

STATE OF WEST VIRGINIA

AUDIT REPORT

OF

WEST VIRGINIA
ALCOHOL BEVERAGE
CONTROL ADMINISTRATION

FOR THE PERIOD OF

JULY 1, 2005 - DECEMBER 31, 2007



OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

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Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd., East
Charleston, WV 25305-0610
(304) 347-4880

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WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division
Building 1, Room W-329
1900 Kanawha Blvd., E.
Charleston, WV 25305-0610



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

June 4, 2009

The Joint Committee on Government and Finance:

In compliance with the provisions of the, Chapter 4, Article 2, and Chapter 60, Article 2, Section 21, of the West Virginia Code, as amended, we have conducted a post audit of the West Virginia Alcohol Beverage Control Administration (ABCA) for the period July 1, 2005 through December 31, 2007.

We conducted our audit in accordance with Auditing Standards generally accepted in the United States. Our audit disclosed certain findings which are detailed in this report. The ABCA's management has responded to the audit findings; we have included the responses following each finding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Stacy L. Sneed".

Stacy L. Sneed, CPA, CICA, Director
Legislative Post Audit Division

SLS/cdo

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

July 1, 2005 – December 31, 2007

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WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

July 1, 2005 – December 31, 2007

EXECUTIVE SUMMARY

Finding 1 Special Check Handling

- When disbursements are designated for “special handling”, the checks are returned to the agency and mailed to vendors by them rather than being mailed to vendors by the State Treasurer’s Office. The ABCA “special handled” a total of 1,587 checks totaling approximately \$4.6 million in disbursements during the audit period of July 1, 2005 through December 31, 2007. There is an increased risk that checks may be lost or stolen when they are “special handled”

Auditor’s Recommendation

We recommend the ABCA comply with Chapter 5A, Article 8, Section 9 and Chapter 12, Article 3, Section 1a of the West Virginia Code by not issuing “special handled” State checks where appropriate.

Spending Unit’s Response

The WV ABCA has and will continue to comply with our recommendations. (See Pages 12 and 13)

Finding 2 Enforcement Division Imprest Cash Funds

- The ABCA Enforcement Division has six Imprest Cash Funds totaling \$23,000.00. We audited these Imprest Cash Funds by conducting cash counts, reviewing various records used to record cash fund transactions and by reviewing bank statements. We noted numerous internal control weaknesses in the management oversight of these funds.

Auditor’s Recommendation

We recommend the ABCA comply with ABCA Policy Number E-114 and Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended.

Spending Unit’s Response

The WV ABCA has and will continue to comply with our recommendations. (See Pages 14 – 16)

Finding 3 Fee Schedule for Assessment of Fines and Penalties

- During our audit of fines and penalties, we noted differences between fine amounts levied against different licensees for the same violation. **We reported this same finding in our last three audits.** We also reported the ABCA had an existing fee schedule that was not utilized by the ABCA for the assessment of fines and penalties. However, no fee schedule was used during our audit period. The ABCA collected a total of \$316,474.00 in fines and penalties during our audit period.

Auditor’s Recommendation

We recommend the ABCA comply with Chapter 60, Article 7, Section 13, as amended. Further, we recommend the ABCA implement, by Legislative Rule, a fee schedule establishing guidelines for fines and penalties.

Spending Unit’s Response

The WV ABCA disagrees with the finding with respect to having a set fee schedule for assessment of fines and penalties. (See Pages 17 and 18)

Finding 4 Lack of Segregation of Duties Bailment Inventory

- We noted, the same two employees who are responsible for the inventory count of liquor bailment are the same employees who make adjustments to the Bailment Inventory System. For calendar year 2007, ABCA paid liquor vendors in excess of \$72 million dollars from liquor disbursed from the ABCA’s liquor warehouse.

Auditor’s Recommendation

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

Spending Unit’s Response

The WV ABCA has and will continue to comply with our recommendations. (See Page 19)

Finding 5 Lack of Hospitality Forms

- We reviewed ten hospitality disbursements totaling \$6,936.47 during our audit period of July 1, 2005 to December 31, 2007. Of these ten purchases, four purchases totaling \$3,959.56 were not supported by a completed and approved Request for Hospitality Form “TMO 3”.

Auditor's Recommendation

We recommend the ABCA comply with the West Virginia Purchasing Divisions Procedures by completing hospitality forms for all purchases related to hospitality expenses.

Spending Unit's Response

The WV ABCA agrees with our recommendation and In the future will utilize the West Virginia Purchasing Division Hospitality forms. (See Pages 20 and 21)

Finding 6 Lack of Criminal Identification Bureau (CIB) Report

- We selected 60 license purchases totaling \$42,050.00 for testing and found the ABCA issued one license for \$400.00 without obtaining the required criminal investigation background check.

Auditor's Recommendation

We recommend the ABCA comply with Legislative Rule, Title 176, Series 1. Sections 3.1.1 of West Virginia Legislative rule by only issuing licenses after the criminal investigation background checks have been completed.

Spending Unit's Response

The WV ABCA has and will continue to comply with our recommendations. (See Page 22)

Finding 7 Incorrect Time and Accrual Hour Maintenance

- We tested Sick and Annual Leave for 17 Alcohol Beverage Control Administration (ABCA) employees during our audit period and noted errors in four (4) employees' leave balances. These four errors resulted in underpayments totaling \$476.63 and overpayments totaling \$279.21.

Auditor's Recommendation

We recommend the ABCA comply with Section 14.15 of The West Virginia Division of Personnel's Policies and Procedures by maintaining accurate annual and sick leave balances for the ABCA employees accrued and used leave.

Spending Unit's Response

The WV ABCA has and will continue to comply with our recommendations. (See Pages 23 and 24)

Finding 8 **Missing LCD Projector and a Dell Laptop**

- During the equipment inventory test, we were unable to locate two items, a LCD projector (a projection system that works with multimedia items, such as television and computers), purchased on July 1, 1999 for \$5,000.00 and a Dell Laptop Computer purchased on August 1, 2002 for \$3,316.00.

Auditor's Recommendation

We recommend the ABCA keep a tighter control of assets they purchase, transfer or dispose of in compliance with Chapter 5A, Article 3, Section 36 of the West Virginia Code and work with the Surplus Property Division to remove the items from the inventory listing.

Spending Unit's Response

The WV ABCA has and will continue to comply with our recommendations. (See Page 25)

Finding 9 **Time sheets Not Approved**

- We tested 17 employees' time sheets for Payroll and Overtime, during the period of July 1, 2005 through December 31, 2007. We noted 30 time sheets that were not approved via the signature of the employees' immediate supervisors.

Auditor's Recommendation

We recommend the ABCA comply with the Fair Labor Standards Act of 1938, as amended, and Chapter 5A, Article 8, Section 9 of the West Virginia Code. We also recommend the ABCA implement a written policy requiring the Payroll Department to return all unapproved timesheets to the appropriate employee's supervisor in order to obtain signature approval prior to processing.

Spending Unit's Response

The WV ABCA has and will continue to comply with our recommendations. (See Pages 26 and 27)

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

July 1, 2005 – December 31, 2007

INTRODUCTION

POST AUDIT AUTHORITY

This is a report on the post audit of the West Virginia Alcohol Beverage Control Administration. The report was conducted pursuant to Chapter 4, Article 2 of the West Virginia Code, which requires the Legislative Auditor to “make post audits of the revenues and expenditures of the spending units of the State government, at least once every two years, if practicable, to report any misapplication of State funds or erroneous, extravagant or unlawful expenditures by any spending unit, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the State and of the organization and functions of the State and its spending units.”

In addition, the report was also conducted pursuant to Chapter 60, Article 2, Section 21 of the West Virginia Code, which requires at least every two fiscal years, the legislative auditor audit the affairs of the West Virginia Alcohol Beverage Control Administration and report the results of the audit to the Governor.

BACKGROUND

Chapter 9 of the Acts of the 1990 Legislature 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.

Chapter 267 of the Acts of the 2000 Legislature 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

July 1, 2005 – December 31, 2007

ADMINISTRATIVE STAFF
DECEMBER 31, 2007

Administration

Dallas S. Staples. Commissioner
A. Keith WagnerDeputy Commissioner
Thomas Mullins..... Comptroller
Frank Ciordia.....Deputy Comptroller
Brenda K Ashley Payroll Supervisor
Randy Haynes.....Database Administrator
Danny Miller.....Co-Enforcement Director Region I
John D Duncan. Co-Enforcement Director Region II
Cheryl Akers.....Licensing Supervisor

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

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SCOPE

We conducted an audit of the West Virginia Alcohol Beverage Control Administration for the period of July 1, 2005 through December 31, 2007. Our audit scope included a review of internal control and compliance with laws and regulations. The audit was conducted in accordance with auditing standards generally accepted in the United States.

OBJECTIVES and METHODOLOGIES

The objectives of our post audit were to audit the revenues and expenditures of the spending unit, to report any misapplication of State funds or erroneous, extravagant or unlawful expenditures by any spending unit, that we find, to ascertain facts and to make recommendations to the Legislature concerning post audit findings, the revenues and expenditures of the State and of the organization and functions of the state and its spending units. We were to determine whether expenditure and revenue transactions were related to the spending unit's programs, were reasonable, and were recorded properly in the accounting systems. Additionally, we were to examine the spending unit's financial transactions, records and internal control, and to evaluate its compliance with applicable State laws, rules and regulations.

In preparation for our testing, we studied legislation, applicable West Virginia Code sections, applicable rules and regulations, and policies of the spending unit. Provisions that we considered significant were documented and compliance with those requirements was verified by interview, observations of the spending unit's operations, and through inspections of documents and records. We also tested transactions and performed other auditing procedures that we considered necessary to achieve our objectives. Additionally, we reviewed the budget, studied financial trends, and interviewed spending unit personnel to obtain an understanding of the programs and the internal controls. In planning and conducting our post audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk.

We did not audit the spending unit's federal financial assistance programs for compliance with federal laws and regulations because the State of West Virginia engages an independent accounting firm to annually audit such programs administered by State agencies.

A nonstatistical sampling approach was used. Our samples of transactions were designed to provide conclusions about the validity of transactions as well as internal control and compliance attributes. Transactions were selected for testing using professional judgment.

The Alcohol Beverage Control Administrations' written response to the significant deficiencies and compliance findings identified in our audit has not been subjected to the auditing procedures applied in the audit and, accordingly, we express no opinion on it.

The Alcohol Beverage Control Administration management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved. Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

This communication is intended solely for the information and use of the Post Audit Subcommittee, the members of the West Virginia Legislature, management of the spending unit and others within the spending unit. However, once released by the Post Audit Subcommittee, this report is a matter of public record and its distribution is not limited.

CONCLUSIONS

Our report includes findings regarding instances of noncompliance with applicable laws, rules or regulations. Other less significant findings were communicated to the spending unit that did not warrant inclusion in this report. In addition, we identified deficiencies in ABCA's internal control that we consider to be significant deficiencies and warrant the attention of those charged with governance. Although we reported nine findings in this report, we generally believe ABCA has improved their internal controls since the two previous post audits of ABCA performed by our Office.

EXIT CONFERENCE

We discussed this report with management of Alcohol Beverage Control Administration (ABCA) on June 11, 2009. All findings and recommendations were reviewed and discussed. Responses from Alcohol Beverage Control Administration have been included at the end of each respective finding in the report.

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

JULY 1, 2005 – DECEMBER 31, 2007

FUND LISTING

We have completed an audit report on the Alcohol Beverage Control Administration (ABCA). The examination covers the period July 1, 2005 through March 31, 2007.

SPECIAL REVENUE ACCOUNT

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, beer gallonage taxes:

Special Revenue

<u>Fund Number</u>	<u>Name</u>	<u>Description</u>
7351.....	Wine Licensing Fund.....	Receipts from Wine Licensing Sales Administered by the ABCA
7352.....	General Administrative Fund.....	Receipts from liquor sales for operation and administration of the ABCA
7356.....	Enforcement Fund.....	Receipts from other collections, fees, licenses & Income Administered by the ABCA
7357.....	Gifts, Grants & Donations Fund.....	Receipts from Gifts, Grants and Donations, and other collections, fees, licenses & Income Administered by the ABCA

General Revenue

<u>Fund Number</u>	<u>Name</u>	<u>Description</u>
0490.....	Collections Fund.....	Receipts from Beer Tax and Beer License sales
0491.....	Beer Commission/Administrative Fund.....	Receipts from Beer Tax and Beer License sales

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

July 1, 2005 – December 31, 2007

SIGNIFICANT DEFICIENCIES IN INTERNAL CONTROL AND REPORTABLE COMPLIANCE AND OTHER MATTERS FINDINGS

In planning and performing our audit of the West Virginia Alcohol Beverage Control Administration (ABCA), in accordance with accounting standards generally accepted in the United States, we considered the Spending Unit's internal control over financial reporting (internal control) as a basis for designing our auditing procedures, but not for the purpose of expressing an opinion on the effectiveness of the Spending Unit's internal control. Accordingly, we do not express an opinion on the effectiveness of the ABCA's internal control.

Our consideration of internal control was for the limited purpose described in the preceding paragraph and was not designed to identify all deficiencies in internal control that might be significant deficiencies or material weaknesses and therefore, they can be no assurance that all deficiencies, significant deficiencies or material weaknesses have been identified. However, as discussed below, we identified certain deficiencies in internal control that we consider to be significant deficiencies.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented or detected and corrected on a timely basis. We did not identify any deficiencies in internal control that we consider to be material weaknesses, as defined above.

A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies described in Finding 1, Finding 2, Finding 3 and Finding 4 as significant deficiencies in ABCA's internal control.

COMPLIANCE MATTERS

As part of conducting our post audit, we performed tests of compliance with certain provisions of laws, regulations, contracts and grant agreements. Compliance with applicable requirements is the responsibility of the entity's management. The ten findings presented on the following pages of this report do not provide a legal determination of the entity's compliance.

WEST VIRGINIA ALCOHOL BEVERAGE CONTROL ADMINISTRATION

July 1, 2005 – December 31, 2007

FINDINGS

Finding 1 Special Check Handling

Condition: Generally, vendors are paid by electronic fund transfers or State warrants. State warrants are mailed directly to vendors from the State Treasurer’s Office; however, when such State warrants are designated for “special handling”, the State warrants are returned or picked up by ABCA and mailed by them. Therefore, there is an increased risk that the State warrants may be lost or stolen when they are designated for “special handling”.

We reviewed a total of 1,587 transactions totaling approximately \$4.6 million in “special handled” State warrants during our audit period of July 1, 2005 through December 31, 2007. For our audit period, the total amount of disbursements that were special handled totaled 3% of all disbursements. This amount does not include warrants paid to liquor vendors which must be “special handled” in order for ABCA to include a recap of liquor sales with the check.

After alerting the ABCA, we were issued a memo from ABCA stating that “special handling” would no longer be done as of March 2008. However, we found 45 disbursements totaling approximately \$1.3 million dated after May 2008 that had been designated as “special handling”. This amount does not include “special handled” payments to liquor vendors.

Criteria: Chapter 5A, Article 8, Section 9 of the West Virginia Code, 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...”

Chapter 12, Article 3, Section 1a of the West Virginia Code states in part:

“...Payment by deposit in bank account.

...Provided, That after the first day of July, two thousand two, the state auditor shall cease issuing paper warrants except for income tax refunds. After that date **all warrants except for income tax refunds, shall be issued by electronic funds transfer:...** (Emphasis Added).

Cause: We were given a memo dated August 27, 2001 by the Deputy Commissioner stating that the ABCA had permission from the State Auditor, State Treasurer, Secretary of Administration, and the Legislative Auditor to designate State warrants as "special handled".

Effect: Payments made by "special handling" cost more per transaction than payments made electronically. "Special handling" increases the payment processing time and increase the risk of the State being in a prompt payment penalty situation. Furthermore, "special handling" increases the risks of State warrants being lost or stolen.

Recommendation: We recommend that the ABCA comply with Chapter 5A, Article 8, Section 9 and Chapter 12, Article 3, Section 1a of the West Virginia Code by not issuing "special handled" State warrants where appropriate.

*Spending Unit's
Response:*

During the stated audit period of July 1, 2005, through December 31, 2007, the WVABCA agrees with the issues for special handling checks that existed due to previous agreement with the State Auditor, State Treasurer and Department of Administration.

As of April 2008, the WVABCA no longer provides special handling of vendors' checks. While changing from the old process of special handling checks, certain checks may have been special handled in the 45 disbursements tested by your auditors. These checks include: Unemployment payment checks; Enforcement imprest cash fund checks; Quick Delivery checks and a few travel reimbursement checks special handled due to human error. To address these issues: (1) As of May 2009, the WVABCA does not special handle any checks for Quick Delivery; (2) As of July 1, 2009, Unemployment will change its policy and no longer require special handle checks; and (3) As of July 1, 2009, the WVABCA will no longer special handle checks transferring funds to liquor vendors.

Note that refund checks go directly to the individual and the only record of the warrant # is in the state accounting system, thus no further record of the payment and warrant # needs to be recorded.

The WVABCA has and will continue to comply with W.Va. Code '5A-8-9 and '12-3-1a. You may wish to review W.Va. Code '12-3-1a in its entirety with respect to the use of special handle checks.

Finding 2

Enforcement Division Imprest Cash Funds

Condition:

The ABCA's Enforcement Division is responsible for conducting undercover compliance checks and researching licensee background checks of West Virginia establishments that sell alcohol and tobacco. In order to assist the Division in managing its operations, the Division has divided the State into five regional areas—each area is assigned an Enforcement Supervisor and ABCA employees who work as undercover investigators and enforcement agents. Each Supervisor reports to the Enforcement Director, who is over the entire Enforcement Division.

In order to conduct their investigative work, each of the five Enforcement Supervisors, as well as the Enforcement Director, is assigned an Imprest Cash Fund approved by the State Treasurer's Office. Five of these funds total \$4,000.00 each and one totals \$3,000.00. Cash fund monies are regularly dispersed among the various investigators and enforcement agents and are used by them to conduct enforcement operations.

We audited these funds by conducting cash counts, reviewing various records used to record cash fund transactions and by reviewing bank statements. We noted numerous internal control weaknesses in the management oversight of these funds as follows:

- Each enforcement supervisor is solely responsible for maintaining his or her imprest fund and for reconciling the balance of his or her fund to bank statements and other fund records. One of the most important staples of good internal controls over cash funds is the regular performance of cash fund reconciliations by an employee who does not have custody of the assets.
- We noted a total of 127 instances where the forms documenting fund transactions did not have either the required employee signature or the proper supervisory approval signature.
- During our cash count we noted one Enforcement Supervisor failed to have the required records supporting fund transactions made from his \$4,000.00 imprest fund. We did note cancelled checks viewed from the imprest fund bank account web site, which had been written payable to various regional employees. However, this would only document monies outstanding for employees who had cashed imprest fund checks issued to them. Also, since no records other than those of the bank were available, there were no records signed by employees verifying their receipt of imprest fund monies and no records indicating approval of fund transactions by the Regional Supervisor. At the time of our cash count the imprest fund bank account had a balance of \$72.68; therefore, \$3,927.32 of undocumented disbursements had been made from the fund.

- We noted the transaction records for two imprest cash funds failed to reconcile to the designated amount of the fund. According to the fund transaction records, the bank balances and monies on-hand, one of these funds was over by \$50.17 while another fund was short \$3.00.
- While conducting our audit for one of the \$4,000.00 imprest cash funds, we noted the fund moneys contained four personal checks totaling \$195.56, which had apparently been submitted by employees in order to settle fund advances made to them. These checks had not been deposited or cashed and, according to the check dates, had been held anywhere from 20 to 111 days for an average of 65 days after their receipt.

Criteria:

Policy Number E114 of Imprest Fund Cash Fund Reimbursement states in part:

“ . . .A. Administration:

. . . 3. **Regional Supervisors will be responsible for insuring that his/her Imprest Cash Fund Account is kept balanced.**

. . . 5. Regional Supervisors will check forms (ABC-Enf.9,10,11,12) to insure that all “buy money” was spent appropriately and that **all paperwork demonstrates how money was spent during the Underage Compliance Checks.**

B. Employees:

1. **Agents and/or Inspectors will sign form (ABC-Enf.9) documenting receipt of “buy money.”**

2. **Agents and/or Inspectors will fill out form (ABC-Enf.10) to demonstrate dispersal of “buy money. . .” (Emphasis Added)**

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

“ . . . (a) All officials and employees of the state authorized by statute to accept monies due the State of West Virginia **shall keep a daily itemized record of monies received** for deposit in the State Treasury....” **(Emphasis Added)**

Cause:

ABCA personnel told us that the ABCA relies on the State Treasurer’s Office to perform reconciliations of cash funds. We were told by an ABCA employee that when the forms are out in the field it is sometimes difficult to get employees to sign the forms. The Enforcement Supervisor that failed to have documents recording imprest cash fund transactions told us that he mails forms to his investigators and does not receive them until the investigator settles his account. For the overage, the Regional Supervisor stated that he had placed \$40.85 of his own money in the fund because he thought he was short by that amount. He was unable to explain the remaining \$9.32 difference. For the \$3.00 shortage, the Regional Supervisor stated he was aware of the difference

and informed us before we conducted our count of the fund. He stated an employee failed to return the \$3.00 when his advance was settled. We were told that he subsequently collected the money from the employee. The Enforcement Director stated that there was nothing in ABCA policy that states how many days the Enforcement Supervisors have to deposit checks into their Enforcement Funds; however, the Enforcement Director agreed to amend the policy to require deposits to be made within 24 hours of receipt of checks.

Effect: Failure to maintain good internal controls by performing independent reconciliations of cash funds, documenting cash fund transactions and making regular deposits and prompt settlements of advances made from cash funds increases the risk that fraud may occur through the misuse or "borrowing" of fund moneys. Such a lack of good internal controls over cash imprest funds also increases the chance that moneys may be lost.

Recommendation: We recommend the ABCA comply with ABCA's Policy Number E-114 and Chapter 12, Article 2, Section 2 of the West Virginia Code, as amended.

Spending Unit's

Response: During the stated audit period of July 1, 2005, through December 31, 2007, the WVABCA agrees that 127 instances over likely thousands of signatures on documents were missing. In 2008, the WVABCA changed its forms that had required 5 separate signatures but now would only require 2 signatures. The WVABCA had requested actual test documents but the documents were not provided by your auditors, and therefore the WVABCA cannot respond more specifically. Under the "cause" section of your finding the WVABCA has addressed all the other issues of balancing Enforcement imprest cash funds and all such funds have balanced.

The WVABCA notes that your findings regarding the balancing of the Enforcement imprest cash funds were for time periods in 2008 and 2009, and were not dates in the stated Audit period. During the stated audit period, there were no findings related to the balancing of the Enforcement imprest cash funds. In any event, the WVABCA will take steps to move all Enforcement imprest cash funds to Accounting to ensure daily balancing of these funds. Additionally, these funds are audited by the State Treasurer and the WVABCA will add these funds to the audit performed by the WVABCA's external auditors.

From your findings, note that none of the Enforcement imprest cash funds are funds which are deposited into the state treasury and you incorrectly reference W.Va. Code '12-2-2 which does not apply to Enforcement imprest cash funds.

The WVABCA has and will continue to comply with its policies and W.Va. Code '12-2-2.

Finding 3

Fee Schedule for Assessment of Fines and Penalties

Condition:

During our audit of fines and penalties, we noted differences between fine amounts levied against different licensees for the same violation. **We reported this same finding in our last three audits.** We also reported the ABCA had an existing fee schedule that was not utilized by the ABCA for the assessment of fines and penalties. However, no fee schedule was used during our audit period.

During our review, we noted differences between fine amounts levied against licensees for the same type of violations and the table below illustrates the differences:

<u>Violation Code</u>	<u>Number of Violation</u>	<u>Dollar Amount</u>	<u># of Instances</u>
11-16-18(a)(3)	1 st Offense	\$100.00	1
11-16-18(a)(3)	1 st Offense	\$150.00	18
11-16-18(a)(3)	1 st Offense	\$500.00	10
11-16-18(a)(3)	2 nd Offense	\$150.00	2
11-16-18(a)(3)	2 nd Offense	\$300.00	2
11-16-18(a)(3)	2 nd Offense	\$500.00	1

Criteria:

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....”

Cause:

In the agency’s responses to this finding, the ABCA stated there are many variables that affect the amount of the fine, such as, the source of our information on the violation; whether other government agencies have taken action; the seriousness of the violation; the number of times the same violation has occurred; and whether death or injury is included in the violation. According to ABCA there was no logical way to prepare a fine schedule since each violation case was different and may have different combinations of violations cited. 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 among licensees.

Effect: 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.

Recommendation: We recommend the ABCA comply with Chapter 60, Article 7, Section 13, as amended. Further, we recommend the ABCA implement, by Legislative Rule, a fee schedule establishing guidelines for fines and penalties.

Spending Unit's

Response: During the stated audit period of July 1, 2005, through December 31, 2007, the WVABCA disagrees with your finding with respect to having a set Fee Schedule for Assessment of Fines and Penalties. The Commissioner may levy fines, penalties and suspensions according to the schedule based on W.Va. Code "11-16-23, 60-3A-1 et seq., 60-7-13, 60-8-18 and see also 175 CSR 1 "24, 25, 26, 27, 29, and 29; 175 CSR 2 '5; 176 CSR 1 "14 and 15; and 175 CSR 4 "14 and 15. In all other cases, the Commissioner has discretion to review the facts, circumstances and law to review each licensee's violation and make a determination on a case by case basis. The WVABCA makes every attempt to treat the same and similar violations equally but in the agency's experience the facts of each case need to be reviewed in order to determine the appropriate action to be taken by the Commissioner, if any. Typically, the fact and circumstances surrounding a violation do not neatly fit into a chart.

Note that the violations you reviewed failed to take account that the 1st offense for \$500 in 10 of the violations were during a statewide compliance check where the Enforcement Division actually notified the licensees that the WVABCA would be performing compliance checks during the set time frame and violations would be \$500.00. A licensee that knows the WVABCA is performing compliance checks during a set time frame and the licensee still sells to an underage is very problematic. The WVABCA weighs the fact and circumstances of the compliance checks and determines a harsher penalty for licensees that openly disregard complying with the law.

The WVABCA has and will continue to comply with its policies and W.Va. Code "11-16-23, 60-3A-1 et seq., 60-7-13, and 60-8-18 for nonintoxicating beer, taverns, liquor stores, alcoholic liquor sales, private clubs, wine, private wine restaurants, private wine bed and breakfasts, private wine spas, wine retailers, and wine specialty shops

Finding 4 Lack of Segregation of Duties Bailment Inventory

Condition: We noted, the same two employees who are responsible for the inventory count of bailment are the same employees who make adjustments to the Liquor Bailment Inventory System. This provides these employees opportunities to conceal errors or thefts by adjusting inventory records. Also, there are no offsetting procedures performed in lieu of segregating these responsibilities. For calendar year 2007 ABCA paid liquor vendors in excess of \$72 million dollars from liquor disbursed from the liquor warehouse.

Criteria: Chapter 5A, Article 8, Section 9 of the West Virginia Code, 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... .”

Cause: Management has not segregated duties among liquor warehouse staff in order to reduce the possibility of errors and theft.

Effect: A lack of segregation of duties can lead to misappropriation of assets due to theft or loss.

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

*Spending Unit’s
Response:*

During the stated audit period of July 1, 2005, through December 31, 2007, for bailment inventory, the WVABCA agrees that there was a lack of segregation of duties. However, since December 2008, a new policy was set that two employees perform the inventory count of the bailment inventory but then the Warehouse Manager and the Wine, Spirits and Order Entry Supervisor reviews their adjustments. Finally the edited adjustments are reviewed, approved and made by Deputy Comptroller, Frank Ciordia.

Lastly, while your findings state this could lead to misappropriation of assets, theft or loss. The auditors found no such problem.

The WVABCA has and will continue to comply with W.Va. Code '5A-8-9.

Finding 5 Lack of Hospitality Forms

Condition: According to the West Virginia Expenditure Schedule, transactions expended for hospitality coded as (042) can be defined as: “Food, nonalcoholic beverages and related expenses for the reception of guests by a spending agency for a specific event or function relating to conducting state business”. We reviewed ten hospitality disbursements totaling \$6,936.47 during our audit period of July 1, 2005 to December 31, 2007. Of these ten purchases, four purchases totaling \$3,959.56 were not supported by a completed and approved Request for Hospitality Form “TMO 3”.

These four instances are detailed in the following table:

<u>Document #</u>	<u>Date</u>	<u>Type</u>	<u>Amount</u>
I007167293	11/3/2005	Food	\$ 253.97
I007421851	6/21/2006	Catering	1,628.55
I007421865	6/22/2006	Catering	243.80
I007455613	7/19/2006	Reception and Room	<u>1,833.24</u>
Total			<u>\$3,959.56</u>

Criteria: Section 9, subsection 13 of the West Virginia Purchasing Division’s Procedures Handbook states in part:

“...13. **Hospitality:** Hospitality expenses include food, beverages, facility rental, entertainment and other expenses relating to conducting state business. A Request for Hospitality Form TMO 3.0 must accompany the invoice regardless of the amount. ..”

Cause: According to the ABCA’s Accounting Technician II, the ABCA was unaware that hospitality forms needed to be completed for purchases under \$10,000.00. They now understand hospitality forms need to be completed for all hospitality purchases and kept at the agency.

Effect: This control is set into place to decrease the likelihood of the agency or any one individual of an agency from making an unauthorized purchase that would not benefit ABCA or the state.

Recommendation: We recommend the ABCA comply with the West Virginia Purchasing Divisions Procedures by completing hospitality forms for all purchases related to hospitality expenses.

*Spending Unit’s
Response:*

During the stated audit period of July 1, 2005, through December 31, 2007, the WVABCA was unaware of the hospitality form requirement in Section 9, Subsection 13 of the West Virginia Purchasing Division’s Handbook.

Nevertheless, the WVABCA has on file contracts that address each of the 4 identified expenditures. Note that the expenditures on June 21 and 22, 2006, were related to costs associated with a grant committee that sets meetings and allocates costs to different grants. The grant committee requires different recipients of grants to front the costs of the meeting and then the grant reimburses the State for the expenditures.

In the future the WVABCA will utilize the West Virginia Purchasing Division's hospitality forms.

Finding 6 Lack of Criminal Identification Bureau (CIB) Report

Condition: We selected 60 license purchases totaling \$42,050.00 for testing and found the ABCA issued one license for \$400.00 without obtaining the required Criminal Investigation Background check. Prior to issuing a license, the ABCA must request a criminal background check be performed on the applicant by the West Virginia State Police's Criminal Investigation Bureau (CIB). If the applicant has a criminal record, the ABCA is required by Legislative Rule to deny the applicant a license.

Criteria: Legislative Rule, Title 176, Series 1. Sections 3.1.1 states in part:

 "...Licenses.

 ...3.1.1. Following receipt of a completed application for a license containing supplemental information as the Commissioner may require, **the Commissioner may conduct such investigation of an applicant as deemed necessary or desirable in determining whether the applicant is qualified to receive a license...."** (Emphasis Added)

Cause: The fee was paid for the criminal background check. However, the background check was never performed. This is an isolated incident and it will be performed per the Licensing Supervisor.

Effect: The applicant may have a criminal record and received a license in error.

Recommendation: We recommend the ABCA comply with Legislative Rule, Title 176, Series 1. Sections 3.1.1 of West Virginia Legislative rule by only issuing licenses after the criminal investigation background checks have been completed.

Spending Unit's Response:

During the stated audit period of July 1, 2005, through December 31, 2007, the WVABCA agrees that one instance occurred due to human error where a license file did not contain a CIB report. This error occurred as the WVABCA was converting from the ink and standard methods of fingerprint detection to an electronic system of fingerprint detection used in conjunction with the West Virginia Lottery.

With the use of an electronic system of fingerprint detection this human error should be eliminated from the CIB report process. Lastly, the identified license is on hold and will not be renewed until the licensee completes its electronic fingerprinting and its CIB report is reviewed.

The WVABCA has and will continue to comply with its investigation and fingerprinting rules: 176 CSR 1 "3.1.1., 3.1.2., 3.1.3., and 3.1.4.; 175 CSR 2 '3.1.6., 3.1.6.a., 3.1.6.b.; 175 CSR 4 "4.10., 5.2.r., 6.3., 6.7., 7.3., 7.7., 8.3., 8.7., and 9.9.; and 175 CSR 5 '8.

Finding 7

Incorrect Time and Accrual Hour Maintenance

Condition:

We tested Sick and Annual Leave for 17 Alcohol Beverage Control Administration (ABCA) employees during our audit period and noted errors in four (4) employees' leave balances. These errors are as follows:

1. We noted the ABCA could not provide us documentation to explain why a employee received six additional hours of annual leave to the employee's ending balance for June 30, 2004. The employee was overpaid a total of \$141.21 in the final lump sum payment.
2. The ABCA payroll department did not properly post annual and sick leave accrual balances for one employee upon leaving the agency. The employee went on sick leave and subsequently died. Due to an understatement of the annual leave balance, the employee's beneficiaries were underpaid \$15.33. The employee's sick leave balance was used to extend his years of service credit and increase his retirement benefits. As a result of an overstatement in the sick leave balance, the employee's beneficiary received an overpayment of \$335.42.
3. An employee was denied accrual leave hours to annual and sick leave balances for the pay period at suspension. The personnel file contains a document showing that the employee remained on the ABCA payroll until January 14, 2006. Subsequently, the employee was underpaid \$233.96.
4. Lastly, the agency paid an employee \$45.25 to correct the error resulting from incorrectly factoring the annual leave hours at resignation.

Criteria:

Section 14.15 of the Division of Personnel's Administrative Rule states:

"14.15. 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."

Cause:

According to the payroll supervisor, the majority of errors were caused due to incorrectly calculating the final balances of the employees' leave.

Effect:

Errors in employee leave balances resulted in under/over payments for unused annual leave upon an employee's retirement, resignation or death and an advantageous/adverse effect upon an employee's retirement annuity payments to the employee or his/her beneficiary. The resultant error(s) could affect subsequent transfers of sick and annual leave hours to another state agency for transferring employees.

Recommendation: We recommend the ABCA comply with The West Virginia Division of Personnel policies and procedure 14.15 by maintaining accurate annual and sick leave balances for the ABCA employees accrued and used leave.

Spending Unit's

Response: Point #1: During the stated audit period of July 1, 2005, through December 31, 2007, the WVABCA Personnel Director was a person no longer with the agency and therefore the agency cannot account for the stated 6 hours.

Point #2: At the time of this employee's untimely death, the WVABCA was not in receipt of the employee's records and timesheet information due to his death. Thus, the WVABCA corrected the underpayment by issuing a check for that amount and correcting the employee's time with the West Virginia Retirement Board.

Point #3: The WVABCA was instructed by the WV Division of Personnel about how to handle this employee's situation. However, the WVABCA discovered the WVDOP was incorrect since the employee was an arrears employee and the WVABCA did owe the employee for the first part of the pay period. The correction was made and a check issued to the employee.

Point #4: The WVABCA agrees that the agency did correct an error and paid an employee \$45.25.

Lastly, in June 2008, the WVABCA implemented a computer/internet based leave system to simplify the calculation, recording, requesting and approval of leave for employees and supervisors.

The WVABCA has and will continue to comply with the WVDOP Administrative Rule '14.15.

Finding 8 Missing LCD Projector and a Dell Laptop

Condition: During the equipment inventory test, we were unable to locate a LCD projector (a projection system that works with multimedia items, such as television and computers), purchased on July 1, 1999 for \$5,000.00 and a Dell Laptop Computer purchased on August 1, 2002 for \$3,316.00. Both of these assets were purchased for use by the Department of Revenue.

Criteria: Chapter 5A, Article 3, Section 36 of the West Virginia Code states in part:

“The director shall have the power and duty to:

(1) Make and keep current an inventory of all removable property belonging to the state. Such inventory shall be kept on file in the office of the director as a public record. The inventory shall disclose the name and address of the vendor, the date of the purchase, the price paid for the property therein described and the disposition thereof;...”
(Emphasis Added)

Cause: We were given documentation showing that the LCD projector is in the the possession of the Secretary of the Department of Revenue, however, the Department of Revenue could not locate the projector. The agency also stated that the Dell laptop had been sent to the Department of Revenue and not been seen since.

Effect: Failure to track equipment and maintain accurate inventory records could result in fraud or misappropriation and equipment items being lost or stolen.

Recommendation: We recommend the ABCA keep a tighter control of assets they purchase, transfer or dispose of in compliance with Chapter 5A, Article 3, Section 36 of the West Virginia Code and work with the Surplus Property Division to remove the items from the inventory listing.

*Spending Unit’s
Response:*

Note the LCD projector purchased in 1999 under Commissioner Stemple and the Dell computer was purchased in 2002 under Commissioner Keeley and neither item was purchased during the stated audit period. These items were provided to the Secretary of Revenue’s office at those time frames as indicated in the WVABCA’s equipment inventory records. The items were never returned to the WVABCA and therefore remain outstanding in the equipment inventory system. Discussions with Secretary of Revenue’s office reveal that the LCD projector was provided to Secretary of Revenue Brian Kastick and further that the laptop may have crashed and been sent to surplus by the Secretary of Revenue’s office. There are no other records about these items. The WVABCA has and will continue to comply with W.Va. Code '5A-3-36 since the WVABCA’s equipment inventory system has accounted for the items.

Finding 9 Time Sheets Not Approved

Condition: During our testing of Payroll and Overtime, we tested 17 employees' time sheets, which were turned in for each pay period for the period of July 1, 2005 through December 31, 2007. We also noted 30 time sheets that were not approved and signed by their Supervisor. According to the ABCA's personnel, all employees of the ABCA are required to complete a time sheet except for the commissioner and deputy commissioner(s). Part-time employees are required to complete a time sheet at the end of each pay period, while full-time employees are required to complete their timesheet at the end of every month. Part-time employees are paid in arrears along with some full time employees. Each division supervisor will approve the employees' time sheets via their signature. Time sheets are then turned into the Payroll & Personnel Division by each division supervisor. Also, any overtime worked by an employee is reported on his time sheet. The commissioner, deputy commissioner(s), and supervisors can approve overtime.

Criteria: The Fair Labor Standards Act of 1938, as amended, §516.6, states in part:

"... (a) Supplementary basic records: Each employer required to maintain records under this part shall preserve for a period of at least 2 years...."

"... (b) Basic employment and earnings records. From the date of last entry, **all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees**, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example units produced) when those amounts determine in whole or in part the pay period earnings or wages of those employees...."**(Emphasis Added)**

Chapter 5A, Article 8, Section 9 of the West Virginia Code states, in part:
"The head of each agency shall:

- (a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency.
- (b) **Make and maintain records containing adequate and proper documentation** of the organization, function, 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...." **(Emphasis Added)**

Cause: According to the personnel supervisor, the employees' supervisors have been instructed several times to sign their employee's time sheets.

Effect: Having an appropriate supervisory authority sign and approves an employee's time sheet helps to ensure that the hours reported by the employee, both for

time worked and leave taken, are complete and accurate. However, due to the absence of proper supervisory approval for 30 unapproved time sheets, the sheets could have been incomplete and inaccurate. We had less assurance that the hours reported as worked were accurate.

Recommendation: We recommend the ABCA comply with the Fair Labor Standards Act of 1938, as amended, and Chapter 5A, Article 8, Section 9 of the West Virginia Code. We also recommend the ABCA implement a written policy requiring the Payroll Department to return all unapproved timesheets to the appropriate employee's supervisor in order to obtain signature approval prior to processing.

*Spending Unit's
Response:*

During the stated audit period of July 1, 2005, through December 31, 2007, the WVABCA reviewed the findings and some of the timesheets were faxed to the WVABCA first in duplicate, so there were 2 copies of the timesheets with separate signatures of the employee and the supervisor. The original timesheets with both signatures were mailed to the WVABCA later. Also some time sheets did exist where the Supervisors failed to mark the box with their initials for overtime and merely marked the box with a checkmark. Previously the WVABCA had a manual leave system and utilized leave slips which needed to be signed off by Supervisors and attached to timesheets. In some instances this may not have been correctly followed. The WVABCA does agree that there were some timesheets that were not signed as the manual system was difficult to use with office employees and filed employees.

Take note that in June 2008, the WVABCA implemented a new computer/internet based leave system to simplify the calculation, recording, requesting and approval of leave for employees and supervisors. The WVABCA also has new electronic forms for the approval of overtime when it is needed.

The WVABCA has and will continue to comply with the Fair Labor Standards Act of 1938, as amended, and W.Va. Code '5A-8-9.

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Stacy L. Sneed, CPA, CICA, 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 16th day of June 2009.

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Stacy L. Sneed, CPA, CICA, 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 Alcohol Beverage Control Administration; Governor; Attorney General; State Auditor; and Department of Revenue.