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A HISTORY OF LIQUOR-BY-THE-DRINK LEGISLATION IN NORTH CAROLINA

BY MICHAEL CROWELL*

At 8:04 a.m. on Tuesday, November 21, 1978, Hank Stoppelbein stepped up to the bar at Benedictine's Restaurant in Charlotte and ordered a Bloody Mary, ending a seventy-year ban on the sale of mixed drinks in North Carolina and leaving Oklahoma as the only state in the Union without some form of legal mixed-drink sales. This article will trace the route by which North Carolina law came to accept Mr. Stoppelbein's early-morning consumption and will review the law and regulations which govern his drinking.

LIQUOR BY THE DRINK BEFORE 1977

The General Assembly has been legislating with regard to liquor since 1798. Initially sale and use were unrestricted, but grad-

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1. Raleigh News and Observer, Nov. 22, 1978, at 1, col. 4. TIME Dec. 4, 1978, at 43. The standard recipe for a Bloody Mary is two parts tomato juice to one part vodka, plus touches of lemon juice, Worcestershire sauce and pepper.

2. DISTILLED SPIRITS COUNCIL OF THE UNITED STATES, SUMMARY OF STATE LAWS AND REGULATIONS RELATING TO DISTILLED SPIRITS (22d ed. 1977) [hereinafter cited as SUMMARY OF STATE LAWS]. A local option law enacted in 1978 in Kansas was found to violate the provision in KAN. CONST. art. 15, § 10 that “[t]he open saloon shall be and is hereby forever prohibited.” State ex rel. Schneider v. Kennedy, 586 P.2d 276 (Kan. 1978). Kansas still allows the sale of mixed drinks in private clubs. Memberships are reported to be easy to obtain. Trillin, U.S. Journal: Kansas, Thoughts of an Occasionally Thirsty Travelling Person, NEW YORKER, Aug. 7, 1978, at 68. West Virginia also limits sales to private clubs. It is reported that the Oklahoma ban on mixed-drink sales is widely ignored. TIME, Dec. 4, 1978, at 43.

3. A 1798 act was apparently designed for consumer protection. It required each “ordinary” (inn) to be licensed and the owner to be bonded, and provided for the setting of liquor “rates” by the county justices. Those rates were to be posted and a limit was placed on the credit to be given drinkers. N.C. Public Acts 1798, ch. 18.

The first restriction on sale came in 1800 when the General Assembly found that “a custom prevails in some parts of this State of selling spirituous liquors and other articles at places where people are assembled for divine worship.” The legislature banned such sales, but only between 10 a.m. and 4 p.m. if the church was located inside a city. N.C. Public Acts 1800, ch. 24.
ually local governments were given authority to restrict or ban most liquor activities. By the time statewide prohibition was approved in 1908, local option had already made most of the state dry anyway. The end of prohibition in the mid-1930's was followed by legislation establishing the form of the present ABC system. Beer and wine could be sold by the bottle or by the drink, subject to city and county local option elections, but spirituous liquor, distilled spirits with more than 21 per cent alcohol, could be sold only by the bottle and only in county-run stores in counties exercising the local option in favor of such sales. Numerous local acts of the legislature followed, authorizing named cities to also hold elections on the establishment of ABC stores. Not until 1978, however, did the sale of spirituous liquor by the drink become lawful.

Local option mixed-drink legislation was introduced for the first time in 1967, but it made no progress that year or in 1969. In 1971 liquor by the drink passed the General Assembly for the first time; indeed, twice. Two local acts authorized elections in Moore and Mecklenburg counties and soon thereafter Mecklenburg voters


5. The prohibition legislation was passed in an extra session in early 1908, N.C. Public Laws Ex. Sess. 1908, ch. 71, and went into effect on New Year's Day of 1909 following its approval at a statewide referendum in May of 1908. All sales of liquor, by drink or otherwise, became unlawful, except for sales of wines and ciders by their manufacturers and sales of other forms of alcohol for medicinal purposes.

6. In the early 1900's local option city elections were allowed on three separate questions: whether the manufacture of intoxicating liquor should be permitted; whether barrooms and saloons should be allowed to operate; and whether "dispensaries" (ABC stores) should be operated by the city. N.C. REVISAL OF 1905, § 2069.

7. N.C. Public Laws 1937, ch. 49. This statewide act superseded the Pasquotank Act, N.C. Public Laws 1935, ch. 493, which authorized a number of eastern counties to vote on establishment of ABC stores.

8. This definition is retained in present N.C. GEN. STAT. § 18A-2(12) (1978).

9. S.B. 182, 1967 N.C. General Assembly, introduced by Sen. Herman Moore of Mecklenburg County. The bill was never reported out of committee.


approved such sales. However, the state supreme court voided the election by finding that the Mecklenburg act was a local act regulating trade,\textsuperscript{13} prohibited by the North Carolina Constitution.\textsuperscript{14} To state a complicated issue in the simplest terms, a local act is legislation which, without good reason, is made applicable to less than the whole state. However, an act may apply to less than all 100 counties and not be considered a local act if there is good reason for making a distinction between those areas included in the act and those left out; that is, if there is a “reasonable classification.”\textsuperscript{15} There being no good reason for treating Mecklenburg County differently from the other ninety-nine counties as far as mixed drinks were concerned, the court found the 1971 legislation to be a local act. Article II, section 24 of the constitution prohibits such acts when they regulate trade, and the court next decided that legislation on mixed drinks is a regulation of trade. Because they involve regulation of the activities of private entrepreneurs, local acts concerning the sale of beer and wine, as well as local acts on mixed drinks, have consistently been voided as acts regulating trade.\textsuperscript{16}

\begin{itemize}
  \item \textsuperscript{13} Smith v. County of Mecklenburg, 280 N.C. 497, 187 S.E.2d 67 (1972). The court's decision nullified the November 1971 vote in Mecklenburg County in which mixed drinks had been approved by 37,634 to 27,244.
  \item \textsuperscript{14} N.C. CONST. art. II, § 24.
  \item \textsuperscript{15} McIntyre v. Clarkson, 254 N.C. 510, 119 S.E.2d 888 (1961). The best review of the law concerning local legislation in North Carolina may be found in Ferrell, \textit{Local Legislation in the North Carolina General Assembly}, 45 N.C.L. Rev. 340 (1967). The issue of whether the 1978 mixed-drink act might be argued to be a local act is discussed \textit{infra} at note 38.
  \item \textsuperscript{16} “The selling of wine is a trade. \ldots” Food Fair, Inc. v. City of Henderson, 17 N.C. App. 335, 339, 194 S.E.2d 213, 216 (1973) (invalidating a local act that authorized city governing bodies in Vance, Scotland, and Moore counties to refuse to issue a city wine license, the issuance of which is mandatory under state law). “A local act that authorizes or prohibits the sale of beer and wine is a local act regulating or governing a trade and is void.” Nelson v. Board of Alcoholic Control, 26 N.C. App. 303, 305, 216 S.E.2d 152, 153, \textit{appeal dismissed}, 288 N.C. 242, 217 S.E.2d 666 (1975) (invalidating an act prohibiting sale of beer and wine in the community of Atlantic in Carteret County). Despite the constitutional provision, local acts on beer and wine are regularly enacted. For example, the 1977 General Assembly passed local acts exempting Foxfire Village (1977 N.C. Sess. Laws, ch. 237) and Cameron (1977 N.C. Sess. Laws, ch. 371) in Moore County from the requirement of N.C. GEN. STAT. § 18A-52(a) (1978) that a city must have a population of 500 before it may vote on beer sales. Rural Hall in Forsyth County is exempted from the provision of N.C. GEN. STAT. § 18A-52(i) (1978) that a city may not hold a beer election until beer sales have been rejected in a county election. (1977 N.C. Sess. Laws, ch. 717).
\end{itemize}
In contrast local acts concerning the establishment or operation of city ABC stores have been upheld since the stores are all government operated, no private business is involved, and the purpose of such stores is regulation rather than commerce. It is clearly established then that any legislation on mixed drinks must be statewide in effect or have some reasonable basis for being limited to certain localities.

Mixed drink legislation passed again in 1973 and 1974 but never went into effect. The 1973 local option act was conditioned on approval at a statewide referendum in November 1973 where a vigorous Christian Action League campaign led to its defeat by more than a two-to-one margin. The 1974 act was not knowingly passed. It was adopted in the hectic closing days of the session after being represented as a "technical amendment" to a local act on zoning. When its existence was discovered it was quickly "unpassed." The poor showing in the 1973 referendum and the suspicion generated

17. "[T]rade' refers to a business venture embarked in for gain or profit by a person or a business corporation. It refers to commerce engaged in by citizens of the State, and not a restricted activity conducted by the State itself.” Gardner v. City of Reidsville, 269 N.C. 581, 591-92, 153 S.E.2d 139, 148 (1967) (approving a local act authorizing the establishment of ABC stores in Reidsville).

18. 1973 N.C. Sess. Laws, ch. 316. If it had become effective, Ch. 316 would have made the sale of mixed drinks lawful upon approval of the county commissioners or the voters in a county election. Permits would have been issued to restaurants that seat 36; to auditoriums, civic centers, and other convention sites during special occasions; and to social establishments having a ten-day waiting period for membership and minimum dues of $5 per quarter.


20. The amendment, offered by Sen. Michael Mullins of Mecklenburg, was to H.B. 2125, a local zoning act for his county. The amendment, artfully drawn, in effect reenacted the 1971 Mecklenburg mixed-drink act but deleted all references to the county by name and attempted to make it valid statewide legislation by making it applicable to all counties with a population of 275,000 or more. After being adopted by the Senate and concurred in by the House, the amendment was withdrawn when its true contents were discovered. The formal record of the maneuverings of H.B. 2125 may be found in N.C. SEN. JOUR. 1973 (2d Sess., 1974) at 436, 439, 442 and 446, and in N.C. HOUSE JOUR. 1973 (2d Sess., 1974) at 1876, 1888 and 1890. A narrative summary of the action is in Crowell, The 1974 Legislature; An Overview, N.C. LEGIS. 1974, at 1, 16 (Institute of Government 1974). A copy of the amendment may be found in the legislative files of the Institute of Government library in Chapel Hill.
by the ill-fated 1974 amendment kept liquor by the drink off the 1975 legislative agenda. In 1977 supporters were ready to try again.

**Development of the 1977 Legislation**

Partly to offset the negative reactions still lingering from the ill-fated 1974 Mecklenburg amendment, mixed-drink supporters in 1977 decided to be as open as possible in developing and promoting their legislation. Early in the session, legislators sympathetic to mixed drinks were invited to a meeting, open to the press, to discuss the options available in drafting the legislation. Next, a four-page, twelve-item questionnaire was sent to all legislators asking their opinion on several basic matters to be addressed in the proposed mixed-drink bill. The responses indicated that the members favored legislation limited to cities and counties with existing ABC systems and strongly opposed any statewide referendum. Legislators felt that a local election should be called before mixed drinks could be sold; that sales should be limited to restaurants, hotels, and private clubs; that drinks should be mixed rather than sold in miniature bottles; that the hours of lawful sales should be the same as for brown-bagging; and that individual businesses should have the choice whether to have brown-bagging or mixed drinks. Opinions were about evenly divided on whether there should be an additional tax on liquor bought for resale as mixed drinks and on what should be the price of a mixed drink permit. 

With this information in hand, legislation was drafted that would become Senate Bill 735. Because the questionnaire responses so closely paralleled the then-current ABC laws, Chapter 18A of the General Statutes, the legislation was constructed as a series of amendments to the existing statutes rather than as a new self-contained article. This approach shortened and simplified the bill by incorporating existing provisions on election procedures, penalties, kinds of places that could receive permits, and other matters of detail. But that style of drafting may have also unintentionally affected how the legislators considered the substance of the bill. This kind of drafting strengthened the sponsors’ arguments that: (1) the bill would not increase the availability of alcohol since the only places that could be issued permits were places already de-

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21. A copy of this questionnaire, distributed by Rep. Marcus Short of Guilford County, and the results, are in the author’s files.

fined by statute as being eligible for brown-bagging and (2) voting for the bill was a vote not for mixed drinks but only for the people's right to vote, giving them the same local-option voting privilege as is provided for other forms of liquor sales. This drafting technique also made the bill difficult to read and understand. Senate Bill 735 made little sense unless read in conjunction with Chapter 18A, a complicated and sometimes contradictory web of statutes. Thus, only by looking at Chapter 18A would a reader of the bill understand that one section that read in full: "G.S. 18A-30(6) is amended by adding after the word 'beverages' in lines 2 and 6 of that subsection the words 'or mixed beverages'" meant that the same hours of consumption would apply for mixed drinks as for brown-bagging. And only by looking at another section unmentioned in the bill would he know that Sunday sales could not be restricted by city or county ordinance. Perhaps this difficulty in reading the bill helped divert opponents' attention from the details of the legislation. Only infrequently in the legislative process was there any serious debate on the definition of private clubs, the period of time required to elapse after an election before another could be held, the age of employees in mixed-drink establishments, or the various other details that later were hotly discussed when the ABC Board's regulations were being considered. Instead, the legislative debate centered almost exclusively on the general proposition of whether mixed drinks should be allowed. Opponents may have chosen that strategy anyway, feeling confident that their fellow legislators would not go against the overwhelming 1973 statewide vote. The effect, however, was to have important aspects of the legislation fully understood by only a few legislators and to shift from the General Assembly to the State ABC Board the debate on the specifics of the bill, such as how the surcharge was to be enforced and what kinds of places would qualify as social establishments.

23. S. 735, § 10.
24. N.C. Gen. Stat. § 18A-30(6) (1978) then and now allows brown-bagging on licensed premises from 7:00 a.m. until 1:30 a.m. From the last Sunday of April to the last Sunday of October (daylight savings time) consumption may continue on the premises until 2:30 a.m. Consumption may not commence on Sunday until 1:00 p.m. The mixed-drink bill was later amended to specify that, like sales of beer, sales of mixed drinks had to cease a half-hour before the consumption deadline.
25. N.C. Gen. Stat. § 18A-1 (1978) specifies that Chapter 18A is intended to establish a uniform system of liquor regulation for the state. A local ordinance in conflict with the provisions of Chapter 18A is invalid. State v. Williams, 283 N.C. 550, 196 S.E.2d 756 (1973) (local ordinance prohibiting public display and consumption of malt beverages held invalid—this was before the 1977 amendment permitting such an ordinance in limited circumstances. See note 122 infra).
26. Legislative attention might have focused more closely on some of these
MIXED-DRINK REGULATIONS

SUMMARY OF THE LEGISLATION

THE ORIGINAL BILL

Elections—As introduced and enacted, S 735 authorizes a mixed-drink election in "any county or city where alcoholic beverage control stores have been established. . . ." That is, elections may be held in the 45 counties with county ABC systems established pursuant to state law, and also in the 80 or so city systems in 44 other counties established by local acts of the legislature.

The use of local option elections for mixed drinks is consistent with North Carolina law on the sale of all other kinds of liquor. Beer, unfortified wine, fortified wine, and spirituous liquor are issues if the State ABC Board has participated more actively in the legislative process. Other than seeking a higher permit fee, the Board had virtually no comment on the mixed-drink legislation. This may have been partly due to the political controversy of the subject, but more likely it was the byproduct of another legislative conflict. Early in the 1977 session one of the governor's state government reorganization bills transferred the Board's enforcement officers to a new Department of Crime Control and Public Safety. 1977 N.C. Sess. Laws, ch. 70, codified as N.C. GEN. STAT. §§ 143B-473 to -485 (1978). The Board chairman, who is appointed by and serves at the pleasure of the governor, was reported to be unhappy with the loss, and the dispute between the Board and Crime Control became a source of some embarrassment to the administration. Whether on direct instructions from the governor, or otherwise, the Board took a more passive role during the remainder of the 1977-78 session. Thus it had no one telling the committees or other legislators of the enforcement problems that might be created by the mixed-drink surcharge or that the Board might prefer that the statute on social establishments be made more restrictive.

28. N.C. STATE BOARD OF ALCOHOLIC CONTROL, LIST OF COUNTIES AND MUNICIPALITIES WHERE MALT BEVERAGES, WINE, AND SPIRITUOUS LIQUORS ARE SOLD (January 1978) [hereinafter cited as LIST OF COUNTIES AND MUNICIPALITIES].
30. LIST OF COUNTIES AND MUNICIPALITIES, supra note 28. Almost all of the older ABC systems—those in the eastern part of the state—are county systems. In the piedmont and western parts of the state, the city ABC systems dominate. Except for Bladen, all the counties with no ABC system at all are in the mountains.
32. Id.
33. The sale of fortified wine in hotels, restaurants, grocery stores, and drugstores becomes lawful in a city or county when ABC stores are established in that jurisdiction. N.C. GEN. STAT. § 18A-38(f) (1978). ABC stores are established by local election.
34. N.C. GEN. STAT. § 18A-51(a) (Interim Supp. 1978) provides for county elections on establishing ABC stores. City stores are established by local act as explained in the text accompanying notes 39-41, infra. Although the local acts have always conditioned the establishment of city stores upon approval at a local elec-
all subject to such elections. There never has been any serious question of the legality of making the availability of liquor dependent on local elections, on either equal protection grounds or any other. The value of local option liquor control has been recognized by the North Carolina courts.

There were several reasons for restricting mixed-drink elections to localities that already have ABC stores. Most of the reasons

35. Rippey v. Texas, 193 U.S. 504 (1903). "The state has absolute power over the subject [liquor sales]. It does not abridge that power by adopting the form of reference of a local vote. It may favor prohibition to just such degree as it chooses, and to that end may let in a local vote upon the subject as much or as little as it may please." Id. at 510.

36. "In numerous cases, local option laws have been upheld as against objections to their constitutionality." 45 AM. JUR. 2d Intoxicating Liquors § 80 (1969). See cases cited therein.

37. See Gardner v. City of Reidsville, 269 N.C. 581, 153 S.E.2d 139 (1967). In connection with the problem [liquor control], the court stated in Guy v. Commissioners, 122 N.C. 471, 29 S.E. 771: 'Nor is it essential that the regulation (of intoxicating liquors) shall be uniform throughout the State.' Although we note this statement was made some nineteen years prior to the enactment of the amendment [local act regulating trade provision of Constitution], it evidences early recognition of the fact that due to varying social and cultural differences within the state, the control of intoxicating liquors was not a subject easily susceptible of uniform regulation. The truth of this fact has been subsequently borne out and was recognized by the 1937 legislature when they, after the end of prohibition, adopted a 'local option' plan of liquor control. G.S. 18-61. This plan and many local acts have generally been acquiesced in and abided by for thirty years. Id. at 589, 153 S.E.2d at 146.

38. As discussed in the text accompanying notes 11-20, supra, a local act covering mixed drinks would be unconstitutional as a local act regulating trade. Smith v. County of Mecklenburg, supra note 13. Although it applies to less than the whole state, the 1978 mixed-drink law is not a local act. "A law is general, not because it operates on every person in the State, but because every person brought within the relations and circumstances provided for by the Act is affected. Statutes relating to persons or things as a class are general laws." McIntyre v. Clarkson, 254 N.C. 510, 519, 119 S.E.2d 888, 894 (1961). The mixed-drink act treats all cities and counties with ABC stores as a class. "The Legislature has wide discretion in making classifications." Id. "The General Assembly undoubtedly has authority to provide for the creation of classes and to classify objects of legislation. The classifications are upheld if they are practical and prescribe regulations for different classes." Hursey v. Town of Gibsonville, 284 N.C. 522, 528, 202 S.E.2d 161, 165 (1974) (upholding statutory provision that allows local government to prohibit Sunday afternoon beer and wine sales but excludes brown-bagging premises). The reasons stated in the paragraph in the text following this footnote should constitute adequate justification for the classification. The courts are reluctant to overturn a
relate to law enforcement. By requiring the drink seller to buy his liquor at a local ABC store, the law avoids any need for transporting large amounts of liquor over a great distance, which would complicate enforcement of the transportation laws. Because each ABC system is required to spend a certain percentage of its profits on law enforcement, local ABC officers will always be available to help enforce the mixed-drink provisions. The methods of enforcement, especially monitoring the volume of sales by permit holders, are simplified when all the records of purchases are kept at the local ABC store. There was also a fiscal consideration: limiting mixed drinks to counties and cities with ABC stores means that any additional revenue from the sale of liquor to permit holders can be retained locally as part of the ABC store profits. Of course, part of that added profit would be spent for enforcement.

An important and difficult question not really addressed in the legislative debate is whether cities within counties with ABC systems—Fayetteville, Charlotte, Raleigh, and Durham, for example—might vote separately on mixed drinks. One may read the statute literally and say that any city with ABC stores may have its own election; it matters not whether the stores are part of a county or city system so long as there are stores within the city. A preferable interpretation, however, is to require the election to be in the same jurisdiction as the ABC system. That is, if there is a county ABC system, the election must be county-wide; and if there is a city system, only the city votes. This view recognizes and is consistent with the overall thrust of the legislation, which is to follow the existing ABC structure as much as possible. Instead of creating a separate article on mixed drinks, the bill amended Chapter 18A to incorporate as much as possible of the existing provisions on elections, qualifications for obtaining permits, hours of sale, and so on. Also, requiring elections to follow ABC system lines answers questions about subsequent elections that would otherwise be impossible. For example, if a city within a county ABC system could have a separate election and the city called its election first, would the provision that forbids another election on mixed drinks within three years keep the county from voting for three years? If the county legislative classification. "The question of selection is legislative and not legal. Where the Legislature makes the classification, the courts are not authorized to supplant the legislative intent and purpose by substituting their own. The Legislature is presumed to have provided for a reasonable classification and the burden is on the plaintiff to show the classification is unreasonable." Id. at 528-29, 202 S.E.2d at 165. The best discussion of local legislation may be found in Ferrell, supra note 15.
voted first, could the city vote in the county election or within three years of it? That the legislation provides no answer to such questions indicates that only elections in accordance with the local ABC system were anticipated.39

Only Moore County fails to fit neatly into this county/city election scheme. Although Moore has a county ABC board, only four communities are authorized to have stores: Southern Pines, Pinehurst, Aberdeen, and Carthage. Those authorizations came from separate local acts of the legislature and separate votes or petitions in those towns, rather than by action of the county ABC board pursuant to a county-wide election.40 Thus Moore County is considered to have actually four separate city ABC systems, the county ABC board being only an umbrella organization, and the cities are

39. This is the view adopted by the State ABC Board and the Attorney General's Office. One other question that might arise is whether a county-wide mixed-drink vote could be held in a county that had a city ABC system. This was foreclosed by the act's provision [N.C. GEN. STAT. § 18A-29.1(b) (Interim Supp. 1978)] that requires the permittee to obtain a purchase-transportation permit from the local ABC board—in this case a city board—and authorizes the transportation of the alcoholic beverages only in that city. Thus a county-wide vote would be futile because restaurants and clubs outside the city could not buy and transport alcoholic beverages for mixing drinks.

40. N.C. Public Laws 1935, ch. 493, known as the Pasquotank Act, exempted several eastern counties from the Turlington Act, the state prohibition law. That exemption, and the authority to operate ABC stores, was conditioned on approval at local elections in the counties named in the act. Moore County was not included in the Pasquotank Act, but a § A at the end of the act authorized the establishment of stores in Southern Pines and Pinehurst upon petition of a majority of voters in the townships in which those communities were located. Two years later a state-wide local-option ABC act was passed, N.C. Public Laws 1937, ch. 49; it included several special provisos to accommodate the situation in Southern Pines and Pinehurst. Apparently those stores were being operated by the Wilson County ABC Board because §§ 6 and 26 of the 1937 act provided for a Moore County board to take over the operation from the Wilson board. However, because it was solely the creation of that legislative act and had not been approved at an election like the usual county board, the Moore ABC board was prohibited in § 10 from establishing stores elsewhere than Southern Pines and Pinehurst until there had been a county-wide election (which still has not been held). 1965 N.C. Sess. Laws, ch. 962, authorized an election in Carthage to determine whether the Moore County ABC Board should be allowed to operate an ABC store there, and 1969 N.C. Sess. Laws, ch. 122, made a similar provision for Aberdeen. Because of the restrictions in the 1937 act, the Moore board does not have the authority given other county boards by N.C. GEN. STAT. § 18A-17(13) (1978) to locate stores elsewhere in the county. That authority in N.C. GEN. STAT § 18A-17(13) to locate stores is limited by the provisions of N.C. GEN. STAT. § 18A-15(10) (Interim Supp. 1978) which require approval of the State ABC Board for opening a new store and prohibit locating a store inside a city that voted against ABC stores in the county election.
eligible to vote separately on mixed drinks, as Southern Pines has already done.\textsuperscript{41} 

If a city or county does not already have an ABC system, it may vote on the mixed-drink proposition at the same time as it votes on the establishment of ABC stores.\textsuperscript{42} The unit must pass both issues before mixed drinks may be sold there. If a community votes out its ABC stores, mixed-drink sales must stop.\textsuperscript{43} 

The other election provisions in the bill follow existing law for ABC elections: the election \textit{may} be called by the governing body (county commission or city council) on its own initiative and \textit{must} be called on petition of 20 per cent of the unit’s registered voters; the election may not be held within forty-five days of the biennial election for county officers; no absentee ballots are allowed; and no election may be held within three years of a previous one.\textsuperscript{44} 

\textbf{Premises Eligible for Permits—}The original bill provided for only one ballot proposition: whether the sale of mixed drinks should be allowed in restaurants and social establishments.\textsuperscript{45} Although the provisions on dual permits would be subject to several amendments, no change was ever made in the basic proposition that only restaurants and social establishments would be eligible for mixed-drink permits. Other than commercial establishments with special-occasion permits, these are also the only places where brown-bagging is allowed.\textsuperscript{46} 

A social establishment was already defined in the statutes as a facility that is not open to the general public and is organized and operated solely for a social, recreational, patriotic, or fraternal purpose.\textsuperscript{47} Such an establishment, which might be a country club, a veterans’ club, or a disco club may—but need not—have lockers.

\textsuperscript{41} Pinehurst is not eligible for a separate election on mixed drinks since N.C. GEN. STAT. \S\ 18A-51(b) (Interim Supp. 1978) authorizes elections only in cities and counties with ABC stores and Pinehurst is not an incorporated city.

\textsuperscript{42} N.C. GEN. STAT. \S\ 18A-51(b) (Interim Supp. 1978).

\textsuperscript{43} Id.

\textsuperscript{44} Id. \S\ 18A-51(b) (Interim Supp. 1978), the mixed-drink election provision, says that such elections are subject to the same rules as ABC store elections, which are contained in subsection (a). The restrictions listed in the text are found in (a).

\textsuperscript{45} S. 735, \S\ 13.

\textsuperscript{46} N.C. GEN. STAT. \S\ 18A-30 (1978 and Interim Supp. 1978) allows the possession of alcoholic beverages (over 14 per cent alcoholic content) off one’s own premises only at a place that has a permit as a social establishment, a restaurant or related place (hotel), or a commercial establishment hosting a special occasion. Possession is also permitted in one’s own home, a secondary residence such as a hotel room, and other premises under one’s exclusive control where a special occasion is being held. No permit is required for possession at those places.

\textsuperscript{47} Id. \S\ 18A-30(2) (1978).
where members can store the brown-bag liquor they bring.\textsuperscript{48} As introduced and as enacted, the mixed-drink bill gives each individual social establishment the choice whether to have mixed-drink sales or brown-bagging or both.

The restaurant definition, which was already in the law, requires the restaurant to have a kitchen and an inside dining area that seats at least thirty-six people and to be part of a business “engaged primarily and substantially in preparing and serving meals or furnishing lodging . . . .”\textsuperscript{49} That last phrase is the basis for granting permits for hotels (if they contain restaurants that seat at least thirty-six), since a hotel’s total income obviously does not come primarily from serving meals. Like the social establishment, the individual restaurant originally was given the choice whether to have mixed drinks or brown-bagging or both, though that option did not survive the legislative process.

Mixed-drink permits, like all other ABC permits, are to be issued by the State ABC Board. Local governments have an opportunity to object to the issuance of specific permits,\textsuperscript{50} but the objection must be clearly based on one of the narrow grounds given in the statute, such as that local zoning allows no commerical activity at the proposed location or that the operator has been convicted of a felony within three years.\textsuperscript{51}

\textsuperscript{48} Id. Actually the statute is somewhat ambiguous and might be read to require that all alcoholic beverages brought into a social establishment be stored in individual lockers, but the State ABC Board’s interpretation is that lockers are not required.

\textsuperscript{49} Id. § 18A-30(4) (1978) (emphasis added).

\textsuperscript{50} N.C. GEN. STAT. § 18A-31 (1978 and Interim Supp. 1978) gives the State Board exclusive authority over issuance of all permits related to alcoholic beverages; subsection (d) provides that the procedures to be followed shall be the same as for beer and wine permits. Thus N.C. GEN. STAT. § 18A-38(e)(1) (1978), requiring notice to local governing bodies, is applicable. The governing body has ten days within which to make its written objection. The State Board gives the local governing body the opportunity to designate someone else, such as the police chief, to receive the notice.

\textsuperscript{51} N.C. GEN. STAT. § 18A-39(a)(8) (1978) prohibits the issuance of a permit to a person who has been convicted of a felony or other crime involving moral turpitude within the last three years or has been convicted of a liquor law violation within the last two years. N.C. GEN. STAT. § 18A-43(b) (1978) allows the Board, in deciding whether a place is suitable for a permit, to consider among other things the number of permits already in the neighborhood, the parking facilities and traffic conditions, and the recommendations of the local governing body. In practice, few applications are turned down. For example, in 1976, of the applications for retail sale permits for beer, 4,135 were issued and 209 were rejected. At the end of that year 12,232 retail beer permits were in effect; only 10 such permits were
**Purchase and Sales**—Both the original and the enacted bill require drinks to be sold already mixed rather than in miniature bottles, set twenty-one as the minimum age for purchase—the same as for the purchase of all other beverages with an alcohol content of over 14 per cent—require the mixed-drink permit holder to purchase his liquor at a local ABC store and to obtain a separate purchase-transportation permit for each purchase, as any person must who wishes to buy more than four liters of alcoholic beverage at a time. The bill further sets the same hours for buying and consuming mixed drinks as for brown-bagging, and generally prohibits the permit holder from allowing disorderly conduct and lewd entertainment on his premises, the same as for other ABC permit holders. The mixed-drink permit fees, later amended, first were set the same as brown-bagging permits for social establishments ($200) and restaurants ($100 for a capacity of less than fifty, otherwise $200).

**Additional Tax**—The original bill added a charge of $5 per gallon to the price of each bottle sold for resale as mixed drinks. The sponsors were not enthusiastic about this surcharge, but they thought that if the revenue went to local governments those units might more readily support mixed drinks. The sponsors also hoped that putting a $5 surcharge in the bill might avert the later addition revoked during the year. N.C. BOARD OF ALCOHOLIC CONTROL, 1976 ANNUAL ACTIVITY REPORT.

52. This is the effect of the “mixed beverage” definition in N.C. GEN. STAT. § 18A-2(6) (Interim Supp. 1978), which refers to the alcohol being served “in a quantity less than the quantity contained in a closed package. . . .”


54. N.C. GEN. STAT. § 18A-3(a) (1978) forbids any purchase, possession, or transportation of intoxicating liquor except as authorized by Chapter 18A. N.C. GEN. STAT. § 18A-25(a) (1978) provides that an ABC store may not sell more alcoholic beverage than can be lawfully transported. N.C. GEN. STAT. § 18A-26 (1978) states that only four liters of alcoholic beverages (7.2 ounces more than a gallon) may be transported unless the person has a purchase-transportation permit from the local ABC board for a greater amount. N.C. GEN. STAT. § 18A-27 (1978) allows any citizen to obtain a permit for transporting up to 20 liters. N.C. GEN. STAT. § 18A-29.1 (Interim Supp. 1978), enacted as part of the mixed-drink act, authorizes a mixed-drink permit holder to obtain a purchase-transportation permit for whatever amount is specified by the local ABC board that issues the permit.

55. See note 24 supra.


57. S. 735, § 12.

58. Id. § 3.
of a higher charge by an opponent. The surcharge, which was later raised, is to be computed before the state excise tax, 22.5 per cent of the retail price,\(^59\) is determined which means that the excise tax is not increased. The additional charge becomes part of the local store’s profits. North Carolina ABC law gives the state all the proceeds from the excise tax on alcoholic beverages (about $39 million in fiscal 1977-78) and allows the local governments that operate ABC stores to keep the profits (about $26 million statewide).\(^60\) State law requires some of the profits to be spent for particular activities (5 to 10 per cent for employing local ABC officers\(^61\) and 7 per cent for alcoholism programs\(^62\)), although many systems have local acts of the legislature that alter these requirements. State law also provides that the remaining profits in a county system go to the county general fund,\(^63\) but many counties have had local acts passed specifying different uses of particular percentages of the profits. For example, in many counties certain percentages go to named cities within the county or to named hospitals, schools, and recreational activities.\(^64\) Because all city systems are established by local act,

\(^{59}\) N.C. Gen. Stat. § 105-113.93 (Supp. 1977). This excise tax, which is in lieu of the sales tax, applies only to spirituous liquors (over 21 per cent alcohol). Because the definition of alcoholic beverage includes any beverage with more than 14 per cent alcohol, ABC stores may sell fortified wine (14 to 21 per cent alcohol) as well as spirituous liquor. Most choose not to do so, since the fortified wine may also be sold in grocery stores. Wherever fortified wine is sold, in the ABC store or grocery store, it is subject to the sales tax plus an excise tax levied by N.C. Gen. Stat. § 105-113.95 (Supp. 1977). That tax is 70 cents per gallon unless the fortified wine is a North Carolina product, in which case it is only 5 cents per gallon.


\(^{61}\) N.C. Gen. Stat. § 18A-15(8) (Interim Supp. 1978) states that the State ABC Board is to insure that local boards spend 5 to 10 per cent of net profit on law enforcement. N.C. Gen. Stat. § 18A-17(14) (1978) requires county ABC boards to spend 5 to 15 per cent of total profits for that purpose.

\(^{62}\) Id. § 18A-17(14) (1978). This requirement is not considered applicable to a board that has a local act setting a different distribution of profits. 41 Op. N.C. Atty’ Gen. 610 (1971).


\(^{64}\) For example, profits from the Mecklenburg ABC system are distributed as follows: Five per cent is to go to the Charlotte/Mecklenburg public library and 95 per cent is to be evenly divided between Charlotte and Mecklenburg County. Davidson, Cornelius, Huntersville, Pineville, and Matthews are each to receive 2 per cent of the Mecklenburg half. The rest is to go to the county. Three per cent of the Charlotte half is to go to the Parks and Recreation Commission. At least 25 per cent of the remainder of both the city and the county shares is to be applied to bonded indebtedness. 1947 N.C. Sess. Laws, ch. 835. For a general description of the various local acts concerning ABC revenues, see Lawrence, ABC Revenues:
their distribution of profit is always set by local act. It is common for certain percentages to go to named hospitals and schools and other activities—and also for a certain percentage to go to the county as part of the political arrangement by which the local act was obtained for the city. The surcharge per gallon for mixed-drink liquor is added to the local profits and is spent in whatever way those profits are to be spent.

SENATE ABC COMMITTEE REVISIONS

After it was introduced, S 735 was referred to the Senate Alcoholic Beverage Control Committee, where it received its most thorough review. Attention centered on the amount of the permit fee, whether miniature bottles should be used, whether brown-bagging and mixed drinks should be allowed on the same premises, how the $5 surcharge should be enforced, and whether social establishments should be eligible for permits. The use of mini-bottles was rejected, but amendments were adopted on each of the other issues.

Permit Fee—The State ABC Board tried to influence the size of the permit fee, favoring a fee of $1,500 or higher to discourage financially unstable operations from entering the mixed-drink business and to give the permit holder a greater incentive for not violating the law and risking the loss of his permit. On the other hand,

65. As counsel to the Senate ABC Committee, the author was requested by the chairman to receive all suggestions for amendments to S. 735 and to draft the amendments. A summary of the suggestions may be found in a memorandum from the author to Sen. John Winters, Senate ABC Committee Chairman, June 2, 1977 (the memo is in the author’s file). Those files also contain copies of all the amendments presented to the Senate committee but not adopted.

66. Unopened miniatures are the form of sale in Alabama (where half pints are also sold), South Carolina, and Utah (where the mini-bottles are sold by state stores established on the premises). SUMMARY OF STATE LAWS, supra note 2. Some legislators favored the miniatures believing that they would mean better control over the amount being consumed and would assure that the customer got what he ordered. The prevailing arguments, however, were that (1) miniatures are too easy to conceal and carry into places where they are not allowed, (2) they provide too potent a drink (about 1.7 ounces compared with the one ounce usually served in a mixed drink), (3) the bottling costs make them too expensive for the amount of liquor being purchased, (4) their use complicates the preparation of some fancy drinks, and (5) it is sometimes difficult to get miniatures in the brands and quantities desired.

67. South Carolina charges $750 for a license ($500 for a nonprofit organization). Tennessee charges $1,000 for a license for a hotel, $300 for a club, $600 to $1,000 for a restaurant, and $1,500 for a premier tourist resort. An additional fee
the introducer and committee members wanted to assure that the legislation was not just for "rich folks"—that small businesses, especially those that cater to minority groups, could also obtain permits. The compromise was to raise the original permit fee to $500 for any mixed-drink establishment, to set the annual renewal fee at half rather than the customary quarter of the original fee, and to require a full fee to be paid regardless of whatever other permits were held. Like all other ABC application fees, the mixed-drink fee is not refundable even if the application is denied. The committee briefly considered proposals to include state and local revenue license fees but rejected those amendments because no such fees are charged for brown-bagging (though state and local license fees must be paid for licenses to sell beer and wine). The permit fee remained untouched through the rest of the legislative process.

Enforcement—Recognizing that the $5 surcharge per bottle might tempt the permit holder to buy his liquor somewhere other than at the local ABC store, the committee sought to strengthen the enforcement procedures. Amendments were adopted to require a special stamp to be placed on each bottle sold for resale as mixed drinks, to require permit holders to keep current records of liquor

of the same amount goes to the city or county. In Texas the fee is $2,000. In Maryland the fee for a hotel and restaurant ranges from $250 to $5,000, depending on the county or city. Summary of State Laws, supra note 2.

Taxation is frequently the very best and most practical means of regulating this kind of business [liquor sales]. The higher the license, it is sometimes said, the better the regulation, as the effect of a high license is to keep out from the business those who are undesirable, and to keep within reasonable limits the number of those who engage in it. Phillips v. City of Mobile, 208 U.S. 472, 479 (1970).


69. Id.

70. The state license is purely a revenue raiser and the Department of Revenue issues it automatically after the State ABC Board issues the permit. The annual license fee for the retail sale of beer is $5, with incremental increases for additional licenses. N.C. Gen. Stat. § 105-113.84 (Supp. 1977). Issuance of the city and county licenses is also mandatory; an applicant who has an ABC permit may be refused the license only if he has recently been convicted of a felony or liquor law violation. Id. § 105-113.82 (Supp. 1977). The fee for on-premises sale of beer is $25 for the county and $15 for the city, and the off-premises license fee is $5 for each license. Id. §§ 105-113.79 and -113.81 (1972).

71. Several of these amendments were sought by the introducer of S. 735, Sen. William Smith, following communications from a former ABC officer. Memorandum from T.D. Zweigart, summer intern, to Ann. S. Fulton, Chief Hearing Officer, N.C. Board of Alcoholic Control, copy to Sen. William G. Smith (June 1, 1977) (copy in author's file).
purchases and mixed-drink sales,\textsuperscript{72} and to make it unlawful to refill bottles or to transfer the tax stamp.\textsuperscript{73} These changes, especially the stamp and record-keeping provisions, were intended to give the enforcement officer the data to determine whether a permit holder was buying liquor for which the surcharge had not been paid. Because of the continued tension stemming from the 1977 transfer of state ABC officers from the State Board to the new Department of Crime Control and Public Safety,\textsuperscript{74} the discussions generally avoided the question of how much control the Board would have over the officers (since renamed Alcohol Law Enforcement Agents) and whether those officers were sufficiently qualified and trained to do the auditing that would be crucial to enforcing the mixed-drink tax.

Brown-bagging—Another difficult issue was brown-bagging. The original bill allowed social establishments and restaurants to have both mixed drinks and brown-bagging. Two strong arguments were made against such a system: (1) mixed drinks could not provide better control over drinking (as was argued that it could) if brown-bagging, which by its nature is subject to only minimal control by the permit holder, continued; and (2) the presence of brown-bag bottles on a licensed premises would make it difficult to enforce the $5 surcharge. Several compromises were considered, and finally the committee settled on a change in the election procedure. Whoever called the election, the local governing body or the petitioners, could choose which of two propositions to put on the ballot, while still giving the individual voter only one for-or-against choice. One proposition would allow both mixed drinks and brown-bagging in individual businesses, while the other would require a restaurant to choose either brown-bagging or sale of mixed drinks.\textsuperscript{75} Neither proposition would place any limit on social establishments with both permits. Generally the committee members were not as concerned with what happened in private clubs, though some sponsors thought that the failure to allow brown-bagging to continue in country clubs had helped defeat the 1973 referendum.

Social Establishments—While the situation with social establishments never received the press attention it got later as communities began voting on mixed drinks and the ABC Board began considering its regulations, the Senate ABC Committee carefully con-

\textsuperscript{73} Id. § 18A-30(8).
\textsuperscript{74} See note 26 supra.
sidered what kinds of places should qualify as social establishments. Memoranda to the bill’s sponsor and the committee chairman and discussions before the full committee pointed out that some places had been qualifying as social establishments even though their only “membership” requirement was a $1 or $2 “membership fee” that anyone could pay at the door. The committee debated an amendment that would have replaced the social-establishment provisions of S 735 with a section limiting permits to “private clubs” that were not operated for profit, had been in operation for a year, had a regularly occupied clubhouse, held regular meetings, elected officers, and collected dues. The committee rejected that change, deciding that the social-establishment definition already in the law was sufficient. This action did not mean that the committee members thought that a place with a $2 membership fee qualified as a social establishment—only that they thought the existing statutory requirement that the establishment “not be open to the general public” gave the Board sufficient authority to act against such clubs. The committee members were also wary of tinkering with the existing statutes too much, fearing that they might inadvertently exclude clubs patronized by low-income or minority-group citizens.

Other—The eight amendments the Senate committee adopted also clarified the hours of sale and the provision that permits could not be issued for businesses within certain distances of schools and churches. The committee rejected an amendment to authorize cities and counties to restrict sales after 1:00 p.m. on Sundays. Although a local government can prohibit beer and wine sales on Sunday afternoon, it may not apply that prohibition to a social establishment or restaurant that has a brown-bagging permit. The committee’s decision was to keep the mixed-drink law consistent with that policy.

Passage to the House

The Senate ABC Committee passed its committee substitute for S 735 by a five-to-four vote. The Senate Finance Committee gave routine approval to the substitute’s financial provisions, and

76. Memorandum from T.D. Zweigart to Ann S. Fulton, supra note 71.
77. Memorandum from author to Sen. Winters, supra note 65.
78. Copy in author’s files.
the bill passed the full Senate without amendment by a twenty-four to twenty-three vote on second reading. On third reading the margin widened to twenty-five to twenty-two and the bill was sent to the House. After a brief explanation and discussion, the House ABC Committee approved the bill ten to eight and then the House Finance Committee accepted the financial provisions. When S 735 reached the House floor at the end of the 1977 session, however, proponents saw that they were several votes short of passage. They therefore returned the bill to committee to await the 1978 portion of the session.

The resolution calling the 1977 General Assembly back into session in 1978 was worded to allow consideration of bills that had passed one house in 1977, clearing the way for continued action on S 735. The 1978 session was set for late May, after the primaries for legislative seats, thereby creating an unusual situation for North Carolina—lame-duck legislators acting on bills. The proponents anticipated that in 1978 some legislators who had decided not to run again or who had already been defeated in the spring primary might be more likely to vote their personal convictions in favor of S 735. However, the 1978 politicking was so complicated that it is impossible to say what effect the lame-duck phenomenon had.

Soon after the 1978 session began, the ABC Committee reported S 735 back to the House. Sponsors first adopted a strategy of opposing any amendments, not wanting to return the bill to the Senate for another close vote on concurring in a House amendment. For that reason, several amendments had not been acted on in 1977, including one revision of the election provisions to clarify when cities could vote separately from counties. However, it became clear
that some amendments would have to be accepted in order to win the votes needed on the House floor, though only those amendments for which the strongest political pressure existed were permitted.

**House Amendments**

**Tax**—The first House amendment, adopted on the floor, raised from $5 to $10 per gallon the surcharge on liquor sold for resale as mixed drinks. With little discussion the amendment passed easily, probably because alcohol is generally viewed as a luxury item, although some legislators perhaps thought that the additional revenue would make local governments more likely to call mixed-drink referenda. A few opponents may have voted for the amendment thinking that the surcharge would hurt the bill’s chances. No one mentioned the greater incentive to cheat—and subsequent enforcement problems—that would be created by doubling the mixed-drink surcharge.

**Alcoholism Funding**—A second amendment took $1 of that surcharge away from the local governments and directed it to the Department of Human Resources (DHR) “for rehabilitation of alcoholics and research into the causes of alcoholism.” Because the amendment was written in haste on the House floor during the middle of the debate, it was not specific in saying how the money should be used and included no mention of prevention programs—a current emphasis of DHR.

**Brown-bagging**—The last House amendment finally resolved the brown-bagging question. Instead of permitting the local government to choose the proposition on the mixed-drink ballot, the House amendment provided that if a city or county voted for mixed drinks, restaurants within that jurisdiction would no longer be eligible for brown-bagging. The amendment did not address the question of outstanding permits. The ABC Board later decided to make forfeiture of the brown-bagging permit a condition of a restaurant’s receipt of a mixed-drink permit. A restaurant that is in a city or county that voted for mixed drinks but did not itself apply for a
permit would be allowed to keep its brown-bagging permit until the permit's annual expiration date of May 1, when the permit would not be renewed. The amendment intentionally was worded to allow social establishments to have both brown-bagging and mixed drinks if they wished, again indicating the general lack of concern about drinking practices within private clubs.

ENACTMENT

With those amendments attached, S 735 stood for second reading in the House. It lost fifty-six to sixty-one, but a sponsor was recognized for a motion to adjourn before a clincher motion could be adopted. The fight was not over.93 The next day, one legislator who had voted against the bill moved to reconsider the vote by which it failed on second reading. Five other representatives who had been opposed were absent. The motion to reconsider passed sixty-three to fifty-one, and then the bill passed second reading fifty-seven to fifty-six94 with no other amendments. On the next day it passed third reading by sixty-two to fifty-five.95 Because of the amendments, S 735 had to be returned to the Senate for concurrence. Since the only issue was the House amendments and not the entire bill, none of the votes on concurrence was close.96 On June 15, the act was ratified as Chapter 1138 of the 1977 Session Laws.97

ADOPTION OF REGULATIONS

Authority for Regulations—Even though the first county had approved mixed-drink sales, the State Board of Alcoholic Control had to adopt regulations to implement the legislation before the first drink could be sold. The mixed-drink act does not authorize the adoption of regulations, but other provisions of Chapter 18A give the Board that power for all matters relating to liquor sales.98 Although in some instances the legislation was quite precise, for example, the hours of sale and the conduct of elections, in other matters some discretion was left with the Board. Thus, the statute gives guidance on the issuance of permits to social establishments by stating that

95. Id. at 68.
a place must not be open to the general public and must be organized and operated solely for a social, recreational, patriotic or fraternal purpose. It is for the Board to determine, however, what kinds of membership requirements are necessary to bring an establishment within the legislative definition. Likewise, the statute is clear that a restaurant must be engaged primarily in serving meals, but the Board must determine which offerings qualify as meals. The courts have long recognized the need for broad legislative authority to regulate liquor and for substantial administrative supervision of the liquor industry:

There is a peculiar need for an administrative body to provide close surveillance and regulation of the liquor industry because of the numerous and complex problems that arise and the inability of the legislature to anticipate specific problems and to maintain effective continuing supervision.

Whenever an agency adopts controversial regulations, someone is likely to ask whether too much of the legislative authority has been delegated to the administrative agency or whether the agency has gone beyond the authority it was delegated. The North Carolina courts have invalidated administrative actions for that reason, but typically only when the legislation provides no standards whatsoever to guide the agency. Unbridled discretion to determine who

99. "The state may protect her people against evil incident to intoxicants, [citations omitted], and may exercise large discretion as to means employed." Ziffrin v. Reeves, 308 U.S. 132, 138-9 (1939). "The liquor business 'stands, by universal consent, in a class peculiarly within the police power.'" Boyd v. Allen, 246 N.C. 150, 153, 97 S.E.2d 864, 866 (1957). "The control of liquor traffic is a complicated and difficult task. The Legislature should be accorded considerable discretion as to the method to be employed in providing the necessary control and supervision required." State v. Parham, 412 P.2d 142, 151 (Okla. 1966). See also Gardner v. Reidsville, note 37 supra.


The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on, and to issue licenses for that purpose. It is a matter of legislature will only. As in many other cases, the officers may not always exercise the power conferred upon them with wisdom or justice to the parties affected. But that is a matter which does not affect the authority of the State, or one which can be brought under the cognizance of the courts of the United States.

Crowley v. Christensen, 137 U.S. 86, 91-92 (1890).

101. All legislative power of the state is vested in the General Assembly by N.C. Const. art. II, § 1.
can be a dry cleaner,\footnote{State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940). The only guidance to the State Dry Cleaners Commission was a statutory provision that its standards be related to the public health, safety, and welfare. In Crowley v. Christensen, \textit{supra} note 100, the court distinguished the licensing of a laundry from the licensing of liquor dealers, noting the greater authority and discretion for the state in the latter case: "[T]he ordinance there held invalid vest[ed] uncontrolled discretion in the board of supervisors with reference to a business harmless in itself and useful to the community. . . . In the present case the business is not one that any person is permitted to carry on without a license, but one which may be entirely prohibited or subjected to such restrictions as the governing authority of the city may prescribe." \textit{Id.} at 94. "It is a generally accepted concept that 'the power of a state to regulate and restrict the liquor traffic is far broader than the power to regulate or restrict ordinary businesses. . . .' 30 Am. Jur. Intoxicating Liquors, Sec. 24." State v. Parham, \textit{supra} note 99, at 147.} or who has such a bad driving record that he should lose his license,\footnote{Harvell v. Scheidt, 249 N.C. 699, 107 S.E.2d 549 (1959). The statute provided for revoking the license of a "habitual offender," but gave no guidance to the Commissioner of Motor Vehicles as to the meaning of that term.} is beyond the discretion that may be granted an administrative agency, but a very general statement of the desirable characteristics for a highway system is sufficient guidance for an agency charged with choosing turnpike routes.\footnote{N.C. Turnpike Authority v. Pine Island, Inc., 265 N.C. 109, 143 S.E.2d 319 (1965). \textit{See also In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), in which it was held permissible for the General Assembly to delegate to the Board of Law Examiners the power to determine the meaning of the qualification "good moral character."} The mixed-drink act, especially when placed in the context of the existing ABC laws,\footnote{Apparently the whole statute may be reviewed to find the standards to guide the agency. N.C. Turnpike Authority v. Pine Island Inc., \textit{supra} note 104.} provides a precise enough framework for the Board to operate under, and the regulations stay well enough within that design to remove any question of an improper delegation of legislative authority. Most of the regulations involve nothing more than filling in details: What information must the permit holder supply when he places his order at the ABC store? What records must he keep so that his purchases and sales of liquor can be monitored? Where may he store his liquor? What does he do with the bottles when they are empty? Other regulations involve more substantive questions, but 'in effect they merely provide answers to particular fact situations according to the statutory provisions. Thus the regulations answer whether a building across the street from the licensed premises, both owned by the same person, can be part of the licensed premises; whether a restaurant may include a separate drinking area; and whether drinks may be sold in any part of a hotel. Other than those enacted by the General Assembly, no classes of
permittees, no forms of sale, or no restrictions on qualifications of employees are created by the regulations.

The Holshouser Committee—To advise and assist the State ABC Board in preparing regulations, the governor appointed a committee chaired by former governor James E. Holshouser. Other than being asked to hold a series of public hearings across the state to receive citizens' views on the regulations, the committee received little instruction on its role and its relationship to the Board. Potential conflicts were avoided when Board members joined the committee for the public hearings and the two bodies found it easy to work together. Drafting the regulations became, in effect, a joint project in which the Board accepted without significant change the final recommendations of the committee.

Hearings and Drafting—The public hearings in Charlotte, Asheville, Wilmington, Southern Pines, and Greensboro presented few surprises. Many of those who attended insisted on speaking to issues beyond the Board's regulatory authority, such as the hours of sale. Probably the hearings were most useful in providing an opportunity for committee members, ABC Board members, and staff to spend time together informally discussing and gradually resolving the problems to be faced in the regulations.

For the most part, the regulations were drafted without consulting the law or regulations of other states. When reference was made to what another state did, that state was usually Virginia because Virginia's liquor control system and mixed-drink laws resemble North Carolina's more than the laws of any other neighboring state. Before the consideration of regulations began, the ABC Board and staff visited Virginia to confer with its ABC officials. They received a strong warning to avoid the Virginia experience of "nitpicking" regulations which would be unenforceable and would

106. The other committee members were Mrs. Robert Andrews, Wilmington; Mr. John Belk, Charlotte; Rep. Hartwell Campbell, Wilson; Mr. William Clement, Durham; Mr. W.T. Harris, Charlotte; Mr. Al Lineberry, Sr., Greensboro; Mr. Gene Ochsenreiter, Asheville; and Sen. William Smith, Wilmington. The ABC Board members were Mr. Marvin L. Speight, Jr., chairman, Farmville; Mr. Zebulon Alley, Waynesville; and Mr. Clark Brown, Winston-Salem. Legal advice and drafting were provided to the Board and committee by Ms. Ann S. Fulton, Chief Hearing Officer, ABC Board; Mr. James Wallace, Attorney General's office; and the author.

107. Virginia's mixed-drink law was enacted in 1968. It provides for city and county elections on mixed drinks and allows permits to be issued to restaurants that seat at least 50 and do more business serving full meals than serving liquor. The restaurant may be by itself or located in a hotel or private club. Va. Code §§ 4-98.2, -98.12 (Supp. 1978).
only require later amendment. Virginia officials gave examples of laws and regulations dealing with such issues as the size and structural characteristics of tables and whether one had to be standing or seated while buying a drink. The Board and the Holshouser committee consciously tried to avoid such pitfalls.

The committee debated whether new enforcement officers with auditing skills were needed to enforce the mixed-drink regulations, but once again the discussion was cut short by the political sensitivity of the question of which agency the enforcement officers should work for. It was left to individual committee members to discuss their feelings with the governor.

THE REGULATIONS

As soon as the committee finished its work and reported to the governor, the Board scheduled a formal rule adoption hearing. Because five public hearings had been held by the committee, the adoption hearing was brief and uneventful. The regulations adopted, with only minor changes to the committee’s recommendation, are as follows.

Buying the Liquor—The mixed-drink act requires the permit holder to buy his liquor from a local ABC store. This provision assures that the $9 per gallon revenue from the surcharge ($10 less $1 to DHR) will go to the local ABC system and makes it easier to monitor purchases to determine whether the permit holder is buying liquor without paying the surcharge. To further simplify enforcement and to reduce the cost of applying the tax stamps, the regulations require the local ABC board to designate a single store within the local unit as the one that will sell to mixed-drink permit holders. More than one store may be designated with the State Board’s approval.

Before each purchase the permit holder must obtain from the local board, its manager, or its supervisor a purchase-transportation

108. At the meeting in Richmond on June 20, 1978, the Virginia ABC Commission members distributed and discussed a list of changes in the Virginia law since its passage in 1968. The list showed a gradual liberalization of the law over the ten-year period, including extending hours of sale, allowing sale at counters, allowing cocktail lounges, removing the requirement that the customers be seated in order to be served and to drink, and so forth. The Commission members pointed out the problems that had been created by these rules and how regulation was made simpler and more enforceable by eliminating them.

110. 4 N.C. ADM. CODE 2L § .0401 (Nov. 1978).
permit'similar to the permit required of any other customer who wishes to purchase and carry more than four liters of alcoholic beverage. The form of the permit is set out in the statute. The permit is good for only one purchase and requires the transportation to be complete by 9:30 p.m. on the day of purchase. It is to specify how much liquor may be bought and transported. When the permit is issued, the local board keeps one copy for its records and gives the permit holder two copies. He retains one of those copies after his purchase and leaves the other with the ABC store. These copies build a record of purchases that can be used for comparison with what officers observe as the permit holder's average sales. Likewise, when the permit holder makes his purchase at the store, a purchase form is to be completed, listing by brand and size each item bought. One copy goes to the store, one goes to the permit holder, and the other goes to the local board.

Each bottle purchased must have the mixed-drink surcharge tax stamp. The stamp is to indicate where the liquor is bought and which transaction this is for the permit holder—more information useful for detecting deceit. Only bottles with the tax stamp are allowed on the premises, unless the place also has a brown-bagging permit. The stamp must be defaced and the bottle broken as soon as it is empty.

112. 4 N.C. ADM. CODE 2L § .0402 (Nov. 1978).
113. Id., § .0404. (Nov. 1978). At least two hours before he goes to the store to make his purchase, the permit holder is to notify the store that he is coming and what he wants to buy with his purchase-transportation permit. Id. § .0403 (Nov. 1978). The local board could require an earlier warning if it wished.
114. Id. § .0405 (Nov. 1978). The adoption of such a regulation is required by N.C. GEN. STAT. § 18A-15(18) (Interim Supp. 1978). The perforated stamp that was adopted is similar to the one used in Virginia. The stamp is to be placed on the paper label of the bottle; making it extremely difficult to remove it without tearing the label.
115. N.C. GEN. STAT. § 18A-3 (1978) makes it unlawful to possess any intoxicating liquor except as authorized by Chapter 18A, and the only authorization for possession that a mixed-drink permittee would have is N.C. GEN. STAT § 18A-30(7)(Interim Supp. 1978), allowing the possession of only alcoholic beverages purchased for resale as mixed drinks, which are required by N.C. GEN. STAT. § 18A-15(18) (Interim Supp. 1978) to have the tax stamp. If the premises is a social establishment that also has a brown-bagging permit, each member may possess up to four liters of his own alcoholic beverage. Id., § 18A-30(2) (1978). The permittee is required by the regulations to store his liquor in a separate area, which may not contain any liquor without the stamp tax. 4 N.C. ADM. CODE 2L §§ .0111(c), .0112(6) and (10) (Nov. 1978). The handling of members' liquor at a social establishment is discussed in the text accompanying notes 152-160, infra.
116. 4 N.C. ADM. CODE 2L §§ .0111(g), .0112(9) (Nov. 1978).
**Definition of Premises**—The legislation made social establishments and restaurants eligible to sell mixed drinks on their premises, but it did not define the term "premises." The Board’s regulations generally follow the scheme of earlier ABC regulations but are slightly more precise. The premises includes the building or part of a building where the licensed business is located plus any other property “immediately adjacent thereto” that is “a component or integral part of the business for which the permit is issued.” Because mixed drinks may be sold and consumed only on the licensed premises, this definition means that a restaurant may not include mixed drinks as part of a catering service conducted off the premises. It also means that separate permits are required for different premises operated by the same applicant. The regulation further contains language requiring a separate permit for each business operated under a different trade name, even when owned by the same individual and located in the same building. Although separate permits increase the fees he must pay, this provision may benefit the permit holder when he or one of his employees does something wrong. The policy of the State ABC Board is to act only against the permits held by the particular premises where the violation took place and not against other businesses operated by him.

The permit holder is required to include in his application a diagram of his premises, designating the areas where drinks are to be served and sold and where liquor is to be stored. The diagram makes it easier to check compliance with the regulations requiring

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118. 4 N.C. Adm. Code 2L § .0102 (Nov. 1978).
119. N.C. Gen. Stat. § 18A-43(d) (1978) authorizes the State Board to suspend or revoke any permit issued by it if the permit holder violates any provision of Chapter 18A or the Board’s regulations. Language in other subsections of that statute is ambiguous about whether the action may be against permits for premises other than the one where the violation takes place. The mixed-drink regulations specify that a violation may be grounds for action against any permit held by the violator. 4 N.C. Adm. Code 2L § .0102(e) (Nov. 1978). However, the brown-bagging regulations for restaurants (id., 2H, § .0104 (Feb. 1976)) and social establishments (id., 2G, § .0104 (Feb. 1976)) state only that a violation of those regulations is grounds for action against the particular brown-bagging permit. The provision in the mixed-drink regulations was not considered by the Holshouser committee. It was added by the State Board staff after the committee had submitted its recommendations. The Board’s practice when a permit holder commits a significant violation is to suspend or revoke all the permits (brown-bagging, beer, wine, etc.) for the location where the violation occurred. The practice is not to take any action against permits for separate businesses of the same permit holder.
120. 4 N.C. Adm. Code 2L § .0102(c) (Nov. 1978).
separate, locked storage of liquor, another provision generated by the $10 surcharge.

Knowing that North Carolina already prohibits public consumption of alcoholic beverages (those with an alcoholic content over 14 per cent)¹²¹ and allows cities and counties to limit public consumption of beer and wine,¹²² the Holshouser committee and Board members were concerned about public reaction to highly visible consumption of mixed drinks, for example, drinking in sidewalk cafes. Finding it impossible to write a precise regulation concerning use of the premises that would adequately cover all situations, the committee and Board members finally decided on a general statement that the Board, in defining the premises of any establishment, should try not to permit consumption in areas open to the general public other than the patrons of the business.¹²³ The statement admonishes the Board to allow "the fullest use of the premises consistent with proper control . . . ." For country clubs and other permittees which occupy large areas of land, the Board would be expected to allow service of mixed drinks at poolside or on the golf course, but sidewalk service might be prohibited in a restaurant on a main street downtown.

The definition of premises is significant primarily because the permit holder is responsible for any sale or consumption that takes place on the premises and must "insure" that his employees and patrons comply with the ABC law and regulations while on the

¹²¹ N.C. Gen. Stat. § 18A-30(5) (Interim Supp. 1978) specifically prohibits consumption of an alcoholic beverage on a public highway or on ABC store or board premises. It also prohibits display at an athletic contest. A general provision in that subsection also prohibits possession or consumption on any premises where possession or consumption is not authorized. N.C. Gen. Stat. § 18A-3 (1978) contains a general ban against possession or consumption except as authorized by Chapter 18A. The net effect of these provisions, then, is to prohibit consumption in public other than on licensed premises because no statute authorizes such consumption except on licensed premises.

¹²² N.C. Gen. Stat. § 18A-35(a) (1978) generally allows possession of malt beverages and unfortified wine without restriction, but it permits cities and counties to adopt local ordinances prohibiting consumption (not display or possession) on "property owned or occupied by the local government unit." Such an ordinance could prohibit consumption in the town hall or a city park, but not in a privately owned parking lot. The ordinance may prohibit consumption in a car on a city- or county-owned and maintained highway but not on a numbered state highway, since that road would be state-owned and maintained.

¹²³ 4 N.C. Adm. Code 2L § .0102(c) (Nov. 1978). The subsection also states that the Board is to consider the convenience of the permit holder and his customers.
premises. "Insure" was used in the regulation to emphasize that the burden is on the permit holder to keep his premises free of violations. Under the law he has a positive duty to see that others do nothing contrary to the law or regulations. Under the Board’s practice, however, his responsibility for the premises and his liability for violations is not so strict. Few permits are suspended or revoked, and those only for clear-cut, significant violations. Separate sections of the statutes and regulations make the permit holder responsible for disorderly conduct and lewd entertainment on the premises.

**Definition of Social Establishment**—The most difficult problem the Holshouser committee and the Board faced was what to do with social establishments. As had already been suggested in the Senate ABC Committee, some places clearly had qualified in the past as social establishments even though they charged only a nominal fee for admission or for the services provided. Other places, however, were more difficult to classify. Some of the Alabama clientele had been spotted hanging out in the sidewalks outside these establishments, causing a disturbance. These places did not have a social setting; it was not a question of their social environment, but of the fact that they made a living from their activities. The Board, therefore, had to consider whether these establishments were social or commercial. Some places, however, were clearly social establishments, and here the Board had to consider whether the permit holder was responsible for the actions of his employees.

124. *Id.*, § .0102(e) (Nov. 1978).

125. This view is consistent with statutory and case law concerning the permit holder’s responsibility for the premises. In *Campbell v. N.C. State Board of Alcoholic Control*, 263 N.C. 224, 139 S.E.2d 197 (1964), the court upheld the suspension of Campbell’s beer permit despite his contention that the Board had no evidence that he knew his employee was selling to a minor. Strong language concerning the permit holder’s responsibility for the actions of his employees may be found in *American Legion v. N.C. State Board of Alcoholic Control*, 27 N.C.App. 266, 218 S.E.2d 513 (1975), in which the court held that it was not necessary to show that the permit holder knew that his employee was selling whiskey in order to revoke the permit. In *Fay v. N.C. State Board of Alcoholic Control*, 30 N.C. App. 492, 227 S.E.2d 298, *cert. denied*, 291 N.C. 175, 229 S.E.2d 689 (1976), despite evidence that generally he closely supervised his waitresses, the permit holder was held responsible for the lewd dancing of a waitress in the absence of any evidence that she acted so suddenly in exposing her pubic area that he had no chance to stop her. However, if the evidence shows only a brief lapse in supervision of the premises, such as showing only that two young men had whiskey in the parking lot of the permittee’s premises within 35 minutes of each other on a Saturday night, the court will overturn a ruling that the permit holder knowingly permitted the violation. Underwood v. N.C. State Board of Alcoholic Control, 278 N.C. 623, 181 S.E.2d 1 (1971).

126. For example, in 1976 there were almost 31,000 ABC permits outstanding but during that year only 18 permits (for 13 separate premises) were revoked. Another 393 permits (for 213 premises) were suspended, but 218 of those suspensions were suspended (in effect, the permit holder was placed on probation). The most common violation was sale to a minor; violations took place most frequently on premises with retail beer permits. *N.C. Board of Alcoholic Control, 1976 Annual Activity Report*.

127. *N.C. Gen. Stat.* § 18A-30(8)(g) (Interim Supp. 1978). *4 N.C. Adm. Code* 2L § .0115 (Nov. 1978). The regulation goes into some detail as to what kinds of entertainment are prohibited. These include sexual acts or the simulation of sexual acts, displaying genitals or pubic hair or the anus, showing films with such acts, and so forth.
nal fee for membership and allowed almost anyone who came to the door to buy a membership. In the Greensboro hearing one owner of a social establishment stated that in a year and a half he had acquired 14,000 members. Others stated that their only prerequisite for membership was the display of a driver's license. The committee felt that such places did not comply with the statutory requirement that they "not be open to the general public" as understood by the General Assembly when it passed the mixed-drink law.

That such clubs had received permits as social establishments illustrates the Board's traditional narrow view of its permit-issuing authority. In setting qualifications for permits in its regulations and in considering applications, the Board usually has been concerned only with clear-cut deviations from the standards set in the statutes, which by necessity are written in general terms. Thus since the statute says only that an establishment not be open to the general public, the Board has been reluctant to deny an applicant if he has any limit at all on membership, even if it is only the charge of a $2 fee. In part this attitude is a defense mechanism by a Board that wishes to avoid lawsuits and knows that people who are denied licenses are likely to sue. The Board believes that the courts are increasingly reluctant to accept the view that an ABC permit is a privilege rather than a right and are increasingly likely to uphold the applicant rather than the Board if the grounds for denying the permit are at all questionable. It might also be noted that until the mixed-drink law passed, hardly anyone cared what kind of places were receiving social establishment permits. There was no pressure on the Board to deny applications nor was there much support when it did so.

The statute on social establishments has two parts—one requiring that the facility "not be open to the general public" and the other requiring that it be "organized and operated solely for purposes of a social, recreational, patriotic or fraternal nature." The committee started with the second of those provisions, asking what characteristics a place might be expected to have if it were of a social, recreational, patriotic, or fraternal nature. It was suggested that the club would have to be nonprofit, but there are any number of legitimate country clubs and other clubs that are not formally organized as nonprofit. The committee did decide that if a club met this statutory standard, it should be able to state some social, recreational, patriotic, or fraternal bond among its members; and it

129. Id.
would probably offer its members activities other than those related to drinking. Those two characteristics were incorporated in the regulations, but the committee thought that the statutory language offered little other guidance and decided that it might better focus attention on the statute's other requirement—that the establishment not be open to the general public.

The committee members already knew that they did not consider a club with only a $2 pay-at-the-door membership to be a private club. They therefore began listing the characteristics to be expected of a club that truly limited its memberships. Those characteristics eventually became the main social-establishment regulation, the "laundry list" regulation. Knowing that there would be great diversity in the kinds of social establishments that apply for permits and not wanting to discriminate against the more modest kinds of clubs, the committee and the Board decided to include in the regulation a statement that an individual establishment need not possess each characteristic so long as it generally fits the description in the regulation. Although this approach leaves discretion with the Board, the discretion is considerably less than that available under the broadly written statute. The committee felt that it was important to leave some discretion with the Board rather than to set rigid requirements which might make compliance too difficult for clubs patronized by lower-income citizens—for example, requiring each establishment to operate pursuant to a charter and bylaws. The list of characteristics was drafted as precisely as possible so that applicants would have no doubt what factors the Board would consider and that unsuccessful applicants could be told clearly why they were denied permits.

The most important characteristics to be considered are: (1) whether membership is subject to clearly stated requirements tending to show a common bond; (2) whether there is some limit on membership based on the facility's size; (3) whether members participate in the establishment's organizational affairs; (4) whether membership entitles a person to significant privileges other than drinking liquor; (5) whether membership fees are greater than whatever fees would be paid by a one-time or casual user; and (6) whether use of the facility by guests is limited.

At one point the committee considered a draft with illustrative notes for several of those characteristics. For example, one note stated that a membership of 3,000 for a facility that sat 200 would

130. 4 N.C. ADM. CODE 2L § .0301(b) (Nov. 1978).
131. Id.
be considered strong evidence that the club did not have a regular, limited membership, but a continually changing patronage. Another note stated that $5 or a similarly low membership fee would be considered a cover charge rather than a membership fee. The committee and the Board did not disagree on the substance of those notes but decided to omit them rather than tempt applicants and courts to view those "illustrative" examples as firm rules. They feared, for example, that the $5 illustration might lead an applicant to believe that if he charged any amount greater than $5 he had a sufficient membership fee, whereas the view of the committee and Board was that sometimes a $10 or $15 charge would be a membership fee and sometimes it would not, depending on the size and characteristics of the clientele.

After determining the characteristics of a social establishment, the committee considered what objective facts could be made available to the Board to use as evidence of those characteristics. For this purpose a second regulation was adopted setting out certain mandatory requirements for each establishment. Most of these requirement concern written evidence of the establishment's operation: (1) each establishment is to have a written policy on membership and use by guests; (2) the membership application is to contain information on the applicant's qualifications for membership; (3) applications are to be retained; (4) an alphabetical roster of members is to be kept on the premises; and (5) written evidence of membership is to be issued to members.

The most controversial of the mandatory provisions are those requiring annual membership dues and a thirty-day waiting period for membership. To avoid discrimination against lower-income clubs, the committee rejected attempts to set a minimum membership fee and chose instead to require that whatever dues are charged be on an annual basis. At least that requirement would eliminate any confusion over the size of dues being charged and how many members paid full dues.

Although the length of the waiting period was much debated, the committee never doubted that such a period was necessary. It

133. After the Holshouser committee completed its work, the Board inserted an exemption from the thirty-day waiting period for clubs that have military service as a prerequisite for membership. 4 N.C. ADM. CODE 2L, § .0302(6) (Nov. 1978). This provision was found to be discriminatory and its use was enjoined. Nelson v. Speight, File No. 78 CVS 9697 (Mecklenburg County Super. Ct. Dec. 8, 1978). The Board later readopted the thirty-day requirement without the military exemption. 4 N.C. ADM. CODE 2L § .0302(6) (Jan. 1979).
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assumed that an establishment with real membership requirements would need to have some period in which to determine whether an applicant met the qualifications. An establishment that sold memberships at the door could not possibly check qualifications or do anything other than admit the general public. The committee recognized that its decision on the length of the waiting period would necessarily be somewhat arbitrary. It finally settled on thirty days as a reasonable length of time for a typical social establishment to review an applicant's qualifications. It also was thought that a thirty-day period would discourage backdating of applications more than a five- or ten-day period and would emphasize the seriousness of the Board's commitment to this requirement.\(^{134}\)

The committee's final problem was whether the new social-establishment regulations should apply only to those clubs that apply for a mixed-drink permit or to all social establishments. Because the same statutory provision is used to define a social establishment for both brown-bagging and mixed-drink sales, the committee and the Board felt that the regulations had to apply equally to both. In fairness to establishments that complied with the old regulations when they received their annual brown-bagging permit on May 1, 1978, but might not meet some of the new requirements (like the thirty-day waiting period), the Board made the new standards apply to all new establishments, regardless of the kind of permit being sought, and to all social establishments that apply for a mixed-drink permit, but it exempted other existing establishments until they renew their brown-bagging permits on May 1, 1979.\(^{135}\)

**Definition of Restaurant**—The regulation defining a restaurant presented fewer problems. Following the pattern established for private clubs, the committee first listed common characteristics

\(^{134}\) In 1974 a previous Board had added a five-day waiting period (later reduced to three days) to the social-establishment regulations. However, the regulation waived the waiting period if the social establishment was operated as part of a hotel or motel, and this unreasonable discrimination was the basis for a court order enjoining enforcement of the regulation. Flowe & Harrington, Inc. v. N.C. State Board of Alcoholic Control, File No. 74 CVS 13158 (Mecklenburg County Super Ct. Aug. 7, 1974).

\(^{135}\) 4 N.C. ADM. CODE 2L §§ .0301-.0302 (Nov. 1978 and Jan. 1979), the definition of social establishment for purposes of mixed-drink permits, was made effective Nov. 1, 1978. The regulation defining social establishment for purposes of brown-bagging, id., 2G, § .0101 (Apr. 1978), was amended to read exactly the same as the mixed-drink regulation, but a subsection (d) was included making the new requirements applicable after April 30, 1979, for social establishments that already held a permit on Nov. 1, 1978.
of a restaurant: (1) a printed menu showing full meals with substantial entrees; (2) complete cooking and refrigeration equipment; (3) most meals cooked and consumed on the premises; (4) separate kitchen and service staffs; (5) seating primarily at tables; and (6) only a small portion of the space dedicated to activities unrelated to food service.\textsuperscript{138} Again, to avoid discriminating against modest or slightly offbeat operations, the committee chose not to make these requirements absolute. For example, it was expected that a legitimate restaurant might well not have a printed menu but would qualify under the regulation because it fit most of the other characteristics.

Like previous ABC regulations, the new regulations state that snack bars, lunch counters, and other fast-food outlets are not considered restaurants.\textsuperscript{137} Relying on the statute that gives the Board "broad power to examine the type and nature of the business"\textsuperscript{138} in determining what is a restaurant, the committee and the Board agreed that the term restaurant is commonly understood to mean a place where most customers are seated to be served their meals on the premises. The committee decided to omit any reference to cafeterias, thinking that the places that use that title are too varied to permit a firm declaration that all cafeterias are or are not restaurants. The Board will need to review the characteristics of the individual cafeteria to decide whether it is a restaurant. A separate regulation prohibits self-service of mixed drinks,\textsuperscript{139} so that if a cafeteria receives a permit, drinks may not be picked up in the food line.

The question of table sizes and structures was discussed only casually until one day several committee members ate a meal in a restaurant that happened to have exceptionally small and, by all reports, uncomfortable tables. These members urged the full committee to define "table" for purposes of the thirty-six seat requirement. Rejecting the long and esoteric formulas of several other states concerning table shapes and construction,\textsuperscript{140} the committee settled on the requirement that a table have at least 720 square inches (just less than three feet by two feet) of top surface if it is to

\textsuperscript{136} Id., 2L, § .0201 (Nov. 1978).
\textsuperscript{137} Id.
\textsuperscript{138} N.C. GEN. STAT. § 18A-30(4)b (1978).
\textsuperscript{139} 4 N.C. ADM. CODE 2L § .0114(3) (Nov. 1978).
\textsuperscript{140} For example, REGULATIONS OF THE VA. ABC COMM'N § 41 (Feb. 1978), distinguishes between tables and counters, defines a table as "an article of furniture generally having a flat top surface supported by legs, a pedestal or a solid base and designed to accommodate the serving of food and refreshments." Only 25 per cent of the seating capacity of dining rooms may be at counters and no more than 10 per cent of the tables may have surfaces of less than 720 square inches (no surfaces with less than 576 square inches).
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be counted toward the thirty-six seat requirement. The regulation says nothing about how many chairs may be placed at that table.

Several people at the public hearings urged that mixed drinks be sold only to patrons who also purchase meals, but that seemed beyond the statute’s authority and there was no clear evidence that such a program would affect drinking habits. Virginia officials had warned that such a rule was unenforceable, relating stories of the same dried, hard, inedible hamburger placed in front of customer after customer to satisfy the requirement that food be served with the drink. The committee and the Board recognized, however, that restaurants might wish to segregate customers who primarily want a drink from those who want a meal, so the regulations provide for a separate lounge. Still, believing that the legislative intent was to license restaurants and not bars, the drafters of the regulations considered it essential that the lounge be an integral part of the restaurant. The lounge must share a common kitchen with the dining area and is to be entered only through the dining area or a common foyer, not through a separate entrance. Drinks may be served in the lounge only while the dining area is open and the food service of the dining area kitchen is available. A restaurant is free to limit the kinds of food available after a certain hour—perhaps serving only desserts after 10 p.m.—so long as the dining area remains open.

The drafters expected that the use of a separate lounge would not be abused, since selling too many drinks would mean violating the statutory requirement that the restaurant engage primarily and substantially in preparing and serving meals. During the legislative debate, that phrase “primarily and substantially” was explained several times as meaning a majority of the business, and this common-sense approach was used in the regulations. The regulation says that 51 per cent of the restaurant’s gross receipts must be from meals. The drafters had little difficulty deciding what items are part of meals. The regulation includes in meals all food and beverage sales except sales of liquor and mixers and sales of snack items or nonalcoholic drinks served by themselves. The com-

141. 4 N.C. ADM. CODE 2L § .0201(c) (Nov. 1978). The requirement of 36 seats at tables applies only to the dining area of the restaurant. The only requirement for a separate lounge is that seating be “available.” Id., § .0201(d) (Nov. 1978).
142. Id., § .0201(d) (Nov. 1978).
143. Id. The regulation specifies that the lounge “need not . . . serve full meals . . . .”
145. 4 N.C. ADM. CODE 2L § .0201(e) (Nov. 1978).
committee chose to go no further in defining meals, avoiding such value judgments as to the quality and wholesomeness of meals as the one the Virginia commission made in refusing until recently to recognize the fare of pizza parlors as meals.

Because permits are issued on an annual basis, the original proposal was that the regulation require that the sale of meals be 51 per cent of annual gross receipts, but the ultimate decision was not to restrict the Board in this way in reviewing a restaurant’s business. If the standard was annual receipts, a restaurant with quarterly reports showing that for the first nine months of the year it sold 80 per cent mixed drinks and only 20 per cent meals could argue that the Board could not take action on its permit for another three months. Nor did the committee want to go to the other extreme and force the Board to act against a restaurant’s permit when the first quarterly report, influenced by the novelty of mixed-drink sales, showed slightly more liquor sold than meals. As written, the regulation does not require the Board to act against a permittee the first time a restaurant shows less than 51 per cent food sales, but it does allow the Board to act as soon as it becomes clear that the restaurant is not primarily serving meals, even if that becomes evident before the year is up. The Virginia commission reported that very few full-service restaurants had any difficulty meeting their 50 per cent meals requirement, with most averaging 70 to 80 per cent of their receipts from meals.

Definition of Hotel with Restaurant—When the Holshouser committee began deliberating, its working assumptions were that a restaurant in a hotel was simply another kind of restaurant and that any mixed-drink permit would be for the restaurant only and would not affect the rest of the hotel. The chairman urged a closer reading of the statute. As a result the committee decided that there was in fact a separate category of place that should be eligible for a permit—a hotel with a restaurant—and the permit should properly be issued to the entire hotel. The statute on “restaurants and related places,” read carefully, distinguishes between the “premises” that must contain a thirty-six seat dining area and the “business” or the “business establishment” that includes the premises and is to receive the permit. That “business” may be engaged primarily and substantially in serving meals or furnishing lodging. The view adopted by the committee and the Board and expressed in the regulation is that a hotel must have a restaurant on the premises, but the permit is to be issued to the hotel, the “business,” rather than

to the restaurant.\textsuperscript{147}

Although not addressed in the regulations, another question arose: Did it matter, in regard to issuing a permit, whether the restaurant were operated by someone other than the owner or operator of the hotel? Testimony at the hearings indicated that a majority of hotels may lease their restaurant space to be operated by someone else. The consensus was that who operated the restaurant was irrelevant so long as there was a legitimate thirty-six seat restaurant on the hotel premises. If the restaurant and hotel were operated by the same person, one permit could be issued for the entire hotel and restaurant. If they were under separate control, the restaurant and the hotel would receive separate permits. In fact, the hotel could have a mixed-drink permit even if the restaurant did not. But if the restaurant ceased operation, regardless of its ownership, the hotel would no longer be eligible for a permit.

Once the committee decided that the hotel and not just the restaurant would receive the mixed-drink permit, some limitation had to be placed on the areas where drinks might be sold and consumed to aid enforcement agents in determining whether the law is being obeyed. Since observation would be impossible, room-service sale of mixed drinks is prohibited.\textsuperscript{148} In order to limit the areas where consumption can take place, the hotel operator must designate on the floor plan submitted with the application what areas are generally open to the public and what areas are used only for scheduled events.\textsuperscript{149} Drinks may be sold at any time during lawful hours in the areas open to the public but may be sold in the scheduled event areas only during such events.\textsuperscript{150} Because hotels are so big, requiring each public area in which drinks are sold to be connected with the restaurant would severely restrict the use of the

\textsuperscript{147} 4 N.C. ADM. CODE 2L § .0205 (Nov. 1978). Whether the facility on the hotel premises qualifies as a restaurant is determined by the regulation defining a restaurant (§ .0201(b) (Nov. 1978)), which means that the facility must have a full-service kitchen, a printed menu, etc. However, because the hotel is subject to the statutory requirement of being engaged primarily in furnishing lodging, the restaurant need not show that 51 per cent of its business is from serving meals. Because N.C. GEN. STAT. § 18A-30(4) (1978) requires the restaurant to be located on the hotel's premises and 4 N.C. ADM. CODE 2L § .0102(b) (Nov. 1978) defines the premises to include only the building and "property immediately adjacent thereto which forms a component or integral part of the business for which the permit is issued," the restaurant must have some association with the hotel other than simply being located next door to it.

\textsuperscript{148} 4 N.C. ADM. CODE 2L § .0205(e) (Nov. 1978).

\textsuperscript{149} Id., § .0205(e) (Nov. 1978).

\textsuperscript{150} Id., § .0205(b) (Nov. 1978).
premises. Still, the legislative intent conditions the hotel's permit on the existence of a restaurant. Thus the regulations require that the restaurant's food services be "available" to the areas where drinks are served. A hotel can therefore have a bar or lounge entirely separate from the restaurant, even floors away, if the lounge has access to and offers its patrons the food service of the restaurant, though not necessarily the entire menu.

Storage and Handling of Liquor—When the mixed-drink bill was in the legislature, probably no one anticipated the burdens that would be created by the $10 per gallon surcharge and the decision to allow brown-bagging to continue in social establishments. The regulations deal at greater length with enforcing the $10 surcharge than with any other subject. Except for the mixed-drink tax, there would be no need for the tax stamp nor the provisions against transferring stamps. Nor would the regulations need to require separate, locked storage of the stamped bottles or require that all empty bottles be broken. Nor would the purchase-transportation permit and the purchase form have to carry such detailed information, nor would permittees and ABC stores have to retain those records. All of those regulations have a single purpose—monitoring the permittee's purchases to tell whether he is using liquor for which the $10 surcharge has not been paid.

Cheating on the surcharge becomes even harder to uncover if other people are allowed to bring their own bottles on the premises. The previous regulations on social establishments allow an establishment's employees to keep a member's locker key, to hold his bottle while he was on the premises, and to mix his drinks. That is still the rule if the establishment has only a brown-bagging permit. However, the committee and the Board decided that when an establishment has a mixed-drink permit such a practice would make enforcement of the surcharge impossible. Various options were debated, most of them centered on segregating the sale of mixed drinks and brown-bagging into different rooms or separate bars. Among the arguments against such a rule was that it could split the family if

151. Id.
152. Id., § .0111(g) (Nov. 1978). Although the regulation requires the bottle to be broken as soon it is empty, the Board has stated that the permit holder may wait until the end of the day to break all the bottles.
153. Id., 2G § .0201 (Feb. 1978 and Nov. 1978). The member's liquor is to be used only by him and his guests; the social establishment employee is to return the member's key to him before the member leaves the premises. The regulation is interpreted to require the employee to pour out any liquor left behind by the member.
the wife wanted a fancy mixed drink and the husband wanted to pour his whiskey from his own bottle; no mention was made of the kids’ likely preference. The answer was a regulation stating that when a social establishment has both brown-bagging and mixed-drink permits, an employee may not possess a member’s liquor except to attach a label with the member’s name, as is required for all brown-bagging at social establishments. Included is a prohibition against keeping any member's liquor behind the bar. The effect is to require the brown-bagger to mix all his own drinks, which undoubtedly will discourage brown-bagging.

Potential mingling of bottles also occurs when a social establishment or restaurant or hotel has both a mixed-drink permit and a special-occasion permit. A special-occasion permit allows a patron who has the permit holder’s consent to possess alcoholic beverages on his premises. The patron may bring any amount on the premises to serve, but not to sell, to one’s guests at a “special occasion” like a wedding reception or other party. To limit the opportunities to disguise the possession of liquor without the $10 surcharge stamp, the regulations prohibit the sale of mixed drinks and the holding of a special occasion in the same room at the same time. In a hotel, for example, mixed drinks may not be sold in a ballroom if a bride’s parents have brought in their own liquor for their daughter’s wedding reception, but drinks may be sold there at a retirement party later in the day if the hosts have chosen to have the hotel sell drinks rather than bring in their own liquor. In a social establishment

154. Id., § .0304 (Nov. 1978) and 2G § .0201 (Feb. 1976 and Nov. 1978). Nor may the employee at any time possess the key to the member’s locker.


156. 4 N.C. ADM. CODE 2L § .0304 (Nov. 1978).

157. N.C. GEN. STAT. § 18A-30(3) (1978). Neither statute nor regulation defines what constitutes a special occasion. If the special occasion is on one’s own premises, no permit is needed. If the occasion is at a private club or commercial establishment, a permit is necessary. That permit may be an annual permit, which costs $200, or a permit for a single 48-hour period, which costs $25. Id., § 18A-31(b) (Interim Supp. 1978).

158. General provisions to this effect are found in 4 N.C. ADM. CODE 2L § .0204 (Nov. 1978) and 2L § .0120 (Nov. 1978). A more specific provision to the same effect for hotels is in 2L § .0205(d) (Nov. 1978).

159. The hotel could sell drinks to individual guests at the social occasion, or the host of the occasion could contract for the hotel to serve all the guests at a set rate or at a rate based on the total consumption. The only limitation in the statutes or regulations on the form of sale is that the permit holder may not provide free drinks except to his personal guests. 4 N.C. ADM. CODE 2L § .0113(7) (Nov. 1978). No statute or regulation requires that the payment be made immediately after the drink is served.
with both brown-bagging and mixed-drink permits, employees may handle members' bottles during private meetings and parties.\textsuperscript{160}

**Employees**—The mixed-drink act is silent on the ages for employees of permit holders other than the general provision that no one under twenty-one may possess mixed drinks.\textsuperscript{161} The regulation on employees\textsuperscript{162} was written to be consistent with that point of law, with existing ABC regulations, and with the child labor statutes. With twenty-one the legal drinking age, it was necessary to require the manager and bartender to be twenty-one. Tracking the labor statutes, the mixed-drink regulations require that all other employees, including waiters and waitresses, be at least eighteen except that persons between sixteen and eighteen may be employed in grade A restaurants if they neither prepare nor serve liquor.\textsuperscript{163}

The regulations prohibit employment of an "unsuitable person," a term defined so as to incorporate the statutory provisions banning any person who has been convicted of a felony or a liquor or drug offense in the last several years.\textsuperscript{164} The regulation apparently also gives the Board discretion to label other unspecified kinds of people as unsuitable and to reject their employment for that reason. The vagueness of this provision raises questions as to its validity.\textsuperscript{165}

\textsuperscript{160} 4 N.C. Adm. Code 2L § .0304 (Nov. 1978). This provision is somewhat vague and does not really answer the question whether the establishment might also sell drinks at that special occasion.


\textsuperscript{162} 4 N.C. Adm. Code 2L § .0105 (Nov. 1978).

\textsuperscript{163} N.C. Gen. Stat. § 110-7 (1978). It might be argued that the provision of the regulation allowing 18-year-old waiters and waitresses to deliver drinks conflicts with the statute prohibiting possession of mixed drinks by someone under 21. The committee and Board considered this argument but decided that simply transferring a drink from a bar or kitchen to a customer was not the kind of possession intended to be prohibited.

\textsuperscript{164} 4 N.C. Adm. Code 2L § .0105(d) (Nov. 1978). The regulation tracks the provisions of N.C. Gen. Stat. § 18A-43(a) (1978), which makes it grounds for suspension or revocation of a beer or wine permit to employ any person convicted within three years of a felony involving moral turpitude or convicted within two years of a liquor or drug violation. The ban also applies if the employee pleaded guilty or no contest. These provisions are made applicable to permits other than beer and wine permits by N.C. Gen. Stat. § 18A-31(d) (1978). The regulation applies only to employees who handle liquor and the Board may waive it in hardship cases.

\textsuperscript{165} The only possible authority for such a regulation is N.C. Gen. Stat. § 18A-43(b) (1978) which states that the Board may refuse to issue, or may suspend or revoke, a permit if it "is of the opinion that the applicant or permittee is not a suitable person to hold such a permit. . . ." If that is a sufficiently precise standard to meet constitutional muster as the grounds for rejecting a permit applicant, then it would be argued that the Board also ought to be able to prevent such
Like several other regulations intended to prevent the liquor industry from exerting influence over licensed premises, a regulation prohibits a mixed-drink permit holder from employing anyone who is also employed or otherwise involved in the manufacture, bottling, wholesaling, etc., of intoxicating liquor. 166

Advertising—Although the mixed-drink legislation does not mention advertising, another ABC statute authorizes the Board to deal with the subject. 167 Existing regulations go into great detail, including specifications of the size of wine menus and the kind of designs that may appear on them. 168 With such rules already extant, the new provisions related specifically to mixed drinks were kept to a minimum. 169 A general provision states that if there is a conflict between the mixed-drink advertising regulations and the more general advertising regulations, those on mixed drinks control. 170 The common theme of all the regulations is that the businessman may notify his customers that he has mixed drinks available but not encourage consumption or make nondrinking customers uncomfortable.

Exterior advertising of mixed drinks is allowed only by restaurants and hotels. It may include only a single sign not greater than six by twenty-four inches in size and with letters no larger than five inches. The only statements allowed on the sign are “mixed beverages” or “all ABC permits.” Symbols intended to represent mixed drinks, such as cocktail glasses, are banned. The sign may have a spotlight turned toward it, but it may not be neon or otherwise self-illuminated. Because it is not open to the public and has no need to solicit business from the streets, a social establishment may not use any exterior advertising. 171

undesirable people from working for people who do get permits. Nothing was stated by Holshouser committee or Board members to indicate that anyone had in mind any particular categories of people they would automatically consider unsuitable.

166. 4 N.C. ADM. CODE 2L § .0105(e) (Nov. 1978).

167. Actually the authority to regulate comes by implication, since N.C. GEN. STAT. § 18A-10 (1978) says that all advertisement of liquor is lawful “provided such advertising complies with the rules and regulations of the State Board of Alcoholic Control.”

168. For example, 4 N.C. ADM. CODE 2B § .0907 (Feb. 1976) limits the wine list to 9 x 12 inches, allows it to be printed only on plain white or solid colored material, requires decoration to be “conservative,” and limits the use of “decorative scenes” (grapevine borders, vineyards, cellar scenes) to two on the cover, four on the inside, and no more than three per page.


170. Id., § .0501.

171. Id., § .0503.
One legislator-member of the Holshouser committee pointed out to the other members that the House had rejected an amendment to the mixed-drink bill that would have required each licensed premises to have a sign of a certain size stating that mixed drinks are sold within.\(^{172}\) His recollection was that the amendment, offered by an unwavering opponent of the bill, had placed other opponents in a quandary, not being sure whether the value of the sign as a warning device really offset the profit-making purpose it might serve for the proprietor. The committee decided on language making the use of a sign permissive.

Again to avoid the promotion of drinking and undue pressure on patrons who do not want to drink, signs inside the premises to advertise mixed drinks are prohibited. But that rule does not forbid a mixed-drink menu, a sign listing drink prices, the display of alcoholic beverage bottles at the bar, or the display of cards in hotel rooms stating when and where drinks are available. A mixed-drink menu must be separate from the food menu.\(^{173}\)

Mass media advertising\(^{174}\) is similarly limited. Only general references to "mixed beverages" or "all ABC permits" are allowed. Price advertising is prohibited as is the promotion of a "happy hour," though a regular period during which prices are reduced may be held and those reduced prices stated on the menu or on a price sign inside the premises. Printed references to mixed drinks are limited to half the size of other lettering in a newspaper ad and may never be larger than 18-point type. To emphasize the intention to apply the law on social establishments strictly and to prevent deception of the public, any advertisement by such an establishment must carry the statement "not open to the general public." The drafters of the regulations considered banning advertisement by social establishments altogether, but they realized that occasionally, as in a membership drive, a private club might need to advertise. If the social establishment is advertising a function open to the general public, such as a veteran's club barbeque or fish fry to raise money for a charitable project, the words "not open to the general public" need not be included in the ad. Although the statutes and regulations do not specifically address the issue, it would not seem proper for drinks to be sold at such a fund-raising event since the

\(^{172}\) Amendment offered by Rep. P. C. Collins on the House floor, June 9, 1978 (copy in Institute of Government legislative files). The amendment would have required each establishment to have a sign outside the premises stating, in letters at least three inches high, that mixed drinks are sold within.

\(^{173}\) 4 N.C. ADM. CODE 2L § .0502 (Nov. 1978).

\(^{174}\) Id., § .0504.
social establishment would fail to meet a primary statutory condi-
tion of its permit, that it not be open to the public, during that
event. The potential abuse of allowing drinks to be sold at public
events is obvious.

Billboard advertising of alcoholic beverages has been and still
is prohibited altogether.\footnote{175}

Relationships with Industry Representatives—Like other
industries, liquor manufacturers and wholesalers employ represent-
atives to visit retailers to explain and promote their products. These
salesmen are licensed by the State ABC Board\footnote{176} and are regulated
to prevent undue influence by offering gifts or other inducements.\footnote{177}

Before mixed drinks became legal, the only legal retailers of
spirito us liquor in North Carolina were the State ABC Board and
city and county ABC stores. Members of the state and local ABC
boards were the only persons whom distillery representatives were
allowed to contact.\footnote{178} Although the public position of the liquor
industry favored allowing their representatives to do business di-
rectly with mixed-drink permit holders, a private polling of repre-
sentatives by the State Board indicated overwhelming sentiment
against such privileges. At least in part, the representatives wanted
to avoid giving permit holders the opportunity to seek gifts and
other favors as a reward for carrying their products. Beer representa-
tives, who do visit retailers, are regularly solicited to provide free
clocks or signs or other goods and to have their employees help
unload trucks or perform other services for the retailer. With such
abuses in mind, the regulations prohibit liquor representatives from
promoting or soliciting orders in any manner, including mailings,
from mixed-drink permit holders.\footnote{179} The regulation also contains a
ban, applicable to both representatives and permit holders, on offer-
ing and accepting gifts, money, services, equipment, and other
things of value.

A separate regulation prohibits anyone who is an owner, officer,
employee of a liquor business, or anyone who has a significant finan-

\footnote{175. \textit{Id.}, § .0505.}
\footnote{176. \textit{Id.}, 2D, § .0303 (Feb. 1976). This provision requires a vendor representa-
tive to acquire an annual permit. Although the statutes do not specifically require
this permit, the Board issues it under its general authority (N.C. GEN. STAT. § 18A-
15(12) (1978)) to grant permits to anyone in the business of selling alcoholic bever-
ages. Although the Board's authority to inspect records of a distillery representa-
tive was challenged in \textit{Myers v. Holshouser supra} note 100, no question was raised
concerning its authority to license the representative.}
\footnote{177. 4 N.C. ADM. CODE 2D § .0304(c) (Feb. 1976).}
\footnote{178. \textit{Id.}, §§ .0203 & .0204 (Feb. 1976).}
\footnote{179. \textit{Id.}, 2L, § .0107 and 2D, § .0304(e) and (f) (Nov. 1978).}
cial interest in such a business from having any financial interest in a business with a mixed-drink permit or in a building where a licensed business is located. 180 The drafters agreed on the term “significant financial interest” after considering several other phrases related to percentage ownership of stock and other precise measures. They did not want this restriction to apply to someone who owns a few shares of a large conglomerate that includes a distillery as one of its divisions, but they wanted to be able to act against the person who owns a few shares that happen to constitute a significant investment in the company.

A related regulation prohibits paying any of the profits from a mixed-drink business to a person who does not hold a financial interest in the business and has not provided any service to it. 181 This provision affords another handle for the Board to use in acting against hidden ownerships and payoffs.

Prohibited Acts—Several regulations consist of long lists of “prohibited acts” for permit holders. These prohibited acts are essentially only a “thou shall not” way of saying what is implied elsewhere in the regulations. Their main purpose is to provide enforcement officers with a simple reference for charging a permit holder with a violation. These sections are also used to incorporate in the regulations certain statutory prohibitions, such as selling to someone who is intoxicated or allowing lewd entertainment. Some of the prohibited acts complement and aid the enforcement of other provisions of the statutes and regulations. For example, the prohibition against placing counterfeit tax stamps on bottles 182 is directly related to the provisions discussed earlier on enforcing the $10 surcharge.

Several prohibitions deserve separate discussion: (1) A permit holder may not serve free drinks to anyone other than his personal guests. 183 This provision is intended to prevent promotion of drinking, but nothing in the statutes or regulations requires the permit holder to charge more than a few pennies for a drink or prevents a customer from buying drinks for other customers. (2) A permittee must not misrepresent the brand of liquor being used in a drink. 184 If a customer requests a specific brand, the permit holder must notify him if another kind is used. 185 (3) Permit holders and their

180. *Id.*, 2L § .0108 (Nov. 1978).
182. *Id.*, § .0112(4) (Nov. 1978).
183. *Id.*, § .0113(7) (Nov. 1978).
184. *Id.*, § .0114(6) (Nov. 1978).
185. *Id.*, § .0114(7) (Nov. 1978).
employees may not actively encourage or entice customers to drink or insist that they do so.\textsuperscript{186} Employees may not be rewarded for encouraging or enticing customers to drink.\textsuperscript{187} Several committee members had had personal experiences in out-of-state restaurants where they could not order food without ordering a drink or were regularly visited by a waiter persistently urging them to further drinking. This rule would prohibit a restaurant from setting employees' salaries or giving bonuses on the basis of the amount of liquor sold, though it would not restrict pay increases or bonuses based on some more general evaluation of efficiency. (4) Living quarters, other than hotel rooms, may not be established on licensed premises.\textsuperscript{188} This is a provision carried over from other ABC regulations. Its primary purpose seems to be to avoid claims of unlawful searches when enforcement agents want to inspect the premises.\textsuperscript{189}

**Miscellaneous**—Although they are set out in the statute and are not subject to alteration by regulation, the hours of sale and consumption are included in the regulations\textsuperscript{190} as part of a policy of giving the permit holder all information related to mixed drinks in one source.

Automatic dispensing equipment may be used, but each brand of equipment must be approved by the State Board.\textsuperscript{191} The reason for this rule is that if liquor must be poured from the original bottle before it can be used in an automatic dispenser, it might provide the permit holder with a means to hide the fact that he is buying liquor without the $10 tax stamp. The same concern lies behind the regulation against mixing drinks before an order is received from a customer,\textsuperscript{192} although all ingredients other than the liquor may be mixed in advance.

A number of consumer advocates suggested that the Board require mixed drinks to have a minimum alcohol content. This suggestion was rejected because of enforcement problems and because it would deny the bartender the chance to water down the

\textsuperscript{186} Id., § \textsuperscript{.0114(8)} (Nov. 1978).
\textsuperscript{187} Id., § \textsuperscript{.0114(9)} (Nov. 1978).
\textsuperscript{188} Id., § \textsuperscript{.0116(1)} (Nov. 1978).
\textsuperscript{189} N.C. Gen. Stat. § 18A-19(e) (1978) grants alcohol law enforcement agents of the Department of Crime Control and Public Safety the authority to inspect premises at any hour of day or night, with refusal to allow inspection grounds for suspending or revoking the permit. City and county ABC officers and other local law enforcement officers have the same authority through N.C. Gen. Stat. § 18A-20(b) (1978).
\textsuperscript{190} 4 N.C. Adm. Code 2L § .0103 (Nov. 1978).
\textsuperscript{191} Id., § .0109 (Nov. 1978).
\textsuperscript{192} Id., § .0109(c).
drinks of a customer who was becoming intoxicated. Still, the permit holder must notify the customer if the drink contains less than one ounce of alcoholic beverage.\textsuperscript{193}

\textbf{Regulations Rejected}—The committee and Board rejected any number of other suggestions for regulations. Several are related to regulations already discussed, \textit{e.g.}, the proposals for minimum or maximum prices and minimum or maximum alcoholic content. Spokesmen from the Christian Action League wanted “no drinking” sections set aside in restaurants. That suggestion was not accepted. As already noted several regulations take into account the possible sensibilities of non-drinking customers.

Despite newspaper reports that the mixed-drink bill required restaurants to have a grade A rating, the legislation never contained such a rule. Nor has a grade A rating been required for a restaurant to obtain a brown-bagging permit, though it is required for on-premises sale of wine.\textsuperscript{194} The committee and the Board decided not to require a grade A rating after hearing testimony that restaurants with perfectly satisfactory sanitary conditions sometimes fail to receive a grade A for other unrelated reasons. In particular, it was alleged that minority-owned restaurants have trouble getting grade A ratings even when there is little question about their cleanliness.

The regulations say nothing about topless waitresses or dancers, mainly because the drafters of the regulations did not consider such activity likely in restaurants that would have to meet the other requirements for a permit. Also, there is some question whether the statutory prohibition against lewd entertainment and nude dancers\textsuperscript{195} gives the Board authority to prohibit toplessness. Court decisions have held that the bare female breast is not indecent exposure.\textsuperscript{196} Having those doubts, the Board decided to wait until there was some indication that topless entertainment created problems.

Suggestions to license bartenders were heard, partly as a means of assuring properly mixed drinks and partly to raise revenue, but requiring such a license is beyond the authority given the Board.

\textsuperscript{193} Id., § .0110 (Nov. 1978).

\textsuperscript{194} N.C. GEN. STAT. §§ 18A-38(f) and -52(j) (1978). If a restaurant loses its grade A rating, sales must stop after 30 days. One option in calling a city or county malt beverage election is to limit on-premises sales to grade A hotels and restaurants. Id., § 18A-52(j).

\textsuperscript{195} N.C. GEN. STAT. § 18A-30(8)(g) (Interim Supp. 1978).

\textsuperscript{196} The indecent-exposure statute, N.C. GEN. STAT. § 14-190.9 (Supp. 1977), prohibits exposure of one’s “private parts” in the presence of someone of the opposite sex. Female breasts are not considered “private parts.” State v. Jones, 7 N.C. App. 166, 171 S.E.2d 468 (1970).
under the statute. The suggestion to bond permit holders was shelved for the same reason. Bonding might be desirable if the Board is ever given the authority to levy fines against permit holders. Currently, the Board can only suspend or revoke the permit.\textsuperscript{197} An administrative fine, payable from the bond if necessary, would give the Board more flexibility in dealing with minor violations. Typically what happens now is that the permit is suspended but then that penalty itself is suspended on condition that the permittee not violate any other ABC regulations, in effect a probationary sentence.\textsuperscript{198}

Committee and Board members discussed writing a set schedule of penalties for violating the mixed-drink regulations. That is, the regulations would state that having on the premises a bottle without the $10 surcharge stamp would automatically result in a 30-day suspension of the permit. The main purpose of such a schedule would have been to emphasize which violations the Board considered most serious. The most severe penalties would have been for buying and using liquor without paying the $10 surcharge or for opening a social establishment to the general public. The drafters of the regulations decided, however, that a set schedule of suspensions would probably result in unnecessarily harsh punishments in some cases. Also, with no punishment authority other than suspensions, the Board needed to retain as much flexibility as possible. By deciding against the set schedule, which would have committed it to punish each permit holder violating one of the provisions included in the schedule, the Board, in effect, decided to retain the "good-faith" standard that has been its unwritten practice in dealing with permit holders, rejecting what would have been a move toward stricter liability.

\textbf{1979 Legislation}

Several of the issues discussed in this article were the subject of debate early in the 1979 session of the General Assembly. By mid-March, when this was written, bills had been introduced to change the definition of a social establishment and to specify the State ABC Board’s authority to require a 30-day waiting period for memberships, to remove local restrictions that prevent wine from being sold in some places where mixed drinks have become legal, to specify

\begin{itemize}
\item \textsuperscript{197} N.C. GEN. STAT. § 18A-43 (1978).
\item \textsuperscript{198} For example, of 560 total actions taken by the Board on permits in 1976, 218 were suspended suspensions. N.C. BOARD OF ALCOHOLIC CONTROL, 1976 ANNUAL ACTIVITY REPORT.
\end{itemize}
when cities may vote separately on mixed-drinks, to allow drinks to be sold in civic centers and convention centers, and to prohibit topless dancing in places with mixed-drink permits. Early indications were that the actual commencement of mixed-drink sales had taken much of the emotionalism out of the liquor-by-the-drink issue. By early March 1979, mixed-drink sales had already begun in a dozen counties following voter approval in Mecklenburg, Orange, Wake, Durham, New Hanover, and Onslow counties and in the cities of Sanford, Greensboro, High Point, Asheville, Southern Pines, Winston-Salem, Louisburg, Southport, Long Beach, Sunset Beach, Calabash, and Yaupon Beach. Elections had failed only in Dare and Alamance counties and in the cities of Black Mountain, Burlington, and Graham. Perhaps with those election results in mind, even legislators who were strong opponents of liquor-by-the-drink in 1977 and 1978 seemed in early 1979 to be accepting its existence and to be more interested in making improvement in the present mixed drink scheme rather than trying to dismantle it. The lengthy mixed-drink debate did focus considerable attention on the North Carolina ABC system and there were signs that the exposure might result in more basic changes in the next few years. In fact, one of the first liquor-related bills introduced in the 1979 General Assembly was a proposal for a two-year study and thorough revision of the state's patchwork ABC laws.

**CONCLUSION**

H. L. Mencken suggests the following possible origins for the word "cocktail":

1. That the word comes from the French *coquetier*, an eggcup, and was first used in New Orleans soon after 1800.
2. That it is derived from *coquetel*, the name of a mixed drink known in the vicinity of Bordeaux and introduced to America by French officers during the Revolution.
4. That its parent was a later *cock ale*, meaning a mixture of spirits and bitters fed to fighting cocks in training.
5. That it comes from *cock-tailed*, 'having the tail docked so that the short stump sticks up like a cock's tail.'
6. That it is a shortened form of *cock tailings*, the name of a mixture of tailing from various liquors, thrown together in a common receptacle and sold at a low price.
7. That in the days of cock-fighting, the spectators used to toast the cock with the most feathers left in its tail after the con-
test,' and 'the number of ingredients in the drink corresponded with the number of feathers left' [footnotes omitted].

Although the cocktail's origins may be cloudy, we can feel fairly certain about its future in North Carolina. Now that mixed drinks have become a reality, they are likely to remain lawful. The recent attention focused on the ABC laws may result in tinkerings with the ABC system, but almost certainly the system will remain highly dependent on local option and will contain provisions for sales of all kinds of liquor by the bottle and by the drink. Presumably North Carolina, like the other states, will gradually reduce the limitations on mixed drinks. The first concession will probably be in extending legal sale of cocktails to places like convention centers. Later extensions will be for other places that do not serve meals or have restricted membership. As that happens, and as more cities and counties vote for mixed drinks, the interest in retaining brown-bagging will diminish. Now that she has lost the distinction of being the only state east of the Mississippi without mixed drinks, there is no reason to believe that North Carolina will behave much differently from her neighboring states in regard to liquor law.

ADDENDUM

The 1979 General Assembly, which adjourned just as printing of this issue began, passed several bills concerning mixed drinks. Unless otherwise indicated, these acts are all already in effect. For this article, the most important act was Chapter 718 of the 1979 Session Laws (originally House Bill 206). That act specifies that the State ABC Board has authority to adopt regulations concerning social establishments, including regulations requiring membership committees, issuance of identification cards to members, separating brown-bagging and the drinking of mixed drinks, and imposing a waiting period for membership of up to 30 days. In effect, the act confirms the regulations already promulgated by the Board.

Two essentially local situations were dealt with by statewide acts. Chapter 609 (H.B. 1298) allows a mixed drink vote to be held in a township if that is the unit of government that approved the establishment of ABC stores. A petition of the voters of Mineral Springs township in Moore County was the authority for establishing an ABC store in Pinehurst in 1935; now the Moore County

commissioners may authorize Mineral Springs township to vote on mixed drinks, creating the possibility of mixed drinks in Pinehurst. The only other township involved in establishing ABC stores was McNeills township, also in Moore County, but the city of Southern Pines in that township already has approved mixed drinks in a city election.

The other state act alleviating a local problem was Chapter 384 (H.B. 895). That act provides that when a city votes for mixed drinks, a restaurant or other eligible establishment on the property of an airport operated by the city but outside the city limits still may receive a mixed-drink permit if the airport boards at least 150,000 passengers annually. The only airport affected is the Greensboro/High Point/Winston-Salem regional airport. The mixed-drink election there was a city election since Greensboro has its own ABC system.

Beginning October 1, 1979, absentee ballots may be used in mixed-drink elections, and in all other ABC elections, by virtue of Chapter 140 (H.B. 53). Sale of liquor to someone under age is a misdemeanor. The statute has said that failure to ask for a driver's license or other identification establishes a prima facie case that the sale was made knowingly. Previously that prima facie rule applied only to sales of beer and unfortified wine to those under 18. One provision of Chapter 683 (H. 986) makes the rule applicable to sales of alcoholic beverages and mixed drinks to persons under 21. Incidentally, that act also makes all places that have mixed-drink permits automatically eligible for permits to sell unfortified and fortified wine for consumption on the premises. Previously only restaurants were eligible for wine permits, and there were some places, such as Sanford and several beach towns in Brunswick County, that had approved mixed-drink sales but had never authorized wine. The act is effective regardless of any local act or local wine election to the contrary.

Finally, Resolution 75 (H.B. 279) authorizes, but does not require, the Legislative Research Commission to study the ABC statutes and propose a revision to the 1981 General Assembly.