
Coates' Canons Blog: The ABCs of ABC Boards

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A \$12,000 dinner for Mecklenburg ABC employees paid for by a liquor broker. A \$280,000 salary for an ABC administrator in New Hanover County ? finally disclosed after the ABC board first refused to release public information about salaries. A dispute over the location of an ABC store in Currituck County. Each of these issues has generated considerable local controversy ? and statewide interest ? in recent weeks, and each has prompted the affected boards of county commissioners to think about their role in the oversight of local alcoholic beverage control systems. This blog reviews the basics of the relationship between county commissioners and city councils and their local ABC boards.

Almost all the law on this subject is in one statute, **G.S. 18B-700**, which tries to set uniform rules on appointments, terms, vacancies, etc., for all ABC boards in the state. Those rules can be modified by a local act of the General Assembly for a particular county or city, however, and **G.S. 18B-700** itself says such acts passed before enactment of **Chapter 18B** in 1981 remain in effect. So, before doing anything else, check whether there is a local act which sets a different size ABC board, different terms, different method of appointment, or different whatever.

The statewide statute says that a local ABC board has three members appointed by the board of county commissioners (if the ABC system was established by a county vote) or city council (if established by a city election). Board members serve three-year, staggered terms. They are to be appointed on the basis of their "interest in public affairs, good judgment, knowledge, ability, and good moral character." The appointing authority designates one member to serve as chair.

The appointing authority ? the city or county governing body ? may remove a local ABC board member for cause at any time. The statute says nothing about the procedure for removal, but it ought to include the basics of due process: notice of the reason for removal, a chance to respond, and a decisionmaker whose mind is not already made up. Good advice to commissioners and council members is not to stake themselves out in the local newspaper before hearing from the ABC board member whose job is on the line.

Local ABC board members "may be compensated as determined by the appointing authority," which seems to mean that the commissioners or city council can set the salary at any level they want, or decide that board members won't be paid at all, and may change the pay at any time.

The ABC board hires and fires its employees, including the manager of the ABC system, and sets all their salaries. The commissioners and city council have no role in those decisions, but a rule of the state ABC Commission, **4 N.C. Admin. Code 2R.1009**, says the local ABC board is supposed to adopt a personnel policy. ABC system employees are not county or city employees, meaning the local government is not liable for the misdeeds of an ABC system employee. See *Brewer v. Catawba County*, 29 N.C. App. 417 (1976).

While a local appointing authority may remove only the members of the local ABC board, the state ABC Commission can remove both ABC board members and employees (**G.S. 18B-203(a)(8)**). Again, though, it has to be for cause. The ABC Commission's rules address certain conflicts of interest, including a prohibition on local board members and employees from having financial interests in liquor businesses (see **4 N.C. Admin. Code 2R.1008**), but don't say much about the conduct of board members and employees. There is a rule setting a hearing procedure for removal by the state commission, and it says that cause for rejecting local board members and employees includes "violation of the terms or spirit of the ABC laws" (**4 N.C. Admin. Code 2R.1006**).

There are several tools available to a board of county commissioners or city council short of removing local ABC board members, if the commissioners or council are unhappy with the way the ABC system is being run. First, as already mentioned, the commissioners or council can change the pay of the ABC board members. Second, they can change which ABC board member they designate as chair. And, third, the commissioners or council can adopt a policy describing



the standard of conduct expected of ABC board members. Because the appointing authority can remove board members for cause, it would seem useful to say upfront what kind of behavior will be considered cause.

Another method employed by commissioners and city councils to exert control over ABC boards is to appoint themselves or their own employees to the ABC board. When ABC board terms expired in Currituck recently, the board of commissioners appointed two of its own members to the ABC board. That does not violate the dual office-holding law, **G.S. 128-1.1**, which allows a person to hold one elected and one appointed office simultaneously. In New Hanover, the resignation of the ABC board gave the commissioners the chance to appoint the county manager, attorney and finance director to the board. One expects that those new appointees likely will not serve full terms, but their selection and service for a while gives the appointing authority more direct influence over operation of the ABC system.

The recent controversies about local ABC operations have brought attention to the December 2008 report by the legislature's Program Evaluation Division on the state ABC system. The report recommended greater authority of the state ABC Commission over local boards. The report can be found **here**.

As happens from time to time, there also has been talk of having the state get out of the business of selling liquor, leaving it to private enterprise. That seems unlikely to happen soon in light of the current economic situation and the \$250 million in revenue the ABC system pays to state and local government each year. About \$65 million of that goes to counties and cities.

Links

- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_18B/GS_18B-700.html
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/ByChapter/Chapter_18B.html
- www.nccrimecontrol.org/div/ale/t04_02r.pdf
- www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_18B/GS_18B-203.html
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