BUSINESS

Chairman Guy asked Ms. Stevens, Mrs. Carter-Coley and Deputy Director Terrance Merriweather if there was any other business. They stated there was no other business.

Chairman Guy thanked Kelton Brown for his work managing the virtual meeting, as well as all those participating in the virtual meeting. Commissioner Mitchell stated he and Commissioner Stout reviewed all items on the agendas prior to the meetings for expediency and for fewer comments during the virtual meetings. The November ABC Commission Meeting was adjourned.

Approved at the December 9, 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