

ABC

(f) When Sales Stop. — When the sale of any alcoholic beverage that was previously lawful becomes unlawful because of an election, the sale of that alcoholic beverage shall cease 90 days after certification of the results of the election. (1937, c. 49, ss. 25, 26; c. 431; 1947, c. 1084, ss. 1, 2, 4; 1951, c. 999, ss. 1, 2; 1957, c. 816; 1963, c. 265, ss. 1-3; 1965, c. 506; 1969, c. 647, s. 1; 1971, c. 872, s. 1; 1973, cc. 32, 33; 1977, c. 149, s. 1; c. 182, s. 2; 1977, 2nd Sess., c. 1138, s. 15; 1979, c. 140, ss. 2, 3; c. 609, s. 1; c. 683, s. 13; 1979, 2nd Sess., c. 1174; 1981, c. 412, s. 2; 1993, c. 415, s. 29.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 9 that all local, public-local, and private acts in conflict with Article 6 of Chapter 18B would be repealed except as provided in subsections (b) and (c) of this section and in § 18B-605.

§ 18B-605. Local act elections.

If a jurisdiction has lawfully voted in favor of ABC stores or in favor of the sale of some kind of alcoholic beverage, and the jurisdiction would not be eligible to hold another election under the conditions set by G.S. 18B-600, then that jurisdiction may continue to hold elections as though qualified under G.S. 18B-600. Except for the authority to hold the election, however, the procedures of this Chapter shall apply to any subsequent election. (1981, c. 412, s. 2; 1983, c. 457, s. 4.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 9, that all local, public-local, and private acts in conflict with Article 6 of Chapter 18B would be repealed except as provided in § 18B-604(b) and (c) and in this section.

§§ 18B-606 through 18B-699: Reserved for future codification purposes.

ARTICLE 7.

Local ABC Boards.

§ 18B-700. Appointment and organization of local ABC boards.

(a) Membership [REDACTED]

...or unless the board is a board for a merged ABC system under G.S. 18B-703 and a different size membership has been provided for as part of the negotiated merger. One member of the initial board of a newly created ABC system shall be appointed for a three-year term, one member for a two-year term, and one member for a one-year term. As the terms of initial board members expire, their successors shall each be appointed for three-year terms. The appointing authority shall designate one member of the local board as chairman.

(b) City Boards. — City ABC board members shall be appointed by the city governing body, unless a different method of appointment

is provided in a local act enacted before the effective date of this Chapter.

(c) County Boards. — County ABC board members shall be appointed by the board of county commissioners, unless a different method of appointment is provided in a local act enacted before the effective date of this Chapter.

(d) Qualifications. — The appointing authority shall appoint members of a local board on the basis of the appointees' interest in public affairs, good judgment, knowledge, ability, and good moral character.

(e) Vacancy. — A vacancy on a local board shall be filled by the appointing authority for the remainder of the unexpired term. If the chairman's seat becomes vacant, the appointing authority may designate either the new member or an existing member of the local board to complete the chairman's term.

(f) Removal. — A member of a local board may be removed for cause at any time by the appointing authority. Local board members are subject to the removal provisions of G.S. 18B-202.

(g) Salary. — A local board member may be compensated as determined by the appointing authority.

(h) Conflict of Interest. — The provisions of G.S. 18B-201 shall apply to local board members and employees.

(i) Bond. — Each local board member shall be bonded in an amount not less than five thousand dollars (\$5,000), secured by a corporate surety, for the faithful performance of his duties. A public employees' blanket position bond in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board. The appointing authority may exempt from this bond requirement any board member who does not handle board funds, and it may also increase the amount of the bond for any member who does handle board funds.

(j) Limited Liability. — A person serving as a member of a local ABC board shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

- (1) Was not acting within the scope of his official duties;
- (2) Was not acting in good faith;
- (3) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury;
- (4) Derived an improper personal financial benefit from the transaction; or
- (5) Incurred the liability from the operation of a motor vehicle.

The immunity in this subsection is personal to the members of local ABC boards, and does not immunize the local ABC board for liability for the acts or omissions of the members of the local ABC board. (1981, c. 412, s. 2; c. 747, s. 50; 1981 (Reg. Sess., 1982), c. 1262, s. 10; 1989, c. 800, s. 19.)

Local Modification. — Bertie: 1987 (Reg. Sess., 1988), c. 888; Cumberland: 1981 (Reg. Sess., 1982), c. 1251, s. 1; Durham: 1983 (Reg. Sess., 1984), c. 1116; Edgecombe: 1987, c. 167; Halifax: 1995, c. 45; Martin: 1987 (Reg. Sess., 1988), c. 888; Mecklenburg: 1983, c. 788; Moore:

1983 (Reg. Sess., 1984), c. 957; Nash: 1991 (Reg. Sess., 1992), c. 863; Wake: 1983 (Reg. Sess., 1984), c. 1040; Wayne: 1981 (Reg. Sess., 1982), c. 1251, s. 2; city of Gastonia: 1991, c. 557, s. 1; city of Lumberton: 1985 (Reg. Sess., 1986), c. 811; town of Maxton: 1987, c. 15.

Editor's Note. — As to the effective date of this Chapter, see the Editor's Note following § 18B-100.

Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted

this Chapter in lieu thereof, provided in s. 8 that all local, public-local, and private acts in conflict with this section would be repealed except as provided in this section.

§ 18B-701. Powers of local ABC boards.

A local board shall have authority to:

- (1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores;
- (2) Adopt rules for its ABC system, subject to the approval of the Commission;
- (3) Hire and fire employees for the ABC system;
- (4) Designate one employee as manager of the ABC system and determine his responsibilities;
- (5) Require bonds of employees as provided in the rules of the Commission;
- (6) Operate ABC stores as provided in Article 8;
- (7) Issue purchase-transportation permits as provided in Article 4;
- (8) Employ local ABC officers or make other provision for enforcement of ABC laws as provided in Article 5;
- (9) Borrow money as provided in G.S. 18B-702;
- (10) Buy and lease real and personal property, and receive property bequeathed or given, as necessary for the operation of the ABC system;
- (11) Invest surplus funds as provided in G.S. 18B-702;
- (12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes; and
- (13) Perform any other activity authorized or required by the ABC law. (1937, c. 49, ss. 10, 12; cc. 411, 431; 1939, c. 98; 1957, cc. 1006, 1334; 1963, c. 1119, s. 2; 1967, c. 1178; 1969, cc. 118, 902; 1971, c. 872, s. 1; 1973, cc. 85, 185; c. 1000, ss. 1, 2; 1977, c. 618; 1979, c. 467, s. 20; c. 617; 1981, c. 412, s. 2.)

Local Modification. — Town of Chadbourn: 1989 (Reg. Sess., 1990), c. 895, s. 5.

Editor's Note. — Session Laws, 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 7 that all local,

public-local, and private acts in conflict with this section would be repealed.

Legal Periodicals. — For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

CASE NOTES

ABC board has authority to construct buildings in which to carry out its duties. *Waters v. Biesecker*, 309 N.C. 165, 305 S.E.2d 539 (1983).

The ABC board is not required to construct buildings; it has authority to purchase or lease buildings for use as ABC stores. *Waters v. Biesecker*, 309 N.C. 165,

305 S.E.2d 539 (1983).

An alcoholic beverage control officer is a "public officer" within the meaning of § 14-223 and is entitled to the protection of that section. *State v. Taft*, 256 N.C. 441, 124 S.E.2d 169 (1962) (decided under similar provisions of former Chapter 18).

§ 18B-702. Financial operations of local boards.

(a) Generally. — A local board may transact business as a corporate body, except as limited by this section. A local board shall not be considered a public authority under G.S. 159-7(b)(10).

(b) Borrowing Money. — A local board may borrow money only for the purchase of land, buildings, equipment and stock needed for the operation of its ABC system. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board.

(c) Audits. — A local board shall submit to the Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission. The audit report shall contain a summary of the requirements of this Chapter, or of any local act applicable to that local board, concerning the distribution of profits of that board and a description of how those distributions have been made, including the names of recipients of the profits and the activities for which the funds were distributed. A local board shall also submit to any other audits and submit any reports demanded by the Commission.

(d) Deposits and Investments. — A local board may deposit moneys at interest in any bank or trust company in this State in the form of savings accounts or certificates of deposit. Investment deposits shall be secured as provided in G.S. 159-31(b) and the reports required by G.S. 159-33 shall be submitted. A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30(c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

(e) Compliance with Commission Rules. — The Commission shall adopt, and each local board shall comply with, fiscal control rules concerning the borrowing of money, maintenance of working capital, investments, appointment of a financial officer, daily deposit of funds, bonding of employees, auditing of operations, and the schedule, manner and other procedures for distribution of profits. The Commission may also adopt any other rules concerning the financial operations of local boards which are needed to assure the proper accountability of public funds.

(f) Applicability of Criminal Statutes. — The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon. (1937, c. 49, ss. 10, 12; cc. 411, 431; 1939, c. 98; 1957, cc. 1006, 1335; 1963, c. 1119, s. 2; 1967, c. 1178; 1969, cc. 118, 902; 1971, c. 872, s. 1; 1973, cc. 85, 185; c. 1000, ss. 1, 2; 1977, c. 618; 1979, c. 467, s. 20; c. 617; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 11; 1991, c. 459, s. 2.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 7 that all local, public-local, and private acts in conflict with this section would be repealed.

§ 18B-703. Merger of local ABC operations.

(a) Conditions for Merger. — Any city governing body or board of county commissioners may merge its ABC system with the system of one or more other cities or counties if:

- (1) Stores operated by the systems of those jurisdictions serve the same general area or are in close proximity to each other; and
- (2) The merger is approved by the Commission.

(b) Appointment of Board. — Upon merger of ABC systems, the local boards for those systems shall be replaced by one board appointed jointly by the appointing authorities for the previous boards.

(c) Distribution of Profits. — Before merger, the cities or counties involved shall agree upon a formula for distribution of the profits of the new merged ABC system, based as closely as practicable on the distribution previously authorized for the separate systems. This formula for distribution shall be subject to approval by the Commission.

(d) Enforcement. — Local officers hired by the local ABC board for the merged ABC system shall have the same territorial jurisdiction that officers for each of the merged boards would have.

(e) Dissolution. — With the approval of the Commission, the cities or counties that have merged their ABC systems may dissolve the merged operation at any time and resume their prior separate operations.

(f) Other Details Negotiated. — Issues not addressed in this section concerning the merger or dissolution of ABC systems, such as the method of appointment of the merged board, the size of the merged board, or the procedure for dissolution, may be negotiated by the affected cities and counties, subject to the approval of the Commission.

(g) Operation Follows General Law. — Except as otherwise provided in this section, the authority and operation of any local board established under this section shall be the same as for any other local board. (1981, c. 412, s. 2; c. 747, s. 51.)

§§ 18B-704 through 18B-799: Reserved for future codification purposes.

ARTICLE 8.***Operation of ABC Stores.*****§ 18B-800. Sale of alcoholic beverages in ABC stores.**

(a) Spirituous Liquor. — Except as provided in Article 10 of this Chapter, spirituous liquor may be sold only in ABC stores operated by local boards.

(b) Fortified Wine. — In addition to spirituous liquor, ABC stores may sell fortified wine.

(c) Commission Approval. — No ABC store may sell any alcoholic beverage which has not been approved by the Commission for sale in this State.

(d) Expired. (1981, c. 412, s. 2; 1985, c. 59, s. 1; 1989, c. 800, s. 21.)

Local Modification. — (As to subsection (d)) Nash and city of Eden: 1991, c. 171 (effective 5-30-91, and expired 6-1-91).

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu

thereof, provided in s. 7 that all local, public-local, and private acts in conflict with this section would be repealed.

Subsection (d), which prohibited expansion of credit sales, expired June 1, 1991, pursuant to Session Laws 1989, c. 800, s. 22.

§ 18B-801. Location, opening, and closing of stores.

(a) **Number of Stores.** — Each local board shall have the authority and duty to operate one ABC store. Additional stores may be operated with the approval of the Commission.

(b) **Location of Stores.** — A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely affected; and

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question.

(c) **Closing of Stores.** — Subject to the provisions of subsection (a), a local board may close, or the Commission may order a local board to close, any store when the local board or the Commission determines that:

(1) The operation of the store is not sufficiently profitable to justify its continuation;

(2) The store is not operated in accordance with the ABC law; or

(3) The continued operation of that store will adversely affect the health, safety, or general welfare of the community in which the store operates.

(d) **Insolvent ABC System.** — If an ABC system is insolvent, the local board may apply to the Commission for an order to close the system. Upon receipt of an application, or upon its own motion, the Commission shall investigate the system, and if it finds that further operation of the ABC stores will not be profitable, it may order the system closed. If the Commission orders a local system to close, the Commission may:

(1) After consultation with the local board, its creditors, and other interested parties, schedule a phase out of the system's business activities;

(2) Represent the local board in negotiations with creditors and other interested parties;

(3) Require an accounting or auditing of the local system;

(4) Take possession or arrange for the disposition of any liquor for which the local board has not paid;

(5) Apply to the Superior Court to be appointed as receiver for the local board with all powers and duties of a receiver for a corporation under Article 38 of Chapter 1 of the General Statutes, except that the Commission shall not be required to post the bond required by G.S. 1-504; or

(6) Take any other reasonable steps to promote an orderly closing of the system. (1981, c. 412, s. 2; 1987, c. 135; 1989, c. 770, s. 6.)

Local Modification. — Brunswick: 1991, c. 372; 1991 (Reg. Sess., 1992), c. 776; town of Navassa: 1993, c. 17, s. 1.

§ 18B-802. When stores operate.

(a) **Time.** — No ABC store shall be open, and no ABC store employee shall sell alcoholic beverages, between 9:00 P.M. and 9:00 A.M. The local board shall otherwise determine opening and closing hours of its stores.

(b) **Days.** — No ABC store shall be open, and no ABC store employee shall sell alcoholic beverages, on any Sunday, New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, or Christmas Day. A local board may otherwise determine the days on which its stores shall be closed. (1981, c. 412, s. 2.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 7 that all local, public-local, and private acts in conflict with this section would be repealed.

§ 18B-803. Store management.

(a) **Manager.** — A local board shall provide for the management of each store operated by it. The board shall employ at least one manager for each store, who shall operate the store pursuant to the directions of that board.

(b) **Bonding of Manager.** — Each store manager shall be bonded in an amount not less than five thousand dollars (\$5,000), secured by a corporate surety, for the honest performance of his duties. A public employees' blanket position bond, honesty form, in the required amount satisfies the requirements of this subsection. The bond shall be payable to the local board and shall be approved by the appointing authority for the local board.

(c) **Bonding of Other Employees.** — A local board may require any of its other employees who handle funds to obtain bonds. The amount and form of those bonds shall be determined by the local board. (1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1262, s. 12.)

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 7 that all local, public-local, and private acts in conflict with this section would be repealed.

§ 18B-804. Alcoholic beverage pricing.

(a) **Uniform Price of Spirituous Liquor.** — The retail price of spirituous liquor sold in ABC stores shall be uniform throughout the State, unless otherwise provided by the ABC law.

(b) **Sale Price of Spirituous Liquor.** — The sale of spirituous liquor sold at the uniform State price shall consist of the following components:

- (1) The distiller's price.
- (2) The freight and bailment charges of the State warehouse as determined by the Commission.
- (3) A markup for local boards as determined by the Commission.
- (4) The tax levied under G.S. 105-113.80(c), which shall be levied on the sum of subdivisions (1), (2), and (3).

- (5) An additional markup for local boards equal to three and one-half percent (3½%) of the sum of subdivisions (1), (2), and (3).
 - (6) A bottle charge of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.
 - (6a) The bailment surcharge.
 - (6b) An additional bottle charge for local boards of one cent (1¢) on each bottle containing 50 milliliters or less and five cents (5¢) on each bottle containing more than 50 milliliters.
 - (7) A rounding adjustment, the formula of which may be determined by the Commission, so that the sale price will be divisible by five.
 - (8) If the spirituous liquor is sold to a mixed beverage permittee for resale in mixed beverages, a charge of twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities.
 - (9) If the spirituous liquor is sold to a guest room cabinet permittee for resale, a charge of twenty dollars (\$20.00) on each four liters and a proportional sum on lesser quantities.
- (c) Sale Price of Fortified Wine. — The sale price of fortified wine shall include the tax levied by G.S. 105-113.80(b), as well as State and local sales taxes.
- (d) Repealed by Session Laws 1985, c. 59, s. 2. (1937, c. 49, s. 4; cc. 237, 411; 1945, c. 954; 1949, c. 974, s. 9; 1961, c. 956; 1963, c. 426, s. 12; c. 916, s. 2; c. 1119, s. 1; 1965, c. 1063; c. 1102, s. 3; 1967, c. 222, s. 2; c. 1240, s. 1; 1971, c. 872, s. 1; 1973, c. 28; c. 473, s. 1; c. 476, s. 133; c. 606; c. 1288, s. 1; cc. 1369, 1396; 1975, cc. 240, 453, 640; 1977, c. 70, ss. 15.1, 15.2, 16; c. 176, ss. 2, 6; 1977, 2nd Sess., c. 1138, ss. 3, 4, 18; 1979, c. 384, s. 1; c. 445, s. 5; c. 482; c. 801, s. 4; 1981, c. 412, s. 2; 1981 (Reg. Sess., 1982), c. 1285, s. 5; 1983, c. 713, ss. 100, 101; 1985, c. 59, s. 2; c. 68, s. 1; c. 114, ss. 7-9; 1991, c. 565, ss. 4, 7; c. 689, ss. 304, 305; 1991 (Reg. Sess., 1992), c. 920, s. 3.)

CASE NOTES

Cited in *Waters v. Biesecker*, 60 N.C. App. 253, 298 S.E.2d 746 (1983).

§ 18B-805. Distribution of revenue.

(a) Gross Receipts. — As used in this section, "gross receipts" means all revenue of a local board, including proceeds from the sale of alcoholic beverages, investments, interest on deposits, and any other source.

(b) Primary Distribution. — Before making any other distribution, a local board shall first pay the following from its gross receipts:

- (1) The board shall pay the expenses, including salaries, of operating the local ABC system.
- (2) Each month the local board shall pay to the Department of Revenue the taxes due the Department. In addition to the taxes levied under Chapter 105 of the General Statutes, the local board shall pay to the Department one-half of both the mixed beverages surcharge required by G.S. 18B-804(b)(8)

and the guest room cabinet surcharge required by G.S. 18B-804(b)(9).

- (3) Each month the local board shall pay to the Department of Human Resources five percent (5%) of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9). The Department of Human Resources shall spend those funds for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse.
- (4) Each month the local board shall pay to the county commissioners of the county where the charge is collected the proceeds from the bottle charge required by G.S. 18B-804(b)(6), to be spent by the county commissioners for the purposes stated in subsection (h) of this section.

(c) Other Statutory Distributions. — After making the distributions required by subsection (b), a local board shall make the following quarterly distributions from the remaining gross receipts:

- (1) Before making any other distribution under this subsection, the local board shall set aside the clear proceeds of the three and one-half percent (3 ½%) markup provided for in G.S. 18B-804(b)(5) and the bottle charge provided for in G.S. 18B-804(b)(6b), to be distributed as part of the remaining gross receipts under subsection (e) of this section.
- (2) The local board shall spend for law enforcement an amount set by the board which shall be at least five percent (5%) of the gross receipts remaining after the distribution required by subdivision (1). The local board may contract with the ALE Division to provide the law enforcement required by this subdivision. Notwithstanding the provisions of any local act, this provision shall apply to all local boards.
- (3) The local board shall spend, or pay to the county commissioners to spend, for the purposes stated in subsection (h), an amount set by the board which shall be at least seven percent (7%) of the gross receipts remaining after the distribution required by subdivision (1). This provision shall not be applicable to a local board which is subject to a local act setting a different distribution.

(d) Working Capital. — After making the distributions provided for in subsections (b) and (c), the local board may set aside a portion of the remaining gross receipts, within the limits set by the rules of the Commission, as cash to operate the ABC system. With the approval of the appointing authority for the board, the local board may also set aside a portion of the remaining gross receipts as a fund for specific capital improvements.

(e) Other Distributions. — After making the distributions provided in subsections (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to the general fund of the city or county for which the board is established, unless some other distribution or some other schedule is provided for by law. If the governing body of each city and county receiving revenue from an ABC system agrees, those governing bodies may alter at any time the distribution to be made under this subsection or under any local act. Copies of the governing body resolutions agreeing to a new distribution formula and a copy of the approved new distribution formula shall be submitted to the Commission for review and audit

purposes. If any one of the governing bodies later withdraws its consent to the change in distribution, profits shall be distributed according to the original formula, beginning with the next quarter.

(f) **Surcharge Profit Shared.** — When, pursuant to the last paragraph of G.S. 18B-603(d), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located outside the city, the local board operating the store at which the sale is made shall retain seventy-five percent (75%) of the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) and the remaining twenty-five percent (25%) shall be divided equally among the local ABC boards for all other cities in the county that have authorized the sale of mixed beverages.

When, pursuant to G.S. 18B-603(e), spirituous liquor is bought at a city ABC store by a mixed beverages permittee for premises located at an airport outside the city, the local share of both the mixed beverages surcharge required by G.S. 18B-804(b)(8) and the guest room cabinet surcharge required by G.S. 18B-804(b)(9) shall be divided equally among the local ABC boards for all cities in the county that have authorized the sale of mixed beverages.

(g) **Quarterly Distributions.** — When this section requires a distribution to be made quarterly, at least ninety percent (90%) of the estimated distribution shall be paid to the recipient by the local board within 30 days of the end of that quarter. Adjustments in the amount to be distributed resulting from the closing of the books and from audit shall be made with the next quarterly payment.

(h) **Expenditure of Alcoholism Funds.** — Funds distributed under subdivisions (b)(4) and (c)(3) of this section shall be spent for the treatment of alcoholism or substance abuse, or for research or education on alcohol or substance abuse. The minutes of the board of county commissioners or local board spending funds allocated under this subsection shall describe the activity for which the funds are to be spent. Any agency or person receiving funds from the county commissioners or local board under this subsection shall submit an annual report to the board of county commissioners or local board from which funds were received, describing how the funds were spent.

(i) **Calculation of Statutory Distributions When Liquor Sold at Less Than Uniform Price.** — If a local board sells liquor at less than the uniform State price, distributions required by subsections (b) and (c) shall be calculated as though the liquor was sold at the uniform price. (1981, c. 412, s. 2; c. 747, s. 52; 1983, c. 713, ss. 102-104; 1985 (Reg. Sess., 1986), c. 1014, s. 116; 1991, c. 459, s. 3; c. 689, s. 306; 1991 (Reg. Sess., 1992), c. 920, s. 4; 1993, c. 415, s. 27.)

Local Modification. — City of Gibsonville: 1989, c. 394, s. 1; town of Wallace: 1987, c. 94.

Editor's Note. — Session Laws 1981, c. 412, which repealed former Chapter 18A and enacted this Chapter in lieu thereof, provided in s. 8 that all local,

public-local, and private acts in conflict with this section would be repealed except as provided in this section.

Legal Periodicals. — For article, "A History of Liquor-by-the-Drink Legislation in North Carolina," see 1 Campbell L. Rev. 61 (1979).

CASE NOTES

No Estoppel against Town Council Where It Acted Outside Its Author-

ity. — Where a town's resolution appropriating a certain percentage of its alco-

holic beverage control revenue to county school board was outside the authority of the town council, the town council could not be estopped from terminating the unauthorized payments without notice. *Watauga County Bd. of Educ. v. Town of*

Boone, 106 N.C. App. 270, 416 S.E.2d 411 (1992).

Cited in *Waters v. Biesecker*, 60 N.C. App. 253, 298 S.E.2d 746 (1983); *North Carolina Ass'n of ABC Bds. v. Hunt*, 76 N.C. App. 290, 332 S.E.2d 693 (1985).

§ 18B-806. Damaged alcoholic beverages.

(a) Owned by Local Board. — All damaged alcoholic beverages owned by a local board shall be destroyed, given to a public or private hospital for medicinal use only, or given to the Commission.

(b) Not Owned by Local Board. — The Commission shall dispose of all damaged alcoholic beverages which are:

- (1) Owned by the Commission;
- (2) Damaged while in the State warehouse; or
- (3) Damaged while in transit between the State warehouse and a local board.

The Commission shall dispose of the alcoholic beverages by giving them to a public or private hospital for medicinal use only, by selling them to a military installation, or by destroying them.

(c) Sale Procedure. — If damaged alcoholic beverages are sold under subsection (b), sale shall be by:

- (1) Advertisement for sealed bids;
- (2) Negotiated offer, advertisement and upset bids; or
- (3) Exchange.

Funds derived from the sale of damaged alcoholic beverages shall be paid to the general fund of the State.

(d) Records. — Local boards and the Commission shall keep detailed records of all disposals of damaged alcoholic beverages, including brand, quantity and disposition. (1981, c. 412, s. 2.)

§ 18B-807. Rules.

The Commission may adopt rules concerning the organization and operation of self-service ABC stores, the size of ABC store signs, the display of alcoholic beverages, solicitation in and around ABC stores, and any other subject relating to the efficient operation of ABC stores. (1981, c. 412, s. 2.)

§§ 18B-808 through 18B-899: Reserved for future codification purposes.

ARTICLE 9.

Issuance of Permits.

§ 18B-900. Qualifications for permit.

(a) Requirements. — To be eligible to receive and to hold an ABC permit, a person shall:

- (1) Be at least 21 years old, unless the person is a manager of a business selling only malt beverages and unfortified wine, in which case the person shall be at least 19 years old;
- (2) Be a resident of North Carolina unless:

- a. He is an officer, director or stockholder of a corporate applicant or permittee and is not a manager or otherwise responsible for the day-to-day operation of the business; or
 - b. He has executed a power of attorney designating a qualified resident of this State to serve as attorney in fact for the purposes of receiving service of process and managing the business for which permits are sought; or
 - c. He is applying for a nonresident malt beverage vendor permit, a nonresident wine vendor permit, or a vendor representative permit;
- (3) Not have been convicted of a felony within three years, and, if convicted of a felony before then, shall have had his citizenship restored;
 - (4) Not have been convicted of an alcoholic beverage offense within two years;
 - (5) Not have been convicted of a misdemeanor controlled substance offense within two years; and
 - (6) Not have had an alcoholic beverage permit revoked within three years.
 - (7) Not have, whether as an individual or as an officer, director, shareholder or manager of a corporate permittee, an unsatisfied outstanding final judgment that was entered against him in an action under Article 1A of this Chapter.

To avoid undue hardship, however, the Commission may decline to take action under G.S. 18B-104 against a permittee who is in violation of subdivisions (3), (4), or (5).

(b) Definition of Conviction. — A person has been "convicted" for the purposes of subsection (a) when he has been found guilty, or has entered a plea of guilty or nolo contendere, and judgment has been entered against him. A felony conviction in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would also constitute a felony in North Carolina. A conviction of an alcoholic beverage offense or misdemeanor drug offense in another jurisdiction shall disqualify a person from being eligible to receive or hold an ABC permit if his conduct would constitute an offense in North Carolina, unless the Commission determines that under North Carolina procedure judgment would not have been entered under the same circumstances. Revocation of a permit in another jurisdiction shall disqualify a person if his conduct would be grounds for revocation in North Carolina.

(c) Who Must Qualify; Exceptions. — For an ABC permit to be issued to and held for a business, each of the following persons associated with that business must qualify under subsection (a):

- (1) The owner of a sole proprietorship;
- (2) Each member of a firm, association or general partnership;
- (2a) Each general partner in a limited partnership;
- (2b) Each manager and any member with a twenty-five percent (25%) or greater interest in a limited liability company;
- (3) Each officer, director and owner of twenty-five percent (25%) or more of the stock of a corporation except that the requirement of subdivision (a)(1) does not apply to such an officer, director, or stockholder unless he is a manager or is otherwise responsible for the day-to-day operation of the business;

- (4) The manager of an establishment operated by a corporation other than an establishment with only off-premises malt beverage, off-premises unfortified wine, or off-premises fortified wine permits;

- (5) Any manager who has been empowered as attorney-in-fact for a nonresident individual or partnership.

(d) **Manager of Off-Premises Establishment.** — Although he need not otherwise meet the requirements of this section, the manager of an establishment operated by a corporation and holding off-premises permits for malt beverages, unfortified wine, or fortified wine shall be at least 19 years old and shall meet the requirements of subdivisions (3), (4), (5) and (6) of subsection (a).

(e) **Convention Centers.** — With the approval of the Commission, the manager of a convention center may contract with another person to provide food and beverages at conventions and banquets at the convention center, and that person may engage in the activities authorized by the convention center's permit, under conditions set by the Commission. The person with whom the convention center contracts must meet the qualifications of this section. (1949, c. 974, ss. 1, 2; 1963, c. 119; c. 426, s. 12; 1965, c. 326; 1971, c. 872, s. 1; 1973, c. 758, s. 2; c. 1012; 1975, c. 19, s. 5; 1977, c. 70, s. 19.1; c. 668, s. 3; c. 977, ss. 1, 2; 1979, c. 286, s. 4; 1981, c. 412, s. 2; c. 747, ss. 53, 54; 1981 (Reg. Sess., 1982), c. 1262, ss. 13, 14; 1983, c. 435, ss. 32, 39; 1987, c. 136, ss. 7, 8; 1993, c. 415, s. 10; 1995, c. 466, s. 6.)

Effect of Amendments. — The 1995 amendment, effective October 1, 1995, added subdivision (c)(2b).

CASE NOTES

Stated in *Clark v. Inn West*, 89 N.C. App. 275, 365 S.E.2d 682 (1988).

Cited in *State v. Fletcher*, 92 N.C. App. 50, 373 S.E.2d 681 (1988).

§ 18B-901. Issuance of permits.

(a) **Who Issues.** — All ABC permits shall be issued by the Commission. Purchase-transportation permits shall be issued by local boards under G.S. 18B-403.

(b) **Notice to Local Government.** — Before issuing a retail ABC permit, other than a:

- (1) Special occasion permit under G.S. 18B-1001(8);
- (2) Limited special occasion permit under G.S. 18B-1001(9);
- (3) Temporary permit under G.S. 18B-905; or
- (4) Special one-time permit under G.S. 18B-1002

for an establishment, the Commission shall give notice of the permit application to the governing body of the city in which the establishment is located. If the establishment is not inside a city, the Commission shall give notice to the governing body of the county. The Commission shall allow the local governing body 15 days from the time the notice was mailed or delivered to file written objection to the issuance of the permit. To be considered by the Commission, the objection shall state the facts upon which it is based.

(c) **Factors in Issuing Permit.** — Before issuing a permit, the Commission shall be satisfied that the applicant is a suitable person to hold an ABC permit and that the location is a suitable place to

hold the permit for which he has applied. To be a suitable place, the establishment shall comply with all applicable building and fire codes. Other factors the Commission shall consider in determining whether the applicant and the business location are suitable are:

- (1) The reputation, character, and criminal record of the applicant;
- (2) The number of places already holding ABC permits within the neighborhood;
- (3) Parking facilities and traffic conditions in the neighborhood;
- (4) Kinds of businesses already in the neighborhood;
- (5) Whether the establishment is located within 50 feet of a church or public school or church school;
- (6) Zoning laws;
- (7) The recommendations of the local governing body; and
- (8) Any other evidence that would tend to show whether the applicant would comply with the ABC laws and whether operation of his business at that location would be detrimental to the neighborhood.

(d) **Commission's Authority.** — The Commission shall have the sole power, in its discretion, to determine the suitability and qualifications of an applicant for a permit. (1945, c. 903, s. 1; 1947, c. 1098, ss. 2, 3; 1949, c. 974, s. 1; 1957, cc. 1048, 1448; 1963, c. 426, ss. 10, 12; c. 460, s. 1; 1971, c. 872, s. 1; 1973, c. 476, s. 128; 1975, c. 586, s. 1; c. 654, ss. 1, 2; c. 722, s. 1; 1977, c. 70, s. 19; c. 182, s. 1; c. 669, ss. 1, 2; c. 676, ss. 1, 2; c. 911; 1979, c. 348, ss. 2, 3; c. 683, ss. 5, 6, 11, 12; 1981, c. 412, s. 2; 1993 (Reg. Sess., 1994), c. 749, ss. 1, 2.)

Effect of Amendments. — The 1993 (Reg. Sess., 1994) amendment, effective July 15, 1994, and only applicable to permits applied for on or after July 15, 1994, in subsection (b), in the introductory language substituted "a retail" for "an," added "other than a" at the end,

added subdivisions (b)(1) through (b)(4), and in the next to last sentence substituted "15 days" for "10 days"; and in the third sentence of the introductory language of subsection (c) substituted "shall" for "may."

CASE NOTES

ABC Permit Preempts Municipal Zoning Ordinance. — In case in which petitioner, without objection by respondent board, argued that the decision of the ABC Commission to grant him a permit preempted respondent's denial of his special exception use permit request since the zoning ordinance, upon which respondent's denial was based, attempted to regulate the sale of alcoholic beverages, which is a violation of State law, the trial court did not err in concluding that petitioner, as the holder of a valid ABC permit issued by the State Alcoholic Beverage Control Commission,

was entitled to be issued a city beer license, and in ordering the tax collector of the city to issue any city license. In re Melkonian, 85 N.C. App. 351, 355 S.E.2d 503, cert. denied, 320 N.C. 631, 360 S.E.2d 91 (1987).

The superior court is without power to order the Commission to issue a permit, but can order the Commission to exercise its discretion in accordance with law. Waggoner v. North Carolina Bd. of Alcoholic Control, 7 N.C. App. 692, 173 S.E.2d 548 (1970) (decided under similar provisions of former Chapter 18A).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. — The opinions below include opinions decided under similar provisions of former Chapters 18 and 18A.

Commission May Issue Permits for the Retail Sale of Fortified Wines in Those Counties and Cities Where A.B.C. Stores Are Authorized. — See opinion of Attorney General to Mr. N.H. Person, 41 N.C.A.G. 616 (1971).

In Locality Where Election for Off-Premises Sale of Unfortified Wine

Only Has Been Held, Retail Sales of Wine Are Restricted to Those Conditions Despite Revision of General Statutes. — See opinion of Attorney General to Mr. Lee P. Phillips, State Board of Alcoholic Control, 41 N.C.A.G. 630 (1971).

§ 18B-902. Application for permit; fees.

(a) **Form.** — An application for an ABC permit shall be on a form prescribed by the Commission and shall be notarized. The application shall be signed and sworn to by each person required to qualify under G.S. 18B-900(c).

(b) **Investigation.** — Before issuing a new permit, the Commission, with the assistance of the ALE Division, shall investigate the applicant and the premises for which the permit is requested. The Commission may request the assistance of local ABC officers in investigating applications. An applicant shall cooperate fully with the investigation.

(c) **False Information.** — Knowingly making a false statement in an application for an ABC permit shall be grounds for denying, suspending, revoking or taking other action against the permit as provided in G.S. 18B-104 and shall also be unlawful.

(d) **Fees.** — An application for an ABC permit shall be accompanied by payment of the following application fee:

- (1) On-premises malt beverage permit — \$200.00.
- (2) Off-premises malt beverage permit — \$200.00.
- (3) On-premises unfortified wine permit — \$200.00.
- (4) Off-premises unfortified wine permit — \$200.00.
- (5) On-premises fortified wine permit — \$200.00.
- (6) Off-premises fortified wine permit — \$200.00.
- (7) Brown-bagging permit — \$200.00, unless the application is for a restaurant seating less than 50, in which case the fee shall be \$100.00.
- (8) Special occasion permit — \$200.00.
- (9) Limited special occasion permit — \$25.00.
- (10) Mixed beverages permit — \$750.00.
- (11) Culinary permit — \$100.00.
- (12) Unfortified winery permit — \$150.00.
- (13) Fortified winery permit — \$150.00.
- (14) Limited winery permit — \$150.00.
- (15) Brewery permit — \$150.00.
- (16) Distillery permit — \$150.00.
- (17) Fuel alcohol permit — \$50.00.
- (18) Wine importer permit — \$150.00.
- (19) Wine wholesaler permit — \$150.00.
- (20) Malt beverage importer permit — \$150.00.
- (21) Malt beverage wholesaler permit — \$150.00.
- (22) Bottler permit — \$150.00.
- (23) Salesman permit — \$25.00.
- (24) Vendor representative permit — \$25.00.
- (25) Nonresident malt beverage vendor permit — \$50.00.
- (26) Nonresident wine vendor permit — \$50.00.
- (27) Any special one-time permit under G.S. 18B-1002 — \$25.00.

The 1989 referendum which provided for alcoholic beverage sales in Brunswick County presented a great challenge to the Brunswick County Alcoholic Beverage Control Board. This board worked quickly and efficiently to establish a county ABC Store to carry out the wishes of the voters. The sales records of the ABC Store point to a lean administrative and operational distribution unit which has coupled compliance with the wishes of the electorate and economy.

In the infancy of the Brunswick County Alcoholic Beverage Control Board, meetings were held with high level representatives of the North Carolina Alcoholic Beverage Control Commission. These representatives stressed that, operational integrity of the Brunswick County Alcoholic Beverage Control system notwithstanding, the important issue to be addressed in Brunswick County was the number of Alcoholic Beverage Control systems operating in Brunswick County. Formal and informal initiatives were taken by the county board as to merger, but the immediacy of opening the county system took priority. The recent actions of the county board as to opening a second store has raised the merger issue once again. I feel that this is important and I am pleased to see that a discussion has been fueled by this action. I do think that this discussion must remain positive as all systems examine the potential of cost savings for all systems through merger. I do not know if a complete or partial merger is a realistic proposal, but I do feel that an open examination of merger is needed at this point in time. Therefore, I suggest that representatives of all Brunswick County Alcoholic Beverage Control Systems meet with representatives of the North

Carolina Alcoholic Beverage Control Commission within the next 30 days to discuss the mutually beneficial aspects of merger. Further, if such a meeting can be scheduled, that this Board table any further action on establishing another store pending the outcome of the meeting. This action does not preclude or prevent any action by this board, but allows for a needed period of discussion.