

WEST VIRGINIA LEGISLATURE
Legislative Post Audit Division

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Denny Rhodes
Director

February 7, 2017

The Honorable Mitch Carmichael, President
West Virginia State Senate
Post Audits Subcommittee, Co-Chair
Room 229 M, Building 1
State Capitol Complex
Charleston, WV 25305

The Honorable Timothy Armstead, Speaker
West Virginia House of Delegates
Post Audits Subcommittee, Co-Chair
Room 228 M, Building 1
State Capitol Complex
Charleston, WV 25305

Dear Mr. President and Mr. Speaker:

While conducting our audit of the West Virginia Alcohol Beverage Control Administration (ABCA), we noted the agency was maintaining a balance in the Administrative Liquor Fund (Fund #7352) in excess of what is needed for operations. This violates WV Code §60-3-17, as amended, which stipulates that receipts in excess of what is required for operations, "...shall be remitted by the commissioner to the state treasury..." As of February 3, 2017, wvOASIS shows the fund balance at \$18,431,526. As noted in the table below, the Legislative Auditor finds this balance to be approximately \$10.4 million in excess of what is required for operations, which is required by statute to be remitted to the State General Revenue Fund.

Current Fund Balance as of February 3, 2017	Fund Balance Required for Operations	Amount in Excess of Required Fund Balance
\$18,431,526	\$8,000,000	\$10,431,526

The audited financial data showed a significant increase in the fiscal year-end balance of the Liquor Fund from Fiscal Years 2011 to 2016. During this period, the year-end balance of the fund more than doubled from \$7.48 million in FY 2011 to \$17.95 million in FY 2016. Our office inquired with the ABCA Commissioner as to the reason for the increase in the fund balance. Further, we asked what balance is necessary to be maintained in the fund to ensure continual unabated operations.

In his January 13, 2017 response, the Commissioner stated the accumulation of the current fund balance was neither intentional nor was it done to meet some future financial need of the agency. He added a fund balance of \$7 to \$8 million was necessary to continue unabated operations for the agency. Conservatively, the current balance exceeds the balance necessary for agency operations by approximately \$10.4 million.

The following sections of WV Code govern the use and balance of the Liquor Fund and are criteria for our finding and recommendation.

WV Code §60-3-18, as amended, states in part:

The operating fund [Administrative Liquor 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...** (emphasis added)*

WV Code §60-3-17, as amended, states in part:

*...All receipts accruing to and available for the general revenue fund **in excess of the requirements of the operating fund** and the license fee and additional sales tax imposed by the provisions of this chapter **shall be remitted by the commissioner to the state treasury monthly within fifteen days next after the end of each calendar month...** (emphasis added)*

The Legislative Auditor recommends the ABCA and the Commissioner comply with the above quoted statutes and transfer \$10.4 million from the Administrative Liquor Fund (Fund #7352) to the State General Revenue Fund. The Legislative Auditor further recommends the Commissioner review the amount of funds needed to meet the routine requirements of his office to ensure the fund balance is sufficient and to ensure that excess funds are properly remitted to the State General Revenue Fund. This required fund balance should be reported annually to the Joint Committee on Government and Finance.

During our review of Chapter 60, Article 3 of WV Code, we noted several sections that contained outdated language that make reference to State-owned retail stores, operations and liquor stock. In particular, Section 15 of this article, which stipulates the limit on the balance of the Administrative Liquor Fund, makes very clear references to State-owned liquor stock being a primary component of the total value of the fund balance. Chapter 60, Article 3A, Section 2 of WV Code set in statute that the State and the ABCA would no longer operate State-owned retail liquor stores, but instead would act as a wholesaler to licensed State retailers.

The current operations of the ABCA holds substantially all liquor inventories on bailment. These bailment inventories are not owned by the State and are not a component of the current fund balance. The Legislative Auditor recommends WV Code §60-3-1 et al., be reviewed and amended to clearly reflect the current operations of the ABCA and to establish a new fund balance limit that more accurately reflects the amount needed to maintain unabated operations for the ABCA.

Sincerely,



Denny Rhodes