

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MEETING MINUTES
APRIL 14, 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 April 14, 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 April 14, 2021 Commission Meeting. Chairman Guy stated there were many parties with an interest in the discussions to be held during the meeting and thanked them for participating. Chairman Guy called the April 14, 2021 Commission Meeting to order.

Chairman Guy thanked Kelton Brown and Liliana Carbajal for their IT assistance. Chairman Guy also expressed his appreciation to Director Bryan House, the Branch Head of ALE, for the work done by ALE. Chairman Guy thanked the Commission staff for their efforts during the pandemic. Chairman Guy acknowledged there had been some difficulties managing the volume of telephone calls received and that the Commission was working to correct the issues. Chairman Guy stated customer service was very important at the Commission and anyone who wished to express concerns should contact Deputy Commissioner Terrance Merriweather for assistance.

Chairman Guy introduced Commissioner Norman A. Mitchell, Sr. and Commissioner Karen L. Stout who were joining the meeting via teleconference. Chairman Guy stated they have been wonderful to work with and thanked them for their assistance to the Commission.

Chairman Guy explained the Commission manages its meetings using Robert’s Rules of Order and parliamentary procedure. Once an agenda topic is on the floor with a motion and that motion has been seconded, there would be no further public discussion and a vote would be called.

MINUTES OF THE MARCH 10, 2021 COMMISSION MEETING

Commissioner Stout made a motion to waive the reading of the minutes of the March 10, 2021 Commission Meeting into the record. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Commissioner Mitchell made a motion to approve the minutes of the March 10, 2021 Commission Meeting. Commissioner Stout seconded the motion. A vote was held, and the 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 – 62

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 and had been heard by the Office of Administrative Hearings. Mrs. Carter-Coley explained the Administrative Law Judge had issued a decision in the case including a \$1,000.00 penalty for failure to superintend. Mrs. Carter-Coley stated staff requested the Commission accept the final decision of the Administrative Law Judge.

Commissioner Stout made a motion to follow staff's recommendation and impose the Judge's decision. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Chairman Guy stated staff had recommended the ratification of the remaining cases. Commissioner Mitchell made a motion to ratify the remaining Offers in Compromise. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

II. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B – 1116(b) – COMMUNITY BREWING VENTURES, LLC; DISTRICT 9 BREWING COMPANY, LLC; D9 BREWING UPTOWN CHARLOTTE, LLC; AND, D9 BREWING HENDERSONVILLE, LLC

Chairman Guy again recognized Mrs. Carter-Coley regarding the exemption request. Mrs. Carter-Coley explained it was a self-contained ownership request from the parent company, Community Brewing Ventures, LLC and the related LLC's. Mrs. Carter-Coley stated the original brewery was adding a second satellite location while the two sister breweries would sell only to their own taprooms. Mrs. Carter-Coley explained a third-party wholesaler was currently being used by the original brewery and they would continue to use a third-party wholesaler. Mrs. Carter-Coley explained the petitioner itself would not be allowed to transfer or move product from the original brewery to the others and would still be required to use a wholesaler to transfer product.

Mrs. Carter-Coley explained the exemption was reviewed by staff and Kris Gardner of the Beer and Wine Wholesalers Association. Mrs. Carter-Coley stated staff recommends the exemption be granted with the terms and conditions presented to the Commission. Chairman Guy asked if anyone was present regarding the exemption request.

Abbie Rosario addressed the Commission, explaining he worked for District 9 Brewing Company and Community Brewing Ventures. Mr. Rosario stated he wished to clarify the statement regarding the continued use of the wholesaler and not being able to transfer between the locations. Mr. Rosario stated that was incorrect and explained they would continue using the wholesaler across the state and for other retail locations. Mr. Rosario stated they were under the impression they would still be able to transfer products between locations and asked if that was not allowed.

Mrs. Carter-Coley stated it was not allowed. Mrs. Carter-Coley continued, explaining if Mr. Rosario was referring to section 14 of their exemption request, the order the staff recommended would not allow those transfers. The breweries would still need to use a wholesaler for those transactions. Mr. Rosario asked if the exemption could be amended to allow them to transfer the products without a wholesaler. Mrs. Carter-

Coley explained it was staff's recommendation that it not be allowed as it would not be lawful. Chairman Guy asked the Commissioners to consider the exemption based upon the staff recommendation.

Commissioner Mitchell made a motion to grant the presented exemption based upon the staff recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed. Chairman Guy thanked Mr. Rosario for his comments.

III. REQUEST FOR DECLARATORY RULING REGARDING N.C.G.S. §18B – 1105

Chairman Guy recognized Assistant General Counsel Renee Metz to address the Commission on this agenda item. Mrs. Metz stated on March 17, 2021, the Commission received a Verified Request for Declaratory Ruling asking the Commission to determine the applicability of General Statute §18B-1105 to Mystic Farm and Distillery which holds a distillery permit in North Carolina.

Chairman Guy asked the Commissioners if they had any questions regarding the request. As they did not, Mrs. Metz stated staff recommends the Commission decline to issue a declaratory ruling, as House Bill 366 was filed on March 23, 2021, approximately one week after the verification request was received by the Commission. Mrs. Metz explained this bill specifically changes the requests included in the petition. Mrs. Metz also explained 14B NCAC 15A .0602(c)(8) specifically states the Commission could not issue a declaratory ruling while there is pending legislation regarding the subject matter.

Chairman Guy stated, to the Commissioners, the Assistant General Counsel had explained the staff recommendation and asked if there was a motion. Commissioner Stout made a motion to accept the staff recommendation.

Jonathan Blitz interrupted and stated he wished to speak to the Commission. Mr. Blitz explained he was the attorney who filed the request and also a principal of Barrister and Brewer, LLC. Mr. Blitz requested to be briefly heard by the Commission before a vote was held on the matter. Chairman Guy stated he would allow Mr. Blitz to address the Commission despite having a motion already on the floor.

Mr. Blitz stated it was their position that Chapter 150B does not recognize the pending legislature as being a proper basis for denying the declaratory ruling. Mr. Blitz also referenced the uncertain nature of legislature. Mr. Blitz stated there are Constitutional issues raised by the application of §18B-1105 to out-of-state sales. Mr. Blitz continued, stating the second section of the 21st Amendment reserves to the individual states, the ability to control the importation and sale of spirituous alcohol within their borders. Mr. Blitz stated he believed by prohibiting them from conducting the interstate commerce to those jurisdictions, North Carolina was extending its jurisdiction into the other states; thereby contravening their ability under the second section of the 21st Amendment to control that commerce. Mr. Blitz stated within the past 30 days, an order placed on their website by an individual in each of the states of Kentucky, Florida and New Hampshire had to be refunded.

Mr. Blitz stated as a policy matter it is really important to have the ability to serve those customers. Mr. Blitz stated he disagrees with staff regarding their interpretation of §18B-1105 as prohibiting this. He added "private agencies" could be construed to include private individuals.

Mr. Blitz explained they had filed the petition approximately a week before the legislature's action which they did not know was forthcoming. Mr. Blitz stated with the unpredictability of the state legislature and the hope it will not be necessary to seek injunctive relief; but to preserve their ability to do so, it was their intention to use the declaratory ruling to give them jurisdiction in Superior Court. Mr. Blitz stated once that matter was filed, they would have time to see what the legislature does. Mr. Blitz added, for the

record, they are losing business and the money from the out-of-state sales would add to the North Carolina economy. Mr. Blitz thanked the Commission for its time and consideration.

Chairman Guy reminded the Commissioners they had received a staff recommendation regarding this matter. Commissioner Stout repeated her motion to follow the staff recommendation. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Chairman Guy thanked Mr. Blitz and the Commissioners.

IV. OTHER BUSINESS

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

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