

STATE OF WEST VIRGINIA

AUDIT REPORT

OF

WEST VIRGINIA ALCOHOL BEVERAGE

CONTROL ADMINISTRATION

FOR THE PERIOD

JULY 1, 2000 - JUNE 30, 2002



OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305-0610

**WEST VIRGINIA ALCOHOL BEVERAGE
CONTROL ADMINISTRATION
FOR THE PERIOD
JULY 1, 2000 - JUNE 30, 2002**

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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CHARLESTON, WEST VIRGINIA 25305-0610

To the Joint Committee on Government and Finance:

In compliance with the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, we have examined the accounts of the West Virginia Alcohol Beverage Control Administration.

Our examination covers the period July 1, 2000 through June 30, 2002. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,


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

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

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WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

EXIT CONFERENCE

We held an exit conference on July 9, 2003 with the Secretary of the Department of Tax and Revenue and representatives of the West Virginia Alcohol Beverage Control Administration and all findings and recommendations were reviewed and discussed. The agency's responses are included in bold and italics in the Summary of Findings, Recommendations and Responses and after our findings in the General Remarks section of this report.

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

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The 21st Amendment of 1933 repealed national prohibition and gave each state the right to make and enforce its own laws governing alcoholic beverages. In 1934, the people of West Virginia repealed a July 1, 1914 amendment to the State's Constitution which made absolute prohibition a part of their law.

The West Virginia Legislature, on February 22, 1935, repealed Chapter 60 of the West Virginia Code providing for the State control of alcoholic liquors; and, as subsequently amended by Senate Bill No. 294 passed March 8,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. To 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 no 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; and, obtain for the State financial gain from the issuance of retail licenses.

The Acts of the 2000 Legislature, C. 267, established Article 9, Chapter 60 of the West Virginia Code. The passage of this article gave the West Virginia Alcohol Beverage Control Administration the authority to conduct unannounced inspections at establishments where tobacco products are sold or distributed to ensure compliance with federal and State laws governing the sale and distribution of tobacco products to underage minors.

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

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

ADMINISTRATIVE OFFICERS AND STAFF

AS OF JUNE 30, 2002

Thomas A. Keeley Commissioner (January 15, 2001 to June 30, 2002)
Donald L. Stemple Commissioner (July 1, 2000 to January 15, 2001)
A. Keith Wagner Deputy Commissioner
Gregory G. Skinner Deputy Commissioner
Edward Hart Administrative Services Manager
Ronald Moats Administrative Services Manager
Howard Wellman Administrative Services Manager
Patricia Holtsclaw Comptroller
Gary Phillips Information Systems Manager
William Plantz Director of Enforcement
Glenna Roe Payroll Supervisor
Lola Walters Licensing Supervisor

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

Lack of Effective System of Internal Controls

1. During the course of our audit, it became apparent to us, based on the observed noncompliance with the West Virginia Code, the West Virginia Alcohol Beverage Control Administration did not have an effective system of internal controls in place to ensure compliance with applicable State laws, rules and regulations. We believe an effective system of internal controls would have alerted management to these violations at an earlier date and allowed more timely corrective action.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code, as amended, and establish a system of internal controls.

Agency's Response

The ABCA has a system of policies and procedures as well as laws and regulations which are followed in all areas of operation in the agency. We will strive to update policies that are not current in our operation. (See pages 24-27)

ENFORCEMENT:

Inventory of Evidence Room

2. On June 2, 2003, we conducted an inventory count of the ABCA evidence room. We noted the lack of a system of control procedures over the disposition of seized evidence and the safeguarding of cash.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended. We further recommend the ABCA 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's Response

We will comply with the recommendation. (See pages 28-31)

Assessment of Excess Fine and Unauthorized Court Costs

3. During our audit of fines and penalties, we noted a private club licensee was cited for one violation and fined \$6,500.00 in excess of the maximum fine amount allowed under State law. Also, there were 23 instances totaling \$1,150.00 where the licensee was charged \$50 for court costs, even though a hearing was not held.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 60, Article 7, Sections 13 and 13a of the West Virginia Code, as amended. We also recommend the additional \$50 be included in the amount of the fine, if it is part of the fine amount.

Agency's Response

Fines and penalties are levied according to the WV State Code. The \$50.00 court cost covers administrative costs. In the future we will consider the \$50.00 as part of the fine.

(See pages 31-34)

Fee Schedule for Assessment of Fines and Penalties

4. We were unable to determine whether fines and penalties assessed by the ABCA for violations cited against licensees were equitably levied because the ABCA had not established a fee schedule for fines and penalties. We also noted the ABCA had not established written procedures to dismiss pre-hearing cases; therefore, we were unable to determine if the dismissals were appropriate.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended. We further recommend the ABCA 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's Response

A schedule of fines will be implemented for most of the violations that we receive. (See pages 34-36)

Destruction of Non-Cash Evidence

5. During our audit of fines and penalties, we noted three instances where the ABCA was unable to provide evidence forms supporting evidence seized; 20 instances where the case docket number was not recorded on the evidence form; 12 instances where the Commissioner's Order settling a violation did not address the forfeiture of seized evidence; and eight instances where the disposition of seized evidence was undocumented.

Auditors' Recommendation

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

Agency's Response

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

Timely Action Not Taken on Violation Report

6. There was one instance (out of the two transactions tested) of the ABCA not taking 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.

Auditors' Recommendation

We recommend the ABCA 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's Response

We will assure that all fines are collected in a timely manner in the future. (See pages 39-41)

Collection Procedures for Outstanding Fines

7. Our audit of fines and penalties assessed against licensees indicated long periods of time to collect payment from licensees. We reviewed 51 violation report forms for the period July 1, 2000 through June 30, 2002. All of these violation report forms and their corresponding cases had been completed. We determined the total processing time to settle these 51 violations ranged from zero to 198 days, with an average processing time of 23 days.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended.

Agency's Response

We will assure that all fines are collected in a timely manner in the future. (See pages 41-43)

Fines Assessed Not Properly Documented

8. During our audit of fines and penalties, there was one instance (out of 51 transactions tested) where a Commissioner's Order was not completed for a violation.

Auditors' Recommendation

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

Agency's Response

No response. (See pages 43-45)

Enforcement Activities Not Properly Documented

9. Of the 51 violation report forms we reviewed, four violations resulted in license suspensions. However, the ABCA does not verify the business is actually closed for the period of the suspension.

Auditors' Recommendation

We recommend the ABCA 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's Response

No response. (See pages 45 and 46)

Weak Controls Over Imprest Funds

10. As of June 30, 2002, the ABCA utilized seven imprest funds for enforcement purposes. One \$5,000 imprest fund was maintained at the ABCA main office, while one \$2,000 imprest fund was assigned to each one of the ABCA's six enforcement supervisors. During our audit of these imprest funds, we noted the internal controls over these funds were weak.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, by strengthening controls over the utilization of imprest funds for enforcement purposes.

Agency's Response

We will establish a procedure to have banks mail statements to the ABCA Central Office, and the accounts will be reconciled there. (See pages 46-49)

Issuance of Postage Stamps to Enforcement Personnel

11. We noted the Enforcement Division issues stamps to inspectors for postage expenses for mailing correspondence from their homes to the ABCA.

Auditors' Recommendation

We recommend the ABCA 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's Response

The ABCA will review the system of providing Enforcement agents with postage. (See pages 49 and 50)

ADMINISTRATION:

Commuting Value of Leased Vehicles

12. During the audit period, we noted the ABCA did not properly account for the commuting value of leased vehicles assigned to administrative employees in accordance with Title 148, Series 3, Sections 9.3 and 9.4.

Auditors' Recommendation

We recommend the ABCA 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's Response

We will develop a procedure to deduct the commuting value from the pay of the four administrative employees that use their cars to commute from home to work using the recommended guidelines. (See pages 50-53)

Accounts Required by Statute Not Created

13. As of June 3, 2003, the ABCA had not created the "Alcohol Beverage Control Enforcement Account" or the "Fetal Alcohol Syndrome Account" in accordance with the West Virginia Code.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended, and 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 we recommend the ABCA propose legislation that would enable them to comply with the Code.

Agency's Response

We will comply with the recommendation. (See pages 53-57)

**Contracting of Accounting and Legal Services
to Assist With the Awarding of Franchise Licenses**

14. 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, from one year to three years and increased the original contract price by more than 100% without requiring the ABCA to rebid each of these contracts.

Auditors' Recommendation

We recommend the ABCA 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's Response

All contracts were awarded and extended according to the WV State Purchasing Divisions instructions. (See pages 57-59)

Awarding of Franchise Licenses

15. During our audit of the awarding of franchise licenses between July 1, 2000 and June 30, 2002, there were two instances where the ABCA did not receive a signed affidavit from the Director of Purchasing certifying the results of each round of bids.

Auditors' Recommendation

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

Agency's Response

We will immediately ask the Purchasing Director, in writing, to provide us a certification of all bids conducted in the Purchasing Divisions office. (See pages 59-62)

**Purchase of Computer Equipment For
The Office of the Secretary of Tax and Revenue**

16. On November 15, 2002, subsequent to the audit report date, 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.

Auditors' Recommendation

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

Agency's Response

No response. (See pages 62 and 63)

Assessment of Fees Without Statutory Authority

17. 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.

Auditors' Recommendation

We recommend the ABCA discontinue charging fees that are not authorized by statute to license applicants and interested persons.

Agency's Response

We will review our system of fee collections and attempt to get legislation or change ABCA rules & regulations to support them where necessary. (See pages 63-66)

Will-Call Orders

18. 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.

Auditors' Recommendation

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

Agency's Response

We will include a change in our regulations to allow us to adjust will call orders as necessary. (See pages 66-68)

ACCOUNTING:

Payment of PHH Credit Card Monthly Billings

19. The ABCA is approving for payment the monthly billings received from the West Virginia 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.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended; Chapter 12, Article 3, Section 9 of the West Virginia Code; and Title 148, Series 3, Section 9.3 of the Department of Administration's Procedural Rule for State Owned Vehicles. We further recommend the ABCA 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's Response

We have contacted the WV Purchasing Division and the PHH credit card office regarding their billing inaccuracies. Drivers have been advised that mileage must be recorded properly when making gasoline purchases. (See pages 68-71)

**Depositing of Licensing Revenues to
Wrong Account Resulting in Excess Cash Balance**

20. 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.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 60, Article 3, Sections 17 and 18 of the West Virginia Code, as amended; Chapter 60, Article 7, Section 6 of the West Virginia Code, as amended; and Chapter 60, Article 8, Section 24(a) of the West Virginia Code, as amended.

Agency's Response

All ABCA accounts will be reviewed and procedures of deposits will be changed when necessary. (See pages 71-74)

Non-Sufficient Electronic Funds Transfers (EFTs)

21. 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.

Auditors' Recommendation

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

Agency's Response

We will instigate changes in our regulations to allow us to be more objective in this area.

(See pages 74-76)

State Purchasing Card Transactions

22. 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.

Auditors' Recommendation

We recommend the ABCA comply with the West Virginia State Auditor's State Purchasing Card Policies & Procedures.

Agency's Response

It was an error by an employee to use the wrong credit card for travel expenses. He has since been advised of that error. (See pages 76-78)

**Excess Cash Balance Not Transferred
to General Revenue in a Timely Manner**

23. 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.

Auditors' Recommendation

We recommend the ABCA comply with Chapter 11, Article 16, Section 23(b) of the West Virginia Code, as amended.

Agency's Response

There were some account balancing issues that delayed the transfer from the Enforcement account to the General Revenue account in FY2000. (See pages 78 and 79)

Equipment Inventory

24. During our audit 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.

Auditors' Recommendation

We recommend the ABCA 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's Response

The equipment inventory is counted and updated at the end of each fiscal year. We are in the process of reviewing ABCA equipment inventory reports and updating our files.

(See pages 79-82)

Trade Show Expenditures

25. During the audit period, 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 West Virginia Purchasing Division.

Auditors' Recommendation

We recommend the ABCA comply with Section 9.14 of the West Virginia Purchasing Division's Policies and Procedures Handbook. We further recommend the ABCA comply with Chapter 60, Article 3, Section 18 of the West Virginia Code, as amended.

Agency's Response

We will obtain approval for ABCA trade shows implementing purchasing guidelines in the future. (See pages 82-85)

Bailment Fees

26. Of the 50 payments made to distillers which were included in our test sample, we noted 28 instances totaling \$21,091.15 where the ABCA did not charge the distiller for bailment fees immediately upon the products being delivered to the warehouse.

Auditors' Recommendation

We recommend the ABCA seek to amend the aforementioned Legislative Rule if they believe this to be the most efficient method. We further recommend the ABCA comply

with Title 175, Series 6, Section 11.1 of the Legislative Rule on Bailment Policies and Procedures until the rule changes.

Agency's Response

We will initiate changes in our regulations to reflect this procedure. (See pages 85 and 86)

Not Following Purchasing Regulations

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

Auditors' Recommendation

We recommend the ABCA comply with the West Virginia Purchasing Division's Policies and Procedures Handbook.

Agency's Response

Our Purchasing function has been changed and all efforts are being made to comply with all purchasing guidelines. (See pages 86-88)

Payment of State Sales Tax on Janitorial Services

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

Auditors' Recommendation

We recommend the ABCA 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 West Virginia Code, as amended.

Agency's Response

We will no longer pay state sales taxes on anything. (See pages 88 and 89)

PERSONAL SERVICES:

Sick and Annual Leave

29. During our audit of the leave records for 20 employees, 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.

Auditors' Recommendation

We recommend the ABCA comply with Section 14.14 of the Division of Personnel's Administrative Rule, as well as, Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended.

Agency's Response

All were clerical errors and corrected when possible. The division of Personnel is always contacted when a problem with policy is encountered. (See pages 90-92)

WAREHOUSE OPERATIONS:

Bailment Inventory

30. During our physical count of 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.

Auditors' Recommendation

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

Agency's Response

We will comply with the recommendation. (See pages 92-97)

Not Monitoring Inventory Levels of Bailment Stock

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

★

Auditors' Recommendation

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

Agency's Response

We will comply with the recommendation. (See pages 97-99)

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

GENERAL REMARKS

INTRODUCTION

We have completed a post audit of the West Virginia Alcohol Beverage Control Administration (ABCA). The audit covered the period July 1, 2000 through June 30, 2002.

GENERAL REVENUE ACCOUNTS

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

<u>Account Number</u>	<u>Description</u>
0490-551	Private Liquor Store Licenses
0490-553	Statutory Transfers
0490-575	Gallonage Tax *
0491-515	Beer Tax *
0491-516	Beer Licenses

** Tax Accounts 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 Administration are made from the following special revenue accounts:

<u>Account Number</u>	<u>Description</u>
1. Wine License Special Revenue Operating Account (7350) *	
2. Wine License Special Account (7351) *	
7351-001	Personal Services
7351-004	Annual Increment
7351-010	Employee Benefits
7351-099	Unclassified
7351-640	Cash Control
3. General Administrative Account (7352)	
7352-001	Personal Services
7352-004	Annual Increment
7352-010	Employee Benefits
7352-099	Unclassified
7352-419	Purchase of Supplies for Resale
7352-425	Transfer of Liquor Profits and Taxes
7352-426	Transfers
7352-640	Cash Control
7352-913	BRIM Premium
4. Non-Intoxicating Beer Enforcement Account (7355)	
7355-099	Unclassified
7355-640	Cash Control

** These accounts are administered by the Department of Tax and Revenue.*

COMPLIANCE MATTERS

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

Lack of Effective System of Internal Controls

During the course of our audit, it became apparent to us, based on the observed noncompliance with the West Virginia Code, the West Virginia Alcohol Beverage Control Administration did not have an effective system of internal controls in place to ensure compliance with applicable State laws, rules and regulations. 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 West Virginia Alcohol Beverage Control Administration, 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) On 6/02/03, we conducted an inventory count of the ABCA evidence room. During our inventory count of the ABCA’s evidence room, we noted the lack of a system of control procedures over the disposition of seized evidence and the safeguarding of cash. (2) During our audit of fines and penalties, we noted a private club licensee was fined \$7,500.00 and given one year probation for one violation of immoral conduct (gambling). Also, we noted 23 instances totaling \$1,150.00 where the licensee was charged \$50 for court costs, even though a hearing was not held. (3) During our audit of fines and penalties, we were unable to determine whether fines and

penalties assessed by the ABCA for violations cited against licensees were equitably levied. (4) During our review of fines and penalties, there were three instances where the ABCA was unable to provide evidence forms supporting evidence seized; 20 instances where the case docket number was not recorded on the evidence form; 12 instances where the Commissioner's Order settling a violation did not address the forfeiture of seized evidence; and eight instances where the disposition of seized evidence was undocumented. (5) 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. (6) Our review of fines and penalties assessed against licensees indicated long periods of time to collect payment from licensees. (7) During our review of fines and penalties, there was one instance where a Commissioner's Order was not completed for a violation. (8) There were four instances of undocumented compliance with license suspensions; and two instances where the inspector/agent did not sign for violation report forms when received. (9) During our audit of the ABCA's enforcement imprest funds, we noted the agency's internal controls over these funds were weak. (10) We noted the Enforcement Division issues stamps to inspectors for postage expenses for mailing correspondence from their homes to the ABCA.

Administration:

(11) During the audit period, we noted the ABCA did not properly account for the commuting value of leased vehicles assigned to administrative employees in accordance with Title 148, Series 3, Sections 9.3 and 9.4. (12) As of 6/03/03, the ABCA had not created an account called the "Alcohol Beverage Control Enforcement Account" in accordance with Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended, or created an account called the "Fetal Alcohol Syndrome Account" in accordance with Chapter 60, Article 6, Section 25 of the West Virginia Code. (13) 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. (14) During our review of the awarding of franchise licenses between July 1, 2000 and June 30, 2002, there were two instances where the ABCA did not receive a signed affidavit from the Director of the Purchasing Division

certifying the results of each round of bids. (15) On 11/15/02, subsequent to the audit report date, 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. (16) 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. (17) 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.

Accounting:

(18) 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. (19) 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. (20) As noted in our previous audit, the ABCA continues to accept EFT payments from retailers after two non-sufficient EFTs have been received during a calendar year. (21) 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. (22) 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. (23) 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. (24) 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 West Virginia Purchasing Division. (25) 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. (26) During the audit period, we noted the ABCA obtained trash hauling services and pager services from outside vendors without following purchasing regulations. (27) There were 22 instances totaling \$2,310.00 where the ABCA paid State sales tax on janitorial services provided for the ABCA Main Office.

Personal Services:

(28) 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.

Warehouse Operations:

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

We recommend the ABCA comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code, as amended, and establish a system of internal controls.

Agency's Response

The ABCA has a system of policies and procedures as well as laws and regulations which are followed in all areas of operation in the agency. However, some specific job procedures need to be updated to account for innovative changes continually being made in our day to day operations. We will strive to update policies that are not current in our operation.

ENFORCEMENT:

Inventory of Evidence Room

Any evidence of a violation by a licensee can be seized by ABCA enforcement personnel (inspectors and enforcement agents) in accordance with Title 175, Series 2, Section 4.4 which states in part,

“ . . . Any evidence of a violation found during an inspection is to be seized and impounded by the Commissioner and shall be admissible into evidence to prove such violation.”

Upon seizure of evidence, the inspector or agent is to complete an ABCA Evidence Form itemizing any cash or non-cash evidence seized. One copy of the evidence form is maintained with the seized evidence in the evidence room, while another copy is placed in a log book also maintained in the evidence room. The enforcement director is the only employee with access to the evidence room and is responsible for logging in all evidence.

On June 2, 2003, we conducted an inventory count of the ABCA evidence room. Of the 30 items of evidence tested, 14 of these included cash evidence seized totaling \$1,623.05. Cash evidence is maintained along with any non-cash evidence seized and is not separately safeguarded. Agency records indicated the cash evidence, included in our sample, was still being maintained in the evidence room 33 to 500 days after the corresponding violations had been adjudicated and the non-cash evidence 31 to 259 days after the related violations had been adjudicated.

We believe any cash evidence seized should be deposited to the State General Revenue Fund immediately following the settlement of the corresponding violation case in accordance with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended. This Code section 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 moneys so received for deposit in the state treasury and shall deposit within twenty-four hours with the state treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. . . .”

During our inventory count of the ABCA's evidence room, we also noted the following items: 30 instances where neither the Violation Report Form number or case docket number was recorded on the ABCA Evidence Form linking the evidence seized to a specific violation; one instance where actual cash seized (\$27.50) did not match the amount of cash seized (\$27.25) as recorded on the ABCA Evidence Form; seven instances where a copy of the ABCA Evidence Form was not maintained with the actual evidence seized; two instances where the ABCA Evidence Form supporting the evidence seized had not been signed off on by the enforcement director signifying the evidence had been transferred to the evidence room; one instance where the ABCA was unable to locate the Violation Report Form corresponding to the evidence seized ; 15 instances where the Commissioner's Order settling the violation did not address the forfeiture of the seized evidence; one instance where the Commissioner's Order addressing the forfeiture of seized evidence was not signed by the Commissioner; and two instances where there was no documentation in the licensee's violations file addressing the forfeiture of seized evidence as the result of the charges being dismissed by the Commissioner or the licensee went out of business.

Our inventory count also indicated three instances where there was a slight discrepancy between the actual non-cash evidence on hand and the non-cash evidence recorded on the corresponding ABCA Evidence Form. We counted the following additional items of evidence not recorded on the evidence forms: two bottles of liquor and one manila envelope of gambling materials (tips).

Furthermore, there was one instance where the evidence seized was not properly recorded on the ABCA Evidence Form and one instance where the Violation Report Form linked to the evidence seized indicated the licensee's Dale Earnhardt leather jacket was initially seized as evidence along with the other evidence reflected on the ABCA Evidence Form. The ABCA eventually returned this jacket back to the licensee. However, the disposition of this piece of evidence was not addressed in the Commissioner's Order settling the violation.

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 for the state and of persons directly affected by the agency's activities. . . ."

The lack of control procedures over the seized evidence and evidence forms could result in the unauthorized use or disposition of the confiscated evidence. Generally, the aforementioned instances of noncompliance occurred as the result of weak controls over the disposition of evidence and evidence forms. According to the enforcement director, cash evidence is maintained with non-cash evidence in the evidence room to maintain the chain of evidence.

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. In the agency's responses to this finding, the ABCA stated that it had initiated a system of controls to account for seized evidence and was taking the necessary steps to properly safeguard cash evidence. However, the aforementioned instances of noncompliance clearly indicate the ABCA has not fully implemented a system of controls over the disposition of seized evidence and the proper safeguarding of cash evidence.

We recommend the ABCA comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended. We further recommend the ABCA 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's Response

We will identify seized evidence as recommended. The ABCA is in the process of developing a computer program that will label and bar-code for scanning all evidence seized with the docket number and case number and generate a management report of all evidence that is in the evidence room. When the case and the appeal period is over the evidence will be disposed of according to the law. We will make arrangements to obtain a lock box at the WV State Treasurers Office to hold cash evidence.

Assessment of Excess Fine and Unauthorized Court Costs

During our review of fines and penalties, we noted a \$7,500.00 fine was paid by a licensee based on the options offered by the ABCA on the Waiver of Hearing form. This licensee

was fined \$7,500.00 and given one year probation for one violation of immoral conduct (gambling). During a routine inspection of this private club on April 12, 2001, ABCA inspectors found evidence of gambling in the form of three slot machines. The \$7,500.00 fine is in noncompliance with Chapter 60, Article 7, Section 13 of the West Virginia Code which limits the fine amount for each violation to \$1,000, therefore, the licensee overpaid by \$6,500.00. As we reported in our last audit of the ABCA, fines should be limited to amounts authorized by the governing West Virginia Code.

Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended, states in part:

“(a) Upon a determination by the commissioner that a licensee has: (i) Violated the provisions of article sixteen, chapter eleven, or of this chapter; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may impose any one or a combination of the following sanctions:

- (1) Revoke the licensee’s license;
- (2) Suspend the licensee’s license;
- (3) Place the licensee on probationary status for a period not to exceed twelve months; and
- (4) Impose a monetary penalty not to exceed one thousand dollars for each violation where revocation is not imposed. . . .”

We spoke with both the Commissioner and the Administrative Services Manager who acts as the ABCA’s hearing officer concerning the excessive amount fined the one licensee for a violation for immoral conduct (gambling). Both the Commissioner and the Administrative Services Manager stated that as long as the licensee agreed to pay the amount they were being fined, then there was no problem with the fine being more than the maximum amount as provided by Chapter 60, Article 7, Section 13 of the WV Code.

Additionally, of 51 violation report forms tested, we noted 23 instances totaling \$1,150.00 where the licensee was charged \$50 for court costs, even though a hearing was not held.

Chapter 60, Article 7, Section 13a of the West Virginia Code, as amended, states in part:

“ . . .The commissioner shall have authority to summon witnesses in the hearing before him, and fees of witnesses on behalf of the state in proceedings to sanction licenses shall be treated as a part of the expenses of administration and enforcement. Such fees shall be the same as those in similar hearings in the circuit courts of this state. The commissioner may, upon a finding of violation, assess a licensee a sum, not to exceed one hundred fifty dollars per violation, to reimburse the commissioner for expenditures of witness fees, court reporter fees and travel costs incurred in holding the hearing. Any moneys so assessed shall be transferred to the alcohol beverage control enforcement fund created by section thirteen of this article....”

The ABCA does not have the statutory authority to charge a \$50 court cost to licensees that do not request a hearing. We spoke again with the Administrative Services Manager concerning the ABCA charging licensees \$50 for court costs even though a hearing was not held. He stated that the court cost charge covers mailing expenses and other costs associated with processing violations. He also stated that this charge is not deposited separately from the actual fine and it is basically considered part of the fine itself.

We recommend the ABCA comply with Chapter 60, Article 7, Sections 13 and 13a of the West Virginia Code, as amended. We also recommend the additional \$50 be included in the amount of the fine, if it is part of the fine amount.

Agency's Response

Fines and penalties are levied according to the WV State Code. All charges are presented to a committee of four administrators and are agreed upon according to the law as it is written. The mentioned fine of \$7,500.00 was agreed upon between the ABCA committee and

the licensee. The \$50.00 court cost covers administrative costs. In the future we will consider the \$50.00 as part of the fine.

Fee Schedule for Assessment of Fines and Penalties

During our audit of fines and penalties, we were unable to determine whether fines and penalties assessed by the ABCA for violations cited against licensees were equitably levied. During our review, we noted differences between fine amounts levied against licensees for the same violation. The noted differences in fines and penalties assessed are as follows:

1. §11-16-18(a)(3) - Sell, Give, Furnish Underage with Non-Intoxicating Beer - Fines levied against licensees ranged as follows:
 - First offense (no previous violation of any type) - fines levied ranged from dismissal to \$500.
 - Licensees with one previous violation of some type - fines levied ranged from \$200 to \$1,000.
 - Licensees with two previous violations of some type - fines levied ranged from \$200 to \$500.
2. §60-7-12(a)(3) - Sell, Give, Permit Consumption of Alcoholic Liquors - Fines levied against licensees ranged as follows:
 - First offense (no previous violation of any type) - fines levied ranged from \$300 plus three days suspended license to \$500 plus three days suspended license.
3. §175-2-4.7 - After Hours Sale/Consumption of Alcoholic Liquors and §175-2-4.8 - Hours of Operation/Clear Premises - Fines levied against licensees ranged as follows:
 - Licensees with three previous violations of some type - fines levied ranged from dismissal to \$1,000.

Additionally, since there are no written procedures for case dismissals, we were unable to determine if the aforementioned case dismissals were appropriate. The reason for the dismissal of charges in each case was classified as no violation having occurred in the ABCA's Violation Tracking System.

The sanctions the Commissioner can impose on licensees with outstanding violations are addressed in Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended, which states in part:

- “(a) Upon a determination by the commissioner that a licensee has:
- (i) Violated the provisions of article sixteen, chapter eleven, or of this chapter; (ii) acted in such a way as would have precluded initial or renewal licensure; or (iii) violated any rule or order promulgated by the commissioner, the commissioner may impose any one or a combination of the following sanctions:
- (1) Revoke the licensee’s license;
 - (2) Suspend the licensee’s license;
 - (3) Place the licensee on probationary status for a period not to exceed twelve months; and
 - (4) Impose a monetary penalty not to exceed one thousand dollars for each violation where revocation is not imposed. . . .”

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. We spoke with the Commissioner concerning the levying of fines against licensees. He stated that there is no logical way to prepare a fine schedule due to the nature of different violations. Since each violation case is different and may have different combinations of violations cited, there is no logical way to prepare a fine schedule. However, we believe the ABCA should establish a formal schedule of fines and penalties for violations to ensure such fines and penalties are levied equitably against licensees. We also spoke with the Administrative Services Manager, who acts as the ABCA’s hearing officer, concerning the reason certain violations were dismissed. He stated that violation dismissals are within the scope of the Commissioner’s authority and he decides the ultimate fines and penalties to be assessed in violation cases.

We reported in our previous audit the existing fee schedule was not being utilized by the ABCA for the assessment of fines and penalties. In the agency's responses to this finding, the ABCA stated that it was in the process of developing a revised fee schedule. However, no such fee schedule was ever prepared and the fee schedule existing during our previous audit is no longer utilized.

We recommend the ABCA comply with Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended. We further recommend the ABCA 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's Response

A schedule of fines will be implemented for most of the violations that we receive. The agency will still reserve the right to have the Commissioner make the final decisions in those cases where major violations have occurred. We will in all cases stay within the guidelines of fines, suspensions, probation and revocation as mandated by state law.

Destruction of Non-Cash Evidence

During our review of fines and penalties, we tested 51 violation report forms which had been adjudicated between July 1, 2000 and June 30, 2002. Of the 51 violation cases tested, 24 cases involved the seizure of non-cash evidence by ABCA enforcement personnel. Any evidence of a violation cited against a licensee can be seized by ABCA enforcement personnel in accordance with Title 175, Series 2, Section 4.4. Upon seizure of any evidence, enforcement personnel is to complete an evidence form itemizing the evidence seized.

Our review of these 24 violation cases indicated there were three instances where the ABCA was unable to provide evidence forms supporting evidence seized; 20 instances where the case docket number was not recorded on the evidence form; and 12 instances where the Commissioner's Order settling a violation did not address the forfeiture of seized evidence.

In addition, we noted eight instances where the ABCA was unable to provide an evidence disposal form showing the Commissioner's approval to destroy evidence for adjudicated cases. These eight instances are detailed in the following schedule:

<u>No.</u>	<u>Case Docket Number</u>	<u>Date Seized</u>	<u>Description of Seized Evidence</u>
1	2001-0010	07/22/00	one bag of tips, approximately 115
2	2001-0310	04/12/01	3 slot machines
3	2002-0023	06/30/01	2 boxes of pull off tips, assorted amount of pull off tips
4	2002-0054	07/26/01	one 6 pack of Miller Lite
5	2002-0084	08/14/01	one 6 pack of Bud Light 12 oz. cans
6	2002-0181	08/14/01	one 6 pack of Bud Light bottles
7	2002-0187	08/14/01	one 6 pack of Bud Light cans
8	2002-0392	11/18/01	one 6 pack of Bud Light cans

The enforcement director recalled the evidence in six of these eight violation cases had been destroyed on 10/15/02. For these six instances, an evidence form had been prepared by enforcement personnel supporting the evidence seized. For the other two instances, the ABCA could not provide us with either an evidence form or evidence disposal form even though the violation report indicated evidence was seized.

Finally, for 16 of the 24 violation cases where evidence was seized, we noted the non-cash evidence seized was kept on hand by the ABCA for long periods of time after the cases had been adjudicated. Subsequent to the related violation case being adjudicated, the non-cash evidence remained in the ABCA's evidence room 83 to 323 days prior to being destroyed.

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 for the state and of persons directly affected by the agency's activities. . . ."

To fully comply with this Code section, we believe the ABCA should develop written procedures governing the disposition of evidence seized in violation cases.

The lack of control procedures over the disposition of seized evidence following the settlement of the corresponding violations could result in the unauthorized use or disposition of the confiscated evidence. Generally, the aforementioned instances of noncompliance occurred as the result of weak controls over the disposition of evidence.

We reported in our previous audit the lack of control procedures over the disposition of seized evidence. In the agency's responses to this finding, the ABCA stated that it had initiated a system of controls to account for the disposition of seized evidence. However, the aforementioned instances of noncompliance clearly indicate the ABCA has not fully implemented a system of controls over the disposition of seized evidence following the related violation cases being adjudicated.

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

Agency's Response

We will identify seized evidence as recommended. The ABCA is in the process of developing a computer program that will label and bar-code for scanning all evidence seized with the docket number and case number and generate a management report of all evidence that is in the evidence room. When the case and the appeal period is over the evidence will be disposed of according to the law. We will make arrangements to obtain a lock box at the WV State Treasurers Office to hold cash evidence.

Timely Action Not Taken on Violation Report

There was one instance (out of the two transactions tested) 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. A specific progression of this violation case is detailed as follows:

- Upon applying for a private wine restaurant license to add to his beer license in December 2000, the ABCA discovered this licensee had falsified his application by not fully disclosing his criminal record from the State of Virginia. ABCA enforcement personnel completed a violation report on January 29, 2001 stating the licensee had provided false information on their application.
- At the end of March 2001, the licensee was served with a hearing notice setting the time for the holding of an administrative hearing which was held on April 18, 2001.
- Subsequent to the holding of the hearing, the hearing examiner determined that the licensee had falsified its application and recommended revocation of the licensee's license in a decision dated August 10, 2001.

- After a delay, the hearing examiner submitted his decision to the Commissioner during September 2001. The Commissioner accepted the hearing examiner's decision.
- On October 4, 2001 the Commissioner signed a written order ordering the revocation of the licensee's license because the licensee had failed to fully disclose the extent of his criminal record when he failed to disclose several felony convictions and violations of probation.
- The licensee's 2000-2001 beer license had expired on June 30, 2001 and he had not applied for a license renewal since he went out of business.

Chapter 11, Article 16, Section 12(b) of the West Virginia Code, as amended, states

in part:

“ . . .(b) Each Class A retail dealer, in addition to furnishing the information required by this article, shall furnish as prerequisite to obtaining a license, a bond with some solvent surety company as surety, to be approved by the commissioner, payable to the state of West Virginia, in the amount not less than five hundred dollars, nor more than one thousand dollars, within the discretion of the commissioner. All such bonds shall be conditioned for the faithful observance of the provisions of this article, the rules, regulations and orders promulgated pursuant thereto and of any other laws of the state of West Virginia generally relating to the distribution, sale and dispensing of nonintoxicating beer, and shall be forfeited to the state in the full amount of said bond upon the revocation of the license of any such retail dealer. Such money received by the state shall be credited to the state fund, general revenue.”

Also, Title 175, Series 2, Section 6.16 of the Legislative Rule for Private Club

Licensing states in part:

“6.16. Commissioner's decision. - After the conclusion of the hearing or within ten (10) days of receipt of the transcript, the person designated by the Commissioner as hearing examiner shall prepare a recommended decision supported by findings of fact and conclusions of law affirming, modifying or vacating the earlier order of the Commissioner. Thereafter, the Commissioner within (10) days of receipt of the recommended decision, shall either accept or reject the recommended decision. If he or she accepts the decision, he or she shall sign and acknowledge the same as his or her own after having reviewed the transcript and all exhibits attached and affixed thereto.

If he or she rejects the decision, he or she shall within ten (10) days of receipt of the recommended decision prepare a decision setting forth his or her own findings of fact and conclusions of law. . . .”

Since the licensee’s beer bond has not been collected, the State General Revenue Fund is without the benefit of these funds. However, we believe if the ABCA had processed this violation report in a more timely manner, the ABCA would have been entitled to collect the licensee’s non-intoxicating beer bond before it expired. The ABCA was unable to collect this bond forfeiture on behalf of the State because both the hearing examiner in this case and the Commissioner did not adhere to the time frame (set forth in aforementioned rule) in ruling on this case.

We recommend the ABCA 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’s Response

We will assure that all fines are collected in a timely manner in the future.

Collection Procedures for Outstanding Fines

Our review of fines and penalties assessed against licensees indicated long periods of time to collect payment from licensees. We reviewed 51 violation report forms for the period July 1, 2000 through June 30, 2002. All of these violation report forms and their corresponding cases had been completed. We determined the total processing time to settle these 51 violations ranged from zero to 198 days, with an average processing time of 23 days. As of 5/15/03, the ABCA’s fines accounts receivable balance included \$13,550.00 of past due fines, of which \$2,450.00 was over 60 days late.

Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, states in

part:

“The head of the 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 for the state and of persons directly affected by the agency’s activities. . . .”

For fines assessed which are not collected in a timely manner, the ABCA is without the use of these monies. We questioned agency personnel concerning the lengthy processing time to settle violations. We were told the main reason violations are not settled in a timely manner is due to licensees not remitting their payment to the ABCA in accordance with the time frame as directed by the Waiver of Hearing form, Agreed Order, or Commissioner’s Order. Of the 51 violation report forms we reviewed, there were 20 violations where the licensee did not remit payment of their fine in accordance with the time frame specified in the Waiver of Hearing form cover letter, Agreed Order or Commissioner’s Order. For fines that have not been collected, the Administrative Services Manager who acts as the ABCA’s hearing officer stated that collection procedures consisted of denying a licensee renewal of their license for the next year if a fine is still outstanding. The ABCA may also send an inspector to the licensee’s place of business to inquire the reason the licensee has not paid their fine. We believe the past due amounts of fines exist because the ABCA has not implemented the collection procedures available to them.

We reported in our previous audit the lack of control procedures over the timely collection of outstanding fines. The aforementioned instances of noncompliance clearly indicate the ABCA has not addressed this problem since the last audit.

We recommend the ABCA comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended.

Agency's Response

We will assure that all fines are collected in a timely manner in the future.

Fines Assessed Not Properly Documented

During our review of fines and penalties, there was one instance (out of 51 transactions tested) where a Commissioner's Order was not completed for a violation. A private club licensee was cited for two violations on March 15, 2002. A Waiver of Hearing form was sent to the licensee with two options: request an administrative hearing or pay a \$750.00 fine. The licensee failed to return the Waiver of Hearing form to the ABCA. As a result, the ABCA automatically set a hearing date for the violation. Two ABCA Inspectors hand delivered a hearing notice to the licensee on May 16, 2002 stating that a hearing had been set for May 29, 2002. The hearing was held on May 29, 2002 and the licensee failed to attend the hearing. While the ABCA was waiting for the hearing examiner's decision, the licensee submitted the original fine amount of \$750.00 to the ABCA on May 31, 2002. The hearing examiner rendered her opinion on June 6, 2002 and found the licensee did commit the violation and recommended a \$500.00 fine. The ABCA did not prepare a Commissioner's Order stating the Commissioner's final decision and whether he agreed or disagreed with the hearing examiner's decision.

Title 175, Series 2, Section 6.16 of the Legislative Rule for Private Club Licensing states in part:

"6.16. Commissioner's decision - After the conclusion of the hearing or within ten (10) days of receipt of the transcript, the person designated by the Commissioner as hearing examiner shall prepare a

recommended decision supported by findings of fact and conclusions of law affirming, modifying or vacating the earlier order of the Commissioner. Thereafter, the Commissioner within ten (10) days of receipt of the recommended decision, shall either accept or reject the recommended decision. If he or she accepts the decision, he or she shall sign and acknowledge the same as his or her own after having reviewed the transcript and all exhibits attached and affixed thereto. If he or she rejects the decision, he or she shall within ten (10) days of receipt of the recommended decision prepare a decision setting forth his or her own findings of fact and conclusions of law....”

Also, Chapter 60, Article 7, Section 13a of the West Virginia Code, as amended, states in part:

“. . .The commissioner may, upon a finding of violation, assess a licensee a sum, not to exceed one hundred fifty dollars per violation, to reimburse the commissioner for expenditures of witness fees, court reporter fees and travel costs incurred in holding the hearing. Any moneys so assessed shall be transferred to the alcohol beverage control enforcement fund created by section thirteen of this article....”

Even though the private club licensee eventually paid the fine amount originally assessed by the ABCA as reflected on the Waiver of Hearing form prior to the issuance of the hearing examiner’s decision, we believe the ABCA could have assessed the licensee an additional \$150.00 for hearing costs in accordance with Chapter 60, Article 7, Section 13a of the West Virginia Code, as amended. Also, we were unable to determine if this licensee remitted the proper amount to settle this violation since there was no signed acknowledgment by the Commissioner validating the \$750.00 paid by the licensee and rejecting the hearing examiner’s decision. The Administrative Services Manager, who acts as the ABCA’s hearing officer, told us he assumed the payment by the licensee of the original fine amount precluded the preparation of the Commissioner’s Order.

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

Agency's Response

No response.

Enforcement Activities Not Properly Documented

Of the 51 violation report forms we reviewed, 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. Without some verification of the business closing, enforcement personnel could be told that an establishment is closed to comply with a suspension when it is actually still open. According to the enforcement director, there is no effective way to document that a licensee is closed down as ordered because there is usually no one there when the licensee's establishment is closed. Therefore, enforcement personnel cannot even complete a routine compliance check or have someone at the establishment sign a form stating the inspector was there.

There were two instances where the inspector/agent did not sign for violation report forms when received. When an inspector/agent needs more violation report forms, he/she will see an office assistant assigned to the violations division. The office assistant completes an assignment sheet which notes the inspector's name, inspector number and which violation report form numbers are being assigned to that inspector. Even though there were only two instances where an inspector/agent did not sign for the violation report forms received, the ABCA cannot verify which forms were assigned to each inspector/agent or track the status of these forms.

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 for the state and of persons directly affected by the agency's activities."

The office assistant responsible for issuing these forms to enforcement personnel stated that the violation report forms and assignment sheet were mailed out to the inspectors, but the inspector failed to sign and mail the assignment sheet back to the ABCA.

We reported in our previous audit the lack of control procedures over the verification by enforcement personnel of licensee compliance with license suspensions. The aforementioned instances of noncompliance clearly indicate the ABCA has not addressed this problem since the last audit.

We recommend the ABCA 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's Response

No response.

Weak Controls Over Imprest Funds

As of June 30, 2002, the ABCA utilized seven imprest funds for enforcement purposes. One \$5,000 imprest fund was maintained at the ABCA main office, while one \$2,000 imprest fund was assigned to each one of the ABCA's six enforcement supervisors. Each supervisor maintains their assigned fund in a local bank account and distributes the money to inspectors/agents as needed. Enforcement inspectors/agents received advances from these funds to pay for expenses related to the conducting of undercover alcohol/tobacco sting operations and to pay underage

operatives utilized in these underage buys. In addition, monies from these imprest funds were utilized to reimburse inspectors/agents who used their own monies to pay for undercover expenses without receiving an advance beforehand.

During our review of the reimbursements made to the \$5,000 imprest fund and to two of the six imprest funds assigned to the enforcement supervisors, we tested 110 transactions involving the expenditure of imprest monies to fund various undercover operations. We noted the following items: 25 instances where a Request for Funds form was not completed documenting monies advanced; 54 instances where an Enforcement Fund Reimbursement Sheet itemizing undercover expenses incurred was not approved by the inspector's supervisor or enforcement director; one instance totaling \$147.03 where an Enforcement Fund Reimbursement Sheet itemizing undercover expenses incurred was not signed by the inspector who completed the form; five instances totaling \$154.18 where undercover expenses were not supported by an approved Enforcement Reimbursement Sheet; 22 instances where there was no documentation supporting the return of monies left over from an advance; and 17 instances totaling \$2,900.75 where an Enforcement Reimbursement Sheet was completed but did not indicate whether this form was completed to settle an advance or to support the amount to be reimbursed to the inspector.

In addition, there was one instance where an inspector categorized a \$300.00 undercover expense on an Enforcement Reimbursement Sheet as being forwarded to an unclassified individual for undercover work. Upon inquiry, the enforcement director identified this individual as a member of the State Police. He also told us the ABCA will periodically forward imprest monies to other law enforcement agencies who work in conjunction with the ABCA on undercover operations. However, the Enforcement Reimbursement Sheet did not clearly indicate the purpose

for which these monies were spent. Furthermore, we noted each enforcement supervisor was solely responsible for maintaining the imprest fund assigned to them; therefore, there was no independent reconciliation done on a monthly basis reconciling the bank statement balance to the checkbook balance.

Finally, as reported in our last audit, the ABCA 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. During our audit period, the ABCA paid one young adult \$810.00 and another \$876.00 to perform underage buys during calendar year 2002, without issuing a Form 1099.

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 for the state and of persons directly affected by the agency's activities. . . ."

Lack of documentation for the expenditure of cash advances or monies reimbursed to inspectors/agents for undercover expenses incurred, as well as, the records supporting the expenditure of imprest fund monies not being reviewed and approved by the appropriate enforcement officials could result in the unauthorized use or disposition of the cash. We believe the lack of control procedures governing the use of imprest fund monies as well as the lack of supervisory review by the appropriate enforcement officials of the records supporting each imprest fund resulted in the inconsistent documentation of the expenditure of imprest fund monies.

We reported in our previous audit the lack of control procedures over the utilization of imprest funds for enforcement purposes. In the agency's responses to this finding, the ABCA stated that it would strengthen controls over its enforcement imprest funds. However, the aforementioned instances of noncompliance clearly indicate the ABCA has not fully implemented a system of controls over the utilization of imprest funds for enforcement purposes.

We recommend the ABCA comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended, by strengthening controls over the utilization of imprest funds for enforcement purposes.

Agency's Response

We will establish a procedure to have banks mail statements to the ABCA Central Office, and the accounts will be reconciled there. Additionally, we will change the form to indicate the amount of the cash advance, the amount expenses and the amount returned.

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.

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 for the state and of persons directly affected by the agency's activities. . . ."

Postage stamps sent to inspectors in lieu of reimbursement or pre-addressed stamped envelopes can be easily utilized for personal use. The ABCA's practice is to issue stamps to inspectors as needed.

We reported in our previous audit the lack of control procedures over the issuance of postage stamps to enforcement personnel. In the agency's responses to this finding, the ABCA stated that it would strengthen controls over its issuance of postage stamps to enforcement personnel. However, the ABCA's current practice clearly indicates the ABCA has not fully implemented a system of controls over the issuance of postage stamps to enforcement personnel.

We recommend the ABCA 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's Response

The ABCA will review the system of providing Enforcement agents with postage. The ability of downloading reports instead of mailing them has decreased the amount of postage needed in this area. One consideration is to have the agents purchase the postage needed and file for reimbursement on their travel expense forms.

ADMINISTRATION:

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 administrative employees in accordance with Title 148, Series 3, Sections 9.3 and 9.4. These rules require State agencies to utilize one of two methods when assessing employees for the commuting value of their assigned vehicles: authorization of a monthly payroll deduction for the commuting value of their assigned vehicle or a monthly

submission of a "Statement of Commuting Value" completed by the employee along with their personal reimbursement for the commuting value of their assigned vehicle. For tax years ending 2000, 2001, and 2002, the ABCA failed to require its administrative employees, who were assigned a leased vehicle during the tax year, to comply with these rules. The following table details the number of employees and the estimated commuting value of their assigned vehicles for tax years ending 2000, 2001, and 2002.

<u>Tax Year</u>	<u>No. of Administrative Employees</u>	<u>Estimated Commuting Value of Leased Vehicles</u>
2000	2	\$1,272
2001	4	\$1,908
2002	4	\$2,544

Title 148, Series 3, Sections 9.3 and 9.4 of the Department of Administration's

Procedural Rule for State Owned Vehicles state:

"9.3 Use by Primarily One Employee

When a State owned vehicle is leased for State business use by primarily one employee, the vehicle:

(a) is assigned to an employee that has been required by his or her Department Executive Officer, or the Executive officer of his spending unit if the spending unit has not been assigned to a department, to commute to and/or from work for bona fide noncompensatory business reasons;

(b) cannot be used for personal purposes except for commuting and minimal personal convenience, i.e., stopping for meals while traveling;

(c) is designated as a "qualified nonpersonal use vehicle" and/or is not assigned to an employee designated a "control employee" or "law enforcement officer" as defined by the Internal Revenue Services of the Department of the Treasury; and

(d) is assigned to an employee that authorizes a monthly payroll deduction for the commuting value or completes a "Statement of Commuting Value" as designated by the Travel Management Office.

9.4 Determining Commuting Value

In accordance with Federal Tax Regulations issued by the Internal Revenue Service of the Department of the Treasury, the State of West Virginia will place a "commuting value" of \$1.50 one way or \$3.00 roundtrip per day (or the amount referenced in the "Commuting Valuation Rule" or equivalent of the Department of the Treasury, Internal Revenue Service of the Federal Government rules and/or regulations, which ever is greater) for each day the vehicle is used for commuting purposes based on two (2) methods:

(a) An assignment to an individual employee when used for commuting will have a monthly payroll deduction based on the following:

Business days per year 261
Average non-business days 49
(includes holidays and annual/sick leave)
Business days for calculation 212

"Commuting Value" per day\$ 3.00
"Commuting Value" per month\$ 53.00
"Commuting Value" per year\$636.00

(b) Temporarily Assigned Vehicles:

If an employee has been assigned a vehicle on a temporary basis and the vehicle is used to commute to and/or from work during that temporary assignment, the employee must complete and submit to his or her spending unit business office a "Statement of Commuting Value" as designated by the Travel Management Office with payment attached to reimburse the State for the "commuting value".

A "Statement of Commuting Value" must be completed for each month in which the employee has been assigned a State owned

vehicle and has used it for commuting. The "Statement of Commuting Value" must be submitted to the employee's spending unit business office with a copy to the Travel Management Office within fifteen (15) business days from the last day of the reporting month. Failure to submit the form may result in the termination of the assignment of a vehicle to the employee as well as any applicable penalties by the Department of the Treasury, Internal Revenue Service of the Federal Government."

By not requiring employees to reimburse the agency for the commuting value of their assigned vehicles, the ABCA may be understating employees' federal and state taxable wages. According to the ABCA's comptroller, the ABCA is exempt under IRS Tax Regulations from accounting for the commuting value of an employee's use of a leased vehicle during the tax year because of the ABCA's status as a law enforcement agency.

We recommend the ABCA 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's Response

Presently, we do not assign any commuting value to leased vehicles used by administrative employees. We will develop a procedure to deduct the commuting value from the pay of the four administrative employees that use their cars to commute from home to work using the recommended guidelines. In addition, we will request an opinion from the Department of Administration as to how the use of state owned cars by employees who work from their homes should be treated.

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" in accordance with Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended. During the early 1990's, the Non-Intoxicating Beer

Commission was merged with the Alcohol Beverage Control Administration. One of the accounts maintained by the Non-Intoxicating Beer Commission was called the Non-Intoxicating Beer Enforcement Account. This account was established in accordance with Chapter 11, Article 16, Section 23 of the West Virginia Code to enforce the statutes set forth in Chapter 11, Article 16 of the West Virginia Code. When the Non-Intoxicating Beer Commission was merged with the ABCA, the ABCA began utilizing this account to fund the enforcement of the statutes set forth in both Chapter 11, Article 16 and Chapter 60 of the West Virginia Code.

Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended, states in part:

“. . . (b) Any monetary penalty assessed and collected by the commissioner shall be transmitted to the state treasurer for deposit into the state treasury to the credit of a special revenue fund designated “The Alcohol Beverage Control Enforcement Fund”, which is hereby created. All moneys collected, received and deposited in the “Alcohol Beverage Control Enforcement Fund” shall be kept and maintained for expenditures by the commissioner for the purpose of enforcement of the statutes and rules pertaining to alcoholic liquor, and shall not be treated by the state treasurer or state auditor as any part of the general revenue of the state. At the end of each fiscal year all funds in the alcohol beverage control enforcement fund in excess of twenty thousand dollars shall be transferred to the general revenue fund. . . .”

By not establishing the Alcohol Beverage Control Enforcement Account, the ABCA has not followed the mandate set forth by the Legislature with the enactment of Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended. According to the comptroller, enforcement of the statutes controlling the sale of alcoholic liquors and non-intoxicating beer is so intertwined that it would not be effective to maintain two enforcement accounts (one for alcohol and one for non-intoxicating beer). Thus, the ABCA simply utilizes the Non-Intoxicating Beer Enforcement Account to enforce the statutes governing both the sale of alcoholic liquors and non-intoxicating beer.

Additionally, on March 14, 1998, the West Virginia Legislature enacted Chapter 60, Article 6, Section 25 of the West Virginia Code creating the "Fetal Alcohol Syndrome Account." The purpose of this account was to provide for the collection of fines assessed by the Commissioner against licensees who failed to display signs, provided by the ABCA, at their place of business warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy. As of June 3, 2003, the ABCA has not established this account as directed by the Legislature.

During the audit period, the ABCA did not cite any violations against licensees resulting in assessed fines for failing to display one of these signs. Also, we noted two transactions totaling \$2,845.00 where the ABCA expended monies from the General Administrative Account to pay for Fetal Alcohol Syndrome Posters which were provided to licensees.

Chapter 60, Article 6, Section 25 of the West Virginia Code states in part:

"(a) Beginning the first day of July, one thousand nine hundred ninety-eight, all persons licensed to sell alcoholic liquor, wine or nonintoxicating beer at retail, either for consumption on-premises or off-premises, or both, shall display signs provided by the alcohol beverage control commissioner warning of the possible danger of birth defects which may result from the consumption of alcohol during pregnancy . . .

(c)(1) Upon a determination by the commissioner that a licensee has failed to comply with the provisions of this section, the commissioner may impose a civil administrative penalty of not less than one hundred dollars nor more than one thousand dollars for each violation . . .

(3) The proceeds of civil administrative penalties collected for violations of this section shall be deposited in a fund hereby established in the state treasury to be known as the "fetal alcohol syndrome fund". The commissioner shall expend the moneys deposited in the fund to educate the public concerning the dangers of fetal alcohol syndrome without appropriation except as provided in this subsection. . . ."

By not establishing the Fetal Alcohol Syndrome Account, the ABCA has not followed the mandate set forth by the Legislature with the passage of Chapter 60, Article 6, Section 25 of the West Virginia Code. According to the ABCA's enforcement director, the ABCA's practice is to give those licensees a warning who fail to display a Fetal Alcohol Syndrome Poster rather than write them up for a violation. If a licensee does not have one of these posters, one will be provided to them by the ABCA. In addition, the comptroller told us payment for the posters which are provided to the licensees are paid for with monies from the General Administrative Account which makes unnecessary the creation of the Fetal Alcohol Syndrome Account.

We recommend the ABCA comply with Chapter 60, Article 7, Section 13 of the West Virginia Code, as amended, and 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 we recommend the ABCA propose legislation that would enable them to comply with the Code.

Agency's Response

The account for fines and penalties was merged with the existing account for beer penalties. When the ABCA and the Beer Commission were merged, the charges levied were for establishments serving both beer and liquor. Therefore, the fines could not be separated and deposited to two accounts. The ABCA will set up and begin depositing the income into the ABCA Enforcement Account and transfer the remaining money from the 7355 (Beer) account. The Fetal Alcohol Syndrome Account has not been used because there have been no violations of this law. In following this mandate, the ABCA was to provide the signs, as there was no money from failure to display the signs in the account to be established, the money had to be paid from the General Administrative Account. If we collect any money from failure to display the signs we will

deposit it to the designated account. We have been advised by the Director of the accounting in the State Auditors office to not set up the account for alcohol syndrome fines until we have money to deposit to the account.

**Contracting of Accounting and Legal Services
to Assist With the Awarding of Franchise Licenses**

The passage of House Bill 3023 mandated the ABCA and the Retail Liquor Licensing Board (the Board) to rebid liquor licenses for an additional ten years beginning July 1, 2000. To assist the ABCA with this process, the ABCA contracted with outside vendors to provide accounting and legal services.

On July 9, 1999, the ABCA entered into a contract for accounting services with the accounting firm of Smith, Cochran and Hicks, CPAs. The contract details including the initial contract amount and all subsequent change orders are summarized in the following table.

<u>Change Order No.</u>	<u>Purpose of Change Order</u>	<u>Contract/Change Order Start Date</u>	<u>Contract/Change Order End Date</u>	<u>Contract/Change Order Amount</u>	<u>Cumulative Contract Amount</u>	<u>% Increase*</u>
n/a	Initial contract	07/09/99	06/30/00	\$73,000.00	\$ 73,000.00	n/a
1	Additional services	03/27/00	n/a	\$14,310.00	\$ 87,310.00	20%
2	Additional services	04/01/00	n/a	\$ 3,780.00	\$ 91,090.00	5%
3	Extend contract	06/30/00	01/31/02	\$45,000.00	\$136,090.00	62%
4	Extend contract	02/01/02	05/31/02	\$ 0.00	\$136,090.00	n/a
5	Extend contract	06/01/02	06/30/03	\$45,000.00	\$181,090.00	62%

* Percent increase refers to the percentage increase by which each change order increased the total contract amount beyond the initial contract price.

As the above table indicates, change orders 1, 3, and 5 substantially increased the contract price without requiring the ABCA rebid this contract. The contract which was originally for one year and

an amount of \$73,000 has been extended to three years and an amount of \$181,090, representing an increase of 149%. Through June 30, 2002, the ABCA has paid Smith Cochran and Hicks, CPAs a total of \$117,722.50 under this contract.

On August 27, 1999, the ABCA entered into a contract for legal services with a private attorney. The contract details including the initial contract amount and all subsequent change orders are summarized in the following table.

<u>Change Order #</u>	<u>Purpose of Change Order</u>	<u>Contract/Change Order Start Date</u>	<u>Contract/Change Order End Date</u>	<u>Contract/Change Order Amount</u>	<u>Cumulative Contract Amount</u>	<u>% Increase*</u>
n/a	Initial contract	08/27/99	06/30/00	\$95,000.00	\$ 95,000.00	n/a
1	Increase contract	05/19/00	n/a	\$45,000.00	\$140,000.00	47%
2	Extend contract	07/01/00	12/31/00	\$85,000.00	\$225,000.00	89%
3	Extend contract	01/01/01	01/31/01	\$ 0.00	\$225,000.00	n/a

* Percent increase refers to the percentage increase by which each change order increased the total contract amount beyond the initial contract price.

As the above table indicates, change orders 1 and 2 substantially increased the contract price without requiring the ABCA rebid this contract. The contract period was increased from one year to three years and the contract amount by 136%. Through June 30, 2002, the ABCA has paid this private attorney a total of \$208,031.25 under this contract.

Section 3.3 of the Division of Purchasing's Policies and Procedures Handbook states in part:

"Formal Acquisitions (Over \$10,000): The Purchasing Division of the Department of Administration is responsible for acquiring all commodities and services on behalf of the state. Agencies under the executive branch of state government are required to process

purchases expected to exceed \$10,000 through the Purchasing Division, unless statutorily exempt. . . .”

Also, Section 7.1 of the Division of Purchasing’s Policies and Procedures Handbook states in part:

“Definition of Authority: All requisitions for commodities and services over \$10,000 must be submitted to the Purchasing Division using TEAM or a *Purchase Requisition*, WV-35, for formal competitive bidding. . . .”

If the ABCA had included options to renew for additional one-year periods and established an overall contract price as part of the terms and conditions when the initial contracts were bid out, the possibility exists that an increased number of vendors may have been willing to bid for these services or those who did bid might have been inclined to offer a lower rate considering the extended years which could have resulted in a savings to the ABCA. The ABCA’s comptroller told us the reason the ABCA did not rebid each of these contracts was that the ABCA was satisfied with the quality of the accounting and legal services being provided by these vendors.

We recommend the ABCA 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’s Response

All contracts were awarded and extended according to the WV State Purchasing Divisions instructions.

Awarding of Franchise Licenses

The passage of House Bill 3023 mandated the ABCA and the Retail Liquor Licensing Board (the Board) to rebid liquor licenses for an additional ten years beginning July 1, 2000. All licenses within the 98 zones in West Virginia were initially rebid on March 3, 2000. The following

table summarizes the results from the first round of bids and each successive round which was held through June 30, 2002.

<u>Bid Round</u>	<u>Date Held</u>	<u>No. of Franchises Awarded</u>	<u>Amount Realized</u>
1	03/03/2000	148	\$20,640,842.75
2	06/23/2000	12	1,025,108.00
3	10/05/2000	4	561,700.00
4	04/17/2002	<u>5</u>	<u>215,903.00</u>
	Total	<u>169</u>	<u>\$22,443,553.75</u>

Potential bidders are required to submit their bids to the Division of Purchasing, Department of Administration. It is the responsibility of the Division of Purchasing to handle the receipt and safeguarding of competitive, sealed bids and to open those bids on the designated bid opening date. After the bid opening process has been completed, Title 175, Series 5, Section 9.2.1 requires the Director of the Purchasing Division, by affidavit, to certify the name of each bidder, the amount bid, and whether the bid was submitted timely and in correct form, and have the State Police deliver all of the bids and the affidavit to the Commissioner's office or to his designee. However, 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.

Representatives from the accounting firm of Smith, Cochran and Hicks, CPAs were present at the bid openings for the third and fourth rounds. The ABCA contracted with this firm in July 1999 to provide accounting services related to the bidding of franchise licenses. According to the ABCA's comptroller, the ABCA engaged this firm to ensure the integrity of the bid process as well as having a professional accounting firm certify the bid results. Once the bids for these two

rounds were opened, representatives from Smith, Cochran and Hicks, CPAs took custody of the bids for the purpose of evaluating the bids to determine the highest bidder for each franchise license bid. When the highest bidders had been determined, the accounting firm representatives reported this information to the Retail Liquor Licensing Board.

Title 175, Series 5, Section 9.2.1 of the ABCA's Legislative Rule for the Licensing of Retail Liquor Stores states in part:

“. . . After the bid opening process is completed, the Director of the Purchasing Division, shall, by Affidavit, certify the name of each bidder, the amount bid, and whether the bid was submitted timely and in correct form, and have the State Police deliver all of the bids and the Affidavit to the Commissioner's office or to his designee.”

By not requiring the Director of the Purchasing Division to certify the bid results by signed affidavit prior to turning the bid documentation over to the Commissioner's designated representatives, the ABCA is not complying with governing Legislative Rules to maintain the integrity of the bid process for franchise licenses. According to the comptroller, the reason the ABCA did not require the Purchasing Division to certify by affidavit the results of the bids from these two rounds was due to the presence of the ABCA's representatives (Smith, Cochran & Hicks, CPAs) at each bid opening and the small number of bids received from each round. Since there were only a handful of bids received at each bid opening, representatives from Smith, Cochran & Hicks, CPAs simply took custody of these bids for evaluation.

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

Agency's Response

Smith, Cochran & Hicks was contracted to certify the Franchise bid results, WV Purchasing Division, as well as the accounting firm, was involved and present at all bid openings and recorded the bid amounts which were certified to the ABCA by the accounting firm of Smith, Cochran & Hicks. We will immediately ask the Purchasing Director, in writing, to provide us a certification of all bids conducted in the Purchasing Divisions office.

Purchase of Computer Equipment For
The Office of the Secretary of Tax and Revenue

On November 15, 2002, subsequent to the audit report date, 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.

Chapter 60, Article 3, Section 18 of the West Virginia Code, as amended, 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 of this article."

The ABCA is paying for expenses that do not directly benefit the ABCA. Purchasing computer equipment on behalf of another State agency results in monies from the General Administrative Account being utilized for purposes not intended by State law. Also, by purchasing this equipment on behalf of the Secretary's Office effectively results in the ABCA subsidizing the operations of the Secretary's Office. The ABCA is classified under the purview of the Department of Tax and Revenue. As a result, when the Secretary's Office of the Department of Tax and

Revenue requests the ABCA to pay a portion of its expenses, the ABCA complies with the request. We spoke with the ABCA's comptroller concerning the purchase of computer equipment for the Secretary's Office totaling \$11,126.00. She stated that the ABCA does not have a formal written request from the Secretary's Office requesting the purchase of this equipment. The ABCA was contacted and asked to buy specific computer equipment for administrative personnel in the Secretary's Office. The ABCA bought the equipment and placed the equipment on their inventory but the ABCA does not have access to or use of this computer equipment.

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

Agency's Response

No response.

Assessment of Fees Without Statutory Authority

During our audit of licensing revenues, the ABCA charged applicants for a Class A or B retail license a \$20 fee for criminal background checks without statutory authority. The ABCA instructs applicants to submit "Record Request Check Cards" and a \$20 processing fee for each card with their license application for criminal background checks; the State Police Criminal Identification Bureau (CIB) processes these cards and charges the ABCA a \$20 fee for each background check performed. We noted in all instances where a criminal background check of a licensee was required, the ABCA assessed the licensee a \$20 processing fee.

The following table details the total amount of CIB fees collected from licensees and reimbursements made to the Department of Public Safety during the 2001 and 2002 fiscal years.

<u>Fiscal Year</u>	<u>Total CIB Fees Collected</u>	<u>Total Reimbursements Made to Depart. of Public Safety</u>
2001	\$40,320.00	\$30,100.00
2002	\$44,480.00	\$34,620.00

Since the ABCA 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 were unable to determine if the fees collected from license applicants were for the reimbursements made to the Department of Public Safety. Also, the ABCA is classifying the CIB fees received as revenues instead of as reimbursements of an expenditure.

Section 175-2-3.1.6 of the Legislative Rule for Private Club Licensing requires the ABCA to conduct a criminal background check on all applicants as follows:

"Arrest record, if any, of the applicant and if the applicant be a corporation or association or limited liability company the arrest record, if any, of the officers, directors, members and managers or stewards including disposition of same. (All applicants will be checked through the Criminal Identification Bureau of the Department of Public Safety.)"

Also, for persons applying for a Class B retail beer license the ABCA's policy is to have criminal background checks performed on applicants to determine compliance with Chapter 11, Article 16, Section 8 of the West Virginia Code, as amended, which states in part:

". . . (6) That the applicant is not incarcerated and has not during the five years immediately preceding the date of said application been convicted of a felony. . . ."

The ABCA's policy of charging applicants for a retail license a \$20 fee to conduct a criminal background check allows the ABCA to collect and expend monies which under State law the ABCA is not authorized to collect. The ABCA's comptroller stated the \$20 fee assessed license

applicants to conduct a criminal background check is assessed to reimburse the ABCA for expenditures to be made to the State Police.

Also, during our audit of miscellaneous revenues, we noted where the ABCA was charging interested persons unauthorized report charges for requesting various reports. Interested persons can obtain such reports from the ABCA as copies of license files, bailment inventory price catalogs, distiller reports reflecting monthly sales of bailment stock by franchise, and other miscellaneous reports. Depending on the type of report requested, the ABCA charges interested persons an applicable report charge in accordance with the following rate schedule:

<u>Report Name</u>	<u>Format</u>	<u>Charge</u>
660 Report	Printed Hard Copy	\$50.00 per retailer - no per page charge
BVN 150	Printed Hard Copy	\$50.00 per Distiller
BVN 150	Disk or Upload	\$50.00 per disk + \$10.00 per Distiller
License Files	Printed Hard Copy	\$25.00 + .10 cents per page
Price Books	Additional Copies	\$20.00 each
Enforcement Freedom of Information Files	Hard Copy	\$10.00 + .25 cents per page

Additionally, the ABCA charged interested persons fees for attending either a TEAM (Training and Education on Alcoholic Management) or TIPS (Training for Intervention Procedures) seminar conducted by the ABCA. These programs are offered to licensees and their employers to train participants about serving/selling alcoholic beverages responsibly. Persons attending a TEAM training seminar were assessed a \$20 participation fee, while persons attending a TIPS seminar were assessed a \$30 participation fee. There is no statutory authority for the fees charged.

The ABCA's comptroller told us the ABCA charges interested persons a report charge for providing copies of requested documents to recover the cost of providing such copies. She also told us the ABCA charges each participant in a TEAM/TIPS seminar a participation fee to help defray cost of materials.

We reported in our previous audit where the ABCA was charging licensees and interested persons these same fees. The ABCA stated in response to this previous finding that they would include these charges in a legislative rule which hasn't been done.

We recommend the ABCA discontinue charging fees that are not authorized by statute to license applicants and interested persons.

Agency's Response

We will review our system of fee collections and attempt to get legislation or change ABCA rules & regulations to support them where necessary.

Will-Call Orders

Title 175, Series 1, Section 4.7.6. of the Legislative Rule for Retail Licensee Operations states that stores can utilize an ordering procedure called a "will-call" as a supplement to the regular ordering procedure to order additional stock merchandise. Also, Section 4.7.6.b of this same rule limits the number of cases which can be ordered as a "will-call" order to ten cases or less of alcoholic liquor. There were nine instances out of 13 "will-call" orders tested, where the ABCA allowed retailers to place "will-call" orders for more than ten cases as follows:

<u>Store Number</u>	<u>Store Name</u>	<u>Order Date</u>	<u>Total Number of Cases Ordered</u>
460	7-ELEVEN #28303	11/16/00	21
472	GDSH Distributors, LLC	11/28/00	111
425	Rite Aid #3702	06/28/01	175
556	Southridge Spirits	07/30/01	15
532	Spirits, ETC	09/20/01	25
558	B & S Beverage Barn	01/22/02	23
532	Spirits, ETC	02/13/02	12
425	Rite Aid #3702	04/17/02	52
556	Southridge Spirits	06/18/02	12

Title 175, Series 1, Section 4.7.6. of the Legislative Rule for Retail Licensee

Operations, states in part:

“4.7.6. Order pick-up procedure (“will-call”).

4.7.6.a. The retail liquor store may order alcoholic liquors and pick up its order at the ABCC warehouse. This procedure is available only as a supplement to the regular ordering procedure and should not be used to circumvent the regular ordering procedure.

4.7.6.b. Alcoholic liquor sold in this manner will be sold only in full case lots not exceeding ten (10). . . .”

The ABCA is not complying with Title 175, Series 1, Section 4.7.6. of the Legislative Rule for Retail Licensee Operations concerning “will-call” orders placed by retailers. The ABCA’s practice is to allow retailers to order as many cases as needed for orders classified as a “will-call” order.

We recommend the ABCA comply with Title 175, Series 1, Section 4.7.6. of the Legislative Rule for Retail Licensee Operations concerning “will-call” orders.

Agency's Response

Will call liquor orders are kept to a 10-case order except in conditions of an emergent nature. We endeavor to help our retailers in unforeseen situations and assist in keeping their business' functioning. We will include a change in our regulations to allow us to adjust will call orders as necessary.

ACCOUNTING:

Payment of PHH Credit Card Monthly Billings

During the period July 1, 2000 through June 30, 2002, the ABCA leased vehicles from the Department of Administration's Fleet Management Office for the use of its enforcement personnel and some administrative officials (such as the commissioner and deputy commissioners). Each leased vehicle is assigned a PHH credit card which is used for purchasing gasoline and paying for major and minor car repairs. The Fleet Management Office will pay the credit card company (PHH) on a monthly basis for all outstanding credit card charges incurred by PHH card users and then seek reimbursement from each State agency for the amount of charges incurred by its employees.

The ABCA is approving for payment the monthly billings received from the Fleet Management Office which are mathematically inaccurate. Each monthly billing provides an itemization of each cardholder's individual charges. For gasoline purchases made by a cardholder, the monthly billing shows the quantity of gallons purchased, price per gallon, and total sale price. However, upon attempting to recalculate the total sales price for several of these transactions, we noted the total sales price reflected on the monthly billing was mathematically inaccurate based on price per gallon and quantity purchased. In each case, our recalculation resulted in an over charge

based on the actual quantity of gallons purchased multiplied by the actual price per gallon as reflected on the monthly billing.

In addition, we noted the ABCA was not reviewing each monthly billing for the mileage entered by each PHH credit cardholder from the odometer of the cardholder's assigned vehicle each time a gasoline purchase was made. Upon reviewing the ABCA's monthly billings, we noted cardholders would enter the same mileage amount for successive gasoline purchases or would enter mileage amounts for successive purchases which fluctuated between higher and lower mileage amounts rather than reflect progressive mileage readings.

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 for the state and of persons directly affected by the agency's activities . . ."

In addition, Chapter 12, Article 3, Section 9 of the West Virginia Code states:

"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; and the auditor shall not issue his warrant to pay any money out of the state treasury unless he is satisfied that the same is needed for present use for such purposes."

By not reviewing vendor invoices for mathematical accuracy prior to approving the vendor invoice for payment, the ABCA may be over paying for services rendered. Also, the ABCA not reviewing the mileage amounts on each monthly billing, which are entered by cardholders when

making gasoline purchases, may allow cardholders the opportunity to make gasoline purchases with their PHH credit card for their own personal use.

The ABCA's comptroller told us ABCA personnel do not fully review for mathematical accuracy the PHH credit card monthly billings prior to approving these monthly billings for payment. She further stated she assumed these monthly billings were already mathematically accurate since each monthly billing is a computer generated invoice. In addition, she explained that the mileage amounts pertaining to each cardholder's gasoline purchases as reflected on each monthly billing are not reviewed to ensure each cardholder is only using their PHH credit card for authorized use.

Finally, we reviewed the inspector records of four inspectors for the period July 1, 2000 through June 30, 2002. Three of these inspectors who drove a leased vehicle during work hours to perform inspections were not required to keep a daily log specifying the number of miles driven during each work day and the destinations of travel. If a detailed log is not maintained it is difficult to verify the vehicle was used for business purposes as required by Title 148, Series 3, Section 9.3.

Title 148, Series 3, Section 9.3 of the Department of Administration's Procedural Rule for State Owned Vehicles states in part:

"9.3 Use by Primarily One Employee

When a State owned vehicle is leased for State business use by primarily one employee, the vehicle . . . (b) cannot be used for personal purposes except for commuting and minimal personal convenience, i.e., stopping for meals while traveling. . . ."

We recommend the ABCA comply with Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended; Chapter 12, Article 3, Section 9 of the West Virginia Code; and Title 148, Series 3, Section 9.3 of the Department of Administration's Procedural Rule for State Owned Vehicles. We further recommend the ABCA 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's Response

We have contacted the WV Purchasing Division and the PHH credit card office regarding their billing inaccuracies. Drivers have been advised that mileage must be recorded properly when making gasoline purchases. We have been advised by PHH officials that safeguards have been put in place in their system that will also monitor the mileage reported.

**Depositing of Licensing Revenues to
Wrong Account Resulting in Excess Cash Balance**

During our audit of licensing revenues, we noted in all 16 instances tested where private club license fees totaling \$17,000.00 collected by the ABCA were deposited to the ABCA's General Administrative Account rather than being directly deposited to the State General Revenue Fund; two instances (all instances tested) of private wine restaurant license fees totaling \$500.00 collected by the ABCA and deposited to the General Administrative Account rather than to the Wine License Special Account; and one instance (only instance tested) where a \$50.00 wine distributor sales representative fee collected by the ABCA was deposited to the Wine License Special Revenue Operating Account rather than to the Wine License Special Account.

The following table details the amounts of each fee collected by the ABCA during the 2001 and 2002 fiscal years.

<u>License Fee</u>	<u>FY 2001</u>	<u>FY 2002</u>
Private Club	\$1,696,925.00	\$1,910,220.00
Private Wine Restaurant	\$ 29,375.00	\$ 34,125.00
Wine Dist. Sales Rep.	\$ 2,225.00	\$ 2,300.00

The collection and disposition of private club license fees are addressed by Chapter 60, Article 7, Section 6 of the West Virginia Code, as amended, which 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.”

The disposition of wine license fees is addressed by Chapter 60, Article 8, Section 24(a) of the West Virginia Code, as amended, which states:

“All fees collected by the commissioner under the provisions of this article shall be deposited in the state treasury and credited to a special fund to be known as the “wine license special fund.” All moneys in such special fund may be expended only for the administration of the provisions of this article or, to the extent of any excess, for the administration of this chapter or as may be appropriate by law.”

By not depositing monies collected to the appropriate accounts, the ABCA may be spending funds for purposes not intended by the West Virginia Code. The ABCA’s comptroller told us private club license fees collected by the ABCA are deposited initially to the General Administrative Account and then periodically transferred to the State General Revenue Fund as part of the liquor profits transferred throughout the fiscal year. As to monies derived from the collection of private wine restaurant license fees and wine distributor sales representative license fees not being deposited to the Wine License Special Account, the comptroller was unable to provide us with a reasonable explanation other than to say this decision to deposit these specific wine license fees to other accounts was mutually agreed upon by a past ABCA administration and the Department of Tax and Revenue.

Each fiscal year the ABCA is required to periodically transfer a designated amount of liquor profits to the State General Revenue Fund in accordance with the revenue schedule set forth in the Governor's Budget. The comptroller further stated these monies are not immediately deposited to the State General Revenue Fund because the ABCA needs these monies to operate on during the fiscal year; thus, for this reason these monies are incorporated into the liquor profit transfers which occur over the course of the fiscal year.

Chapter 60, Article 3, Section 17 of the West Virginia Code, as amended, states in part:

"The commissioner, with the approval of the state treasurer, shall prescribe regulations for the handling and depositing of all moneys collected by the commissioner. All receipts accruing to and available for the general revenue fund in excess of the requirements of the operating fund and 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. . . ."

Additionally, Chapter 60, Article 3, Section 18 of the West Virginia Code, as amended, 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 of this article."

In addition, the State Auditor's Account Status Report indicates the ending cash balance of the General Administrative Account for the 2001 and 2002 fiscal years was \$6,355,989.72 and \$6,566,542.26, respectively. Based on the ending cash balance for each fiscal year, we believe

the ABCA could transfer more monies from this account to the State General Revenue Fund in accordance with Chapter 60, Article 3, Sections 17 and 18 of the West Virginia Code which provide for monies to be credited to the operating fund until the fund reaches an amount sufficient for the current and routine requirements of the ABCA. The transfer of the additional monies to the General Revenue Fund would then be available for appropriation by the Legislature.

We reported in our previous audit the lack of control procedures over the depositing of private club license fees to the State General Revenue Fund. The aforementioned instances of noncompliance clearly indicate the ABCA continues to be in noncompliance with the statutes governing the collection and depositing of private club license fees.

We recommend the Alcohol Beverage Control Administration comply with Chapter 60, Article 3, Sections 17 and 18 of the West Virginia Code, as amended; Chapter 60, Article 7, Section 6 of the West Virginia Code, as amended; and Chapter 60, Article 8, Section 24(a) of the West Virginia Code, as amended.

Agency's Response

All ABCA accounts will be reviewed and procedures of deposits will be changed when necessary.

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. Specifically, we noted where the ABCA continued to allow a total of seven retailers to pay for liquor orders filled from the ABCA's bailment inventory via an Electronic Funds Transfer (EFT) payment even though the retailer had at least two non-sufficient responses for EFTs during the same calendar year. Based

on the ABCA's records, these seven retailers submitted 49 non-sufficient EFT's for fiscal years 2001 and 2002 totaling \$413,543.35.

Generally, these NSF payments were submitted to the State Treasury once and then resubmitted following an initial NSF response. Following the occurrence of a second NSF response to a properly executed EFT payment relating to these retailers in any one calendar year, the ABCA should have immediately required these retailers to submit payment for subsequent orders in the form of a certified check, cashier's check, or money order. However, agency records indicated the ABCA allowed three of these stores to continue paying for liquor orders by EFT even after the occurrence of two NSF responses in a calendar year.

Agency records also indicated the ABCA did eventually require the four remaining stores to pay for subsequent orders with a cashier's check or money order but not immediately following the occurrence of a second NSF response. We noted the ABCA allowed one of these retailers to resume making payment by EFT for liquor orders on December 21, 2001. However, agency personnel were unable to provide a reasonable explanation for allowing this retailer to resume making payment for liquor orders by EFT.

Title 175, Series 1, Section 4.6.2.c. of the Legislative Rule for Retail Licensee

Operations states:

"4.6.2.c. Any EFT which is not completed due to non-sufficient funds will preclude further processing of liquor orders to the licensee by ABCC until payment is actually received. In any calendar year where the Commissioner receives two (2) non-sufficient 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."

If the ABCA allows retailers who have previously submitted non-sufficient EFTs to continue to make payment by EFT for liquor orders, the ABCA may risk not receiving proper payment from a retailer for an order before the order has been delivered to the retailer. According to the ABCA's comptroller, the ABCA's policy is to instruct, after notification from the State Treasury an EFT was non-sufficient, the State Treasury to resubmit the EFT for payment. If the EFT is subsequently returned for a second time, the ABCA then considers the EFT non-sufficient.

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

Agency's Response

We have experienced problems with some retailers regarding their EFT deposits and have tried to work with them to resolve them. The ABCA has lost no money through retailer liquor purchases. We will instigate changes in our regulations to allow us to be more objective in this area.

State Purchasing Card Transactions

During our review of cash disbursements, we noted numerous instances of noncompliance by the ABCA of the State Auditor's Purchasing Card Policies and Procedures. One ABCA employee had charged travel related expenses totaling \$1,498.00 onto their State purchasing card. These travel related expenses were for payment of airfare for enforcement personnel to attend an out-of-state seminar. Section 6.6 of the West Virginia State Auditor's Purchasing Card Policies and Procedures Handbook states:

"6.6 Restricted Items: Payment for the following items may not be made using the purchasing card:

- Alcoholic Beverages
- Cash Advances

- Legal Services
- Firearms
- Insurance
- Memberships
- Tax Reportable Services
- Telephone/Cell Phone Services
- Travel Related Gasoline
- Travel Related Expenses
- Building Leases
- Encumbered Contracts
- Flowers for individuals/personal purposes (including funerals, Secretary's day, birthdays, etc.)

The purchasing card may not be used to receive cash or cash credits.”

By spending monies without statutory authority, the ABCA may be spending monies for purposes not intended by State law. Agency personnel told us the purchasing cardholder erroneously charged these expenses on his purchasing card and was subsequently instructed that he was not to pay for such charges with his purchasing card.

Also, we noted purchasing card charges totaling \$400.16 were not supported by credit card receipts. These charges were for miscellaneous equipment purchases and postal and freight charges. Section 7.1 of the West Virginia State Auditor's State Purchasing Card Policies & Procedures states in part:

“Receipts: An itemized receipt must be obtained for each transaction placed on the card. A receipt must contain certain specific information and meet certain conditions. . . .”

The ABCA processed purchasing card payments without the proper documentation to support the purchases. Therefore, we could not verify the types of disbursements and whether they benefitted the ABCA. Upon request, agency personnel were unable to locate the credit card receipts supporting these transactions.

We recommend the ABCA comply with the West Virginia State Auditor's State Purchasing Card Policies & Procedures.

Agency's Response

It was an error by an employee to use the wrong credit card for travel expenses.

He has since been advised of that error.

**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. State law requires that any funds in the Non-Intoxicating Beer Enforcement Account in excess of \$20,000 at the end of each fiscal year should be transferred to the State General Revenue Fund. We noted the Non-Intoxicating Beer Enforcement Account had an ending cash balance on June 30, 2000 of \$82,832.40. The ending cash balance exceeds the authorized fund balance by \$62,832.40. The ABCA transferred \$62,832.00 on October 18, 2000 to the General Revenue Fund.

Chapter 11, Article 16, Section 23(b) of the West Virginia Code, as amended, 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.”

The excess funds in the Non-Intoxicating Beer Enforcement Account were not deposited timely to the State General Revenue Fund in noncompliance with the aforementioned statute. Thus, the State General Revenue Fund was without the use of these funds immediately following the end of the fiscal year. The comptroller told us the ABCA usually transfers any excess funds to the General Revenue Fund after they receive the Account Status Report from the State Auditor's Office for reconciliation of the account. She said she is not aware of why there was a time delay in the transfer.

We reported in our previous audit where the ABCA had not transferred the excess balance being maintained in the Non-Intoxicating Beer Enforcement Account in a timely manner to the General Revenue Fund. The aforementioned instance of noncompliance clearly indicates the ABCA has not taken the necessary steps to ensure the timely transfer of any excess monies from this account to the General Revenue Fund.

We recommend the ABCA comply with Chapter 11, Article 16, Section 23(b) of the West Virginia Code, as amended.

Agency's Response

There were some account balancing issues that delayed the transfer from the Enforcement account to the General Revenue account in FY2000.

Equipment Inventory

Of the 92 equipment inventory items included in our test sample, we noted six (6) instances where equipment inventory items totaling \$4,144.83 were not tagged with state tags. These items included a digital camera, printer, stereo system, sweeper, and two fax machines. Also, there were 18 instances where equipment inventory items were not listed on the ABCA's Fixed Assets Listing. These items are detailed in the following table:

<u>State Tag/Serial Number</u>	<u>Item Description</u>	<u>Acquisition Date</u>	<u>Assigned Item Location</u>
8706	HP Laserjet 1200	01/27/03	Wine Division
8344	Olympus P-300 Photo Printer	01/01/90	Enforcement
8280	HP Scanner	01/01/90	Data Processing
8009	PCS Computer	02/20/98	Warehouse
8304	Compaq DeskPro	01/01/90	Warehouse
02010868	Fax Machine	03/14/02	Wine Division
OG106617	Fax Machine	10/10/00	Accounting
8343	HP Laserjet 2200	04/20/01	Licensing
8628	Home Base (Scanner)	06/18/02	Enforcement
8656	Vehicle Base (Scanner)	06/28/02	Enforcement
6498	Fax Machine	Unknown	Enforcement
8400	HP Deskjet Printer	02/22/02	Enforcement
4440	4-Drawer File Cabinet	Unknown	Enforcement
8614	Home Base (Scanner)	06/18/02	Enforcement
8557	Vehicle Base (Scanner)	01/25/02	Enforcement
8426	HP Deskjet Printer	04/02/02	Enforcement
8599	Home Base (Scanner)	06/18/02	Enforcement
8636	Vehicle Base (Scanner)	06/28/02	Enforcement

The HP Laserjet 2200 printer listed above, with an acquisition cost of \$1,456.00, was also not listed in the WVFIMS Fixed Asset System.

Section 3.11 of the Department of Administration's Inventory Management and Surplus Property Disposition Handbook states in part,

"3.11 Identification Tags: All equipment over \$1,000 will have a numbered equipment identification tag and that equipment will be entered into the WVFIMS Fixed Asset system. Agency's will be responsible for obtaining and placing the proper tags on all equipment under their jurisdiction. Tags are to be placed on all items of property/equipment in such a manner that it may be easily seen and read . . ."

Inventory items not tagged with state tags or added to the agency's equipment inventory could be converted to personal use since the agency is not properly accounting for these items. We spoke with the ABCA employee responsible for maintaining the ABCA's equipment inventory records. He stated that sometimes the state tags fall off and are not replaced. He also stated that if an equipment item is not listed in the agency's fixed assets system, then he was not given an Added Property form in order to add it to the inventory.

Additionally, the ABCA purchased camera equipment on June 21, 2001 totaling \$7,003.15 from Merrill Photo Supply Co. for which the ABCA was unable to provide written bids for this purchase. Section 6.1.3 of the West Virginia Purchasing Division's Policies and Procedures Handbook states in part:

"Purchases \$5,000.01 to \$10,000: A minimum of three (3) written bids are required, *when possible*.

A Request for Quotations form, WV-43, or TEAM-Generated RFP/RFQ (See Appendix A) should be used for documenting and making these requests. In all cases, state agencies must attempt to obtain at least three (3) written bids for a product or service. A "no bid" is not considered a bid. An **Agency Purchase Order** or **TEAM generated Purchase Order** is required. Fax bids are acceptable. ..."

If the ABCA had obtained three written bids, the possibility exists that the ABCA could have purchased the equipment from a different vendor at a lower price. According to the current purchasing manager, she stated that the previous purchasing manager (who handled this purchase) did not properly document this purchase.

We recommend the ABCA 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's Response

The equipment inventory is counted and updated at the end of each fiscal year. We are in the process of reviewing ABCA equipment inventory reports and updating our files.

Trade Show Expenditures

The ABCA conducts a trade show annually; a trade show was held at Pipestem Resort State Park during the 2001 fiscal year and at Flatwoods, WV during the 2002 fiscal year. The purpose of the trade show is to offer a one day discount to private retail liquor stores by the distilleries that sell liquor in the State of West Virginia. 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. During our audit of trade show expenditures, we noted the ABCA held a trade show during the 2001 and 2002 fiscal years with an estimated cost (less reimbursements from distillers) of \$7,750 and \$8,300, respectively, without obtaining approval from the Purchasing Division in noncompliance with the Division of Purchasing's Policies and Procedures Handbook. The total expenditures associated with the holding of each trade show are detailed in the following schedule:

<u>Type of Expenditure</u>	<u>FY 2001</u>	<u>FY 2002</u>
Labor Costs*	\$ 9,329.00	\$ 9,214.00
Room Rental	666.33	2,313.09
Travel Expenses	<u>4,142.77</u>	<u>4,211.47</u>
Total	<u>\$14,138.10</u>	<u>\$15,738.56</u>

*No labor costs associated with the holding of the trade shows had been calculated by the ABCA; thus, we had to estimate these costs.

The ABCA's role in the trade 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 ABCA charged distillers for display tables (\$100) and soft drinks to help defray the ABCA's costs. For the 2001 fiscal year, we determined total costs of holding the trade show (labor costs, room rental, and travel expenses) were \$14,138.10 and reimbursements from distillers totaled \$6,388.15 for a difference of \$7,749.95. Also, for the 2002 fiscal year we determined total costs of holding the trade show (labor costs, room rental, and travel expenses) were \$15,738.56 and reimbursements from distillers totaled \$7,443.70 for a difference of \$8,294.86.

In addition, the ABCA paid \$49.00 in lodging expenses for a person to attend the September 2000 trade show held at Pipestem Resort State Park. This person assisted with a TEAM training seminar held in conjunction with the trade show. However, this person was not employed by the ABCA or under contract with the ABCA; thus, the ABCA should not have paid for this individual's lodging expenses.

Section 9.14 of the West Virginia Purchasing Division's Policies and Procedures

Handbook states:

"9.14 Promotional: All promotional items, events or functions estimated to exceed \$5,000 must have prior approval of the Travel Management Office of the Purchasing Division, while those costing \$5,000 or less may be submitted for payment without approval of the Purchasing Division. Promotional expenditures may include display booths, promotional items at trade shows or similar events. Promotional items, except for sole source items shall be purchased under the normal purchasing guidelines."

In addition, Chapter 60, Article 3, Section 18 of the West Virginia Code, as amended, states in part,

"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 . . ."

By spending monies without statutory authority, the ABCA may be spending monies for purposes not intended by State law. The ABCA's comptroller told us that she did not believe the ABCA needed the approval of the Division of Purchasing to conduct its annual trade show. Additionally, she agreed the ABCA should not have paid the aforementioned person's lodging expenses since this person was not an employee of the ABCA or under contract with the ABCA.

We reported in our previous audit the ABCA had not attained the required approval of the Division of Purchasing to hold its annual trade shows. The ABCA stated it would follow purchasing guidelines in the future regarding trade show expenditures. However, the aforementioned instances of noncompliance clearly indicate the ABCA continues to hold its annual trade shows without obtaining the Division of Purchasing's approval.

We recommend the ABCA comply with Section 9.14 of the West Virginia Purchasing Division's Policies and Procedures Handbook. We further recommend the ABCA comply with Chapter 60, Article 3, Section 18 of the West Virginia Code, as amended.

Agency's Response

We will obtain approval for ABCA trade shows implementing purchasing guidelines in the future.

Bailment Fees

Of the 50 payments made to distillers which were included in our test sample, we noted 28 instances totaling \$21,091.15 where the ABCA did not charge the distiller for bailment fees immediately upon the products being delivered to the warehouse. These 28 instances represented all instances in our test sample where bailment fees were owed by a distiller. The ABCA currently bills each distiller for bailment fees on a semi-monthly basis by deducting the amount owed for bailment fees from the amount due the distiller for the cases of bailment stock withdrawn from their inventory maintained at the warehouse. The ABCA utilizes this practice to collect bailment fees from distillers rather than require distillers to pay any necessary bailment fees upon delivering their product to the ABCA warehouse.

Title 175, Series 6, Section 11.1 of the Legislative Rule on Bailment Policies and Procedures states:

“11.1. Suppliers doing business with ABCC under the bailment inventory system will be charged for routine warehousing services, such charges will be due and owing at the time the product is delivered to the ABCC warehouse. The amount of such charges will be imposed by administrative notices filed in the State Register.”

When the ABCA first established its bailment inventory system, the ABCA had difficulty in having distillers to remit payment for bailment fees after being invoiced. According to the ABCA's comptroller, due to these difficulties the ABCA started to deduct the amount for any bailment fee charges from the amount due to the distiller each semi-monthly period for the cases

withdrawn from their inventory at the warehouse. The ABCA employs this practice to ensure the agency is properly compensated by distillers for any bailment fee charges owed.

We recommend the ABCA 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. We further recommend the ABCA comply with Title 175, Series 6, Section 11.1 of the Legislative Rule on Bailment Policies and Procedures until the rule changes.

Agency's Response

The ABCA records bailment fees when the product is received in the warehouse and they are deducted from payment to vendors on the 15th and last day of each month. This assures receipt of all bailment fees due. We will initiate changes in our regulations to reflect this procedure.

Not Following Purchasing Regulations

During our review of cash disbursements for the period July 1, 2000 to June 30, 2002, we tested 50 transactions. There were two transactions where the ABCA paid \$152.27 to Don's Disposal Service, Inc. for trash hauling services and \$223.85 to Tri Star Paging and Wireless for pager services. Agency records indicate total payments made to these vendors for the same services during the 2001 and 2002 fiscal years were as follows:

<u>Fiscal Year</u>	<u>Vendor Name</u>	<u>Type of transaction</u>	<u>Amount</u>
2001	Don's Disposal Service, Inc.	Trash hauling services	\$1,799.12
2001	Tri Star Paging and Wireless	Paging services	\$1,976.09
2002	Tri Star Paging and Wireless	Paging services	\$3,339.27

We noted the ABCA paid for the trash hauling services without requiring an WV-88 Agency Purchase Order or WV-48 Agreement form be completed. The ABCA also paid for paging services without soliciting bids from other prospective vendors.

Section 9.22 of the West Virginia Purchasing Division's Policies and Procedures

Handbook states:

"9.22 Utilities (Regulated Services by the Public Service Commission): *(Natural gas, water, sewage, electric, telephone, garbage, cable television service, connection fees, trash hauling and dumpster rental [if only on PSC approved hauler is in the area]).* **Agency Purchase Order, WV-88 or Agreement, WV-48,** is required for cable service and trash hauling in excess of \$1,000 per year. Propane gas and coal must be competitively bid. Utilities are exempt from being bid through the Purchasing Division."

In addition, Section 6.1.2 of the West Virginia Purchasing Division's Policies and Procedures

Handbook states, in part:

"6.1.2 Purchases \$1,000.01 to \$5,000: A minimum of three (3) verbal bids are required *when possible*.

Bids shall be documented and recorded for public record. *(See Appendix B for Verbal Bid Quotation Summary form, WV-49).* An **Agency Purchase Order, WV-88, or TEAM-Generated Purchase Order** is required for purchases exceeding \$1,000. Awards are to be made only to vendors who are properly registered with the Purchasing Division. Fax bids are acceptable."

Agency personnel could not locate either a WV-88 Agency Purchase Order or WV-48 Agreement to support the payments made to the vendor providing trash hauling services. Also, the purchasing manager told us that Tri Star Paging and Wireless does not have contracts with its customers since it bills its customers on a month to month basis. If the ABCA had obtained three written bids for these paging services, the possibility exists that the ABCA could have retained the services of a different vendor for a lower price.

We recommend the ABCA comply with the West Virginia Purchasing Division's Policies and Procedures Handbook.

Agency's Response

Our Purchasing function has been changed and all efforts are being made to comply with all purchasing guidelines.

Payment of State Sales Tax on Janitorial Services

The ABCA leases its main office headquarters located at 322 70th Street, S. E. in the City of Charleston, Kanawha County, West Virginia, from the Dickinson Fuel Company, Inc. As part of the lease agreement between the ABCA and this vendor, the ABCA agreed to be responsible for janitorial services. During the period July 1, 2000, through June 30, 2002, we noted Dickinson Fuel Co. utilized the services of a janitorial services company to maintain the ABCA Main Office. Dickinson Fuel Co. would pay this janitorial services company for services rendered and then would bill the ABCA for reimbursement. Each monthly billing submitted to the ABCA for reimbursement amounted to \$1,855.00, \$105.00 of which was for reimbursement of State sales tax. In the 22 instances during the audit period where the ABCA was billed for reimbursement of these janitorial services, we noted the ABCA paid a total of \$2, 310.00 in State sales tax as part of the total amount reimbursed.

The lease agreement between the ABCA and Dickinson Fuel Company, Inc., addresses utilities and other related services in part as follows:

"The Lessee covenants that Tenant will be responsible for utilities, janitorial services, minor maintenance (such as light bulbs and filters of HVAC systems replacement, etc.) and other related services required for the Tenant's proper use of the leased premises. . ."

In addition, Chapter 11, Article 15, Section 9 of the West Virginia Code, as amended, addresses in part those persons or entities who are exempt from paying State sales tax:

*“(a) Exemptions for which exemption certificate may be issued.- A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the tax commissioner, and deliver it to the vendor of the property or service, in the manner required by the tax commissioner. However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:
... (3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: Provided, That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state, or local governments for distribution in public welfare or relief work. . . .”*

The ABCA is over reimbursing Dickinson Fuel Co. for providing janitorial services to maintain the ABCA Main Office. Upon speaking with the ABCA's comptroller, she told us she believes the ABCA is required to fully reimburse Dickinson Fuel Co. for these janitorial services since the ABCA is responsible for janitorial services under the lease agreement.

We recommend the ABCA 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 West Virginia Code, as amended.

Agency's Response

We will no longer pay state sales taxes on anything.

PERSONAL SERVICES:

Sick and Annual Leave

During our review of the leave records for 20 employees, we noted 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 from their cumulative sick/annual leave balance, 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 from donated leave not used.

As the result of the ABCA not properly deducting hours of sick/annual leave taken from employees' leave record, the June 30, 2002 annual leave balance of two employees was overstated by a total of 26.59 hours. In addition, one employee's June 30, 2002 sick leave balance was understated by 3.75 hours, while another employee's sick leave balance was overstated by 7.50 hours.

Regarding the three instances where two employees' sick/annual leave was not properly accrued, one employee's June 30, 2002 sick and annual leave balances were calculated incorrectly as the result of agency personnel improperly accruing his sick/annual leave while the employee was on a medical leave of absence. As a result of these errors, this employee's sick leave balance was overstated by 1.74 hours and his annual leave balance was overstated 2.34 hours.

As of June 30, 2000, the second employee's annual leave accrual rate was 11.25 hours per month. However, we recalculated this employee's years of service as of June 30, 2000 to be 11 years. She began employment with the ABCA on September 1, 1998. Prior to being employed with the ABCA, she had service credit totaling 9 years and 2 months. Therefore, as of July 1, 1999, this

employee reached 10 years of service and her accrual rate should have been increased to 13.13 hours per month. The employee's annual leave accrual was changed by the payroll office to 13.13 hours per month as of August 1, 2001. Therefore, her annual leave balance was understated 1.88 hours for 25 months which totals 47.00 hours (6.27 days) of annual leave.

Finally, one employee donated 26 hours of annual leave to another employee during December 2000. However, there was only need for the payroll office to use 14 hours of that leave. A total of 16 hours of annual leave was reinstated to the donating employee's annual leave balance, when only 12 hours should have been reinstated. Therefore, this employee's annual leave balance is overstated 4 hours as of June 30, 2002.

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 for the state and of persons directly affected by the agency's activities. . . ."

Also, Section 14.14 of the Division of Personnel's Administrative Rule states:

"14.14. Leave Records - Each agency shall maintain a current leave record of its employees' accrued and used leave. Each employee shall have access to his or her leave records subject to the appropriate agency's established rules. Supervisors and employees shall attest to the accuracy of the records on a periodic basis, but not less than twice annually."

The ABCA not maintaining accurate sick and annual leave balances could lead to employees being underpaid or overpaid for lump sum payments for any unused annual leave upon their retirement/resignation or could adversely affect an employee's retirement annuity or the amount

of extended health insurance coverage an employee would be entitled to receive for any unused sick leave.

The payroll supervisor told us the aforementioned errors were the result of clerical errors made by her office and have been corrected. However, she disagreed with our finding concerning the employee whose annual leave balance was understated because to the wrong accrual rate was utilized based on an incorrect number of years of service. She stated that she tried to verify the employee's prior service several times including speaking with the employee. She does not believe she was required to count the employee's prior service until it was verified and that she sees no reason to retroactively credit this employee for the 25 months prior to the employee providing her service information.

We recommend the ABCA comply with Section 14.14 of the Division of Personnel's Administrative Rule, as well as, Chapter 5A, Article 8, Section 9 of the West Virginia Code, as amended.

Agency's Response

All were clerical errors and corrected when possible. The division of Personnel is always contacted when a problem with policy is encountered.

WAREHOUSE OPERATIONS:

Bailment Inventory

As we reported in our previous audit the ABCA is accepting delivery of product not authorized for sale from suppliers. During our physical count of bailment inventory, we noted the ABCA allowed a distiller to deliver eight cases of delisted inventory to the warehouse. The ABCA had delisted bottle code 2475 - B & B D.O.M. but still accepted delivery of the product. Also, a

further review of agency records showed that the following delisted items are currently being maintained in the ABCA warehouse as of May 19, 2003.

<u>No.</u>	<u>Bottle Code</u>	<u>Description</u>	<u>No. of Cases in Stock</u>
1	70	BOMBAY ON-PREMIS	1
2	252	OLD FORESTER BIR	5
3	1421	SURFACE MINER	22
4	1439	KY PRIDE 10 YR	2
5	1440	NOAH'S MILL 15 YR	1
6	1442	KY VINTAGE	1
7	1444	ROWAN CREEK 12 YR	3
8	1446	PURE KY XO 12 YR	1
9	1447	PADRE GOLD TEQ	3
10	1848	PORFIDIO PLATA T	2
11	1879	FIRST GUILD HONE	57
12	1881	FIRST GUILD PREM	59
13	2476	BENEDICTINE DOM	2
14	4155	TEMPO TRIPLE SEC	1
15	4662	JACQUIN CR DE ME	9
16	4664	JACQUIN CR DE ME	2
17	4666	JACQUIN CR DE CA	7
18	4667	JACQUIN CR DE CA	3
19	4668	JACQUIN CR DE CA	9
20	4670	JACQUIN SLOE GIN	10
21	4671	JACQUIN ROCK/RYE	29
22	4730	ROYALE MONTAINE	35

<u>No.</u>	<u>Bottle Code</u>	<u>Description</u>	<u>No. of Cases in Stock</u>
23	4733	JACQUIN SAMBUCA	34
24	4737	JACQUIN CREAM DE	12
25	4744	JACQUIN TRIPLE S	6
26	4972	JACQUIN WF RUM/W	24
27	4974	JACQUIN WF RUM/G	19
28	5048	CANTON GINGER LQ	48
29	5049	CANTON GINGER LQ	<u>39</u>
Total Number of Cases on Hand			<u>446</u>

As reported in our prior audit, we also noted the destruction of liquor was performed by the same employee who prepares 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 ABCA liability. In addition, we noted individual liquor bottles that became separated from damaged case packs in a pallet. These bottles are placed in an area separate from the bailment stock in the bottle hospital. The warehouse personnel wait until the inventory amounts are depleted on the pallet to obtain the damaged case. The ABCA does not maintain an inventory of these individual bottles as part of their computerized inventory records noting the change of location of the liquor. However, a handwritten list by bottle code is kept in a notebook.

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 for the state and of persons directly affected by the agency's activities. . . .”

Also, Title 175, Series 6, Sections 4.2, 4.3, 4.4 and 4.5 state,

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

4.3 The shipment will not be accepted if the quantities to be delivered will place the warehouse inventory of the product being delivered over the maximum level. The supplier will be notified of such nonacceptance within 24 hours of original notification.

4.4 The supplier will be responsible for obtaining the freight carrier. The supplier must provide the carrier with the ABCC unloading reference number.

4.5 The carrier is required to call the ABCC Warehouse to obtain an unloading appointment time. The carrier must indicate the supplier and the ABCC unloading reference number when scheduling the appointment. Carriers should call at least one (1) working day in advance to arrange the unloading time. Trucks arriving without appointments and reference numbers will not be unloaded.”

The ABCA 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. Acceptance of delisted stock by warehouse personnel usually occurs because the distillers were not notifying the warehouse of quantities and codes of product to be delivered by calling ahead for a reference number. Also, some distillers do not have their own freight carriers, therefore, when delisted or excess inventory is delivered the freight carrier will not return these items to the distiller. ABCA personnel will attempt to contact the distiller arrange pick up of the delisted stock. We

believe the ABCA should not accept responsibility for shipments of unsaleable liquor and implement the criteria noted above.

Next, we believe the destruction of product should be performed or witnessed by someone other than the employee preparing the claim forms. Also, liquor bottles that become separated from damaged case packs in a pallet are placed in a separate area from the bailment stock without this change being reflected in the agency's computerized inventory system. Although the separated bottles are accounted for in the bailment inventory, the ABCA should maintain an additional inventory in their computer system for these bottles due to the location change in the warehouse.

We reported in our previous audit the lack of control procedures over the acceptance of delisted stock, destruction of defective merchandise, and inventory of bottles which become separated from damaged cases. However, the aforementioned instances of noncompliance clearly indicate the ABCA has not strengthened its system of internal controls to address these issues.

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

Agency's Response

Segregation of duties in the warehouse will be reviewed. The ABCA liquor inventory is counted on a daily rotation basis and compared with the computer generated reports. This includes the bottle hospital where the inventory is recorded as state owned and all bottles are accounted for. Additionally, the entire warehouse is audited twice each year by a physical count that is balanced with the computer generated report originating with each receipt of a product and

each sale to a retailer. Each vendor supplying products to our warehouse is sent weekly, semi monthly and monthly reports of their inventory levels. The ABCA liquor inventory system assures us that we are accurately accounting for all liquor housed in our warehouse.

The ABCA has formed a committee to eliminate all delisted items from our warehouse. Letters have been written to suppliers instructing them to make arrangements to pick up their products or give us instructions to destroy the products. We have also alerted the liquor suppliers that stock outages will no longer be tolerated and products that are not available will be delisted.

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. According to Title 175, Series 6, Section 9.1, the maximum inventory level for an item is a 60 supply based on a one-year average consumption for each bottle code. This inventory is to be reviewed quarterly and recomputed on a forecasted sales basis. However, the ABCA is currently basing their maximum inventory levels on a 12 week supply. During our physical count of bailment inventory, we noted some bottle codes were over the maximum inventory level as calculated by the ABCA as follows:

<u>No.</u>	<u>Bottle Code</u>	<u>Description</u>	<u>12 Weeks Case Sales</u>	<u>Actual Count</u>	<u>No. of Cases Over Max.</u>
1	1607	BACARDI LIGHT	802	1383	581
2	4169	BOWMAN'S VIRGINIA	366	566	200
3	421	AMARETTO DI AMOR	130	218	88
4	882	JOSE CUERVO ESPE	466	533	67
5	172	GEORGE DICKEL #8	483	753	270

<u>No.</u>	<u>Bottle Code</u>	<u>Description</u>	<u>12 Weeks Case Sales</u>	<u>Actual Count</u>	<u>No. of Cases Over Max.</u>
6	3334	ABSOLUT VODKA	630	1335	705
7	213	CALVERT LDN GIN	23	67	44
8	5424	SMIRNOFF 80	1473	1924	451
9	4170	BOWMAN'S VIRGINIA	142	184	42
10	6146	KUTSKOVA VODKA	4	43	39
11	257	CICLON	8	102	94
12	535	SKY BERRY	6	36	30
13	4846	BACARDI GOLD	3	70	67
14	501	MAUI TROPICAL	7	30	23
15	573	BACARDI RAZZ	13	122	109
16	596	BACARDI PRTY BAH	3	57	54
17	565	BACARDI VANILLA	1	74	73
18	568	BACARDI COCO	<u>1</u>	<u>74</u>	<u>73</u>
		Total	<u>4,561</u>	<u>7,571</u>	<u>3,010</u>

Title 175, Series 6, Sections 9.1 and 9.2 state,

"9.1 The preapproved level will be a sixty-day (60) supply based on a one-year (1) average consumption for each code.

9.2 ABCC will set a maximum level of inventory of each item in storage."

Also, Title 175, Series 6, Section 4.3 states,

"4.3 The shipment will not be accepted if the quantities to be delivered will place the warehouse inventory of the product being delivered over the maximum level. The supplier will be notified of such nonacceptance within 24 hours of original notification."

The occurrences of excess stock (above the maximum inventory level for a specific bottle code) being maintained at the warehouse is because the ABCA does not monitor the inventory levels of the bailment stock. Maintaining a stock of inventory for each bottle code is left to the responsibility of the distiller and the ABCA does not interfere with this process.

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

Agency's Response

Segregation of duties in the warehouse will be reviewed. The ABCA liquor inventory is counted on a daily rotation basis and compared with the computer generated reports. This includes the bottle hospital where the inventory is recorded as state owned and all bottles are accounted for. Additionally, the entire warehouse is audited twice each year by a physical count that is balanced with the computer generated report originating with each receipt of a product and each sale to a retailer. Each vendor supplying products to our warehouse is sent weekly, semi monthly and monthly reports of their inventory levels. The ABCA liquor inventory system assures us that we are accurately accounting for all liquor housed in our warehouse.

The ABCA has formed a committee to eliminate all delisted items from our warehouse. Letters have been written to suppliers instructing them to make arrangements to pick up their products or give us instructions to destroy the products. We have also alerted the liquor suppliers that stock outages will no longer be tolerated and products that are not available will be delisted.

AUDITORS' OPINION

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 Administration for the years ended June 30, 2002 and June 30, 2001. The financial statement is the responsibility of the management of the West Virginia Alcohol Beverage Control Administration. Our responsibility is to express an opinion on the financial statement based on our audit.


We conducted our audit in accordance with auditing standards generally accepted in the United States of America. 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 cash basis of accounting, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America.

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 Administration for the years ended June 30, 2002 and June 30, 2001, 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 the purpose 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.

Respectfully submitted,


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

June 3, 2003

Auditors: Michael A. House, CPA, Supervisor
Neil M. McEachron, Jr., CPA, Auditor-in-Charge
Amanda L. Poff
Trenton W. Morton
William H. J. Spencer, III

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION
STATEMENT OF CASH RECEIPTS, DISBURSEMENTS
AND CHANGES IN CASH BALANCE

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Cash Receipts:		
Liquor Sales and License Fees	\$52,879,252.44	\$50,818,401.39
Less: Liquor Payments to Distillers	<u>41,243,911.62</u>	<u>41,567,103.20</u>
	11,635,340.82	9,251,298.19
Proceeds from 10-Year ABCA Liquor License Sales	159,903.00	761,700.00
Gallonage Tax	1,228,559.28	1,064,017.32
Beer Tax	7,391,882.00	7,133,197.20
Private Club License Fees	1,910,220.00	1,696,925.00
Other License and Permit Fees	295,801.00	388,697.00
Beer License Fees	875,370.70	817,767.07
Wine License Collections	234,905.76	223,075.00
Enforcement Account Collections	256,866.00	143,370.00
Tobacco Settlement Fund Monies	200,000.00	200,000.00
Miscellaneous Income	<u>57,378.23</u>	<u>15,314.67</u>
	12,610,885.97	12,444,063.26
Disbursements:		
Personal Services	3,460,935.44	3,169,924.14
Employee Benefits	1,159,135.08	1,085,878.81
Current Expenses	1,866,910.34	1,972,373.92
Repairs and Alterations	364,965.26	50,483.29
Equipment	225,422.51	113,818.20
Refunds	<u>22,750.00</u>	<u>212,263.00</u>
	<u>7,100,118.63</u>	<u>6,604,741.36</u>
Cash Receipts Over Disbursements	17,146,108.16	15,090,620.09
Transfer to General Revenue Fund 0490-551	0.00	(3,200,000.00)
Transfer to General Revenue Fund 0490-553	(16,833,405.06)	(16,277,813.59)
Statutory Transfer Per Senate Bill 2018	(150,000.00)	0.00
Beginning Balance	<u>7,019,638.03</u>	<u>11,406,831.53</u>
Ending Balance	<u>\$ 7,182,341.13</u>	<u>\$ 7,019,638.03</u>

See Notes to Financial Statement

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

NOTES TO FINANCIAL STATEMENT

Note A - Accounting Policy

Accounting Method: The cash basis of accounting was followed for all accounts. Therefore, certain revenues 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 4.5% of their compensation and employees are vested under certain circumstances. The West Virginia Alcohol Beverage Control Administration matches contributions at 9.5% of the compensation on which the employee made contributions. The West Virginia Alcohol Beverage Control Administration's pension expenditures for the 2001 and 2002 fiscal years were as follows:

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2003</u>
Wine License Special Account (7351)	\$ 16,779.22	\$ 18,737.17
General Administrative Account (7352)	<u>302,907.72</u>	<u>275,313.60</u>
Total	<u>\$319,686.94</u>	<u>\$294,050.77</u>

Note C - Accounts 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 the 2001 and 2002 fiscal years for the following:

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Gallonage Tax Account (0490-575)	\$1,228,559.28	\$1,064,017.32
Beer Tax Account (0491-515)	<u>7,391,882.00</u>	<u>7,133,197.20</u>
Total	<u>\$8,620,441.28</u>	<u>\$8,197,214.52</u>

Further, the Alcohol Beverage Control Administration was responsible for collection of cash receipts for both the Wine License Special Revenue Operating Account and the Wine License Special Account for the 2001 and 2002 fiscal years as follows:

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Wine License Special Revenue Operating Account (7350)	\$ 2,300.00	\$ 2,225.00
Wine License Special Account (7351)	<u>232,605.76</u>	<u>220,850.00</u>
Total	<u>\$234,905.76</u>	<u>\$223,075.00</u>

However, the Department of Tax and Revenue made cash disbursements from the Wine License Special Account during the 2001 and 2002 fiscal years as follows:

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Wine License Special Account (7351)	<u>\$240,926.83</u>	<u>\$273,818.94</u>

SUPPLEMENTAL INFORMATION

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS

GENERAL REVENUE

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
<u>ABCA Collections Account -</u>		
<u>Private Liquor Store Licenses - Account 0490-551</u>		
Beginning Balance:		
State Treasury	\$ 0.00	\$3,000,000.00
Cash Receipts:		
Proceeds from 10-Year ABCA Liquor License Sales	<u>0.00</u>	<u>200,000.00</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$ 0.00</u>	<u>\$3,200,000.00</u>
Disbursements:		
Transfers to General Revenue Fund of West Virginia	\$ 0.00	\$3,200,000.00
Ending Balance:		
State Treasury	<u>0.00</u>	<u>0.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$ 0.00</u>	<u>\$3,200,000.00</u>
<u>ABCA Collections Account -</u>		
<u>Statutory Transfers - Account 0490-553</u>		
Beginning Balance:		
State Treasury	\$ 0.00	\$ 0.00
Cash Receipts:		
Statutory Transfers from Accounts 7352 and 7355	<u>7,337,593.08</u>	<u>7,262,832.00</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$7,337,593.08</u>	<u>\$7,262,832.00</u>
Disbursements:		
Transfers to General Revenue Fund of West Virginia	\$7,337,593.08	\$7,262,832.00
Ending Balance:		
State Treasury	<u>0.00</u>	<u>0.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$7,337,593.08</u>	<u>\$7,262,832.00</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS

GENERAL REVENUE

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
<u>ABCA Collections Account -</u>		
<u>Gallonage Tax - Account 0490-575</u>		
Beginning Balance:		
State Treasury	\$ 0.00	\$ 0.00
Cash Receipts:		
Gallonage Tax	<u>1,228,559.28</u>	<u>1,064,017.32</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$1,228,559.28</u>	<u>\$1,064,017.32</u>
Disbursements:		
Transfers to General Revenue Fund of West Virginia	\$1,228,559.28	\$1,064,017.32
Ending Balance:		
State Treasury	<u>0.00</u>	<u>0.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$1,228,559.28</u>	<u>\$1,064,017.32</u>
<u>ABCA - Beer Commission General Administrative</u>		
<u>Account - Beer Tax - Account 0491-515</u>		
Beginning Balance:		
State Treasury	\$ 0.00	\$ 0.00
Cash Receipts:		
Beer Tax	<u>7,391,882.00</u>	<u>7,133,197.20</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$7,391,882.00</u>	<u>\$7,133,197.20</u>
Disbursements:		
Transfers to General Revenue Fund of West Virginia	\$7,391,882.00	\$7,133,197.20
Ending Balance:		
State Treasury	<u>0.00</u>	<u>0.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$7,391,882.00</u>	<u>\$7,133,197.20</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

GENERAL REVENUE

<u>ABCA - Beer Commission General Administrative</u> <u>Account - Beer Licenses - Account 0491-516</u>	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Beginning Balance:		
State Treasury	\$ 0.00	\$ 0.00
Cash Receipts:		
Beer License Fees	<u>875,370.70</u>	<u>817,767.07</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$875,370.70</u>	<u>\$817,767.07</u>
Disbursements:		
Transfers to General Revenue Fund of West Virginia	\$875,370.70	\$817,767.07
Ending Balance:		
State Treasury	<u>0.00</u>	<u>0.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$875,370.70</u>	<u>\$817,767.07</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENT OF CASH RECEIPTS, DISBURSEMENTS

AND CHANGES IN CASH BALANCE

SPECIAL REVENUE

<u>Wine License Special Revenue Operating</u> <u>Account - Account 7350</u>	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Cash Receipts:		
Wine Distributor Sales Representative Fees	\$ 2,300.00	\$ 2,225.00
Disbursements	<u>0.00</u>	<u>0.00</u>
Cash Receipts Over Disbursements	2,300.00	2,225.00
Beginning Balance	<u>21,888.40</u>	<u>19,663.40</u>
Ending Balance	<u>\$24,188.40</u>	<u>\$21,888.40</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

SPECIAL REVENUE

<u>Wine License Special Account - Cash</u> <u>Control - Account 7351</u>	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Beginning Balance:		
State Treasury	\$584,166.83	\$637,079.85
Cash Receipts:		
Wine Sales & Distributorship License & Label Registration Fees	<u>232,605.76</u>	<u>220,850.00</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$816,772.59</u>	<u>\$857,929.85</u>
Disbursements:		
Personal Services	\$176,622.47	\$197,479.18
Employee Benefits	62,466.41	70,246.54
Current Expenses	497.95	2,169.22
Equipment	<u>1,340.00</u>	<u>3,924.00</u>
	240,926.83	273,818.94
Add Transmittals Paid July 1-31 Beginning; and (Less) Transmittals Paid July 1-31 Ending:		
Employee Benefits	496.37	440.45
(Employee Benefits)	<u>(212.27)</u>	<u>(496.37)</u>
	<u>284.10</u>	<u>(55.92)</u>
	241,210.93	273,763.02
Ending Balance:		
State Treasury	<u>575,561.66</u>	<u>584,166.83</u>
TOTAL CASH ACCOUNTED FOR	<u>\$816,772.59</u>	<u>\$857,929.85</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

<u>Wine License Account -</u> <u>Personal Services - Account 7351-001</u>	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Appropriations	\$219,894.00	\$215,528.00
Expenditures	<u>173,422.47</u> 46,471.53	<u>194,579.18</u> 20,948.82
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$ 46,471.53</u>	<u>\$ 20,948.82</u>
<u>Wine License Account -</u> <u>Annual Increment - Account 7351-004</u>		
Appropriations	\$ 3,200.00	\$ 3,600.00
Expenditures	<u>3,200.00</u> 0.00	<u>2,900.00</u> 700.00
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$ 0.00</u>	<u>\$ 700.00</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

<u>Wine License Account -</u> <u>Employee Benefits - Account 7351-010</u>	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Appropriations	\$ 78,029.00	\$ 77,345.00
Expenditures	<u>62,466.41</u> 15,562.59	<u>70,246.54</u> 7,098.46
Transmittals Paid After June 30	<u>212.27</u>	<u>496.37</u>
Balance	<u>\$ 15,774.86</u>	<u>\$ 7,594.83</u>
<u>Wine License Account -</u> <u>Unclassified - Account 7351-099</u>		
Appropriations	\$156,016.00	\$156,016.00
Expenditures	<u>1,837.95</u> 154,178.05	<u>6,093.22</u> 149,922.78
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$154,178.05</u>	<u>\$149,922.78</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

SPECIAL REVENUE

<u>General Administrative Account - Cash Control - Account 7352</u>	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Beginning Balance:		
State Treasury	\$ 6,355,989.72	\$10,667,255.88
Cash Receipts:		
Liquor Sales	52,879,252.44	50,818,401.39
Proceeds from 10-Year ABCA Liquor License Sales	159,903.00	761,700.00
Private Club License Fees	1,910,220.00	1,696,925.00
Other License and Permit Fees	295,801.00	388,697.00
Tobacco Settlement Fund Monies	200,000.00	200,000.00
Miscellaneous Income	<u>57,378.23</u>	<u>15,314.67</u>
	<u>55,502,554.67</u>	<u>53,881,038.06</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$61,858,544.39</u>	<u>\$64,548,293.94</u>

	<u>Year Ended June 30</u>	
	<u>2002</u>	<u>2001</u>
Disbursements:		
Personal Services	\$ 3,285,249.22	\$ 2,972,977.21
Employee Benefits	1,078,231.87	1,018,387.69
Current Expenses	1,648,014.94	1,661,021.83
Repairs and Alterations	364,700.06	49,505.31
Equipment	181,927.97	39,502.05
Purchase of Liquor	41,243,911.62	41,567,103.20
Refunds	<u>22,750.00</u>	<u>212,263.00</u>
	47,824,785.68	47,520,760.29
Add Transmittals Paid July 1-31		
Beginning; and (Less) Transmittals Paid		
July 1-31 Ending:		
Personal Services	(936.25)	(1,468.50)
(Personal Services)	0.00	936.25
Employee Benefits	18,152.70	15,453.20
(Employee Benefits)	0.00	(18,152.70)
Current Expenses	0.00	225,657.33
(Current Expenses)	0.00	0.00
Repairs and Alterations	0.00	977.98
(Repairs and Alterations)	0.00	0.00
Equipment	0.00	48,140.37
(Equipment)	<u>0.00</u>	<u>0.00</u>
	17,216.45	271,543.93
	47,842,002.13	47,792,304.22
Transfer to General Revenue Fund 0490-551	0.00	3,200,000.00
Transfer to General Revenue Fund 0490-553	7,300,000.00	7,200,000.00
Statutory Transfer Per Senate Bill 2018	150,000.00	0.00
Ending Balance:		
State Treasury	<u>6,566,542.26</u>	<u>6,355,989.72</u>
TOTAL CASH ACCOUNTED FOR	<u>\$61,858,544.39</u>	<u>\$64,548,293.94</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
<u>General Administrative Account -</u>		
<u>Personal Services - Account 7352-001</u>		
Appropriations	\$3,509,802.00	\$3,351,398.00
Expenditures	<u>3,228,936.72</u>	<u>2,916,516.82</u>
	280,865.28	434,881.18
Transmittals Paid After June 30	<u>0.00</u>	<u>(936.25)</u>
Balance	<u>\$ 280,865.28</u>	<u>\$ 433,944.93</u>
<u>General Administrative Account -</u>		
<u>Annual Increment - Account 7352-004</u>		
Appropriations	\$ 76,000.00	\$ 73,251.00
Expenditures	<u>56,312.50</u>	<u>56,460.39</u>
	19,687.50	16,790.61
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$ 19,687.50</u>	<u>\$ 16,790.61</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENTS OF APPROPRIATIONS AND EXPENDITURES

SPECIAL REVENUE

<u>General Administrative Account - Employee Benefits - Account 7352-010</u>	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Appropriations	\$1,372,691.00	\$1,362,674.00
Expenditures	<u>1,078,231.87</u>	<u>1,018,387.69</u>
	294,459.13	344,286.31
Transmittals Paid After June 30	<u>0.00</u>	<u>18,152.70</u>
Balance	<u>\$ 294,459.13</u>	<u>\$ 362,439.01</u>
 <u>General Administrative Account - Unclassified - Account 7352-099</u>		
Appropriations	\$2,166,574.00	\$2,503,999.00
Reappropriations:		
Fiscal Year 2001	<u>753,969.81</u>	<u>0.00</u>
	2,920,543.81	2,503,999.00
Expenditures:		
Current Expenses	1,648,014.94	1,661,021.83
Repairs and Alterations	364,700.06	49,505.31
Equipment	<u>181,927.97</u>	<u>39,502.05</u>
	<u>2,194,642.97</u>	<u>1,750,029.19</u>
	725,900.84	753,969.81
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$ 725,900.84</u>	<u>\$ 753,969.81</u>
Components of Balance June 30,		
Fiscal Year 2002	\$ 449,663.36	\$ 0.00
Fiscal Year 2001	<u>276,237.48</u>	<u>753,969.81</u>
	<u>\$ 725,900.84</u>	<u>\$ 753,969.81</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS

SPECIAL REVENUE

General Administrative Account - Purchase
of Supplies for Resale - Account 7352-419

Year Ended June 30,
2002 2001

Cash Receipts	\$41,243,911.62	\$41,567,103.20
Disbursements	<u>41,243,911.62</u>	<u>41,567,103.20</u>
Balance	<u>\$ 0.00</u>	<u>\$ 0.00</u>

General Administrative Account - Transfer of
Liquor Profits and Taxes - Account 7352-425

Cash Receipts	\$ 7,300,000.00	\$ 7,200,000.00
Disbursements	<u>7,300,000.00</u>	<u>7,200,000.00</u>
Balance	<u>\$ 0.00</u>	<u>\$ 0.00</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENTS OF CASH RECEIPTS AND DISBURSEMENTS

SPECIAL REVENUE

<u>General Administrative Account - Transfers - Account 7352-426</u>	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Cash Receipts	\$150,000.00	\$ 0.00
Disbursements	<u>150,000.00</u>	<u>0.00</u>
Balance	<u>\$ 0.00</u>	<u>\$ 0.00</u>
 <u>General Administrative Account - BRIM Premium - Account 7352-913</u>		
Appropriations	\$ 0.00	\$65,324.00
Expenditures	<u>0.00</u>	<u>0.00</u>
	0.00	65,324.00
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$ 0.00</u>	<u>\$65,324.00</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

STATEMENT OF CASH RECEIPTS, DISBURSEMENTS

AND CHANGES IN CASH BALANCE

SPECIAL REVENUE

<u>Nonintoxicating Beer Enforcement Account - Account 7355</u>	<u>Year Ended June 30,</u>	
	<u>2002</u>	<u>2001</u>
Cash Receipts:		
Fines, Penalties and Other Collections	\$256,866.00	\$143,370.00
Disbursements:		
Current Expenses	218,397.45	83,525.54
Repairs and Alterations	265.20	0.00
Equipment	<u>42,154.54</u>	<u>22,251.78</u>
	<u>260,817.19</u>	<u>105,777.32</u>
Cash Receipts (Under)/Over Disbursements	(3,951.19)	37,592.68
Transfer to General Revenue Fund 0490-553	(37,593.08)	(62,832.00)
Beginning Balance	<u>57,593.08</u>	<u>82,832.40</u>
Ending Balance	<u>\$ 16,048.81</u>	<u>\$ 57,593.08</u>

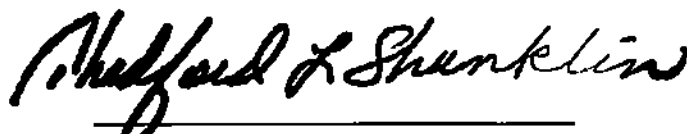
STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Thedford L. Shanklin, CPA, Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 13th day of July

2003.



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 Administration; Governor; Attorney General; State Auditor; and, Director of Finance Division, Department of Administration.