

# TENNESSEE ALCOHOLIC BEVERAGE COMMISSION

**Minutes**  
**January 25, 2012**  
**1:30 pm**

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The regular meeting of the Tennessee Alcoholic Beverage Commission was held on Wednesday, January 25, 2012, in Nashville, Tennessee at 1:30 p.m. Chairperson Mary McDaniel, Commissioner John Jones and Commissioner Bryan Kaegi were present. Executive Director Danielle Elks, Assistant Director Keith Bell and CLEO Mark Hutchens were present.

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**1. The Minutes for December 14, 2011 Commission Meeting were approved.**

**2. NEW BUSINESS--RETAIL**

**A. 1. ALL-AMERICAN WINE AND SPIRITS  
LEBANON, TENNESSEE (WILSON COUNTY)**

**Applicant: All-American Wine and Spirits, LLC**  
**Members: Edwin and Susan James**

Before the Commission is a request for a new retail store to be located at 703-C South Cumberland Street in Lebanon, Tennessee. Mr. and Mrs. James intend to initially invest \$125,000 to operate the business as a LLC. Financing is based existing personal funds. The applicant LLC is leasing the property from Barry-Bobo, LLC for a period of one year at \$2000, plus utilities. If approved, Mr. and Mrs. James will each hold 50% interest. All documentation has been submitted.

**Discussion/Action Taken:**

Director Elks reviewed the matter to the Commission. Director Elks recommended approval.

Commissioner Kaegi made a motion to approve. Commissioner Jones seconded the motion and it passed with 3 ayes.

**2. RIVERSTONE WINE AND SPIRITS (Currently known  
as The Crossings)  
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

**Licensee: James Paul Little**

Before the Commission is a request a transfer of location for the retail store currently located at 2304 Lebanon Pike in Nashville, Tennessee. The proposed location is 2282 Lebanon Pike in Nashville, Tennessee. Mr. Little is requesting the change because the landlord, Boyle Crossings, LLC, served notice that it intended to terminate the lease. Therefore, Mr. Little is requesting the move to another location within the same shopping center. Boyle Crossings, LLC will continue to be the landlord and the term of the lease is one year at \$2300/month. **Second Issue:** Mr. Little is requesting a name change from The Crossings to Riverstone Wine and Spirits. All documentation has been submitted with the exception of the following:

- a. Use and Occupancy permit.

**Discussion/Action Taken:**

James Little was present at the meeting. Director Elks reviewed the matter to the Commission. Director Elks recommended approval upon submission of the Use and Occupancy.

Commissioner Kaegi made a motion to approve upon submission of the Use and Occupancy. Commissioner Jones seconded the motion and it passed with 3 ayes.

Commissioner Kaegi made a motion to approve the name change. Commissioner Jones seconded the motion and it passed with 3 ayes.

**3. OOLTEWAH DISCOUNT LIQUORS  
OOLTEWAH, TENNESSEE (HAMILTON COUNTY)**

**Licensee: Bailey's, LLC**  
**Members: Vicki Cooke, Tracy Cooke, Brad Whalen**  
**Resulting Members: Vicki Cooke and Tracy Cooke**

Before the Commission is a request for a partial change in ownership. Currently, Vicki Cooke and Tracy Cooke each have 37.5% interest in the business, and Brad Whalen has 25% interest. Mr. Whalen requests permission to sell his stock to the remaining members, so that the Cookes will each own 50%. The purchase price of his membership interest in this business and in BTV Properties of Ooltewah (a separate and distinct partnership with Vicki Cooke, Tracy Cooke and Brad Whalen) is \$250,000. All documentation has been submitted with the exception of the following;

- a. The specific amount of the purchase price allocated to the Mr. Whalen's interest in Bailey's, LLC.

**Discussion/Action Taken:**

Director Elks reviewed the matter to the Commission. Director Elks recommended approval upon submission of the specific amount of the purchase price allocated to Mr. Whalen's interest in Bailey's, LLC.

Commissioner Jones made a motion to approve upon submission of the pending documentation. Commissioner Kaegi seconded the motion and it passed with 3 ayes.

**4. HARVEST WINE MARKET  
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

**Applicant: Harvest Wine Market, LLC**

**Members: Ames Bailey**

Before the Commission is a request for a new retail store to be located at 6043 Highway 100 in Nashville, Tennessee. Mr. Bailey intends to initially invest \$300,000 to operate the business as a LLC. Financing is based upon a loan with MidSouth Bank for the total amount. Linda Anderson is a guarantor on the loan. The applicant LLC is leasing the property from Southern Property Company for a five year period with monthly rent beginning at \$4144 and increasing to \$4834 over the term of the lease. All documentation has been submitted with the exception of the following:

- a. Deed to Southern Property Company;
- b. TABC Inspection;
- c. Acknowledgment of the rules and regulations;
- d. Use and Occupancy permit.

**Discussion/Action Taken:**

Ames Bailey and William Cheek, III, attorney, were present at the meeting. Director Elks reviewed the matter to the Commission. Director Elks recommended approval upon submission of the following documentation:

- a. Deed to Southern Property Company;
- b. TABC Inspection;

- c. Acknowledgment of the rules and regulations;
- d. Use and Occupancy permit.

Commissioner Kaegi made a motion to approve upon submission of the pending documentation. Commissioner Jones seconded the motion and it passed with 3 ayes.

**5. T & T PACKAGE STORE (Currently known as C & C Package Store)  
MORRISTOWN, TENNESSEE (HAMBLEN COUNTY)**

**Licensee/Seller: C & C Package Store, Inc.**  
**Stockholders: Rhonda Cooper**  
**Applicant/Buyer: T & T Package, LLC**  
**Members: Tammy Keaton and Tracy Joe Harrell**

Before the Commission is a request for a change of ownership at 1764 Buffalo Trail in Morristown, Tennessee. Tammy Keaton and Tracy Joe Harrell wish to initially invest \$150,000 total to purchase the business. Financing is based upon existing personal funds. Tammy Keaton and Tracy Joe Harrell currently own the property where the business will be located and will have to prepare a lease to the applicant LLC. **Second issue:** If approved for a license, then the applicant would request a name change to T & T Package Store. All documentation has been submitted with the exception of the following:

- a. Bill of Sale;
- b. Lease to LLC;
- c. Certificate of Compliance for Tracy Joe Harrell;
- d. Use and Occupancy Permit;

**Discussion/Action Taken:**

Tucker Herndon, attorney, was present at the meeting. Director Elks reviewed the matter to the Commission and stated that all documentation had been submitted and, therefore, recommended approval.

Commissioner Jones made a motion to approve the change of ownership. Commissioner Kaegi seconded the motion and it passed with 3 ayes.

Commissioner Jones made a motion to approve the name change. Commissioner Kaegi seconded the motion and it passed with 3 ayes.

**6. WELCOME LIQUOR  
CHATTANOOGA, TENNESSEE (HAMILTON COUNTY)**

**Licensee: Ho S. Cho and Kay Cho**  
**Applicant: Ho S. Cho**

Before the Commission is a request for a transfer of ownership of the retail store located at 2001 Market Street in Chattanooga, Tennessee. Mrs. Kay Cho passed away on August 27, 2011, leaving all her interest in the business to her husband, Ho S. Cho. Mr. Cho is requesting that the interest be transferred to him and allow him to operate the business as a sole proprietor. All documentation has been submitted.

**Discussion/Action Taken:**

Director Elks reviewed the matter to the Commission and recommended approval.

Commissioner Jones made a motion to approve. Commissioner Kaegi seconded the motion and it passed with 3 ayes.

**7. HICKORY DISCOUNT LIQUORS  
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

**Licensee/Seller: Hanh Huu Huynh**  
**Applicant/Buyer: Phuong Huynh Do**

Before the Commission is a request for transfer of ownership of the retail store located at 15114 Old Hickory Boulevard in Nashville, Tennessee. Ms. Do wishes to purchase the business from Mr. Huynh for an estimated \$400,000 (purchase price is contingent upon amount of inventory). Financing is based upon a promissory note with the current owner; \$50,000 given by each of the applicant's children (Kathey and Kevin Do); and a line of credit with Union Bank. Ms. Do will be leasing the property from K.R. Stanfill and D.H. Peppers for a period of five years at \$5900/month. All documentation has been submitted with the exception of the following:

- a. Original loan document with Union Bank;
- b. TABC Inspection;
- c. Acknowledgement of the rules and regulation;
- d. Financial background check and questionnaires for Kathy Do and Kevin Do;
- e. Verification of payoff of the home mortgage.

**Discussion/Action Taken:**

Phuong Huynh Do was present. Director Elks reviewed the matter to the Commission. Director Elks recommended approval upon submission of the following documentation:

- a. Original loan document with Union Bank;
- b. TABC Inspection;
- c. Acknowledgement of the rules and regulation;

Commissioner Kaegi made a motion to approve upon submission of the pending documentation. Commissioner Jones seconded the motion and it passed with 3 ayes.

**8. MILL CREEK DISCOUNT LIQUORS  
ANTIOCH, TENNESSEE (DAVIDSON COUNTY)**

**Licensee/Seller: Shiv, Inc.**  
**Stockholder: Arvind Patel**  
**Applicant/Buyer: Joyal, Inc.**  
**Stockholder: Anjanaben Patel**

Before the Commission is a request for a transfer of ownership of the retail store located at 1664 Antioch Pike in Antioch, Tennessee. Ms. Anjanaben Patel wishes to purchase the business for \$275,000. Financing is based upon a \$225,000 promissory note with Sunmukh Patel, and the remaining from existing personal funds. The corporate applicant will be leasing the property from Kathryn Bubis for a period of five years, with monthly rent beginning at \$3800 and increasing to \$4300 over the term of the lease. All documentation has been submitted with the exception of the following:

- a. Deed to Kathryn Bubis;
- b. Questionnaire for Sunmukh Patel;
- c. Use and Occupancy permit;
- d. Bill of Sale.

**Discussion/Action Taken:**

Anjanaben Patel and William Cheek, III, attorney, were present at the meeting. Director Elks reviewed the matter to the Commission. Director Elks recommended approval upon submission of the following documentation:

- a. Questionnaire for Sunmukh Patel;
- b. Use and Occupancy permit;
- c. Bill of Sale.

Commissioner Kaegi made a motion to approve upon submission of the pending documentation. Commissioner Jones seconded the motion and it passed with 3 ayes.

**9. VICTORY VILLAGE LIQUOR AND WINE  
MURFREESBORO, TENNESSEE (RUTHERFORD COUNTY)**

**Licensee/Seller: Jai Varahi Mata, Inc.**  
**Stockholder: Ankit Patel**  
**Proposed New Stockholder: Tushar Jayantbhai Otia**

Before the Commission is a request for a partial transfer of ownership of the retail store located at 4167 Franklin Road, #A5 in Murfreesboro, Tennessee. Mr. Patel seeks permission to sell 10% of his interest in the business to Mr. Otia for \$10,000. Financing is based upon existing personal funds. The corporate licensee will remain the same. All documentation has been submitted.

**Discussion/Action Taken:**

Director Elks reviewed the matter to the Commission and recommended approval.

Commissioner Kaegi made a motion to approve. Commissioner Jones seconded the motion and it passed with 3 ayes.

**10. VIC'S PACKAGE STORE  
KNOXVILLE, TENNESSEE (KNOX COUNTY)**

**Licensee: Vic's Package Store, LLC**  
**Member: Garrett Jernigan**  
**Proposed New Member: Timothy England**

Before the Commission is a request for a partial transfer of ownership of the retail store located at 102 Stekoaia Lane, Suite 102, in Knoxville, Tennessee. Mr. Jernigan seeks permission to sell 50% of his interest to Mr. England for approximately \$100,000 as indicated on Mr. England's questionnaire. Financing is based upon an inheritance that Mr. England has received. The LLC will remain the licensee. All documentation has been submitted with the exception of the following:

- a. Bill of Sale;
- b. Explanation of promissory note with England Investment, LLC;
- c. Documentation indicating inheritance.

**Discussion/Action Taken:**

Director Elks reviewed the matter to the Commission and recommended approval upon submission of the Bill of Sale.

Commissioner Jones made a motion to approve upon submission of the pending documentation. Commissioner Kaegi seconded the motion and it passed with 3 ayes.

**11. THE COPPER STILL WINE AND SPIRITS  
GALLATIN, TENNESSEE (SUMNER COUNTY)**

**Applicant: The Copper Still, LLC**

**Members: Clay Haynes and Michelle Haynes**

Before the Commission is a request for a new retail store to be located at 1176 Long Hollow Pike in Gallatin, Tennessee. Mr. and Mrs. Hayes seeks permission to open a new retail store and operate as a LLC. The initial investment will be approximately \$75,000. Financing is based upon existing personal funds. The LLC applicant is leasing the property from Oak Tree Partners, LLC for a period of two years at \$2000/month. Issue: Mr. Haynes is a member of the Sumner County Election Commission. Mrs. Haynes is a member of the Tennessee Real Estate Commission. T.C.A. §57-3-210(b)(1) and (2) sets forth the following:

- (1) No...retailer's license shall be issued to a person who is a holder of a public office, either appointive or elective, or who is a public employee, either national, state, city or county. It is unlawful for any such person to have any



- (2) interest in such...retail business, directly or indirectly, either proprietary or by means of any loan, mortgage, or lien, or to participate in the profits of any such business;
- (3) The foregoing shall not apply to uncompensated appointees to municipal boards and commissions where the boards or commission on which such appointees serve have no duty to vote for, overlook or in any manner superintend the sale of alcoholic beverages.

The questions that arise are (1) whether the Tennessee Real Estate Commission is a municipal board or commission; and (2) whether Mr. and Mrs. Haynes are appointed and uncompensated. All documentation has been submitted with the exception of the following:

- a. Verification that Mr. and Mrs. Haynes positions are appointed, uncompensated and whether the Tennessee Real Estate Commission is a municipal commission. If not, then an affidavit should be submitted by both parties;
- b. Individual names on the Certificate of Compliance as opposed to the LLC's name;
- c. TABC Inspection;
- d. Acknowledgement of the rules and regulations.

**Discussion/Action Taken:**

Clay Haynes, Michelle Haynes and Tucker Herndon, attorney, were present at the meeting. Director Elks reviewed the matter to the Commission and stated that, although Mr. Haynes is a member of the Sumner County Election Commission, it is a county appointed, uncompensated position. Therefore, pursuant to the statute, he qualifies for ownership interest in a retail package store. On the other hand, Director Elks stated that although Mrs. Haynes is also an appointed uncompensated member of the Tennessee Real Estate Commission, Ms. Haynes does not qualify for ownership interest in a retail store. Director Elks argued that the Tennessee Real Estate Commission is a state appointment; and, thus, Ms. Haynes is prohibited from having ownership or operation in a retail package store. The statutory exception exists for only municipal boards and commissions—not state boards and commissions. Director Elks stated that Mrs. Haynes will have to divest her interest in the retail package store. Director Elks stated that the Commission

could approve the retail package store subject to Ms. Haynes divesting her interest in the retail package store.

Commissioner Jones made a motion to approve pending the receipt of the documentation required for Mrs. Haynes to transfer sole ownership to Mr. Haynes. Commissioner Kaegi seconded the motion and it passed with 3 ayes.

**12. SHORT MOUNTAIN DISTILLERY  
WOODBURY, TENNESSEE (CANNON COUNTY)**

**Applicant: Golden Rule Distilling Company**  
**Stockholders: William Kaufman, Benjamin Kaufman and David Kaufman**

Before the Commission is a request for a new retail store to be located at 119 Mountain Spirits Lane in Woodbury, Tennessee—which is the location of Short Mountain Distillery. At the October, 2011 Commission meeting, Golden Rule Distilling Company, d/b/a Short Mountain Distillery was approved for a distillery license. Pursuant to T.C.A. §57-3-204, a licensed manufacturer under §57-3-202 or chapter 2 of Title 57, is authorized to obtain a license under this section of the retail sale of alcoholic beverages. Therefore, William Kaufman (\$300,000), Benjamin Kaufman (\$150,000) and David Kaufman (\$150,000) wish to initially invest \$600,000 total to operate the retail business, and if approved, William Kaufman would own 50%, while Benjamin and David Kaufman would each own 25% of the business. Financing is based upon existing personal funds. The corporate applicant is leasing the property from William Kaufman for a period of five years at \$500/month. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgment of the rules and regulations;
- c. Use and Occupancy permit.

**Discussion/Action Taken:**

Christian Grantham and Rob Pinson, attorney, were present at the meeting. Director Elks reviewed the matter to the Commission and recommended approval upon submission of the TABC Inspection and Acknowledgement of the rules and regulations.

Commissioner Kaegi made a motion to approve upon submission of the pending documentation. Commissioner Jones seconded the motion and it passed with 3 ayes.

**3. WHOLESALE MATTERS**

**A. AJAX TUNER BEVERAGES  
NASHVILLE, TENNESSEE (DAVIDSON COUNTY)**

**Applicant:** Ajax Turner Beverages, LLC

**Members:** Todd Williams, Jack Turner, Scott Turner, Jill Crow

Before the Commission is a request for a transfer of location of the wholesale business currently located at 1501 Corporate Place, in Lavergne, Tennessee. The licensee is requesting permission to move to 104 Visco Drive in Nashville, Tennessee. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Use and Occupancy Permit
- c. Lease from Ajax Turner Company, Inc. to Ajax Turner Beverages, LLC

**Discussion/Action Taken:**

Rob Pinson, attorney, was present at the meeting. Director Elks reviewed the matter to the Commission. Director Elks recommended approval upon submission of the TABC Inspection. Mr. Pinson indicated that the request included a transfer of stock ownership to the individuals listed on the agenda so that Ajax Turner would be in compliance with the Attorney General's Opinion discussed in the June, 2011 Commission Minutes. Director Elks recommended approval.

Commissioner Kaegi made a motion to approve both items upon submission of the pending documentation. Commissioner Jones seconded the motion and it passed with 3 ayes.

**4. WINERY MATTERS**

**A. REEDY CREEK CELLARS AT MEADOWVIEW  
KINGSPORT, TENNESSEE (SULLIVAN COUNTY)**

**Applicant: Reedy Creek Cellars, Inc.**  
**Stockholders: Michael Reedy**

Before the Commission is a request for a new winery to be located at 1901 Meadowview Parkway in Kingsport, Tennessee. Michael Reedy wishes to initially invest \$50,000 to operate the business. The corporate applicant is leasing the property from the Industrial Development Board of the City of Kingsport, Tennessee for a period of five years, with a monthly rent of \$2,325. All documentation has been submitted with the exception of the following:

- a. TABC Inspection;
- b. Acknowledgement of the rules and regulations;
- c. Deed to the City of Kingsport.

**Discussion/Action Taken:**

Director Elks reviewed the matter to the Commission and recommended approval submission of the TABC Inspection and the Acknowledgement of the rules and regulations.

Commissioner Jones made a motion to approve upon submission of the pending documentation. Commissioner Kaegi seconded the motion and it passed with 3 ayes.

**5. CONTESTED CASES**

**A. TABC v. Guzman II, Inc., d/b/a La Hacienda**

Before the Commission is a Notice of Review for a Final Order in the above-styled case. On January 5, 2012, Administrative Law Judge Tom Stovall issued an Initial Order suspending TABC License Number 60129 for a period of sixty (60) days for six counts of selling alcoholic beverages to a minor in violation of T.C.A. §57-4-203(b)(1). This Initial Order and Notice of Review are before the Commission to render a Final Order, either (1) adopting the Initial Order as a Final Order; (2) reversing the Initial Order; or (3) amending the Initial Order.

**Discussion/Action Taken:**

Victor Guzman and Salvador Guzman were present. Assistant Director Keith Bell stated this matter is for the Commission to review the Initial Order as rendered by Judge Thomas Stovall, Administrative Law Judge for the Administrative Procedures Division of the Secretary of State's Office.

Assistant Director Bell reviewed that on May 5, 2011 the Franklin Police Department received an anonymous telephone call about six underage drinkers at the restaurant and they were consuming margaritas as well as malt beverages. Officer Scott Quinn, Franklin Police Department, was dispatched to the restaurant and he testified at the hearing what he observed. Officer Quinn testified that he observed underaged individuals consuming alcoholic beverages. Officer Quinn also testified that he took the minors outside the restaurant and determined that they were underage by examining their drivers' licenses. Officer Quinn further testified that the minors admitted they were drinking alcoholic beverages. Assistant Director Bell stated that all of the minors were given citations for underage drinking. He further stated that Victor Guzman and Salvador Guzman testified at the hearing that the minors were consuming alcoholic beverages at their restaurant. Assistant Director Bell stated that SA Matthew Larkins issued citations to the Guzmans for the sale of alcoholic beverages to the minors. Assistant Director Bell stated that evidence was presented at the hearing that the Guzmans had been cited on at least three previous incidents of serving alcoholic beverages to minors. Assistant Director Bell stated that this was the fourth offense.

Salvador Guzman stated that on one citation the bartender was charged with selling to a minor after checking the ID but had misread the information on the ID which has already been heard in front of the Beer Board. Salvador Guzman stated that if the restaurant has to be closed for 60 days, the restaurant would go out of business.

Victor Guzman stated that the bartenders did check the IDs but miscalculated the information on the IDs. Victor Guzman produced a letter from the TABC that a minor had attempted to purchase alcoholic beverages, but were denied. Victor Guzman stated they are working with the Beer Board and training their employees every 15 days. Victor Guzman stated they are carding everyone that comes to the restaurant. He also stated they have hired security personnel and putting bands on individuals over 21.

Assistant Director Bell testified that Salvador Guzman and Victor Guzman have the right to submit a petition for reconsideration of the Final Order within 15 days as well as appellate rights.

Commissioner Kaegi made a motion to amend the Initial Order to require a \$10,000 fine paid by February 29, 2012, upon payment in full by this date, a 30 day suspension for alcohol sales will begin. If, however, the fine is not paid in full by February 29, 2012, then a 60-day suspension for alcohol sales will begin on March 1, 2012. As part of his motion, Commissioner Kaegi also required the establishment's employees to complete the TABC training course, and if issued any further citations for

sales to minors occur within the next 5 years, then TABC staff will initiate a hearing to revoke the liquor by the drink license.

Chairperson McDaniel disagreed with the amendment and believed the Initial Order should be adopted.

Commissioner Jones seconded the motion. Commissioner Jones and Commissioner Kaegi voted aye on Commissioner Kaegi's motion to adopt the Initial Order as amended; Chairperson McDaniel voted against the motion. The motion with passed with 2 ayes.

- 6. BUDGET**
- 7. CONSENT ORDERS**
- 8. PENDING MATTERS LIST**
- 9. MISCELLANEOUS**
  - A. Monthly Summary of TABC Activity**
  - B. Growlers**

**Discussion/Action Taken at the October, 2011 Commission meeting:**

Mr. Bard Quillman, owner of Red Dog Wine and Spirits in Franklin, Tennessee, has requested to address the Commission regarding the sale of "growlers". Mr. Quillman is requesting permission to sale "growlers" at his off-premise retail store. TTB defines "growlers" as "A large container that we [TTB] may consider as either a large glass or as a bottle. These containers are usually about a ½ gallon, but may be smaller."

The premise of the "growler" is for the licensed retail store to sell the container with high alcoholic content beer inside to the customer, and then allow the customer to return the empty container at a later time and have the container refilled with high alcoholic content beer by the licensed retailer.

The Commission agreed to hear the discussion on growlers as referenced on the addendum agenda.

Bard Quillman, owner of Red Dog Wine and Spirits in Franklin, Tennessee, was present. George Jerum and Hank Hildebrand were also present for the discussion. Bard Quillman, stated he would like to have

would make the high alcoholic content beer more marketable to leave the store in smaller containers and would provide the State more revenue.

George Jerum stated that most retailers in the state oppose this matter because stores have fixed walls and ceilings, etc. and do not have the capability of expanding the necessary space. Further, Mr. Jerum stated that growlers would also be regulated by the Department of Health because, by using the same bottle each time, the bottles will have to be sterilized. He also stated that the employees will have to get health permit cards and server permit cards. Mr. Jerum also stated that this matter would cause the micro-breweries difficulty.

Hank Hildebrand stated that this would require a change in the TABC Rules and Regulations. Specifically, TABC Rule #100-03-.12(a) states that no licensee shall import into Tennessee or sell in Tennessee any alcoholic beverages except wine not in an original retail container. Mr. Hildebrand stated that Mr. Quillman wants to change the TABC Rule to allow high alcohol content beer to be sold in containers that are not the original containers. The product is sold by the distributor in kegs as the original containers; by selling the product in “growlers, the retail licensee would have to transfer the product from the original container to a separate container. Mr. Hildebrand stated that the issues Mr. Quillman has raised should be resolved by rulemaking changes as opposed to a decision by the Commission. Mr. Hildebrand stated that notice needs to be given so that all the matters can be heard in a rulemaking hearing.

Director Elks stated that she believes that this is more than would be required than merely a rule change. Director Elks stated that there are various businesses that are licensed by this agency as manufacturers and wineries. These manufacturers bottle and sell their product to the wholesalers in state and out of state. The agency requires them to obtain a manufacturer/distillery or winery license. She stated that would require a statutory change not a rule making change to allow a retail store to bottle this product. Director Elks also stated that she agrees with the health issues and at this point has not done sufficient research on the health issues on refilling bottles.

Director Elks stated that the TABC Rules would currently prohibit this matter because the alcoholic beverage must be sold in the original containers. She stated that the “growlers” would not be considered original containers. By comparison, Director Elks indicated that, years ago, the LBD licensee—Macaroni Grill—desired to sell its wine by placing a craft of wine on each table, having the customer pour their own wine, and then the licensee’s staff would refill the craft of wine upon conclusion of the customer’s visit. Director Elks stated that this was prohibited because (1)

access to the alcohol by minors; (2) Department of Health issues; and (3) alcohol not being sold in the original container.

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For these reasons, Director Elks indicated that TABC staff would be opposed to the use of growlers by retail licensees.

Commissioner Kaegi indicated that he was not prepared to make a decision on this issue today—but wanted to hear arguments on both sides of the issue. Commissioner Jones agreed that he was not prepared to make a decision at this time, but stated that if the retailers were interested in pursuing this issue, they should request a rulemaking hearing to be conducted. Chairperson McDaniel also agreed that this was merely an opportunity to discuss the issues associated with growlers, but was not prepared to make a decision at this time. However, the issue will be listed as pending and placed on the next agenda.

**Discussion/Action Taken at November, 2011 Commission meeting:**

Joyce McDaniel stated that at the November, 2011 Commission stated that the Department of Health said they do not regulate this matter. The Department of Health states that the Department of Agriculture regulates this matter. Ms. McDaniel stated that the retailers want to know where in the statute or the TABC Rules and Regulations that they would be denied the ability to sell the “Growlers”.

Henry Hildebrand, III, attorney, stated that the idea was whether or not the TABC should embark on an administrative hearing for the rules and regulations governing “Growlers” and whether other agencies should be involved.

Director Elks stated that the rule exists that the retailers must sell in the original containers and also that this is an element of the manufacturers license which would exceed the authority of the Commission to conduct a rulemaking hearing and that it would require a statutory change as opposed to a rulemaking hearing.

Chairperson McDaniel also stated that at the previous meeting that there would need to be 3 Commissioners present to hear this matter before making any further discussion or decisions.

Director Elks stated that based on what was heard today that they are waiting on a letter from her and she will issue the letter.

Ms. McDaniel requested this matter to be heard at the January, 2012 Commission meeting.



**Discussion/Action Taken at January 25, 2012 Commission meeting:**

Director Elks stated that she had been informed by Joyce McDaniel that at this point that they do not wish to move forward on this discussion and would seek that this matter be removed from this agenda until otherwise notified.

- 10. DATE OF NEXT MEETING** – Wednesday, February 22, 2012 and Wednesday, March 28, 2012 at 1:30 p.m.

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Mary McDaniel  
Chairperson

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Shari Danielle Elks  
Executive Director