
FINDINGS AND RECOMMENDATIONS

The prior 2014 sunset audit made five recommendations:

- The Alcoholic Beverage Control Board's (board) director should ensure that all board meetings are properly published on the State's Online Public Notice System.
- The board should notify local governing bodies of applications for new and transfer licenses within 10 days of receipt.
- The board should issue catering permits in accordance with statutory requirements.
- The board should issue recreational site licenses in accordance with statutory requirements.
- The board should implement a process to monitor and track all complaints to ensure they are resolved in a timely manner.

The prior audit recommendations regarding board meetings, notification of local governing bodies, and catering permits were resolved. Testing found board meetings were public noticed, local governing bodies were notified of new and transfer applications, and catering permits were issued according to statutes.

The prior audit recommendation regarding recreational site licenses was not resolved. License testing found the board continued to issue recreational site licenses that did not meet statutory requirements. The prior recommendation is reiterated as Recommendation 2 of this audit.

The prior audit recommendation to implement a process to monitor and track all complaints was not resolved. According to Alcohol and Marijuana Control Office (AMCO) staff, a process to log all complaints was implemented but halted due to new responsibilities associated with marijuana regulation. The prior recommendation is reiterated as Recommendation 5 of this audit.

In addition to reiterating two prior recommendations, the audit makes six new recommendations.

Recommendation 1:

The authority to renew licenses should be limited to the board.

Of 40 license applications tested, four were new or transfer applications approved by the board. The remaining 36 were renewal applications issued by AMCO license examiners without board approval.

Per AS 04.11.070, only the board may issue, renew, transfer, relocate, suspend, or revoke a license under AS 04. Alaska Statute 04.06.080 states that notwithstanding AS 04.11.070, the board may delegate authority to the director to *temporarily* grant or deny the issuance, renewal, or transfer of licenses and permits. In a past board meeting, the board voted to delegate its authority to renew licenses to the director under the incorrect understanding that such delegation was legal. The AMCO director, in turn, assigned the function to license examiners. According to management, the delegation helps in processing the high volume of renewal applications.

Delegating the renewal authority resulted in licenses being renewed without board oversight.

We recommend the authority to renew licenses be limited to the board to comply with statutes.

Recommendation 2:

The board should issue recreational site licenses in accordance with statutory requirements.

Ten of 29 recreational site licenses active during the audit period were judgmentally selected for testing. All 10 did not meet the statutory definition of a recreational site. Six of the 10 licensees were informed by the board that their license would not be renewed during the next renewal period since the business did not meet the statutory definition of a recreational site. This same finding was reported in the prior 2014 sunset audit.

According to AS 04.11.210(a), the holder of a recreational site license may sell beer and wine at a recreational site during and one hour before and after a recreational event that is not a school event. Alaska Statute 04.11.210(c) defines recreational sites as locations where baseball games, car races, hockey games, dog sled racing events, or curling matches are regularly held during a season. The 10 noncompliant licensees noted above included travel tour companies, bowling alleys, an art council, a pool hall, a

movie theater, and a spa.

Review of board meeting minutes revealed that board members understood these businesses did not meet the definition of a recreational site license, yet believed it to be in the public interest to issue them. Furthermore, board members anticipated the criteria for recreational site licenses would be addressed in a future rewrite of AS 04.06. The issuance of these licenses expanded the number of establishments licensed to sell alcohol over the number allowed by statute.

We again recommend that the board issue recreational site licenses in accordance with statutory requirements.

Recommendation 3:

The board should issue beverage dispensary licenses in accordance with statutory requirements.

In a sample of 16⁹ of 126 beverage dispensary licenses issued to encourage tourism, the audit found five licenses were transferred and six were renewed despite not meeting statutory requirements.

Alaska Statute 04.11.400(d) states the board may approve the issuance or transfer of ownership of a beverage dispensary license without regard to statutory population limits if it appears that the issuance or transfer will encourage tourism. Statutes provide for the minimum number of rental rooms that must be met by a business in order to encourage the tourist trade. Alaska Statute 04.11.330(a)(4) states the renewal of a license shall be denied if the board finds the issuance of an existing license under AS 04.11.400(d) has not encouraged the tourist trade.

The board believed it was appropriate to approve the licenses, as the original licenses were issued before June 1985;¹⁰ however, there was no statutory provision to “grandfather” the licenses. The issuance of the licenses expanded the number of establishments licensed to sell alcohol over the number allowed by statute.

We recommend the board issue beverage dispensary licenses in accordance with statutory requirements.

⁹Random sample of 13 and judgmental sample of three.

¹⁰Chapter 93, SLA 1985, Section 13 enacted AS 04.11.400(d).

Agency Response from the Alcoholic Beverage Control Board

Robert Klein, Chair
Alcoholic Beverage Control Board
6560 Lakeway Drive
Anchorage AK 99502

January 3, 2017

Kris Curtis, CPA, CISA
Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
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LEGISLATIVE AUDIT

Dear Mr Curtis,

I have reviewed your recommendations contained in the November 17, 2017 Audit of our Board, and below are my comments on each:

Recommendation 1

I agree with the recommendation and will work with staff to implement the improved renewal process.

Recommendation 2

I agree. Following the 2014 sunset audit, the Board no longer issued new recreational site licenses that did not strictly adhere to the statute. With respect to licenses already issued, the Board is aware that a bill revising Title 4 will be before the current Legislature. Included in that current version of the bill is a method of rescinding licenses that do not strictly adhere to the definition. It includes a period of time to phase out the license. We have decided to wait to see if the Legislature passes this or some similar method, before taking action as the Board.

Recommendation 3

I disagree with your reading of the statute, and our Board feels that allowing for grandfathering in the case of tourism licenses issued before June 1985 is appropriate.

Recommendation 4

I agree and staff will be working to establish the plan.

Recommendation 5

I agree. There is a logging system, and staff is working to improve its use to insure both timeliness and completeness.

Recommendation 6

I agree, and staff will be taking steps to implement the suggestions.

Recommendation 7

I agree, and staff will be taking steps to implement the suggestions.

Recommendation 8

I agree. I believe the review suggested has already been put in place.

Thank you for the opportunity to respond.

Yours truly,

A handwritten signature in black ink, appearing to read 'R. Klein', written in a cursive style.

Robert Klein

Legislative Auditor's Additional Comments

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

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January 8, 2018

Members of the Legislative Budget
and Audit Committee:

I reviewed the Alcoholic Beverage Control Board's (board) response to the audit report. Nothing contained in the response causes me to revise or reconsider the report conclusions and recommendations. However, there is a section of the board's response that warrants further comments.

In response to Recommendation 3, the board chair disagrees with the auditor's interpretation of statute, and states that the board feels that allowing for grandfathering in the case of tourism licenses issued prior to the law taking effect in 1985 is appropriate. However, the board chair provides no legal basis for this comment. Statutes do not address grandfathering licenses or the transfer or sale of licenses in existence prior to the law passing in 1985.

In summary, I reaffirm our report conclusions and recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Curtis".

Kris Curtis, CPA, CISA
Legislative Auditor