

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MEETING MINUTES  
MARCH 10, 2021**

The following narrative summarizes the North Carolina Alcoholic Beverage Control Commission (hereinafter “Commission”) Meeting held via teleconference at 400 East Tryon Road in Raleigh, North Carolina on March 10, 2021, beginning at 10:00 AM. The meeting was recorded, and a copy of the recording is on file at the Commission within the Legal Section.

**ROLL CALL**

Chairman A.D. Zander Guy, Jr. welcomed those who were joining the teleconference for the March 10, 2021 Commission Meeting and thanked them for participating. Chairman Guy called the March 10, 2021 Commission Meeting to order.

Chairman Guy announced the April 2021 Commission Meeting would also be held virtually.

Chairman Guy described the day as auspicious, as the March meeting would include discussions of topics on which the Commission had been working a long time. Chairman Guy explained the Commission staff, as well as their partners, had worked very hard to complete the project. Chairman Guy thanked the Commission staff and the industry members who had assisted the Commission staff, as well as those participating in the meeting.

Chairman Guy introduced Commissioner Karen L. Stout and Commissioner Norman A. Mitchell, Sr. who were joining the meeting via teleconference. Chairman Guy stated it was a pleasure to work with the Commissioners as they have tackled some difficult issues. Chairman Guy stated the Commission was fortunate to have the Commissioners to work with, as well as the Commission staff.

**MINUTES OF THE FEBRUARY 10, 2021 COMMISSION MEETING**

Commissioner Mitchell made a motion to waive the reading of the minutes of the February 10, 2021 Commission Meeting into the record. Commissioner Stout seconded the motion. Motion passed.

Commissioner Stout made a motion to approve the minutes of the February 10, 2021 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 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. HEARING CASES AND OFFERS IN COMPROMISE – 45**

Chairman Guy recognized General Counsel Stacey Carter-Coley. Mrs. Carter-Coley stated there were forty-five Offer in Compromise cases on the agenda. Mrs. Carter-Coley asked if anyone wished to speak to the Commission regarding a case and there were no responses. As there were no responses, Mrs. Carter-Coley stated staff recommends the ratification of the forty-five Offers in Compromise.

Commissioner Mitchell made a motion to ratify the forty-five Offers in Compromise upon staff recommendation. Commissioner Stout seconded the motion. Motion passed.

## **II. STORE LOCATION – YOUNGSVILLE ABC BOARD (1170 US Route 1, Youngsville, North Carolina 27596)**

Chairman Guy recognized Deputy Commissioner Terrance L. Merriweather to provide an overview of the Youngsville ABC Board's request for an ABC Store relocation. Mr. Merriweather stated on January 21, 2021, the Youngsville ABC Board requested approval from the Commission to operate a new ABC Store. Mr. Merriweather stated on February 24, 2021, Commission Auditor/Investigator Richard Thorsen met with Youngsville ABC Board Chairman Rick Houser to gather information needed for the investigative report. Mr. Houser informed Mr. Thorsen the proposed store would replace the store located at 101 North College Street in Youngsville.

Mr. Merriweather stated the property is zoned for commercial use. The proposed property is located at 1170 US Highway 1, Suite 150 in Youngsville, North Carolina and the building is approximately 3,800 SF. The property is owned by Barnett Properties, LLC of Henderson, NC. Mr. Thorsen confirmed there are no shared financial interests between the ownership and the Youngsville ABC Board. All Youngsville ABC board members submitted financial disclosure forms.

Mr. Merriweather stated the nearest schools are Long Mill Elementary School located at 1753 Long Mill Road in Youngsville approximately 1.5 miles from the proposed location and Freedom Academy located at 120 Weathers Street in Youngsville approximately 1.1 miles from the proposed location. The nearest church, Glory Tabernacle Church located at 120 Weathers Street, is approximately .6 miles from the proposed location.

The notice to the public was properly posted on January 20, 2021 and was witnessed by Mr. Thorsen. Mr. Merriweather stated three objections had been received by the Board regarding the proposed store. The calls included concerns a new store was not needed; concerns regarding traffic; and, a general objection to ABC Stores. Mr. Merriweather stated staff recommended approval of the proposed location for the Youngsville ABC Board.

Youngsville ABC Board Chairman Rick Houser was participating in the meeting and thanked Chairman Guy and the Commission employees for their continued support of the Youngsville ABC Board. Mr. Houser specifically thanked Laurie Lee, Director of the Pricing/ABC Board Audits Section for her assistance and Mr. Thorsen for the professional investigation. Ms. Bridget Miller, the General Manager of the Youngsville ABC Board, thanked the Commission for its support and stated the other ABC Boards had also been supportive. Ms. Miller thanked the Commission for its consideration.

Chairman Guy asked if the Commissioners had questions regarding the proposed location or if anyone else wished to comment and there were no responses. As the Commissioners did not have questions,

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

### III. REVIEW OF PRODUCT REGISTRATION DENIAL – SYCAMORE BREWING

Chairman Guy stated the next item on the agenda was the review of the product registration denial of a Sycamore Brewing product label and recognized Mrs. Carter-Coley. Mrs. Carter-Coley stated Michael Boyer, the attorney for Sycamore Brewing, wished to address the Commission. Chairman Guy welcomed Mr. Boyer. Mr. Boyer thanked Mrs. Carter-Coley and Assistant General Counsel Renee C. Metz for their assistance and understanding when he requested to move the review from the February meeting to the March meeting.

Mr. Boyer explained the request for review was regarding the Commission's decision to disapprove Sycamore Brewing's 2020 year's end hard seltzer product. Mr. Boyer asked if the Commission had received the materials he had submitted. Mrs. Carter-Coley confirmed the Commission had received the documents. Mr. Boyer stated Sycamore Brewing does not have a future profit motive, but the review request was a more pure and principled appeal. Mr. Boyer stated if the Commission reversed its decision, it would benefit the industry. Mr. Boyer added the industry had suffered tremendously over the last calendar year because of COVID 19 and the accompanying governmental actions.

Mr. Boyer questioned if the rule addressed in the label disapproval, 14B NCAC 15B .1003 (a)(2), was the proper mechanism for the product disapproval in question. Mr. Boyer read, *14B NCAC 15B .1003 (a) An advertisement or product label on any alcoholic product sold or distributed in this State shall not contain any statement, design, device or representation that: (a)(2) depicts the use of alcoholic beverages in a scene that is determined by the Commission to be undignified, immodest or in bad taste.*

Mr. Boyer questioned whether the label submitted does depict the use of alcoholic beverages in a scene. Mr. Boyer asked if the presence of a stylized product name such as the one submitted, was sufficient to rise to the level of depicting the use of alcoholic beverages in a scene that is found to be in bad taste. Mr. Boyer questioned overlooking subsection (a)(1) of the same Administrative Rule. Mr. Boyer stated this subsection was not cited as a justification for the disapproval. Mr. Boyer continued, stating (a)(1) incorporates by reference the C.F.R. which prohibits from appearing on labels "*any statement, design, device, or representation that is obscene or indecent.*" Mr. Boyer stated rule (a)(1) was more applicable to the Sycamore Brewing label. Mr. Boyer continued, questioning if an absence of a certificate of label approval (COLA) which the TTB does not issue for certain products, affected the Commission's decision. Mr. Boyer added, if there was a COLA, it would have given the Commission a more favorable attitude when rendering a decision regarding the product. Mr. Boyer explained the TTB has approved at least one product with the exact same name.

Mr. Boyer questioned the application of subsection (a)(2) of this Rule to other products sharing the same or similar sensibility as the Sycamore product. Mr. Boyer stated the Commission had approved those products and cited examples from a cross-section of these products referenced in the documentation previously provided to the Commission. Mr. Boyer stated the listed products bore similar expletives as the Sycamore product and they had been approved for sale in North Carolina. Mr. Boyer described the wording and graphics of those products, some of which were from out-of-state suppliers and some from in-state breweries. Mr. Boyer stated the labels brought into North Carolina by suppliers had the word in question spelled out. However, the labels of the products from the North Carolina breweries used "EFF" and "EFFU" or asterisks in place of letters. Mr. Boyer also described labels using a representation(s) of the middle finger. Mr. Boyer questioned if the out-of-state products, which had COLAs and were brought

into North Carolina by the wholesalers, were treated differently from the in-state products which did not require COLAs. Mr. Boyer stated they did not believe the Commission intended to create an unpredictable speech environment for the in-state products; however, the approvals appeared to be in contradiction.

Mr. Boyer stated consumer sentiment is an important barometer for what businesses understand to be acceptable speech in the private marketplace. Mr. Boyer stated they understood the Commission is obligated to ensure the Administrative Code and laws are upheld. Mr. Boyer explained they believed the expletive was the consumer sentiment, as U.S. brewers, both large and small, had expressed it on their labels. Mr. Boyer stated the ownership of Sycamore Brewing had explained, "this was intended to be a small-batch release and provide a bit of levity during a dark time." Mr. Boyer stated it had been received and anticipated as such. Mr. Boyer added they hoped the Commission would take the consumer sentiment and competing ideas in the marketplace into account. Mr. Boyer asked the Commission to consider the procedural issues, as well as the substantive precedence issue.

Mr. Boyer thanked the Commission for allowing Sycamore Brewing to present their request. Mr. Boyer restated there was no future profit motive as the product would not be produced again. Mr. Boyer added it was intended to be a small-batch release to commemorate a pretty terrible year. Mr. Boyer requested the Commission preserve some predictability of the Commission's application of the Administrative Code and laws and preserve the innovative and creative aspects of a healthy and thriving craft beer industry in North Carolina.

Chairman Guy thanked Mr. Boyer for his comments and asked if anyone else wished to address the Commission regarding this matter. Reverend Mark Creech, the executive director of the Christian Action League of North Carolina, introduced himself and thanked the Commission for the opportunity to speak regarding the subject. Rev. Creech also expressed, the appreciation of the League and the thousands of churches it represents, for the work of the Commission to protect public health and safety from alcohol abuse with its regulations.

Rev. Creech stated he had been long aware of Sycamore Brewing's proposed name for one of its products which included a vulgar expletive. Rev. Creech continued, expressing that this "F-word" is unquestionably used in society; however, when a letter is followed by "-word," it is still taken as the word which is offensive in most settings. Rev. Creech explained some of the "-words" could be so offensive as to cause pain and many are also an assault on some citizens when they hear them.

Rev. Creech explained the objectionable nature of the "F-word" is known because it is so often substituted, often with "freaking," "frigging" and "fricking". But these substitutes still conjure the "F-word". Though the word has become prevalent in use and even allowed by some governing bodies, it is not acceptable on radio and television as it is most often "bleeped out" or edited. Rev. Creech added, he believed the word is generally rejected in most advertising. Rev. Creech explained some studies in defense of the word, may state using expletives can help with pain while others state it does not help with pain. Other research states its use can create bonding and morale among employees or its use can make those using the words appear incompetent or unprofessional. Rev. Creech added, politicians using it may seem more persuasive, but its use often has the opposite affect with some audiences. Rev. Creech explained there is not definitive research showing these words are necessary or in the best interest of the general welfare.

Rev. Creech provided a quote from Bob Greene of the Field Newspaper Syndicate regarding swearing in our society. Mr. Greene described swearing as once being a marker of the lower strata of society and the use of profanity in public can be a violation of privacy. Rev. Creech continued, stating Mr. Greene

described profanity as a message of ugliness, aggressiveness and a disrespect for society. Mr. Greene also recognized it is now being defended as “freedom,” but he questioned whose freedom? Rev. Creech thanked the Commission on behalf of the Christian Action League and asked that the Commission deny the proposal, which in their opinion, only contributes to a coarser society. Rev. Creech added, the product would not be the focus, but instead, its name would be the focus. The product’s name would be egregiously offensive to many and most would prefer for it not to be prominent in the public domain.

Chairman Guy thanked Rev. Creech for his comments and asked if anyone else wished to comment on this matter. Chairman Guy also asked if Mr. Boyer had any additional comments as the matter would be closed after a motion is made and passed, eliminating the opportunity for any additional public comments per Roberts Rules of Order. Mr. Boyer thanked the Commission and stated, though they respect the position of the Christian Action League, he wished to underscore the issues Sycamore presented earlier during the meeting. Chairman Guy asked if anyone else wished to comment on the topic. As no one expressed a desire to address the Commission, Mrs. Carter-Coley stated staff recommends the Commission uphold the staff decision to deny the product registration.

Commissioner Mitchell made a motion upon staff recommendation to uphold the previous staff decision. Commissioner Stout seconded the motion. Motion passed.

Chairman Guy thanked all who participated in the discussion of this matter. Chairman Guy added everyone gets an opportunity to speak to the Commission on these matters when they request to do so. Chairman Guy again thanked Mr. Boyer and Rev. Creech.

#### **IV. UPDATE AND CONSIDERATION OF WAREHOUSE RFP**

Chairman Guy recognized Agnes C. Stevens, Director of Special Services, to address the Commission regarding an update and the consideration of the warehouse Request For Proposal “RFP.” Chairman Guy stated the Commission staff, especially Ms. Stevens with the assistance of Moniqua Mclean, had worked with the State and other parties on this project for almost three years. Chairman Guy thanked them, and all the parties involved for their hard work.

Ms. Stevens thanked Chairman Guy and stated it was a pleasure to be able to present the report to the Commission. Ms. Stevens explained she had last provided an update on the Warehouse RFP at the December Commission Meeting. Ms. Stevens provided the background of the warehouse RFP, stating in July 2018, the Commission made a public commitment to put the contract for the warehouse services out for bid in 2020. This was to allow a new contract to be in place upon the current contract’s expiration on June 30, 2021.

Ms. Stevens explained the process had been thorough and transparent. In order to procure expert outside assistance, the Commission issued an RFP for services to assist in drafting the content of the warehouse services RFP. Ms. Stevens stated, in the summer of 2019, the Commission selected Atlanta-based Johnson Stephens Consulting, a firm with national expertise in supply chain operations and distribution issues.

Johnson Stephens began work in the summer of 2019. Ms. Stevens explained input was requested from the key stakeholders, including the NC Association of ABC Boards, the NC Spirits Association, and the Distillers Association of NC. Additionally, the Commission contacted all the ABC Boards and requested input and suggestions for the new warehouse contract. In December 2019, the Commission also sought input from the Department of Public Safety (“DPS”) Chief Information Officer and the DIT team to help

ensure the computer hardware and software requirements included in the contract were compliant with the State's IT standards.

Ms. Stevens stated Johnson Stephens conducted several site visits and compiled research for the contract requirements. Johnson Stephens developed a draft scope document and provided it to the Commission in winter 2019. During the spring and summer of 2020, the Commission worked with DPS Purchasing and the state's Purchasing and Contracts staff to refine the bid documents. The resulting RFP was published in September 2020 with a bid deadline of November 12, 2020.

Ms. Stevens explained the criteria for evaluating the resulting bids was outlined in the RFP and the Commission Chairman selected a blue-ribbon evaluation committee to evaluate the bid responses and make a recommendation. Ms. Stevens added the Commission would like to thank the members of this outside evaluation committee for their work. This committee included Tim Kent, Executive Director of the Beer and Wine Wholesalers Association, who served as chairman; NC Representative Jamie Boles; Wilson County ABC Board General Manager Larry Etheridge; Jack Wooten, Vice President of Southern Glazer's Wine & Spirits of NC; and, Mark Edwards, Chief Deputy Secretary of the Department of Administration.

Ms. Stevens stated the evaluation committee met on November 24, 2020 and on December 1, 2020. The evaluation committee then made its recommendation that the State should negotiate a contract. Since that recommendation was made, the Commission staff worked with DPS Purchasing and the Division of Purchasing and Contracts to negotiate a best and final offer. Ms. Stevens explained DPS Purchasing and the state's Division of Purchasing and Contracts stressed the confidential nature of the negotiations until the award is complete. Ms. Stevens announced that the negotiations were complete, and Mrs. Carter-Coley would begin the next step related to the best and final offer.

Mrs. Carter-Coley stated, due to the confidential nature of the proposed warehouse contract, staff recommends the Commission begin a closed session. Based upon staff recommendation that the Commission begin an executive closed session, Chairman Guy requested a motion. Commissioner Mitchell in compliance with N.C.G.S §143-318.11(a)(1), N.C.G.S. §132-1.2(a), and exemption (b)(4) of the Freedom of Information Act, made a motion that the Commission go into a closed session regarding confidential information in the proposed warehouse contract. Commissioner Stout seconded the motion. Motion passed.

#### *Closed Session Begins*

Ms. Stevens stated, following the recommendation of the evaluation committee, the Commission staff worked with DPS Purchasing and the state's Purchasing and Contracts office to negotiate the best and final offer, as well as a side agreement related to the continuity of computer services with the new contract.

Ms. Stevens explained the proposed contract will compensate the vendor on a per load basis. Additionally, the compensation increases would be capped at 2% a year with a potential for an additional 1% if key performance indicators are met. The indicators include nearly error-free and on-time deliveries. The new contract provides the state's 171 ABC Boards with a shorter cycle of time between ordering and delivery, weekly deliveries (some boards currently receive only a monthly delivery and many only receive deliveries two times a month), a backorder process, and real-time inventory information. Ms. Stevens stated the new computer system will be robust and promises long-term flexibility.

Ms. Stevens stated, since 2004, the warehouse services for the Commission have been operated by the vendor that took over the operations when the prior contractor was in bankruptcy. The contract was amended many times in the ensuing seventeen years and rebid in 2020.

Ms. Stevens explained the term of the proposed contract is ten years. The term was approved by the state purchasing officer who recognized the need for a long lead time for the development of a new contract of this scope. The expiring contract was last amended in March 2019 when a \$2,000.00 fee was added for loads in excess of 333 loads per month, the standard level of deliveries established in a 2011 contract amendment. Ms. Stevens stated, under the current contract the Commission pays more than \$1 million per month which includes the flat fee, plus the fee for excess loads. Ms. Stevens explained the per load billing format of the proposed contract will streamline the billing as it is all inclusive and is per load only.

Ms. Stevens stated, the warehouse operations are paid for by bailment, a fee paid by the ABC Boards based upon each case of liquor ordered. Ms. Stevens explained, to fund the new contract, the bailment would need to be increased. Ms. Stevens stated the Commission staff believes the proposed contract for services to be in the best interest of the State and the State's ABC system. Ms. Stevens stated staff recommends the State's Purchasing and Contracts office be directed to execute the contract as presented, to ensure a smooth transition between the current contract and the new contract.

Ms. Stevens added, the Commission is also requested to approve increasing the bailment from \$1.50 per case to \$2.75 per case, effective August 1, 2021. Ms. Stevens stated there was no recommended change to the current markup of 39.6% and no recommended change to the bailment surcharge, currently \$1.15 per case. Ms. Stevens explained the bailment increase would raise the shelf price of a typical bottle in a 12-bottle case by \$.20. This increase should not affect the boards' profitability, as it is expected the suppliers will adjust their prices to reflect the bailment increase.

Ms. Stevens stated Bob Smith, the senior attorney in the Purchasing and Contracts office was available if the Commissioners had any questions. Chairman Guy stated they had all worked hard on the contract and asked Commissioners Mitchell and Stout if they had any additional questions while in the closed session. Commissioners Mitchell and Stout stated they did not have questions. Commissioner Mitchell thanked the staff for the overview and proposal and commended Ms. Stevens and the staff for the wonderful job they did.

Commissioner Stout made a motion to end the closed session and return to the Commission Meeting. Commissioner Mitchell seconded the motion. Motion passed.

#### *Closed Session Ends*

Chairman Guy explained the topic of the discussion during the closed session was the new warehouse contract. Ms. Stevens stated staff recommends the Commission accept and approve the best and final offer as presented and make the suggested adjustments to bailment. Chairman Guy stated he was proud of the staff and the process had been as transparent as allowed. Chairman Guy thanked Ms. Stevens and Ms. Mclean, as well as the partners in this contract.

Commissioner Mitchell made a motion to adjust the bailment as authorized by N.C.G.S. §18B-203(14) to \$2.75 per case, effective August 1, 2021 and recommend to and authorize DPS Procurement to execute the proposed warehouse contract with LB & B Associates, Inc. in reference to Proposal Number 19RFP-014978-PJW. Commissioner Stout seconded the motion. Motion passed.

Chairman Guy thanked everyone again for their hard work regarding the warehouse contract.

**V. OTHER BUSINESS**

Chairman Guy asked Mr. Merriweather and Mrs. Carter-Coley if there was any additional business, and both stated there was not. Chairman Guy reminded the participants the April 2021 Commission Meeting would be held virtually and thanked everyone for participating in the meeting. Chairman Guy declared the March Commission Meeting adjourned.

*Approved at the April 14, 2021 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