

VIRTUAL BOARD MEETING MINUTES: December 13, 2023 ABC Headquarters

Call Virtual Meeting to Order at 2:00 p.m.

Attendees

Board Chair Tim Hugo
Board Member William Eulle
Board Member Mark Rubin
Board Member Bob Sledd
Board Member Gregory Holland
Interim Chief Executive Officer and
Chief Law Enforcement Officer, Tom Kirby
Chief Government Affairs Officer, John Daniel
Chief Retail Operations Officer, Mark Dunham
Chief Administrative Officer, David Alfano
Chief Information Officer, Paul Williams
Chief Digital and Brand Officer, Vida Williams
Deputy Secretary, Chris Curtis
Office of the Attorney General, Jim Flaherty
Director of Finance, Doug Robinson
Director of Real Estate, Susan Johnson
Director of Human Relations, John Singleton
Director of Digital Operations, Ernest Moore
Governor's Office, Elizabeth Peay
Tom Lisk
Jerry Cable
Tommy Herbert
Director of Communications, Tracey Lorraine
Public Information Officer, Jeff Caldwell
Executive Administrative Assistant, Kathleen LaMotte
Digital Strategist, Jack Brown
Project Support Specialist, Linda Phelps
Senior Paralegal, Helen Gordon
Chief Clerk, Megan Wallmeyer Rose
Senior Paralegal, Kristie Miles
Senior Legal Counsel, LaTonya D. Hucks-Watkins

Welcome

Board Chair Hugo opened by thanking everyone for working these regulations and questions out. The Board Chair then deferred to Chief Daniel and/or Interim CEO Kirby to proceed.

New Business

Revised Regulations

Mr. Daniel explained that the modification to the regulation which was the subject of discussions among a multitude of authorities was 3 VAC5-50-110, relating to the definition and qualifications for retail on-premises and off-premises licenses generally, more specifically to mixed beverages. The agreement reached was that the modifications that were proposed would be restored to their current state, i.e. the new language would be eliminated and it would go back to what the current state of the law is. The balance of the regulatory modifications would go forward as proposed.

The Board Chair thanked Mr. Daniel and his staff for all the work on this issue. The Board Chair asked if any Board members wished to ask questions prior to opening it up to public comment.

Mr. Rubin asked for an explanation of what the problem was with the regulation that is being pulled out.

The Board Chair suggested letting the interested parties make comments about their concerns and asked if Mr. Benka or Mr. Cable were on the call to discuss concerns. Ms. Lamotte noted that if any members of the public wish to speak, would they please identify themselves for the record.

Mr. Cable spoke, saying he believed the changes that were being proposed by the Virginia Restaurant Association and Virginia ABC conflict with the Virginia Code, so removing them puts them in line with the existing Virginia Code. He stated that the language should remain as it is in the code today. He stated that the code made it clear who is entitled to a mixed beverage license and who is not. The proposed changes were not in agreement with the Virginia Code.

Mr. Cable explained that the changes that were being made changed the requirements for a mixed beverage restaurant to get a license. He said the changes made it appear that anyone who wanted a license who sold pizza, or a hamburger could get a license. He added that the existing code outlines who should get a mixed beverage license and any changes to this should go through the General Assembly and not be a regulation change made by ABC.

Mr. Rubin stated that it was his understanding that if the changes to this regulation are withheld, what ABC will be guided by is a circular that has been in effect for eight or nine years that effectively does what this regulation revision does. Mr. Rubin stated that the circular has been around for eight-to-nine years and that he did not know of any cases that have come forward with objections to the circular.

Chair Hugo stated that he heard what Mr. Rubin was saying and he appreciated the remarks. The Chair stated that he heard from bi-cameral parties and their belief was that this change was one that should be made by the General Assembly. Mr. Hugo said that a number of people felt this change should be left to the prerogative of the General Assembly. However, the Board did need to decide about how to proceed at this point and it was his understanding that an agreement had been worked out between the parties that would work for everyone. The chair suggested that the Board also hear from Tom Lisk as a key party to these revisions. Before hearing from Mr. Lisk, the chair asked if the other Board members had any further questions.

Mr. Rubin stated that his biggest concern was that there was a process to revise regulations. All the stakeholders met during this process, to include Mr. Benka, a consensus was reached in regard to all of these processes and then the draft proposal came before the Board. He noted they could go to the members of the General Assembly, the General Assembly could certainly make a rule at any time to say the regulations are not valid, there is also a whole process of J-cards, and all of these regulations still have to go in front of the Governor before they are finally approved. What we are discussing doing would undermine a process that many state agencies use.

Chair Hugo stated that there were quite a few people that contacted him about this regulation and the Board did need to vote on the proposed changes. The staff and stakeholders got together and agreed on the revisions on their level, but the revisions still need to come before the ABC Board for approval. As Mr. Daniel said, the parties concluded that gets 98% of the revisions approved for processing. The Board's review, respectfully, adds to the process by bringing our different perspectives.

Mr. Rubin stated that the Chair's point was well taken. The Board's review does provide the final stage of the internal process and we could approve or reject the consensus. The way this agreement has been presented is that it is hard to stand up against the consensus. He wanted to make it clear that he looked through all the public comments and he saw

no comments about this regulation; so apparently the process was not completely followed, but in the end, the Board does have a right to vote either for or against passing these revisions through or to accept the agreement as it was made.

Chair Hugo asked if there were any other members of the Board who would like to make a comment? If not, the chair proposed hearing from Mr. Tom Lisk and his team. Vice Chair Sledd said he had no further questions but would like to listen to what Mr. Lisk had to say.

Chair Hugo asked Mr. Lisk to identify himself and his organization and thanked him for being in the meeting today as well as for the work he and his team put into working with all interested parties and the staff.

Mr. Lisk introduced himself. Mr. Lisk stated he was the legal counsel for the Virginia Restaurant, Lodging and Travel Association, which has been the voice of the restaurant and hospitality community in Virginia for many decades. Mr. Lisk stated that his group participated with all the other stakeholders in what was really a two-year process convened by Virginia ABC to look at all of its regulations, all eight chapters from top to bottom, to bring them up-to-date and in conformance with the Code of Virginia. Mr. Lisk appreciated the work of the stakeholders. He explained that these hundreds of pages, these eight chapters, there were many, many changes proposed, and he argued that the vast majority of the changes were stylistic or technical rather than substantive. The vast majority of these changes came from ABC staff who took a lot of time and a lot of work to review the regulations from top to bottom. The industry, all the stakeholders, retailers, wholesalers, manufacturers, colleges and universities, community groups, public service groups sat down at the table and had a voice in deliberating on these proposed changes. Mr. Lisk and his group were in favor of the Board moving forward with this package, but Mr. Lisk wanted to be clear in terms of any agreement. Mr. Lisk and his group agreed to ask the Board to take out the proposed changes to this one section of one chapter: 3 VAC 5-50-110. He said they agreed to have those removed from the package so the Board could move forward with everything else because they did not want the dispute about these changes to hold up two years' worth of work performed by all the stakeholders and performed by ABC staff. We do not agree that the proposed changes that are being taken out are without merit and Mr. Lisk stated explicitly that he would challenge anyone to articulate how any of these changes were in conflict with the Code of Virginia. Mr. Lisk noted that he has been practicing alcohol regulatory law for 40 years. Virginia ABC's attorneys, and several attorneys, have reviewed these changes, and Mr. Lisk would guarantee that ABC's staff attorneys would not have let these changes go forward if they were in conflict with the Code of Virginia. For someone to opine that they are in conflict, was simply not true. Mr. Lisk further stated that Mr. Cable, whom Mr. Lisk has had a long relationship with, stated earlier that these changes would allow hamburger joints to get ABC licenses. In fact, over 20 years ago, ABC had an enforcement case that challenged whether or not a restaurant at an off-track betting parlor in Vinton could qualify for a mixed beverage restaurant license based on its serving of hamburgers. The case came before the ABC Board for a decision and the Board ruled that that was a meal for the purposes of a mixed beverage restaurant license and issued the mixed beverage restaurant license to the off-track betting parlor in Vinton, Virginia. This has been the law for over 20 years. The circular letter issued eight-to-nine years ago really confirmed what that law was and has been for many decades. So, there is nothing in here in conflict with the Code of Virginia. Mr. Lisk said he did not see a problem and knows that Mr. Cabell is worried that these changes will open up multiple new businesses to getting ABC licenses. Mr. Lisk said ABC has been issuing licenses to these establishments that he is concerned about. Taco Bells in Virginia, Shake Shacks, movie theaters, food halls, all have full mixed beverage licenses under current law. The suggestion that these changes, if adopted, would somehow create an explosion of new businesses with mixed beverage licenses is simply not true. Mr. Lisk said it was with reluctance on their part that they agreed to remove these changes from the packet but as he said there are so many other changes that would be held up if they did not agree, so they agreed, but it is their intention to return to the Board in 2024 to see if they can have these proposed changes in this one section considered outside of the broader package but as a stand alone proposal so they can actually have an informed discussion and debate and can demonstrate conclusively that the concerns raised by the objectors to these changes are without merit, that these changes are not inconsistent with the Code of Virginia, that these changes certainly serve the public interests and do no harm. But to allow the other changes to move forward, they

agreed to have this section removed to limit the controversy that was holding up all of the two years' worth of work of the stakeholders.

Chair Hugo thanked Mr. Lisk and stated that he appreciated the information and expertise he brought to the table, adding that he was aware of Mr. Lisk's tenacity and had no doubt that Mr. Lisk would be back at the table in early January to work on this regulation again.

Mr. Lisk added that phone calls from other legislators, while well-intentioned, should be challenged about what their understanding of the specifics were because he suspected they were given the same conclusionary statements that Mr. Cable has offered and have not had a chance to review the draft language to see that those representations are in fact inaccurate. Mr. Lisk added that as Mr. Rubin pointed out, the Board's approval is a step in the process, and we are far from the end of the regulatory process. If the Board moves forward with the package today, it would go forward as proposed regulations which would then be subject to review by the Secretary of Public Safety, and review by the Governor's Office before they could even be published by the ABC as proposed regulations which would then start a whole new round of public comments, more opportunity for review by legislators, and more review by stakeholders. He noted that it is many months away from any regulatory changes taking effect so it would really do no harm if all of the changes, to include this section, were adopted today, but they didn't want to be the fly in the ointment that prevented the hard work of ABC's staff and the stakeholders going through.

Mr. Holland stated that he kept hearing there was a consensus on this topic but wondered where there was this consensus? Who are the parties that agreed to this?

Chair Hugo stated that he did not want to answer this one but thought that perhaps Mr. Daniel or Mr. Lisk might prefer to do so.

Interim CEO Kirby stated that it was his understanding that the agreement was that ABC would remove the part of the regulation that is causing the controversy, leaving the current language that is in the Code as guidance, then we would all come together after the first of the year to work out the language that's in controversy.

Chair Hugo asked Mr. Holland if this response was adequate.

Mr. Holland replied that it was.

Chair Hugo asked if there were any other questions from the Board members or staff. Was there anyone else from the public who would like to speak, perhaps Mr. Herbert or someone from hotels?

Mr. Tommy Herbert introduced himself as a representative of the Virginia Restaurant Lodging and Travel Association. Mr. Herbert stated that he would associate himself with the comments of Mr. Lisk who has always been a great help to his organization, adding that he appreciated his group's ability to come here to speak as well as the agreement of the Board and the stakeholders to not to hold up such important regulatory changes.

Chair Hugo asked if there were any other comments from the Board members? There being none, the Chair deferred to Mr. Chris Curtis regarding proposals handed out to the Board.

Mr. Curtis confirmed that two motions had been shared with the Chair, Vice Chair and Mr. Rubin who was present in the meeting room today.

Chair Hugo asked if someone could make a motion based on what was given to them? Vice Chair Sledd stated that he would be happy to make the motion to approve the two proposals. John Daniel added that two separate motions needed to be made because the second proposal depends on the vote from the first proposal.

Vice Chair Sledd made a motion that the proposed regulatory changes to Chapters 10 through 70 of 3 VAC5 be amended to delete the proposed modifications to 3VAC5-50-110 and to restore the existing language for 3VAC5-50-110, dealing with mixed beverage licenses to the modification proposal. Mr. Sledd also stated that he would encourage also that the Board continue to pursue a discussion of these revisions in 2024 to get a better understanding of it.

Chair Hugo asked if there was a second? Hearing none, the Chair seconded the motion. The chair asked for any further discussion. There being none, the roll was called: the motion passed 4-1. Mr. Holland was the dissenting vote. The Chair then asked for the reading of the second proposal.

Vice Chair Sledd made a motion that the modifications to Chapters 10 through 70 of 3VAC5, as amended, be approved.

Mr. Euille seconded the motion.

The Chair asked for any further discussion. There being none, roll was called, and the motion passed 4-1. Mr. Holland was the dissenting vote.

The Chair then deferred to the staff and Interim CEO regarding the necessity of a closed session.

Interim CEO Kirby stated that a closed session was necessary but suggested that there may be more public comments at this time.

The Chair asked if there was any further comment. There being none, he thanked the members of the staff and public for attending and asked that Mr. Daniel take the Board out of public session into a closed session.

Closed Session

Mr. Rubin made a motion to move into closed session. Mr. Euille seconded the motion. Chair Hugo asked for discussion. There being none, roll was called; all approved the motion. The Board entered closed session at 2:44p.m. to discuss a personnel issue pursuant to Virginia Code §2.2 37.11(A)(1). Attending the closed session were Chair Hugo, Vice Chair Sledd, Member Rubin, Member Euille, Member Holland, Office of the Attorney General Elizabeth Peay, Chief Government Affairs Officer John Daniel, Deputy Secretary Chris Curtis and Interim CEO Tom Kirby.

Meeting Adjournment at 3:10 p.m.

Upcoming Dates:

January 9, 2024, at 9:00 a.m.