



**Alcoholic Beverage Control Board
Emergency Meeting Minutes**

April 10, 2018

Telephonic

Call-in Number: 1-800-315-6338, code 69173#

● **ADMINISTRATION**

8:06am

A. Call to Order

*Erika McConnell asks if it is okay with everyone to have Rex Leath, as the longest-serving Board member present, to chair today's meeting.
None opposed.*

B. Roll Call

Board Members Present:

Rex Leath, Acting Chair, Public Safety Member
Sara Erickson, Public Member
Glenn Brady, Industry Member

Staff Members Present:

Erika McConnell, Director
Sarah Oates, Program Coordinator

Legal Counsel Present:

Harriet Milks, Assistant Attorney General

● **BOARD CONSIDERATION**

8:08am

Erika McConnell informs the Board that in House Finance on Friday, April 6, the Committee voted to amend HB 299 (the Alcoholic Beverage Control Board extension bill) by repealing AS 04.11.537 Application of precedent. She reads the current language that will be deleted by the bill amendment, which states:

"In determining whether issuance, renewal, transfer, relocation, suspension, or revocation of a license is in the best interests of the public, the board need not conform

to or distinguish its decision from any action it has taken in the past on applications presenting similar facts, but may instead base its decision only on the particular facts before it.”

Harriet Milks states that the Board is now housed under the Department of Commerce for administrative purposes only; before that, this Board was housed in the Department of Public Safety, and before that, in the Department of Revenue. She adds that this particular provision has been in the alcohol statute since at least 1980, when the Board was in both the Departments of Revenue and Public Safety.

Erika McConnell reads the following statement for the record:

“This section of statute allows the board to make decisions based on the facts and particular circumstances of each case that comes before it, without being bound by how the board treated a similar case in the past.

The section does not allow the board to make random decisions based on whims. The board works hard to be consistent so that it can properly discharge its authority under the statute and maintain credibility and predictability for the public, including licensees.

However, in my opinion, the flexibility allowed by this section of statute is vital to the board’s requirement to act in the public interest.

The board is required by AS 04.06.050 to travel to the four judicial districts of the state at least once per year to modify the existing board regulations in light of statewide and local problems. This acknowledgment of the particular challenges that face the varied communities in the state, along with the local option provisions and the broad opportunity for local government protests on licenses, recognizes that different situations exist in different communities with respect to the manufacture, barter, possession and sale of alcoholic beverages. Subsequently, the board may be faced with applications presenting similar facts in different communities, and need to take different actions based on the public input from those communities. The board must be free to conclude that what is in the public interest may differ in different parts of the state and be different over time.

My speculation on why this amendment was offered is that Representative Wool is attempting to address real frustrations with situations where licensees or board staff have followed certain practices or taken certain actions, sometimes over a period of months or years, some of which were unknown to the board or the director, and which didn’t necessarily have statutory support.

While there are valid frustrations with this type of situation, removing the board’s flexibility to address individual circumstances as described above will not guarantee against human error, either on the part of board staff or licensees, and errors should be corrected.

My recommendation is that the board adopt a resolution recommending the retention of AS 04.11.537 in Title 4.”

Glenn Brady moves to adopt the resolution that (the Board) recommend not-passage (of the amendment) and retention of the referenced statute section.

Sara Erickson seconds the motion.

Sara Erickson states that she understands the frustration of the public and that there should be some sort of administrative procedure that (the Board) follows as to how to vote. She adds that (a decision) may differ upon a community or by public testimony, so (the Board) doesn't always do the same thing, so that flexibility needs to remain.

Glenn Brady states that there should be more transparency in the decision-making process, such that when a licensee has a decision made either before or against them, that there's a chain of logic that leads up to the foundation of that decision that's understood – that that's incumbent upon the Board as it moves forward, and that that be solved administratively.

Rex Leath states that if the Board is presented with a similar set of circumstances and facts, that it should be predictable, for the benefit of the public and licensees. He adds that he does not think that this language, though, specifically addresses that, but that it addresses the diversity of the communities around the state. He states that the Board can work to improve and better communicate its position based upon the facts that are presented, but that the language (in the current statute) allows the Board the flexibility to address the entire state as a whole – to take into consideration the diversity of different areas of the state.

Glenn Brady states that this allows not only for consideration of geographic diversity and how each local area has different needs, requirements, and consideration, but as well, in time, where past decisions (the Board has made) have proven maybe to not be in the best interests of the public – that with further consideration of the realities of that moment, that (the Board) is not hamstrung by the precedence. He adds that at the same time, there needs to be a thoughtful consideration, such that it doesn't appear to be arbitrary. He states that geographic location notwithstanding, there is also a consideration of time and circumstance that should be considered, as well, in the future.

Sara Erickson states that she agrees – that all of the Board members are on the same page here, and she asks whether the Board members will be able to see the resolution before it goes out.

Erika McConnell states that she will circulate the resolution before it gets finalized, and she will have Mr. Leath sign it. She adds that the Board needs to vote, if there are no additional comments.

Motion to adopt the resolution carries unanimously.

Erika McConnell states that this was an emergency meeting, it did have less than 24 hours of public notice, and the reason for this is that this amendment, which could have a significant impact on the workings of the ABC Board, was provided to the public only last Friday, and the next hearing on this bill is on Thursday. She adds that this time was the time when (the Board) was able to establish a quorum, which is why the meeting was called in very short order.

● **ADJOURN**

8:21am

*Glenn Brady moves to adjourn.
None opposed.*

Minutes prepared by:

A handwritten signature in green ink, appearing to read "S. Oates", is positioned above a horizontal line.

Sarah D. Oates
Program Coordinator