

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
SEPTEMBER 9, 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 September 9, 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 September 2020 ABC Commission Meeting to order.

Chairman Guy thanked the ABC Commission employees for the good service they are providing during the COVID pandemic though the building is not open to the public. Chairman Guy stated the Commission is trying to help permittees and assist the Governor's Office with the Executive Orders. Chairman Guy thanked ALE Director Bryan House, the Branch Head of ALE, and the ALE Special Agents. Chairman Guy acknowledged it has not been an easy task for their agents. Chairman Guy also thanked the bar and restaurant owners for their patience, as well as the suppliers.

Chairman Guy announced the remainder of the 2020 ABC Commission Meetings would also be conducted virtually.

Chairman Guy greeted Commissioner Karen L. Stout and Commissioner Norman A. Mitchell, Sr. who were joining the meeting via teleconference.

MINUTES OF THE AUGUST 12, 2020 COMMISSION MEETING

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

Commissioner Mitchell made a motion to approve the minutes of the August 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 – 58

Chairman Guy recognized General Counsel Stacey Carter-Coley. Mrs. Carter-Coley stated the first three cases were contested cases with Final Decisions rendered by an Administrative Law Judge through the Office of Administrative Hearings. Mrs. Carter-Coley stated staff recommended the adoption of the findings of the Administrative Law Judges.

Commissioner Stout made a motion to impose the Judges' decisions in the three cases. Commissioner Mitchell seconded the motion. Motion Passed.

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

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

II. EXEMPTION REQUEST PURSUANT TO G.S. §18B-1116(b) – JAMES C. LANE AND ALLORA WINE COMPANY, LLC

Chairman Guy announced the next item on the agenda was an exemption request. Mrs. Carter-Coley stated attorney Hardy Lewis was present on behalf of his clients.

Mr. Lewis thanked the Commission for the opportunity to speak and stated he represented Allora Wine Company and James Lane. Mr. Lewis explained Allora Wine Company, which does not hold permits, was established earlier this year in Brunswick County by Mr. Lane. Mr. Lewis added, if there were questions, Mr. Lane was also present for the meeting.

Mr. Lewis explained Allora was formed to engage in business as an importer of European wines, beginning with Italian wines and to obtain an Importer ABC permit. The goal of Allora is to import the wines and engage wholesalers to offer the products for sale in North Carolina and later, in South Carolina. Mr. Lewis stated the business is still in the start-up phase and has not yet been able to generate interest with independent wholesalers.

Mr. Lewis explained Mr. Lane is the 100% owner of Allora. Mr. Lane is also the 100% owner of Angelo's Pizzeria and Bistro in Shallotte, North Carolina and the 100% owner of Maria's Pizzeria and Gelateria in Ocean Isle Beach, North Carolina. Both businesses are restaurants and hold ABC retail permits.

Mr. Lewis stated there is not a prohibition against an importer also holding a direct or indirect interest in a retailer. Mr. Lewis explained, initially, Allora would need to be its own wholesaler until it can develop a market and find wholesalers to distribute its products in North Carolina. Mr. Lewis explained both restaurants offer a variety of wines with at least 50 different labels available and they are purchased from various wholesalers and suppliers. Mr. Lewis stated the restaurants wish to continue to offer their customers a variety of products. Mr. Lewis added there is no danger regarding violating the policy for exclusive outlets.

Mr. Lewis explained Mr. Lane is not interested in being in the logistics business with trucks and drivers. He wishes to have a wholesaler manage the distribution of the wines for Allora. Mr. Lewis added Mr.

Lane also does not want to alienate his current wholesalers and suppliers. Mr. Lewis asked the Commission to consider the number of products and that this is a temporary solution until the import business develops and it is able to gain wholesalers.

Chairman Guy asked if anyone had comments. As no one wished to comment, Mrs. Carter-Coley stated staff recommends approval of the exemption with conditions of the requirement of a reasonable market share and a good faith effort is made to find an independent wholesaler.

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

III. EXEMPTION REQUEST PURSUANT TO G.S. §18B-1116(b) – ARTISANAL BREWING VENTURES CHARLOTTE, LLC T/A BREWERS AT 4001 YANCEY

Chairman Guy stated the next item on the agenda was an exemption request from Artisanal Brewing Ventures Charlotte, LLC trading as Brewers at 4001 Yancey. Mrs. Carter-Coley stated attorney Erin Mosley wished to speak to the Commission on behalf of her clients. Chairman Guy greeted Ms. Mosley. Ms. Mosley explained she had addressed the Commission on behalf of her clients a few times prior regarding exemption requests and this request was more of a clean-up request. Ms. Mosley stated the matter originated at the January 15, 2020 Commission Meeting during which Artisanal Brewing Ventures' exemption request was granted.

Ms. Mosley explained Artisanal Brewing has retail and commercial permits associated with the brewery in Charlotte, North Carolina. Ms. Mosley stated Artisanal was now requesting to wholesale products to Bold Rock Partners of Mills River, North Carolina. Ms. Mosley explained, as part of the original exemption, Artisanal agreed to forego its wholesaler rights. Ms. Mosley stated this request was to wholesale only to Bold Rock and not to wholesale throughout the rest of the state. Ms. Mosley thanked the Commission for their consideration.

Chairman Guy asked if there were any questions and no one had questions. Mrs. Carter-Coley explained this was the fourth requested amendment to the original exemption. Mrs. Carter-Coley added, Kris Gardner of the Beer and Wine Wholesalers Association had reviewed the amendment request and had no objections. Mrs. Carter-Coley stated staff recommends approval of the request.

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

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

Chairman Guy stated the matter before the Commission was consideration of the adoption of the Permanent ABC Store Spirituous Liquor Tasting Rules and 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 the permanent ABC Store Spirituous Liquor Tasting rules were proposed by the Commission at its meeting on March 11, 2020. Mr. Reagan explained the proposed rules were submitted to the Office of Administrative Hearings on March 11, 2020. Mr. Reagan stated the proposed rules, the notice of public hearing and notice of public written comment period were published in the North

Carolina Register on April 1, 2020 and posted on the ABC Commission's website and emailed to the ABC Commission rulemaking email list on March 11, 2020.

Mr. Reagan explained the public hearing was properly noticed for May 13, 2020 at 10:00 a.m. and the public comment period was noticed to end at the same time. Mr. Reagan explained, due to COVID-19, on April 15, 2020, notice was properly given that the public hearing was rescheduled to June 10, 2020 at 10:00 a.m. and the public comment was extended to end at this time, also. On May 21, 2020, notice was properly given that the public hearing was rescheduled to July 8, 2020 at 10:00 a.m. and that the public comment period was extended until July 8, 2020 at 10:00 a.m. On June 10, 2020, notice was properly given that the public hearing was rescheduled, and the public comment period was extended to August 12, 2020 at 10:00 a.m. The public hearing was held on August 12, 2020.

Mr. Reagan stated the statutory time periods after publication for holding a public hearing of at least 15 days after publication and the receiving of written comments of at least 60 days after publication, have been complied with. Mr. Reagan explained, after receiving public comments, staff is recommending revised rules with changes made after publication in the NC Register, as presented at the public hearing on August 12, 2020 and to the Commission today.

Mr. Reagan stated in addition to the comments heard during the public hearing on August 12, 2020 from Reverend Mark Creech and Larry Etheridge; the Commission also received written comments from Miles Davis, President of the North Carolina Association of ABC Boards. Mr. Davis commented on the version of the rules originally published in the NC Register. After reviewing the revised rules, Mr. Davis withdrew his comments. Mr. Etheridge commented on the revised rules presented at the public hearing and his comment is the remaining public comment. Mr. Reagan explained the ABC Boards Association, the NC Spirits Association and the NC Distillers Association all indicated they are satisfied with the version of the rules before the Commission today.

Mr. Reagan explained the Commission may consider the adoption of the rules during the current meeting. Mr. Reagan stated staff recommends the Commission adopt the Permanent ABC Store Spirituous Liquor Tastings rules as published in the NC Register with the changes presented and direct that these 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 added staff recommends the Commission authorize staff to make any non-substantive changes to the adopted rules, as needed, prior to publication.

Mr. Reagan stated Skye David of the NC ABC Boards Association and Carol Shaw of the Distillers Association were present for the meeting and perhaps Meredith McCormack of the NC Spirits Association was participating, also. Chairman Guy recognized them and asked if anyone wished to comment and no one wished to comment.

Commissioner Stout made a motion that the ABC Commission adopt the Permanent ABC Store Spirituous Liquor Tastings Rules as published in the NC Register, with the changes recommended and presented by staff and the recommendations of staff regarding the rules. Commissioner Mitchell seconded the motion. Motion Passed.

Chairman Guy thanked Mr. Reagan for his work on the rules; and thanked Mr. Etheridge for his comments, as well as his work with the ABC Boards Association.

V. OTHER BUSINESS – CONSIDERATION OF PROPOSAL OF PERMANENT COME TO REST RULES – 14B NCAC 15C .0602 and .0607

Chairman Guy stated the matter before the Commission was the consideration of a proposal of the Come to Rest 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, as part of his general review of the ABC Commission rules, and at the request of the NC Beer and Wine Wholesalers Association, it was 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, staff recommends the phrase “come to rest” be defined.

Mr. Reagan stated, G.S. §18B-1113 for malt beverages and G.S. §18B-1114 for wine require these alcoholic beverages 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” 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, 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 staff recommends the Commission propose the Come to Rest Rules as presented. Mr. Reagan explained the Commission should direct the proposed rules be filed with the Office of Administrative Hearings for publication in the NC Register and copies of the proposed permanent rules be sent to persons on the ABC Rulemaking emailing list and posted on the Commission’s website. Mr. Reagan stated staff recommends the Commission schedule a public hearing on the proposed permanent rules be held at the Commission’s meeting on November 4, 2020 and set a public comment period on the proposed permanent rules be open until November 30, 2020. Mr. Reagan stated staff recommends the Commission authorize staff to make any non-substantive changes to the proposed rules as needed.

Mr. Reagan stated Terri Beirne of The Wine Institute previously indicated she may wish to be heard by the Commission and Tim Kent, Executive Director of the NC Beer and Wine Wholesalers Association, was present. Chairman Guy asked if either wished to make comments. Wendy Kelly of the California Wine Institute stated Ms. Beirne wished to make comments but was in a meeting and Ms. Kelly would try to connect her.

Mr. Kent stated the NC Beer and Wine Wholesalers Association appreciates the work of the Commission staff in the preparing of the proposed rule change. Mr. Kent stated this is the first step in a long process and it codifies the Commission’s existing interpretation of the rule. Mr. Kent explained, though it is common industry practice, the come to rest definition being set in the rules will ensure everyone operates in the same manner. Mr. Kent thanked the Commission and Mr. Reagan.

Ms. Kelly stated Ms. Beirne sends her apologies and would be unable to join the meeting. Ms. Kelly added The Wine Institute would send written comments.

Chairman Guy asked if anyone else wished to address the Commission regarding the Come to Rest Rules. As no one responded, Commissioner Stout made a motion that the Commission propose the Come to Rest Rules as presented and the recommendations of the staff regarding the rules. Commissioner Mitchell seconded the motion. Motion Passed.

VI. OTHER BUSINESS –

Chairman Guy asked Mrs. Carter-Coley, Administrator Agnes C. Stevens and Deputy Director Terrance Merriweather if there was any other business. They stated there was not. Chairman Guy asked if anyone else wished to address the Commission, no one else wished to speak to the Commission.

Chairman Guy thanked all those participating in the virtual meeting. Chairman Guy thanked the staff and stated the Commission is doing everything it can to provide good customer service, as it is a top priority. Chairman Guy added anyone who needs assistance, should contact the Commission. Chairman Guy encouraged everyone to be safe and the September Commission Meeting was adjourned.

Approved at the October 7, 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