

Master

STATE OF WEST VIRGINIA

AUDIT REPORT

OF

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

FOR THE PERIOD

JULY 1, 1991 - JUNE 30, 1994



OFFICE OF LEGISLATIVE AUDITOR

Legislative Post Audit Division

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

FOR THE PERIOD

JULY 1, 1991 - JUNE 30, 1994

WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance



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CHARLESTON, WEST VIRGINIA 25305

The Joint Committee on Government and Finance:

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

Our examination covers the period July 1, 1991 through June 30, 1994. The results of this examination are set forth on the following pages of this report.

Respectfully submitted,

A handwritten signature in cursive script that reads "Theford L. Shanklin".

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

TLS/tnt

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

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WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

EXIT CONFERENCE

We held an exit conference on June 7, 1995 with the Commissioner and the Director of Accounting of the West Virginia Alcohol Beverage Control Commissioner and all findings and recommendations were reviewed and discussed. The above officials' responses are included in italics in the Summary of Findings, Recommendations and Responses and after our recommendations in the General Remarks section of this report.

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

INTRODUCTION

The 21st Amendment of 1933 repealed national prohibition and gave each state the right to make and enforce its own laws governing alcoholic beverages. In 1934, the people of West Virginia repealed a July 1, 1914 amendment to the State's Constitution which made absolute prohibition a part of their law.

The West Virginia Legislature, on February 22, 1935, repealed Chapter 60 of the West Virginia Code providing for the State control of alcoholic liquors; and, as subsequently amended by Senate Bill No. 294 passed March 8,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

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 numbers of retail outlets and application of the police power of the State, to discourage the intemperate use of liquor; preserve and continue the tax base of counties and municipalities derived from the retail sale of liquor; and, obtain for the State financial gain from the issuance of retail licenses.

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

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

ADMINISTRATIVE OFFICERS AND STAFF

Richard A. Atkinson, III Commissioner
(01/01/94-Present)

Jim Alex Acting Commissioner
(11/01/93-12-31-93)

Harry G. Camper, Jr. Commissioner
(07/01/91-10/31/93)

Ronald M. Moats Deputy Commissioner
(07/01/91-Present)

Howard Wellman Deputy Commissioner
(01/01/93 - Present)

Patricia Holtsclaw Director of Accounting

Gary Phillips Data Processing Manager

Bill Adkins Director of Enforcement

Glenna Roe Payroll Supervisor

Carl Linville Warehouse Director

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

OVERTIME CALCULATION

1. Lunch periods were included in the calculation of employee's time worked at an estimated cost of \$76,720.00 for the audit period.

We recommend the ABCC comply with Title 42, Series 8, Section 9 of the Department of Labor Legislative Rules in determining hours worked.

AGENCY'S RESPONSE

The WVABCC will comply with the audit recommendation.

(See pages 17-19)

NONINTOXICATING BEER ENFORCEMENT FUND BALANCE

2. Excess funds in the Nonintoxicating Beer Enforcement Fund were not transferred to the General Revenue Fund in a timely manner. The collective underpayments to the General Revenue Fund amounted to \$51,352.62.

We recommend the ABCC comply with Chapter 11, Article 16, Section 23 of the West Virginia Code, as amended. Also, we recommend the ABCC transfer to the State General Revenue Fund \$51,352.62, representative of the collective underpayments due the State General Revenue Fund from the Nonintoxicating Beer Enforcement Fund for fiscal years 1991-1994.

AGENCY'S RESPONSE

The WVABCC believes that all required transfers were made to the General Fund. (See pages 19-22)

IMPREST FUND - NONINTOXICATING BEER ENFORCEMENT FUND

3. We noted two instances in which monies in the imprest fund were used to reimburse expenditures that were not related to enforcement activities totalling \$126.48.

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

AGENCY'S RESPONSE

The WVABCC has improved the internal control structure in the Imprest Fund. (See pages 22-23)

BOND FORFEITURE

4. A beer and liquor license was revoked by a previous administration. The ABCC did not request the forfeiture of the \$1,000.00 and \$5,000.00 bonds until March 30, 1994.

We recommend the ABCC comply with Chapter 60, Article 8, Section 26 of the West Virginia Code.

AGENCY'S RESPONSE

Since January 1, 1994 all bonds have been collected when a license is revoked. (See pages 23-24)

ANNUAL INCREMENT

5. One employee was underpaid a total of \$324.00 for annual increment for the period of her employment.

We recommend the ABCC comply with Chapter 5, Article 5, Section 2 of the West Virginia Code, as amended. Also, we recommend the ABCC take necessary steps to compensate the employee the \$324.00 in accrued annual increment underpayments.

AGENCY'S RESPONSE

The WVABCC will investigate the cited occurrence. (See pages 24-25)

SICK LEAVE USAGE

6. We noted ABCC had not defined sick leave abuse as set out in the West Virginia Division of Personnel Administrative Rules. We believe the lack of a definition of sick leave abuse may permit extravagant use of sick leave.

We recommend the ABCC define what a pattern of sick leave abuse means in the West Virginia Division of Personnel Administrative Rules in order to minimize any extravagant use of sick leave and to avoid any misunderstandings of sick leave abuse.

AGENCY'S RESPONSE

Management will monitor those employees that have a higher than average use of sick leave. However, the ABCC

did not address the definition of a pattern of sick leave. (See pages 25-29)

ABCC POLICY ON ANNUAL AND SICK LEAVE

7. ABCC adopted a policy which requires the payroll section to reduce the number of sick or annual leave hours taken by the number of overtime hours worked in the same work week, which effectively denies the employee of his or her leave benefits.

We recommend the ABCC comply with Sections 15.03 and 15.04 of the West Virginia Division of Personnel Administrative Rules.

AGENCY'S RESPONSE

Employees are only entitled to overtime pay for hours worked in excess of 40 hours in a work week. (See pages 30-31)

ROUNDING WORK TIME BALANCES

8. ABCC employee's work time balances were rounded up to the nearest quarter of an hour at an estimated cost of \$85.00 for the audit period. Also, we noted one employee was overpaid \$69.62 and three employees were underpaid a total of \$182.00.

We recommend the ABCC comply with Chapter 12, Article 3, Section 13 of the West Virginia Code. Also, we recommend the ABCC collect for the overpayment, and compensate the

three employees for the underpayments.

AGENCY'S RESPONSE

The WVABCC will investigate the cited occurrences. (See pages 31-32)

ROUNDING SICK AND ANNUAL LEAVE BALANCES

9. Sick and annual leave balances for calendar year 1993 were rounded up to the nearest one-half hour at an estimated cost of \$375.00.

We recommend the ABCC carry sick and annual leave balances as set out in the West Virginia Division of Personnel Administrative Rules.

AGENCY'S RESPONSE

The one time rounding of sick leave balances to the nearest half hour was completed in order to make the agency comply with Division of Personnel Rules and Regulation. (See pages 32-33)

LIQUOR SALES - ELECTRONIC FUNDS TRANSFERS

10. We noted the ABCC continued to ship liquor after receiving two or more nonsufficient EFT's in the same calendar year from a licensee's bank account. The State lost the use of about \$133,000.00 for about five days and approximately \$92.00 in interest.

We recommend the ABCC comply with Title 175, Series 1, Section 4.6, Sub Sections 1 and 2.3 of the West Virginia Legislative Regulations.

AGENCY'S RESPONSE

The West Virginia Board of Investments cannot inform the WVABCC for a period of five days from the receipts of an EFT that it has been returned for nonsufficient funds.

(See pages 33-35)

INCORRECT MEAL ALLOWANCE

11. The ABCC paid \$360.00 for 12 meals served at the Glade Springs Resort in Daniels, West Virginia. Also, we noted three employees exceeded the authorized daily rate for meal reimbursements while attending the trade show.

We recommend the ABCC comply with the Governor's Travel Regulations and attempt to collect the \$360.00 payment made to the West Virginia Wholesale and Retail Beverage Association. Also, we recommend the three employees be required to reimburse the State \$19.00 for exceeding the authorized daily rate.

AGENCY'S RESPONSE

The WVABCC will investigate the cited occurrence. (See pages 35-37)

TRAVEL - PRIOR AUTHORIZATIONS

12. The previous Commissioner took out-of-state trips and an international trip which had no prior authorization by the Travel Management Office. The cost of the trips totalled \$3,900.00.

We recommend the ABCC comply with Governor's Travel Regulations.

AGENCY'S RESPONSE

The WVABCC now complies with the Governor's Travel Regulations. (See pages 37-39)

HOLD HARMLESS AGREEMENTS

13. We noted two suppliers had no "Hold Harmless Agreement". The ABCC may have been potentially liable for the supplier's inventory stored at the ABCC warehouse in the event of fire, water or other damages.

We recommend the ABCC comply with Title 175, Series 6, Section 3.5 of the Legislative Regulations.

AGENCY'S RESPONSE

The two companies in question have ceased doing business in West Virginia. (See page 39)

LATE DEPOSITS

14. We noted 37 enforcement fees and violations receipts and 15 miscellaneous receipts of \$12,000.00 and \$51,750.00,

respectively, were not deposited within 24 hours. The State lost approximately \$34.00 in interest.

We recommend the ABCC comply with Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended.

AGENCY'S RESPONSE

The WVABCC has taken steps to insure that all funds are deposited within 24 hours. (See pages 39-40)

EQUIPMENT INVENTORY ADDITIONS

15. We noted \$1,290.00 of purchases were not added to the ABCC inventory listing.

We recommend the ABCC comply with Chapter 5A, Article 3, Section 36 of the West Virginia Code.

AGENCY'S RESPONSE

The WVABCC has taken steps to strengthen internal control in this area. (See pages 40-41)

NATIONAL FOOTBALL LEAGUE CONTRIBUTION

16. The Alcohol Beverage Control Commissioner made a \$2,500.00 contribution to the National Football League Players Association on April 15, 1993.

We recommend the ABCC comply with Chapter 11, Article 16, Section 23 of the West Virginia Code. Also, we recommend the responsible parties be required to reimburse the \$2,500.00 to the Nonintoxicating Beer Enforcement Fund.

AGENCY'S RESPONSE

Funds collected in the Nonintoxicating Beer Enforcement Account are now used only for expenditures that are permitted by law. The ABCC did not address the recovery of the money. (See pages 41-42)

PAYROLL AUTHORIZATIONS

17. The payroll section withheld taxes at the wrong filing status for a limited number of employees and we noted three employee's personnel files had no documentation for their Mountaineer Flex Benefits deductions.

We recommend the ABCC determine State and Federal tax to be withheld in accordance with Circular E, Employer's Tax Guide and the West Virginia Employer's Withholding Instructions Manual.

AGENCY'S RESPONSE

The WVABCC has taken steps to improve the internal control structure in this area. (See pages 42-43)

STRENGTHEN INTERNAL CONTROLS OVER COMPLIANCE

We believe the ABCC should strengthen internal controls in the area of compliance with the West Virginia Code and various rules and regulations which control the ABCC's operations.

We recommend the ABCC strengthen or establish the necessary internal controls to better ensure compliance

with the West Virginia Code and other administrative rules and regulations which govern the operations of the ABCC.

AGENCY'S RESPONSE

No response by the agency. (See page 45)

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

GENERAL REMARKS

INTRODUCTION

We have completed a post audit of the West Virginia Alcohol Beverage Control Commissioner. The audit covered the period July 1, 1991 through June 30, 1994.

GENERAL REVENUE ACCOUNTS

The following accounts were utilized by the West Virginia Alcohol Beverage Control Commissioner solely for the depositing of liquor profits, licenses and permit fees and wine gallonage taxes into the State General Revenue Fund:

<u>FUND NUMBER</u>	<u>OLD ACCOUNT NUMBER</u>	<u>DESCRIPTION</u>
0490-522	6350-80	Transfer of Liquor Profits
0490-551	6350-81	Private Liquor Store License
0490-575	6350-83	Gallonage Tax
0491-515	4900-82	Beer Tax
0491-516	4900-81	Beer Licenses
0491-588	4900-80	Beer Comm/Revocations

Effective July 9, 1993 the Alcohol Beverage Control Commissioner utilized the following account to transfer the Nonintoxicating Beer Enforcement Fund revenue to the General Revenue Fund:

<u>FUND NUMBER</u>	<u>OLD ACCOUNT NUMBER</u>	<u>DESCRIPTION</u>
0490-553	6350-80	Statutory Transfers

SPECIAL REVENUE ACCOUNTS

All expenditures required for the general operation of the West Virginia Alcohol Beverage Control Commissioner are made

COMPLIANCE MATTERS

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

OVERTIME CALCULATION

We noted the ABCC paid overtime to employees after 35 hours per week during the period July 1, 1991 through February 28, 1992. For the period February 29, 1992 through June 30, 1994, employees receive overtime for time worked beyond thirty-five hours per week. Title 42, Series 8, Sections 9.2 and 9.3 of the Division of Labor's Legislative Rules define nonwork time and work time as follows.

"9.2. Nonwork time. -- Periods during which an employee is completely relieved from duty and which are long enough to enable him to use the time effectively for his own time are not hours worked.

9.3. Work time. -- The employee whose time is spent in physical or mental exertion under control and direction of the employer constitutes hours worked."

We noted ABCC utilizes the full eight hour workday when computing employees overtime worked for compensation. During the period July 1, 1991 through February 28, 1992, the ABCC employees were required to work 7.5 hours per day or 37.5 hours per week. The employees had a one-half hour lunch period. Included in the 7.5 hour workday were two 15 minute breaks, one in the morning and one

lunch periods being treated as work time. We determined from the West Virginia State Auditor's Office Payroll Register these 11 employees were paid a total of \$25,635 in overtime during the same period. Based upon our sample, we believe approximately 37% of the total overtime paid to employees during this period may be attributable to lunch periods being used to compute employee's hours worked. We calculated ABCC paid employees \$206,175 for overtime during the period. We believe \$76,720 of this amount may be attributable to the method used to compute the employee work time.

We recommend the ABCC comply with Title 42, Series 8, Section 9 of the Department of Labor Legislative Rules in determining hours worked.

AGENCY'S RESPONSE

The WVABCC agrees with this finding and will take steps to bring the agency into compliance.

NONINTOXICATING BEER ENFORCEMENT FUND BALANCE

Chapter 11, Article 16, Section 23 of the West Virginia Code states in part:

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

We examined the ABCC records for fiscal years 1991-1993 to determine when the excess funds in the Nonintoxicating Beer Enforcement Fund were transferred to the General Revenue Fund. The transfer activity for fiscal years 1991-1993 are shown in the following schedule.

accordance with Chapter 11, Article 16, Section 23 of the West Virginia Code. It appears the ABCC transferred \$18,000 less than what should have been transferred for fiscal year 1993. The State temporarily lost the use of \$124,268.43 until the transfers were made. The State General Revenue Fund is still due \$18,000.00 from the Nonintoxicating Beer Enforcement Fund relating to the excess balance at June 30, 1993.

Chapter 11, Article 16, Section 23 of the West Virginia Code was amended in fiscal year 1993. The amendment became effective July 9, 1993. Section 23, 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...."

We examined the ABCC records for fiscal year 1994 to determine when the excess funds in the Nonintoxicating Beer Enforcement Fund were transferred to the State General Revenue Fund. The transfer activity for fiscal year 1994 is shown in the following schedule.

<u>Year Ending</u> <u>June 30,</u>	<u>Account Balance</u> <u>At 6/30/94,</u>	<u>Amounts</u> <u>Transferred</u>	<u>Date of</u> <u>Transfers</u>	<u>Remaining</u> <u>Balance</u>	<u>Remaining</u> <u>Balance</u>
1994	\$137,968.88	\$111,867.00	12/13/94	\$26,101.88	\$6,101.88

The balance in the Nonintoxicating Beer Enforcement Fund on June 30, 1994 was \$137,968.88. On December 13, 1994, the ABCC transferred \$111,867 to the General Revenue Fund. We believe an additional \$6,101.88 should have been transferred to the General Revenue Fund in order to bring the balance down to \$20,000 at June 30, 1994. The State temporarily lost the use of \$111,867 until the

Enforcement Fund were used to reimburse expenditures that were not related to enforcement activities. We noted \$56.48 was reimbursed to an employee for film processing. The photographs were of the annual trade show which is mainly a promotional function and not an enforcement function.

We also noted a \$70.00 reimbursement for fees with the Kanawha County Circuit Clerk. The expenditures were related to a dispute between the ABCC and a Commission employee concerning the job duties of the employee.

The ABCC lost the use of \$126.48 for enforcement activities. In addition, the balance of the Nonintoxicating Beer Enforcement Fund, less \$2,000 is periodically transferred to General Revenue. Thus, General Revenue may have lost the use of the \$126.48.

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

AGENCY'S RESPONSE

The WVABCC agrees with the findings and has improved the internal control structure in the Imprest Fund.

BOND FORFEITURE

The ABCC is in violation of Chapter 60, Article 8, Section 26 of the West Virginia Code which states in part:

"On conviction of a violation of any provision of this article, upon the revocation of a license in accordance with section eighteen [§ 60-8-18] of this article...the licensee, former licensee or company registered as a supplier, as the case may be, shall forfeit any bond required by section twenty-nine [§ 60-8-29] of this article...."

The employee was employed by the State on July 1, 1980, and terminated employment with ABCC on July 16, 1993. We calculated the employees years of service for fiscal years 1991, 1992, and 1993 to be 11, 12, and 13 years, respectively. However, the ABCC has calculated the years of employment to be 10, 11, and 12 years, respectively.

We believe the employee was underpaid a total of \$324 during the total period of receiving annual increments. It appears the underpayment was caused by a clerical error made by the payroll section.

We recommend the ABCC comply with Chapter 5, Article 5, Section 2 of the West Virginia Code, as amended. Also, we recommend the ABCC take the necessary steps to compensate the employee the \$324 in accrued annual increment underpayments.

AGENCY'S RESPONSE

The WVABCC will investigate the cited occurrence and take the appropriate action.

SICK LEAVE USAGE

We reviewed the sick leave rules as set out by the West Virginia Division of Personnel. According to the rules, accrued sick leave shall be granted for incapacitating illness or injury of the employee, death in the immediate family of the employee, exposure to a contagious disease, incapacity due to pregnancy, routine medical appointments for the employee, and illness and/or routine medical and dental appointments of the employee's immediate family (not to exceed 40 hours per calendar year). When an

state in writing that the employee's presence on duty may jeopardize the health of others.

Our examination included a review of sick leave usage by all ABCC employees (87) that accrued sick leave for the period July 1, 1991 through October 31, 1994. The ABCC's employees used a total of 3,235 days of sick leave for the period July 1, 1991 through October 31, 1994. The ABCC had a full time equivalent employee of 1.05 for all sick leave used. This means the ABCC needed 87 employees to perform the duties of 83 employees. The cost of all sick leave was \$311,425 for the period examined. The total sick leave included 1,270 days of sick leave which had verification (physician's statement).

From our review of the ABCC records, it appears the employees with lower salaries took more sick leave than higher salaried employees. The average salary of all employees who accrue sick and annual leave at the ABCC is \$20,070. The employees with salaries below the average took an average of fourteen and one-half days of sick leave per year. The employees with salaries above \$20,070 appeared to have taken an average of nine and one-half days of sick leave per year.

It appears employees with 15 or more years of service have the highest sick leave usage rate. These employees took a total of 1,591 days of sick leave, or an average of 15 days per year during the audit period. It appears employees with 10 to 15 years of service take the least amount of sick leave. These employees took 313 days of sick leave during our audit period, or

means the ABCC needed 87 employees to perform the duties of 85 employees.

Sick leave without a physician's statement cost \$186,809 for the audit period. From the ABCC's records we calculated at the current rates, the cost of retirement insurance of the employees would be \$204,101 for this amount of sick leave. Therefore, it appears that the State may have saved \$17,292 by the employees using this sick leave now, instead of using it for insurance benefits at retirement time.

We noted in another finding in this report sick leave taken is reduced if the employee works overtime in the same week the sick leave is taken. Therefore we believe that these balances may not reflect the actual sick leave taken by the employees of the ABCC. (See pages 12-14)

We recommend the ABCC define what a pattern of sick leave abuse means in the West Virginia Division of Personnel Administrative Rules in order to minimize any extravagant use of sick leave and to avoid any misunderstandings of sick leave abuse.

AGENCY'S RESPONSE

No employee of the WVABCC has used any unearned sick leave and the WVABCC requires that a doctor's excuse be presented upon return to work when three consecutive days of sick leave are used. Management will monitor those employees that have higher than average use of sick leave in order to detect sick leave abuse.

of this has the effect of denying an employee of his or her leave benefits.

We recommend the ABCC comply with Sections 15.03 and 15.04 of the West Virginia Division of Personnel Administrative Rules.

AGENCY'S RESPONSE

Employees are only entitled to overtime pay for hours worked in excess of 40 hours in a work week. It is the policy of the WVABCC not to approve any vacation request that would have the effect of paying the employee in excess of 40 hours in a work week.

ROUNDING WORK TIME BALANCES

We noted ABCC employees were working three to five minutes over their normal work hours and rounding these minutes up to a quarter of an hour. We believe this is an extravagant method of compensating employees for hours worked.

Chapter 12, Article 3, Section 13 of the West Virginia Code states:

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

During our audit period, we noted three employee's work time had been rounded up six different times. The three employees were paid \$13.72 for thirteen minutes of actual work. We estimate based on the results of our testing, the 87 employees of ABCC could have had rounded up work time amounting to \$85.00 during the audit period. We learned from the payroll section that it is an agency policy to round up time worked to the next quarter of an hour

We tested sick leave balances for 15 employees of the ABCC. We noted the sick leave balances for all 15 employees had been rounded up to the nearest one-half hour. The total sick leave rounded up for the 15 employees tested was two hours and thirty-five minutes at a cost of \$23.92. We estimate, based on the results of our testing, the 87 employees of ABCC could have had rounded up sick leave of \$188.00 during the audit period.

We were told by agency personnel a former Acting Commissioner had instructed the payroll department to round the ending sick and annual leave balances to the nearest one-half hour.

We recommend the ABCC carry sick and annual leave balances as set out in the West Virginia Division of Personnel Administrative Rules.

AGENCY'S RESPONSE

The one time rounding of sick leave balances to the nearest half hour was completed in order to make the agency comply with the Division of Personnel Rules and Regulations 15.03 (e) with states in part, "The minimum charge against annual leave shall be one-half hour..." The WVABCC prior to January 1, 1994 allowed the employee to charge leave in as little as one minute increments.

LIQUOR SALES - ELECTRONIC FUNDS TRANSFERS

Title 175, Series 1, Section 4.6, Sub Section 2.3 of the West Virginia Legislative Regulations states in part:

"4.6.2.3 Any EFT which is not completed due to nonsufficient funds will preclude further processing of liquor orders to the licensee by ABCC until payment is finally received. In any calendar year where the Commissioner receives two (2) nonsufficient fund responses

such liquors into the retail liquor store...."

The Board of Investments notifies the ABCC of nonsufficient EFT's. When an EFT is determined to be nonsufficient, the ABCC has already sent the liquor to the retailer. Therefore, the retailer has received the liquors without making prior payment as set out in Title 175.

We recommend the ABCC comply with Title 175, Series 1, Section 4.6, Sub Sections 1 and 2.3 of the West Virginia Legislative Regulations.

AGENCY'S RESPONSE

The West Virginia Board of Investments cannot inform the WVABCC for a period of five working days from the receipt of an EFT that it has been returned for nonsufficient funds. Upon on notices of the NSF from the BOI the WVABCC takes steps to insure that no additional orders are released until payments have been received. The WVABCC will begin administrative action against those licensees that have more than two NFS returns.

INCORRECT MEAL ALLOWANCE

The ABCC paid for meals in excess of the limits set by the Governor's Travel Regulations. The Travel Regulations state in part:

"Meal expense reimbursement is limited to actual expenses incurred for food, service, and any gratuity of 15% or less, not to exceed the Authorized Daily Rate (ADR) as issued by the Travel Management Office for the destination city (see Appendix II)...."

The ADR for West Virginia was \$26.00 per day. We noted the ABCC paid the West Virginia Wholesale and Retail Beverage

75%. The three employees meal overcharges totalled \$19.00.

We recommend the ABCC comply with the Governor's Travel Regulations and attempt to collect the \$360 payment made to the West Virginia Wholesale and Retail Beverage Association. Also, we recommend the three employees be required to reimburse the state \$19.00 for exceeding the authorized daily rate.

AGENCY'S RESPONSE

The WVABCC will investigate the cited occurrence and take the appropriate action.

TRAVEL - PRIOR AUTHORIZATIONS

We noted on four different occasions the previous Commissioner did not have out-of-state travel authorized prior to departure. Also, we noted one instance where there was no authorization for an international trip.

The Governor's Travel Regulations in effect for fiscal year 1992 stated in part:

"There is no requirement for advance approval for in-state travel by the Travel Management Office, however, this approval must be obtained at the agency level. There is no requirement for advance approval from the Travel Management Office for out-of-state travel if it is to a location within fifty (50) miles of the border of West Virginia, when only ground conveyance is used...."

The Regulations further state:

"...Advance approval from the Travel Management Office for out-of-state travel except as noted above must be requested on the out-of-state travel requisition no later than fifteen (15) days prior to the trip regardless of the source of funding...."

AGENCY'S RESPONSE

The WVABCC now complies with the Governor's Travel Regulations.

HOLD HARMLESS AGREEMENTS

Title 175, Series 6, Section 3.5 of the West Virginia Legislative Regulations states:

"Each supplier is required to execute the "HOLD HARMLESS AGREEMENT" provided by ABCC. This agreement states that the supplier will hold ABCC harmless for any losses incurred to the supplier's inventory due to fire, water, or other damage by the elements while the supplier's inventory is stored at the ABCC warehouse. ABCC will not cover costs or carry insurance for such losses."

Hold Harmless Agreements were not obtained from Morgan Furze Limited and Gibson Wine Company in fiscal years 1992 and 1993, respectively. It appears ABCC may have been potentially liable for the supplier's inventory stored at the ABCC warehouse. We were told by agency personnel in February 1993 requests for the Agreements were sent to all active vendors.

We recommend the ABCC comply with Title 175, Series 6, Section 3.5 of the Legislative Regulations.

AGENCY'S RESPONSE

The two companies in question have no inventory in the warehouse because they have ceased doing business in West Virginia.

LATE DEPOSITS

Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended, states in part:

"All officials and employees of the state authorized by statute to accept moneys due the

office of the director as a public record...."

We noted the following purchases were not added to the ABCC inventory listing.

<u>ITEM DESCRIPTION</u>	<u>PURCHASE PRICE</u>
SRX 200s Black Phone	\$ 462.50
Task Chair Mod FX16	349.00
SRX MOD 100 Station BL	112.50
ARS 9120 Lamp	47.79
ARS Model 100 Station Bl	95.00
ARS Model 100 Station Bl	95.00
SRS Model 100 Station Bl	128.70
	<u>\$1,290.49</u>

Without accurate inventory records, the ABCC will have no means to effectively manage their inventory. The ABCC personnel did not know why the items had not been added to the inventory listing.

We recommend the ABCC comply with Chapter 5A, Article 3, Section 36 of the West Virginia Code.

AGENCY'S RESPONSE

The WVABCC has taken steps to strengthen internal control in this area.

NATIONAL FOOTBALL LEAGUE CONTRIBUTION

The Alcohol Beverage Control Commissioner made a \$2,500 contribution to the National Football League Players Association on April 15, 1993. The contribution was paid from the Nonintoxicating Beer Enforcement Fund (Fund).

Chapter 11, Article 16, Section 23 of the West Virginia Code states in part:

"...All moneys collected, received and deposited in the "Nonintoxicating Beer Enforcement Fund" shall be kept and maintained

and changed it to single with one dependent. The change was made in March 1993. The payroll section continued to withhold the taxes at the married with one dependent status until we notified the department of the discrepancy in November 1994. Also, we noted three employees' files had no documentation for their Mountaineer Flex Benefits deductions.

Federal income tax withholdings are determined from the tables in the Circular E, Employer's Tax Guide provided by the Internal Revenue Service. State income tax withholdings are determined from the tax tables in the West Virginia Employer's Withholding Instructions Manual.

These errors may cause employees to over or under pay taxes during the year, thus creating a tax liability or an excessive refund at the end of the tax year. We believe these discrepancies occurred due to internal control weaknesses. With a periodic review of authorizations, we believe these errors will be minimized.

We recommend the ABCC determine State and Federal tax to be withheld in accordance with Circular E, Employer's Tax Guide and the West Virginia Employer's Withholding Instructions Manual.

AGENCY'S RESPONSE

The WVABCC has taken steps to improve the internal control structure in this area.

INTERNAL CONTROLS AND ACCOUNTING SYSTEM

As part of our examination, we reviewed and tested the system of internal accounting control to the extent we considered

evaluation of internal accounting control to future periods is subject to the risk that the procedures may become inadequate because of changes in conditions and that the degree of compliance with the procedures may deteriorate.

Our study and evaluation of the system of internal accounting control for the period July 1, 1991 to June 30, 1994, which was made for the purpose set forth in the first paragraph above, would not necessarily disclose all weaknesses in the system. However, such study and evaluation disclosed conditions that we believe to be weaknesses.

STRENGTHEN INTERNAL CONTROLS OVER COMPLIANCE

As indicated by the items noted in the "Compliance Matters" section of this report, we believe the ABCC should strengthen internal controls in the area of compliance with the West Virginia Code and various rules and regulations which control the ABCC's operations. We believe weaknesses in the internal control structure exist in the following areas as evidenced by the compliance findings: 1. Collection of Bailment Fees; 2. Imprest Fund - Nonintoxicating Beer Enforcement Fund; 3. Bailment Fees - Receiving Reports; 4. Administrative Procedures Over the Nonintoxicating Beer Enforcement Fund; and, 5. Control Over the Use of the Telephone System.

We recommend the ABCC strengthen or establish the necessary internal controls to better ensure compliance with the West Virginia Code and other administrative rules and regulations which govern the operations of the ABCC.

INDEPENDENT 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 Commissioner for the years ended June 30, 1994 and June 30, 1993. The financial statement is the responsibility of the management of the West Virginia Alcohol Beverage Control Commissioner. Our responsibility is to express an opinion on the financial statement based on our audit.

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

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

In our opinion, the financial statement referred to above presents fairly, in all material respects, the revenues collected and expenses paid of the West Virginia Alcohol Beverage Control Commissioner for the years ended June 30, 1994 and June 30, 1993 on the basis of accounting described in Note A.

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

	<u>Year Ended June 30,</u>	
	<u>1994</u>	<u>1993</u>
Cash Receipts:		
Liquor Sales to Retailers	\$45,923,767.47	\$46,213,883.42
Less: Liquor Payments to Distillers	<u>35,255,839.56</u>	<u>35,942,047.11</u>
	10,667,927.91	10,271,836.31
Beer Tax	6,955,022.71	6,844,142.13
Beer Licenses	941,702.00	848,958.00
Private Club Licenses	1,734,150.00	1,581,477.00
Wine Gallonage Tax	899,587.48	950,432.74
Wine Licenses and Labels	217,952.50	208,006.00
Penalties	18,531.57	157,300.00
Miscellaneous	<u>1,300.00</u>	<u>46,252.64</u>
	<u>10,768,246.26</u>	<u>10,636,568.51</u>
	21,436,174.17	20,908,404.82
Disbursements:		
Personal Services	1,945,206.65	2,049,249.33
Employee Benefits	914,611.61	843,793.14
Current Expenses	1,709,212.17	1,600,406.28
Repairs and Alterations	28,525.92	23,528.14
Equipment	28,866.03	33,392.34
Annual Increment	40,159.50	37,379.50
Refunds	0.00	14,880.05
Claims Against the State	0.00	489.10
Miscellaneous	<u>181.69</u>	<u>0.00</u>
	<u>4,666,763.57</u>	<u>4,603,117.88</u>
Cash Receipts over Disbursements	16,769,410.60	16,305,286.94
Transfers Out:		
State General Revenue Fund	(17,195,580.62)	(15,142,595.73)
Beginning Balance	<u>8,358,021.41</u>	<u>7,195,330.20</u>
Ending Balance	<u>\$7,931,851.39</u>	<u>\$8,358,021.41</u>

See Notes to Financial Statement

SUPPLEMENTAL INFORMATION

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

GENERAL REVENUE

	<u>Year Ended June 30,</u>	
	<u>1994</u>	<u>1993</u>
<u>Wine Gallonage Tax -</u>		
<u>Fund 0490-575 (Account 6350-83)</u>		
Beginning Balance:		
State Treasury	\$0.00	\$0.00
Cash Receipts:		
Wine Gallonage Tax	899,587.48	950,432.74
TOTAL CASH TO ACCOUNT FOR	<u>\$899,587.48</u>	<u>\$950,432.74</u>
Disbursements:		
Refunds	\$0.00	\$499.05
Transfers to General Revenue		
Fund of West Virginia	899,587.48	949,933.69
	899,587.48	950,432.74
Ending Balance:		
State Treasury	<u>0.00</u>	<u>0.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$899,587.48</u>	<u>\$950,432.74</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

GENERAL REVENUE

	<u>Year Ended June 30,</u>	
	<u>1994</u>	<u>1993</u>
<u>Beer Tax -</u>		
<u>Fund 0491-515 (Account 4900-82)</u>		
Beginning Balance:		
State Treasury	\$0.00	\$0.00
Cash Receipts:		
Beer Tax	<u>6,955,022.71</u>	<u>6,844,142.13</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$6,955,022.71</u>	<u>\$6,844,142.13</u>
Disbursements:		
Transfers to General Revenue		
Fund of West Virginia	\$6,955,022.71	\$6,844,142.13
Ending Balance:		
State Treasury	<u>0.00</u>	<u>0.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$6,955,022.71</u>	<u>\$6,844,142.13</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENTS OF APPROPRIATIONS/CASH RECEIPTS AND

EXPENDITURES/DISBURSEMENTS

	<u>Year Ended June 30,</u>	
	<u>1994</u>	<u>1993</u>
<u>Wine License Special Fund - Unclassified -</u>		
<u>Fund 7351-099 (Account 8592-27)</u>		
Appropriations	\$171,484.00	\$326,379.00
Supplemental Appropriations - Governor	<u>0.00</u>	<u>0.00</u>
	171,484.00	326,379.00
Expenditures:		
Current Expenses	0.00	2,962.00
Refunds	<u>0.00</u>	<u>800.00</u>
	<u>0.00</u>	<u>3,762.00</u>
	171,484.00	322,617.00
Transmittals Paid After June 30	<u>0.00</u>	<u>52.00</u>
Balance	<u>\$171,484.00</u>	<u>\$322,669.00</u>
 <u>Wine License Special Fund - Refunds -</u>		
<u>Fund 7351-427 (Account 8592-78)</u>		
Cash Receipts	\$0.00	\$225.00
Disbursements	<u>0.00</u>	<u>225.00</u>
Balance	<u>\$0.00</u>	<u>\$0.00</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENTS OF APPROPRIATIONS/CASH RECEIPTS

AND EXPENDITURES/DISBURSEMENTS

	<u>Year Ended June 30,</u>	
	<u>1994</u>	<u>1993</u>
<u>Personal Services - Fund 7352-001</u>		
<u>(Account 9270-00)</u>		
Appropriations	\$2,541,656.00	\$2,541,656.00
Expenditures:		
Personal Services	1,852,765.22	1,935,508.78
Employee Benefits	<u>11,841.06</u>	<u>0.00</u>
	<u>1,864,606.28</u>	<u>1,935,508.78</u>
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$677,049.72</u>	<u>\$606,147.22</u>
 <u>Refunds - Fund 7352-427</u>		
<u>(Account 9270-05)</u>		
Cash Receipts	\$0.00	\$11,506.00
Disbursements	<u>0.00</u>	<u>11,506.00</u>
Balance	<u>\$0.00</u>	<u>\$0.00</u>
 <u>Purchase of Supplies for Resale - Fund 7352-419</u>		
<u>(Account 9270-06)</u>		
Cash Receipts	\$35,255,839.56	\$35,942,047.11
Disbursements	<u>35,255,839.56</u>	<u>35,942,047.11</u>
Balance	<u>\$0.00</u>	<u>\$0.00</u>
 <u>Transfer of Liquor Profits and Taxes -</u>		
<u>Fund 7352-425 (Account 9270-07)</u>		
Cash Receipts	\$0.00	\$6,501,411.91
Disbursements	<u>0.00</u>	<u>6,501,411.91</u>
Balance	<u>\$0.00</u>	<u>\$0.00</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENT OF APPROPRIATIONS AND EXPENDITURES

	<u>Year Ended June 30,</u>	
	<u>1994</u>	<u>1993</u>
<u>Claims Against the State - Fund 7352-319</u> <u>(Account 9270-79)</u>		
Appropriations	\$0.00	\$489.10
Expenditures	<u>0.00</u> 0.00	<u>489.10</u> 0.00
Transmittals Paid After June 30	<u>0.00</u>	<u>0.00</u>
Balance	<u>\$0.00</u>	<u>\$0.00</u>

	<u>Year Ended June 30,</u>	
	<u>1994</u>	<u>1993</u>
Ending Balance:		
State Treasury	\$7,207,130.80	\$7,706,942.57
Disbursements:		
Personal Services	1,852,765.22	1,935,508.78
Employee Benefits	859,050.00	850,381.50
Current Expenses	1,647,670.43	1,563,130.55
Repairs and Alterations	24,625.26	26,084.29
Equipment	22,915.68	17,963.28
Annual Increment	37,855.50	36,767.50
Refunds	0.00	11,506.00
Purchase of Liquor	35,255,839.56	35,942,047.11
Transfers to General Revenue Fund	8,399,268.43	6,501,411.91
Claims Against the State	0.00	489.10
Miscellaneous	<u>181.69</u>	<u>0.00</u>
	48,100,171.77	46,885,290.02
Add Transmittals Paid July 1-31		
Beginning; and (Less) Transmittals		
Paid July 1-31 Ending:		
Personal Services	(14,243.25)	186.00
(Personal Services)	3,081.94	14,243.25
Employee Benefits	63,395.30	27,834.72
(Employee Benefits)	(41,186.15)	(63,395.30)
Current Expenses	131,671.48	130,707.40
(Current Expenses)	(88,619.69)	(131,671.48)
Repairs and Alterations	5,260.05	2,703.90
(Repairs and Alterations)	(1,359.39)	(5,260.05)
Equipment	1,889.00	10,365.56
(Equipment)	<u>(2,331.82)</u>	<u>(1,889.00)</u>
	<u>57,557.47</u>	<u>(16,175.00)</u>
	<u>48,157,729.24</u>	<u>46,869,115.02</u>
 TOTAL CASH ACCOUNTED FOR	 <u>\$55,364,860.04</u>	 <u>\$54,576,057.59</u>

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL COMMISSIONER

STATEMENT OF CASH RECEIPTS AND DISBURSEMENTS

SPECIAL REVENUE

	<u>Year Ended June 30,</u>	
	<u>1994</u>	<u>1993</u>
<u>Wine License Special Fund -</u> <u>Fund 7350-640 (Account 8591-06)</u>		
Beginning Balance:		
State Treasury	\$2,425.00	\$475.00
Cash Receipts:		
Miscellaneous Income	<u>1,300.00</u>	<u>1,950.00</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$3,725.00</u>	<u>\$2,425.00</u>
Disbursements	\$0.00	\$0.00
Ending Balance:		
State Treasury	<u>3,725.00</u>	<u>2,425.00</u>
TOTAL CASH ACCOUNTED FOR	<u>\$3,725.00</u>	<u>\$2,425.00</u>