

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

Theodore L. Shanklin, CPA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd., E.



Area Code (304)
Phone: 347-4880
Fax: 347-4889

CHARLESTON, WEST VIRGINIA 25305-0610

Memo

To: Theodore L. Shanklin, CPA, Director

From: Michael A. House, CPA, Supervisor *m/h*
Neil McEachron, Jr., CPA, Legislative Auditor III

Date: October 6, 2003

Subject: FOLLOW-UP REVIEW OF THE AUDIT REPORT OF THE ALCOHOL
BEVERAGE CONTROL ADMINISTRATION (ABCA) FOR THE PERIOD
JULY 1, 2000 - JUNE 30, 2002

In accordance with your instructions, we conducted a follow-up review to examine the implementation of recommendations contained in the audit of the ABCA for the period July 1, 2000 - June 30, 2002. In conducting this follow-up, we met with the following ABCA employees: Acting Commissioner Ronald Moats and Pat Holtsclaw, Comptroller. In addition, we reviewed new procedures implemented to comply with audit recommendations. Our review shows controls have been strengthened and recommendations have been followed in several instances. In other instances plans which would comply with audit recommendations have been formatted for implementation in the near future. However, the ABCA has not drafted a proposed rule for a fee schedule governing the assessment of fines and penalties, nor has the ABCA submitted in a timely manner to the Legislative Rule-Making Committee proposed changes to their existing rules which the ABCA told us would be made to comply with specific audit recommendations. The specific actions taken by the ABCA with respect to each finding in the report are set out in the attached summary of actions taken by the ABCA.

SUMMARY OF ACTIONS TAKEN BY THE ABCA

FINDING #1 - INVENTORY OF EVIDENCE ROOM

The ABCA had a lack of control procedures over seized evidence and evidence forms. We reported in our previous audit the lack of control procedures over the disposition of seized evidence as well as the proper safeguarding of cash evidence.

We Recommended:

The ABCA should comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended. The ABCA should also comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, by implementing control procedures to account for the disposition of evidence, as well as strengthen controls over the safeguarding of cash in the ABCA's custody.

Agency Action:

Both the commissioner and the comptroller told us the ABCA was in the planning stages of developing a computer program that will label and bar-code for scanning all evidence seized with the docket number and case number. Once this system is in place, the ABCA will be able to generate a management report of all evidence that is in the evidence room. This report will enable ABCA personnel to process the disposition of seized evidence in a more timely manner as violation cases are adjudicated. The commissioner stated the ABCA's time frame for implementing this computer program is by the end of the fiscal year. The comptroller also stated the ABCA is once again utilizing the lock box obtained through the State Treasurer's Office to secure any seized cash evidence to be maintained until the related violation case has been adjudicated. Finally, the commissioner told us the Waiver of Hearing Form has not been modified as yet to reflect language addressing the forfeiture of seized evidence but that the ABCA will take immediate steps to revise this form.

Post Audit Division Comments:

We should follow-up at the end of the fiscal year to insure the ABCA has implemented the above procedures.

FINDING #2 - ASSESSMENT OF EXCESS FINE AND UNAUTHORIZED COURT COSTS

One private club licensee, cited for one violation of gambling, was fined \$6,500.00 in excess of the maximum fine amount of \$1,000 allowed by State law. Also, we noted 23 of 51 instances where the ABCA assessed licensees \$50 for court costs, even though a hearing was not held. The ABCA does not have the statutory authority to charge a \$50 court cost to licensees that do not request a hearing.

We Recommended:

The ABCA should comply with Chapter 60, Article 7, Sections 13 and 13a of the West Virginia Code, as amended, as well as including the additional \$50 in the amount of the fine, if it is part of the fine amount.

Agency Action:

The instance where the one licensee was fined an excess amount was an isolated incident. The commissioner told us the practice of assessing licensees a \$50 fee for court costs who do not request a hearing has been discontinued. Currently, any such fee for court costs is incorporated into the amount of the fine.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #3 - FEE SCHEDULE FOR ASSESSMENT OF FINES AND PENALTIES

The lack of a formal fee schedule provides the opportunity for licensees who commit the same violation(s) to be fined on an unequal basis. This same finding was reported in the previous audit. Also, the ABCA had no written procedures for case dismissals.

We Recommended:

The ABCA should comply with Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended. Also, the ABCA needs to implement, by legislative rule, a fee schedule establishing guidelines for fines and penalties as well as developing a written procedure providing for the dismissal of pre-hearing cases as they agreed to do in their responses to our last post audit.

Agency Action:

No action has been taken. According to Commissioner Moats, a fee schedule is not logical due to the diverse nature of violations. Also, Commissioner Moats told us a written procedure for case dismissals is unnecessary since the discretion whether or not to dismiss a case rests with the commissioner.

Post Audit Division Comments:

The Post Audit Division believes the ABCA should implement, by legislative rule, a fee schedule for fines and penalties to ensure licensees are not fined on an unequal basis, and to avoid accusations of preferential treatment of some licensees. They should also develop written procedures for case dismissals.

FINDING #4 - DESTRUCTION OF NON-CASH EVIDENCE

During the audit, there was a lack of control procedures over seized evidence. This same finding was reported in the previous audit.

We Recommended:

The ABCA should comply with Chapter 5A, Article 8, Section 9 of the WV Code, as amended, by strengthening internal controls over the disposition of evidence following settlement of the corresponding violations.

Agency Action:

Both the commissioner and the comptroller told us the ABCA was in the planning stages of developing a computer program that will label and bar-code for scanning all evidence seized with the docket number and case number. Once this system is in place, the ABCA will be able to generate a management report of all evidence that is in the evidence room. This report will enable ABCA personnel to process the disposition of seized evidence in a more timely manner as violation cases are adjudicated. The commissioner stated the ABCA's time frame for implementing this computer program is by the end of the fiscal year. The comptroller also stated the ABCA is once again utilizing the lock box obtained through the State Treasurer's Office to secure any seized cash evidence to be maintained until the related violation case has been adjudicated. Finally, the commissioner told us the Waiver of Hearing Form has not been modified as yet to reflect language addressing the forfeiture of seized evidence but that the ABCA will take immediate steps to revise this form.

Post Audit Division Comments:

The Post Audit Division should follow up at the end of this fiscal year to ensure the plan for automating the tracking of all seized evidence had been implemented.

FINDING #5 - TIMELY ACTION NOT TAKEN ON VIOLATION REPORT

There was one instance where the ABCA did not take timely action on a violation report which resulted in the ABCA not collecting the \$1,000 non-intoxicating beer bond of a licensee whose beer license should have been revoked.

We Recommended:

The ABCA should comply with Chapter 11, Article 16, Section 12(b) of the West Virginia Code, as amended, and Title 175, Series 2, Section 6.16 of the Legislative Rule for Private Club Licensing.

Agency Action:

The commissioner told us he receives a daily report from the Data Processing Division which reflects an aging of fines receivable. For any fines assessed which have been outstanding over 30 days as reflected on the daily report, the commissioner will direct agency personnel within the Violations Division to contact licensees with fines outstanding over 30 days in an attempt to collect the fine amount due. This procedure was implemented by the ABCA to become more responsive in collecting outstanding fines from licensees who do not submit payment of their fine in a timely manner.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #6 - COLLECTION PROCEDURES FOR OUTSTANDING FINES

Our review of fines and penalties assessed against licenses indicated long periods of time to collect payment from licensees. This same finding was reported in our previous audit.

We Recommended:

The ABCA should comply with Chapter 5A, Article 8, Section 9 of the WV Code, as amended.

Agency Action:

The commissioner told us he receives a daily report from the Data Processing Division which reflects an aging of fines receivable. For any fines assessed which have been outstanding over 30 days as reflected on the daily report, the commissioner will direct agency personnel within the Violations Division to contact licensees with fines outstanding over 30 days in an attempt to collect the fine amount due. This procedure was implemented by the ABCA to become more responsive in collecting outstanding fines from licensees who do not submit payment of their fine in a timely manner.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #7 - FINES ASSESSED NOT PROPERLY DOCUMENTED

There was one instance where a Commissioner's Order was not completed for a violation.

We Recommended:

The ABCA should comply with Chapter 60, Article 7, Section 13a of the WV Code, as amended, and Title 175, Series 2, Section 6.16 of the Legislative Rule for Private Club Licensing.

Agency Action:

No action necessary.

Post Audit Division Comments:

This was an isolated incident, thus, no followup action was necessary.

FINDING #8 - ENFORCEMENT ACTIVITIES NOT PROPERLY DOCUMENTED

We were unable to determine if license suspensions issued against four licensees as part of the fines and penalties levied by the ABCA were complied with because the ABCA did not maintain records documenting visits by enforcement personnel to the licensees' place of business. This same finding was reported in the previous audit.

We Recommended:

The ABCA should comply with Chapter 5A, Article 8, Section 9 of the WV Code, as amended, by strengthening controls over the verification of licensee compliance with license suspensions.

Agency Action:

At this time, no action has been taken by the ABCA to document licensee compliance with license suspensions. However, the commissioner told us that the ABCA will immediately develop a form to be completed by enforcement personnel when visiting a licensee's place of business to ensure the licensee is complying with the suspension.

Post Audit Division Comments:

We recommend the inspector complete a form after periodically checking to ensure the licensee is complying with the suspension. We recommend Post Audit Division verify these forms are being submitted during a follow up at the end of this fiscal year.

FINDING #9 - WEAK CONTROLS OVER IMPREST FUNDS

We reported in our previous audit the lack of control procedures over the utilization of imprest funds for enforcement purposes.

We Recommended:

The ABCA should comply with Chapter 5A, Article 8, Section 9 of the WV Code, as amended, by strengthening controls over the utilization of imprest funds for enforcement purposes.

Agency Action:

For each imprest fund assigned to an enforcement supervisor which is maintained in a local bank account, the ABCA has instructed the banks where these funds are kept to send the monthly bank statements for each account to the ABCA Main Office rather than directly to the enforcement supervisors. The bank statements are received by the comptroller who is now responsible for maintaining these bank statements. Upon receiving each enforcement supervisor's reimbursement request, the comptroller will reconcile the monthly bank statements against the reimbursement records submitted by the enforcement supervisor. Also, the ABCA has developed a new form to be completed by enforcement personnel when requesting an advance for undercover expenses. The following information must be provided on the form: amount of monies received by requesting agent/inspector, date monies were received, signature of agent/inspector, amount of undercover expenses, amount of any advance monies returned and date monies were returned. This form must be reviewed and approved by both the comptroller and enforcement director when submitted by the enforcement supervisor as part of the documentation supporting their reimbursement request. This form is also utilized to document reimbursements made to agents/inspectors who use their own funds for undercover expenses without receiving an advance. Regarding the issue of whether 1099s are required to be issued to underage operatives utilized in sting operations, the agency is presently attempting to obtain further information from other sources about the appropriateness of issuing 1099s to underage operatives.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #10 - ISSUANCE OF POSTAGE STAMPS TO ENFORCEMENT PERSONNEL

We noted the Enforcement Division issues stamps in lieu of using pre-addressed stamped envelopes or reimbursing inspectors for postage expenses for mailing correspondence from their homes, which are their designated headquarters, to the ABCA. This same finding was reported in the previous audit.

We Recommended:

The ABCA should comply with Chapter 5A, Article 8, Section 9 of the WV Code, as amended, by strengthening controls over the issuance of postage stamps to enforcement personnel.

Agency Action:

With the equipping of all enforcement personnel with handheld scanners to conduct inspections, the ability of downloading inspection reports to the ABCA Main Office from the field has decreased the amount of postage needed by enforcement personnel for the mailing of correspondence to the main office. No further action has been taken by the agency.

Post Audit Division Comments:

The ABCA has substantially complied with our audit recommendation; however, the ABCA should comply with Chapter 5A, Article 8, Section 9 of the WV Code, as amended, and further strengthen internal controls over the issuance of postage to enforcement personnel.

FINDING #11 - COMMUTING VALUE OF LEASED VEHICLES

During the audit period, we noted the ABCA did not properly account for the commuting value of leased vehicles assigned to four administrative employees.

We Recommended:

The ABCA should comply with Title 148, Series 3, Sections 9.3 and 9.4 of the Department of Administration's Procedural Rule for State Owned Vehicles.

Agency Action:

Of the four administrative employees cited in this finding, one employee has since resigned from the agency while another employee has been placed on a medical leave of absence. For the two remaining administrative employees, the ABCA began effective July 31, 2003 to assess each employee for the commuting value of their assigned vehicle through a monthly payroll deduction authorized through EPICS. The ABCA also sent a letter to the Department of Administration requesting guidance on the proper treatment of the commuting value of leased vehicles assigned to enforcement personnel. The Department of Administration responded that enforcement personnel, due to the nature of their employment, were not required under IRS Tax Regulations to report the commuting value of leased vehicles as part of their taxable wages.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #12 - ACCOUNTS REQUIRED BY STATUTE NOT CREATED

As of June 3, 2003, the ABCA had not created an account called the "Alcohol Beverage Control Enforcement Account" or an account called the "Fetal Alcohol Syndrome Account".

We Recommended:

The ABCA should comply with Chapter 60, Article 7, Section 13 of the WV Code, as amended, and Chapter 60, Article 6, Section 25 of the WV Code. If the ABCA considers the current law to be impractical or impossible to comply with, then the ABCA should propose legislation that would enable them to comply with the Code.

Agency Action:

The ABCA established through the State Auditor's Office the Alcohol Beverage Control Enforcement Account and subsequently transferred the balance of funds (\$12,070.80) remaining in the Non-Intoxicating Beer Enforcement Account to the newly created Alcohol Beverage Control Enforcement Account on August 11, 2003. Presently, all monies collected as fines and penalties are deposited to the Alcohol Beverage Control Enforcement Account while the Non-Intoxicating Beer Enforcement Account is inactive. Also, the comptroller told us the Fetal Alcohol Syndrome Account will not be created until there are monies to deposit to this account from the assessment of fines relating to licensees not posting signs warning of the possible dangers of birth defects which may result from the consumption of alcohol during pregnancy. This action was recommended by the State Auditor's Office.

Post Audit Division Comments:

The ABCA has partially complied with our audit recommendation by complying with Chapter 60, Article 7, Section 13 of the WV Code, as amended; however, the ABCA should fully comply with our audit recommendation by proposing legislation to enable them to comply with the Code if the ABCA considers unnecessary the requirement by State law for the Non-Intoxicating Beer Enforcement Account as well as the Fetal Alcohol Syndrome Account.

FINDING #13 - CONTRACTING OF ACCOUNTING AND LEGAL SERVICES TO ASSIST WITH THE AWARDING OF FRANCHISE LICENSES

The ABCA contracted for accounting and legal services to assist with the awarding of franchise licenses. The ABCA executed change orders to extend each of these contracts. However, each contract extension substantially increased the original contract price without requiring the ABCA to rebid each of these contracts.

We Recommended:

The ABCA should comply with Sections 3.3 and 7.1 of the Division of Purchasing's Policies and Procedures Handbook and make every effort to obtain the best available price for services requested.

Agency Action:

No action necessary.

Post Audit Division Comments:

These were isolated incidents, thus, no followup action was necessary.

FINDING #14 - AWARDING OF FRANCHISE LICENSES

We noted where the ABCA did not receive a signed affidavit from the Director of the Purchasing Division certifying the results of either the third or fourth round of bids.

We Recommended:

The ABCA should comply with Title 175, Series 5, Section 9.2.1 of the ABCA's Legislative Rule for the Licensing of Retail Liquor Stores.

Agency Action:

The ABCA sent a letter to the Purchasing Division requesting the Director of Purchasing provide the ABCA with a signed affidavit certifying the bid results from the previous bid rounds for the awarding of franchise licenses. However, the Purchasing Division responded that it was impossible after three years passage of time and numerous bids for anyone to sign an affidavit certifying the requested information to be correct. Also, the ABCA is considering amending its rules to remove the requirement of having the bid results certified by signed affidavit by the Director of Purchasing.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #15 - PURCHASE OF COMPUTER EQUIPMENT FOR THE OFFICE OF THE SECRETARY OF TAX AND REVENUE

On November 15, 2002, the ABCA ordered and paid for computer equipment totaling \$11,126.00 on behalf of the Office of the Secretary of Tax and Revenue using monies from the General Administrative Account.

We Recommended:

The ABCA should comply with Chapter 60, Article 3, Section 18 of the WV Code, as amended.

Agency Action:

The comptroller told us this was an isolated incident. She stated that in the future that if the Secretary's Office was to make a similar request the ABCA would advise the Secretary's Office to make the purchase itself and then seek reimbursement from the agencies under its control in accordance with State law.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #16 - ASSESSMENT OF FEES WITHOUT STATUTORY AUTHORITY

During our audit of revenues collected by the ABCA, we noted the ABCA was charging licensees and interested persons various fees without statutory authority. These unauthorized fees included a processing fee to conduct a criminal background check, copy charges, and participation fees for attending a TEAM/TIPS training seminar conducted by the ABCA. This same finding was reported in the previous audit.

We Recommended:

The ABCA should discontinue charging fees that are not authorized by statute to license applicants and interested persons.

Agency Action:

The commissioner told us the ABCA is in the process of amending its existing rules to allow the ABCA to charge licensees a processing fee for conducting criminal background checks through the State Police. However, the ABCA was unable to submit these proposed changes to the Legislative Rule-Making Committee by the August 1st deadline in order to be considered during the 2004 Legislative Session. Also, the commissioner told us the participation fees charged persons for attending TEAM/TIPS training seminars conducted by the ABCA are being phased out, while copying charges assessed persons for copies of various records offered by the ABCA have not been addressed in the proposed changes of the ABCA's legislative rules. However, the commissioner told us the ABCA was still in the process of making proposed changes to their legislative rules and copy charges may be addressed as part of these changes. The commissioner was uncertain what steps will be taken to submit their proposed rule changes since the deadline has passed.

Post Audit Division Comments:

The ABCA has not complied with our audit recommendation since the ABCA did not submit its proposed rule changes to the Legislative Rule-Making Committee in a timely manner. To fully comply with our audit recommendation, the ABCA should finalize their proposed rule changes and submit them to the Legislative Rule-Making Committee as soon as possible for possible consideration by the Committee during the upcoming 2004 Legislative Session.

FINDING #17 - WILL-CALL ORDERS

During our audit of liquor receipts, we noted nine instances where the ABCA allowed retailers to place "will-call" orders for more than ten cases.

We Recommended:

The ABCA should comply with Title 175, Series 1, Section 4.7.6 of the Legislative Rule for Retail Licensee Operations concerning "will-call" orders.

Agency Action:

The commissioner told us the ABCA is in the process of amending its existing rules to allow retailers to place "will-call" orders for however many cases of bailment stock the retailer wants to purchase. However, the ABCA was unable to submit these proposed changes to the Legislative Rule-Making Committee by the August 1st deadline in order to be considered during the 2004 Legislative Session. The commissioner told us the ABCA was still in the process of making proposed changes to their legislative rules and was uncertain what steps will be taken to submit their proposed rule changes since the deadline has passed.

Post Audit Division Comments:

The ABCA has not complied with our audit recommendation since the ABCA did not submit its proposed rule changes to the Legislative Rule-Making Committee in a timely manner. To fully comply with our audit recommendation, the ABCA should finalize their proposed rule changes and submit them to the Legislative Rule-Making Committee as soon as possible for possible consideration by the Committee during the upcoming 2004 Legislative Session.

FINDING #18 - PAYMENT OF PHH CREDIT CARD MONTHLY BILLINGS

The ABCA is approving for payment the monthly billings received from the WV Fleet Management Office for reimbursement of PHH credit card charges which are mathematically inaccurate. Also, ABCA employees are not properly recording the odometer reading from their leased vehicle when making a gasoline purchase with their assigned PHH card.

We Recommended:

The ABCA should comply with Chapter 5A, Article 8, Section 9 of the WV Code, as amended; Chapter 12, Article 3, Section 9 of the WV Code; and Title 148, Series 3, Section 9.3 of the Department of Administration's Procedural Rule for State Owned Vehicles. Also, the ABCA should review each PHH credit card monthly billing for completeness and mathematical accuracy to ensure billings are correct and purchases are for the benefit of the State.

Agency Action:

The comptroller told us accounting department personnel are now spot checking each PHH credit card monthly billing for mathematical accuracy as well as the mileage being entered by drivers when stopping for gasoline. She also told us that PHH has implemented a new

safeguard which prevents cardholders from entering a mileage amount which is lower than or identical to the mileage amount entered during the driver's previous stop for gasoline. All drivers have been informed about entering the proper mileage amount when stopping for gasoline. The ABCA has not yet started requiring drivers to record all their daily driving destinations on their weekly activity reports; however, the comptroller stated the ABCA will start requiring drivers to do this as soon as possible.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

**FINDING #19 - DEPOSITING OF LICENSING REVENUES TO WRONG ACCOUNT
RESULTING IN EXCESS CASH BALANCE**

During our audit of licensing revenues, we noted 19 instances totaling \$17,550.00 where various license fees collected by the ABCA were deposited to the wrong account. This same finding was reported in the previous audit.

We Recommended:

The ABCA should comply with Chapter 60, Article 3, Sections 17 and 18 of the WV Code, as amended; Chapter 60, Article 7, Section 6 of the WV Code, as amended; and Chapter 60, Article 8, Section 24(a) of the WV Code, as amended.

Agency Action:

The ABCA still continues to deposit private club license fees to the General Administrative Account rather than directly to the State General Revenue Fund in noncompliance with Chapter 60, Article 7, Section 6 of the WV Code, as amended. These monies are periodically transferred to the State General Revenue Fund through statutory transfers. Presently, private wine restaurant license fees are being properly deposited to the Wine License Special Account rather than the General Administrative Account, while wine distributor sales representative fees are being properly deposited to the Wine License Special Account rather than the Wine License Special Revenue Operating Account. The ABCA has transferred private wine restaurant fee collections totaling \$4,250.00 from the General Administrative Account to the Wine License Special Account and wine distributor sales representative fees totaling \$25,688.40 from the Wine License Special Revenue Operating Account to the Wine License Special Account to achieve compliance with the WV Code.

Post Audit Division Comments:

The ABCA has partially complied with our audit recommendation. To fully comply with our audit recommendation, the ABCA should comply with Chapter 60, Article 7, Section 6 of the WV Code, as amended, by depositing private club license fees directly to the State General Revenue Fund.

FINDING #20 - NON-SUFFICIENT ELECTRONIC FUNDS TRANSFERS (EFTS)

As noted in our previous two audits, the ABCA continues to accept EFT payments from retailers after two non-sufficient EFTs have been received during a calendar year.

We Recommended:

The ABCA should comply with Title 175, Series 1, Section 4.6.2.c of the Legislative Rule for Retail Licensee Operations.

Agency Action:

The commissioner told us the ABCA is in the process of amending its existing rules to reflect its current practice towards NSF EFTs. However, the ABCA was unable to submit these proposed changes to the Legislative Rule-Making Committee by the August 1st deadline in order to be considered during the 2004 Legislative Session. The commissioner told us the ABCA was still in the process of making proposed changes to their legislative rules and was uncertain what steps will be taken to submit their proposed rule changes since the deadline has passed.

Post Audit Division Comments:

The ABCA has not complied with our audit recommendation since the ABCA did not submit its proposed rule changes to the Legislative Rule-Making Committee in a timely manner. To fully comply with our audit recommendation, the ABCA should finalize their proposed rule changes and submit them to the Legislative Rule-Making Committee as soon as possible for possible consideration by the Committee during the upcoming 2004 Legislative Session.

FINDING #21 - STATE PURCHASING CARD TRANSACTIONS

There were eight instances totaling \$1,498.00 where an ABCA employee charged travel related expenses onto their State purchasing card and seven instances totaling \$400.16 where purchasing card transactions were not supported by credit card receipts.

We Recommended:

The ABCA should comply with the State Auditor's Purchasing Card Policies and Procedures Manual.

Agency Action:

No action necessary.

Post Audit Division Comments:

While conducting the audit, we learned the ABCA had taken action to strengthen internal controls over purchasing card transactions by appointing a new purchasing card coordinator, ensuring the new purchasing card coordinator was properly trained by the State Auditor's Office, and organizing purchasing card records to comply with the State Auditor's Purchasing Card Policies and Procedures Manual.

**FINDING #22 - EXCESS CASH BALANCE NOT TRANSFERRED
TO GENERAL REVENUE IN A TIMELY MANNER**

Subsequent to the close out of the 2000 fiscal year, the ABCA did not transfer \$62,832.40 in excess monies from the Non-Intoxicating Beer Enforcement Account to the General Revenue fund in a timely manner. This same finding was reported in the previous audit.

We Recommended:

The ABCA should comply with Chapter 11, Article 16, Section 23(b) of the WV Code, as amended.

Agency Action:

No action necessary.

Post Audit Division Comments:

This was an isolated incident, thus, no followup action was necessary.

FINDING #23 - EQUIPMENT INVENTORY

During our review of equipment inventory, we noted six instances where equipment inventory items were not properly tagged; 18 instances where equipment inventory items were not listed on the ABCA's Fixed Assets Listing; and one instance where the ABCA did not receive three bids for an equipment purchase costing in excess of \$1,000.

We Recommended:

The ABCA should comply with Section 3.11 of the Department of Administration's Inventory Management and Surplus Property Disposition Handbook and Section 6.1.3 of the West Virginia Purchasing Division's Policies and Procedures Handbook.

Agency Action:

The comptroller told us the ABCA is in the process of evaluating their current computerized equipment inventory system. The agency is determining whether to upgrade the current system or to implement an entirely new computerized equipment inventory system.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #24 - TRADE SHOW EXPENDITURES

The ABCA held two trade shows, one at Pipestem Resort State Park and the other at the Flatwoods Days Inn, at a cost of over \$5,000 each without obtaining approval from the WV Purchasing Division. This same finding was reported in the previous audit.

We Recommended:

The ABCA should comply with Section 9.14 of the WV Purchasing Division's Policies and Procedures Handbook. The ABCA should also comply with Chapter 60, Article 3, Section 18 of the WV Code, as amended.

Agency Action:

Prior to holding the 2003 trade show at Mountaineer Park, Chester, WV on September 14th, 15th, and 16th, the ABCA requested and received the proper approval from the WV Fleet Management Office on August 11, 2003.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #25 - BAILMENT FEES

We noted 28 instances totaling \$21,091.15 where the ABCA did not charge the distiller for bailment fees immediately upon the alcoholic liquors being delivered to the warehouse.

We Recommended:

The ABCA should seek to amend the aforementioned Legislative Rule to allow the practice of deducting the amount for bailment fee charges from the amount due the distiller for withdrawals of their stock from bailment inventory if they believe this to be the most efficient method. The ABCA should also comply with Title 175, Series 6, Section 11.1 of the Legislative Rule on Bailment Policies and Procedures until the rule changes.

Agency Action:

The commissioner told us the ABCA is in the process of amending its existing rules to reflect its current practice of deducting the amount for bailment fee charges from the amount due the distiller for withdrawals of their stock from bailment inventory. However, the ABCA was

unable to submit these proposed changes to the Legislative Rule-Making Committee by the August 1st deadline in order to be considered during the 2004 Legislative Session. The commissioner told us the ABCA was still in the process of making proposed changes to their legislative rules and was uncertain what steps will be taken to submit their proposed rule changes since the deadline has passed.

Post Audit Division Comments:

The ABCA has not complied with our audit recommendation since the ABCA did not submit its proposed rule changes to the Legislative Rule-Making Committee in a timely manner. To fully comply with our audit recommendation, the ABCA should finalize their proposed rule changes and submit them to the Legislative Rule-Making Committee as soon as possible for possible consideration by the Committee during the upcoming 2004 Legislative Session.

FINDING #26 - NOT FOLLOWING PURCHASING REGULATIONS

During the audit period, we noted the ABCA obtained trash hauling services and pager services from outside vendors without following purchasing regulations.

We Recommended:

The ABCA should comply with the WV Purchasing Division's Policies and Procedures Handbook.

Agency Action:

No action necessary.

Post Audit Division Comments:

These were isolated incidents, thus, no followup action was necessary.

FINDING #27 - PAYMENT OF STATE SALES TAX ON JANITORIAL SERVICES

There were 22 instances totaling \$2,310.00 where the ABCA paid State sales tax on janitorial services provided for the ABCA Main Office.

We Recommended:

The ABCA should comply with the terms and conditions of the lease agreement between the ABCA and Dickinson Fuel Company, Inc., as well as, Chapter 11, Article 15, Section 9 of the WV Code, as amended.

Agency Action:

Dickinson Fuel Company, Inc., is no longer billing the ABCA for State sales tax as part of the reimbursement amount sought by the vendor for providing monthly janitorial services to the ABCA Main Office.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #28 - SICK AND ANNUAL LEAVE

There were two instances where two employees' monthly time sheets were not signed by a responsible supervisory official, four instances where three employees' sick/annual leave usage was not properly deducted, three instances where two employees' sick and/or annual leave was not properly accrued, and one instance where the incorrect number of hours was reinstated to an employee's annual leave balance.

We Recommended:

The ABCA should comply with Section 14.14 of the Division of Personnel's Administrative Rule, as well as, Chapter 5A, Article 8, Section 9(b) of the WV Code, as amended.

Agency Action:

The clerical errors noted in this finding were corrected where possible.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.

FINDING #29 - BAILMENT INVENTORY

We noted one instance where ABCA warehouse personnel accepted eight cases of liquor not authorized for sale from suppliers; a lack of segregation of duties between the employee who destroys damaged product and the employee who prepares the claims; and a lack of inventory for individual bottles which become separated from packaged cases. This same finding was reported in the previous audit.

We Recommended:

The ABCA should comply with Chapter 5A, Article 8, Section 9 of the WV Code, as amended, and Title 175, Series 6 of the Legislative Rule for Bailment Policies and Procedures.

Agency Action:

The comptroller told us a committee has been established to monitor bailment inventory stock levels at the warehouse. This committee is comprised of Commissioner Ronald Moats; Keith Wagner, Deputy Commissioner; Pat Holtsclaw, Comptroller; Linda Holliday, Marketing; and Debbie Pennington, Data Processing. The committee is continuously monitoring bailment inventory stock for delisted stock items. For any delisted stock found to be housed at the warehouse, agency personnel will be directed to contact the appropriate distiller to arrange to pick up the delisted stock or risk having the stock destroyed by warehouse personnel if not picked up within 30 days in accordance with the ABCA's legislative rules. Regarding the lack of segregation of duties between the employee who destroys damaged product and the employee who prepares the claims as well as a lack of inventory for individual bottles which become separated from packaged cases, the comptroller told us these areas are still under review.

Post Audit Division Comments:

The ABCA has partially complied with our audit recommendation. To fully comply with our audit recommendation, the ABCA should comply with Chapter 5A, Article 8, Section 9 of the WV Code, as amended, and establish a segregation of duties between the employee who destroys damaged product and the employee who prepares the claims as well as accounting for the location change within their computerized bailment inventory system of individual bottles which become separated from packaged cases.

FINDING #30 - NOT MONITORING INVENTORY LEVELS OF BAILMENT STOCK

The ABCA is not adequately monitoring inventory levels of the various bottle codes maintained as part of bailment inventory.

We Recommended:

The ABCA should comply with Title 175, Series 6, Sections 4.3, 9.1 and 9.2 of the Legislative Rule for Bailment Policies and Procedures.

Agency Action:

The comptroller told us a committee has been established to monitor bailment inventory stock levels at the warehouse. This committee is comprised of Commissioner Ronald Moats; Keith Wagner, Deputy Commissioner; Pat Holtsclaw, Comptroller; Linda Holliday, Marketing; and Debbie Pennington, Data Processing. The committee is continuously monitoring bailment inventory stock for stock outages or for any stock items which exceed the maximum inventory level for that item. For any stock outages the ABCA will contact the appropriate distiller to restock the warehouse, while for any stock overages the ABCA will contact the appropriate distiller to make arrangements to have the excess stock removed from the warehouse.

Post Audit Division Comments:

Action taken is in compliance with our recommendation.