

STATE OF WEST VIRGINIA

AUDIT REPORT

OF

**WEST VIRGINIA ALCOHOL BEVERAGE
CONTROL COMMISSIONER**

**FOR THE PERIOD
JULY 1, 1996 – JUNE 30, 1997**



OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305-0610

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

FOR THE PERIOD

JULY 1, 1996 - JUNE 30, 1997

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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The Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 60, Article 2, Section 21, as amended, we have examined the accounts of the West Virginia Alcohol Beverage Control Commissioner.

Our examination covers the period July 1, 1996 through June 30, 1997. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,

A handwritten signature in black ink, reading "Thadford L. Shanklin".

Thadford L. Shanklin, CPA, Director
Legislative Post Audit Division

TLS/cal

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

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WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

EXIT CONFERENCE

We held an exit conference on July 6, 1999 with the Commissioner, Administrative Services Manager and Director of Accounting of the West Virginia Alcohol Beverage Control Commissioner and all findings and recommendations were reviewed and discussed. The above officials' responses are included in italics in the Summary of Findings, Recommendations and Responses and after our recommendations in the General Remarks section of this report.

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

INTRODUCTION

The 21st Amendment of 1933 repealed national prohibition and gave each state the right to make and enforce its own laws governing alcoholic beverages. In 1934, the people of West Virginia repealed a July 1, 1914 amendment to the State's Constitution which made absolute prohibition a part of their law.

The West Virginia Legislature, on February 22, 1935, repealed Chapter 60 of the West Virginia Code providing for the State control of alcoholic liquors; and, as subsequently amended by Senate Bill No. 294 passed March 8, 1935, created the West Virginia Liquor Control Commission. The West Virginia Liquor Control Commission was abolished by Acts of the 1957 Legislature, C. 5, which created the Office of the West Virginia Liquor Control Commissioner. The latter office was abolished by Acts of the 1965 Legislature, C. 8, which act created the office of the West Virginia Alcohol Beverage Control Commissioner and transferred to him all powers and authority vested in the former commission.

The purpose of Chapter 60 of the West Virginia Code is to give effect to the mandate of the people expressed in the repeal of the State prohibition amendment; and to be public policy of the State to regulate and control the manufacture, sale, distribution, transportation, storage and consumption of alcoholic liquors and, at the same time, to assure the greatest degree of personal freedom consistent with the health, safety, welfare, peace and good morals of the people of this State. The these ends the police power of the State is pledged to the sound control and temperate use of alcoholic liquors.

The Acts of the 1990 Legislature, C. 9, established Article 3A, Chapter 60 of the West Virginia code to be known as the "State Retail Liquor License Act." This act declares that the sale of liquor at retail should not longer be by the State, but rather by retail licensees; that there is a need for the State to control the wholesale sales of liquor; that the health and welfare of the citizens of the State will be adequately protected by the licensing and control of such retail licensees; that the sale of liquor through retail licensees will satisfy reasonable consumer concerns of availability and price; and, that the operation and efficiency of State government will be improved by removing the State from the retail sale of liquor.

The purpose of this act is to continue revenue to the State from the wholesale sale of liquor; provide a system of controls, through limitations on the number of retail outlets and application of the police power of the State, to discourage the intemperate use of liquor; preserve and continue the tax base of counties and municipalities derived from the retail sale of liquor; and, obtain for the State financial gain from the issuance of retail licenses.

The administrative office of the West Virginia Alcohol Beverage Control Commissioner is located at 322 70th Street, Charleston, West Virginia. The warehouse is located at HUB, Nitro, West Virginia.

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

ADMINISTRATIVE OFFICERS AND STAFF

Donald Stemple.....Commissioner (April 16, 1997 to June 30, 1997)
Richard Atkinson, III Commissioner (July 1, 1996 to April 15, 1997)
Keith Wagner Deputy Commissioner
Edward Hart Deputy Commissioner
Ronald MoatsAdministrative Services Manager
Howard WellmanAdministrative Services Manager
Patricia Holtsclaw Director of Accounting
Gary Phillips Data Processing Manager
Bill Adkins Director of Enforcement
Glenna RoePayroll Supervisor
Carl Linville Director of Warehouse Operations
Lola Walters Licensing Supervisor

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER
SUMMARY OF FINDINGS, RECOMMENDATIONS AND RESPONSES

ENFORCEMENT:

Official Time Records Disagree with Inspection Reports

1. We were unable to reconcile the times worked by three enforcement inspectors as noted on the official time records (time sheets) to the time recorded on their travel expense vouchers and inspection reports. It appears inspectors are adjusting times as necessary to show 40 hours worked per week to comply with a former Commissioner's policy that overtime would be denied if authorization to work is not obtained.

We recommend the Commission establish sufficient internal control procedures to ensure time is recorded properly and accurately, and to ensure compliance with the federal Fair Labor Standards Act and the West Virginia Code.

AGENCY'S RESPONSE

We have established procedures to assure the information on all documents is accurate and in agreement and all overtime worked is paid. (See pages 29-32.)

Unaccounted for Evidence

2. We were unable to locate several items of seized evidence recorded on evidence forms. In addition, we noted cash totaling \$1,172.00 recorded on evidence forms was not secured in the safe with other cash. We also noted two differences of (\$21.00) and \$20.00 in cash recorded and cash on hand when we performed a cash count.

We recommend the Commission strengthen internal controls over the safeguarding of cash seized as evidence as well as implement a control system to account for the disposition of evidence.

AGENCY'S RESPONSE

We will comply with the recommendation. (See pages 32-35.)

Late Deposits of Cash

3. The Commission was not making deposits of cash forfeited to the State within 24 hours in accordance with Chapter 12, Article 2, Section 2 of the West Virginia Code. Deposits totaling \$3,692.19 were made 6 to 244 days late. Secondly, an additional \$2,530 of forfeited cash had been available for deposit from 34 to 252 days as of June 19, 1998. We estimated the State lost approximately \$90.00 in interest on the forfeited cash totaling \$6,222.19. We also noted the Commission retains cash seized as evidence in a safe at the Commission instead of the vault at the State Treasurer's Office.

We recommend the Commission comply with Chapter 12, Article 2, Section 2 of the West Virginia Code and make deposits within 24 hours. We also recommend that cash be kept in the vault in the State Treasurer's Office.

AGENCY'S RESPONSE

We will deposit cash promptly after the violation is settled but we do not believe it is feasible to store cash in the Treasurer's Office. (See pages 35-36.)

Travel Reimbursements

4. We noted employees received \$445.21 in travel reimbursements for dates the employees' time sheets did not indicate the employees were working. We also noted two employees received \$69.11 in meal reimbursements in noncompliance with the Governor's Travel Regulations; conversely, we noted three employees were denied eligible meal reimbursements totaling \$102.86 because of a former Commissioner's policy of no single-day meal reimbursements. Lastly, we noted one employees was underpaid \$14.39 due to an error in the mileage rate when calculating the travel reimbursement.

We recommend the Commission comply with the Governor's Travel Regulations and strengthen internal controls over reimbursements to employees. We also recommend the Commission assist employees in filing a claim for the reimbursable expenses they have been denied.

AGENCY'S RESPONSE

We will comply with the recommendation. (See pages 36-39.)

Fee Schedule for Commission Orders

5. We were unable to determine if fines and penalties assessed by Commission Orders to licensees were equitably levied because the Commission had not implemented, by Legislative Rule, a fee schedule. We also noted the Commission had not established written procedures to dismiss pre-hearing cases; therefore, we are unable to determine if the dismissals were appropriate. We noted lengthy processing times for violations. For the 43 violation report forms tested, 31 forms and their corresponding cases were

completed 17 to 491 days after the violation report was prepared, 6 forms and their corresponding cases had been pending from 394 to 546 days as of June 4, 1998, and 6 forms and their corresponding cases had been dismissed.

We recommend the Commission comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code. We also recommend the Commission implement, by Legislative rule, a fee schedule establishing guidelines for fines and penalties and a written procedure to provide for dismissal of pre-hearing cases.

AGENCY'S RESPONSE

We will comply with the recommendation. (See pages 39-42.)

Weak Controls Over Enforcement Fund

6. In our test of the \$2,000 imprest fund used for enforcement purposes, we noted cash advances were not settled in a timely manner, some expenses were not detailed on the settlement forms or supported by receipts, and no accounting records were maintained for cash payments made to young adults for services rendered during "underage buys".

We recommend the Commission comply with its procedures for cash advances and settle such advances timely, provide detailed description of expenditures as well as receipts, if possible, and implement a system to account for cash payments made to young adults.

AGENCY'S RESPONSE

This function will be automated to ensure prompt settlement of advances and tracking of amounts paid to underage buyers. Inspectors cannot ask for receipts when working undercover. (See pages 42-44.)

Evidence Forfeited Without Commission Order

7. We noted the Commission Orders did not, in some cases, address the disposition of evidence seized; therefore, the Commission retained \$701 and deposited an additional \$266 of cash evidence without a forfeiture order as of June 19, 1998. We also noted a violation which was dismissed by Commission Order; the Order did not address the disposition of the evidence and the evidence (eight 12-packs of beer) was not returned to the licensee.

We recommend the Commission comply with Chapter 60A, Article 7, Section 705 of the West Virginia Code.

AGENCY'S RESPONSE

All evidence which is forfeited will now be included in the agreed order. (See pages 44-45.)

Unaccounted for Violation Report Forms

8. We were unable to locate 88 pre-numbered violation report forms. The Commission's records indicated these forms were unused or void but were unable to provide us with the actual form for our physical inspection. Secondly, we noted four violation reports forms were recorded in the Commission's records as void but appeared to be unprocessed violations.

We recommend the Commission comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code and strengthen internal controls over pre-numbered violation forms.

AGENCY'S RESPONSE

We will comply with the recommendation. (See pages 45-46.)

Collections of Bonds and Late Payment of Fines and Penalties

9. We noted in our test that nine licensees paid their fines 1 to 62 days late. The Commission's accounts receivable for fines as of January 30, 1998 included past due amounts totaling \$14,100 with \$4,250 of that amount being over 60 days late. We also noted the Commission does not make concerted efforts to collect forfeited bonds. The Commission's outstanding bonds receivable account as of January 30, 1998 totaled \$19,000; these amounts were 74 to 178 days past due.

We recommend the Commission comply with Chapter 60, Article 7, Section 14 of the West Virginia Code and strengthen internal controls over collections for forfeited bonds and fines and penalties.

AGENCY'S RESPONSE

Licensees who have outstanding fines are not allowed to renew their licenses until those fines are paid. (See pages 47-48.)

Stamps Issued to Enforcement Inspectors

10. Rolls of stamps are issued to enforcement inspectors to mail correspondence from their homes to the Commission headquarters. We also noted a \$40 overpayment due to a calculation error in a postage invoice generated by the Commission; we were unable to determine the disposition of the \$40.00.

We recommend the Commission establish a policy of reimbursing employees for postage expenses incurred as opposed to providing them rolls of stamps.

AGENCY'S RESPONSE

We will comply with the recommendation. (See pages 48-49.)

ADMINISTRATION:

Overtime Policy

11. We noted the Commission's overtime policy allows employees to adjust annual and sick leave taken after the leave has been used, does not permit employees the option to receive compensatory time off in lieu of overtime payments and compensates exempt employees for overtime. We also noted two employees were overpaid and underpaid \$10.68 and (\$9.50) as a result of clerical error in computing hours worked in weeks that contained holidays and determining the correct rate.

We recommend the Commission develop a policy in accordance with the West Virginia Division of Personnel's Administrative Rule which does not allow adjustment to annual or sick leave time taken by employees. We further recommend the Commission revise the overtime policy to comply with the federal Fair Labor Standards Act.

AGENCY'S RESPONSE

The policy for overtime has been revised. (See pages 49-52.)

Charging Fees With No Authorization

12. The Commission charged license applicants \$20 for a criminal background check without statutory authority. We also could not locate any statutory authority for the \$20 fee charged to participants of "TEAM" (Training and Education on Alcohol Management) program.

We recommend the Commission discontinue charging fees to license applicants and "TEAM" program participants that are not authorized by statute or Legislative Rule.

AGENCY'S RESPONSE

The ABCA will file a legislative rule to permit the charges. (See pages 52-54.)

Informational - State-Owned Inventory Located at Northfork Store #71

13. During the divestiture of the State's retail liquor stores in 1990, \$12,621 of state-owned inventory at Northfork Store #71 was not returned to the Commission because of a dispute over storage fees. This issue currently remains unresolved.

AGENCY'S RESPONSE

An effort is being considered to seize all state property located at Northfork with the help of the State Police. (See pages 54-55.)

ACCOUNTING:

General Administration Fund Surplus

14. Upon review of the June 30, 1997 account balance of the Commission's General Administration Fund, it appears the Commission is retaining a surplus of monies. We noted the Commission has, on average, understated the estimated beginning cash balance for budgeting purposes by \$2,843,242.49 during the period July 1, 1994 through June 30, 1998.

We recommend the Commission comply with Chapter 60, Article 3, Section 18 of the West Virginia Code.

AGENCY'S RESPONSE

The ABCA transfers monies in accordance with Governor's Executive Budget and as scheduled by the State Budget Office. (See pages 55-56.)

Unappropriated Expenditures

15. The Commission paid \$2,130.29 for telephone services on an account assigned to the Beer

Commission; it appears that three of the four telephone extensions billed during the fiscal year were not utilized by the Commission. An enforcement inspector also received a duplicate travel reimbursement of \$83.41 which was subsequently repaid after we brought the duplicate payment to the Commission's attention. Lastly, we were unable to locate the statutory authority which permitted the Commission to reimburse the West Virginia State Police \$1,082.97 for services of officers who assisted the Enforcement Division in "sting" operations.

We recommend the Commission comply with Chapter 12, Article 3, Section 9 of the West Virginia Code.

AGENCY'S RESPONSE

We are now in compliance with the recommendation. (See pages 56-59.)

Not Following Purchasing Procedures

16. The Commission purchased a surveillance camera and obtained pager services without obtaining the required number of bids. Further, the Commission received two bids for the camera but did not purchase the camera from the lowest bidder. Finally, no service agreement was obtained for monthly trash hauling services and the vendor did not receive a payment for services provided November 1996.

We recommend the Commission comply with the Department of Administration's "Agency Purchase Procedures Manual", Sections 2.1.3 and 1.9-A, and strengthen internal controls over the purchasing function.

AGENCY'S RESPONSE

We will investigate the reported violations and strengthen controls over purchasing. (See pages 59-61.)

Nonsufficient Electronic Fund Transfers (EFT)

17. As noted in our prior audit, the Commission continues to accept EFT payments from retailers after two nonsufficient EFT's have been received during a calendar year.

We recommend the Commission comply with Title 175, Series 1, Section 4.6.2.3 of the Legislative Regulations.

AGENCY'S RESPONSE

It is the ABCA's policy to discontinue processing EFT's from any retail account after two insufficient funds have been returned to our office. However, when the treasurer resubmits an EFT and it then clears, the ABCA considers this as good funds. We only consider an EFT returned when it is returned to us and it becomes necessary for ABCA to process a debit to his sales. When this happens all future orders are stopped until the retailer delivers a cashiers or certified check to our office. (See pages 61-62.)

Grocery Store Credit Card Purchases

18. The Commission obtained a grocery store credit card without statutory authority and used the card to purchase coffee, sodas and food products, all of which were classified as office expenses instead of hospitality expense. We also noted the Commission purchases coffee for the daily use of employees.

We recommend the Commission comply with the Department of Administration's "Agency purchase Procedures Manual", Section 2.1.1 and Policy Statement No. 11.

AGENCY'S RESPONSE

The ABCA no longer has a grocery store credit card. This process was stopped when

we were informed during the audit that there was no statutory authority for this expenditure. (See pages 62-64.)

Lack of Purchasing Division Approval for Trade Show Expenditures

19. The Commission held a trade show at Flatwoods, West Virginia at an estimated cost of \$7,500 without obtaining approval from the Department of Administration's Purchasing Division. Further, the Commission classified the room rental fee for the show as a miscellaneous expenditure instead of advertising and promotional expense.

We recommend the Commission comply with the Department of Administration's "Agency Purchasing Procedures Manual", Policy Statement Number 13 and the object code definitions per the "Expenditure Schedule Instructions".

AGENCY'S RESPONSE

We will follow purchasing guidelines in the future. (See pages 64-67.)

Equipment Inventory

20. We were unable to locate a file cabinet in our test of equipment inventory and noted two computers did not have inventory identification tags affixed to the units.

We recommend the Commission comply with Section 3.11 of the "Inventory Management and Surplus Property Disposition Policies and Guidelines" and strengthen inventory controls over equipment.

AGENCY'S RESPONSE

No response. (See page 67.)

General Revenue Deposits

21. The Commission did not transfer \$6,301.54 in excess monies from the Enforcement

Fund and did not deposit the annual private club license fees into the General Revenue Fund.

We recommend the Commission comply with Chapter 11, Article 16, Section 23 and Chapter 60, Article 7, Section 6 of the West Virginia Code.

AGENCY'S RESPONSE

The enforcement fund balance that exceeds \$20,000 is transferred in the following fiscal year, the only exception is invoices received prior to June 30 that are outstanding in the State Auditor's Office. (See pages 68-69.)

Monies Not Received Timely

22. We were unable to determine compliance with Chapter 12, Article 2, Section 2 of the West Virginia Code which requires that deposits be made within 24 hours of receipt because the Commission receipts monies when deposits are made, not when the monies are received.

We recommend the Commission comply with Chapter 12, Article 2, Section 2 of the West Virginia Code and receipt monies when received.

AGENCY'S RESPONSE

All monies are deposited within 24 hours of receipt. (See pages 69-70.)

Expenses for State-Owned Vehicles Not Authorized by Rule

23. The Commission paid the Department of Administration \$125,080 for leased vehicles as well as paying for fuel purchases totaling \$35,545.59 and \$3,064.13 for tires at a tire franchise approved by the Department. We believe the expenditures for fuel and tires are to be included in the lease amount charged by the Department of Administration in accordance with their procedural rule.

We recommend the Commission discontinue expending funds for fuel and tires in accordance with the Department of Administration's Procedural Rules, Title 148, Series 3, Section 11.12.1.

AGENCY'S RESPONSE

Tire and maintenance must have the approval of purchasing but ABCA pays the bills. This is the procedure that the Leasing Division insists that we follow. (See pages 70-71.)

Accounting for Bailment Warehouse Fees

24. The Commission did not record the bailment warehouse fees charged to suppliers for routine warehouse services as revenues in the State's Financial Information Management System (FIMS). The Commission deducted the fees due from the invoice for liquor purchases and paid the netted figure.

We recommend the Commission comply with Chapter 12, Article 2, Section 2 of the West Virginia Code and classify these transactions appropriately.

AGENCY'S RESPONSE

Bailment are adjusted to income and reported as income on ABCA financial statements. Bailment fees are incurred when product is received into our warehouse and reported as income from bailment fees on ABCA financial statement. (See pages 71-72.)

Inactive Account - Computer Equipment Purchase Governor Transfer Fund (7354)

25. We noted in our review of the Commission Accounts that Fund 7354 has had no activity and maintained an account balance of \$141.34 since July 1, 1990.

We recommend the Commission seek to transfer these monies to the General Administration Fund and close the account.

AGENCY'S RESPONSE

This account will be closed. (See pages 72-73.)

LICENSING:

Lack of Criminal Background Checks

26. We were unable to locate criminal background checks for 19 of the 21 executive officers and directors of a corporation that holds a retail license. The Commission's policy is to have criminal background checks performed on license applicants to determine compliance with Chapter 60, Article 3A, Section 8 of the West Virginia Code.

We recommend the Commission comply with Chapter 60, Article 3A, Section 8 of the West Virginia Code.

AGENCY'S RESPONSE

27. *The ABCA obtains criminal background checks on the directors and officers of licensees that are local and all local operators. It is difficult to obtain thumb prints of officers of large multinational firms such as the Marriott and the Seven-Eleven Stores.*
- (See page 73.)*

Overcharging for License Fee

28. The Commission overcharged a Class B retail licensee a total of \$3,000 in annual retail license fees for the three-year period ended June 30, 1998.

We recommend the Commission comply with Chapter 60, Article 3, Section 12 of the West Virginia Code.

AGENCY'S RESPONSE

This was a clerical error and has been resolved. (See pages 74-75.)

PERSONAL SERVICES:

Incorrect Overtime Payments

29. In our test of personal services, we noted two employees were underpaid a total of \$215.92 and two additional employees were overpaid \$289.50 in overtime compensation. We recommend the Commission comply with Chapter 21, Article 5C, Section 3(a) and Chapter 12, Article 3, Section 13 of the West Virginia Code.

AGENCY'S RESPONSE

These were errors and have been resolved. (See pages (75-76.)

Overpayment of Annual Increment

30. An employee was overpaid a cumulative total of \$200 in annual increment as of July 31, 1997 because the employee received credit of an extra year of service due to a clerical error.

We recommend the Commission comply with Chapter 5, Article 5, Section 2 of the West Virginia Code.

AGENCY'S RESPONSE

These were errors and have been resolved. (See pages 76-77.)

Sick Leave Accruals

31. We noted two errors in the test of sick leave accruals which resulted in overstated and understated balances of two employees of eight hours and .25 hours, respectively.

We recommend the Commission comply with the Division of Personnel's Administrative Rule, Section 15.04.

AGENCY'S RESPONSE

These were errors and have been resolved. (See pages 77.)

Overpayment of Personnel Fees

32. During our review of employee benefits, we noted the Commission overpaid the Department of Administration \$38.75 for personnel fees for one FTE (full-time equivalent position).

We recommend the Commission comply with Chapter 29, Article 6, Section 23 of the West Virginia Code.

AGENCY'S RESPONSE

These were errors and have been resolved. (See pages 78-79.)

Bailment Inventory

33. During our physical county of bailment inventory, we noted the Commission accepted 57 cases of liquor not authorized for sale from suppliers; one case of liquor costing \$77.94 was unaccounted for during our count but located by the end of the day; a lack of segregation of duties between the employee who destroys damaged product and the employee who prepares the claims noting the product was damaged; and, a lack of inventory for individual bottles which become separated from packaged cases in pallets. We recommend the Commission implement the provisions in Title 175, Series 6 of the Legislative Regulations and strengthen internal controls over accounting for bailment inventory.

AGENCY'S RESPONSE

The ABCA bailment inventory is counted on a continuous cycle. That and our computer tracking allows us to locate any miss shipped items within 24 hours. Our

warehouse inventory shows no overages or shortages and very minimal breakage.

Internal controls over bailment inventory work very well. (See pages 79-81.)

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

GENERAL REMARKS

INTRODUCTION

We have completed a post audit of the West Virginia Alcohol Beverage Control Commissioner (ABCC). The audit covered the period July 1, 1996 through June 30, 1997.

GENERAL REVENUE ACCOUNTS

The following accounts were assigned to the West Virginia Alcohol Beverage Control Commissioner for the depositing of liquor profits, license and permit fees, wine gallonage taxes and enforcement fund revenue into the State General Revenue Fund as follows:

<u>FundNumber</u>	<u>Description</u>
0490-553	Statutory Transfers - Liquor Profits
0490-575	Gallonage Tax *
0491-515	Beer Tax *
0491-516	Beer Licenses

** Tax Funds are Administered by Department of Tax and Revenue*

SPECIAL REVENUE ACCOUNTS

All expenditures required for the general operation of the West Virginia Alcohol Beverage Control Commissioner are made from the following special revenue accounts:

<u>Fund Number</u>	<u>Description</u>
1. General Administrative Fund (7352):	
7352-001	Personal Services
7352-004	Annual Increment
7352-010	Employee Benefits
7352-099	Unclassified
7352-419	Purchase of Liquor for Resale
7352-425	Transfer of Liquor Profits and Taxes
7352-640	Cash Control

2. Nonintoxicating Beer Enforcement Fund (7355)

7355-099Unclassified
7355-640Cash Control

3. Computer Equipment Purchase Governor Transfer Fund (7354)

4. Wine License Special Revenue Operating Account Fund (7350) *

5. Wine License Special Fund (7351) *

7351-001Personal Services
7351-004Annual Increment
7351-010Employee Benefits
7351-099Unclassified
7351-640Cash Control

* *Funds are Administered by Department of Tax and Revenue*

COMPLIANCE MATTERS

Chapter 60 of the West Virginia Code generally governs the West Virginia Alcohol Beverage Control Commissioner. We tested applicable sections of the above, and general State regulations and other applicable chapters, articles and sections of the West Virginia Code as they pertain to fiscal matters. Our findings are discussed below.

Lack of Effective System of Internal Controls

During the course of our examination, it became apparent to us, based on the observed noncompliance with the West Virginia Code, the Commission did not have an effective system of internal controls in place to ensure compliance with applicable State laws. Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, states in part:

“The head of each agency shall:
... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities....”

This law requires the agency head to have in place an effective system of internal controls in the form of policies and procedures set up to ensure the agency operates in compliance with the laws, rules and regulations which govern it.

During our audit of the Commission, we found the following noncompliance with State laws or other rules and regulations in the areas of enforcement, administration, accounting, licensing, personal services and warehouse operations:

Enforcement:

(1) We were unable to reconcile times worked by three enforcement inspectors as noted on the official time records (time sheets) and the times recorded on their expense vouchers to inspections reports. (2) We were unable to reconcile seized evidence on hand to agency records; in addition, we noted \$1,172 in cash was not stored in the Commission's safe as required by procedure. (3) Nineteen deposits of forfeited cash totaling \$3,692.19 were made 6 to 244 days late; also, the Commission had \$2,530.00 of forfeited cash on hand from ten cases which had been settled from 34 to 252 days but no deposits had been made as of June 19, 1998. (4) Five employees received a total of \$445.21 in travel reimbursements but the employees' time sheets did not indicate the employee was working; meal and mileage reimbursements were not in compliance with the Governor's Travel Regulations. (5) We were unable to determine if fines and penalties for violations were levied equitably because the Commission used "draft" procedures; we also noted no criteria for dismissing violations and lengthy processing times for violations; and the Commission records do not indicate that enforcement inspectors visit the premises to insure licensees comply with license suspensions. (6) Some monies expended from a \$2,000 imprest fund used for enforcement operations were not properly documented and three cash advances from the fund to enforcement inspectors were not settled timely. (7) The Commission deposited seized cash evidence without authorization by Commission order. Seized cash evidence totaling \$266 was deposited and \$701 of seized cash was on-hand at the Commission but no forfeiture authorization was noted in the settlement documents. Further, we located a Commission order dismissing a case against a licensee but the seized evidence (beer) was not returned -- the Commission order did not address the disposition of the evidence.

(8) We were unable to locate 88 pre-numbered violation report forms which the Commission's records indicated were unused or void; however, we also noted four forms which were recorded as void but appeared to be unprocessed violations (9) The Commission does not make concerted efforts to collect forfeited bonds; outstanding bonds receivable as of January 30, 1998 totaled \$19,000 and were 74 to 178 days past due; also we noted nine licensees paid their fines 1 to 62 days late and the accounts receivable records for fines included past due amounts totaling \$14,100 of which \$4,250 was over 60 days late. (10) Rolls of stamps are issued

to inspectors in lieu of reimbursing employees for expenses incurred, and we noted a mathematical error in a postal invoice generated by Commission resulted in overpayment of \$40.

Administration:

(11) As noted in our prior audit, the Commission's policy for overtime allows amounts of sick and annual leave taken to be adjusted on employees' time sheets after the leave has been used; employees are not permitted the option to receive compensatory time off in lieu of overtime payments, exempt employees are compensated for overtime and two employees were overpaid and underpaid \$10.68 and (\$9.50), respectively, due to clerical errors in computing pay for workweeks containing holidays. (12) No statutory authority was located for the fees charged for criminal background checks and the "TEAM" (Training and Education on Alcohol Management) program. (13) During the divestiture of the State's retail liquor stores in 1990, \$12,621 of state-owned inventory at Northfork Store #71 was not returned to the Commission because of a dispute over storage fees.

Accounting:

(14) The Commission appears to be retaining a cash surplus in the General Administration Fund. (15) The Commission paid \$2,130.29 for telephone services not received by the Commission; a \$8.59 calling-card charge for a West Virginia Lottery employee was also paid; an enforcement inspector received a duplicate reimbursement of \$83.41 for travel expenses; and the Commission paid \$1,082.97 to the West Virginia State Police for assistance in a "sting" operation but no statutory authority for the reimbursement was located. (16) Purchases of a surveillance camera and services for pagers were made without obtaining the required number of bids; the lowest bid was not used to buy the camera; and no service agreement was obtained for monthly trash hauling services. (17) As noted in our prior audit, the Commission continued to accept electronic fund transfers (EFT) from retailers for liquor purchases after two nonsufficient EFT's had been received during the calendar year. (18) Grocery purchases totaling \$2,002.33 were made using a grocery store credit card and classified as office expenses instead of hospitality; coffee is provided for use of employees at the Commission on a regular basis. (19) No approval was obtained from the Purchasing Division for trade show expenditures. (20) We were unable to locate a file cabinet and noted two computers did not have identification tags in our test of equipment. (21) The Commission did not transfer \$6,301.54 in excess monies from the enforcement fund and deposit \$1,830,075 of private club license fees into the General Revenue Fund in accordance with statute. (22) The Commission does not receipt monies when received but when deposited. (23) The Commission made fuel and tire purchases in addition to the lease payments for vehicles in noncompliance with the Department of Administration's procedural rule. (24) Bailment fees are not

recorded as revenues on the State Auditor's Account Status Report because the amounts due from vendors are netted against the amount owed by the Commission; therefore, receipts and disbursements are understated. (25) The Commission should close an account with a \$141.34 balance that has been inactive since 1991.

Licensing:

(26) Criminal background checks were not performed for 19 of 21 executive officers and directors for a retailer that was a corporation. (27) A Class B retail licensee was charged for a Class A license which resulted in an overpayment of \$3,000; further, we noted license forms are not pre-numbered.

Personal Services:

(28) Two employees were underpaid a total of \$215.92 and two additional employees were overpaid a total of \$289.50 in overtime compensation because of calculation errors. (29) An employee was overpaid a cumulative total of \$200 for annual increment because of an error in computing years of service. (30) Mathematical errors in the accruals of sick leave for two employees resulted in balances being overstated and understated by eight hours and (.25) hours, respectively. (31) The Commission overpaid the Department of Administration \$38.75 for personnel fees for one FTE (full-time equivalent position).

Warehouse Operations:

(32) The warehouse accepted 57 cases of liquor not authorized for sale by the State from suppliers; one case of liquor was unaccounted for during our inventory count but retrieved from a retailer by the end of the day; there was a lack of segregation of duties because the same employee who prepared claim forms also destroyed the damaged product; and a lack of inventory for individual bottles which become separated from packaged cases in pallets.

Official Time Records Disagree with Inspection Reports

As part of our audit, we attempted to reconcile the information provided by ABCC inspectors on three separate documents. We randomly selected three inspectors and compared the times they submitted on their official time records (time sheets) to the times they recorded on their expense vouchers and their inspection reports. We immediately noted several problems as detailed below in reconciling the times recorded on these documents.

One of the three inspectors selected in our sample failed to include times on nearly all of his inspection reports and only included times on travel documents when traveling away

from his assigned area and requesting reimbursement for expenses. The only document completed in its entirety by this inspector was his time sheet. In the few instances where there was information to compare on the various documents the times recorded were often not in agreement.

The other two inspectors selected for testing, as general rule, completed each form and included times. However, the times recorded on these forms were often not reconcilable. In numerous instances inspections were recorded as done before the inspector started work or after he stopped work for the day according to his time sheet. In other instances the times recorded on inspection forms and time sheets simply were unrelated. Additionally, in several instances time sheets indicated the inspectors worked but there was no inspection report or other recorded activity. These two inspectors also frequently recorded a time on their initial or final inspection report of the day that conflicted with the starting or stopping time on their time sheets. In these instances there would not be nearly enough time elapsed between the times recorded on the inspection reports and the time sheets to allow for travel from the inspection location to the inspector's headquarters. Both of these inspectors also completed inspection reports on dates their time sheets indicated they were off work or on annual leave.

We also noted times on inspection reports that could not have been correct since it would be impossible to get from the location of one inspection to the location of the next in the time period recorded. On the other hand, we noted long unexplained time gaps between inspections on some dates. Additionally we noted on some days the inspection route was erratic and in some instances the route doubled back and forth without any apparent logic.

While we were attempting to reconcile the recorded times on the forms we reviewed, we noted some other areas of concern. It came to our attention that one inspector in our

sample spent 73 of 280 working days in Charleston. In many instances the reason specified for travel was “to deliver paper work” or “to do paperwork.” On one of these trips we also noted the motel receipt indicated a check out time of 7:56 a.m. but the inspector recorded a start time of 6:30 a.m on his time sheets. We noted that another inspector had recorded a trip to Charleston from his headquarters and recorded three hours driving time; however, he never recorded the return trip nor did he record any time in which the return trip could be included.

We believe a policy promulgated by the former Commissioner is largely responsible for the erroneous recording of time as discussed above. That policy states in part, “... Failure to obtain authorization for overtime work will result in the employees claim for overtime being denied.” It appears inspectors are adjusting times as necessary to show 40 hours worked per week. This policy is in noncompliance with the Fair Labor Standards Act which requires covered employees be compensated for all hours worked more than 40 in any week at the rate of time and one half their regular rate or receive compensatory time for time worked at one and one half hour for each hour worked over forty up to a maximum of 240 hours.

We believe that the second and most important reason for situations described above is a lack of internal controls at the agency. There is apparently no review system in place to insure the inspectors are accurately recording the work they do or the time that they spend working and traveling. This lack of controls is not in compliance with West Virginia Code, Chapter 5A, Article 8, Section 9 which states in part:

“The head of each agency shall:
...(b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities...”

The erroneous recording of time worked as described above can result in the

violation of numerous sections of the West Virginia Code. We have no way of knowing which of the recorded times is correct, when there is a recorded time. However, the times recorded as discussed above indicate the agency is not in compliance with the Fair Labor Standards Act in regard to payment for overtime worked nor with Chapter 12, Article 3, Section 13 of the West Virginia Code, as amended, which states:

“No money will be drawn from the treasury to pay the salary of any officer or employee before his services have been rendered.”

We recommend the Commission establish sufficient internal control procedures to ensure time is recorded properly and accurately and to ensure compliance with the federal Fair Labor Standards Act and the West Virginia Code.

AGENCY'S RESPONSE

To resolve this problem all ABCA Inspectors have been instructed to report accurate time records on their time sheets, inspection reports and expense reports. Soon after my appointment as Commissioner this agency changed the organization structure to include three Regional Area Managers (R.A.M.'s) to more effectively manage inspectors activities throughout the state. As a result of your findings, we now randomly check time sheets with expense reports. We have sent a written procedure to the R.A.M.'s to follow in verifying inspectors reporting and we are in the process of revising the time reporting requirements on the inspection reports to reflect time in and time out. New procedure will include copies of time sheets, inspection reports and expense reports to be forwarded to the Deputy Commissioner to be randomly checked each month.

Any overtime worked is paid whether authorized or not. When overtime is

necessary it is authorized by the assigned R.A.M., the Commissioner or the Deputy Commissioner.

Unaccounted for Evidence

Any evidence of a violation by a licensee can be seized by inspectors of the Enforcement Division in accordance with Title 175, Series 2, Section 4.4 which states in part, "... Any evidence of a violation found during an inspection shall be seized and impounded and the same shall be admissible into evidence to prove such violation..." Upon seizure of evidence, inspectors complete an "Evidence Form" and provide a completed copy of the form to the licensee.

During our test of seized evidence, we noted differences in cash-on-hand and the amount of cash seized per the evidence forms, seized evidence could not be accounted for, seized cash was not stored in the Commission's safe, evidence forms were not completed properly, and no control procedures were in place to link evidence forms to Commission Orders or case dockets.

During our reconciliation of total cash seized as noted on evidence forms and amounts of cash we physically counted, we noted two differences of (\$21.00) and \$20.00. Commission records indicate \$50.75 and \$427.00 were seized from two licensees; however, our testing accounted for \$29.75 and \$447.00, respectively.

Also, we were unable to account for non-cash evidence seized from five licensees. Some of these items are as follows:

<u>Description</u>	<u>Date Seized</u>	<u>Control Number</u>
Cigarettes - 6 Cartons	03/21/97	15-1997
Cigarettes - 15 Packs	03/21/97	15-1997

<u>Description</u>	<u>Date Seized</u>	<u>Control Number</u>
Food Coupons - 48 Dollars	03/21/97	15-1997
Gambling Materials - Tips	03/21/97	15-1997
Various Liquors - 36 Bottles	03/21/97	15-1997
1 Six-Pack Beer	03/19/97	16-1997
US Postage Stamp Machine	03/28/97	17-1997
Steeler's Starter Jacket	03/28/97	17-1997
5 ft. Easter Basket with Bunny	03/28/97	17-1997
Gambling Materials - Tips	03/28/97	17-1997
1 - Six-Pack Beer	04/03/97	22-1997
1 - 24 oz. Can of Beer	05/31/97	35-1997

For the evidence noted above, we are unable to determine its disposition because the Commission has not implemented any control procedures or maintained records to account for the disposition of evidence. The lack of control procedures over the seized evidence and evidence forms could result in the unauthorized use or disposition of the confiscated evidence.

In addition to the preceding unaccounted for evidence, we noted weaknesses in the internal controls over safeguarding of cash evidence. Chapter 5A, Article 8, Section 9 of the West Virginia Code states in part,

“The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities....”

On April 22, 1998, we requested all seized cash by the Commission to perform a cash count test. The Commission maintained the cash in a safe at the headquarters. After completion of our cash count and reconciliation to Commission records, we noted four evidence forms denoted cash totaling \$1,172 which had not been accounted for. The money was subsequently located in the locked evidence room by Commission personnel and presented to us on May 4, 1998. The Administrative Services Manager of the Enforcement Division stated in part, “...This money was inadvertently left with the other evidence seized from each respective case, and has been placed in the safe.”

Secondly, we noted numerous evidence forms which were not completed properly and in their entirety. Two forms selected for testing did not list any items seized; however, we located evidence seized from these licensees in the evidence storage room. Finally, the Commission has not implemented any control procedures to link the evidence forms to the case hearings or Commission Order. We requested the Commission Orders that correspond to the evidence forms selected for testing and noted on three occasions the Orders received did not correspond to the evidence form. For one licensee, we received a Commission Order dated January 5, 1996 which was purported to correspond to two evidence forms; however, the forms were dated May 13, 1997 and June 15, 1997 and, therefore, could not correspond to the Order because the evidence form dates are subsequent to the Order date. Further, the Commission provided us with an Order for another licensee but the names on the evidence form and Order did not correspond.

We recommend the Commission comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code. We further recommend the Commission implement control procedures to account for the disposition of evidence, as well as strengthen controls over the safeguarding of cash in the Commission's custody.

AGENCY'S RESPONSE

A system of control has been initiated to account for seized evidence. This includes tagging all evidence with the case docket number. All cash is stored in a locked safe and deposited with the State Treasurer at the conclusion of the case.

Late Deposits of Cash

The Commission was not making deposits of monies forfeited to the State within 24 hours as provided in Chapter 12, Article 2, Section 2 of the West Virginia Code. Chapter 12, Article 2, Section 2 of the West Virginia Code states in part,

“(a) All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury and shall deposit within twenty-four hours with the state board of investments all moneys received or collected by them for or on behalf of the state for any purpose whatsoever....”

We noted deposits of cash seized as evidence totaling \$3,692.19 from 19 violation cases were made 6 to 244 days after the monies were ordered forfeited. Secondly, we noted ten additional violation cases which had been settled from 34 to 252 days involved forfeited cash totaling \$2,530.00 but no monies had been deposited as of June 19, 1998. We estimate the interest lost on the preceding monies was \$90.00 based on a 4% interest rate. We believe the late deposits occurred because the Commission had not implemented control procedures to ensure timely deposits were made after moneys seized as evidence were forfeited.

The Commission had cash and cash-like items (\$65 in food stamps) totaling

\$6,383.19 at its headquarters on the day of our cash count. When cash was seized as evidence by an enforcement inspector, the Commission maintained custody of the cash until the violation case was settled. It is our understanding the Commission has a sub-vault assigned to them in the main vault at the State Treasurer's Office. We believe the sub-vault would provide a more secure place to retain custody of cash instead of the safe at the Commission headquarters.

We recommend the Commission comply with Chapter 12, Article 2, Section 2 of the West Virginia Code and deposit cash within 24 hours. We further recommend that cash be kept in the vault at the Treasurer's office.

AGENCY'S RESPONSE

All cash is now deposited promptly after the violation is settled. We have discussed the feasibility of storing cash evidence in the treasurer's vault with Jeff Blaydes, our representative from the Attorney General's Office. We were advised that this would create a problem in the "trail of evidence" All persons who handle cash evidence may be called to testify at hearings; this would include any employees who transport cash to the treasurer's office and any employees of the Treasurer's office who touched the evidence.

Travel Reimbursements

During our test of travel we noted that employees received travel reimbursements for dates the employees' time sheets did not indicate the employee was working. We also noted employees received reimbursements for meals and mileage in noncompliance with the Governor's Travel Regulations. Conversely, we noted employees requested reimbursable meal expenses for single-day travel in accordance with these regulations, but were denied reimbursement as a result of a former Commissioner's verbal policy.

The Governor's Travel Regulations, Section 2 states in part,

"...2.3 Travel may be authorized only for official business and only

if the spending unit has the financial resources to reimburse the traveler for travel expenses....”

We noted 11 instances in which a total of five employees received \$445.21 in travel reimbursements for days the time sheets did not indicate the employees were working. Since the travel dates and times in which expenses were claimed do not correspond to the time sheets, we are unable to determine if the employees were on official State business and the reimbursements were in compliance with the Governor's Travel Regulations.

The Governor's Travel Regulations, Sections 6.1 and 6.4 provides for the \$30 a day single meal allowance as follows:

“6.1 Meal expense reimbursement is limited to actual expenses for food, service and gratuities up to the applicable maximum daily rate authorized by the Travel Management Office 6.4 Meal expense reimbursement for single day travel ... is allowed when travel time begins and/or extends more than two (2) hours beyond the traveler's normal work day ... To determine the amount(s) allowable for meals for single day travel, the traveler may claim reimbursement for actual expenses according to the following schedule:

Breakfast	20% of the maximum daily rate
Lunch	20% of the maximum daily rate
Dinner	60% of the maximum daily rate”

We noted the Commission reimbursed two inspectors in the Enforcement Division for meals in noncompliance with the preceding criteria because of a clerical error. One employee received a total of \$64.53 for six meals and another employee received \$4.58 for one meal in conjunction with single day travel but these employees did not work two hours in excess of the normal workday. The Commission's normal workweek is 7.5 hours per day for a total of 37.5 hours per week; however, the inspectors in the Enforcement Division work various hours during a normal work day for a total of 37.5 hours per workweek.

In January 1997, the former Commissioner implemented a policy of no meal reimbursements for single-day travel which conflicted with the preceding Governor's Travel Regulations. The Governor's Travel Regulations provides for exceptions to the regulations as follows:

“SECTION 12 Exceptions

Any exception to this rule must be explained in writing and approved by the Travel Management Office.”

The Director of Accounting believed the former Commissioner's policy was verbal only and no approval was obtained from the Travel Management Office. We noted employees claimed meal expenses in accordance with the Governor's Travel Regulations; however, the Commission would edit employees' travel settlement forms and reduce the reimbursement by the amount claimed for meals. In conjunction with single-day travel, three of the ten employees selected for testing were denied eligible meal reimbursements of \$29.05, \$15.81, and \$58.00 even though the former Commissioner claimed and subsequently received \$11.50 in meal reimbursements for single-day travel in April 1997. We are unable to ask the former Commissioner why the policy was implemented because he is no longer employed by the Commission.

Finally, we noted an employee received reimbursement for mileage at a rate less than specified for August 1996. The Governor's Travel Regulations, Policy Statement No. 34 states in part,

“... Use of a privately owned vehicles will be reimbursed at a rate of \$.31 per mile....”

The employee received reimbursement at a rate of \$.30 per mile instead of \$.31 for 1,439 miles which resulted in a cumulative underpayment of \$14.39. The Commission did not detect the rate

error in the mileage amounts charged by the employee.

We recommend the Commission comply with the Governor's Travel Regulations and strengthen internal controls over reimbursements to employees. We also recommend the Commission assist employees in filing claims for reimbursable expense they have been denied.

AGENCY'S RESPONSE

The ABCA now pays travel expenses in compliance with the Governor's Travel Regulations. We will advise all employees whose meal expenses were not properly paid in compliance with the former travel regulations that they may reclaim their expenses through the Court of Claims.

Fee Schedule for Commission Orders

We were unable to determine if fines and penalties assessed by Commission Orders to licensees were equitably levied. Secondly, for licenses which were suspended as part of the penalty, the Commission did not maintain records to determine that an enforcement inspector visited the licensee to ensure compliance with the suspension order. Further, the Commission had not developed written procedures to dismiss violations before hearings were held, and lengthy processing times for violation report forms were noted. Chapter 60, Article 7, Section 13 of the West Virginia Code states in part,

“... the commissioner may impose any one or a combination of the following sanctions ... (4) Impose a monetary penalty not to exceed one thousand dollars for each violation where revocation is not imposed....”

The Commission gave us draft procedures for violations which contained a fee schedule for common violations of less than \$1,000 but the procedures indicate this schedule was just a guide and in some circumstances the violation would be treated differently. Our testing

revealed three instances in which the fee schedule and the actual penalty differed as follows:

1. A licensee committed an advertising violation was fined \$350; however, we located a memorandum from the Deputy Commissioner dismissing 17 other advertising violations;
2. A club received a two-day license suspension for stripping violations but the draft procedures indicated the stripping fine was \$550; and,
3. A licensee was fined \$1,050 for underage drinking and advertising but no suspension was ordered as noted in the draft fee procedures.

We also noted a \$12,000 fine was paid based on a settlement agreement instead of Commission Order. A club licensee received a \$12,000 fine and 14-day license suspension as a result of ten different violations involving stripping and one violation for underage drinking which occurred during August 21, 1996, June 3, 1997 and June 19, 1997. The licensee did not admit guilt and the Commission agreed not to prosecute the charges in exchange for the licensee making \$2,000 installment payments on the \$12,000 fine and the suspension. The \$12,000 fine appears to be in noncompliance with the preceding criteria because the Commission exceeded the maximum fine for each violation. We calculated the maximum total amount due from the licensee for 11 violations was \$11,000; therefore, it appears the licensee overpaid \$1,000.

In our test, we were unable to determine if license suspensions issued as part of penalties were complied with because the Commission did not maintain records documenting visits by enforcement inspectors to the licensees' place of business.

Due to the lack of written procedures for case dismissals, we are unable to determine if the dismissals were appropriate. We noted six pre-hearing cases in our test were dismissed by either the Deputy Commissioner, an Administrative Services Manager, or a secretary

in the Enforcement Division instead of the Commissioner. The reasons for the dismissals included “out of business”, “advertising violations not going to be prosecuted”, “old case, and problem has been solved”, “people cannot be located” and “please dismiss the dockets”.

Our testing also showed long periods of time to process violations. We tested 43 violation report forms of the 552 issued during fiscal year 1997; and as of June 4, 1998, 31 forms and their corresponding cases had been completed, six forms and their corresponding cases were still pending, and six forms and their corresponding cases had been dismissed. We determined the process time for the 31 completed violations was 17 to 491 days for an average of 135 days. The six in-process violations had been pending from 394 to 546 days as of June 4, 1998.

Chapter 5A, Article 8, Section 9(b) of the West Virginia Code states in part,

“The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities....”

We believe the Commission should establish a formal schedule of fines and penalties for violations to ensure such penalties are levied equitably among licensees. We further believe the Commission should maintain records to document when enforcement inspectors visit licensees to determine compliance with suspension orders. Finally, we believe the Commission should develop written criteria to dismiss pre-hearing cases and process violation report forms timely.

We recommend the Commission comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code and implement, by legislative rule, a fee schedule establishing guidelines for fines and penalties. We also recommend a written procedure be provided for dismissal of pre-hearing cases.

AGENCY'S RESPONSE

The ABCA is in the process of developing a revised fee schedule. The previous draft was general and did not allow for all violation types and repeated offenses. Only the ABCA Commissioner can dismiss cases. Processing of violations has been expedited.

Weak Controls Over Enforcement Fund

During the audit period, the Commission maintained a \$2,000 imprest fund to use for enforcement purposes. Enforcement inspectors received cash advances from this fund to purchase beer, liquor, gambling tips, etc. during undercover operations, and to pay young adults for services rendered and travel when executing "underage buys". During our test, we noted cash advances were not settled in a timely manner, some expenses were not supported by receipts, and no accounting records were maintained for cash payments made to young adults for services rendered.

To obtain a cash advance, inspectors signed a form which stated in part, "...Received from \$_____ dollars advance for undercover enforcement expenses. **This advance must be settled in full within 15 days from the date of receipt.** Expected settlement date is _____...." In our testing, we noted three cash advances were not settled within 15 days in noncompliance with this policy; a \$200 advance was settled 74 days late; a \$150.00 advance was settled 20 days late; and a \$200 advance was settled 189 days late. We were unable to determine why the settlements were not timely.

Secondly, the Commission required inspectors to complete a settlement form noting date, location, description of disbursement, and amount paid. We noted an inspector received \$50 from another inspector but no description for the disbursement was detailed on the settlement form. If inspectors pay cash to young adults for underage buys, the inspector is

required to complete an additional form noting the person's name, social security number, amounts paid and the underage's signature. We were unable to locate the underage forms for three payments of \$30, \$90, and \$54 as well as a hotel receipt for an underage operative for \$42.40.

Lastly, the Commission did not maintain accounting records for payments made for personal services to young adults making underage buys. The Internal Revenue Service's Circular E, Employer's Tax Guide requires employers to issue Form 1099 to non-employees for miscellaneous income of \$600 or more during a calendar year. In our testing we noted the Commission paid a total of \$548.00 to a young adult to perform underage buys during calendar year 1996.

Cash advances not settled timely and lack of supporting documentation for expenditures could result in the unauthorized use or disposition of the cash. Further, the lack of controls over accounting for payment of income to persons other than employees could result in noncompliance with Circular E of the Employer's Tax Guide.

We recommend the Commission comply with its procedures for cash advances and settle such advances timely, provide detailed descriptions of expenditures as well as receipts, if possible, and implement a system to account for cash payments made to young adults.

AGENCY'S RESPONSE

This function will be automated in a timely manner to provide tracking of settlement dates and amounts paid to underage buyers. 1099 forms will be issued to underage buyers who are paid over \$600.00 annually. Because of the nature of the undercover work performed, inspectors cannot ask for receipts.

Evidence Forfeited Without Commission Order

Our testing revealed the Commission did not address the disposition of evidence in

some Commission Orders. This resulted in monies seized as evidence being deposited and retained at the Commission without forfeiture order. We also located evidence seized from a licensee whose violation had been dismissed by Commission Order; the Order did not address the disposition of the merchandise which was retained by the Commission. Chapter 60A, Article 7, Section 705 of the West Virginia Code states in part,

“...(a) (1) Any proceeding wherein the state seeks forfeiture of property subject to forfeiture under this article shall be a civil proceeding. A petition for forfeiture may be filed on behalf of the state and any law-enforcement agency making a seizure under this article by the prosecuting attorney of a county, or duly appointed special prosecutor....”

We noted in our test of seized evidence the Commission made two deposits of seized cash, one of \$165 and another one of \$101, but no forfeiture order was issued by the Commission. We further noted \$105 and \$596 of seized cash for two cases settled on May 15, 1998 and October 14, 1997, respectively, remained at the Commission headquarters as of June 19, 1998 but the disposition of the cash evidence was not addressed in the settlement documents. The lack of authorization for forfeiture was also noted on Commission Orders for evidence seized other than cash. A violation case was dismissed by Commission Order; the Order did not address the disposition of the seized evidence (eight 12-packs of beer) and the beer was not returned to the licensee. We believe the Commission should implement control procedures to ensure Commission Orders address the disposition of evidence seized and such disposition is made accordingly.

We recommend the Commission comply with Chapter 60A, Article 7, Section 705 of the West Virginia Code and strengthen internal controls over evidence.

AGENCY'S RESPONSE

All evidence which is forfeited will now be included in the agreed orders.

Unaccounted for Violation Report Forms

Fines and penalties received by the Commission from licensees for beer and liquor law violations originate from Commission Orders; Commission Orders originate from violation report forms prepared by enforcement inspectors. Therefore, as part of our test of fines and penalty receipts, we attempted to account for the pre-numbered violation report forms. Based on our test, we were unable to locate 88 pre-numbered forms. The Commission's records indicated these forms were unused or void. We further noted four violation report forms were recorded as void in the Commission's computerized violation tracking system but appeared to be unprocessed violations. Chapter 5A, Article 8, Section 9(b) of the West Virginia Code states in part,

"The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities...."

For the 88 unaccounted for violation report forms, we requested the assistance of the Deputy Commissioner in a July 22, 1998 memorandum to locate the forms for our physical inspection; however, no response was received as of September 15, 1998. For the four forms which appeared not processed, the Commission stated the forms were void because the violations were for distributors and the computerized violation system could not accept distributor license information. Due to the lack of accounting for and processing of the aforementioned forms, we were unable to determine if the missing forms were used to report valid violations which could have resulted in revenues for the Commission.

We believe internal control procedures to account for pre-numbered forms are weak; inspectors periodically obtain several of the blank forms from Commission headquarters since their headquarters are their homes. Because the inspectors receive numerous blank forms which are used at various times, the pre-numbered forms are not used sequentially. The Commission also told us that 45 of the preceding 88 unaccounted for forms had been assigned to inspectors who no longer worked for the Commission. We believe the Commission should strengthen controls over the forms by requiring inspectors to sign for the blank forms received and monitoring their usage and disposition.

We recommend the Commission comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code and strengthen internal controls over pre-numbered violation forms.

AGENCY'S RESPONSE

Records are kept of the numbered violation forms given to each inspector, and each violation received will now be screened for proper numeric sequence. Violation forms will be added to the inspectors equipment inventory sheets which are verified by the R.A.M.'s in ongoing audits and checked in when an inspector leaves the agency.

Collection of Fines, Penalties and Bonds

For fiscal year 1997, we believe the Commission did not implement collection procedures in a timely manner to obtain amounts due from bond forfeitures and fines and penalties. We noted nine licensees paid their fines resulting from liquor law violations, 1 to 62 days after the due date as noted in the Commission Order. We also noted that on January 30, 1998, subsequent to the audit report date, the fines accounts receivable balance included \$14,100 of past due fines of which \$4,250 was over 60 days late. We further noted a licensee selected for testing had their license revoked and their \$6,000 bond forfeited by Commission Order on June 5,

1997. As of January 30, 1998, the monies had not been received and the Commission's forfeited bonds receivable records indicated four bonds totaling \$19,000 were outstanding from 74 to 178 days. Chapter 60, Article 7, Section 14 of the West Virginia Code states,

“On conviction of a violation of any provision of this article or upon the revocation of a license in accordance with section thirteen [§50-7-13] of this article, which conviction or revocation has become final, the licensee or former licensee, as the case may be, shall forfeit his bond required by section four [§60-7-4] of this article. The penal sum of said bond shall forthwith be paid to the state treasurer to be credited to the general revenue fund of this state. Such sum may be collected by an action at law or other appropriate remedy.”

For fines and penalties, the Administrative Manager stated that collection procedures could consist of bond forfeiture and to deny a license for the next year if a fine is outstanding. The Director of Accounting stated that past commissioners have ordered inspectors to seize the licenses for non-payment of fines. We believe the past due amounts of fines exist because the Commission has not implemented the collection procedures available to them. For the nine licensees tested who paid their fines 1 to 62 days after the due date noted in the Commission Order, we determined the State lost \$14.00 in interest revenue based on a 4% rate.

For the bond forfeiture due to revocation of a license noted above, correspondence in the licensee's file from the surety company dated October 14, 1997 stated in part "... Attempts are being made to contact our principal to obtain his version of the allegation. We will be in touch with you again regarding your complaint after this contact has been accomplished. We will then advise you of our position." The Administrative Services Manager for Enforcement Division stated no further collection efforts have been made on the bond. As of January 30, 1998, the lost interest on the bonds outstanding per the accounts receivable records totaled approximately \$300 using a 4% interest rate. We believe the controls over forfeitures are weak since no

concerted efforts are being made to obtain these monies.

We recommend the Commission comply with Chapter 60, Article 7, Section 14 of the West Virginia Code and strengthen internal controls over collections for forfeited bonds and fines and penalties.

AGENCY'S RESPONSE

Licensees who have outstanding fines are not allowed to renew their licenses until those fines are paid.

Stamps Issued to Enforcement Inspectors

The Enforcement Division issues rolls of stamps in lieu of using pre-addressed stamped envelopes on reimbursing inspectors for postage expenses for mailing correspondence from their homes to the Commission. The inspector's homes are their designated headquarters. We also noted a \$40 mathematical error in an invoice for a \$680 payment to the postmaster for the purchase of stamps. Chapter 5A, Article 8, Section 9 of the West Virginia Code states in part,

“The head of each agency shall:

... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities....”

The secretary of the Enforcement Division did not know why stamps were provided to inspectors. Because stamps can be utilized for personal use, we believe the Commission should strengthen internal controls over stamps to safeguard the asset from unauthorized use or disposition.

Secondly, we noted a mathematical error in an invoice generated by the Commission to obtain stamps from the post office. The invoice indicated 20 rolls of stamps to be

purchased at \$34 per roll; however, a roll of stamps should cost only \$32. The error in the price of the roll resulted in an overpayment of \$40. We are unable to determine the disposition of the \$40 because the employee who prepared the invoice is no longer employed by the Commission.

We recommend the Commission comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code and reimburse employees for expenses incurred for postage.

AGENCY'S RESPONSE

We will immediately implement a policy that will require inspectors to purchase postage, obtain receipts and file expense forms for reimbursement.

Overtime Policy

The Commission's overtime policy allows employees to adjust annual and sick leave time taken after the leave has been used, does not permit employees the option to receive compensatory time off in lieu of overtime payments, and compensates exempt employees for hours worked in excess of the normal workweek. We also noted in our testing two employees were compensated at an hourly rate other than prescribed by the Commission's policy.

We noted in our prior audit the Commission's payroll department was adjusting sick and annual leave on employees time sheets as permitted by the "Policy and Procedures for Overtime" statement, effective April 1, 1995, which states in part,

"...C. When an employee works in excess of a normal work day in a week which includes a holiday or time taken for sick or annual leave, and the actual hours do not exceed forty, the sick and or annual leave hours will be adjusted so that work hours and adjusted hours will equal forty..."

We were unable to locate in the West Virginia Division of Personnel's Administrative Rule a provision that permits an agency to adjust an employee's legitimate hours taken for annual or sick

leave and recommended the Commission develop policies in accordance with such Administrative Rule.

On April 1, 1998, the Commission revised this policy statement which states as follows:

“...C. When an employee works in excess of a normal work day in a week which includes a holiday or time taken for sick or annual leave, and the actual hours do not exceed forty, the sick and or annual leave hours may be adjusted so that work hours and adjusted hours will equal 37.5...”

We noted the revision consisted of using “may” instead of “will” for adjusting work hours. According to the Payroll Supervisor, the payroll department no longer alters time sheets; however, the employee can adjust his/her time based on hours worked for the week. Since the employee has the option of adjusting time, the time sheets may not reflect the actual hours of leave taken per workweek.

The Commission's policy also states that granting compensatory time in lieu of overtime for covered employees is not allowed by the West Virginia Code. The Commission's “Policies and Procedures for Overtime” states in part,

“...A. Management has the prerogative to require overtime to be worked, and the employee must be paid for all hours worked over forty. West Virginia state law does not permit compensatory time off in lieu of overtime payments....”

However, the Federal Fair Labor Standards Act (FSLA) states that non-exempt employees are to be given an option to receive compensatory time at a rate of one and one-half the hours worked over 40 hours per workweek in lieu of overtime payments. We believe the Commission should amend their policy to comply with the (FSLA) to give employees the option to receive compensatory time.

Further, the Fair Labor Standards Act, Section 13.⁹² (a)(1) provides for

exemptions from overtime compensation as follows:

“SEC.13.⁹² (a) The provisions of sections 6 ... and 7 shall not apply with respect to – (1) any employee employed in a bona fide executive, administrative, or professional capacity”

The FSLA does not require employers to compensate exempt employees for hours worked in excess of the normal workweek. However, we noted the Commission’s policy permits such compensation to exempt employees. We believe overtime should only be paid to non-exempt employees.

Finally, we noted in our testing the Commission computed compensation for two employees at one and one-half times the hourly wage rate instead of a straight-time rate which resulted in overpayments of \$10.50 and \$10.68, respectively. These employees were compensated at an overtime rate when the hours actually worked per week did not exceed forty but the total hours per week exceeded forty when the workweek contained a holiday. We also noted that the first employee noted above was not paid for two hours of straight-time pay which resulted in an underpayment of \$21.00. Therefore, this employees was underpaid a net amount of \$9.50. The Commission’s “Policy and Procedures for Overtime” statement, effective April 1, 1995, which states in part,

“...B. All employees will receive straight-time pay for all hours worked up to and including forty hours per work week at the regular hourly rate....”

The items noted above were caused by clerical error in computing hours worked per weeks which contained holidays and determining the correct rate.

We recommend the Commission develop a policy in accordance with the West Virginia Division of Personnel’s Administrative Rule which does not allow adjustments to annual or sick leave time taken by employees. We further recommend the Commission revise the

overtime policy to comply with the Federal Fair Labor Standards Act.

AGENCY'S RESPONSE

The policy for overtime has been revised.

Charging Fees with No Authorization

We noted the Commission was charging license applicants a \$20 fee for criminal background checks without statutory authority. We also could not locate any statutory authority for "TIPS" (Training Intervention Procedures for Servers) program. This program was offered to licensees and their employees to train participants about serving/selling alcoholic beverages. Participation in this program was also required by the Commission for some licensees who committed liquor law violations.

Title 175-2-3.1.6 of the Legislative Rules for private club licensing requires a license application to contain the following:

"Arrest record, if any, of the applicant and if the applicant be a corporation or association, the arrest record, if any, of the officers, directors, employees and the manager or steward including disposition of same. (All applicants will be checked through the Criminal Identification Bureau of the Department of Public Safety.)"

The Commission instructs license applicants to submit "Record Request Check Cards" and a \$20 processing fee for each card with their license application for criminal background checks; the Criminal Identification Bureau of the Department of Public Safety processes these cards and charges the Commission a \$20 fee for each background check performed. However, we could not locate any statutory authority for the assessment of the fee to the license applicant. The Director of Accounting stated the fees are assessed to reimburse the Commission for expenditures to be made to the Department of Public Safety.

The Commission's accounting records indicate the fees collected and amounts paid

to the Department of Public Safety during fiscal year 1997 totaled \$40,440 and \$35,400, respectively. Since the Commission does not maintain accounting records to reconcile the number of "Record Request Check Cards" and fees received from license applicants to the amounts charged by the Department of Public Safety, we are unable to determine if reimbursements were received for the amounts paid. The Commission is also classifying the fees received as revenues instead of reimbursements of an expenditure.

We also could not locate any statutory authority nor accounting records for the "TIPS" (Training Intervention Procedures for Servers) program and the corresponding expenditures and reimbursements of \$14,393.29 and \$20,920.00, respectively. Subsequent to our audit, the Commission ceased using the "TIPS" program and began the "TEAM" (Training and Education on Alcohol Management) program and charged participants \$20.00. The Director of Accounting stated the Commission charges the fee to participants to defray the costs of materials. She further stated the authority to provide the program and receive reimbursement for training costs is embodied in the legislative intent of Chapter 60 of the West Virginia Code to promote the intemperate and safe use of alcohol which would include educating club owners and servers. Because no accounting records were located for the "TIPS" program, we are unable to determine if the Commission collected the amounts due based on the number of seminars performed and corresponding participants.

We recommend the Commission discontinue charging fees to license applicants and "TEAM" program participants that are not authorized by statute.

AGENCY'S RESPONSE

The fees collected for criminal background checks are as a reimbursement for the amount paid to the State Police by the ABCA for conducting the checks. The fee for

training programs offered by the ABCA is to defer costs incurred in materials used in the classes. The ABCA will file a legislative rule to permit the charges. The ABCA adjusts the fees collected to the expenses paid in the ABCA financial statements.

Informational - State-Owned Inventory Located at Northfork Store #71

During the divestiture of the State's retail liquor stores in 1990, \$12,621 of state-owned inventory at Northfork Store #71 was not returned to the Commission. A dispute involving the owner of the retail store building and the Commission arose over storage fees; since 1990, the owner has retained possession of the inventory. We inquired as to the status of the dispute and the Commissioner responded as follows:

"In an attempt to resolve the controversy involving ABCA inventory held in Northfork, I have met several times with the previous owner Mr. Phillip Mason and his lawyers. The ABCA and the Attorney General's Office are in the process of talking with Mr. Mason and his legal counsel and we believe we are much closer to settling this issue.

In answer to your other questions, the dispute began following the first bid for the retail licenses when Mr. Mason did not have the high bid and did not get the franchise for his area. This was shortly after the first bid in August, 1990, Harry Camper was the ABCA Commissioner at the time.

The current book value of the liquor is \$23,361, however, the condition of the liquor has deteriorated and will most likely be destroyed. At the time of the bid the ABCA book cost of the liquor was \$12,621, the Northfork cost continues to increase each time ABCA cost increases involve any product listed in the Northfork inventory."

AGENCY'S RESPONSE

An effort is being considered to seize all state property located at Northfork with the help of the State Police.

General Administration Fund Surplus

Upon review of the June 30, 1997 account balance of the Commission's General Administration Fund (7352), it appears the Commission is retaining a surplus of monies. We noted for the period July 1, 1994 through June 30, 1998, the Commission has, on average, understated the estimated beginning cash balance for budgeting purposes by \$2,843,242.49.

Chapter 60, Article 3, Section 18 of the West Virginia Code states,

“The operating fund of the commissioner, heretofore created in the state treasury, is hereby continued and shall be a revolving fund from which all operation and administration expenses of the commissioner shall be paid.

All moneys collected by the commissioner shall be credited to the operating fund until that fund reaches an amount sufficient for the current and routine requirements of the office of the West Virginia alcohol beverage control commissioner, this amount to be not in excess of the amount hereinbefore provided in section fifteen [§ 60-3-15] of this article.”

We noted the Commission's fiscal year 1997 actual ending cash balance exceeded the budgeted estimated balance by \$4,713,761.13. We further noted the Commission understated the estimated beginning balance for fiscal year 1998 by \$3,300,023.13. We reviewed the “Summary of Receipts and Disbursements” used in the budgeting process for the period July 1, 1994 through June 30, 1998 and noted the following:

	<u>Estimated Ending Balance</u>	<u>Estimated Actual Balance</u>	<u>Fiscal Year Difference</u>	<u>Beginning Balance</u>	<u>Actual Balance</u>	<u>Difference</u>
1998	\$2,000,000.00	\$5,300,023.13	\$3,300,023.13	\$1,060,477.00	\$5,665,871.66	\$4,605,394.66
1997	\$2,000,000.00	\$4,138,661.55	\$2,138,661.55	\$ 586,262.00	\$5,300,023.13	\$4,713,761.13
1996	\$4,100,000.00	\$6,327,154.46	\$2,227,154.46	\$ 80,433.00	\$4,138,661.55	\$4,058,228.55
1995	\$3,500,000.00	\$7,207,130.80	\$3,707,130.80	\$ 395,680.00	\$6,327,154.46	\$5,931,474.46

Average per Fiscal Year \$2,843,242.49 \$4,827,214.70

Based on the above schedule, we believe the Commission could transfer more monies to the State’s General Revenue Fund in accordance with the preceding Code section which provides for monies to be credited to the operating fund until the fund reaches an amount sufficient for the current and routine requirements of the Commission. The transfer of the additional monies to the General Revenue Fund would then be available for appropriation by the Legislature.

We recommend the Commission comply with Chapter 60, Article 3, Section 18 of the West Virginia Code.

AGENCY’S RESPONSE

The ABCA transfers monies in accordance with the Governor’s Executive Budget and scheduled by the State Budget Office. When asked by the budget office to transfer more or less money we comply with their request.

Unappropriated Expenditures

In our test of expenditures, we noted the Commission paid for telephone services not utilized by the Commission; paid an employee twice for the same travel expense, and reimbursed the State Police for personal services. Chapter 12, Article 3, Section 9 of the West Virginia Code states in part,

“Every board or officer authorized by law to issue requisitions upon the auditor for payment of money out of the state treasury, shall, before any such money is paid out of the state treasury, certify to the auditor that the money for which such requisition is made is needed for present use for the purposes for which it was appropriated”

In our review of telephone invoices, we noted the Commission paid \$2,130.29 for telephone calls on an account assigned to the Beer Commission. The Beer Commission was

merged with the Commission in the early 1990's. Based on the invoiced charges, it appears that three of the four telephone extensions billed during the fiscal year were not utilized by the Commission. Secondly, the Commission paid \$8.59 of calling card charges on the November 4, 1996 monthly invoice for a West Virginia Lottery Commission employee. The Commission received a \$8.59 refund after we brought this matter to their attention. We further noted frequent out-of-state calling card calls and calls placed on days when time sheets indicate employees were not working. Upon interviews with Enforcement Division's regional area managers, out-of-state calls should be rare and usually in instances where an inspector would have to contact a law enforcement agency or witness in another state. Due to the lack of a system of controls, we are unable to determine if the calls were work-related.

An administrative services manager reviews calling card charges, however, we believe the control system needs strengthened to include a procedure that includes employees reviewing their calling card charges to identify any unusual calls. The weakness in internal controls over telephone and calling card charges resulted in the overpayments noted above.

We noted in our test of travel an enforcement inspector received a duplicate reimbursement for travel expenses in November 1997 totaling \$83.41. The enforcement inspector submitted two separate travel settlement forms which requested payment for the same period. We brought the duplicate payment to the attention of the Commission and the inspector reimbursed the Commission \$83.41 in March 1998. We believe the Commission should strengthen internal controls over processing settlement forms to ensure duplicate payments are not made to employees for travel expenses.

Lastly, the Commission reimbursed the West Virginia State Police \$1,082.97 for

the personal services of officers who assisted the Enforcement Division in “sting” operations during the period December 8, 1996 through February 8, 1997. According to the Director of Enforcement, when the Commission requested and received assistance from the State Police for “sting” operations, it was “standard” to reimburse the State Police for personal services expenditures. However, we could not locate any statutory authority for such reimbursements. Chapter 15, Article 2, Section 12 of the West Virginia Code for the West Virginia State Police states in part,

“... (k) The superintendent may at his or her discretion and upon the written request of the West Virginia alcohol beverage control Commissioner assist the Commissioner in the coordination and enforcement of article sixteen [§11-16-1 et seq.], chapter eleven of this code and chapter sixty [§60-1-1 et seq.] of this code....”

The Director of Enforcement stated the former Commissioner agreed to pay the expenses; however, the preceding criteria does not provide for such reimbursement. This payment results in the Commission subsidizing salaries of the State Police which were not budgeted expenditures.

We recommend the Commission with Chapter 12, Article 3, Section 9 of the West Virginia Code.

AGENCY'S RESPONSE

Telephone charge errors have been corrected through IS&C who invoices ABCA for long distance calls. Employees have been instructed to check their calls billed on calling card and mobile services. Controls are in place to detect duplicate payments for expenses. The ABCA no longer reimburses the State police for assistance in sting operations.

Not Following Purchasing Procedures

In our test of purchases, we noted the Commission purchased a surveillance

camera and obtained pager services in noncompliance with bid procedures established in the Department of Administration's "Agency Purchasing Procedures Manual"; further, no service agreement was obtained for trash hauling services in noncompliance with the preceding manual and the vendor did not received a November 1996 payment.

The Department of Administration's "Agency Purchasing Procedures Manual", Section 2.1.3 states in part,

"2.1.3. \$5,001 to \$10,000: Obtain a minimum of three (3) written bids ... State Agencies must, in all cases, attempt to obtain at least three (3) written bids for a product or service ... A written purchase order (WV-88 or TEAM generated Purchase Order) is required."

We noted the Commission only received two bid quotations and did not purchase an eye-witness surveillance camera from the lowest bidder. The Commission paid \$5,125 for the camera; however, we believe the \$3,495 quote met the proposed specifications and the camera should have been purchased at the lower bid amount which would have resulted in a savings of \$1,630. Also, we noted the Commission disbursed monies for pager service fees, maintenance and rental fees totaling \$9,284.98 during fiscal year 1997 but did not obtain bids in compliance with the preceding criteria. By not obtaining three written bids, the Commission bypassed the competitive bid process; therefore, the State may have paid more for these services than necessary. Further, the Commission did not prepare a WV-88 purchase order for the pager services or maintain an inventory of the pagers. Due to the lack of pager inventory, we are unable to determine if the invoiced charges were for services received.

In our review of utility expenditures, a trash collection vendor for the Nitro Warehouse appeared unpaid for November 1996 monthly services. Further, the Commission did not obtain an agreement for service in noncompliance with the Department of Administration's

“Agency Purchasing Procedures Manual”, Section 1.9-A which states in part,

“A. ... **FORM WV-88, Agency Purchase Order, or FORM WV-48, Agreement**, is required for cable service and trash hauling in excess of \$500 per year.

During fiscal year 1997, the Commission paid \$1,736 for trash collection services provided by this company. The trash collection company was delinquent on worker’s compensation premium payments; therefore, the payments due the company from the Commission were forwarded to the West Virginia Workers Compensation Division as required by Chapter 21, Article 2, Section (5) of the West Virginia Code. The Director of Accounting stated the vendor was notified, by mail, each time a payment was made. The vendor’s invoices noted past due balances because the payments to Worker’s Compensation were not credited in all cases. We reviewed the fiscal year 1997 expenditures and noted no invoice or payment for November 1996 monthly service. The Director of Accounting stated the company provided service for the month. The December 31, 1996 invoice noted a carry-forward balance of \$280 and a current monthly service charge of \$168. The vendor’s October 31, 1996 invoice totaled \$140 for current monthly services which was subsequently paid on November 14, 1996. Because the Commission was unaware these services required an agreement and did not obtain such agreement, we are unable to determine the monthly service fee due the vendor for November, 1996.

We recommend the Commission comply with the Department of Administration’s “Agency Purchasing Procedures Manual,” Sections 2.1.3 and 1.9-A and strengthen internal controls over the purchasing function.

AGENCY’S RESPONSE

The ABCA will initiate an investigation of the noted purchasing violations. It is

ABCA procedure to follow State Purchasing guidelines. We are in the process of evaluating our purchasing department with the intent of strengthening internal controls.

Nonsufficient Electronic Fund Transfers (EFT)

As noted in a prior audit, the Commission continues to accept EFT payments from retailers after two nonsufficient EFT's have been received during a calendar year. Title 175, Series 1, Section 4.6.2.3 of the Legislative Regulations states:

“Any EFT which is not completed due to nonsufficient funds will preclude further processing of liquor orders to the licensee by Commission until payment is finally received. In any calendar year where the Commissioner receives two (2) nonsufficient fund responses to a properly executed EFT from a licensee's bank account, further liquor orders of the licensee will only be shipped after the Commissioner's receipt of a certified check, cashier's check or money order for the full amount of the order at least twenty-four (24) hours prior to delivery.”

The Commission's policy was to instruct, after notification from the State Treasury an EFT was nonsufficient, the State Treasury to resubmit the EFT for payment. If the EFT is subsequently returned for a second time, the Commission considers the EFT nonsufficient. However, we do not believe this policy is in compliance with the preceding statute.

Based on the Commission's records, four retailers submitted two or more nonsufficient EFT's for calendar year 1997 totaling \$70,851.19. Because notification from the State Treasury of the nonsufficient EFT varies from four to seven days after the liquor was delivered to the retailer, the State lost approximately \$45.00 in interest based on a 4% rate.

Of the four retailers noted above, it appears the Commission eventually removed one of the retailers from the EFT payment method, and a second retailer closed for business in December of 1997.

We recommend the Commission comply with Title 175, Series 1, Section 4.6.2.3 of

the Legislative Regulations.

AGENCY'S RESPONSE

It is the ABCA's policy to discontinue processing EFT's from any retail account after two insufficient funds have been returned to our office. However, when the treasurer resubmits an EFT and it then clears, the ABCA considers this as good funds. We only consider an EFT returned when it is returned to us and it becomes necessary for ABCA to process a debit to his sales. When this happens all future orders are stopped until the retailer delivers a cashiers or certified check to our office.

Grocery Store Credit Card Purchases

We noted the Commission obtained a grocery store credit card without statutory authority, and used that card to purchase coffee, sodas and food products, all of which were classified as office expenses. The Department of Administration's "Agency Purchasing Procedures Manual", Section 2.1.1 states,

"2.1.1 \$500 and Less: Competitive bids are not required but are encouraged when possible. (Agency personnel should use the 'Purchasing Card')."

During the period June 1, 1997 through March 31, 1998, we noted \$2,002.33 of groceries were purchased on a grocery store credit card which has five authorized users. The Commissioner stated the intent of the card was to pay for coffee, sodas and pastries for special employee events or business meetings held at the Commission; however, the Commissioner was unable to identify the special employee events or business meetings associated with the expenditures for the 42 grocery receipts.

We could locate no statutory authority that allowed the Commission to enter into a charge account agreement with the store. We noted the Commission began using the Department

of Administration's purchasing card in October 1997; therefore, we believe the Commission should

have used the purchasing card in lieu of the grocery store credit card in accordance with the Department of Administration's "Agency Purchasing Procedures Manual" for the purchases made after October 1997.

Also, the Commission classified the expenditures for groceries as office expenses instead of hospitality expense. The Department of Administration's "Agency Purchasing Procedures Manual", Policy Statement No. 11 states in part,

"Hospitality Line Item 042 is defined by the Director of Budget as:

Food, non-alcoholic beverages, and related expenses for the reception of guest (non-employees of the spending agency) by a spending agency for a specific event or function. The Department of Administration Purchasing Division Policy Statement 11 shall apply to all state spending agencies ...

In the conduct of day-to-day business it is not anticipated that a spending agency will need to incur meal or other hospitality related expenses, involving its employees. However, the following examples represent some circumstances in which a spending agency, using prudent judgement, may incur expenses involving employees:

A.) An event hosted by a spending agency and specifically planned for participants of a conferences, seminar, workshop or similar event

E.) Appreciation, award, and all other group entertainment or events for employees when such functions or events are directly addressed and specifically permitted in the funding source documentation. Funding for such activities from a General Revenue source is prohibited. On this item (E) only, the Purchasing Division reserves the authority to approve or disapprove either requests to expend funds or expenditures submitted for payment, in any amount, at the request of the State Auditor...."

The Commission's expenditure schedule does not indicate any budgeted amounts for hospitality. Further, we noted numerous purchases for coffee. The Commissioner stated the Commission provides coffee to its employees on a regular basis because he believed coffee was an allowable expenditure. We do not believe providing coffee on a day-to-day basis to employees results in compliance with Policy Statement No. 11.

We recommend the Commission comply with the Department of Administration's "Agency Purchasing Procedures Manual", Section 2.1.1 and Policy Statement No. 11.

AGENCY'S RESPONSE

The ABCA no longer has a grocery store credit card. This process was stopped when we were informed during the audit that there was no statutory authority for this expenditure.

Lack of Purchasing Division Approval for Trade Show Expenditures

We noted the Commission held a trade show at Flatwoods, WV at an estimated cost of \$7,500 without obtaining approval from the Purchasing Division in noncompliance with the Department of Administration's "Agency Purchasing Procedures Manual", Policy Statement No. 13 which states in part,

"Promotional Line Item 044 is defined by the Director of Budget as:

'Expenditures by any spending agency for display booths, promotional items at trade shows or similar events, promotion or exposure of service(s) provided, enhancement of professional (not personal) image, and/or the attraction of business and/or clientele. The Department of Administration Purchasing Division Policy Statement 13 shall apply to all state spending agencies.'

All promotion items, events, or functions estimated to cost \$5,000.00 or greater must have prior approval of the Purchasing

Division”

In addition to lack of approval from the purchasing division for the trade show, we noted the Commission classified the room rental fee for the show as a miscellaneous expenditure instead of advertising and promotional in noncompliance with the object code definitions of the Department of Administration’s “Expenditure Schedule Instructions.”

The Commission conducts a trade show annually. The purpose of the trade show, as noted in the Commission’s fiscal year 1997 annual report, stated in part,

“... The trade show offers a one day discount to WV private retail liquor stores by the distilleries that sell liquor in the State of WV... The show allows the distillery representatives and the retail store owners to meet each other and become familiar with the products that are available to stock in the retail stores. This year, the trade show was open to bar and restaurant owners. This gave the distillers an opportunity to make the on premise licensees aware of the products that are available through the licensed retail outlets... The 1996 trade show was a tremendous success with sales totaling \$3,206,094.52 for 36,376 cases

The trade show is a one-day event not open to the public. The Director of Accounting stated the preparation time for the trade show was four days and staffing requirements were approximately 20 employees. The Commission’s role in the show was to provide the conference room, assist in set-up of display tables, take liquor orders, provide security, and perform the registration process. The Commission charged distillers for display tables (\$50) and soft drinks to help defray Commission costs. No overall cost figures have been computed by the Commission; we estimated the total costs of the show (room rental, labor and travel expenses) were \$11,605.90 and reimbursements from distillers totaled \$3,911.80 for a difference of \$7,694.10.

The Commission’s 1997 annual report stated in part, “... the 1996 trade show was a tremendous success”; however, we noted the following yearly case purchase history of liquor

and wines for the Commission based upon its annual reports:

<u>Fiscal Year</u>		<u>Cases Purchased</u>
1985		713,953
1986		688,306
1987		686,525
1988		678,598
1989		630,628
1990		654,012
1991		547,471
1992		583,564
1993		582,230
1994		Not Noted
1995		540,568
1996		528,497
1997		529,597

Based on the preceding schedule, purchases of cases have decreased since 1985; therefore, it appears if purchases decrease then the corresponding sales of cases would decrease also.

We recommend the Commission comply with Department of Administration's "Agency Purchasing Procedures Manual" Policy Statement Number 13 and the object code definitions per the "Expenditure Schedule Instructions".

AGENCY'S RESPONSE

In the future the ABCA will follow purchasing guidelines regarding trade show expenditures. Case sales have declined on a national average since 1985, case sales are reported in the ABCA annual report.

Equipment Inventory

We were unable to locate a file cabinet in our test of equipment inventory; further, we were unable to locate inventory tags on two computers selected for testing. The Commission, by not tagging equipment, was in noncompliance with Section 3.11 of the “Inventory Management and Surplus Property Disposition Policies and Guidelines” which states in part,

“3.11 Identification Tags: All equipment over \$1,000 will have a numbered tag and that equipment will be placed into the agency’s inventory system ... Tags are to be placed on all items of property/equipment in such a manner that it may be easily seen and read.”

The value of the two computers were \$1,390 each and the Commission had assigned identification tags to the computers but failed to place the tags on the actual piece of equipment. We obtained assistance from the Commission in an attempt to locate the file cabinet. Inventory records indicate the cabinet was moved from the Commission headquarters to the Nitro Warehouse but the cabinet could not be located.

We recommend the Commission comply with Section 3.11 of the “Inventory Management and Surplus Property Disposition Policies and Guidelines” and strengthen inventory controls over equipment.

AGENCY’S RESPONSE

No response.

General Revenue Deposits

The Commission did not transfer \$6,301.54 in excess monies from the enforcement fund and did not deposit the annual private club license fees into the General Revenue Fund in accordance with the West Virginia Code. Chapter 11, Article 16, Section 23 of the West Virginia Code states in part,

“...At the end of each fiscal year all funds in the nonintoxicating beer enforcement fund in excess of twenty thousand dollars shall be transferred to the general revenue fund”

We noted the enforcement fund had an ending cash balance on June 30, 1997 of \$80,652.54. The ending cash balance exceeds the authorized fund balance by \$60,652.54. The Commission transferred \$54,351 on September 18, 1997 to the General Revenue Fund for a difference of \$6,301.54. The Director of Accounting stated the entire \$60,652.54 was not transferred because June 1997 invoices were submitted to the State Auditor for payment but subsequently returned for various corrections.

In regard to annual private club license fees, Chapter 60, Article 7, Section 6 of the West Virginia Code states in part,

“...(d) All such fees shall be paid by the Commissioner to the state treasurer and credited to the general revenue fund of the State.”

During our test of license fees, we noted the Commission made private club license deposits totaling \$1,830,075 into the General Administration Fund (7352) which is a special revenue fund. Therefore, these funds were not made available to the General Revenue Fund as prescribed by the preceding statute.

We recommend the Commission comply with Chapter 11, Article 16, Section 23 and Chapter 60, Article 7, Section 6 of the West Virginia Code.

AGENCY'S RESPONSE

The enforcement fund balance that exceed \$20,000 is transferred in the following fiscal year, the only exception is invoices received prior to June 30 that are outstanding in the State Auditor's Office.

Monies Not Receipted Timely

The Commission receipts monies when deposits are made, not when the monies are received. Monies are collected at various divisions of the Commission and remitted to the Accounting Division for deposit. Upon receipt of the monies by the Accounting Division, the cashier prepares the deposit and records the monies in a receipt book. Chapter 12, Article 2, Section 2 of the West Virginia Code states in part,

“(a) All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury and shall deposit within twenty-four hours with the state board of investments all moneys received or collected by them for or on behalf of the state for any purpose whatsoever...”

The mail routine of the Commission allows unopened mail to be delivered to each division; no control system is in place to account for monies when received by the Commission. We believe the Commission should implement control procedures designating someone other than an employee in the accounting function to open the mail and make a daily itemized record of moneys received. Further, this record should be verified by an independent third party and reconciled with the actual deposit. Since no daily itemized record is maintained, we were unable to determine if all moneys received had been deposited timely with the preceding Code section.

We recommend the Commission comply with Chapter 12, Article 2, Section 2 of the West Virginia Code and receipt monies when received.

AGENCY'S RESPONSE

Mail is delivered to various departments in the ABCA twice daily, the mail is time-date stamped by the receiving department. All money is received in the accounting department the next morning and deposited that day within 24 hours of receipt. The accounting department does not open the mail. The money is recorded in the department in

which it was received and verified by the accounting department as a deposit in transit and verified again when the verified deposit is received from the Treasurer. Then moved by an entry from deposits in transit to cash with treasurer.

Expenses for State-Owned Vehicles Not Authorized by Rule

The Department of Administration's Procedural Rule, Title 148, Series 3, Section 11.12.1 states,

"11.12.1 Charges

The Travel Management Office will specify the rates for lease of vehicles to departments, with such rates approved by the Secretary of the Department of Administration. The rates will provide for reasonable vehicle expenses, including, but not limited to, authorized fuel purchases, preventative maintenance, general maintenance and repairs, insurance, tires, insurance, depreciation, replacement and administrative costs. However, the spending unit will be responsible for all expenses related to abuse and/or misuse of the vehicle."

During fiscal year 1997, the Commission paid the Department of Administration \$125,080.00 for leased vehicles. In addition, the Commission was invoiced separately by the Department and subsequently paid fuel purchases totaling \$35,545.59. Finally, the Commission paid \$3,064.13 for tires at a tire franchise store approved by the Department.

We believe the expenditures for fuel and tires are to be included in the lease amount charged by Department of Administration in accordance with their procedural rule. Therefore, it appears the Commission has no statutory authority to make such expenditures.

We recommend the Commission discontinue expending funds for fuel and tires in accordance with the Department of Administration's Procedural Rule, Title 148, Series 3, Section 11.12.1.

AGENCY'S RESPONSE

The State Purchasing Department, Leasing Division charges a monthly lease fee for each car, each driver is issued a PHH credit card for gasoline and other minor purchases, the ABCA gets invoiced for all charges on the PHH card. Tires and maintenance must have the approval of purchasing but ABCA pays the bills. This is the procedure that Leasing Division insist that we follow. We will follow this up with the State Purchasing Department and submit their reason for billing to you as soon as possible.

Accounting for Bailment Warehouse Fees

The Commission did not classify the bailment warehouse fees charged to suppliers for routine warehouse services as revenues on the State's FIMS system. The ABCC deducted the fees due from the invoice for liquor purchases and the ABCC paid the netted figure. The netted amount paid would be classified as a disbursement on the accounting records. This type of accounting results in receipts and disbursements being understated on the State's records. Chapter 12, Article 2, Section 2 of the West Virginia Code states in part,

“(a) All officials and employees of the state authorized by statute to accept moneys due the state of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury and shall deposit within twenty-four hours with the state board of investments all moneys received or collected by them for or on behalf of the state for any purpose whatsoever....”

The Director of Accounting stated the “netting” process is performed so the State is guaranteed payment of the bailment warehouse fees in a timely manner. This netting procedure was implemented when the ABCC began the bailment inventory system in 1991. We did note the ABCC maintains a separate ledger indicating the actual amount of liquor purchases made and the bailment warehouse fees received. The bailment fees during fiscal year 1997 totaled approximately \$327,000.00.

We recommend the Commission comply with Chapter 12, Article 2, Section 2 of the West Virginia Code and classify these transactions appropriately.

AGENCY'S RESPONSE

Bailment are adjusted to income and reported as income on ABCA financial statements. Bailment fees are incurred when product is received into our warehouse and reported as income from bailment fees on ABCA financial statements.

Inactive Account - Computer Equipment Purchase Governor Transfer Fund (7354)

We noted in our review of the accounts of the Commission that Fund 7354 has had no activity and maintained an account balance of \$141.34 since July 1, 1990. The "Digest of Revenue Sources in West Virginia" (1991) indicates this was a Governor's transfer to the WV Nonintoxicating Beer Commissioner for the purchase of computer equipment. We were unable to obtain any further information from the State Auditor's Office since this account was assigned before FIMS came into effect. Further, the Director of Accounting at the Commission believes this account was used for the Beer Commission before they were incorporated into the Commission's chart of accounts.

We recommend the Commission seek to transfer these monies to the General Administration Fund and close the account.

AGENCY'S RESPONSE

This account will be closed.

Lack of Criminal Background Checks

During our test of license receipts, we were unable to locate criminal background checks for 19 of the 21 executive officers and directors of a corporation that was a retailer. The Commission's policy is to have criminal background checks performed on applicants to determine

compliance with Chapter 60, Article 3A, Section 8 of the West Virginia Code which states in part,

“...(3) That the applicant has never been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law, and if the applicant is a corporation, limited partnership, partnership or association, that none of its executive officers, directors or general partners, or any person owning, directly or indirectly, at least twenty percent of the outstanding stock of or partnership interest in such applicant, has been so convicted....”

The Commission required criminal background checks for the officer who signed the license application as well as the manager who oversees the operation of the store. However, without the criminal background check, the Commission is unable to determine compliance with the preceding statute.

We recommend the Commission comply with Chapter 60, Article 3A, Section 8 of the West Virginia Code.

AGENCY'S RESPONSE

The ABCA obtains criminal background checks on the directors and officers of licensees that are local and all local operators. It is difficult to obtain thumb prints of officers of large multinational firms such as the Marriott and the Seven-Eleven Stores.

Overcharging for License Fee

The Commission overcharged a Class B franchise store a total of \$3,000 in annual retail license fees for the years 1995-96, 1996-97 and 1997-98. Chapter 60, Article 3A, Section 12 of the West Virginia Code states in part,

“...(a) The annual retail license period shall be from the first day of July to the thirtieth day of June of the following year. The annual retail license fee for the Class A retail license shall be the sum obtained by multiplying the number of retail outlets operated by the retail license ... by one thousand five hundred dollars. The annual retail license fee for a Class B retail license shall be five hundred

dollars”

Because a data input error in the licensing computer system, the Class B franchise store was listed as a Class A franchise store which has a \$1,500 annual retail license fee. Since the Commission utilizes an automated billing and application system, information remains constant year-to-year. Therefore, this input error resulted in the invoicing and subsequent payment by the store of incorrect fees. Since a Class B annual retail license fee is \$500, the franchise store overpaid \$1,000 each year during the three-year period.

We further noted the license forms used by the Commission are not pre-numbered. Pre-numbered forms provide accountability and controls over unauthorized use or disposition. Although the Commission's computer system prints retailer license numbers and other information on each license, we believe good internal controls over the actual license documents are required to protect the blank licenses from unauthorized use or disposition.

We recommend the Commission comply with Chapter 60, Article 3, Section 12 of the West Virginia Code. We further recommend the Commission implement the use of pre-numbered license forms.

AGENCY'S RESPONSE

This was a clerical error and has been resolved.

Incorrect Overtime Payments

In our test of personal services, we noted two employees were underpaid a total of \$215.92 and two additional employees were overpaid \$289.50 in overtime compensation.

Chapter 21, Article 5C, Section 3(a) of the West Virginia Code which states,

“On and after the first day of July, one thousand nine hundred eighty, no employer shall employ any of his employees for a workweek longer than forty hours, unless such employee receives compensation for his employment in excess of the hours above

specified at a rate of not less than one and one-half times the regular rate at which he is employed.”

Due to mathematical errors in calculating hours worked per workweek, the first employee received no payment for 16 hours worked in excess of a forty-hour workweek which resulted in an underpayment of \$179.52. The second employee received compensation for seven hours but at an hourly rate that was less than one and one-half times his regular rate of pay; therefore, the underpayment was \$36.40. These errors resulted in noncompliance with the preceding statute regarding compensation for hours worked over forty and the hourly rates of pay.

We further noted two employees who were overpaid in noncompliance with Chapter 12, Article 3, Section 13 of the West Virginia Code which states,

“No money shall be drawn from the treasury to pay the salary of any officer or employee before his services have been rendered.”

One employee was overpaid eight hours of overtime compensation totaling \$117.84 due to a mathematical error in computing hours worked per week. The second employee was overpaid \$171.66 for ten hours of overtime due to a duplicate payment. The duplicate payment occurred because the November 1, 1996 workday was recorded on both the October and November time sheets.

We recommend the Commission comply with Chapter 21, Article 5C, Section 3(a) of the West Virginia Code and compensate the employees who were underpaid. We further recommend the Commission comply with Chapter 12, Article 3, Section 13 of the West Virginia Code and seek reimbursement for the overpayments.

AGENCY'S RESPONSE

These were errors and have been resolved.

Overpayment of Annual Increment

Of the 14 employees selected for annual increment testing, we noted an employee was overpaid a cumulative total of \$200 as of July 31, 1997. Chapter 5, Article 5, Section 2 of the West Virginia Code, as amended, states in part,

“Effective for the fiscal year beginning the first day of July, one thousand nine hundred ninety-six, every eligible employee with three or more years of service shall receive an annual salary increase equal to fifty dollars times the employees’ years of service”

The employee received credit for an extra year of service because of a clerical error. This resulted in the employee receiving the increment one year early, as well as adding an additional year to one subsequent increment.

We recommend the Commission comply with Chapter 5, Article 5, Section 2 of the West Virginia Code, as amended, and seek reimbursement for the overpayment.

AGENCY'S RESPONSE

These were errors and have been resolved.

Sick Leave Accruals

We noted two errors in the test of sick leave accruals which resulted in overstated and understated balances of two employees of eight hours and .25 hours, respectively. The Division of Personnel’s Administrative Rule, Section 15.04 states in part,

“15.04 Sick Leave

(a) Accrual: Except as otherwise provided in this section, each employee shall received accrued sick leave with pay and benefits. Sick leave is computed on the basis of 1.5 days per month for full-time employees. This is unlimited accumulation of sick leave...

(c) Minimum Charge: The minimum charge against sick leave is one quarter (1/4) hour....”

Due to clerical error, one employee used eight hours of sick leave in June 1997

Personnel Fees - Temporary Employees \$38.75 per temporary employee per quarter..."

The Commission received an invoice for July 1996 from the Department of Administration-Personnel for 119.12 permanent FTE positions. Because nine of these positions are budgeted under the Wine License Special Fund (7351), the Commission payroll clerk edits the invoice to only pay for the 110.12 FTE positions budgeted under the General Administration Fund (7352) and forwards a copy of the invoice to the Department of Tax and Revenue for payment of the remaining 9 FTE's from the Wine License Special Fund (7351).

It appears, due to clerical error, the Commission paid for 111.12 FTE positions for the month of July, 1996 instead of 110.12 positions. This error resulted in an overpayment of \$38.75 for one FTE position.

We recommend the Commission comply with Chapter 29, Article 6, Section 23 of the West Virginia Code.

AGENCY'S RESPONSE

These were errors and have been resolved.

Bailment Inventory

During our physical count of bailment inventory, we noted the Commission accepted 57 cases of liquor not authorized for sale from suppliers; one case of liquor costing \$77.94 was unaccounted for during our count but located by the end of the day; a lack of segregation of duties between the employee who destroys damaged product and the employee who prepares the claims noting the product was damaged; and, a lack of inventory for individual bottles which become separated from packaged cases. Title 175, Series 6, Section 4.2 and 4.5 of the Legislative Regulations states in part,

“4.2 Suppliers are required to notify Commission warehouse personnel at least forty-eight (48) hours in advance of shipment of quantities, by code, of product being delivered to the Commission Warehouse. The supplier will be provided with an unloading reference number at the time Commission is notified of shipment.

...4.5 The carrier is required to call the Commission Warehouse to obtain an unloading appointment time Trucks arriving without appointments and reference numbers will not be unloaded.”

We identified 57 cases of liquor at the warehouse which were not recorded on the inventory records. Warehouse personnel told us the liquor was received in suppliers' shipments but was not a listed product for sale by the State. This occurred because the suppliers were not notifying the warehouse of quantities and codes of product to be delivered. Therefore, the Commission retained the liquor because the trucking companies refused to return the liquor to the distiller. After receipt of the liquor, the Commission stated they would contact the supplier and request the supplier to pick up the cases. We believe the Commission should not accept responsibility for shipments of unsaleable liquor and implement the criteria noted above.

We were also unable to account for one case of liquor during our physical inventory; it appears the case of liquor was shipped, in error, to a retailer prior to our count. Based on our inquiry, the Commission identified the retailer and retrieved the case of liquor before the end of the day. We also noted the destruction of liquor was performed by the same employee who prepared the “Report of Loss and Damage - Affidavit of Claim” forms. These forms are used to account for unsaleable product due to damage and assigns responsibility for the claim -- such as distiller, truck or Commission liability. We finally noted individual liquor bottles that became separated from damaged case packs in a pallet were placed in an area separate from the bailment stock on the warehouse floor. The warehouse personnel wait until the inventory amounts are depleted on the pallet to obtain the damaged case. No inventory was maintained for these

individual bottles noting the change of location of the liquor.

We believe the Commission should strengthen controls over shipments to ensure the correct number of cases are shipped and accept from suppliers only product available for sale by the State. Secondly, the destruction of product should be performed or witnessed by someone other than the employee preparing the claim forms. Finally, although the separated bottles are accounted for in the bailment inventory, we believe the Commission should maintain an additional inventory for these bottles due to the change in location at the warehouse.

We recommend the Commission implement the provisions in Title 175, Series 6 of the Legislative Regulations and require suppliers to notify the warehouse at least 48 hours in advance as to quantities and codes of liquor to be received. We further recommend the Commission strengthen internal controls over accounting for bailment inventory.

AGENCY'S RESPONSE

The ABCA bailment inventory is counted on a continuous cycle. That and our computer tracking allows us to locate any miss shipped items within 24 hours. Our warehouse inventory shows no overages or shortages and very minimal breakage. Internal controls over bailment inventory work very well.

INDEPENDENT AUDITORS' OPINION

To the Joint Committee on Government and Finance:

We have audited the statement of cash receipts, disbursements and changes in cash balance of the West Virginia Alcohol Beverage Control Commissioner for the year ended June 30, 1997. The financial statement is the responsibility of the management of the West Virginia Alcohol Beverage Control Commissioner. Our responsibility is to express an opinion on the financial statement based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statement is free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statement. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

As described in Note A, the financial statement was prepared on the basis of cash receipts and disbursements, which is a comprehensive basis of accounting other than generally accepted accounting principles.

In our opinion, the financial statement referred to above presents fairly, in all material respects, the revenues collected and expenses paid of the West Virginia Alcohol Beverage Control Commissioner for the year ended June 30, 1997 on the basis of accounting described in Note A.

Our audit was conducted for the purpose of forming an opinion on the basic financial statement taken as a whole. The supplemental information is presented for purposes of additional analysis and is not a required part of the basic financial statement. Such information has been subjected to the auditing procedures applied in the audit of the basic financial statement and, in our opinion, is fairly stated in all material respects in relation to the basic financial statement taken as a whole.

Sincerely yours,



Theodor L. Shanklin, CPA, Director
Legislative Post Audit Division

June 18, 1998

Auditors: Michael A. House, CPA, Supervisor
Jean Ann Waldron, Auditor-in-Charge
Larry D. Bowman

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENT OF CASH RECEIPTS, DISBURSEMENTS AND

CHANGES IN CASH BALANCE

	<u>Year Ended</u> <u>June 30, 1997</u>
Cash Receipts:	
Liquor Sales	\$46,626,270.74
Less: Liquor Payments to Distillers	<u>35,950,114.22</u>
	10,676,156.52
Private Club License Fees	1,830,075.00
Class A Retail License Fees	166,500.00
Class B Retail License Fees	24,500.00
Gallonage Tax	1,012,859.25
Beer Tax	6,735,015.67
Beer License Fees	903,050.00
Wine License Collections	213,992.50
Enforcement Fund Collection	171,085.20
Miscellaneous	<u>144,934.97</u>
	11,202,012.59
Disbursements:	
Personal Services	2,423,254.55
Employee Benefits	999,115.04
Current Expenses	1,472,729.78
Repairs and Alterations	56,722.23
Equipment	127,177.77
Payment of Claims	<u>160.00</u>
	<u>5,079,159.37</u>
Cash Receipts Over Disbursements	16,799,009.74
Transfers to General Revenue Fund of West Virginia	(\$15,684,119.31)
Beginning Balance	<u>4,965,566.60</u>
Ending Balance	<u>\$ 4,080,457.03</u>

See Notes to Financial Statement

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

NOTES TO FINANCIAL STATEMENTS

Note A - Accounting Policies

Accounting Method: The cash basis of accounting is followed. Therefore, certain revenue and the related assets are recognized when received rather than when earned and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statement is not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

Note B - Pension Plan

All eligible employees are members of the West Virginia Public Employees' Retirement System. Employee contributions are 4½% of their compensation and employees are vested under certain circumstances. The West Virginia Alcohol Beverage Control Commissioner matches contributions at 9½% of the compensation on which the employee made contributions. The West Virginia Alcohol Beverage Control Commissioner's pension expenditures for fiscal year 1997 were as follows:

General Administrative Fund (7352)	\$ 208,252.25
Wine License Special Fund (7351)	<u>17,997.63</u>
	<u>\$ 226,249.88</u>

Note C - Funds Administered by the WV Department of Tax and Revenue

The Department of Tax and Revenue was responsible for the collection and remittance of taxes to the General Revenue Fund during fiscal year 1997 for the following:

Gallonage Tax Fund 0490-575	\$1,012,859.25
Beer Tax Fund 0491-515	<u>6,35,015.67</u>
	<u>\$7,747,874.92</u>

Further, the Alcohol Beverage Control Commission was responsible for collection of cash receipts for the Wine License Funds; however, the Department of Tax and Revenue made cash disbursements from this fund as follows:

	<u>Cash</u> <u>Receipts</u>	<u>Cash</u> <u>Disbursements</u>
Wine License Special Fund (7351)	<u>\$211,317.50</u>	<u>\$307,148.87</u>

SUPPLEMENTAL INFORMATION

**WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER
STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS
GENERAL REVENUE**

<u>ABCC Collections Fund - Statutory Transfers - Fund 0490-553</u>	<u>Year Ended June 30, 1997</u>
Beginning Balance:	
State Treasury	\$ 0.00
Cash Receipts:	
Statutory Transfers from Funds 7352 and 7355	<u>7,012,243.00</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$7,012,243.00</u>
Disbursements:	
Transfers to General Revenue Fund of West Virginia	\$7,012,243.00
Ending Balance:	
State Treasury	<u>0.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$7,012,243.00</u>

<u>ABCC Collections Fund - Gallonage Tax - Fund 0490-575</u>	
Beginning Balance:	
State Treasury	\$ 0.00
Cash Receipts:	
Gallonage Tax	<u>1,012,859.25</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$1,012,859.25</u>
Disbursements:	
Transfer to General Revenue Fund of West Virginia	\$1,012,859.25
Ending Balance:	
State Treasury	<u>0.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$ 1,012.859.25</u>

**WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER
STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS
GENERAL REVENUE**

ABCC - Beer Commission General Administrative Fund -		<u>Year Ended</u>
<u>Beer Tax - Fund 0491-515</u>		<u>June 30, 1997</u>
Beginning Balance:		
State Treasury		\$ 0.00
Cash Receipts:		
Beer Tax		<u>6,735,015.67</u>
TOTAL CASH TO ACCOUNT FOR		<u>\$ 6,735,015.67</u>
Disbursements:		
Transfers to General Revenue Fund of West Virginia		\$ 6,735,015.67
Ending Balance:		
State Treasury		<u>0.00</u>
TOTAL CASH ACCOUNTED FOR		<u>\$ 6,735,015.67</u>
ABCC - Beer Commission General Administrative Fund -		
<u>Beer Licenses - Fund 0491-516</u>		
Beginning Balance:		
State Treasury		\$ 0.00
Cash Receipts:		
Beer License Fees		903,050.00
Other Collections		<u>20,951.39</u>
		<u>924,001.39</u>
TOTAL CASH TO ACCOUNT FOR		<u>\$ 924,001.39</u>
Disbursements:		
Transfers to General Revenue Fund of West Virginia		\$ 924,001.39
Ending Balance:		
State Treasury		<u>0.00</u>
TOTAL CASH ACCOUNTED FOR		<u>\$ 924,001.39</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENT OF CASH RECEIPTS, DISBURSEMENTS

AND CHANGES IN CASH BALANCE

SPECIAL REVENUE

<u>Wine License Special Revenue Operating</u>		<u>Year Ended</u>
<u>Account Fund - Fund 7350</u>		<u>June 30, 1997</u>
Cash Receipts:		
	Wine Distributor Sales Representative Fees	\$ 2,675.00
Disbursements		<u>0.00</u>
Cash Receipts Over Disbursements		2,675.00
Beginning Balance		<u>8,350.00</u>
Ending Balance		<u>\$11,025.00</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

Wine License Special Fund -

Personal Services - Fund 7351-001

Year Ended
June 30, 1997

Appropriations	\$200,408.00
Expenditures	<u>187,347.39</u>
	13,060.61
Transmittals Paid After June 30	<u>0.00</u>
Balance	<u>\$ 13,060.61</u>

Wine License Special Fund -

Annual Increment - Fund 7351-004

Appropriations	\$ 2,450.00
Expenditures	<u>2,450.00</u>
Transmittals Paid After June 30	<u>0.00</u>
Balance	<u>\$ 0.00</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

<u>Wine License Special Fund -</u> <u>Employee Benefits - Fund 7351-010</u>	<u>Year Ended</u> <u>June 30, 1997</u>
Appropriations	\$ 47,328.00
Agency Transfer from Fund 7351-099	<u>25,000.00</u>
	72,328.00
Expenditures	<u>62,333.85</u>
	9,994.15
Transmittals Paid After June 30	<u>265.49</u>
Balance	<u>\$ 10,259.64</u>
<u>Wine License Special Fund -</u> <u>Unclassified - Fund 7351-099</u>	
Appropriations	\$183,477.00
Agency Transfer to Fund 7351-010	<u>(25,000.00)</u>
	158,477.00
Expenditures:	
Current Expenses	19,023.25
Equipment	<u>35,994.38</u>
	<u>55,017.63</u>
	103,459.37
Transmittals Paid After June 30	<u>1,350.11</u>
Balance	<u>\$104,809.48</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

SPECIAL REVENUE

<u>Wine License Special Fund - Cash</u> <u>Control - Fund 7351</u>	<u>Year Ended</u> <u>June 30, 1997</u>
Beginning Balance:	
State Treasury	\$786,170.49
Cash Receipts:	
Other Collections	<u>211,317.50</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$997,487.99</u>
Disbursements:	
Personal Services	\$189,797.39
Employee Benefits	62,333.85
Current Expenses	19,023.25
Equipment	<u>35,994.38</u>
	307,148.87
Add Transmittals Paid July 1-31 Beginning; and (Less) Transmittals Paid July 1-31 Ending:	
Employee Benefits	3,117.30
(Employee Benefits)	(265.49)
Current Expenses	222.40
(Current Expenses)	<u>(1,350.11)</u>
	<u>1,724.10</u>
	308,872.97
Ending Balance:	
State Treasury	<u>688,615.02</u>
TOTAL CASH ACCOUNTED FOR	<u>\$997,487.99</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

General Administrative Fund -
Personal Services - Fund 7352-001 **Year Ended**
June 30, 1997

Appropriations	\$ 2,455,256.00
Expenditures	<u>2,171,104.35</u> 284,151.65
Transmittals Paid After June 30	<u>(740.91)</u>
Balance	<u>\$ 283,410.74</u>

General Administrative Fund -
Annual Increment - Fund 7352-004

Appropriations	\$ 70,401.00
Expenditures	<u>61,611.90</u> 8,789.10
Transmittals Paid After June 30	<u>0.00</u>
Balance	<u>\$ 8,789.10</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

<u>General Administrative Fund - Employee Benefits - Fund 7352-010</u>	<u>Year Ended June 30, 1997</u>
Appropriations	\$1,364,785.00
Expenditures	<u>960,532.80</u> 404,252.20
Transmittals Paid After June 30	<u>85,708.92</u>
Balance	<u>\$ 489,961.12</u>

<u>General Administrative Fund - Unclassified - Fund 7352-099</u>	
Appropriations	\$2,023,296.00
Expenditures:	
Current Expenses	1,354,910.72
Repairs and Alterations	58,880.53
Equipment	89,538.24
Payment of Claims	<u>160.00</u>
	<u>1,503,489.49</u>
	519,806.51
Transmittals Paid After June 30	<u>141,895.17</u>
Balance	<u>\$ 661,701.68</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS

SPECIAL REVENUE

<u>General Administrative Fund - Purchase of Liquor for Resale - Fund 7352-419</u>	<u>Year Ended June 30, 1997</u>
Cash Receipts	\$35,950,114.22
Disbursements	<u>35,950,114.22</u>
Balance	<u>\$ 0.00</u>
<u>General Administrative Fund – Transfer of Liquor Profits and Taxes - Fund 7352-425</u>	
Cash Receipts	\$7,000,000.00
Disbursements	<u>7,000,000.00</u>
Balance	<u>\$ 0.00</u>

**WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER
STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS
SPECIAL REVENUE**

<u>General Administrative Fund - Cash Control - Fund 7352</u>	<u>Year Ended June 30, 1997</u>
Beginning Balance:	
State Treasury	\$ 4,138,661.55
Cash Receipts:	
Liquor Sales	46,626,270.74
Private Club License Fees	1,830,075.00
Class A Retail License Fees	166,500.00
Class B Retail License Fees	24,500.00
Other Collections	<u>123,983.58</u>
	<u>48,771,329.32</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$52,909,990.87</u>
Disbursements:	
Personal Services	\$ 2,232,716.25
Employee Benefits	960,532.80
Current Expenses	1,354,910.72
Repairs and Alterations	58,880.53
Equipment	89,538.24
Payment of Claims	160.00
Purchase of Liquor	<u>35,950,114.22</u>
	40,646,852.76
Add Transmittals Paid July 1-31 Beginning; and (Less) Transmittals Paid July 1-31 Ending:	
Personal Services	0.00
(Personal Services)	740.91
Employee Benefits	59,105.50
(Employee Benefits)	(85,708.92)
Current Expenses	115,262.27
(Current Expenses)	(122,536.52)
Repairs & Alterations	3,334.37
(Repairs & Alterations)	(6,006.35)
Equipment	12,276.02
(Equipment)	<u>(13,352.30)</u>
	<u>(36,885.02)</u>
	40,609,967.74
Transfer to General Revenue Fund 0490-553	7,000,000.00
Ending Balance:	
TOTAL CASH ACCOUNTED FOR	<u>\$52,909,990.87</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENTS OF CASH RECEIPTS, DISBURSEMENTS

AND CHANGES IN CASH BALANCE

SPECIAL REVENUE

Computer Equipment Purchase **Year Ended**
Governor Transfer Fund - Fund 7354 **June 30, 1997**

Cash Receipts	\$ 0.00
Disbursements	<u>0.00</u>
	0.00
Beginning Balance	<u>141.34</u>
Ending Balance	<u>\$ 141.34</u>

Nonintoxicating Beer Enforcement Fund - Fund 7355

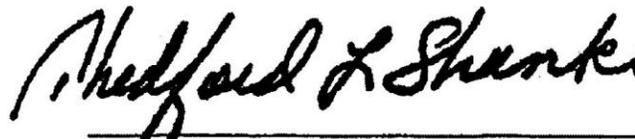
Cash Receipts:	
Fines, Penalties and Other Collections	\$171,085.20
Disbursements:	
Current Expenses	107,197.77
Repairs and Alterations	513.68
Equipment	<u>2,721.43</u>
	<u>110,432.88</u>
Cash Receipts Over Disbursements	60,652.32
Transfer to General Revenue Fund 0490-553	(12,243.00)
Beginning Balance	<u>32,243.22</u>
Ending Balance	<u>\$ 80,652.54</u>

STATE OF WEST VIRGINIA

OFFICE OF LEGISLATIVE AUDITOR, TO WIT:

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the report of audit appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 60, Article 2, Section 21, as amended, and that the same is a true and correct copy of said report.

Given under my hand the 11th day of January 1999.



Thedford L. Shanklin, CPA, Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the West Virginia Department of Tax and Revenue; the West Virginia Alcohol Beverage Control Commissioner; Governor; Attorney General; and State Auditor