



MEMORANDUM

TO: Mayor and Board of Commissioners

FROM: Bryan Gruesbeck, Town Manager

SUBJECT: ABC Request for Excess Working Capital Retention

DATE: September 28, 2015

Background: Jim Nass, Chair of the Pittsboro ABC Board, is requesting that the Pittsboro ABC be allowed to retain a share of its accumulated “working capital” to help save for improvements to the existing store and plan for additional store locations over a twenty (20) to thirty (30) year timeframe.

The Pittsboro ABC Board currently makes distributions to the Town of Pittsboro and local law enforcement, in addition to retaining four months of average gross sales as working capital. Working capital is composed of cash and investments and inventory minus liabilities. During the previous fiscal year this figure totaled \$318,172.

However, their actual working capital (\$398,900) exceeded the average gross sales figure by \$80,728.

The Pittsboro ABC Board is proposing to distribute 40% of the additional working capital to the Town (\$32,291) while retaining 60% (\$48,437). They are proposing that the percentages apply to future excess working capital, unless the Town Board of Commissioners elects to change the proportion.

GS 18B-805 (d) allows the Town Board of Commissioners to grant approval to the ABC Board to retain working capital – after making required distributions (e.g., law enforcement) - for “specific capital improvements.

Attached please find three (3) documents:

1. Excess Working Capital (Jim Nass, Chair, ABC Board)
2. Request for Approval of to Retain 60% of Excess Working Capital (Jim Nass, Chair, ABC Board)
3. G.S. 18B-805. Distribution of Revenue (This statute governs how ABC revenues are distributed. Please refer to paragraph (d) Working Capital).

Action Requested: Allow the Pittsboro ABC board to retain excess working capital, as outlined in the Request for Approval to Retain Excess Working Capital memo from Jim Nass, Chair, ABC Commission with the following caveats:

1. The Pittsboro ABC Board forwards an annual request of “excess working capital” to the Town Board of Commissioners.
2. The annual request shall identify the planned and completed capital improvements to be made by the Pittsboro ABC board.
3. The Pittsboro ABC board shall clearly identify the amount of accumulated excess working capital in its annual audit.

§ 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 Health and Human Services 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 Health and Human Services 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 1/2%) 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 Branch 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 G.S. 18B-603(d1), 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; 1997-443, s. 11A.118(a); 1999-462, s. 8; 2011-145, s. 19.1(q); 2014-100, s. 17.1(xxx).)