

ARTICLE 49

Alcoholic Beverage Control

by James C. Drennan

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IN DECEMBER OF 1933, the twenty-first amendment to the U.S. Constitution was adopted. It ended a national thirteen-year experiment in Prohibition of the sale of alcoholic beverages that had begun with the passage of the eighteenth amendment in 1919. During the rest of that decade, in a series of legislative actions, North Carolina reauthorized the sale of wine, beer, and spirits. The current version of those laws, General Statutes Chapter 18B, was enacted in 1981. It provides a comprehensive and complicated regulatory structure to regulate the sale and consumption of alcoholic beverages.

Normally, alcoholic beverages are sold only in local units of government that have approved the sale by election. The sales of the beverages with the most alcohol—spirituous liquor—are limited to sales by Alcohol Beverage Control (ABC) stores operated by the government. In contrast, private entities (restaurants, clubs, etc.) conduct the sales of unfortified wine and malt beverages. Certain stronger wines (known as fortified wine) may be sold in ABC stores or by private entities. Consequently the regulations of the two kinds of sales are very different.

While the general rule is that elections must be held to authorize sales of any alcoholic beverage, the statutes on that subject contain many exceptions, which are discussed later in this article. On most other matters pertaining to the regulation of alcoholic beverages, local ordinances are not allowed to alter the rules. The areas subject to that prohibition include the manufacturing, sale, purchase, transportation, possession, consumption, or other uses of alcoholic beverages although there are some limited exceptions in which local governments may act.¹

1. General Statutes 18B-300 (hereinafter G.S.) allows a city or county to adopt ordinances prohibiting the consumption of beer and some wines (as well as the possession of opened containers with those beverages) on government property, as well as on public streets, and if the area is closed for special events, parking lots and alleys.

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Local acts of the legislature are not allowed on those subjects either, but local acts that predate the passage of the current chapter in 1981 that alter the composition of the local ABC board or local acts that alter the distribution of any proceeds from the operation of local ABC stores are still authorized.²

Certain basic statutory definitions are crucial to understanding North Carolina's alcoholic beverage laws (ABC laws). This is how the statutes (G.S. 18B-101) categorize the different kinds of beverages

- *Alcoholic beverage*—a beverage containing one-half of 1 percent or more of alcohol by volume, including beer, wine, and hard liquor. This is an all-encompassing term; most regulations are aimed at specific beverages.
- *Malt beverage*—beer, ale, or other brewed or fermented beverages containing between one-half of 1 percent and 15 percent alcohol by volume.
- *Unfortified wine*—wine produced only by natural fermentation or by the addition of sugar.
- *Fortified wine*—wine made by fermentation that contains not more than 24 percent alcohol by volume, the natural alcoholic content being supplemented by brandy. Sherry, port, or vermouth are examples of fortified wines.
- *Spirituous liquor*—whiskey, gin, rum, brandy, and other distilled spirits.
- *Mixed beverage*—a drink containing spirituous liquor and served in a quantity that is less than the amount in a closed package.

State Administration

General administration of the ABC law is the responsibility of the North Carolina Alcoholic Beverage Control Commission, which is part of the state Department of Commerce. It has three members appointed by the governor. Its chief functions are to warehouse all beverages sold in the local ABC stores, set the prices for those beverages, review the work of the local ABC boards, supplement the ABC laws with regulations, and issue (and as appropriate, revoke or suspend) permits to establishments that sell malt beverages and wine (G.S. 18B-203).³

ABC Stores and Sale of Spirituous Liquor

Local Option

ABC stores sell only “hard” liquor and fortified wine. They are the only authorized sellers of spirituous liquor for off-premises consumption, and they do not sell malt beverages or unfortified wine.⁴ A local government unit may establish ABC stores only with the approval of the voters. Once authorized, the authority remains in effect unless there is a subsequent election that fails to authorize the operation of the stores. State law provides the procedure for a county

2. The current law also gives local officials some powers that previously were reserved for the state to decide, such as whether an ABC board should contract with a local law enforcement agency to enforce the ABC law rather than hire its own officers.

3. For a table listing the kinds of beverages that may be sold in each city and county, see <http://www.ncabc.com/xo>.

4. “Off-premises” refers to the places where the beverage may be legally consumed; that is, the beverage may not be drunk on the premises of the permittee. “On-premises” sales, which, with the proper permits, can be conducted for beer, wine, or mixed beverages, may be consumed on the premises of the permittee. Premises includes any parking lots or other land around the store that is controlled by the ABC system. G.S. 18B-101(12a), 18B-1001.

to determine whether it wants to establish ABC stores for the sale of spirituous liquor and fortified wine. If a county does not have ABC stores, a municipality within the county may establish a city ABC system by following a separate but similar procedure (G.S. 18B-600).⁵

The procedure for approval of beer and unfortified wine sales is described in a later section.

Election Procedures

An election to determine whether to establish county ABC stores may be requested by the board of commissioners or by petition of 35 percent of the registered voters at the time the petition is initiated.⁶ The election is conducted by the county board of elections, which must hold it within 120 days from the date on which the request was received from the governing board or on which the petition was verified.⁷ The provisions of G.S. Chapter 163 (the general election law) are to be followed in conducting the election, except as otherwise specified in the ABC law. City alcoholic beverage elections also fall under the general law and use procedures that generally parallel those of the counties set out previously, but the city must have a population of at least 500 and be in a county in which the county does not operate ABC stores before it may conduct an ABC store election.⁸

Operating a County or City ABC System

If the voters approve county ABC stores, the stores are managed by a county ABC board, which is usually comprised of three members appointed by the board of commissioners (or city council, if it is a city board), although boards established by local acts adopted before 1981 may have more members or be appointed in some other manner. Typically, the initial three appointments are for one, two, and three years, respectively, and all subsequent appointees serve three-year staggered terms. Chapter 18B provides general criteria for the appointments. They should be based on the member's "interest in public affairs, good judgment, knowledge, ability and good moral character" [G.S. 18B-700(d)]. There is no statutory residency requirement. Members may be removed "for cause" at any time. Also, any local board member or employee who is convicted of violating Chapter 18B or committing any felony may be removed from office by the state ABC Commission or by a judge. The local government governing board sets the salaries for county ABC board members. Each member must be bonded in an amount of at least \$5,000. A person who handles no funds may be exempted from this requirement, but one who does handle funds may be bonded for more than \$5,000 (G.S. 18B-700).

The local ABC board operates its system subject to the provisions of state law, as summarized later in this section. It is a public "corporate body," and in its fiscal affairs is not subject to the Local Government Budget and Fiscal Control Act, although the statute does impose audit and other fiscal requirements on local boards [G.S. 18B-702(a)]. There are, however, no comparable exemptions for ABC boards for other statutory regulations of public bodies like public records and open meetings laws; in the absence of specific exemptions, local boards are apparently subject to those rules. Salaries and other expenses are paid from store profits.

5. Before 1981 no general state law authorized cities to hold ABC elections; as a result, all city ABC systems put in place before that year were established by separate local acts of the legislature. These acts usually provided essentially the same procedure for city elections (and for operating city ABC systems) as state law provided for counties. Because ABC stores are operated by the government as a means of regulating liquor and not by private entrepreneurs for profit, these local acts do not violate the state constitutional provision against local acts regulating trade. *Gardner v. Reidsville*, 269 N.C. 581, 153 S.E.2d 139 (1967).

6. For the statutes regulating the conduct of ABC elections, see Article 6 of G.S. Ch. 18B.

7. No ABC elections may be held on the day statewide general elections are held. G.S. 18B-601(f).

8. There are many statutory exceptions to this general rule in G.S. 18B-600—for specified ski resort areas, multicounty/city areas, small resort towns, townships, and beautification districts. These exceptions are typically defined very narrowly and often apply to only one or two jurisdictions. They are written as general laws to avoid the statutory and constitutional provisions that prohibit local legislation in ABC issues that affect trade, which can be an issue when mixed drink, wine, or beer sales are involved.

The board hires and fires employees, provides for local enforcement of the ABC laws, buys and sells alcoholic beverages, issues purchase-transportation permits, purchases or leases the necessary real and personal property, and otherwise manages the system (G.S. 18B-701).

The state ABC Commission sets the price for all alcoholic beverages sold in local ABC stores, and must approve the location and number of stores operated by a local board (G.S. 18B-801). The state ABC Commission, and not the local boards, determines which brands of liquor may be sold in this state, but a local board need not stock all approved brands. ABC stores may not be open before 9:00 A.M. or after 9:00 P.M. or at any time on Sundays, New Year's Day, the Fourth of July, Labor Day, Thanksgiving, or Christmas Day. Within these guidelines, hours and days of operation are left to local ABC board discretion (G.S. 18B-802).

Revenue

Generally, the state receives the tax revenue from alcoholic beverages and local governments keep the ABC stores' profits from sales.⁹ Some of those profits must be spent in specific ways. For example, local boards must spend at least 5 percent of profits on liquor-law enforcement. This mandate means hiring one or more local ABC officers or contracting with the sheriff or city police (or other local law enforcement agency) to perform this service. Local ABC officers' main responsibility is to enforce the ABC laws, the North Carolina Controlled Substances Act in Article 5 of Chapter 90 of the General Statutes and violations of the state lottery statutes. They may, however, make arrests for any crime committed anywhere in the county (G.S. 18B-501).

A local board must also spend at least 7 percent of its gross receipts on alcoholism treatment, research, or education programs. This requirement does not apply, however, to any board that has a different distribution set by local act. All undesignated county ABC profits must be paid to the county (or city) general fund unless a local act provides otherwise. Local acts on this subject differ. Often they call for distribution to named schools, hospitals, and similar activities; it is not uncommon for some profits from a city ABC system to go to the county general fund as part of a political compromise that helped pass the local act establishing the system. Cities and counties that receive store profits may also change their distribution without any need for a local act of authorization, so long as the statutory or local act minimums are provided for law enforcement and alcoholism programs.

During the last fiscal year for which figures are available (2004–5), local ABC stores had a net profit of over \$43 million, \$33 million of which went to county and city governments. The Mecklenburg ABC system alone had profits of almost \$6 million. In contrast, some of the small systems actually lost money, apparently because their population base was too small to support an ABC store.¹⁰

Fortified Wines

Although many voters do not realize it—and although the election ballot does not so indicate—approving ABC stores also means approving the sale of fortified wine (not only in ABC stores if they choose to carry it but also in other locations). If ABC stores are approved, fortified wine may also be sold in grocery stores, as well as in restaurants and private clubs for on-premises consumption, if they have the relevant permits from the state ABC Commission. As noted above, fortified wine can have an alcoholic content of up to 24 percent and in general is treated under state law more like spirituous liquor than like unfortified wine (G.S. 18B-603, -800).

9. G.S. 18B-805 contains several sections specifying how ABC store revenues are to be distributed. The following discussion provides a general overview, but for detailed questions, that statute or, if applicable, any relevant local legislation should be consulted.

10. The State Alcoholic Beverage Control Commission makes the profit reports available on its website at <http://www.ncabc.com/reports/?folder=77>.

Use of Spirituous Liquor and Fortified Wine

Spirituous liquor and fortified wine use is highly regulated. Thus, a person may buy, sell, possess, or transport them only if the person is expressly authorized by G.S. Chapter 18B to do so. Chapter 18B now sets a uniform age of twenty-one to buy, sell, transport, or possess any alcohol.

For spirituous liquor and fortified wine, a person may buy and transport 8 liters (slightly over two gallons) at one time or 40 liters with a purchase-transportation permit issued by the local ABC board. The 8-liter limit on transportation in a single vehicle applies regardless of the number of its passengers, except in the case of taxicabs. The law allows 8 liters per passenger in taxis, but they may not haul alcoholic beverages without a passenger. While a vehicle could in times past be confiscated if more than the legal amount were carried, this now can occur only if non-tax-paid liquor is being transported. Fortified wine or spirituous liquor may be transported in the passenger area of a motor vehicle only in the manufacturer's unopened original container. Possession of more than 8 liters of spirituous liquor (except with a permit) creates a presumption that it is for sale. There is no comparable presumption concerning fortified wine, but it is illegal to sell or purchase more than 8 liters at one time without a permit.¹¹ A person may possess and consume fortified wine and spirituous liquor without a permit from the local ABC board in the following places:

1. A home or a temporary residence like a motel room.¹²
2. Any other property not primarily used for commercial purposes and not open to the public when the beverage is possessed (with the property owner's consent).
3. A private club or restaurant with a brown-bagging¹³ permit from the state ABC Commission.
4. A residence or establishment where a "special occasion" is being held.¹⁴

Some other restrictions on consumption and display of alcoholic beverages should be briefly noted. State law prohibits consumption of any kind of alcoholic beverages at locations licensed for on-premises consumption between 2:30 A.M. and 7:00 A.M. daily, and before noon on Sunday (G.S. 18B-1004). Drinking or offering a drink of fortified wine, spirituous liquor, or mixed beverages on a public street or on ABC store premises is also unlawful, as is displaying these beverages at any athletic contest. Also, counties (and cities) may prohibit Sunday sales of beer and wine by establishments not having a brown-bagging or mixed-beverage permit.

Mixed Beverages

Local Option

Counties and cities with ABC stores may choose to allow the sale of mixed drinks within their boundaries. A mixed-drink election may generally be called by the unit of government that operates or is seeking to operate the ABC system; that is, if there is a county system, an election on mixed drinks must be countywide; for a municipal system, the vote must be in the city only. A county may hold a mixed-drink election only if it already operates an ABC store or is conducting a store election on the same day. The provisions for elections on selling mixed drinks essentially parallel those for elections on establishing ABC stores: the elections are requested by the county commissioners or by petition of 35 percent of the voters. A city may hold such an election only if it has at least 500 residents and it operates an ABC store, or there will be an election to open such a store on the same day as the mixed beverage election, or the county

11. See generally Articles 3 and 4 of Chapter 18B.

12. There is no limit on the amount a person may possess in their residence. G.S. 18B-301(a).

13. The term *brown-bagging* means taking a bottle containing an alcoholic beverage to a club or restaurant and serving drinks from it. It need not be carried in a bag of any kind.

14. There is no limit on the amount a person may possess for a private special occasion if the event is held in a noncommercial place and is not open to the public. G.S. 18B-301(c).

operates an ABC store and a mixed beverage election failed in that county.¹⁵ Elections conducted by cities based on the “failed county election” exception apply only to the city in which the election is held, even though the ABC system is operated countywide.

Permits

Once the voters approve the sale of mixed drinks in a county or city, several kinds of places are eligible to receive permits from the state ABC Commission, including restaurants, hotels, private clubs, convention centers, and community theaters. A private club (a country club or Elks’ club, for example) is eligible for both a brown-bagging permit and a mixed-beverage permit, but, once a city or county approves mixed drinks, a restaurant or hotel may have only a mixed-beverage permit—brown-bagging is no longer permitted there. Local approval of mixed-beverage sales also allows the state ABC Commission to issue permits for sales of malt beverages, unfortified wine, and fortified wine for on-premises consumption to places holding mixed-beverage permits, regardless of any other election or any local act concerning sales of those kinds of alcoholic beverages [G.S. 18B-603(d), -1001].

Purchase and Taxation of Mixed-Beverage Liquor

Holders of mixed-beverage permits must purchase their liquor at a designated local ABC store. Before each purchase, they must obtain from the local ABC board a purchase-transportation permit that states how much they are allowed to buy and carry. When permit holders purchase the liquor, they pay an additional charge of \$20 per 4 liters (just over a gallon). Half of this extra charge is paid to the state Department of Revenue; 5 percent is paid to the state Department of Health and Human Services for alcohol and substance abuse treatment, education, or research, and the rest is retained by the local board to meet expenses or as profits. Each bottle bought for resale as mixed drinks must carry a special stamp to indicate that this additional charge has been paid. Once permit holders carry the liquor to their premises, they must store it separately from all other liquor and keep detailed records of their purchases and sales (G.S. 18B-404, -804, -805, -1007).

Sale and Consumption of Mixed Beverages

Mixed drinks are subject to essentially the same rules as spirituous liquor and fortified wine. A person must be at least twenty-one to buy a mixed drink. Sales are allowed on licensed premises from 7:00 A.M. until 2:00 A.M. on weekdays and may not begin until noon on Sunday. Drinks may be consumed on the premises for a half-hour after sales must stop (G.S. 18B-302, -1004). A local government may not pass an ordinance setting additional restrictions on the sale or consumption of mixed beverages, and any local act of the legislature concerning mixed drinks is unconstitutional under the North Carolina prohibition against local acts regulating trade.¹⁶

Malt Beverages and Unfortified Wine

Local Option

Malt beverages (beer) and unfortified wine may be sold in grocery stores, hotels, restaurants, and various other places after the sale has been approved in a local election and after the seller has obtained the proper permits and licenses from the state and local governments.¹⁷ The county board of elections calls the election when it receives a written request from the county governing body or a petition signed by 35 percent of the registered voters. The election

15. There are special statutory exceptions that allow elections even if the city does not meet the general criteria for some small cities, resort cities, cities that cross county lines, and some townships.

16. *Smith v. Mecklenburg*, 280 N.C. 497, 187 S.E.2d 67 (1972).

17. It is unlawful to sell a malt beverage without an ABC permit and revenue license. G.S. 18B-304. Counties, as well as cities, issue on-premises and off-premises malt beverage and wine retail licenses. Usually the local government must issue the license if the applicant holds the corresponding ABC permit from the state. Thus these local licenses are more a matter of revenue than of control (G.S. 105-113.70).

must be held within 120 days of the request. No election on the sale of beer and wine may be held within three years of the most recent election. A city may not hold an election until sale has been rejected in a county election, and a city may not vote out beer or unfortified wine after the county has approved their sale (G.S. 18B-600, -601, -604).

G.S. 18B-603(c) provides that unfortified and fortified wine may be sold in any city or county where ABC stores have been established. This provision allows the sale even if a referendum on unfortified wine was to the contrary. However, G.S. 18B-603 does not allow such a sale without an election in any jurisdiction that approved ABC stores before January 1, 1982, and held an unfortified wine election before that date at which neither on- nor off-premises sales were approved.

One or more of the following propositions may be placed on the same ballot in a malt beverage election:

1. Whether both on- and off-premises sales shall be allowed.
2. Whether on-premises sales only shall be permitted.
3. Whether off-premises sales only shall be permitted.
4. Whether both off- and on-premises sales shall be allowed, the latter to be limited to Class A restaurants and hotels. (Class "A," as used here, apparently means a health or sanitary rating.) Similar choices are allowed in elections on the sale of unfortified wine.

Because beer and unfortified wines are sold by private businesses, a local act that sets election provisions or other procedures different from those found in the General Statutes would probably be void as a local act regulating trade.¹⁸ One area in which the local government may act, however, is Sunday sales of beer and wine. The unit of government may prohibit such sales by ordinance [G.S. 18B-1004(e)].

Permits

Once a city or county approves the sale of beer or unfortified wine, the state ABC Commission may issue permits for selling these beverages in that jurisdiction. Permits for the on-premises sale of beer may be issued to restaurants, convention centers, hotels, private clubs, retail businesses, and similar places. An establishment with an on-premises permit may also sell beer in original containers for consumption off the premises. Unfortified wine may be sold for on-premises consumption in hotels, restaurants, eating establishments, private clubs, convention centers, cooking schools, wineries, and community theaters. As a general rule, beer and wine permits may not be issued for public schools or colleges, but may be for private educational institutions. Before issuing a permit, the state ABC Commission must give notice to the county or city governing body and allow fifteen days for the filing of written objections. Local governments have no veto power over that decision, although their recommendations to the Commission must be considered.¹⁹ In deciding whether to issue a permit, the Commission must decide whether the applicant and the location are "suitable." The statute lists several factors that the commission should consider, including the character of the applicant, the number of permits in the area, the kind of businesses in the area, proximity to schools and churches, and, considering the applicant's history, whether the business would be detrimental to the neighborhood. In considering suitability, the applicant's entire premises are considered and not simply the building in which the alcohol is to be sold. Applicants must also be in compliance with all fire and building codes compliance, as certified by the appropriate local government, and if the permit location is within an urban redevelopment area, the permittee is limited to alcohol sales of no more than 50 percent of the business' sales. The ABC permitting process preempts local zoning rules.²⁰

Use of Beer and Unfortified Wine

The general rule on the use of beer, once it has been legally purchased, is the reverse of the rule regulating spirituous liquor. Beer and unfortified wine purchase, possession, or transportation are authorized unless specifically prohibited by law. As is true of liquor, beer may be purchased and possessed only by persons aged twenty-one or older.

18. *Nelson v. Board of Alcohol Control*, 26 N.C. App. 303, 217 S.E.2d 666 (1975).

19. G.S. 18B-901(c). There is not much detail in the statute about the form or nature a local government's objections must take, and thus it is unclear whether a local government may raise additional objections not listed in the statute. But given the breadth of the factors the commission may consider, its discretionary powers in this decision are substantial.

20. *Melkonian v. Board of Adjustment*, 85 N.C. App. 351, 355 S.E.2d 503 (1987).

Fifty liters of unfortified wine may be bought without a permit, and 100 liters with a purchase-transportation permit from the local ABC board. A customer may not purchase more than 80 liters of beer at a time; but this limitation does not apply to draft beverages in kegs. Possession of more than 80 liters of beer (except in kegs) raises a presumption that it is possessed for sale in violation of law. There is no comparable presumption with respect to unfortified wine (G.S. 18B-302, -303, -304, -403).

G.S. 18B-300(c) authorizes counties and cities to adopt local ordinances regulating the consumption (and possession) of beer and unfortified wine, but the ordinances may deal only with public streets and property “owned or occupied” by the local government. Thus consumption of beer and wine in the parking lot of a local nightclub may not be restricted, but possession of an open container in a city-owned parking lot can be made illegal. Since beer and unfortified wine are *not* subject to the same restrictions as spirituous liquor, fortified wine, and mixed beverages, the various state prohibitions on the use of the latter beverages—such as a display at an athletic contest—do not apply to malt beverages and unfortified wine.

Additional Resources

Loeb Jr., Ben F. “ABC Law: The Rise and Fall of Local Option.” *Popular Government* 58 (Spring 1993): 36–42.

State ABC Commission. *Legal Sales Areas*. Raleigh, North Carolina. Available on the departmental website at <http://www.ncabc.com/xo>.

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