

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MEETING MINUTES
MARCH 16, 2022**

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 16, 2022, 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 William Henry “Hank” Bauer, Jr. called the March 2022 Commission meeting to order and welcomed those who were participating. Chairman Bauer introduced himself, Commissioner Norman A. Mitchell, Sr. and Commissioner Karen Stout, who were joining the meeting virtually, Deputy Commissioner Terrance L. Merriweather and General Counsel Stacy Carter-Coley.

Chairman Bauer provided a business update. He stated that in the first half of our fiscal year, which runs from July through December, depletions were up 11.5% and shipments out of our vendor were up 21%. In January, there was a slowdown. Depletions were up 3% and shipments were up 6%. We bounced back in February with a 12.4% growth and shipments were up 19%. Overall, for the first eight months of the year, depletions were up 10.7%. Chairman Bauer thanked the boards and our vendor for making that happen and stated that he was looking forward to a great fiscal year.

MINUTES OF THE FEBRUARY 9, 2022 COMMISSION MEETING

Chairman Bauer requested a motion to waive the reading of the minutes of the February 9, 2022 Commission meeting into the record. Commissioner Stout made the motion. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

Chairman Bauer requested a motion to approve the minutes of the February 9, 2022 Commission meeting. Commissioner Stout made the motion. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

CONFLICTS OF INTEREST

As required by N.C.G.S. §138A-35, Other Rules of Conduct, Chairman Bauer 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. Chairman Bauer stated he had reviewed the agenda and found no conflicts. Commissioner Stout and Commissioner Mitchell also stated they found no conflicts.

I. HEARING CASES AND OFFERS IN COMPROMISE – 50

Chairman Bauer recognized General Counsel Stacey Carter-Coley regarding Item I on the agenda, the hearing of the cases.

Ms. Carter-Coley presented case number one on the agenda concerning permittee Yummy Crab who was represented by Attorney Glenn Lassiter. She established that this case was handled by Assistant Counsel Rachel Spears and involved a negotiated settlement offer signed by the permittee for four violations, agreeing to the terms of a reduced penalty of \$2,000.00 or a 20-day suspension after completing a training course. She stated that this case was continued from the February agenda where Attorney Lassiter requested the Commission consider an additional reduction in the penalty based on further review of the case and discussion with Mr. Lassiter.

Ms. Carter-Coley stated that staff's recommendation remained the same as the signed offer in compromise and asked Mr. Lassiter if he would like to share any additional evidence of actions taken by his client that warranted further consideration by the Commission.

Mr. Lassiter summarized his argument presented in February. He reiterated that his client did not admit guilt to any of the violations by signing the offer in compromise. However, he stated that he did admit that these violations stemmed from the same problem – a beer shortage in the Charlotte area during the previous summer. He stated that his client could not get product from their wholesaler but could find it at Walmart and Food Lion.

Mr. Lassiter stated that after negotiating with staff, his client was left with two choices. They could accept and sign the offer in compromise carrying a penalty of a \$2,000 fine or 20-day suspension or they could request a hearing with the Office of Administrative Hearings. Mr. Lassiter continued that under current guidelines, if his client went to hearing there was the possibility of a fine and a mandatory 30-day suspension. Mr. Lassiter stated that a 30-day suspension would be devastating to his client and the equivalent to a revocation as the business would not survive. He stated that in lieu of risking a 30-day suspension, his client made the decision to sign the offer in compromise and ask the Commission for further leniency.

Mr. Lassiter stated that his client has had a difficult time and they made a mistake. He said that the liquor shortage was much worse, but the beer shortage was real as well. He suggested that the only harm that occurred was that the sales tax on this beer was paid twice. He stated that the \$2,000.00 penalty was excessive and equivocated it to the penalty for sale to underage, which is \$2,000.00 or a 20-day suspension, and asked the Commission for any relief they would be willing to give.

Ms. Carter-Coley reiterated that staff recommended the Commission ratify the negotiated offer in compromise signed by the permittee without any additional reduction.

Chairman Bauer stated that he appreciated Mr. Lassiter's time and feedback. He stated that staff reviewed the matter, and the Commission was ready to rule. Commissioner Mitchell made a motion to approve staff's recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

Ms. Carter-Coley asked if there was anyone present who would like to address any of the remaining forty-nine offers in compromise on the agenda. Chairman Bauer repeated the request three more times.

Hearing none, Ms. Carter-Coley stated that staff recommended the Commission ratify the remaining cases on the agenda. 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. REVISION TO EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – 321 WINE, LLC D/B/A KELLOGG SELECTIONS; CHARLOTTE WINE CO., LLC D/B/A BAR A VINS; JEFF KELLOGG; STEPHANIE KELLOGG; ERIC SOLOMON AND EUROPEAN CELLARS, LLC

Chairman Bauer recognized Ms. Carter-Coley regarding Item II.

Ms. Carter-Coley introduced the parties and stated that this was a request to amend an exemption order granted at the January 12, 2022 Commission meeting. She stated that the change was to allow Eric Solomon, sole owner of European Cellars, LLC and partial owner of Kellogg Selections, to also have an ownership interest in the retail entity Bar A Vins. She continued that this additional joint ownership was the subject for the request to amend the prior exemption order. Ms. Carter-Coley asked if the permittee’s counsel, Jennifer Morgan, was present.

Hearing no response, Mr. Carter-Coley stated that staff had reviewed the petition for an amended order and requested that the exemption order include all prior conditions imposed on Jeffrey Kellogg and Stephanie Kellogg to also be imposed upon Eric Solomon. She continued that all other conditions contained in the original petition and the amended exemption request should remain in effect so long as they were not in conflict with the original order and the current order if granted. Ms. Carter-Coley stated that staff recommended granting the amendment to the exemption order granted on January 12, 2022.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner Mitchell made a motion to approve staff’s recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

III. EXEMPTION REQUEST PURSUANT TO N.C.G.S. §18B-1116(b) – WEHRLOOM, LLC; WEHRLOOM-AVL, LLC; JESSICA WEHR AND ARON WEHR

Chairman Bauer stated that this item was another exemption request and again recognized Ms. Carter-Coley.

Ms. Carter-Coley introduced the parties and stated that Jessica Wehr owned 76% of Wehrloom, LLC which held both commercial and retail unfortified wine permits. Jessica Wehr and Aron Wehr each owned 42% of Wehrloom-AVL, LLC which held temporary retail unfortified wine permits. She explained that this joint ownership was the subject of the exemption request.

Ms. Carter-Coley asked if the permittees' counsel, Derek J. Allen or Scott K. Burger, were present and if they had anything to add. Permittees' counsel stated that the facts were covered, and they simply ask that this be treated as one of the Permittees' three satellite tasting rooms.

Ms. Carter-Coley stated that Legal Section had reviewed the petition and requested the exemption order include the following basic conditions: Someone other than Jessica Wehr or Aron Wehr should have day-to-day operational control of the retail location in Asheville. Such manager or employee should be exclusively responsible for ordering all unfortified wine products for the retail location in Asheville. The number of Wehrloom products at the retail location in Asheville should not exceed Wehrloom's reasonable market share. The retail location in Asheville should offer a selection of other unfortified wine products for sale at fair and reasonable prices, which are competitive with any comparable unfortified wine produced by Wehrloom. Ms. Carter-Coley concluded that staff recommended granting the exemption with these conditions.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner Mitchell made a motion to approve staff's recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

IV. ADVERTISING AGREEMENT APPROVAL – R. H. BARRINGER DISTRIBUTING COMPANY, INC. AND THE HIGH POINT ROCKERS FOR ADVERTISING AT TRUIST POINT

Chairman Bauer recognized General Counsel Stacey Carter-Coley to present Item IV on the agenda. Ms. Carter-Coley stated that this matter involved R. H. Barringer Distributing Company, Inc. (hereinafter "Barringer"), the High Point Rockers baseball team (hereinafter "the Rockers"), Truist Point and Ovations Food Services Limited Partnership (hereinafter "Concessionaire"). She continued that this was a request for and exemption from NCGS §18B-1116(a)(3) for an advertising agreement between Barringer and the Rockers at Truist Point, the venue where the Rockers hold home games. She stated that there was a retail permit within Truist Point which led to the need for this exemption.

Ms. Carter-Coley asked if Attorney Kris Gardner was on the line and if he would like to share any additional facts with the Commission. Mr. Gardner stated that this was a standard advertising agreement for advertising in the outfield, in the concourse and on social media. He asked for the Commission's approval.

Ms. Carter-Coley stated that Legal Section had reviewed the petition for an exemption and recommended the following conditions as part of the order: The Concessionaire should remain completely independent of Barringer, the Rockers and Truist Point regarding decisions where alcoholic beverages are ordered and the placement of point-of-sale materials. No monies or fees paid by Barringer to Rockers and/or Truist Point should go directly or indirectly to any retail permittee. All Barringer advertising benefits at Truist Point should be specified in the agreement which must be submitted to the Commission within 30 days of execution and prior to any payments from Barringer to Rockers or Truist Point. She concluded that staff recommended granting the exemption with these conditions.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner Mitchell made a motion to approve staff's recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

V. ADVERTISING AGREEMENT APPROVAL – R. H. BARRINGER DISTRIBUTING COMPANY, INC. AND THE WINSTON-SALEM DASH FOR ADVERTISING AT TRUIST STADIUM

Chairman Bauer again recognized General Counsel Carter-Coley. Ms. Carter-Coley stated that this matter involved R. H. Barringer Distributing Company, Inc. (hereinafter "Barringer"), the Winston-Salem Dash baseball team (hereinafter "the Dash"), Truist Stadium and Winston-Salem Legends Hospitality, LLC (hereinafter "Concessionaire"). She continued that this was a request for and exemption from NCGS §18B-1116(a)(3) for an advertising agreement between Barringer and the Dash at Truist Stadium, the venue where the Dash hold home games. She stated that there was a retail permit within Truist Stadium which led to the need for this exemption.

Ms. Carter-Coley again deferred to Attorney Kris Gardner for comment. He asked for the Commission to approve the advertising agreement with the standard conditions mentioned earlier.

Ms. Carter-Coley stated that legal staff had reviewed the petition for an exemption and recommended the following conditions as part of the order: The Concessionaire should remain completely independent of Barringer, the Dash and Truist Stadium regarding decisions where alcoholic beverages are ordered and the placement of point-of-sale materials. No monies or fees paid by Barringer to the Dash and/or Truist Stadium should go directly or indirectly to any retail permittee. All Barringer advertising benefits at Truist Stadium should be specified in the agreement which must be submitted to the Commission within 30 days of execution and prior to any payments from Barringer to the Dash or Truist Stadium. She concluded that staff recommended granting the exemption with these conditions.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner Mitchell made a motion to approve staff's recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

VI. ADVERTISING AGREEMENT APPROVAL – W. J. DEUTSCH & SONS LTD. AND SMG/ASM GLOBAL THEATER MANAGEMENT, LLC FOR ADVERTISING AT KOKA BOOTH AMPHITHEATRE

Chairman Bauer recognized General Counsel Stacey Carter-Coley. Ms. Carter-Coley stated that this matter involved W. J. Deutsch & Sons Ltd. (hereinafter "Deutsch"), SMG/ASM Global Theater Management, LLC (hereinafter "SMG/ASM Global"), Koka Booth Amphitheatre (hereinafter "Koka Booth") and Classic Concessions, Inc. (hereinafter "Concessionaire"). She continued that this was a request for and exemption from NCGS §18B-1116(a)(3) for an advertising agreement between Deutsch and SMG/ASM Global at Koka Booth. She stated that there was a retail permit within Koka Booth which led to the need for this exemption.

Ms. Carter-Coley asked if Attorney Barry Strike was on the line for comment. Strike's associate, Roger Clayton, addressed the Commission stating that Ms. Carter-Coley summed up the request perfectly and that it was a standard advertising agreement. He commented that he was pleased that

there was an independent concessionaire and that no money paid by the wine supplier would go directly or indirectly to any sort of alcohol beverage retail licensee.

Ms. Carter-Coley stated that legal staff had reviewed the petition for an exemption and recommended the following conditions as part of the order: The Concessionaire should remain completely independent of Deutsch, SMG/ASM Global and Koka Booth regarding decisions where alcoholic beverages are ordered and the placement of point-of-sale materials. No monies or fees paid by Deutsch to SMG/ASM Global and/or Koka Booth should go directly or indirectly to any retail permittee. All Deutsch advertising benefits at Koka Booth should be specified in the agreement which must be submitted to the Commission within 30 days of execution and prior to any payments from Deutsch to SMG/ASM Global or Koka Booth. She concluded that staff recommended granting the exemption with these conditions.

Chairman Bauer asked the Commissioners if they had any questions. Hearing none, Commissioner Mitchell made a motion to approve staff's recommendation. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

VII. CONSIDERATION OF ADOPTION OF PERMANENT EXPAND ALLOWABLE GROWLER SIZE RULE – 14B NCAC 15C .0307

Chairman Bauer stated that Item VII on the agenda was the consideration of adoption of the Permanent Expand Allowable Growler Size rule. The Chairman recognized Rules Coordinator Walker Reagan to give an overview of the staff's recommendations for the proposed rule up for consideration.

Mr. Reagan recalled that the Permanent Expand Allowable Growler Size rule was proposed by the ABC Commission at its meeting on December 8, 2021. He stated that the proposed rule, the notice of public hearing, and the notice of public written comment period were all filed with the Office of Administrative Hearings on December 8, 2021 and were published in the North Carolina Register on January 3, 2021. Copies of the notice of text and the proposed rule were posted on the ABC Commission website on December 9, 2021 and were then emailed to the ABC Commission rulemaking mailing list on December 10, 2021. He continued that the public hearing was properly noticed and held on February 9, 2022 at 10:00 AM and that the public comment period was noticed to end on March 4, 2022.

Mr. Reagan stated that the statutory time periods after publication for holding the public hearing of at least fifteen days and the receiving of written comments of at least sixty days had been complied with. He recalled that no one appeared to give comments that public hearing on February 9, 2022 and no written comments had been received regarding the proposed rule after the proposed rule was published. Mr. Reagan concluded that all the requirements had been met and that the Commission may consider the adoption of the rule at the today's meeting.

Mr. Reagan presented staff's recommendation that the Commission adopt the Permanent Expand Allowable Growler Size rule as was published in the North Carolina Register; direct that this rule be filed with the Office of Administrative Hearings for approval by the Rules Review Commission and for publication in the North Carolina Administrative Code; and finally authorize staff to make any non-substantive changes in the adopted rule as needed prior to publication, including any spelling,

punctuation, grammar, or other technical changes and corrections. Mr. Reagan stated he would be glad to answer any questions.

Chairman Bauer made a motion that the ABC Commission adopt the Permanent Expand Allowable Growler Size rule as published in the North Carolina Register and the recommendations of the staff regarding this rule. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

VIII. APPROVAL OF FUTURE COMMISSION MEETING DATES

Chairman Bauer recognized General Counsel Stacey Carter-Coley who proposed the following future Commission meeting dates: June 8, 2022; July 13, 2022; August 10, 2022 and September 7, 2022.

Chairman Bauer asked the Commissioners if they had any conflicts. The Commissioners responded that they had none as did the Chairman.

Chairman Bauer made a motion to approve staff's recommendation for future meeting dates. Commissioner Stout seconded the motion. A vote was held, and the motion passed.

IX. OTHER BUSINESS

Chairman Bauer asked Ms. Carter-Coley and Mr. Merriweather if there was any additional business. They expressed there was no additional business.

Chairman Bauer stated that the next ABC Commission meeting would be held virtually on Wednesday, April 13, 2022.

Chairman Bauer requested a motion to adjourn the March 2022 Commission meeting. Commissioner Stout made a motion for adjournment. Commissioner Mitchell seconded the motion. A vote was held, and the motion passed.

William Henry Bauer, Jr., Chairman
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by,

Jennifer L. Temple for the Legal Section