

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
AUGUST 12, 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 August 12, 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. called the August 2020 ABC Commission Meeting to order and welcomed those who were joining the teleconference.

Chairman Guy stated that since North Carolina would remain in Phase 2 for five more weeks per Governor Cooper, the September Commission Meeting would also be held virtually.

Chairman Guy greeted Commissioner Karen L. Stout and Commissioner Norman A. Mitchell, Sr. who were joining the meeting via teleconference. Chairman Guy stated he was fortunate to work with two people who care about North Carolina and North Carolinians.

Chairman Guy explained, regarding the COVID-19 pandemic, the Commission is doing everything it can to keep the employees safe. The building is not open to the public, but good customer service remains a priority. Chairman Guy added he is proud of the employees and the good job they have done during this adjustment.

**MINUTES OF THE JULY 8, 2020 COMMISSION MEETING**

Commissioner Mitchell made a motion to waive the reading of the minutes of the July 8, 2020 Commission Meeting into the record. Commissioner Stout seconded the motion. Motion Passed.

Commissioner Stout made a motion to approve the minutes of the July 8, 2020 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 – 61**

Chairman Guy recognized General Counsel Stacey Carter-Coley. Mrs. Carter-Coley stated agenda case number one, Texas Discotheque, was a contested case with a sanctions order. Mrs. Carter-Coley stated

the underlying charge was related to an employee's failure to cooperate with law enforcement as the officer attempted to take a weapon. Administrative Law Judge J. Randall May granted the sanctions motion for failure to file a prehearing statement. Mrs. Carter-Coley explained the Final Decision included a \$1,000.00 fine and a 15-day suspension of the ABC permits. Chairman Guy stated the Commission would defer to staff's recommendation and impose the decision of the Administrative Law Judge.

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

Mrs. Carter-Coley stated a representative wished to speak to the Commission on behalf of agenda case number 8, Aberdeen Lucky Stop. Wanda Al-Lahabi stated she was the office manager and there were two items listed. Ms. Al-Lahabi stated the person stocking in the business left three bottles that were not supposed to be there. Ms. Al-Lahabi also stated, as office manager, she would separate the invoices, and this was the first time this had happened.

Chairman Guy asked Ms. Al-Lahabi what she was requesting. Ms. Al-Lahabi requested a reduction of the fine. Chairman Guy asked Commissioners Stout and Mitchell if they had any questions or comments. Chairman Guy stated, considering the COVID-19 situation and that the permanent permits were obtained in June 2020, he recommended the penalty be reduced from \$1,200.00 to \$600.00.

Commissioner Stout made a motion to reduce the penalty. Commissioner Mitchell seconded the motion. Motion Passed. Ms. Al-Lahabi thanked the Commission.

Due to technical difficulties affecting the audio for the virtual meeting, Chairman Guy stated there would be a brief recess and the Commission Meeting would reconvene in five minutes.

After the meeting reconvened, Mrs. Carter-Coley stated staff recommended the Commission approve and 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 – CUMBERLAND COUNTY ABC BOARD *(102 Westwood Shopping Center, Fayetteville, NC 28314)***

Chairman Guy stated the next item on the agenda was the Cumberland County ABC Board's request to relocate a store. Chairman Guy added General Manager David Horne was in attendance if there were any questions.

Administrator Agnes C. Stevens stated there were two ABC Boards on the agenda regarding proposed store locations.

Ms. Stevens stated on July 9, 2020, the Cumberland County ABC Board requested approval from the Commission to lease and operate an ABC Store at 102 Westwood Shopping Center in Fayetteville, North Carolina. ABC Commission Auditor/Investigator Richard Thorsen conducted the investigation regarding the proposed location.

Ms. Stevens stated the new location will replace the existing ABC Store at 5091 Morganton Road in Fayetteville. Ms. Stevens explained the property is designated commercial and allows for an ABC Store. The Cumberland County ABC Board members have provided financial disclosure forms and Ms. Stevens confirmed there are no personal or financial interests shared between the property owner and the Board members.

Ms. Stevens stated the nearest school, Fayetteville Academy located at 3200 Cliffdale Road in Fayetteville, is approximately .8 miles away. The nearest church, Village Baptist Church located at 3525 Cliffdale Road in Fayetteville, is approximately .9 miles away. Ms. Stevens stated the closest ABC store is located approximately 1.6 miles away at 3708 Sycamore Dairy Road in Fayetteville and is also operated by the Cumberland County ABC Board.

Ms. Stevens stated the required sign announcing the ABC Board's intention to open an ABC Store was properly posted at the location on May 14, 2020. Mr. Thorsen observed the sign and that it was in compliance on July 10, 2020. Ms. Stevens stated as of July 10, 2020, the ABC Board had not received any objections. Ms. Stevens stated staff recommends approval of this request and added Mr. Horne was available if there were questions.

Chairman Guy asked if there were any questions or comments. As there were none, Commissioner Stout made a motion to approve the proposed location upon staff recommendation. Commissioner Mitchell seconded the motion. Motion Passed. Chairman Guy thanked Mr. Horne, the General Manager of the Cumberland County ABC Board.

### **III. ABC STORE LOCATION – PENDER COUNTY ABC BOARD (*Highway 117 Bypass, Burgaw, NC 28425*)**

Chairman Guy welcomed Pender County ABC Board General Manager Susan Crawford and stated they were doing a good job in Pender County.

Ms. Stevens stated on July 8, 2020, the Pender County ABC Board requested approval to relocate and operate a newly constructed ABC Store near the corner of East Wilmington Street and Highway 117 in Burgaw, North Carolina. ABC Commission Compliance Officer Quinn Woolard conducted the investigation regarding the proposed location.

Ms. Stevens explained the property is zoned commercial business and allows for an ABC Store. Ms. Stevens stated the 4.17-acre property is owned by Eva Jones. The Pender County ABC Board members submitted financial disclosure forms as requested and Ms. Stevens confirmed there are no personal or financial interests shared between the property owner and the Board members.

Ms. Stevens stated the nearest schools, Burgaw Elementary School located at 400 North Wright Street and Burgaw Middle School located at 500 South Wright Street, are both approximately 1.3 miles from the proposed location. Ms. Stevens added SPEC Preschool & School Age Childcare located at 1001 North Rhodes Avenue, is approximately .3 miles away.

The nearest church, Broken Bread Fellowship located at 908 East Fremont Street, is approximately .1 mile or 500 feet away, across Highway 117, from the proposed location. St. Mary's Episcopal Church located at 506 South McNeil Street and Mission Baptist Church located at 607 South Walker Street are approximately .7 and .9 miles away, respectively. Ms. Stevens added there are four additional churches located between 1 and 1.5 miles from the proposed location.

Ms. Stevens explained the nearest ABC Store, located at 207 Highway 117 Bypass in Burgaw, will be closed upon the opening of the new store. The next nearest ABC Store is located approximately 8.2 miles away at 8206 Highway 117 South in Rocky Point, North Carolina and is also operated by the Pender County ABC Board.

Ms. Stevens stated the required notice to the public announcing the ABC Board's intention to open an ABC Store was properly posted at the location on June 5, 2020. The notice was witnessed by Mr. Woolard to be in compliance with ABC Rules on June 16, 2020. Ms. Stevens stated as of July 22, 2020, the ABC Board had received no calls or inquiries regarding the proposed store. Ms. Stevens stated staff recommends approval of this request and General Manager Susan Crawford was present on the call if there were any questions.

Chairman Guy asked if there were any questions or comments. As there were none, Commissioner Mitchell made a motion to approve the proposed location upon staff recommendation. Commissioner Stout seconded the motion. Motion Passed.

Chairman Guy thanked Pender County ABC Board Chair Susan Robbins and the Board members, as well as Susan Crawford, the General Manager. Ms. Crawford thanked the Commission.

**IV. EXEMPTION REQUEST PURSUANT TO G.S. §18B-1116(b) – BULL CITY BURGER AND BREWERY, LLC t/a BULL CITY BURGER AND BREWERY; POMPIERI PIZZA, INC. t/a POMPIERI PIZZA; SETH GROSS**

Attorney John Szymankiewicz joined the teleconference on behalf of his clients, Bull City Burger and Brewery and Pompieri Pizza.

Mr. Szymankiewicz explained Bull City Burger is a brewery with commercial and retail ABC permits, and Pompieri Pizza holds retail ABC permits. Mr. Szymankiewicz stated there is common ownership through Seth Gross who owns 100% of the corporations operating each business. Mr. Szymankiewicz stated Pompieri Pizza is one of the three retail outlets allowed and the exemption is requested for the concurrent ownership.

Mrs. Carter-Coley stated Kris Gardner of the North Carolina Beer and Wine Wholesalers Association had also reviewed the request. Mrs. Carter-Coley stated staff recommended approval of the exemption with the following conditions, an independent manager at Pompieri Pizza will be in charge of ordering the malt beverage products, the brewery will continue to brew less than 5,000 barrels annually, and a good faith effort will be made by Bull City to find an independent wholesaler to deliver the malt beverages.

Chairman Guy asked Mr. Szymankiewicz if he had any comments. Mr. Szymankiewicz stated none of the conditions pose any problems for his clients. Chairman Guy thanked Mr. Gardner.

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

**V. OTHER BUSINESS – PUBLIC HEARING ON PROPOSED PERMANENT ABC STORE SPIRITUOUS LIQUOR TASTINGS RULES – 14B NCAC 15C .1301, .1303-.1305, .1307**

Chairman Guy declared the public hearing was opened on the proposed permanent ABC Store Spirituous Liquor Tastings Rules, 14B NCAC 15C .1301, .1303-.1305, .1307. Chairman Guy recognized Walker

Reagan, the rules coordinator, to provide background on the proposed permanent rules and the timeline for consideration. Mr. Reagan previously provided drafts of the proposed permanent rules to the Commission.

Mr. Reagan stated, 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 an ABC store when approved by the local ABC Board, in addition to conducting tastings at other specified events as previously allowed. Mr. Reagan explained the 2019 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 p.m. and 7:00 p.m., to last no longer than three hours, and an ABC store is to hold no more than three tastings per calendar week. Mr. Reagan stated it also allows local boards to impose any additional conditions on tastings held in its stores at the local board's discretion.

Mr. Reagan explained the General Assembly also made additional changes to this 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 stated the amendments to the spirituous liquor tasting statutes have been in effect since September 1, 2019.

Mr. Reagan stated, after receiving written comments, the Commission staff recommends additional changes to the proposed rules as published in the NC Register. Mr. Reagan stated the proposed revised rules were provided to the Commission for the hearing and were posted on the ABC Commission's website.

Mr. Reagan explained since the proposed rules were published in the NC Register on April 1, 2020, after receiving written comments, Commission staff is recommending changes to Rule 14B NCAC 15C .1307 as published, to the following:

1. Allow local boards to require a written agreement from the permittee with the request for a tasting event agreeing to comply with local board conditions.
2. Require local boards to provide a superseding permittee with alternative tasting event dates and times prior to withdrawing prior permission given to another permittee.
3. Require local boards to provide written notice and explanation to a permittee whose prior permission to conduct a tasting is withdrawn.
4. Allow a local board to deny future requests to conduct consumer tastings for up to one year for any permittee, who is found after a hearing, to have violated local board conditions.
5. Require local boards to maintain for a period of three years, records of requests, permissions, denials and withdrawals of permission to conduct tasting events.

Mr. Reagan stated the proposed rules before the Commission:

1. Eliminate the requirements for designated tasting areas and allows authorized agents of spirituous liquor special event permittees to conduct tastings on the permittees' behalf.
2. Establish the processes and procedures for ABC store tastings regarding local boards' determinations on when tastings will be allowed and methods for ensuring reasonable opportunities for tastings to all spirituous liquor special event permittees.
3. Establish the standard for proof of ABC store purchases for spirituous liquor used at tastings.
4. Establish the reporting requirements for ABC store tasting events.

Mr. Reagan stated, prior to the public hearing, Reverend Mark Creech and Larry Etheridge expressed that they wished to speak before the Commission.

Chairman Guy thanked Mr. Reagan and recognized Reverend Mark Creech. Rev. Creech stated he was the Executive Director of the Christian Action League of North Carolina and thanked the Chairman and Commissioners for their service on the ABC Commission. Rev. Creech stated their work is critical to encouraging temperance and keeping North Carolinians as safe as possible. Rev. Creech stated, even though he abstains and encourages the same of others, he believes very much in the work of the Commission. Rev. Creech stated he is a staunch defender of the current control system and offers his comments as such.

Rev. Creech stated he was not speaking in hopes of changing anything previously decided but wished his words to be part of the record of the ABC Commission meeting. Rev. Creech stated he feared turning this corner may bring about the demise of the Commission. Rev. Creech expressed the Christian Action League was perhaps the sole opponent of liquor tasting events in ABC Stores and had been successfully working for several years to convince lawmakers to reject the proposals. Rev. Creech explained, this was not out of concern the tastings would lead to intoxication, but more philosophical in nature.

Rev. Creech explained, in 2005 when the lottery was being considered by the General Assembly, the proponents stated the state was already in the liquor business. Rev. Creech had argued then, that the state was not in the liquor business, but the ABC was about control for regulation and safety. Rev. Creech added the ABC stores have never promoted liquor sales and kept a position of neutrality, avoiding appearances of endorsements and encouragement. Rev. Creech stated he believed the purpose of the ABC stores was to provide accessibility with regulated sales only where it was authorized by ballot boxes.

Rev. Creech stated liquor tastings change the core objective by moving from a neutral stance to an alliance with the spirits industry for the promotion and sale of liquor. Rev. Creech stated this change would shift the ABC Boards from control to profits and provided a quote from John D. Rockefeller. Rev. Creech stated ABC stores would become like other stores, about profit not control and this would lead to privatization. Rev. Creech stated the Christian Action League was disappointed when the NC Association of ABC Boards changed their position of neutral on in-store liquor tastings to one in support. Rev. Creech stated he felt privatization of liquor sales would be a disaster for the public health and safety of North Carolina. Rev. Creech thanked the Chairman and the Commission. Chairman Guy thanked Rev. Creech for his eloquent remarks.

Mr. Reagan stated Larry Etheridge, the General Manager of the Wilson County ABC Board also wished to address the Commission. Chairman Guy stated he had received an email from Mr. Etheridge and had encouraged him to join the meeting to speak.

Mr. Etheridge thanked the Chairman, the Commission, Rev. Creech and Mr. Reagan. Mr. Etheridge stated he did not oppose the law authorizing tastings in ABC Stores; however, he had concerns with Section C of 14B NCAC 15C .1307. Mr. Etheridge explained Section C allows an ABC Board to withdraw permission for a tasting, if a request to hold a tasting on the same date is submitted by another permittee that has conducted fewer tastings in the previous 12 months.

Mr. Etheridge stated he believed the scheduling of tastings should allow for all to be treated fairly on a first come, first served basis. Otherwise, the cancellations and scheduling would become an undue burden on the ABC Boards. Mr. Etheridge asked that the subject be tabled to allow all parties to discuss the matter further. Mr. Etheridge also suggested allocating a percentage of time slots to NC distilleries.

Chairman Guy asked if there was anyone else who wished to address the Commission regarding the proposed rules. Chairman Guy asked the Commissioners if they had any comments regarding considering

the adoption of the proposed rules. As no one else wished to speak, Chairman Guy closed the public hearing. Commissioner Stout expressed a desire to continue the discussion.

Commissioner Stout made a motion to schedule a virtual meeting to allow discussion and consideration of the ABC Boards Spirituous Liquor Tastings rules and the comments received. Commissioner Mitchell seconded the motion. Motion Passed.

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

Mr. Reagan recommended the item be removed from the agenda and be scheduled for consideration at another meeting. Commissioner Stout made a motion to remove the Consideration of the Adoption of the Permanent Rules from the agenda. Commissioner Mitchell seconded the motion. Motion Passed.

**VII. OTHER BUSINESS – CONSIDERATION OF PROPOSAL OF PERMANENT DISTILLERIES ISSUE PURCHASE-TRANSPORTATION PERMIT RULES – 14B NCAC 15A .1304 - .1305, .1403, .1407**

Chairman Guy recognized Mr. Reagan to provide an overview of the Proposed Distilleries Issue Purchase-Transportation Permits Rules. Mr. Reagan previously provided drafts of the proposed permanent 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. 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 explained amendments are needed to existing rules to apply the purchase-transportation permit rules to distilleries selling their own spirituous liquor. And to establish a procedure for the distillery owner to designate a distillery employee as authorized to issue purchase-transportation permits on behalf of the distillery.

Mr. Reagan stated, also 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 explained they also repealed the record-keeping requirements of the number of bottles of spiritous liquor annually sold to each visitor who toured the distillery. Mr. Reagan added, the rules related to the maintenance of records of the number of bottles sold to visitors touring the distillery also needs to be repealed to conform to the current statute. The amendments to the statute became effective September 1, 2019.

Mr. Reagan stated staff recommends the Commission propose the Distilleries Issue Purchase-Transportation Permits Rules as presented. Mr. Reagan requested the rules be filed with the Office of Administrative Hearings for publication in the NC Register; copies be sent to the ABC Commission rulemaking committee emailing list; and be posted, on the Commission website. Mr. Reagan also requested the Commission schedule a public hearing for November 4, 2020; set a public comment period to be open until at least 60 days from the date of publication in the NC Register; and, authorize staff to make non-substantive changes to the proposed rules as needed.

Mr. Reagan stated he would answer any questions. Chairman Guy asked if anyone had any questions or comments. As there were none, Commissioner Mitchell made a motion to propose the Distilleries Issue Purchase-Transportation Permits Rules as presented to the Commission and the recommendations of staff. Commissioner Stout seconded the motion. Motion Passed.

**VIII. OTHER BUSINESS – CONSIDERATION OF PROPOSAL OF PERMANENT ALLOW CERTAIN ORDERS OF ELIGIBLE DISTILLERY PRODUCTS RULES – 14B NCAC 151 .1706, .1801, .2103 - .2104**

Chairman Guy stated the matter before the Commission was the consideration of a proposal of Allow Certain Orders of Eligible Distillery Products Rules and recognized Mr. Reagan to provide an overview. Mr. Reagan previously provided drafts of the proposed permanent rules to the Commission.

Mr. Reagan explained, 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. Under prior law, special order products could only be ordered in the supplier's minimum case size that were prepaid by the customer prior to the special order being placed by the local board.

Mr. Reagan stated amendments are needed to existing rules to eliminate the requirement that a customer must purchase special order products by the case and to establish conditions under which local boards may sell 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. 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 add a new rule to allow local boards to authorize distillery, 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 added the amendments to the statute became effective September 1, 2019.

Mr. Reagan explained staff recommends the Commission propose the Allow Certain Orders of Eligible Distillery Products 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. Mr. Reagan recommended the Commission direct copies of the proposed permanent rules be sent to persons on the ABC Rulemaking emailing list and posted on the ABC Commission's website; schedule a public hearing on the proposed permanent rules to be held at the Commission's meeting on November 4, 2020; set a public comment period on the proposed permanent rules to be open until at least 60 days from the date of publication in the NC Register; and, authorize staff to make non-substantive changes to the adopted rule as needed prior to publication.

Chairman Guy asked if anyone had questions or wished to comment on the rule. Commissioner Stout made a motion that the Commission propose the Allow Certain Orders of Eligible Distillery Products Rules as presented and the recommendations of the staff regarding the rules. Commissioner Mitchell seconded the motion. Motion Passed.

Chairman Guy reminded Mr. Reagan to work with Mrs. Carter-Coley to schedule the virtual discussion regarding the tastings rules.

**IX. OTHER BUSINESS – ORDER TO DISPOSE OF EVIDENCE SEIZED (A00207041)**

Mrs. Carter-Coley asked the Commission to issue a Destruction Order for evidence seized. Mrs. Carter-Coley explained the permittee withdrew the application for permits and there were no pending violations or investigations. Mrs. Carter-Coley recommended approval of the order to dispose of the evidence.

Chairman Guy asked if there were any questions regarding the order. As there were none, Commissioner Mitchell made a motion to approve the order for disposal. Commissioner Stout seconded the motion. Motion Passed.

Chairman Guy asked Ms. Stevens and Mrs. Carter-Coley if there was any other business. Both stated there was not. Chairman Guy asked if anyone else wished to address the Commission, no one responded.

Chairman Guy thanked all those participating in the virtual meeting, including suppliers, Rev. Creech, Mr. Etheridge and Miles Davis, President of the NC ABC Boards Association. Chairman Guy reminded everyone the September Commission Meeting would also be held virtually and the meeting was adjourned.

Approved on September 9, 2020  
A.D. “Zander” Guy, Jr., Chairman  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

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Caroline Y. Washburn for the Legal Section