

IOWA ALCOHOLIC BEVERAGES COMMISSION

MINUTES

Iowa Alcoholic Beverages Division
November 19, 2020 - 1:00 p.m.
Telephonic Meeting
Dial In Number: 1.646.749.3129
Access Code Number: 675-842-695

Commission Members Present

Christine Riesenbeck-Spratt: Chairperson via telephone
Gary Nystrom: Secretary
Rachel Eubank: Member via telephone
Jay Wilson: Member via telephone
John Pauli: Member

Division Staff Present

Stephen Larson: Administrator
Herb Sutton: Bureau Chief, Business Operations
Brenda Emelo: Assistant to the Administrator
Alisha Sutton: Receptionist
Anthony Robben: OCIO
Stephanie Strauss: Executive Officer
Tyler Ackerson: Rules Coordinator
Josh Happe: Bureau Chief Regulatory Compliance

Division Staff (via telephone)

DeMario Luttrell: Public Service Manager
Martin Moen: IT Manager
Lolani Lekkas: Bureau Chief Administrative Affairs
Erin Verduyn: Administrative Assistant
Madelyn Cutler: Administrative Assistant
Alexis Minder: Program Planner Licensing
Dominique McNab: Clerk Specialist
Scherael Thurston-Shell: Compliance Officer
Brian Drewry: Compliance Officer
Chuck Crabtree: Program Planner
Deanne Krumm: Compliance Officer

Jake Holmes: Education & Outreach
Pam Koehn-Miller: Secretary
Jason Hohn: Administrative Assistant
Jessica Ekman: Tobacco Compliance Program Planner
Jonathan Mader: Accountant
Denise Roberg: Program Planner
Jodi Christensen: Purchasing Agent
Nathan Beyer: Administrative Assistant

Guests Present (via phone)

John Lundquist: Assistant Attorney General
Kyle Doyle: Iowa Distilling Company
Angel Banks-Adams: Legislative Services Agency
Andrew Deloney: Johnson Brothers
Scott Oeltjenbruns: Johnson Brothers
Marty Wadle: Ruan
Lyle Stutzman: Johnson Brothers
Terry Doherty: E&J Gallo Winery
David Adelman: Cornerstone
Katelyn OHare-Hayes: Cornerstone
Deb Scrowther: Iowa Department of Management
Greg King: Southern Glazer's Wine and Spirits
Lance Cheney: Ruan
Nicole Eilers: Iowa Wine Growers Association
Mike Jurgens: Brown Forman Corporation
Matt McKinney: Brown Winnick
Eric Goransen: Iowa restaurant Association
Greg King: Southern Wine & Spirits
Tommy Athey: Heaven Hill
John Cacciatore: DISCUS
Stacie Schroeder: AC4C
Angela Davis: Wine Growers Association
Mike Brewington: Iowa Beverage Systems

CALL TO ORDER

Chairperson Spratt called the meeting to order at 1:00 p.m. and roll was taken. There was a quorum.

APPROVAL OF AGENDA

MOTION: A motion was made by Commissioner Nystrom and seconded by Commissioner Pauli to approve the agenda for the November 19, 2020 Commission meeting.

Motion approved.

APPROVAL OF MINUTES

MOTION: A motion was made by Commissioner Pauli and seconded by Commissioner Nystrom to approve the minutes for the September 11, 2020 Commission meeting.

Motion approved.

ADMINISTRATOR'S REPORT

Administrator Larson began his report by detailing social distancing protocols in place during the Commission meeting. Speakers were asked to enter the board room to give their report and to exit after questions have been addressed. Commissioners and the public were directed to ask questions at the end of each presentation.

Mr. Sutton, Bureau Chief of Business Operations began his report by providing an overview of ABD's health and safety. To date three employees have tested positive for COVID-19. All three employees had been working remotely. Mr. Sutton reported there are eight employees who continue to work onsite daily.

Ruan reported three positive cases and are continuing preventive measures resulting in no further spread throughout the warehouse or drivers.

Mr. Sutton stated Ruan's night shift began in September which which has improved overall functions in a number of ways including:

- The added night shift has aided in the mitigation efforts with COVID-19 so less workers are in the warehouse at one time which allows for greater social distancing.
- Increased efficiencies have allowed the day shift to work less hours each day.

Mr. Sutton provided the following update on product management highlighting key information including:

- As of 11.18.2020 out of 200 products only 11 are out of stock.
- Total out of stock products were 234 out of approximately 2200 SKU's equating to approximately 11%.
- ABD has been informed by certain suppliers that the supply chain has been interrupted due to high demand throughout the country.
- A number of popular products have been affected, as a result the division implemented a case limit for all stores on those products, while also eliminating the option for will call.
- ABD has limitations on 33 SKUs in addition to the normal average of 9 SKU's. Limited products continued to be reviewed weekly.

Mr. Sutton concluded his report by introducing Jonathan Mader, Accountant who presented the financial update on behalf of Leisa Bertram, Comptroller.

Mr. Mader began by reviewing the year to date FY21 financial report highlighting the following key points:

- July 1st to October 31st sales were robust
- Liquor sales exceeded 141.7 million in FY21 compared to the 116.7 million in FY20 resulting in a 16.28% increase.

Mr. Mader concluded his presentation by pointing out that ABD has consistently achieved new high marks month to month by a comfortable margin in FY21.

Administrator Larson explained that being able to capture information that depicts ABD's liquor sales during a pandemic as well as being able to compare it to sales from previous years will provide historical data showing growth trends that point to a growth in sales during a pandemic. Administrator Larson made known if there is data the public or Commission would like to request ABD has the analytics in place to be able to provide.

Administrator Larson explained the strategy for collecting deferred payments. At some point when the proclamation is terminated ABD will need to collect. When ABD gets to that point, compliance will come into play and there will be entities that want a payment plan, not have the cash or capital or have even gone out of business. We will have accounts that are deemed uncollectible and ABD will need to reflect that in ABD's annual report in 2021.

Commissioner Pauli then asked if ABD had a reversion back to the state which would have made the deferred amounts more if COVID-19 did not come first.

Administrator Larson then pointed out that the governor issued within a proclamation back in March the ability for a certain license type to either defer payment on their taxes and the on premise which is your C license, leaving licensing fees pretty static. Administrator Larson explained that taxes owed to the state regarding beer and wine can fluctuate based on sales. ABD did not currently have the system in place that could compare taxes reported in July or what ABD reported last July.

Administrator Larson introduced Josh Happe, Chief of Regulatory and Compliance.

Mr. Happe began his report by providing an update of COVID-19 Proclamation enforcement initiative.

Mr. Happe stated that under the direction of the governor's office and Administrator the Regulatory and Compliance mission is to uphold the public health and safety initiative for licensees. Mr. Happe announced that ABD is partnering with the Department of Inspections and Appeals, the Department of Public Safety, to begin information sharing.

Mr. Happe further explained that ABD is choosing to be transparent by implementing the following measures:

- Immediate notifications to licensees
- Public information notifications regarding violations occurring, citations issued and complaints filed.

Mr. Happe reviewed statistics regarding violations and complaints since July 2020.

- 600 complaints - information provided from the public
- 83 complaints from the Department of Inspection and Appeals
- 2382 inspections to ensure proclamation is being followed

Mr. Happe gave a brief overview of the COVID-19 Compliance Plan Checklist, reiterating the purpose of the checklist. Mr. Happe explained that the Checklist was sent out to all licensee's. Mr. Happe announced 67.8% of checklists were returned as of November 16th. Mr. Happe provided an overview of open, closed and pending cases. ABD has 57 cases open of 2382. 37 cases were referred to Administrative Actions, and 5 are still under

investigation. Mr. Happe explained that a greater number of inspections took place in the higher populated areas.

Administrator Larson affirmed there is a strategy in place that is focused on analytics. Administrator Larson went on further to explain that when ABD received anonymous tips investigators and compliance officers use discretion to protect those who have provided ABD tips as well as respect the licensees in reference to complaints. Administrator Larson then clarified that ABD does not reach out to wholesalers, suppliers, or reach out to those who provide goods and services.

Administrator Larson then affirmed that our public policy purpose is health, safety and general welfare and under this three tier system and to ensure a fair and level playing field. ABD strives to be sensitive and fair to businesses who have been impacted by COVID-19 guidelines.

Mr. Happe invited Lolani Lekkas to provide an update on Administrative Affairs.

Ms. Lekkas began her report by stating she is overseeing the Administrative Affairs and Education and Outreach departments.

Ms. Lekkas went on to explain that the Administrative Affairs Unit in coordination with the Regulatory and Compliance, and Education and Outreach units advise licensee's in matters regarding legal implications including COVID-19 violations and investigations.

Ms. Lekkas then provided a brief overview of the case that went to the Administrative Law Judge for the decision providing key information including:

- A licensee was found in violation by ABD for a COVID-19 violation of the proclamation.
- The judge affirmed that the governor does have constitutional and statutory authority to issue these proclamations and subsequently ABD to enforce these proclamations.
- The judge also stated that the sanction of \$1,000 may deter others from participating in activities that would cause substantial harm to health, safety and welfare. It is important that we preserve our states interest in preserving the police enforcement in Iowa regarding alcoholic beverages regulations.

Ms. Lekkas stated that ABD is not only reviewing but interpreting the language with the help of the governor's office to ensure licensees and permittees are in compliance and the

best way to ensure that public health safety and welfare is at the forefront and to communicate as soon as changes arise with the proclamation.

Administrator Larson provided an overview of how the Administrative Affairs Unit was developed. Administrator Larson explained the intent was to segregate out the Administrative Actions unit under the Administrative Affairs with education and outreach being a branch within the unit. Administrator Larson explained Administrative Affairs would be reviewing cases that could ultimately go to court as well as contested cases and/or denied licenses by local authority and appealed cases and governmental relations.

Mr. Larson introduced Tyler Ackerson, Rules Coordinator, for adoption of ARC 5220C, the Notice of Intended Action for the cocktails to-go rules.

Mr. Ackerson began by providing an update on events that had taken place since the emergency rules were filed:

- In late September, the National Highway Traffic Safety Administration, or NHTSA, issued its preliminary review of the cocktail to-go law.
- NHTSA concluded that the law by itself was not sufficient to keep Iowa in compliance with federal open container laws. As a result, approximately \$12 million in federal funding for road and bridge projects were in jeopardy. After further review Iowa was brought back into compliance with federal law and secured the \$12 million in federal funds.
- On November 10, 2020 ABD appeared before the legislature's Administrative Rules Review Committee to speak to these rules. The committee had no questions or comments and did not express any opposition to the rules.

Mr. Ackerson stated that the events reinforced that the rules are reasonable, balance protecting public safety with the businesses needs of licensees, and secure important federal funding for the State of Iowa.

MOTION: A motion was made by Commissioner Nystrom and a second by Commissioner Pauli to adopt ARC 5220C.

A roll call vote was taken with the following results:

Commissioner Spratt: Yes

Commissioner Nystrom: Yes

Commissioner Wilson: Yes

Commissioner Eubank: Yes

Commissioner Pauli: Yes

The motion passed and ARC 5220C was adopted.

Mr. Ackerson stated that there are two rule makings that have been given notice:

- Updating contested case rules to reflect current practices
- A clean up rule making to remove the word “variance” from one of the rules chapters.

Mr. Ackerson proposed a meeting be scheduled in December for those rule makings to be brought before the commission for consideration.

Mr. Ackerson explained that ABD is working on other topics for rule making including rules related to the State wholesale system, listing, delisting and product management. Most of this information already exists in the Listing Manual, but ABD wants to formalize those policies in administrative rule.

Mr. Ackerson concluded his presentation by introducing Stephanie Strauss, Governmental Relations Officer.

Ms. Strauss reported that the 86th General Assembly will be starting January 11, 2021.

Ms. Strauss followed by mentioning key differences in the Iowa legislation due to the elections of 2020:

- This year republicans expanded its house majority. In January 2021 the house will have 59 republicans, and 41 democrats.
- Representative Grassley will be Speaker of the House, and representative Matt Windschitl will be House Majority Leader. Representative Prichard remains the House Democratic Leader.
- The Senate is under the control of the republicans. Republican Senators lead 38 to 12.
- Senator Whitver continues to hold the position of Senate Majority Leader and Senator Chapman has been elected to be President of the Senate. Senator Zach Wahls was elected as Democrat leader.

Ms. Strauss then moved on to discuss the three bill requests, and the information needed when proposing the requests.

- Summary and the background of the issue and describe what the current law says, identifying where the issue is.
- Explain how what is being proposed would be a solution to the problem.
- Identify whether or not the bill is passed one, have a fiscal impact or impact on jobs.
- Let her team know if the proposal has been pre cleared in the past and if so what was the legislative history in the past.

Ms. Strauss then named the three bills that have been submitted which were the Peace Officer Status purpose to clarify, not alter ABD's role as the Alcoholic Beverage Control law enforcement authority for the State. It would also give ABD's Investigators and Compliance Officers Peace Officer status as they would be enforcing Chapter 123.

The second proposal will identify a funding system, which will allow Native Distilleries to be included in the Iowa Wine and Beer Promotion Board Activities. ABD has preliminary approval to proceed. The law changed earlier this year and then the pandemic struck. ABD was asked to wait until 2021.

The final request is called the House File 2540 Cleanup Bill. ABD is proposing the language be changed within the bill to conform to the rest of the chapter. In addition four policy issues were missed in the law change, and stakeholders have expressed interest in pursuing.

Administrator Larson asked John Lundquist to provide reasoning for giving Investigators and Compliance Officers Peace Officer status. Administrator Larson also reinforced that having that type of statutory clarity could assist in expediting contested cases or administrative appeals, and determine how to assist the Attorney General's office.

Mr. Lundquist began by explaining the history of the Iowa Department of Public Safety has a designated bureau for Liquor Law Enforcement. The bureau was dismantled and statutory change was made in which law enforcement agencies were granted authority over enforcement investigation of liquor violations. Having Peace Officer status means agencies have certain protections under the code and are protected if they were assaulted. Peace Officer status also gives authority to speak with businesses to swear out complaints and affidavits.

Administrator Larson asked Mr. Happe to outline the requirements ABD has for Tobacco inspectors in regard to Peace Officers.

Mr. Happe explained that ABD facilitates a program to implement tobacco compliance with all tobacco permit establishments. This program includes using minors to conduct purchases of tobacco products. If a violation occurs a citation would be included. ABD continues to work with local law enforcement to implement this program.

Administrator Larson gave closing remarks and gave the floor to Commissioner Spratt.

Commissioner Spratt invited meeting attendees to make any public comments.

PUBLIC COMMENT

none

OLD BUSINESS

None

NEW BUSINESS

Commissioner Spratt recognized Herb Sutton for a presentation of the Annual Report
Commissioner Pauli asked that a footnote be made to the financial report subscript regarding the deferment and how it could impact, and what the impact could be to 2021.

Mr. Sutton replied there would be some expansion on the deferment. It will not be included in the report instead it will be included in an addendum.

Mr. Sutton recognized Denise Roberg who is a part of ABD's Education and Outreach team for leading the project on the FY20 Annual Report.

Administrator Larson stated for the record the recommendation has been accepted by staff that we would like to have additional footnotes regarding various deferments of taxes and fees. We can insert what the obligation would have been and reference again in FY21.

A motion was made by Commissioner Nystrom to accept the Annual Report with a disclaimer and a note of explanation as referenced by Mr. Sutton. Commissioner Wilson seconded. A roll call vote was taken.

Commissioner Pauli - yes

Commissioner Spratt - yes

Commissioner Wilson - yes

Commissioner Nystrom - yes

Commissioner Eubank - yes via email

Motion approved to adopt the Fiscal Year 2020 Annual Report.

Administrator Larson gave closing remarks reiterating that ABD is and will be transparent, wants a fair level playing field, as well as building relationships with local law enforcement and other government agencies making public health and safety during this COVID-19 pandemic a priority, while doing its part to execute within ABD's authority the proclamations set in place by the governor.

NEXT MEETING DATE

December 11, 2020 at 11:00 am. This will be a tele-meeting.

ADJOURNMENT

MOTION: A motion was made by Commissioner Spratt and seconded by Commissioner Pauli to adjourn the meeting.

Motion approved.

The meeting adjourned at 3:26 pm

A handwritten signature in blue ink, reading "Gary Nystrom", written over a horizontal line.

Commissioner Gary Nystrom, Secretary