

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
SEPTEMBER 12, 2012**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its meeting on September 12, 2012, beginning at 10:00 AM. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

**ROLL CALL**

Chairman Zander Guy and Commissioner Daniel L. Briggs were present at the meeting.

**MINUTES OF AUGUST 15, 2012**

Chairman Guy asked for a motion to waive the reading of the minutes of the August 15, 2012 meeting into the record. Commissioner Briggs made a motion to waive the reading of the minutes from the August 15, 2012 meeting. Motion Passed. Chairman Guy asked for a motion to approve the minutes of the August 15, 2012 meeting. Commissioner Briggs made a motion to approve the minutes from the August 15, 2012 meeting. Motion Passed.

**CONFLICTS OF INTEREST**

As required by North Carolina General Statute 138A-35, Chairman Guy asked Commissioner Briggs if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the agenda. Commissioner Briggs stated that he had found no conflicts of interest. Chairman Guy stated that he had found no conflicts of interest.

**I. HEARING CASES – 99**

Chief Counsel Fred Gregory stated the first hearing case was contested case #1, Rock Star Bar Grill and Bar and no one was present. Assistant Counsel LoRita Pinnix stated Assistant Counsel K. Renee Cowick had represented ABC Commission in this matter. It was recommended that the Commission adopt Administrative Law Judge J. Randall May's Decision to impose a 30-day suspension of Permittee's ABC permits and a civil penalty of \$1,000.00.

Commissioner Briggs made a motion to adopt the Administrative Law Judge's Decision. Motion Passed.

Chief Counsel Gregory stated Ms. Susan Tu, the permittee of hearing case #61, Spring Rolls, was present to speak on behalf of the business.

Assistant Counsel Pinnix stated that Wake County ABC conducted an inspection and found several violations, the most serious of which was a tax stamp transferred from a bottle of spirituous liquor. Ms. Tu stated that the bottle of spirituous liquor was Drambuie which was old and not often used and the stamp was mistakenly applied to another bottle. Ms. Tu explained a new bartender tried a recipe by putting a jalapeno in a bottle of tequila. The new drink was not on the menu and they had not gotten approval for the recipe from the ABC Commission. She asked for a reduction of the penalty.

After some discussion with Chairman Guy, Commissioner Briggs made a motion to waive the active suspension and reduce the penalty 25% upon the completion of the ABC Commission's training class within 30 days. Motion passed.

Chief Counsel Gregory stated Ms. Rinkabel Patel, an employee and corporate officer, was present for hearing case #39, Franklin Mart, to speak on behalf of the business.

Assistant Counsel Pinnix stated that this was a campaign by the Chapel Hill Police Department. An underage person's identification was not checked and he was able to buy a malt beverage. Ms. Patel stated she always checked identification, but she was busy at the time the underage person came into her business. She was distracted by another customer and could not remember if she had checked the underage person's identification and made the sale.

Commissioner Briggs made a motion to reduce the penalty 25% upon the completion of the ABC Commission's training class within 30 days. Motion passed.

Chief Counsel Gregory stated Mr. Kent Hodges, owner of hearing case # 81, Mellow Mushroom, was present to speak on behalf of his business.

Assistant Counsel Timothy W. Morse stated a bottle of spirituous liquor was discovered on the premises with a tax stamp belonging to another location. Mr. Hodges stated the license was not posted properly because they were completing renovations. Mr. Hodges also acknowledged that the bottle of spirituous liquor was improperly brought over by an employee from another location.

Commissioner Briggs made a motion to reduce the penalty 25% upon the completion of the ABC Commission's training class within 30 days. Motion passed.

Chief Counsel Gregory stated Mr. Doug Besser, Director of Operations and Mike Leeburg, Vice-President of Operations were present for hearing case # 8, Carolina Ale House, to speak on behalf of the business.

Assistant Counsel Morse stated this case was Assistant Counsel Cowick's. Mecklenburg County ABC conducted an underage campaign. The bartender checked an 18-year old's identification and made the sale anyway. Mr. Besser stated that all employees are trained and documentation is kept on file regarding their training. The employee had been a server and recently promoted to bartender which required additional training. The employee was terminated immediately.

Commissioner Briggs made a motion to reduce the penalty 25% upon the completion of the ABC Commission's training class within 30 days. Motion passed.

Chief Counsel Gregory stated Mr. Layton Johnston, manager, and Mr. Brad Allred, bar manager, were present for hearing case # 91, Shanagins, to speak on behalf of the business.

Assistant Counsel Morse stated law enforcement entered the establishment and saw at least two individuals holding more than one malt beverage at a time. The Asheboro Police Department also responded to a disturbance call on the premises. Initially, it appeared that Mr. Heaton was off-duty, but later the police concluded that he was on duty and was intoxicated at the time. Mr. Morse also pointed out that the Greensboro Police Department officers were involved in one of the incidents and the Asheboro Police Department reported the violation.

Mr. Johnston acknowledged there were patrons in the establishment with two alcoholic beverages at a time. They immediately corrected the situation by taking away one of the beverages. Mr. Johnston also acknowledged they do not always destroy unfinished portions as quickly as they should because they are busy. Mr. Johnston further stated they understood if Mr. Heaton performed a work action then he was on

duty and it was a violation. Mr. Johnston stated they were there to better their establishment and to help Asheboro as a bar industry. Mr. Johnston stated both he and Mr. Allred were from out of state and they had run other operations differently and were trying to learn how to conduct business in North Carolina. Mr. Johnston stated they are the only business to turn in fake ID's in Asheboro and were working to communicate with ALE and local law enforcement.

Commissioner Briggs made a motion to reduce the penalty 25% upon the confirmation of completion of the ABC Commission's training class. Motion passed.

## **II. OTHER BUSINESS – ABC STORE LOCATION – OCEAN ISLE**

Administrator Michael Herring stated that on July 13, 2012, the Commission received a letter from George Montague, Chairman of Ocean Isle ABC Board requesting the Commission's approval to relocate the ABC store. On July 27, 2012, ALE Special Agent Alton Baker began an investigation into the proposed site for the new ABC Store. Special Agent Baker found that the proposed location will be at Lot 10, 6278 Beach Drive, Ocean Isle Beach, North Carolina. The property is part of the Landing at Ocean Isle Beach shopping center. It is currently a vacant lot with plans to build a store in the near future. The area consists mainly of restaurants, retail businesses and residences. The property is 1.46 acres and is to be purchased by the Town of Ocean Isle Beach and the Ocean Isle ABC Board will lease the property. The nearest church is 1.4 miles from the proposed site and the nearest school is 4.4 miles from the proposed site. Notice to the public was properly posted on the property on July 27, 2012. There have been no objections received. The investigation found no conflicts of interest or complaints.

Mr. Herring recommended that the Commission approve the new ABC Store location.

Commissioner Briggs made a motion to approve the new ABC Store location. Motion Passed.

## **III. OTHER BUSINESS – EXEMPTION REQUEST – G.S. §18B-201(a) HENDERSON COUNTY ABC BOARD**

Assistant Counsel Morse stated Mr. Beau Waddell of Henderson County has recently been appointed to the newly formed Henderson County ABC Board. Mr. Waddell was given an information packet by the ABC Commission staff to review in which there was information regarding Conflicts of Interest. Mr. Waddell was concerned about the potential Conflict of Interest and sent a letter to Mr. Herring dated August 23, 2012. Mr. Waddell's father is the sole owner a corporation that operates ten convenience stores in Henderson, Polk and Transylvania counties, nine of which have ABC Permits. Mr. Waddell is a corporate manager.

Assistant Counsel Morse stated that under the provisions of G.S. §18B-201(a), the Conflict of Interest provisions, the general rule is if that person or a member of that person's family "has or controls, directly or indirectly, a financial interest in any business required to have an ABC permit" they are prohibited from serving on a Board. However, in the same paragraph the ABC Commission can, under certain circumstances, exempt that and allow that person to serve. Assistant Counsel Mr. Morse stated a potential conflict of interest could arise if and when the Henderson County ABC Board either employs ABC law enforcement officers or contracts with other law enforcement agencies to enforce the ABC laws. Assistant Counsel Morse stated this potential conflict of interest could be addressed by Mr. Waddell's recusal from discussion and voting on any law enforcement issue coming before the Board.

Commissioner Briggs made a motion to approve an exemption for Mr. Waddell based upon public notice well in advance of a scheduled ABC Board Meeting with Mr. Waddell's request and the ABC Commission's response placed upon the agenda to be discussed in an open session. Mr. Waddell's request

and the ABC Commission's letter in response, with corresponding statute references, along with any other pertinent documents, should be included in the public record in the interest of transparency and maintaining integrity from the beginning. Motion Passed.

**IV. OTHER BUSINESS – Adoption of Rules 04 NCAC 02S .0525, 04 NCAC 02S .0708, 04 NCAC 02S .0901, 04 NCAC 02S .1011, 04 NCAC 02T .0104, 04 NCAC 02T .0714 and 04 NCAC 02T .0715**

Rules Coordinator Bob Hamilton requested that the Commission adopt the rules published in Volume 27, Issue 02 of North Carolina Register and the rules be adopted contingent that no further comments are received prior to the end of the comment period on September 14, 2012. Mr. Hamilton stated thus far there had only been two comments at the public hearing and both were in favor of the rule change. Mr. Hamilton asked that the effective adoption date be Monday, September 17, 2012.

Commissioner Briggs made a motion for adoption of the rules contingent that no further comments are received prior to the end of the comment period on September 14, 2012 and the adoption date be effective Monday, September 17, 2012. Motion Passed.

Commissioner Briggs made a motion to approve the remaining offers in compromise, with the exception of the previously ratified cases. Motion Passed.

With no further business, the meeting adjourned.

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A.D. "Zander" GUY, JR., Chairman  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

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Caroline Y. Washburn, Legal Division