

MINUTES OF THE ALCOHOLIC BEVERAGE CONTROL BOARD JANUARY 22, 2020

On the 22nd day of January 2020, the A.B.C. Board did convene at Little Rock, Arkansas for its regular monthly meeting and in attendance were Freddie Black, Chairperson, Steve Smith, Pam Depriest, Jamie Anderson and substitute Buckley O'Mell.

The Board accepted the Director's Decisions on the Private Club Resume, Violation Resume and the Director's recommendations for extension on Inactive Status Letters. Board member Jamie Anderson made a motion to approve, Pam Depriest seconded the motion and the motion passed with a 5-0 vote.

Chairperson Freddie Black read into the record, and in accordance with Act 1211 of 1995 as amended, a resolution to continue to cover reimbursement of mileage and hotel expenses that Board members incurred while performing their official duties and business of the Alcoholic Beverage Control Board and that the reimbursement will continue to be set at a per diem rate of \$60.00 per day.

Board member Pam Depriest made a motion to accept the resolution, Jamie Anderson seconded, and the motion passed with a 5-0 vote.

Chairperson Black announced that the next A.B.C. Board meeting will be held on February 26, 2020 at 9:00 a.m., which is the fourth Wednesday of February.

Chairperson Black asked Doralee Chandler, A.B.C. Director, if she had anything she would like to report. Director Chandler responded no, but that this was a public comment time period for A.B.C. Rules that had been previously passed. The Rules were published in the newspaper allowing 30 days' notice for public comment. She then read into the record the notice that was published in the newspaper as follows: In compliance with the Administrative Procedure Act of the State of Arkansas (Act 434 of 1967), Notice is hereby given that the Alcoholic Beverage Control Board proposes to promulgate rules concerning the alcoholic beverage industry in the state of Arkansas. The Board will consider rules in the following areas: beer festival permits, hard cider products sold under grocery store off premise wine permit, hard cider manufacturing permits and fees, hard cider temporary permits, wine under twenty-one exception, entertainment districts, pregnancy warning postings, live scan fingerprint checking for applicants, micro-brewery restaurant private club in dry county, inactive status reduction, expansion of home-brew. The public comment hearing will be held on January 22, 2020, at the hour of 9:00 a.m., in the fifth-floor conference room, 1515 West Seventh Street, Little Rock, Arkansas. All interested parties will be afforded an opportunity to present their views at the hearing. The proposed rule is available on our website at: <https://www.dfa.arkansas.gov/alcoholic-beverage-control>. The Alcoholic Beverage Control Division will accept written comments on the proposed rule from December 22, 2019 to January 20, 2020. Please send comments to: The Alcoholic Beverage Control Division, 1515 West 7th Street, Suite 503, Little Rock, Ar. 72201. All inquiries concerning the public comment hearing should be directed to Monty Baugh, Staff Attorney, ABC Division, 1515 West Seventh Street, Suite 503, Little Rock, Arkansas, 72201, with the publication being signed by Doralee Chandler, Director of A.B.C.

Director Chandler stated that there no written public comments submitted to A.B.C. during the 30-day public comment period.

The first Rule introduced into the record for comment were changes to Beer Festival Permit, A.B.C. Rule 1.19(3)(1), correcting language from Act 950 of 2017 by inserting "Small Brewery Hard Cider Manufacturer or Small Brewery Tap Room" and added the last sentence to the Rule regarding State Breweries pursuant to Act 691 of 2019, adding "Hard Cider to be Authorized at Festivals". It was noted that public comment was welcomed on this Rule change, but none were offered.

The second Rule introduced into the record for comment were changes to the Grocery Store off Premise Wine Permit, A.B.C. Rule 1.19. Pursuant to Act 508 of 2017 which established Grocery Store Wine Permits and Act 691 of 2019, which added hard cider as a product that could be sold under the Grocery Store of Premise Wine Permit, and Rule 1.49(46) is introduced to incorporate this kind of permit. Public comment was welcomed on this Rule change, but none were offered.

The third Rule introduced into the record for comment involved Information Furnished by Applicants, A.B.C. Rule 1.20(20), which requires criminal background checks for permit applicants. This rule change expedites the background check process by allowing the use of remote fingerprint checks (Live Scanning) by the Arkansas State Police. This change was requested by the Arkansas State Police. Public comment was welcomed on this Rule change, but none were offered.

The fourth Rule introduced into the record for comment involved Posting of Pregnancy Warnings, A.B.C. Rule 1.33(16). This Rule now requires, pursuant to Act 860 of 2019, that all alcohol permittees post an 8"x11.5" Pregnancy Warning Sign in their outlets as opposed to requiring only certain permittees to comply with the requirement to post pregnancy warning signs. Public comment was welcomed on this Rule change, but none were offered.

The fifth Rule introduced into the record for comment involved Persons under Twenty-One Exceptions, A.B.C. Rule 3.19(10)(B). This Rule was introduced to correct a typographical error to change the amended date from August 21, 2013 to January 22, 2020. This Rule, pursuant to § 33.204B, states that with written consent of a parent or guardian, a person 18 years or of age and older may sale or otherwise handle beer and wine at retail grocery establishments. A.B.C. Rule 3.19(10)(B) currently states beer and small farm wine. This change adds wine in general to allow for grocery store wine in addition to small farm wine to be handled in accordance to § 33.204B. Public comment was welcomed on this Rule change, but none were offered.

Director Chandler stated that due to the change in date, this would require a vote by the Board. Jamie Anderson made a motion to approve the change of the date, Pam DePriest seconded the motion and the motion passed with a 5-0 vote.

The sixth Rule introduced into the record for comment involved the Manufacture and Sale of Controlled Substances, A.B.C. Rule 1.79(20). Act 861 of 2019 amended A.C.A 3-5-205(a) and 3-5-205(f)(1) to allow home brewed beer to be removed from the manufacturers premises and be transported to organized affairs, exhibits, competitions and tastings. A.B.C. Rule 1.79(20) is

being amended to allow for this change. Public comment was welcomed on this Rule change, but none were offered.

The seventh Rule introduced into the record for comment involved adding definitions of terms in Title IV, A.B.C. Rule 5.2. This rule change adds definitions as seen throughout the Act to the rule. Act 861 establishes the micro-brewery, restaurant, private club permit. It defines the term "Barrel" as noted to mean 31 gallons, which is included in Title III of the Arkansas code, and is now being added to the A.B.C. Rules. The definition of malt beverage, which is included in Act 681, the Small Brewery Act and the Micro Brewery Restaurant Act is now being added to the A.B.C. Rules. The term Micro Brewery and Micro Brewery Restaurant Private Club, pursuant to Act 861, is being added to the A.B.C. Rules. Act 681 establishes a similar definition of restaurant as A.B.C. Rules already describe; however, a final sentence was added to include Micro-Brewery Restaurant Private Clubs. Public comment was welcomed on this Rule change, but none were offered.

The eighth Rule introduced into the record for comment involved Micro-Brewery Restaurant Private Club, A.B.C. Rules 5.84 to 5.89, which are new rules that were added to allow for a private club micro-brewery in a dry county. This was presented to correct two typographical changes. In section 5.84, it was determined that the sentence "before applying for a Micro-Brewery Restaurant Private Club" the word "permit" should be added, but it was omitted from the sentence. Also being corrected is a typographical error in "section 5.87" listed twice, when it should have been "section 5.89", prohibited sales. Public comment was welcomed on this Rule change, but none were offered.

Director Chandler stated that due to the changes in this rule, a vote by the Board would be required. Jamie Anderson made a motion to approve the change of the date, Pam DePriest seconded the motion and the motion passed with a 5-0 vote.

The ninth Rule introduced into the record for comment involved A.B.C. Rule 1.81, Suspension of Permit. This was presented to correct a typographical error, which involved changing the amended date from August 20, 2003 to January 22, 2020. This Rule covers Act 571 of 2019, which shortened the total time for Inactive Status of permits. It currently allows extensions of 3 months down from 6 months and changes the total time of Inactive Status from 18 months with extensions to 12 months with extensions. Public comment was welcomed on this Rule change, but none were offered.

Director Chandler stated a change of this date, would require a vote by the Board. Jamie Anderson made a motion to approve the change of the date, Pam DePriest seconded the motion and the motion passed with a 5-0 vote.

The tenth Rule introduced into the record for comment involved A.B.C. Rule 1.22(4), Temporary Hard Cider Permit. This rule covers Act 691 of 2019, which established the Hard Cider Temporary Permit for allowing for short term events. Public comment was welcomed on this Rule change, but none were offered.

The eleventh Rule introduced into the record for comment involved A.B.C. Rule 1.79(27), Alcoholic Beverages Removed from Premises. This Rule covers Act 812 of 2019, which created entertainment districts. Rule 1.79(27) was amended to allow on premises retailers to allow

patrons to leave their permitted premises with alcohol and established the guidelines for cities that notify A.B.C. of creation and removal of entertainment districts. Public comment was welcomed on this Rule change, but none were offered.

The twelfth Rule introduced into the record for comment involved A.B.C. Rule 2.77, Hard Cider Manufacturing Operations and was introduced due the creation of subtitle J, a new addition resulting from Act 691 of 2019, which established the hard cider manufacturing permit and operations. Public comment was welcomed on this Rule change, but none were offered.

Director Chandler asked that the Board vote to accept the proposed Rules in their final form, so that they could be submitted to the Arkansas State Legislature. Pam Depriest made a motion to accept the Rules in their final form, Jamie Anderson seconded, and the motion passed with a 5-0 vote.

Chairman Black adjourned the meeting for a 15-minute break.

After the break, the Board considered the application for a Restaurant Mixed Drink Permit by Vicente Martinez d.b.a. Azul Tacos and Tequila located at 5712 Albert Pike, Suite D, Royal. The applicant had a food truck in place but did not meet the requirements for a Restaurant Mixed Drink Permit and the application was refused by the Director on November 15, 2019. Mr. Martinez was not present to testify. Staff Attorney Chip Leibovich informed the Board that this matter could be resolved quickly and called A.B.C. Enforcement Agent Blake Zavadil to testify. Agent Zavadil testified that subsequent to his initial inspection, the permitted premise has met all the requirements needed, which included adding an indoor kitchen facility and had received Arkansas Department of Health approval; at which time the Department of Health certification was presented by the Agent. Board member Steve Smith made a motion to overturn the Director's decision and approve the application for a Restaurant Mixed Drink permit for Vicente Martinez d.b.a. Azul Tacos and Tequila located at 5712 Albert Pike, Suite D, Royal, Arkansas. Pam DePriest seconded the motion and the motion passed 5-0.

The next item on the agenda that the Board considered was the application for a Private Club permit by Jefferson Ayers d.b.a. Malco Hollywood Cinema located at 2407 East Parker Road, Jonesboro, Arkansas. A Director's decision was issued on November 15, 2019 denying the application due to objections from the Prosecuting Attorney, letters from area residents in opposition and signed petitions in opposition. Appearing with the applicant, Jefferson Ayers was Attorney Cliff McKinney and Larry Etter. Mr. Etter is the Senior Vice President for Malco Theaters. Mr. Ayers is the General Manager for Malco Theaters in Jonesboro.

A.B.C. Staff Attorney Chip Leibovich called Officer Michael Bush, former A.B.C. Enforcement Agent and current Jonesboro Police Department to testify. Officer Bush testified that he performed the initial inspection. His testimony revealed that he did not find anything, other than the incomplete kitchen, that would prohibit a permit from being issued.

Attorney Cliff McKinney called Jefferson Ayers and Larry Etter. Both men testified in support of the application for private club permit. They testified that they had a number of security measures in place to comply with Arkansas controlled beverage laws. Their P.O.S. requires a scanned I.D. prior to any alcohol sale. Their system also controls the pours and limits alcohol sales to two drinks per customer. They have security cameras inside and outside the theater.

They also have ushers roaming the theater for crowd control and portal windows in the projection booths to keep an eye on screening rooms. Mr. Etter testified that alcohol is an amenity that has become a common expectation in the theater industry, much like stadium seating and reclining seats. They also planned on using off-duty Jonesboro police officers as security during busy nights. Attorney McKinney introduced as exhibits copies of menus, a pamphlet on the EZ Bar system, information on I.D. age scanners, pictures of the theater's interior; which included the lobby, café, bar, box office, and pictures of the theater's exterior; which included the parking lot, back lot, street access into the parking lot.

Jonesboro Police Department Chief of Police, Rick Elliot, was then called as a witness by the applicant. Chief Elliot testified that officers have already been providing security for the theater. He testified that he had no problems from the outlet and considered Malco Theater a good corporate citizen of the community.

A.B.C. Attorney Chip Leibovich introduced multiple letters in opposition from numerous citizens in the area that were received by A.B.C.

In opposition, Prosecuting Attorney Scott Ellington appeared and testified. Also testifying in opposition were Bob Hester, Adrian Rodgers, Mike Hart, Jim Carter, Jim Keller, Matt Smith, Rickie Rose, and James Hinds.

Mr. Hester presented multiple letters from citizens in opposition of the applicant as well as letters of opposition from elected officials: Sheriff Monty Boyd and State Representative Dwight Tosh. Mr. Hester also submitted a petition of opposition signed by individuals, all of which were submitted as exhibits to the Board.

Prosecuting Attorney Scott Ellington testified in opposition. He expressed concern that alcohol could be intentionally or unintentionally slipped to a minor and that diversion would be more difficult to prevent and detect in a darkened movie theater. The remaining opposition had similar concerns about minors obtaining alcohol in a darkened theater. They also voiced concern that a movie theater was a family-oriented venue that is ill-suited for alcohol sales. They testified they were against new alcohol outlets as Craighead county is dry. They contended the city council's ordinance to allow the private club was unpopular and the mayor's deciding vote was regrettable. Nonetheless, they conceded that the local ordinance duly passed.

Attorney Cliff McKinney closed by asking that the Board side with Malco theater and overturn the Director's Decision.

Chairperson Black asks if there is a motion to overturn or affirm the Director's Decision.

Pam DePriest made a motion that the Director's decision be upheld, which received no support from the Board, so the motion to uphold the Director's decision failed.

Board member Steve Smith made a motion to overturn the Director's decision and grant a Private Club Permit to applicant Jefferson Ayers, Malco Hollywood Cinema, 2407 East Parker Road, Jonesboro, Arkansas. Jamie Anderson seconded the motion and the motion passed on a 3-2 vote.

The final issue considered by the Board was the application for On Premises Wine & Beer permits by Steven B. Mays for Rain Investments, LLC d.b.a. Saracen Cinema 8, 2901 Pines Mall Drive #500, Pine Bluff, Arkansas. The application was refused by the Director on November 15, 2019 because the business does not meet public convenience and advantage. This matter was rescheduled from the December 18, 2019 Board meeting.

A.B.C. Attorney Monty V. Baugh called A.B.C. Enforcement Agent Kenny Heroman to testify on behalf of the Director. Agent Heroman conducted the initial inspection of the premise. After examination of Mr. May's application and attached proposed floor plan, and testimony of Mr. Mays and Agent Heroman, the Board questioned Mr. Mays regarding details of his proposed alcoholic beverage serving area and control of the perimeter of that area. A.B.C. Attorney Monty Baugh questioned Mr. May about what appeared to be anomalies between the statement of ownership of the permitted business in Mr. May's application and information provided to ABC staff after his application was submitted to the Director. Two documents were received into evidence: an original floor plan submittal and a revised floor plan submittal.

Based upon the testimony and document evidence presented, the Board determined that it should provide Mr. May opportunity to present additional documentation and details of his alcoholic beverage control plan for the Board's consideration, which would be necessary before making a final decision on Mr. May's application for permit. Board member Steve Smith made a motion to table consideration of the application until the Board's next regular monthly meeting, Pam DePriest seconded the motion and the Board voted unanimously to table further hearing on Mr. May's application until February 26th, 2020.

The meeting was then adjourned.

Freddie Black, Chairperson

Doralee Chandler, Director