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**WEST VIRGINIA LEGISLATURE**  
**Joint Committee on Government and Finance**

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# Memo

**To:** Theford L. Shanklin, CPA, Director

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

**Date:** July 19, 2004

**Subject:** FISCAL YEAR-END 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 second follow-up review to examine the implementation of certain recommendations contained in the audit of the ABCA for the period July 1, 2000 - June 30, 2002 which we found had not been implemented during our initial follow-up review. In conducting this follow-up, we met with the following ABCA employees: Acting Commissioner Ronald Moats and Tom Mullins, Director of Accounting. 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. For eight of the 11 areas we reviewed, the ABCA has complied with our audit recommendations. In one other area they have taken significant steps to comply and should be in compliance in the near future. However, in two instance the ABCA has not complied with audit recommendations. The specific actions taken by the ABCA with regard to the 11 findings and recommendations reviewed are set out as follows:

**FINDING #1 - INVENTORY OF EVIDENCE ROOM & FINDING #4 - DESTRUCTION OF NON-CASH EVIDENCE**

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 disposition of evidence following settlement of the corresponding violations.

**Agency Action:**

**The ABCA has automated the tracking of all seized cash and non-cash evidence by developing a computer program that tracks all evidence by docket number and case number. When seized evidence is brought to the ABCA Main Office, one of two enforcement personnel with access to the evidence room will manually log the seized evidence into this computer system via a computer setup maintained in the evidence room. Once all relevant information has been entered, enforcement personnel can generate daily reports from this system which reflect the status of the corresponding violation cases. Thus, seized evidence can be disposed of in a more timely manner as cases are adjudicated.**

**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 the ABCA Commissioner, a fee schedule is not logical due to the diverse nature of violations. Also, the Commissioner 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 ABCA should implement, by legislative rule, a fee schedule for fines and penalties to ensure licensees are not fined on an unequal basis. They should also develop a written procedure for case dismissals. The Commissioner may dismiss cases at his/her discretion, however, there should be some guidelines established to avoid the appearance of favoritism or prejudice.

**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 West Virginia Code, as amended, by strengthening controls over the verification of licensee compliance with license suspensions.

**Agency Action:**

**The Commissioner told us the enforcement division is in the process of updating its policies and procedures. A form has been developed to document on site visits by enforcement personnel who will visit the businesses who have had licenses suspended.**

**Post Audit Division Comments:**

The ABCA has substantially complied with our audit 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 West Virginia 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. The Commissioner also stated the issuance of cell phones to all enforcement personnel and the email capability available to enforcement personnel through computers issued to them has also decreased the use of postage. No further action has been taken by the agency.**

**Post Audit Division Comments:**

The ABCA has partially complied with our audit recommendation; however, the ABCA should comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended and discontinue issuing postage stamps to employees and reimburse employees in the few instances when they need to purchase postage.

**FINDING #12 - ACCOUNT REQUIRED BY STATUTE NOT CREATED**

As of June 30, 2003, the ABCA had not created an account called the "Fetal Alcohol Syndrome Account".

**We Recommended:**

The ABCA should comply with Chapter 60, Article 6, Section 25 of the West Virginia 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:**

**Both the Commissioner and Director of accounting told us the Fetal Alcohol Syndrome Account will be created when this account could be utilized through the depositing of monies 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 and Governor's Budget Office.**

**Post Audit Division Comments:**

If the ABCA establishes the subject account when fines are levied and collected they will be substantially complying with our recommendations.

## **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 ABCA has filed proposed rule changes with the Secretary of State's Office which would allow the ABCA to charge license applicants a processing fee for conducting criminal background checks. 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.

### **Post Audit Division Comments:**

The ABCA has substantially complied with our audit recommendation.

## **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 ABCA has filed proposed rule changes with the Secretary of State's Office which would allow retailers to purchase however many cases of liquor they wanted when placing a "will-call" order.

### **Post Audit Division Comments:**

Action taken is in compliance with our audit 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 7, Section 6 of the West Virginia 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. The director of accounting told us the Governor's Budget Office directs the ABCA when to transfer these funds to the State General Revenue Fund.**

**Post Audit Division Comments:**

The ABCA should comply with Chapter 60, Article 7, Section 6 of the West Virginia 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 ABCA has filed proposed rule changes with the Secretary of State's Office which would require further orders received from retailers be precluded until payment is received for any NSF EFTs.**

**Post Audit Division Comments:**

Action taken is in compliance with our audit 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 ABCA has filed proposed rule changes with the Secretary of State's Office which modifies the ABCA's current rule for bailment inventory to reflect the ABCA's current practice of assessing liquor distillers for bailment fees owed the agency.**

**Post Audit Division Comments:**

Action taken is in compliance with our audit recommendation.

### **FINDING #29 - BAILMENT INVENTORY**

We noted 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 West Virginia Code, as amended.

**Agency Action:**

**The Commissioner informed us that the claim form has been modified to include the signature of the employee who witnessed the destruction of the damaged product. He also informed us that the ABCA has started maintaining an inventory listing for individual bottles which become separated from packaged cases on a word perfect file because the ABCA is not able to reflect the location change of this inventory in their computerized bailment inventory system as it is currently set up.**

**Post Audit Division Comments:**

The ABCA has substantially complied with our recommendations.