

ALCOHOL
BEV. CON.
BOARD

A PERFORMANCE REVIEW
OF THE
ALCOHOLIC BEVERAGE CONTROL BOARD

November 3, 1978

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OF THE
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JUNEAU, ALASKA 99811

November 3, 1978

Members of the
Legislative Budget and Audit Committee:

In accordance with the intent of Title 24 and 44 of the
Alaska Statutes, the attached report is submitted for
your review.

A PERFORMANCE REVIEW
OF THE
ALCOHOLIC BEVERAGE CONTROL BOARD

November 3, 1978



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PURPOSE AND SCOPE OF THE REVIEW

Purpose

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Alcoholic Beverage Control Board was conducted to determine whether there is a demonstrated need to continue liquor regulation in its present form. To determine that need we reviewed Board activities to see if the Board has been operating in an efficient and effective manner.

AS 44.66.010(1) specifies that the Alcoholic Beverage Control Board will terminate on June 30, 1979 but will continue until June 30 of the following year for the purpose of concluding its affairs. This report shall be considered during the legislative oversight function in determining whether the Board should be allowed to terminate, be reestablished in its present form or be reestablished in a modified form.

Scope

The major areas reviewed were the Board's program, licensing, enforcement, administration and affirmative action functions. Our review consisted of analyzing and evaluating the following:

- (1) Applicable statutes and regulations;
- (2) Questionnaires sent to Board members;
- (3) Interviews with, and questionnaires to, ABC Board employees;
- (4) Interviews with and reports by the consulting attorney for the Alaska Code Revision Commission;
- (5) Tests of records and documents of the Alcoholic Beverage Control Board;
- (6) Tests of records and documents of the Office of the Governor on appointments to the ABC Board;
- (7) Questionnaires to Alaska law enforcement agencies;
- (8) Questionnaires to 1978 Alaska Municipal League Members;
- (9) Questionnaires to 206 current licensees of the Alcoholic Beverage Control Board;
- (10) Correspondence with the Commissioners of the Departments of Public Safety and Commerce and Economic Development;

- (11) A review of studies and major Alaska Supreme Court decisions concerning the Board;
- (12) Observation of two ABC Board meetings;
- (13) Observation of meetings with the Attorney General's Office, District Attorney's Office, and the Alaska Code Revision Commission; and
- (14) Complaints filed with the Ombudsman's Office.

Scope Constraints

This review was hampered by the following constraint: The Alcoholic Beverage Control Board had not adequately collected, recorded and maintained files and/or statistics on enforcement activity of the Board prior to October 1977.

ORGANIZATION AND FUNCTION

In 1933 the Territorial Legislature created the Board of Liquor Control with full power, authority and control to prescribe (1) rules and regulations to govern the manufacture, barter, sale and possession of intoxicating liquors, (2) qualifications of those engaged in that business, and (3) license fees and excise taxes. The present Alcoholic Beverage Control Board (hereinafter referred to as the ABC Board or the Board) was established in 1959, and the same broad powers and duties conferred on the Board of Liquor Control were transferred to the new ABC Board at that time.

Members are appointed for three-year terms by the Governor and serve at his pleasure subject to confirmation by the Legislature. Membership is limited by statute to five persons (two liquor industry representatives, three non-industry representatives). A director, also appointed by the Governor, serves as executive officer and is responsible for enforcement of Title 4 liquor laws and rules and regulations developed by the Board. Although he is not a member of the Board, the director may cast a tie-breaking vote.

Under Title 4 of the Alaska Statutes the ABC Board is charged with the general duties, powers and responsibilities involved in the control of alcoholic beverages, including the promulgation of rules and regulations and the hearing of appeals. Its authority is mostly discretionary. Provisions of AS 04.05.030 direct the Board to issue, reissue, revoke, transfer or suspend liquor licenses in accordance with what the Board considers to be the public's best interests. Concerning its general powers of regulation AS 04.05.030 states:

"The Board may control the manufacture, barter, sale and possession of intoxicating liquors in the State, and may adopt necessary rules and regulations in a manner that will protect the public health, safety and welfare."

Title 4 prescribes the types of licenses, fees and specific activities allowed under each license classification (see schedule of license types and fees in Appendix B). Fees are payable at the time of application and are not reduced or prorated in any way for periods less than the statutory calendar year. To renew an already existing liquor license the application must be filed (and the corresponding fees paid) on or before February 28.

The staff of the ABC Board is divided into three major functions: administration, licensing and enforcement. A brief description of the services provided by those functions follows:

Administration. The director of the ABC Board provides all administrative support needed by the Board including overseeing all staff functions, preparing budget documents, and directing the preparation and implementation of administrative and public hearings, and directing special enforcement investigations.

Licensing. The licensing staff currently consists of three full-time employees responsible for issuing and receiving application forms, maintaining records and files for all licenses, collecting fees, issuing all licenses and permits authorized by the Board, and answering inquiries from the general public on routine licensing matters.

Enforcement. The ABC Board currently employs five investigators; three operating from the Anchorage central office and two operating from the Fairbanks field office. Services provided include (1) routine surveillance and inspections of licensed premises, (2) investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, and (3) assisting the licensing staff in handling inquiries from the general public.

REPORT CONCLUSION

Policy Issues

This review contains policy issues raised as a result of our evaluation of various Board practices. The final policy decisions affecting these practices are not within the scope of this review but require legislative consideration. In debating these decisions, the legislative oversight committees should take into consideration the findings and alternatives presented in this report, so that the potential impact of the policy changes can be evaluated.

Report Conclusion

In our opinion, the Alcoholic Beverage Control Board should continue to regulate and license those persons engaged in the liquor industry. Title 4 of the Alaska Statutes established the Alcoholic Beverage Control Board to control the manufacture, barter, sale and possession of intoxicating liquors to protect the public's health, safety and welfare. Because of the growing body of knowledge on the potential dangers of alcohol and its attendant social and economic costs, we concur that the public need for this type of regulation continues to exist.

However, certain changes need to be implemented for the ABC Board to more effectively execute its mandated responsibilities. Enforcement responsibilities of the Board should be transferred to a special investigative unit within the Department of Public Safety. This shift in responsibility would correct the existing deficiencies in ABC Board enforcement. The three elements of ABC enforcement, routine inspections, investigations and licensing assistance, are deficient in the following ways:

- Routine Inspections:
- they are not performed on a regular, timely basis,
 - ratings assigned are not based on a uniform set of standards,
 - ABC inspections duplicate, to a large extent, Division of Public Health inspections, and
 - discrepancies noted during these inspections are seldom followed up.
- Investigations:
- documentation on enforcement activity is not accurate and not maintained in a current manner,

- the Notice of Violation procedures are ineffective because they are not issued in sufficient quantity, do not always result from original ABC work, are not always followed up, and carry no penalty,
- ABC enforcement officers do not have sufficient authority.

Licensing Assistance: - ABC enforcement staff spend approximately 15% of their time assisting the licensing staff, when 100% of their time should be devoted to enforcement efforts.

A transfer of responsibility would remove the State from a position of potential liability which results since the ABC enforcement officers are not commissioned, and are not employed by a "police agency", yet act as agents of the State (see Recommendation No. 1).

If enforcement responsibilities are transferred to the Department of Public Safety, the ABC Board will be left with five full-time employees: two administrative staff members and three licensing staff members. A transfer of the licensing responsibilities to the Department of Commerce and Economic Development, Division of Occupational Licensing would eliminate the need for the administrative positions and would result in an annual savings to the State of approximately \$54,000 (see Recommendation No. 2).

Our review of the licensing function revealed the following. Renewals of liquor licenses currently take longer to process than new issuances because of all licenses being renewed at the same time and conflicting statutory requirements. Public notice requirements under AS 04.10.270 have hindered the Board from automatically renewing licenses as provided under AS 04.10.350. The need for public notice for license renewals should be reviewed as municipalities and boroughs have used it only as a tax collection service for unpaid local taxes (see Recommendation No. 5).

We also noted that the need for the \$2,500 cash or surety bond required for a beverage dispensary license is obsolete. The requirement was established by a 1939 amendment as a penal sum to be forfeited upon revocation. Its penal impact has diminished in the 39 years since it was established and a forfeiture has not been imposed by the Board in at least five years (see Recommendation No. 6).

We also reviewed Board activity, composition and appointments and found the following. The ABC Board currently spends the majority of its meeting time in routine issuances, transfers, and renewals of unprotested licenses. The Board should adopt a regulation delegating the authority to the Director of the Division of Occupational Licensing to perform those routine administrative functions as authorized by AS 04.05.040. This action would result in (1) the need for fewer meetings, (2) reduction in processing time of unprotested applications, and (3) more economical and efficient use of existing funds and manpower (see Recommendation No. 3).

Alcoholic beverage industry representation on the ABC Board should be reduced from the required two members to one member. This action would eliminate the possibility of an industry quorum when the minimum number of members needed for a quorum attend a meeting, and two of those three members are industry representatives. This situation could introduce an unfavorable bias into the Board's actions and its ability to act in the public's best interests (see Recommendation No. 4).

A review of Board appointment activity performed by the Office of the Governor pointed out two problem areas: (1) vacant ABC Board seats have not been filled in a timely manner, and (2) have not been staggered. The establishment of a talent pool by the Office of the Governor for all Board appointments would allow for the immediate appointment of Board members when terms expire or a position is vacated (see Recommendation No. 7).

In conclusion, the Alcoholic Beverage Control Board should analyze and evaluate the purpose of the Board and take the necessary actions needed to perform and fulfill its responsibilities to the public.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

Enforcement responsibilities for the Alcoholic Beverage Control Board should be transferred to a special ABC enforcement unit within the Department of Public Safety.

The enforcement staff for the Alcoholic Beverage Control Board is currently responsible for:

- A. Routine surveillance and inspection of licensed premises,
- B. Investigations to obtain information to be used in criminal and civil proceedings and investigations into suspected licensing violations, and
- C. Assisting the licensing staff by handling inquiries from the general public on regulations, procedures and licensing requirements.

We reviewed these three functions and noted the following deficiencies in each:

A. Routine Surveillance and Inspection

1. Licensed premise inspection reports are prepared subjectively.

The ABC Board developed the check-off list to be used in routine inspections as recommended in a previous Legislative Audit report. The licensed premise is evaluated in 9 categories (e.g. exterior, interior, overall appearance, etc.) and rated as excellent, good, satisfactory or unacceptable. However, no uniform written standards have been developed to explain the specific requirements necessary to receive a given rating.

No written standards have been developed in conjunction with the check-off list used in routine inspections and, therefore, each report reflects the subjective judgment of the inspector preparing it. For standardized reports to be useful and fair they must be prepared uniformly and objectively which can only occur when each report is based on an accepted common set of standards.

2. Licensed premises are not being inspected on a regular or timely basis.

The ABC Board has not adopted a policy on frequency of routine inspections needed to assure compliance with licensing regulations, or established a procedure for assuring that all licensed premises receive inspections in a timely manner

We reviewed a random sample of 100 license files which excluded initial inspections and licenses issued in 1978, to determine frequency of routine inspections and found the following:

<u>Time last routine inspection performed</u>	<u>No. of Licenses</u>
a. within the last 6 months	13
b. 6 months to one year ago	16
c. one year to two years ago	31
d. over two years ago	3
e. never	<u>37</u>
<u>Total</u>	<u>100</u>

As can be noted above 71% of the licenses in our sample had not been inspected in the last year.

3. The enforcement staff of the Alcoholic Beverage Control Board does not follow-up on unacceptable ratings given or discrepancies noted during routine inspections.

Our review of the 100 files noted in 2 above disclosed five which contained unacceptable ratings. There was no evidence of any following action taken on those cases in the files. ABC management indicated the cause to be a lax attitude towards follow-up.

4. One of the primary purposes of ABC's routine inspections is to verify conformance with sanitary requirements also inspected by the Department of Health and Social Services, Division of Public Health - an obvious duplication of effort.

The Department of Health and Social Services is mandated by AS 18.35.120 with the enforcement of these requirements by means including but not limited to periodic inspections. There is, therefore, no obvious need for this duty to also be performed by the enforcement staff of the Alcoholic Beverage Control Board.

B. Investigations

1. There is insufficient managerial control over documentation of enforcement activity of the ABC Board.

A review of the license files and enforcement files maintained by the ABC revealed that neither is accurate as to amount or type of investigation activity or maintained in a current manner.

We attempted to locate and review all Notices of Violation and criminal complaints reported as issued in the October 1977 through July 1978 monthly activity reports, and found the following:

- a. of the 56 Notices of Violations reported as issued only 38 (68%) could be located, and
- b. of the 13 criminal complaints reported as issued only 6 (46%) could be located.

This lack of control over enforcement documentation has two serious effects. The major effect is limitation of the ABC Board's effectiveness in protecting the public's health, safety and welfare by assessing penalties against violators of the ABC laws and regulations. The Board cannot adequately accomplish this goal without accurate, timely information on the nature and type of violations occurring on licensed premises. Where penalties for violations increase with number of offenses it becomes important that the information their decisions are based on be accurate.

The secondary effect is the loss to management of an effective measurement tool of the staff's performance level. For performance reports, such as the ABC Board's monthly activity report, to be useful, the information contained in them must be accurate and properly supported.

2. Notices of Violation issued by ABC enforcement staff have limited effectiveness in reducing the number of violations occurring.
 - a. Notices of violation are not issued in sufficient quantity to provide a meaningful deterrent to violations. As noted in the previous findings we were only able to verify 38 Notices of Violation being issued in a nine-month period by five full-time enforcement staff members. This is an average of less than one enforcement action per month per individual.
 - b. These Notices of Violation which have been issued are not necessarily the result of original investigative work by ABC enforcement staff. Of the 38 Notices of Violation located in our test period, 24 (63%) resulted from copies of arrest reports sent to ABC by local law enforcement agencies. These notices then required a minimum amount of effort on the part of ABC and served only to duplicate the work of the local law enforcement agency.
 - c. ABC enforcement staff does not provide adequate follow-up on Notices of Violation. Of the 38 Notices located in our test period only 3 (8%) resulted in further action--two leading to criminal complaints being filed and one leading to a formal letter of accusation. There was no evidence available to indicate any follow-up action being taken on the balance of the cases or any indication that the violations were ever corrected.
 - d. Notices of Violation carry no penalty, either singly or based on an accumulation of them.

As may be seen by the findings listed above the Notices of Violation system employed by the Alcoholic Beverage Control Board serves only to notify the licensee of a violation and carries no threat of subsequent action by the enforcement staff or by the Board. This system is an ineffective method of enforcement and has only

limited effectiveness in deterring violations from occurring.

3. ABC enforcement officers do not have sufficient authority to enforce liquor law violations.

At present, penalties (suspension or revocation of a license) are only assessed against licensees for violations of liquor laws as a result of convictions for those violations. Thus, the most effective enforcement effort that could be used by the ABC Board would be any effort that led to a conviction. Without minimum police powers, (i.e. powers of arrest, search and seizure authority, right to carry weapons) however, any effort to accumulate sufficient evidence to lead to a criminal conviction is severely hindered.

The amount of authority of the present enforcement staff has been under debate for several years. ABC regulation 15 AAC 20.060 gave the director and all persons employed by the Board for the administration and enforcement of Title 4 all the powers of peace officers. However, an informal opinion rendered by the Attorney General's office stated that because peace officer status was not specifically given in Title 4, agents of the ABC Board could not be considered peace officers.

The reaction to this situation by ABC administration has been a verbal directive to enforcement staff to not exercise any police powers on their own, but to coordinate all enforcement efforts with local law enforcement agents. This enforcement approach has obvious practical limitations. Local law enforcement agents cannot accompany ABC agents on all investigative work. Therefore, when ABC agents are working without the assistance of a commissioned police officer and encounter a violation in progress, they are powerless to take immediate action. Any action that might be taken could place the ABC agent in personal danger and the State in a position of liability because of the confusion over this agent's legal authority.

C. Assistance to Licensing Staff

1. ABC enforcement staff spend approximately 15% of their time assisting the licensing staff.

Included in the description of duties for an ABC Investigator is the duty of assisting the licensing staff by handling inquiries from the

general public on regulations, procedures and licensing requirements. Because enforcement staff is required to have specialized training in law enforcement or investigative work, their time should be spent exclusively on those duties, rather than on licensing duties which require a lesser degree of specialization.

In addition to the underutilization of specialized staff, another problem arises from enforcement staff advising licensees on licensing issues. This is the natural reluctance that would develop on the part of the licensee to question an enforcement agent on what might be a violation or problem.

Summary

The Alcoholic Beverage Control Board has been ineffective in its mandated responsibility of enforcement of ABC laws and regulations. Routine inspections are not made on a regular or timely basis. When they are performed, the ratings assigned are not based on a uniform, objective set of standards and duplicate, to a large extent, the inspections being performed by the Department of Health and Social Services, Division of Public Health. Additionally, when discrepancies are noted during these inspections, they are seldom followed up.

Investigations leading to Notices of Violation are ineffective as Notices of Violation carry no penalty or threat of subsequent action by enforcement staff or by the Board. The most effective enforcement effort that could be employed by the staff is that effort which leads to convictions. The enforcement staff has been able to accomplish this goal to a limited extent, but could be much more effective if given sufficient authority. Finally, specially trained enforcement staff should not be used for routine, administrative tasks such as licensing assistance.

To correct these deficiencies, we recommend that the enforcement responsibilities of the Alcoholic Beverage Control Board be transferred to the Department of Public Safety. A special ABC investigative unit should be established within that Department with the dual responsibilities of (a) investigations of ABC law violations, and (b) sharing of their specialized knowledge of ABC laws with other law enforcement agents through an organized training program.

There is support for this recommendation by the Commissioner of the Department of Public Safety, Richard L. Burton, ABC enforcement officers, and other law enforcement agents. The Commissioner concurred that ABC enforcement officers should

be replaced by state troopers. He also pointed out that because non-commissioned enforcement agents are not employed by a "police agency" they do not have to meet the licensing certification requirement for police officers, yet they act as agents of the State thereby placing the taxpayers of the State in a liability situation.

The responses to our questionnaire to the Alaska law enforcement agencies (Appendix C) supported our finding that ABC enforcement as organized is ineffective, and that there is a need for greater enforcement activity. Several respondents volunteered the suggestion that a transfer of enforcement staff to Public Safety would help accomplish that goal. Transferring the enforcement staff would provide continuing managerial control, proper training and supervision, and insulate the officers from possible Board influence. An organizational change such as this would also logically result in increased cooperation between ABC enforcement agents and other law enforcement agents by equalizing their professional status and clarifying their role in liquor law enforcement.

The alternative to this recommendation, retention of the Alcoholic Beverage Control Board enforcement section under the Department of Revenue, should only be considered in conjunction with the following recommendations: (1) ABC enforcement agents should be commissioned as special police officers with full police powers and authority to effectively enforce the alcoholic beverage control laws, and (2) responsibility for routine inspections to fulfill initial license requirements should be transferred to local law enforcement agencies, and (3) all other routine surveillance inspection activities should be curtailed. We believe, however, that this is a weak alternative to our primary recommendation as the effectiveness of the enforcement staff will always be limited while under the control of a non-enforcement oriented management.

Recommendation No. 2

The Alcoholic Beverage Control Board should be placed under the administrative control of the Department of Commerce and Economic Development, with administrative and licensing responsibilities transferred to the Division of Occupational Licensing.

The Alcoholic Beverage Control Board is the only regulatory Board now operating under the administrative control of the Department of Revenue. The support staff for the Board provides three types of services: administrative, licensing and enforcement. The licensing staff of the ABC Board provides the following services: issues and receives application forms; collects license fees; maintains records and files for all licenses; notifies applicants of acceptance or rejection; issues, renews and transfers licenses and permits; and answers general inquiries on licensing procedures.

These services are the same as the services being provided to the 21 regulatory boards under the administrative control of the Department of Commerce and Economic Development by the Division of Occupational Licensing.

If Recommendation No. 1, transfer of enforcement responsibilities to Department of Public Safety, is implemented, the ABC Board will be left with five full-time employees, three licensing staff members and two administrative staff members. The need for two full-time administrative staff members to oversee three licensing staff members at an annual cost to the State of approximately \$54,000 is not justified. We therefore recommend transfer of the licensing responsibilities to Department of Commerce and Economic Development, Division of Occupational Licensing and elimination of the two administrative positions.

Recommendation No. 3

The Alcoholic Beverage Control Board should adopt a regulation delegating authority to the director of the Division of Occupational Licensing for the routine issuance, transfer and renewal of unprotested licenses.

During our review we noted that the majority of issues discussed at ABC Board meetings during our audit period, (January 1, 1974 to June 30, 1978) were the routine issuance, transfer and renewal of unprotested licenses. The Board automatically issues a new license, or a transfer or renewal of an existing license, if it meets the following criteria:

(1) the local governing body does not protest the issuance of the license, and (2) there are not grounds for denial of the license based on state statutes or regulations.

The power of Alcoholic Beverage Control Board, as defined by AS 04.05.040, specifically includes "...providing for the delegation to the director of routine administrative functions and powers, including the issuance, transfer and renewal of licenses and permits where there is no contest or protest".

Effecting this delegation of power would logically produce the following results: (1) The need for fewer meetings. The Board currently meets an average of eleven times per year, but is only mandated to meet four times per year. (2) A reduction in processing time of all uncontested, routine applications, and (3) More economical and efficient use of existing funds and manpower.

The Board is currently revising the alcoholic beverage control regulations and is considering this delegation of authority in that process. We recommend that the regulation be adopted and implemented as soon as possible.

Recommendation No. 4

No two members of the Alcoholic Beverage Control Board should be engaged in the same business, occupation or profession.

A 1970 amendment to AS 04.05.010 increased ABC Board membership from three to five members and correspondingly increased the number of industry representatives from one to two. That amendment also changed the number of members necessary to comprise a quorum for the conduct of business from two to three. It is evident from these changes that the legislature wished to retain the alcoholic beverage industry representation on the Board in a minority position.

What has occurred, however, is the creation of a situation where just the opposite can occur. When the minimum number of members necessary for a quorum attend a meeting, and two of those three members are engaged in the alcoholic beverage industry, then Board business can be conducted by an industry majority.

A review of 48 meetings held during the period of January 1, 1974 to June 30, 1978 shows that this situation did occur a minimum of 5 times.

There are several alternatives available to correct this situation. One alternative is elimination of industry representation from the Board and allowing for the creation of a non-voting advisory group of industry representatives.

However, although this would be an uncompensated group, the State would be responsible for travel expenses and per diem for more individuals and may be undesirable from a purely economic viewpoint.

A second alternative is a statutory increase in the number of members necessary to constitute a quorum. However, whereas the ABC Board is a voluntary board serving without compensation except for travel and per diem, it would be unreasonable to expect all members to attend all meetings. A review of attendance at the 48 meetings from 1/1/74 to 6/30/78 supports this theory as full Board membership was in attendance for only 16 (33%) of those meetings.

The third alternative to the current situation is to amend AS 04.05.010 so that no two members of the ABC Board have similar interests or background and be in the same business, occupation or profession. This would retain the necessary input from the liquor industry while not affording an opportunity for imbalance in decision-making. This alternative was also supported by the Analysis of Alcohol Problems

Project, Dennis Kelso, Ph.D., Project Director in Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska, 1975.

Recommendation No. 5

Renewals of licenses should be made in a timely manner.

A review of 99 renewals indicated that the average processing time is 70 days, ten days longer than the average processing time for new applications. We were able to determine two major causes of this delay. One is due solely to volume for although the application process for renewal of licenses is almost identical for the application process for new licenses, all alcoholic beverage licenses are renewed at the same time each year, thus causing a large backlog for several months each year.

The second cause for the delay results from conflicting statutory requirements for renewing licenses. AS 04.10.270 requires the Board to transmit written notice of its intent to approve the renewal of a license to the local governing body (city or borough), allowing it 30 days in which to protest its issuance. However, AS 04.10.350 requires the Board to renew licenses automatically if the fee is paid except in the case of conviction of the licensee or protest of a license that is outside a municipality.

ABC licensing staff estimated that of the approximately 1300 licenses renewed in 1978 only 50 were protested by local governing bodies and most, if not all of those protests, were for non-payment of local property taxes. The need for causing the processing delay of all applications to accomplish this tax collection service should be reviewed for its merits. If found to be without merit, AS 04.10.270 should be amended to exclude renewals from the section.

If found to be of merit, however, the following alternative should be considered to reduce processing delays: blanket notification to municipalities or boroughs prior to the renewal period of the ABC Board's intent to renew all liquor licenses in their jurisdiction subject to receipt of application and fees. This would allow the protest period to run concurrent with, rather than subsequent to, the renewal period, thus allowing for automatic renewal unless a protest has been received.

Recommendation No. 6

The requirement for a \$2500 cash or surety bond for a beverage dispensary license should be eliminated from AS 04.10.040.

The requirement of a cash or surety bond in the amount of \$2500 for beverage dispensary license was established by a 1939 amendment to the Laws of Alaska. At that time beverage dispensary licenses had no economic value and the amount of the bond was established as a penal sum to be forfeited upon revocation of a license.

Since 1939, however, beverage dispensary licenses have gained economic value in areas where the quota for that type of license has been reached. Thus, the revocation of a beverage dispensary license is a financially penalizing action in its own right. Additionally, with the rate of economic growth experienced in Alaska in the last 39 years it is obvious that \$2500 no longer has the penal impact it did in 1939.

A review of the ABC Board records disclosed no evidence of the Board requiring forfeiture of the bond in the past five years. The bond requirement does, however, create additional work for the licensing staff and occasional delays in the application process. The need for this cash or surety bond requirement has become obsolete.

Recommendation No. 7

The Office of the Governor should keep appointments of members of the Alcoholic Beverage Control Board current and stagger them as required by AS 39.05.060.

During our review of ABC Board appointments during the period of January 1, 1974 to June 30, 1978, we noted the following exception. The ABC Board was allowed to operate without a five-member complement as required by law during the following periods:

1. February 1, 1974 through February 27, 1974: one vacancy for 27 days.
2. March 14, 1974 through March 23, 1975: one vacancy for 336 days, two vacancies for 35 days, three vacancies for 4 days. Total time period: 375 days.
3. November 20, 1976 through January 17, 1977: one vacancy for 59 days.
4. February 1, 1978 through February 8, 1978: three vacancies for 8 days.

As a result of these vacancies, the ABC Board was not in compliance with AS 04.05.010 which created it. Additionally, the ratio of public representation to industry representation established by AS 04.05.010 was upset allowing a possible unfavorable bias to enter into the Board's decision-making process.

Per AS 39.05.060, initial appointments were to be made for one, two, three, four and five years and each vacancy occurring during a term of office is filled in the same manner as the original appointment and is made for the balance of the unexpired term. During our review, however, we noted that there are currently three ABC Board members whose terms expire on the same day: January 31, 1981. This is an obvious violation of the intent of AS 39.05.060.

We recommend that the Office of the Governor appoint new members or reappoint current members to vacant ABC Board seats in a timely manner and stagger appointment terms as required by AS 39.05.060.

We further recommend that the Office of the Governor consider establishing a talent pool for Board appointments. The concept of a talent pool is to have a list of persons available and desiring to serve as a Board member. Many sources exist in the State to establish such a pool. Liquor industry associations could be requested to provide a list of members who would like to serve as the industry representative on the Board. Retired citizens offer an excellent pool of potential talent for public member appointments and should be contacted for possible inclusion in the talent pool.

An established talent pool, updated at reasonable intervals, would allow for immediate appointment of Board members when terms expire or a position is vacated.

ANALYSIS OF PUBLIC NEED

Limited Analysis

The following analysis indicated both positive and negative attainments of the ABC Board and how its activities relate to the public need factors defined by AS 44.66.050. This analysis is not intended to be comprehensive in nature. It has been limited by the scope of our review and the constraints placed on this review as mentioned in the scope section of this report.

I. The extent to which the board, commission or program has operated in the public interest.

Public protection gained through licensing to control liquor manufacture and traffic has been adequately provided by the ABC Board. However, the Board is also charged with enforcement of the alcoholic beverage control laws, rules, and regulations and, as previously documented in this report, has not demonstrated any effectiveness in this area. Thus, the Board has not met one of its statutory responsibilities in protecting public health, safety, and welfare (see Recommendation No. 1).

II. The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices which it has adopted, and any other matter, including budgetary, resource, and personal matters.

The operation of the ABC Board has been impeded by current statutes. The Legislature acknowledged in Senate Concurrent Resolution No. 88 (1978) that the laws in Title 4 are in serious disarray as a result of patchwork amending over several decades. Those laws are currently under review for revision by a joint interim committee of the Legislative Council and by the Alaska Code Revision Commission.

III. The extent to which the board, commission or agency has recommended statutory changes which are generally of benefit to the public interest.

There was no evidence available of any activity on the part of the current ABC Board to recommend statutory changes.

- IV. The extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service which it has provided.

The ABC Board has met an average of eleven times a year, at least once in each of the four judicial districts. Each meeting has been adequately advertised and open to all interested persons. The staff of the ABC Board is located in both Anchorage and Fairbanks and is available to answer inquiries of the general public during all normal business hours. We believe this has provided an adequate forum for allowing public input on Board regulations and decisions.

- V. The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

As noted above, the Board has provided an adequate forum for obtaining public input in general. The Board is currently in the process of rewriting its regulations which have not been revised since 1963. We cannot, therefore, draw any conclusions on the extent of public participation in the process.

- VI. The efficiency with which public inquiries or complaints regarding the activities of the board, commission or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of the ombudsman have been processed and resolved.

The majority of complainants of ABC Board decisions requesting hearings under the Administrative Procedures Act in the past year have dropped their request for those hearings. Delays in holding a hearing under that Act have resulted primarily from delays in appointing hearing officers by the Office of the Governor.

The ABC Board also has the authority to hold its own hearings on protests which it has begun exercising with greater frequency. Hearings held in this manner have been accomplished in a timely manner because of the frequency of regular Board meetings.

- VII. The extent to which a board or commission which regulated entry into an occupation or profession has presented qualified applicants to serve the public.

Our review of licensing activity of the ABC Board to determine whether all statutory qualifications of licensees were being met revealed no exceptions. The Board has therefore, presented qualified applicants to serve the public.

- VIII. The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

No material discrepancies were noted during our review of the ABC Board affirmative action program. Additionally, our survey of current licensees of the ABC Board elicited only one complaint on discriminatory practices of the Board which was found to be without grounds.

- IX. The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the previous section, Findings and Recommendations.

APPENDIXES

APPENDIX A

ALCOHOLIC BEVERAGE CONTROL BOARD
REVENUES COMPARED WITH EXPENDITURES

Fiscal Year 1978

(UNAUDITED) ¹

Revenue (See Schedule 1 and Note 1)	\$1,006,275
Expenditures	<u>345,441</u>
Excess of Revenue Over Expenditures	<u>\$ 660,834</u>

Schedule 1
Collected Revenues

<u>Types of License</u>	<u>Number Issued</u>	<u>Total Collected</u>
Liquor license application	-	\$ 76,250
Pub	1	300
Brewery	1	100
Distillery	-0-	-0-
Beverage Dispensary	590	490,625
Club	53	21,300
Common Carrier	60	14,900
Restaurant	114	35,850
Roadhouse	19	3,050
Retail	424	255,350
Retail stock sale	1	100
Wholesale general	18	71,250
Wholesale malt beverage	7	16,350

Miscellaneous ²	<u>9</u>	\$ <u>20,850</u>
<u>Total</u>	<u>1297</u>	<u>\$1,006,275</u>

Note 1

This revenue/expenditure comparison was prepared from available records and discussions with ABC Board personnel. The records were not audited by us and accordingly we do not express an opinion on the ABC Board Revenues Compared with Expenditures.

Note 2

Includes recreational-site licenses and a conditional contractor's permit.

APPENDIX B

ALCOHOLIC BEVERAGE CONTROL BOARD
DESCRIPTION OF LICENSE TYPES

<u>Type</u>	<u>Description</u>	<u>Annual Fee</u>
Filing Fee	For each license application.	\$ 50
Pub	To sell beer and wine on campus.	300
Brewery	To operate brewery where beer is mfg., or bottled for sale.	100
Distillery	To operate distillery where intox. liquor is mfg. or bottled for sale.	100
Beverage Dispensary	To sell or serve on premises beer, wine & hard liquor for consumption on the premises only.	500 (Unincorp. comm. pop less than 1500) 1000 (population greater 1500)
Club	Right to sell intox. liquor to club members & families in club rooms.	200 (sales less \$5000) 400 (sales greater \$5000)
Common Carrier	To sell liquor on a boat, aircraft, or railroad buffet car.	250 (per vessel, aircraft, or railroad car)
Restaurant	To sell beer & wine in a restaurant with meals.	300
Roadhouse	Licensed premises not less than 18 miles from Corp. city limits and serves food, may sell beer and wine.	150

Retail	To sell in establishment intox. liquor in orig. packages & wine in bulk.	\$600 (sales greater \$20,000) 300 (sales less \$20,000)
Retail Stock Sale	To sell bulk quantities, but not to consumer, the entire stock of former retail store.	100 (90 days only)
General Wholesale	To sell liquor in original pkgs. to holders of licenses, not to consumer.	500 (plus \$250-\$5000 based on sales)
Wholesale Malt Bev. & Wine	To sell malt bev. & wine in original pkgs. to holders of licenses, not to consumer.	100 (plus \$50-\$4950 based on sales)

Misc. permits & fees:

Caterer's	Right to sell intox. beverages at conventions, picnics, social gatherings, sporting events, or similar affair where the premises are not otherwise licensed.	25
Special Events	To give non-profit organ. right to sell beer at retail for consumption on designated premises for a specific occasion & limited time period.	25 (per day)
Conditional Contractor's:	Right to sell beer on specified premises located within boundaries of military reservation or in remote area as designated by Board.	300 (annual)
Duplicate Bev. Disp.	For holders of Bev. Disp. licenses who have on a specified premise more than one room in which there is regularly maintained a fixed counter or bar where beverages are served.	(an amount equal to the original license fee).

APPENDIX C

QUESTIONNAIRE SENT TO STATE OF
ALASKA LAW ENFORCEMENT AGENCIES

Please answer the following questions as completely as possible.

1. Are you aware of the existence of the Alcoholic Beverage Control Board, its operation and its role in the enforcement of ABC laws, rules and regulations?

Number of respondents commenting

26 Yes
2 Enforcement role is not well known
1 Aware of Board but have never seen any enforcement
1 Not aware of its role in enforcement
30

2. Do you feel that the enforcement staff of the ABC Board complements, duplicates or conflicts with the efforts of your law enforcement personnel? (if you can cite specific instances please do so.)

Number of respondents commenting

8 None of the above, not enough involvement so as to make a difference.
7 No
5 Conflicts
3 Complements
3 It should complement
1 Duplicates
4 Other
31

3. Are you notified when an ABC Inspector/Enforcement Officer is operating within your jurisdiction? Do you accompany him on his inspections and/or enforcement activities?

Number of respondents commenting - Part I

11	No
7	Yes
6	Never see any ABC investigators
5	Occasionally, sometimes
<u>2</u>	Other
<u>31</u>	

Number of respondents commenting - Part II

10	No
5	Yes
2	Seldom or occasionally
1	Only transport prisoners
<u>1</u>	Only when requested
<u>19</u>	

4. Do you have any cooperative working agreements with the ABC Board such as sharing information, notifying them of arrests made on licensed premises, etc.?

Number of respondents commenting

11	No
11	ABC sent copies of liquor related arrests and reports
4	Only on a rare occasion, small amount
3	ABC is notified but no response comes back
2	Yes
<u>1</u>	Not any more
<u>32</u>	

5. What evidence exists demonstrating that the absence of the Board would result in less effective enforcement of alcoholic beverage control laws or be detrimental to the public's best interest in any other manner?

Number of respondents commenting

13	None, no effect
3	Enforcement should be under Public Safety
3	Board may suspend or revoke the license
2	Little effect
2	Provides needed control
6	Other
<u>29</u>	

6. Are there any existing alcoholic beverage control laws you believe are obsolete, vague, unduly restrictive and/or inadequate?

Number of respondents commenting

16	Yes
9	No
3	Inadequate because of the lack of enforcement
1	Not generally
<u>29</u>	

7. What changes could be made to these laws or to the present system of enforcing them which would enable your agency to better serve the public?

Number of respondents commenting

8	More enforcement is necessary
7	Complete code revision needed.
4	Reduce hours bars can be open
4	Place enforcement under Public Safety
4	Impose stronger penalties.
3	Licensee should bear responsibility for minor on premises.
3	Minors should not be allowed in non-food premises
2	Investigators should be better trained
2	None
<u>5</u>	Other
<u>42</u>	

8. Any additional comments.

Number of respondents commenting

7	Laws and enforcement are inadequate or not effective
3	Take politics out of the ABC Board
3	Enforcement section is a joke, a paper tiger
3	Transfer enforcement to Public Safety
3	Enforcement staff is too small to be effective
2	Board has been cooperative
1	Eliminate present ABC enforcement but retain the issuance of licenses.
1	Rewrite liquor laws and do away with the Board

1 Board should not have any liquor industry representatives

1 Enforcement staff should work more closely with local police.

1
26 More restrictive liquor laws are needed

Note 1

Number of questionnaires sent to law enforcement agencies	56
Number of law enforcement agencies who responded	30
Response rate	54%

Note 2

Number of respondents comments does not always equal 30 as some respondents had more than one comment and some had no comments.

APPENDIX D

QUESTIONNAIRE SENT TO 1978
ALASKA MUNICIPAL LEAGUE MEMBERS

1. Is your city or borough given adequate notice by the ABC Board of proposed issuances of new licenses and/or transfers of existing licenses?

Yes 77% No 23%

2. Has the city or borough ever protested the issuance of a new or renewal license or the transfer of a license?

Yes 29% No 71%

If yes, what criteria does the city or borough use to protest a license?

3. Have all protests lodged by the city or borough resulted in a hearing by the Board or by a hearing officer appointed by the Governor?

Yes 40% No 60%

4. Is the current system of notification/protest/hearing adequate in allowing local government input into the licensing process?

Yes 27% No 73%

If no, should local governing bodies be

100% more involved in the licensing process?

-0- less involved in the licensing process?

Please explain.

5. Should the quota for beverage dispensary licenses be
- | | |
|--|------------|
| a. increased (to more than 1500 people per license)? | <u>8%</u> |
| b. decreased (to less than 1500 people per license)? | <u>8%</u> |
| c. eliminated? | <u>42%</u> |
| d. kept the same? | <u>42%</u> |

6. Should the local governing body have the authority to increase or decrease the quota within its jurisdiction?

Yes 75% No 25%

Please explain.

7. Are there any existing alcoholic beverage control laws you believe are obsolete, vague, unduly restrictive and/or inadequate?

Number of respondents commenting

6 Yes
 1 No
 7 No response

8. What changes could be made to these laws which would enable your local governing body to better serve its constituency?

Number of respondents commenting

2 More municipal control
 1 None
 1 Population quotas increased
 1 Eliminate restrictive licenses - ex. beer & wine only
 1 Bootlegging penalties should be stricter
 8 No response

- 9a. What do you feel the responsibility of state government should be in controlling the manufacture and sale of alcoholic beverages?

Number of respondents commenting

2	Regulate in areas not incorporated
2	Licensing
1	Minimal
1	None
1	Assist local governments
1	Total control
7	No response

- b. What do you feel the responsibility of local government should be in controlling the manufacture and sale of alcoholic beverages?

Number of respondents commenting

3	Establish rules more restrictive than the state
2	None
1	Enforce fire, health and building codes
1	Minimal
1	Allow for the voice of the community to be heard
1	Total control
5	No response

10. Do you feel that abolishing the ABC Board would have an impact on your community? On the State?

Number of respondents commenting

10 Yes

1 Abolish the Board would help

3 No response

11. Additional comments:

Note 1

Number of questionnaires sent to Municipal League Members 46

Number of Municipal League Members who responded 14

Response rate 30%

APPENDIX E

QUESTIONNAIRE SENT TO CURRENT LICENSEES
OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

% Responses
(see Note 1)

Yes No Opinion

1. Do you believe that the Alcoholic Beverage Control Board has operated in the public's best interest? 81% 10% 9%

Comments: _____

2. Do you believe that Alaska's requirements for obtaining alcoholic beverage licenses are adequate and effective in ensuring that the public is protected? 89% 7% 4%

Comments: _____

3. Do you believe that the ABC Board's procedures for processing the following types of applications are adequate:

a. new applications?	76%	14%	10%
b. transfers of ownership?	65%	25%	10%
c. transfers of location?	71%	17%	12%
d. renewals?	75%	19%	6%

Please comment on specific problems you have encountered with the application process. _____

4. Are you aware of any discriminatory practices involving licensing of minority groups? 5% 90% 5%

5. Do you believe that the population quota (one type of license per 1500 people) should be

a. increased (to more than 1500 people per license)	3%
b. decreased (to less than 1500 people per license)	9%
c. eliminated?	20%
d. kept the same?	68%

Please explain. _____

% Responses
(see Note 1)

No
Yes No Opinion

6. Do you believe that routine inspections of your licensed premises serve a useful purpose to

- a. the licensee? 66% 26% 8%
- b. the public? 73% 23% 4%

Comments: _____

7. When was the last time your licensed premise received a routine inspection by an ABC Board Investigator?

- a. within the past 6 months? 42%
- b. within the past year? 28%
- c. within the past 2 years? 6%
- d. over two years ago? 12%
- e. never? 12%

8. Have you ever been notified of a violation occurring on your licensed premise by an ABC Board Investigator?

10% 90% -0-

Comments: _____

9. If yes, was the violation clearly explained?

100% -0- -0-

Comments: _____

10. Was there any follow-up by the ABC Board to make sure the violation had been corrected?

66% 17% 17%

Comments: _____

11. Do you believe that the current penalties prescribed by the ABC Board against licensees for convictions are

- a. too harsh 13%
- b. fair 80%
- c. too lenient 7%

Comments: _____

% Responses
(see Note 1)

Yes No Opinion

12. Would any of the following help prevent alcoholic beverage control law violations from occurring:
- a. mandatory license suspension and/or fine for each conviction? 24% 50% 26%
 - b. mandatory license revocation after a set number of convictions? 68% 17% 15%
 - c. commissioning the ABC Board Investigators as special police officers? 11% 67% 22%

Comments: _____

13. Are you aware of any discriminatory practices of the ABC Board in suspending or revoking licenses? 2% 95% 3%

Comments: _____

14. Are you aware of any licensed premise in Alaska that has allowed violations to occur and has not had any action taken against it by the ABC Board, local police or State Troopers? 10% 81% 9%

Comments: _____

15. Are there any existing alcoholic beverage control laws you believe are obsolete, vague, unduly restrictive and/or inadequate? 26% 44% 30%

Please explain. _____

16. Do you have any complaints concerning the service provided by the support staff of the Alcoholic Beverage Control Board? 12% 81% 7%

Please explain. _____

17. Additional Comments:

Note 1

Number of questionnaires sent to current licensees	206
Number of current licensees who responded	59
Response rate	29%

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH S - JUNE 1979

February 6, 1979

Mr. Gerald Wilkerson
Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, AK 99811

Dear Mr. Wilkerson:

This letter responds to the preliminary report as a result of your sunset review of the Alcoholic Beverage Control Board. My response to each finding follows:

Recommendation No. 1

Enforcement responsibilities for the Alcoholic Beverage Control Board should be transferred to a special ABC enforcement unit within the Department of Public Safety.

We disagree.

You might find this disagreement ironic in view of the fact that I proposed moving the Alcoholic Beverage Control function to the Department of Public Safety four years ago. When I first became Commissioner I wanted to concentrate the department's efforts in taxation and treasury matters. Accordingly, I proposed transferring the Motor Vehicle Division and the Alcoholic Beverage Control Board to the Department of Public Safety. Although the Legislature accepted our proposal with regard to the Motor Vehicle Division it rejected our proposed transfer of the Alcoholic Beverage Control Board.

Since that time I have come to believe that it is not as important which agency a particular division resides in as it is how it functions. In particular, I believe that if there are problems in the enforcement area, those

problems should be dealt with directly rather than with the superficial answer of transferring between agencies. I also think that splitting the division between two agencies would be disastrous and would lead to confusion, lack of communication and direction. All parts of the Alcoholic Beverage Control program must be coordinated and work together.

Again, as I have said, it is far less important which agency is responsible for the program as is the commitment by the particular agency to make the program work. I believe that the Department of Revenue has the commitment to making the ABC program work well and to solve its problems. To solve problems in the enforcement area we have been working on several fronts. First of all we have been seeking additional enforcement staff to increase our enforcement effort and have had some success. We have been working to get our enforcement staff properly trained and have been able to secure investigator training at the State Trooper Academy for several of our enforcement officers. We have also been working on establishing uniform enforcement procedures and regulations. Our first step in that direction was the adoption of a procedures manual, and we are now near completion of a comprehensive set of regulations on all phases of Alcoholic Beverage Control including enforcement related topics. We will continue our efforts in obtaining adequate staffing and training for the staff and uniform rules of conduct which will be followed by the enforcement staff. In particular in our regulation effort we are attempting for the first time to set out in specific terms the rules of substantive conduct for licensees and their licensed premises. When we are finished we hope to have a full explanation as to what conduct is prohibited, what is needed to prove a violation and what penalty will be assessed for a particular violation. With these comprehensive rules our enforcement efforts will be many times more successful. Although the enforcement program still needs improvement I believe it has come a long way in just the last couple of years.

The thrust of this recommendation seems to be aimed at criminal enforcement, which is why I assume you are most concerned that the enforcement officers carry weapons and have the power of arrest. Criminal enforcement, however, is only one aspect of the total enforcement program. Only a portion of the violations rise to the level of criminal behavior. Most violations are of a civil nature and demand civil action in the form of license suspension, revocation, premises closure, or other monetary penalty. Enforcement officers must be able to deal in the full range

of enforcement activities whether civil or criminal. In all areas they should be equipped to put together the necessary evidence and documentation to insure compliance with the law, but you certainly don't need to carry weapons to have a successful enforcement program. If criminal behavior is present the enforcement officers should work closely with the local police and the state troopers as they have in the past. Several criminal complaints have been filed in the past year through the coordinated work of our enforcement officers and police agencies. We should not forget however the important area of civil enforcement and enforcement officers must be trained and motivated in this enforcement area as well.

In summary, I believe that problems in the enforcement area should be dealt with directly through adequate funding, training and uniform procedures, all of which we have been working towards. I do not believe that transferring the enforcement program to a police agency is the answer, and I believe that substantial progress is being made to upgrade our enforcement program.

Recommendation No. 2

The Alcoholic Beverage Control Board should be placed under the administrative control of the Department of Commerce and Economic Development with administrative and licensing responsibilities transferred to the Division of Occupational Licensing.

We disagree.

As I mentioned in response to Recommendation No. 1, nothing is to be gained from transferring Alcoholic Beverage Control to another agency. I also think it would be especially bad to separate licensing, administration and enforcement because a total coordinated approach is needed for Alcoholic Beverage Control. Enforcement, licensing and administration and Board activity depend upon each other and separation between agencies would make this coordination difficult.

With regard to your recommendation for separating the enforcement functions from the rest of the ABC program, I am particularly puzzled by the statement in the report that the enforcement officers should be insulated from the influence of the board. I do not understand this statement since it is the board which the Legislature has given the authority and policy making power for Alcoholic Beverage Control. They should not only influence enforcement efforts, they should direct

enforcement efforts through their enforcement policy decisions. Enforcement officers, as any of the staff, should be accountable to the board for their actions in following or not following board policy.

Recommendation No. 3

The Alcoholic Beverage Control Board should adopt a regulation delegating authority to the director for the routine issuance, transfer and renewal of unprotested licenses.

We agree. As you mentioned the board is considering a regulation which will do this very thing. We made this suggestion to the board several months ago in our regulation effort and they agreed that it made sense. Just this one change will help to insure that the board is able to conduct its true function as the body which sets basic policy through the adoption of regulations and insures that its policy is being correctly carried out by making the final decision in appeals of actions taken by the staff. This action will streamline the licensing program tremendously.

In making this delegation, however, we want to make sure that there are careful checks and controls to avoid abuses and insure that the board's public policy is being carried out.

Recommendation No. 4

No two members of the Alcoholic Beverage Control Board should be engaged in the same business, occupation or profession.

We agree.

Recommendation No. 5

Renewals of licenses should be made in a timely manner.

We agree with the statement that renewals should be made in a timely manner. We disagree, however, with your assumptions and your conclusions regarding municipal input during the renewal process. In summary, we believe that there are efficiencies which could be made to shorten the renewal process but we don't think that full and deliberate municipal comment should be sacrificed simply for the sake of efficiency.

First, it should be noted that the notice of renewal requirement to municipalities is not a tax collection service. It provides an annual review by the public and municipal officials at the municipal level of liquor establishments within their boundaries with the right to protest a renewal if the municipality believes it would not be in the public interest. There are several reasons other than the nonpayment of taxes

for a municipality to protest the renewal of a license including the health, safety and general welfare of its citizens.

I believe the public interest of allowing full and deliberate review and input by the public and municipal officials in renewing licenses, far outweighs shortened renewal time.

Recommendation No. 6

The requirement for a \$2,500 cash or surety bond for a beverage dispensary license should be eliminated from AS 04.15.090.

We disagree that the penal bond for a beverage dispensary license should be eliminated but believe instead that it should be increased and applied to all other licenses.

Although in some areas of the state the quota of licenses has been reached so that licenses have become valuable in their right, other areas of the state have not reached that point.


In addition, a cash or surety bond provides a form of security to satisfy any claims that the state may have against a licensee. We agree, however, that because of inflation \$2,500 may be unrealistically low today. Therefore we believe that it should be raised to \$10,000 and perhaps applied to all licensees.

Recommendation No. 7

The Office of the Governor should keep appointments of members of the Alcoholic Beverage Control current and stagger them as required by AS 39.05.060.

We understand that the Governor's Office has already responded to this recommendation and therefore no further comment is necessary.

Sincerely,


Sterling Gallagher
Commissioner

February 6, 1979

Mr. Gerald Wilkerson, Legislative Auditor
Division of Legislative Audit
Pouch W
Juneau, Alaska 99801

Dear Mr. Wilkerson:

This letter is to be in response to your preliminary "Performance Review of the Alcoholic Beverage Control Board", dated November 3, 1978. Please also consider my letter of November 13, 1978 as a response as well, where applicable.

I could only agree with the statements concerning routine inspections, as I have no evidence to the contrary. I cannot, as Board Member, conduct the kind of review to determine if such inspections are made except to ask about specific cases.

Your comments about Notices of Violation have been made several times by me at Board meetings. They may have a "limited" utility in getting the attention of a licensee, otherwise they have no teeth. Due process probably dictates that such "Notices" absent a conviction could not be used in a future disciplinary action. However, they could be the basis of whether or not to take action on a license, if they are subsequent to the latest renewal. The same goes for information transmitted by a local police unit. If the local police observes illegal activity it should prosecute and if possible obtain a conviction - not merely forward information to the ABC Board staff.

Yes, enforcement staff should spend their time in enforcement, not assisting the licensing staff. Given the size of the staff and the need often to answer questions quickly, I think 15% is not unreasonable as a factor of time spent by enforcement.

The major deficiency is that the ABC investigator has limited authority. As I understand it, the Department of Revenue does not support the idea that an investigator should have police officer authority, despite my efforts at persuasion. This problem would be cured by transfer to the Department of Public Safety. However, this alone may not be sufficient to take care of the deficiencies you have

Mr. Gerald Wilkerson, Legislative Auditor
February 6, 1979
Page Two

noted. I am sure that greater manpower is necessary to adequately regulate and police 1,300 establishments. The Department of Public Safety would be foolish to accept this responsibility without making a very strong pitch for more than five personnel. I have said before I am neither enthusiastic of the transfer nor firmly in opposition. Perhaps such a change would be dramatic enough to accomplish a useful purpose, simply because it is a change.

Obviously, an alternative is a bigger and better trained staff with greater authority and better cooperation with local and state police.

Recommendation #2 is really part of #1. The two together raise serious and legitimate questions as to the current administrative structure. The Board is appointed by the Governor with certain powers over regulation of the liquor industry. The staff is hired by the Department of Revenue (including the Director) with no voice from the Board. The Board presumably has some authority over the staff, yet there little real authority, and the Board, because of its part-time status can not really supervise closely.

Yet, historically, control and regulation of liquor was deemed important enough to establish an independent agency with nothing else to do.

Recommendation #3 is now and has been a part of the regulations in the adoption process. These have been needed for several years, as the ones in existence are often poorly written, vague or out of date. This project is one we have been working since I came on the Board two years ago. We did get additional money in the budget to pay for it. This must be the number one priority for the Board. Included in regulations adopted should be the standards you earlier referred to. Regulations can also give the public notice as to what is required for licensure or protest.

The next priority must be a complete re-write of Title 4. Title 4 creates many many problems just in its own interpretation. Piecemeal amendments must stop until this is accomplished. I urged this to a luncheon meeting of the Senate Alcoholism Committee chaired by Senator Colletta in November, 1977. I am delighted the project is underway.

Mr. Gerald Wilkerson, Legislative Auditor
February 6, 1979
Page Three

Recommendation #4 is not really that important. See my response of November 13, 1978 for a complete response. This change would have no real impact and is probably going to raise emotions unnecessarily. The text suggests "industry" domination of the Board is possible. I suspect on only a very few issues, if any, has there been an "industry" position.

Recommendation #5 is hard to argue with - but I don't think we ought to remove the notice to the local government, so it can protest. However, we should find a way to speed up renewals. Perhaps by delegating renewals and licenses issuances to the Director we could speed up the process. Also, as in all municipal protests, there should be a clear protest set forth with specific reasons, not necessarily including non-payment of taxes. (As an aside, we should also review the merits of requiring creditors be satisfied prior to transfer.)

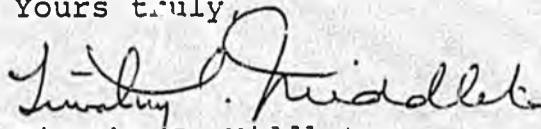
Recommendations #6 and #7, are meritorious.

An area of specific concern to me is the so called hotel-motel license exception to the population quota. This section could result in the elimination of the small neighborhood bar.

In summary, the number one priority of the legislature should be a complete and sensible re-write of Title 4, the other suggestions will not be of much use unless that is accomplished. Indeed, if only your suggestions are adopted, the problem of enforcement of ABC laws will be exacerbated, because there will be a feeling the problem is solved. The priority of the Board should be adoption of a comprehensive set of regulations.

Thank you for an opportunity to comment on your report.

Yours truly,


Timothy G. Middleton

TGM/lh

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

November 3, 1978

SUMMARY OF: A Performance Review of the Alcoholic Beverage Control Board.

PURPOSE OF THE REVIEW

In accordance with the provisions of Alaska Statutes 24.20.271(1) and 44.66.050 (sunset legislation), a review of the Alcoholic Beverage Control Board was conducted to determine whether there is a demonstrated need to continue liquor regulation in its present form. To determine that need we reviewed Board activities to see if the Board has been operating in an efficient and effective manner. The major areas reviewed were the Board's program, licensing, enforcement, administration and affirmative action functions.

REPORT CONCLUSION

In our opinion, the Alcoholic Beverage Control Board should continue to regulate and license those persons engaged in the liquor industry. Because of the growing body of knowledge on the potential dangers of alcohol and its attendant social and economic costs, we concur that the public need for this type of regulation continues to exist.

However, certain changes need to be implemented for the ABC Board to more effectively execute its mandated responsibilities. Enforcement responsibilities of the Board should be transferred to a special investigative unit within the Department of Public Safety. This transfer would eliminate the deficiencies in the ABC enforcement operation which render it ineffective and would provide continuing managerial control, proper training and supervision, and insulate the enforcement staff from possible Board influence.

The transfer of enforcement responsibilities to the Department of Public Safety would reduce the ABC staff to a size too small to justify maintaining a separate agency. We therefore recommend that the Alcoholic Beverage Control Board be placed under the administrative control of the Department of Commerce and Economic Development.

Administrative and licensing responsibilities of the Board should be transferred to that Department's Division of Occupational Licensing with authority for routine issuances, transfers and renewals of unprotested licenses delegated by the Board to the Director of the Division.

Other possible amendments to Title 4 which would improve the efficiency of the licensing function are: (1) removal of the requirement for public notice to local governing bodies on renewals of liquor licenses in AS 04.10.270 which is used primarily as a tax collection service for unpaid local taxes, and (2) removal of the requirement for the \$2,500 surety or cash bond in AS 04.10.040 which has become obsolete since its enactment in 1939.

Liquor industry representation on the Alcoholic Beverage Control Board should be limited to one member to eliminate the possibility of an industry majority comprising a quorum of the Board and conducting its business. Appointments of all members of the Board when terms expire or positions are vacated should be made by the Office of the Governor in a timely manner and terms should be properly staggered as required by AS 39.05.060.

In conclusion, the Alcoholic Beverage Control Board should analyze and evaluate its purpose and methods and take the necessary actions needed to perform and fulfill its responsibilities to the public.

STATE OF ALASKA

THE LEGISLATURE

BUDGET AND AUDIT COMMITTEE

AUDIT DIVISION
POUCH W—ALASKA OFFICE BUILDING

FINANCE DIVISION
POUCH WF—STATE CAPITOL

JUNEAU, ALASKA 99811

December 29, 1978

SUMMARY OF: A Review of the Alaska Industrial Development Authority.

PURPOSE OF THE REVIEW

In accordance with the provision of Title 24 and 44.61.200 of the Alaska Statutes, a review of the Alaska Industrial Development Authority (AIDA) was conducted to determine if the financial statements for the fiscal year ended June 30, 1978 are fairly presented.

FINANCIAL STATEMENTS

It is our opinion that the financial statements present fairly the financial position and results of operations for the year ended June 30, 1978.

STATE OF ALASKA

DEPARTMENT OF REVENUE

ALCOHOLIC BEVERAGE CONTROL BOARD

JAY S. HAMMOND, GOVERNOR

201 E. 9TH AVE.
ANCHORAGE, AK. 99501

May 9, 1979

The Alcoholic Beverage Control Board has written new regulations for public hearing and review. As an interested party a copy of the proposed regulations are enclosed for your review. A copy of the notice of public hearing is also enclosed. Please note page 3 and 4 of the notice for new topics not previously covered by regulation.

Your comments will be welcome and appreciated. If you have any questions, please do not hesitate to contact this office.

Sincerely,



Patrick L. Sharrock
Director

PLS:vk
Enc.

PROPOSED REGULATIONS
OF
THE ALCOHOLIC BEVERAGE CONTROL BOARD

May 1, 1979

[Proposed comprehensive set of regulations to replace all present regulations in Title 15, Chapter 20 of the Alaska Administrative Code and to implement and clarify Title 4 of the Alaska Statutes titled "Alcoholic Beverages"]

PROPOSED REGULATIONS

(These proposed regulations are subject to revision by the Alcoholic Beverage Control Board.)

Title 15. Revenue

Chapter 20. Alcoholic Beverage Control Board

ARTICLE I.

ADMINISTRATION

Section

- 10. Offices
- 20. Staff
- 30. Delegation of Authority
- 40. Public Meetings
- 50. Information Bulletins

Sec. 10. Offices

(a) The central office of the Alcoholic Beverage Control Board shall be at Anchorage, Alaska. All applications, petitions, protests and other correspondence and communications of a formal nature shall be submitted in writing, upon prescribed forms if appropriate, to the board at its central office, and shall not be considered properly or timely filed unless and until received there.

(b) The board may maintain such other field offices as the board deems appropriate, and copies of relevant statutes, regulations, prescribed forms and other directives or instructions as may be necessary and appropriate will be made available at such offices as well as the central office.

Sec. 20. Staff

(a) The director of the board is responsible for the management of the board's offices and the administration of the board's functions. The director shall enforce the statutes relating to alcoholic beverages and the rules and regulations promulgated by the board. The director shall issue all licenses provided for by law.

(b) The director shall employ and supervise such clerical and investigative personnel as necessary and appropriate to the administration of the board functions and office management, and shall prescribe their duties and authority.

Sec. 30. Delegation of Authority

(a) All duties, powers and authorities of the board, except those specifically retained by the board in subparagraph (b), are delegated to the director, including without limitation the power and authority to approve or deny applications for new licenses or permits and for renewals, transfers, or relocations of existing licenses; to issue licenses and permits; and to prescribe the forms of applications, reports and other documents necessary and proper to the administration of board functions.

(b) The board retains the power and authority to adopt rules and regulations; to issue policy directives; to prescribe the fees to be paid for licenses and permits where no fees are prescribed by statute or regulation; to hear and adjudicate administrative appeals from the decisions of the director approving or denying applications for new licenses or permits and for renewals, transfers or relocations of existing licenses; and to hear and adjudicate administrative proceedings for the suspension or revocation of a license.

Sec. 40. Public Meetings

(a) The board shall meet at least once each year in each of the four judicial districts of the state, as it determines, and shall conduct public meetings from time to time at the call of the director. All meetings of the board are open to the public except as otherwise provided in accordance with law, and the director shall give reasonable public notice of the board's meetings.

(b) To the extent and in the manner that the efficient conduct of business will allow, the board will receive public comment upon items of agenda business and other issues of public interest as it relates to alcoholic beverages, including the conduct of business by licensees and the compliance by licensees and others with the statutes and regulations relating to alcoholic beverages. Public comment may also be submitted to the board in writing by any person at any time.

(c) The notice and right to be heard provided for in this section is not an administrative remedy for persons interested in or aggrieved by board action.

Sec. 50. Information Bulletins

From time to time as it deems necessary and appropriate the board may issue to licensees, municipalities and the public and maintain as official records, information bulletins regarding matters of importance with respect to the statutes and regulations relating to alcoholic beverages and the board's policies and procedures relating thereto. Information bulletins do not have the force and effect of law but rather are intended to be of guidance and assistance to licensees and the public in their dealings with the board regarding the statutes and regulations relating to alcoholic beverages.

ARTICLE II.

LICENSING

Section

- 10. Applications
- 20. Petitions
- 30. Public Notice
- 40. Public Comment
- 50. Protests
- 60. Action Upon Application
- 70. Issuance of Licenses
- 80. Grounds for Denial of Application
- 90. Renewals
- 100. Transfers
- 110. Licensed Premises
- 120. Extension and Reduction of Premises
- 130. Surrender of Licenses
- 140. Transfer or Relocation After Loss of Premises
- 150. Management Agreements
- 160. Death or Dissolution of a Licensee

Sec. 10. Applications

(a) All applications for new licenses and for renewals, transfers and relocations of existing licenses shall be upon forms prescribed by the director.

(b) Any application which is incomplete or in any respect insufficient shall be returned to the applicant, together with whatever fee, if any, was tendered with the application.

(c) An application fee is required for all applications submitted to the board in accordance with the fee schedule adopted by the board which shall be available at each board office. Except for renewal applications, the license fee is not required to be submitted until the application is granted.

Sec. 20. Petitions

(a) When required by statute or regulation, a petition is a necessary part of an application for a new license, and for renewal, transfer or relocation of an existing license, and an application submitted without the required petition is insufficient. All petitions must be submitted upon a form prescribed by the director, which shall be available at all board offices. Petition signatures are invalid unless obtained within the 90-day period immediately preceding the submission of the application. Once a petition has been filed with the board, the petition is considered finalized.

(b) Persons signing petitions relating to licenses must be 19 years of age or older. In addition, the person must be a permanent resident of the geographical area relevant to the petition and must have been so for 30 days immediately prior to signing.

Sec. 30. Public Notice

(a) At least 30 days before filing an application for a new license or for transfer or relocation of an existing license, an applicant must commence public notice, which shall be bilingual when necessary, as determined by the director. Notice shall be given in a form prescribed by the director.

(b) Notice shall be given by posting, for a period of at least 10 days, a true copy of the application at the location of the proposed premises, at the post office nearest to the proposed location, and at one other conspicuous location in the area of the proposed premises; and by an announcement published once a week for three consecutive weeks in a newspaper of general circulation in the area, or broadcast between the hours of 8:00 A. M. and 8:00 P. M. twice a week for three consecutive weeks by a radio or television station serving the area.

(c) Proof of posting and of publication shall be made by affidavit which must be attached to the application.

(d) The application must be filed with the board within 60 days of commencement of the publication of the notice.

Sec. 40. Public Comment

Any person who is a resident of Alaska may submit written comment to the board regarding an application for a new license or for renewal, transfer or relocation of an existing license, which will be considered in determining whether to approve or deny the application.

Sec. 50. Protests

(a) Any interested person who is a resident of Alaska may protest the approval or denial of an application for a new license or for the renewal, transfer or relocation of an existing license and invoke a formal hearing prior to a final decision by the board in accordance with the adjudication procedures of Article VI of these regulations.

(b) Within 30 days of receipt of the notice of intent to approve from the director, a municipality may protest the approval of an application and invoke a formal decision-making proceeding in accordance with the adjudication procedures of Article VI of these regulations. It will then be the protesting municipality's responsibility to prosecute the case at this hearing. In the event the protesting municipality does not prevail at the hearing, the board in its discretion may approve the application.

(c) If for any reason the governing body requires more than 30 days for consideration of the issue as set forth in (b) above, it may request an extension of time from the director.

Sec. 60. Action Upon Application

(a) The director shall approve or deny applications as appropriate in accordance with law and these regulations.

(b) The director may conduct an informal public hearing, at his discretion, before taking final action upon an application.

(c) Before taking final action upon an application within a municipality, the director shall transmit written notice of the intent to approve the application to the city governing body if the application is for premises within an incorporated city, or to the borough assembly if the application is for premises within the area of an organized borough outside the boundaries of an incorporated city.

(d) The director may not take final action upon an application until at least 30 days after transmitting notice to a municipality.

(e) Notice to a municipality of the director's intent to approve an application does not vest in the applicant any right to the approval of the application and is without prejudice to the director's right to deny the application.

(f) Upon receipt of a formal protest of an application in accordance with the adjudication procedures of Article VI of these regulations, the director may not take final action upon the application.

(g) Upon denial of an application, the director shall notify the applicant in writing^A the reasons for the denial and inform the applicant of the right to an administrative appeal.

(h) At any time prior to making a final decision regarding a license, the director may reconsider and may reverse his previous decision.

Sec. 70. Issuance of Licenses

Upon approval of an application for a new license or the renewal, transfer, or relocation of an existing license, and upon payment of the prescribed license fee, and upon receipt by the board of necessary public health and public safety approvals, and upon inspection by an enforcement agent of the board, the director shall issue an appropriate license.

Sec. 80. Grounds for Denial of Application

The following, without limitation, are grounds for denial of an application for new license or for transfer or relocation of an existing license:

(1) Granting the application would be contrary to the public interest;

(2) Denial of the application is required by law or regulation;

(3) The application contains a false statement of material fact.

Sec. 90. Renewals

(a) Applications for renewals of licenses shall be filed on or before December 31 of each calendar year. Except as set forth below, all applications will be automatically renewed on or before February 28 of each calendar year and shall be accompanied by payment of the required license fee.

(b) Pending the outcome of a board hearing or judicial determination as to the legality of issuing a license, a license is not automatically renewable.

(c) A license is not automatically renewable in the case of a conviction of the licensee for a violation of law, regulation or municipal ordinance relating to alcoholic beverages.

(d) A license which has been revoked is not renewable, and any subsequent application shall be treated as an application for new license.

(e) A license is renewable upon application after December 31, and on or before February 28, of each calendar year upon payment of a penalty fee which shall be equal to the annual license fee or \$50, whichever is less.

(f) A license which has not been renewed on or before February 28 of each calendar year is automatically forfeited and may only be reissued upon application filed during the six-month period beginning February 28, upon a showing of good cause for the failure to timely renew, and upon payment of the license fee plus a penalty equal to the annual license fee or \$50, whichever is less.

(g) Licenses are automatically forfeited for premises at which business has not been conducted at least 30 days per calendar year for a minimum of eight hours per day. The burden of proof for this requirement rests with the licensee.

Sec. 100. Transfers

(a) Transfers of licenses require the prior written approval of the board upon application of the transferor.

(b) An application for a transfer of a license, or of any interest in a license, shall also contain information from the transferee as required by the board.

Sec. 110. Licensed Premises

(a) A license is issued for a specific area which is the licensed premises, and which shall be clearly designated in a line drawing accompanying the application. The principal address of the licensed premises and the business name under which the licensee is doing business at that address shall be indicated on the license.

(b) The licensee shall post the license conspicuously on the licensed premises.

(c) A licensee shall not alter the area of the licensed premises nor change the business name under which he is doing business upon the licensed premises without the prior written approval of the board.

(d) When a licensed premises is directly adjacent to an unlicensed area, the licensee must notify the public by conspicuously placed signs which area is licensed ("wet") and which is unlicensed ("dry"). Areas designated as "wet" or "dry" remain so at all times and for all purposes.

(e) When the licensed premises consists of more than one room in which alcoholic beverages are served for consumption therein, the board shall issue to the licensee a copy of the original license issued by the board to be displayed in each such separate room.

(f) A licensee doing business in separate rooms under separate business names, whether or not at the same general location and at the same principal address, shall be considered to be doing business upon separate premises which must be separately licensed accordingly, except as set out in Article VII, Section 50.

Sec. 120. Extension and Reduction of Premises

(a) A licensee may reduce or extend the area of the licensed premises only upon approval of the director.

(b) The director may reduce the area of the licensed premises described in an application for a license where, in the judgment of the director, a reduction in area is in the best interests of the public or where a reduction in area is necessary to insure adequate control over the sale or consumption of alcoholic beverages on the premises.

Sec. 130. Surrender of Licenses

(a) Upon loss of the licensed premises, for whatever reason, or upon ceasing to conduct business upon the licensed premises for a period of one week or more, a licensee shall surrender the license to the board, to be reissued upon request when the conduct of business is resumed or the license is transferred or relocated with the approval of the board.

(b) If at any time the licensee ceases personally or through his employees or agents to exercise the authority and responsibility for the conduct of business upon the licensed premises, the licensee shall surrender the license to the board. Unless and until the licensee surrenders the license and so long as business is conducted upon the licensed premises, the licensee is solely responsible and liable therefor, and no other person may acquire or be permitted to acquire a direct or indirect financial interest in the conduct of the business without transfer of the license upon approval of the board.

Sec. 140. Transfer or Relocation After Loss of Premises

(a) When a licensee loses the premises to which a license attaches, whether the loss is voluntary or involuntary, the licensee must within 90 days of the loss of the premises:

- (1) apply for a relocation or for a transfer;
- (2) submit to the board a written statement of intent to reestablish operations at the original premises; or
- (3) request an extension of time for filing the application or statement as set out in (1) and (2) above.

(b) Failure of a licensee to comply with (a) above is grounds for the director to begin proceedings for revocation of the license under Article VI of these regulations.

(c) All licensees who wish to relocate under AS 04.10.220 must qualify under the population criteria for their new location to be found acceptable under the statute.

Sec. 150. Management Agreements

(a) A management agreement may be entered into between a licensee and another party who is not a salaried employee of the business or does not participate in any way in the proceeds of the business. Customarily these agreements are entered into pending transfer of ownership of a license and licensed premises with the proposed transferee acting as manager and receiving a flat fee for his services. All management agreements must be reviewed and approved by the director prior to the time the manager becomes obligated to perform under the agreement.

(b) The request for approval of the management agreement must establish that financial responsibility and primary responsibility for operation and control of the business remain with the licensee.

(c) Any manager of a licensed premises who is remunerated on the basis of a percentage of the proceeds of the business must be a named licensee on the license.

Sec. 160. Death or Dissolution of a Licensee

(a) Upon the death of an individual who was the sole licensee of licensed premises, and upon the dissolution of a corporate licensee, the license shall be immediately surrendered to the board, and no business may thereafter be conducted upon the licensed premises unless and until a new license is issued or the license is reissued or transferred with the approval of the board.

(b) Upon written request made by the legal representative of the estate of a deceased individual licensee, the director may grant permission to the representative to operate the business upon the licensed premises for a reasonable time pending legal disposition of the estate and arrangements for transfer of the license, and upon terms and conditions specified by the director. This request must be made within 90 days of the death of the licensee.

ARTICLE III

LICENSES

Section

10. Restaurant and Roadhouse Licenses
20. Club License
30. Common Carrier Dispensary Licenses
40. Community Liquor License
50. Beverage Dispensary License
60. Hotel-Motel/Tourism License under Section 260

Sec. 10. Restaurant and Roadhouse Licenses

(a) The entire business conducted on the licensed premises of a restaurant or roadhouse must be under the sole operation and control of the licensee.

(b) Prior to the issuance of a restaurant license, the applicant must provide evidence to the board in the form of a menu sufficient to establish that meals are presently available and being furnished to the public on the premises or that they will be available prior to operation under the license. No restaurant license may be issued until such meals are available.

(c) Prior to the issuance of a roadhouse license, the applicant must provide evidence to the board establishing that food is available to be served to the public or that it will be available prior to operation under the license. No roadhouse license may be issued until such food is available.

(d) Holders of a restaurant license may serve beer or wine only to a person who has purchased a meal.

(e) Failure by the holder of a restaurant license to furnish meals to patrons or by the holder of a roadhouse license to have food available to be served to patrons is grounds for the board to suspend or revoke the license.

Sec. 20. Club License

(a) A member of a club which is the holder of a club license is defined as a person who has a paid-up membership in the organization and who has all voting rights and full membership privileges. Persons who previously were spouses of deceased members may be accorded club privileges.

(b) A guest is a person who enters the club premises on the invitation of a member. A guest may be served alcoholic beverages when accompanied personally by said member. A guest shall be required to leave the premises immediately upon the departure of the member who extended the invitation of entry.

(c) All alcoholic beverages served are for consumption on the premises only.

(d) The issuance of a club license is a privilege extended to certain qualified organizations which do not traffic in alcoholic beverages for profit and are operated solely for social, recreational, political, benevolent or athletic purposes, but not for pecuniary gain.

(e) Service of alcoholic beverages to the general public upon a club's premises requires a caterer's permit by a qualified beverage dispensary licensee.

Sec. 30. Common Carrier Dispensary License

(a) Any concessionaire who sells and dispenses alcoholic beverages within Alaska on a common carrier must be licensed under this title.

(b) Any common carrier, whether belonging to an individual or to a business or governmental entity, and whether involved in intrastate, interstate or international travel, may purchase alcoholic beverages within the state only if it is the holder of a common carrier dispensary license.

Sec. 40. Community Liquor Licenses

(a) After receipt of a proper petition, the governing body of a first or second class city which qualifies for a community liquor license under AS 04.10.139 shall place upon a separate ballot at the next municipal election the following questions: "For the issuance of a community liquor license . . . (yes or no)" and "If the above proposal is approved, the city should apply for either: a beverage dispensary license . . . (yes or no) or for a retail (package store) license . . . (yes or no)". If the proposal is approved by a majority of the voters and if all statutory requirements are met, the board may issue such a license.

(b) The voters of an incorporated city which is also a first or second class city may petition for an election designated a local option election, to prohibit the sale of alcoholic beverages by private persons within the city, and at the same time for a vote for the city to acquire a community liquor license. After receipt of such a petition, the governing body of the city shall place upon a separate ballot at the next municipal election the following question: "For prohibition of the sale of alcoholic beverages by private persons and for the city to acquire a community liquor license . . ." (yes or no) If the proposal is approved and if all statutory requirements are met, the board may issue the community liquor license.

(c) Following approval by the board of a community liquor license to a city, the board may not approve any other new license within the city except a license excepted under AS 04.10.430(c), for a minimum period of one year from the date of issuance of the community license and until the voters, in accordance with AS 04.10.430(a) at a subsequent election, vote to cancel the community license or the city council decides to not renew it. Licenses already issued within the city and licenses on premises outside the boundaries of a city are not affected by the issuance of a community liquor license unless the city has also voted under AS 04.10.430(a) to not permit the sale of alcoholic beverages by private licensees.

Sec. 50 Duplicate Beverage Dispensary License

(a) No further duplicate beverage dispensary licenses shall be issued following adoption of these regulations except as set forth under (c)(2) below.

(b) A licensee who holds a duplicate beverage dispensary license at the time of adoption of these regulations may submit application to the board for an extension of premises to incorporate the premises presently designated in the duplicate license into the principal licensed premises.

(c) If the premises currently designated under the duplicate license are found by the board to be too remote or disconnected from the principal licensed premises to be incorporated into them as an extension of premises, the licensee shall

(1) apply for a new beverage dispensary license for the premises previously covered by the duplicate license; or

(2) In the event the population criteria prevents a new beverage dispensary license from being granted at the location of the present premises, apply for a revised duplicate beverage dispensary license. This revised license shall contain a notation that the duplicate license is granted to protect the "grandfather rights" of the licensee and that although it may be renewed, it may not be transferred to any other owner, in whole or in part.

(d) Holders of "grandfather rights" duplicate beverage dispensary licenses shall be granted priority in applying for new beverage dispensary licenses as openings in the class occur.

(e) All duplicate beverage dispensary licenses remaining under "grandfather rights" provisions shall be subject to the following:

(1) a duplicate license must be conspicuously displayed in the room for which it is issued;

(2) the fixed counter or service bar in the duplicate premises must be staffed at all times when the duplicate premises are open to the public;

(3) the duplicate premises must be in operation for a minimum of 30 days each year in order for the duplicate license to be renewed;

(4) the license fee shall be in an amount equal to the fee for the license for the principal licensed premises;

(5) the status of a duplicate license is subject to the principal licensed premises; any suspension or revocation of either a principal or a duplicate license affects the principal and all duplicate licenses related to it.

Sec. 60. "Hotel-Motel/Tourism" License Under Section 260

(a) No new license may be issued outside the population quota under the exception set out in AS 04.10.260 if the population quota permits the license to be regularly issued.

(b) The board may approve the issuance of a license under Section 260 only when it is clear that the license would encourage tourism and also would be in the best interest of the permanent residents of the locality.

(c) No license issued under Section 260 may be automatically renewed when the board acquires evidence that the issuance of the license is not encouraging tourist trade.

(d) Only one license may be issued under Section 260 to any one tourist facility.

(e) If a tourist facility has more than one license which was originally issued under AS 04.10.260, the number of licenses issued under Section 260 shall be reduced by reissuing one of those licenses whenever an opening occurs within the class of one of the existing licenses, permitting the issuance of a regular license of that class.

(f) With the exception of a license granted to an airport terminal facility, any license issued under Section 260 must always exist with room and eating accommodations for the public, the license cannot be transferred to another licensee without transfer of the total facility, and the licensee must be the operator of the total facility.

(g) No license issued under Section 260 may be transferred to another location.

ARTICLE IV

GENERAL PROVISIONS REGARDING LICENSEES AND LICENSED PREMISES

Section

- 10. Public Health and Public Safety
- 20. Adulteration, Misbranding and False Advertising
- 30. Warehousing and Transporting
- 40. Prohibited Conduct
- 50. Refusal to Admit Minors
- 60. Determining if Patron is a Minor
- 70. Designation of "Restaurant Premises"
- 80. Credit Sales
- 90. Credit Purchases
- 100. Liability of Joint Licensees
- 120. Percentage Leases
- 130. Sale on Federal Property
- 140. Contraband
- 150. Reporting Requirements
- 160. Record Keeping Requirements
- 110. Satisfaction of Business Debts Prior to Transfer
- Sec. 10. Public Health and Public Safety

All licensed premises must meet applicable public health and public safety standards, and no license for a new premises may be issued until appropriate approvals are obtained.

Sec. 20. Adulteration, Misbranding and False Advertising

Adulteration, misbranding and false advertising of alcoholic beverages is prohibited.

Sec. 30. Warehousing and Transporting

(a) A licensee may not stock, warehouse or otherwise store alcoholic beverages in a place other than upon the licensed premises without a permit from the board, and no person may stock, warehouse or otherwise store alcoholic beverages on behalf of a licensee unless the licensee has obtained a permit from the board. [See Article VIII, Sec. 50]

(b) Alcoholic beverages shall not be sold or consumed at an approved storage facility, nor shall they be dispensed from the facility except at the explicit direction of the licensee.

(c) Vehicles used to transport alcoholic beverages must be secured against public access at all times.

Sec. 40. Prohibited Conduct

Licensees, their employees and agents, may not engage in the following prohibited conduct on or about the licensed premises:

(a) Serving or permitting the serving of, alcoholic beverages to apparently intoxicated persons, or allowing apparently intoxicated persons to remain upon the licensed premises;

(b) Serving or permitting the service of, alcoholic beverages to minors, or by minors, or allowing minors illegally on the premises to remain upon the licensed premises;

(c) Permitting or refusing to prohibit solicitation for prostitution, possession or use of illegal narcotics, illegal gambling, or lewd conduct or obscene display;

(d) Permitting any employee to encourage a patron to purchase alcoholic beverages for the employee or for any other person;

(e) Permitting or refusing to control disorderly conduct and disturbance of the peace on or about the licensed premises;

(f) Consuming alcoholic beverages while on duty;

(g) Refusing to cooperate with and assist upon request peace officers and investigative agents of the board;

(h) Permitting the removal of alcoholic beverages from the licensed premises when such beverages were sold for consumption on the premises only.

Sec. 50. Refusal to Admit Minors

A licensee, at his discretion, may refuse entry to that part of the licensed premises wherein alcoholic beverages are being sold, served or consumed to any or all persons under the age of 19, even though such person is accompanied by a parent, spouse over the age of 19 years, or legal guardian. The licensee may refuse any service to

such persons under the age of 19 years and may require them to leave the portion of the licensed premises wherein alcoholic beverages are sold, served or consumed.

Sec. 60. Determining if Patron is a Minor

If a licensee, or the agent or employee of a licensee, asks a patron to verify his or her age and the patron does not show identification sufficient under AS 04.15.065, or if there is some question of the validity or accuracy of the identification shown, then the licensee, or the agent or employee, shall require the patron to sign a statement that he or she is over the age of 19 years. It is the responsibility of the licensee to have blank statement forms available and to retain completed forms for 30 days available for inspection.

Sec. 70. Designation of "Restaurant Premises"

(a) A licensee who wishes to have a restaurant designation to permit minors on his premises under AS 04.15.020(d) must apply to the director for such a designation.

(b) The director may grant a restaurant designation for the premises of a licensee who is the holder of a beverage dispensary or a restaurant license when the premises qualify for such a designation under AS 04.15.020(d) and the director finds it is in the best interest of the public to grant such a designation.

(c) The director must be in receipt of a written approval from the local governing body prior to granting a restaurant designation for a licensed premises.

(d) A licensee with a restaurant designation on his premises must reapply annually to keep the status of the designation. The application for the continuance of the restaurant designation shall be submitted to the board each year with the license renewal application.

(e) If the holder of a license for a premises with a restaurant designation is found to be in violation of any of the provisions relating to minors in Title 4 or these regulations, the restaurant designation may be withdrawn.

Sec. 80. Credit Sales

(a) With the exception provided in AS 04.15.085(a), a purchaser of alcoholic beverages on a retail basis must pay for the beverage in cash or its equivalent at the time the beverage is received by the purchaser, or may place the charge on a bill which must be paid prior to the time the purchaser leaves the licensed premises.

(b) A wholesale, distillery, brewery, winery, or bottling works licensee may sell alcoholic beverages to other licensees, for resale, other than for cash, but all accounts receivable must be paid within 90 days thereafter.

Sec. 90. Credit Purchases

(a) A holder of a retail license may not purchase alcoholic beverages, for resale, on credit except upon credit terms which require the payment in full of all accounts payable within 90 days of purchase.

(b) Consignment of alcoholic beverages by a wholesaler to a retailer is prohibited.

(c) Holders of licenses who sell on a retail basis and holders of permits may return to a wholesaler from whom purchases were made unopened containers of alcoholic beverages for credit or refund.

Sec. 100. Liability of Joint Licensees

All persons whose names appear as licensees upon a license are liable for the debts incurred for the operation of the business. No person who is a joint licensee may free himself of these responsibilities by oral or written agreement with any other joint licensee or any other person without a formal transfer.

Sec. 110. Satisfaction of Business Debts Prior to Transfer

(a) An application for a transfer must be accompanied by an affidavit from the transferor setting out all debts of the business. Even if there are debts of the business for which the transferor asserts he has no personal liability, they shall be listed in the affidavit.

(b) Prior to approval of the transfer by the director, all debts of the business must be paid or the creditors satisfied with the security arrangement. If all debts of the business are not paid, the transferor has the responsibility of providing the director with a written acknowledgement from each creditor that the creditor is satisfied the claim is adequately secured. For purposes of this section, "all debts of the business" includes any unpaid taxes and includes all debts listed by the transferor in his affidavit and any other unpaid debt of which the director is aware, but does not include obligations for the purchase of real property.

(c) Within three months of receipt by the director of an application for a transfer of a license, all the debts of the business must be paid or the creditors satisfied as required by statute, or the director may deny the application.

Sec. 120. Percentage Lease

A licensee who wishes to enter into a percentage lease, or its equivalent, must obtain the written approval of the board. An approved percentage lease shall not be deemed to constitute a direct or indirect financial interest of a lessor in the conduct of business upon a licensed premises.

Sec. 130 Sale on Federal Property

Any premises located upon federal property at or in which alcoholic beverages are served to the general public must be licensed under Title 4.

Sec. 140. Contraband

(a) Alcoholic beverages, whether in the possession of a licensee or another person, purchased within the state other than from a licensee, alcoholic beverages possessed by unlicensed persons other than for private consumption or for transport by a licensed common carrier, alcoholic beverages stored other than on licensed premises or approved storage facilities, alcoholic beverages brought into the state for sale other than to licensees, and alcoholic beverages possessed for sale or sold in violation of local option are contraband and subject to confiscation and sale by the board.

(b) Alcoholic beverages seized by the board as contraband shall be sold at public sale and the proceeds deposited in the general fund.

Sec. 150. Reporting Requirements

(a) Any corporation holding any license under Title 4 shall report to the board within ten days.

(1) any transfer of stock which results in a change of the controlling interest;

(2) any change of its corporate officers or its board of directors.

(b) Any corporation holding any license under Title 4 shall report to the board within ten days of the transfer, any transfer of its corporate stock involving ten percent or more of said stock, unless the corporation is required to file periodic reports with the Securities Exchange Commission, or its stock is listed on a stock exchange, or the stock is held by any bank, trust company, financial institution or title company in a fiduciary capacity.

(c) All holders of a retail license who request a refund of a portion of their license fee based on their gross sales, shall provide to the board with their request for the refund an affidavit stating the gross receipts from the sale of alcoholic beverages in the year for which the refund is requested.

Sec. 160. Record Keeping Requirements

(a) All licensees shall retain records sufficient to indicate satisfaction of the statutory requirement that the license has been actively exercised for 30 days during the preceding calendar year.

(b) All licensees shall keep on the premises a copy of the description and the drawing of the licensed premises approved by the board for their current license.

(c) Any licensee who permits a person other than a named licensee to operate the business shall keep on the premises a copy of a document, such as a management agreement or a record of employment, setting out the business relationship between the licensee and the person actually operating the business.

(d) All licensees who sell alcoholic beverages on a retail basis shall retain for ninety days copies of completed age verification forms.

(e) Any licensee who sells alcoholic beverages on a retail basis and who fills and delivers or ships orders for alcoholic beverages based on written or telephone orders shall retain for six months copies of the order forms, the records verifying the age of the purchaser, and the shipping documents, unless the order is shipped to an area where local option is in effect in which case the licensee shall retain the records for one year.

(f) All holders of a wholesale license shall retain for three years a record of all sales made in the conduct of their business.

(g) All holders of a retail license who request a refund of a portion of their license fee based on their gross sales, shall retain for three years a record of the sales of all alcoholic beverages made under their license in the year for which the refund is requested.

ARTICLE V

ENFORCEMENT

Section

- 10. Powers of ABC Investigative Personnel
- 20. Complaints
- 30. Inspection
- 40. Notices of Violation
- 50. Cease and Desist Orders
- 60. Suspension and Revocation of License
- 70. Effect of Revocation
- 80. Civil Penalties

Sec. 10. Powers of ABC Investigative Personnel

ABC investigative personnel have the power and authority to:

- (1) Execute search warrants of licensed premises or premises suspected of being in violation of Title 4 or these regulations;
- (2) Exercise power of arrest for violations of Title 4 or these regulations observed on licensed premises;
- (3) Serve subpoenas issued by a hearing officer in an ABC administrative proceeding;
- (4) Conduct inspections and investigations of licensees and licensed premises;
- (5) Issue Notices of Violation to licensees.

Sec. 20. Complaints

Any person who has cause to complain concerning the conduct of a licensed business or the compliance by licensees with the statutes, regulations and municipal ordinances relating to alcoholic beverages may do so to the board in writing or in person at any of the board's offices.

Sec. 30. Inspection

(a) Licensees shall be deemed to consent to the entry upon the licensed premises and inspection thereof by investigative agents of the board, at all reasonable times and in a reasonable manner, acting in their official capacity for the purpose of enforcing the statutes and regulations relating to alcoholic beverages.

(b) Licensees shall do all things reasonably necessary and appropriate to cooperate with investigative agents and employees of the board, acting in their official capacity, engaged in the enforcement of the statutes and regulations relating to alcoholic beverages, including without limitation permitting entry upon and inspection of the licensed premises and providing access, upon request at reasonable times, to the financial and other business records of the licensee relating to the conduct of business upon the licensed premises.

(c) Investigative agents of the board may make regular routine inspections of all licensed premises and will prepare a written Inspection Report of each such inspection, copies of which shall be delivered to the licensee and placed in the board's files.

(d) The Director shall coordinate with local law enforcement agencies and state police to assist in keeping them knowledgeable of the requirements of Title 4 and to assure that civil and criminal sanctions, as appropriate, are taken against licensees and members of the public who violate the provisions of Title 4.

Sec. 40. Notices of Violation

(a) Investigative agents of the board may issue a Notice of Violation to a licensee whenever a violation of the statutes, regulations or municipal ordinances relating to alcoholic beverages is observed on or about a licensed premises or there is probable cause to believe that such a violation has occurred. Copies of the Notice of Violation shall be delivered to the licensee and filed with the board.

(b) Upon receipt of a Notice of Violation, a licensee shall have the right to appear within 10 days before the director and be heard regarding the Notice of Violation.

(c) Upon receipt of a Notice of Violation, the director shall take whatever action is deemed appropriate under the circumstances in accordance with the statutes and regulations relating to alcoholic beverages.

Sec. 50. Cease and Desist Orders

(a) The director may issue a Compliance Order to a licensee requiring that the licensee, or employees and agents of the licensee, cease and desist engaging in prohibited conduct or otherwise violating statutes and regulations relating to alcoholic beverages, or that the

licensee cease and desist engaging in such other conduct or allowing such conduct upon the licensed premises as the board reasonably deems contrary to the public interest.

(b) A licensee who is the recipient of a Compliance Order issued by the director as provided above must file with the director, within the time specified in the order, a compliance report stating what measures have been and are being taken, or are proposed to be taken, to correct or control the conditions outlined in the order.

(c) Upon receipt of the report required above, or after the time period specified for it has elapsed, the director may issue a Final Order, which shall be served personally or sent by certified mail to the licensee.

(d) Within 15 days after receipt of a Final Order, a licensee may request a hearing before the director to review the Cease and Desist Order. Failure to request a hearing within 15 days after the receipt of a Final Order constitutes a waiver of the licensee's right of review of the Final Order under this section.

(e) The director shall hold an informal hearing within 20 days after receipt of a request, and may rescind, modify or affirm the order thereupon.

Sec. 60. Suspension and Revocation of Licenses

(a) In accordance with the administrative adjudication procedures of Article VI of these regulations, the board may suspend or revoke a license on the following grounds:

(1) violation by a licensee, or an employee or agent of a licensee, of any statute, regulation or municipal ordinance relating to alcoholic beverages;

(2) Failure of a licensee to comply with a Cease and Desist Order issued by the board;

(3) Tax delinquency arising out of conduct of a licensed business;

(4) For cause, when such action is reasonably deemed by the board to be in the public interest.

(b) Without a formal adjudication proceeding, but upon notice and opportunity to be heard afforded the licensee, the board may suspend or revoke a license upon the conviction of the licensee, or employee or agent of the licensee, for a violation of a statute, regulation or municipal ordinance relating to alcoholic beverages, as provided in AS 04.15.100(b).

(c) The licensee is responsible for the acts of his agents and employees that constitute violations of (a) above when such acts are performed by the agent or employee in an official capacity. Even though the agent or employee may be liable criminally for the violation, the licensee additionally may suffer the consequences of the violation under the provisions of AS 04.15.100(b).

Sec. 70. Effect of Revocation

A person whose license is revoked by the board may not apply for a license of any type until at least one year after the effective date of the revocation.

Sec. 90. Civil Penalties

Without admitting wrongdoing, a licensee may be permitted to pay a civil penalty in an amount specified by the board in lieu of filing a Notice of Defense in response to an Accusation filed in accordance with the administrative adjudication procedures of Article VI of these regulations seeking the suspension or revocation of a license. If this option is provided a licensee, and he elects it, upon payment of the civil penalty specified, the accusation shall be dismissed and no further proceedings shall be had thereunder.

ARTICLE VI
ADJUDICATION PROCEDURE

Section

- 10. Administrative Remedy
- 20. Administrative Appeal
- 30. Formal Protest
- 40. Accusation
- 50. Intervention and Consolidation
- 60. Judicial Review

Sec. 10. Administrative Remedy

(a) A formal administrative hearing to determine whether an application should be granted or denied, or to determine whether a license should be suspended or revoked, and all proceedings relating thereto, shall be governed by the Administrative Procedure Act (AS 44.62.330, et seq.) The summary proceeding set out in Article V, Section 60(b) is outside this requirement.

(b) A formal administrative hearing is an administrative remedy which must be exhausted before an aggrieved applicant or an interested party may obtain judicial review of board action.

Sec. 20. Administrative Appeal

A person whose application for a new license, or the renewal, transfer or relocation of an existing license is denied by the director may invoke a formal administrative hearing by filing a Notice of Defense within 15 days of receipt of a Statement of Issues.

Sec. 30. Formal Protest

(a) Any interested person who is a resident of Alaska may formally protest an application for a new license or the renewal, transfer, or relocation of an existing license, and initiate a formal administrative hearing by filing a Statement of Issues before the director takes final action upon the application. If the application protested against is for premises within an incorporated city or unified municipality, the individual's protest must be filed within five days from the expiration of the protest period granted to the local governing body; if the premises are outside an incorporated or unified municipality, the individual's protest must be filed within 15 days of the last date of publication of notice by the applicant.

(b) A municipality may formally protest an application for a new license, or the renewal or transfer of an existing license and initiate a formal administrative hearing by filing a Statement of Issues within 30 days of receipt of the director's Notice of Intent to approve the application.

Sec. 40. Accusation

Any interested person who is a resident of Alaska may initiate a formal hearing to determine whether an existing license should be suspended or revoked by filing an Accusation.

Sec. 50. Intervention and Consolidation

Any interested person may intervene in a formal administrative hearing upon written notice, and formal administrative proceedings may be consolidated as appropriate.

Sec. 60. Judicial Review

Any party aggrieved by a formal administrative adjudication may obtain judicial review by appeal to the superior court.

ARTICLE VII

SPECIAL PROVISIONS

Section

10. Applicant Assistance in Determining Population Criteria
20. Applying the Population Criteria
30. Processing Applications for Licenses in a Previously Filled Class
40. Local Control
50. Community Prohibitions on Alcoholic Beverages
60. Third Party Purchases
70. Written Orders for Alcoholic Beverages
80. Security Interests
90. Destraints for Payment of Taxes
100. Hours on Election Day
110. Possession by Minors
120. Alcoholic Substances
130. Zoning Restrictions
140. Bottle Clubs

Sec. 10. Applicant Assistance in Determining Population Criteria

In preparing an application for a license in an area outside an incorporated city or unincorporated municipality, an applicant shall assist in the determination of the population criteria by submitting the following information with their application for a new license or for transfer or relocation of an existing license:

(1) certification of population total of the applicable area provided by an official governing body if such is available;

(2) a United States Geodetic Survey map showing the population circle under consideration within the applicable area required by statute or regulation, with the proposed premises as center of the circle and the radius required extending therefrom;

(3) a narrative of how the estimated population was determined within the applicable circle;

(4) a graphic designation on a map of the location of each presently existing license of a like class within the applicable circle that was counted by the applicant;

(5) if a petition is required, a graphic designation on a map showing a population circle for the applicable area and showing the general area where petition signatures were obtained.

Sec. 20. Applying the Population Criteria

(a) Unless otherwise notified by the incorporated city or unified municipality, the director shall use the annual population figures published by the Department of Community and Regional Affairs in establishing a population figure for purposes of approval of licenses, which figure shall be made a matter of official record. Once a population figure for an area is established, it remains in effect until officially revised by the director. In the event of a change in population in an area, the new population figure would not go into effect for purposes of calculating quotas for the approval of licenses until a formal communication is received by the director from the local governing body verifying the new figure.

(b) The board shall maintain an official record of the total of licensed premises of each class within an established village, incorporated city, or unified municipality. The board shall make available upon request its determination whether the statutory population criteria would allow the approval of a license within a class.

(c) In determining whether the population criteria would allow the approval of a license, the board shall count all licenses in the class in the appropriate area, regardless of whether any license was issued under an exception to the population criteria under Title 4 or these regulations.

(d) In determining the population criteria for an area outside an incorporated city, only persons residing within the circle established by statutory designation of a radius and who also reside outside an incorporated city are counted.

(e) Signatures for petitions regarding licensed premises located outside an incorporated city may be obtained from persons residing within the circle established by statutory designation of a radius whether or not such persons reside within or outside of an incorporated city.

(f) For purposes of determining how many signatures are required for a petition, all persons residing within the radius and qualified to sign the petition shall be counted.

(g) Except as set out in Section 30 below, applications for new licenses which are mutually exclusive because of the statutory population criteria shall be considered by the director (1) if received more than 30 days apart, in order of priority determined by the date that a sufficient application is received; (2) if received within 30 days of each other, each application shall be considered on its own merits, and if more applications are tentatively approved than can be granted, then an impartial drawing shall be held to select the application or applications which shall be granted a license; if a tentatively approved application is formally protested, the drawing will be delayed until resolution of the protest.

Sec. 30. Processing Applications For Licenses in a Previously Filled Class

When any class of license has been issued such that the population criteria set out in AS 04.10.210 has been met or exceeded, and the population in the area is then increased or a previously granted license is terminated so that an additional license or licenses in the previously filled class may be granted, the board shall publish a notice to the public of the fact that applications for a new license in the previously filled class will be accepted for a specific limited time, and that the applications will be processed and considered by the board, not on a first-come/first-serve basis, but as a group, and the board shall process and consider in the manner set out in the public notice all applications properly and timely submitted.

Sec. 40. Local Control

(a) Under Title 4 there are four statutory schemes for granting local control over the distribution of alcoholic beverages within a community. These four schemes are:

(1) Local option elections by incorporated cities under AS 04.10.430(a), with special provisions for some incorporated cities under 430(d);

(2) Local protest and election by established villages and their immediate environs under AS 04.10.300(b);

(3) Approval of a community liquor license to a qualified first or second class city under AS 04.10.139 and 430(c);

(4) passage by a city of local ordinances under AS 04.15.0.3.

A city which elects a local option status under (1) may also utilize (4) to make the sale of alcoholic beverages a misdemeanor. A city which qualifies under both (1) and (3) may utilize both these schemes.

(b) A license for a premises within a city, or within an established village or two miles of the boundaries of the village, when in a local election the city or village voted against the issuance of licenses or sale of alcoholic beverages, remains in effect only until midnight of December 31 of the year for which the license is issued.

(c) A license for a premises outside of but within five miles of the boundaries of a city which has voted against the sale of alcoholic beverages continues in effect, and may be considered for renewal by the board; however, the board may not issue a new beverage dispensary or retail license within this five-mile area.

Sec. 50. Community Prohibitions on Alcoholic Beverages

(a) The import, sale, possession for sale or trafficking in alcoholic beverages is prohibited:

(1) within the boundaries of an established village or within the area two miles from the boundary of such village when a majority of the voters have voted against the issuance of liquor licenses in this area under the provisions of AS 04.10.300(b);

(2) within the boundaries of an incorporated city when a majority of the voters have voted against the sale of alcoholic beverages in this area under the provisions of AS 04.10.430(a);

(3) within the boundaries of an incorporated city which qualifies as a "dry" community under the provisions of AS 04.10.430(d).

(b) Section (a) above does not apply to licensees within the area affected by a local election during the period following the election and prior to the expiration of their valid license, to employees of a city which has a community liquor license when in the scope of their employment relating to the license, nor to premises specifically excepted under AS 04.10.430(c).

(c) The board shall maintain an official record available to all licensees and the public of the established villages and incorporated cities within which the barter, sale, possession for sale, or trafficking in alcoholic beverages is prohibited as provided in (a) above.

Sec. 60. Third Party Purchases for Consideration

(a) It is prohibited for any person for consideration charged for the act of making the purchase rather than for the cost of the product, to purchase or solicit the sale of alcoholic beverages on behalf of a consumer.

(b) It is prohibited for any person other than a licensee or a licensed common carrier to transport or to store during transport of alcoholic beverages for consideration.

Sec. 70. Written Orders for Alcoholic Beverages

(a) To comply with statutory requirements, a retail licensee may sell alcoholic beverages in response to a written order only as follows. The order must be in writing from a legally qualified purchaser. The order must be accompanied by the equivalent of cash from the person making the written order. The order must be (1) filled, boxed, addressed and shipped by the licensee to the purchaser and must be shipped by licensed common carrier to the purchaser; or (2) immediately delivered on the licensed premises to an individual specifically authorized by name by the purchaser in the written order to receive the purchase and to deliver it to the purchaser.

(b) In a mail order sale made in response to a written order as in (a) above, title to the alcoholic beverages passes to the purchaser at the time the alcoholic beverages are packed and identified to the purchaser, and these actions are sufficient to constitute a sale on the premises under AS 45.05.126 and Title 4.

(c) No telephone orders may be filled or mailed from any premises unless paid for on the licensed premises prior to delivery.

Sec. 80. Security Interests

(a) Licensees and secured parties must file with the board all instruments creating, or purporting to create, security interests in licenses.

(b) Insofar as security interests may be created in liquor licenses, such interests are subject to the requirement that the board approve the transfer of any license or interest therein upon application by the transferor, who may be the licensee or the secured party, and the transferee, who may be the secured party or a third party, respectively.

(c) Any secured party who deprives a licensee of a license shall immediately surrender the license to the board.

(d) Any licensee who loses his license to a secured creditor must close the licensed premises.

(e) Any secured party who shall force the involuntary transfer of an existing license shall bear the responsibility for the satisfaction of creditors as provided by statute.

(f) A secured party who legally deprives a licensee of a license pursuant to a security interest does not acquire any right, title or interest in the license or the conduct of business upon the licensed premises, except the right to apply to the board for approval of transfer of the license.

(g) Upon approval granted by the director, a secured party legally in possession of a license may make application for the transfer of ownership without the approval or signature of the licensee.

(h) A secured party who legally deprives a licensee of a license and the licensed premises may be given approval for the interim conduct of business upon the licensed premises for a reasonable time, upon terms and conditions approved by the board, pending transfer of the license.

(i) Unless a license itself is mentioned as a security interest, foreclosure by a secured party of the licensed premises does not affect the licensee's interest in his license.

(j) A secured party should not be named on a licensed merely to protect a security interest. However, any secured party who is involved in the operation, management or profits of a business must be named on the license as a licensee.

Sec. 90. Destraint for the Payment of Taxes

State and federal taxing authorities with the power of destraint of licenses for the payment of taxes shall exercise that authority in accordance with the provisions of these regulations governing security interests.

Sec. 100. Hours on Election Day

(a) In unorganized areas of the state and in those organized areas which have not by ordinance overruled the provisions of AS 04.15.020(c), all premises licensed under this title shall close at 5:00 A. M. on the day designated as an election day under the statute and shall remain closed until 8:00 P. M. that night. After all polls have closed at 8:00 P. M., licensed premises may open. Hotels, motels, restaurants and roadhouses may be open on election day for business purposes other than selling alcoholic beverages and which are not in violation with the statute.

(b) In unorganized areas of the state, the provisions of (a) above shall apply to all state and local elections, whether a candidate is running for public office or otherwise.

Sec. 110. Possession by Minors

Any person under the age of 19 years is prohibited from possessing any alcoholic beverages, except as provided under AS 04.15.080(b).

Sec. 120. Alcoholic Substances

Every alcoholic substance, whether dehydrated, powdered, or otherwise, is subject to the provisions of Title 4 and the rules and regulations pertaining thereto.

Sec. 130. Zoning Restrictions

(a) Each local government entity shall inform the board of any zoning regulations or ordinances which prohibit the sale or consumption of intoxicating liquors within their jurisdiction.

(b) When a municipality denies a license due to zoning regulations or ordinances, the applicant's recourse is to request the entity to reconsider its refusal to grant a zoning exception or other relief from the restriction, prior to the matter coming before the director for a final decision.

Sec. 150. Bottle Clubs

No person may maintain, operate or lease any room for the purpose of providing therein, for a consideration, a place for the consuming of alcoholic beverages by members of the public or of a club, corporation or association unless the person is a licensee or permit holder under Title 4 or these regulations. As used herein, consideration includes cover charge, the sale of food, ice, mixers or other liquid or non-liquid accessories used with alcoholic beverage drinks, or the furnishing of glassware or other containers for use in the consumption of alcoholic beverage drinks.

ARTICLE VIII

PERMITS

Section

- 10. General Requirements
- 20. Caterer's Permit
- 30. Special Events Permit
- 40. Conditional Contractor's Permit
- 50. Warehousing Permit
- 60. Special Use Permit

Sec. 10. General Requirements

(a) Applications for permits must meet the requirements of Article II, Section 10.

(b) The grounds for denial of an application set out in Article II, Section 80, also apply to permits.

(c) All permits must be applied for by submitting to the board the proper application forms, together with the application fee and permit fee. The application form must include a description of the proposed premises, a drawing designating which areas are to be "wet" or "dry" and which areas are for storage, service, and consumption, specific hours of intended operation, a copy of the approval from the proper authority, and such other information as is required by the board.

(d) Once a permit is issued, it only applies to the premises designated in the application and accompanying drawing and is only effective for the time period specifically designated. No permit is transferrable.

(e) The holder of a permit is required to comply with all laws, rules and regulations pertaining to the sale or dispensing of alcoholic beverages.

Sec. 20. Caterer's Permit

(a) Upon appropriate application, the director may issue a caterer's permit to a beverage dispensary licensee authorizing the sale and possession for sale of alcoholic beverages for consumption on the premises only at conventions, picnics, social gatherings, sporting events and similar affairs subject to the terms and conditions specified by the board.

(b) The applicant must obtain written approval for the permit from the appropriate police authority, with the request for such approval submitted at least one week in advance of the date of the proposed event. A copy of the approval must accompany the application to the board.

(c) A caterer, or an employee or agent of the caterer, must be present on the catered premises at all times alcoholic beverages are being served or consumed.

(d) Any violation by the licensee/permit holder of any provision of law or regulation pertaining to beverage dispensary licenses may be grounds for suspension or revocation of the licensee/permit holder's beverage dispensary license.

(e) The fee for a caterer's permit shall be \$25 per event and \$10 for each day following the initial day.

(f) No caterer's permit fee is required for a beverage dispensary licensee who caters a fund-raising function open to the general public for a non-profit charitable organization.

Sec. 30. Special Events Permit

(a) Upon appropriate application, the director may issue a special events permit to any person authorizing the holder thereof to sell or dispense or to possess for sale or dispensing beer and wine for consumption on designated premises for a special event which is open to the public, subject to the terms and conditions specified by the board.

(b) No special events permit is required for a function held in a private home.

(c) The applicant for a special events permit must obtain written approval for a permit from the appropriate police authority at least 10 days in advance of the date of the proposed event. A copy of the approval must accompany the application to the board.

(d) A maximum of three special events permits may be granted to any person in any one calendar year.

(e) The fee for a special events permit shall be \$25 per event and \$10 for each day following the initial day.

Sec. 40. Conditional Contractor's Permit

(a) Upon appropriate application, the director may issue conditional contractor's permit which gives to the holder thereof the right to sell beer and wine upon specified premises located within the boundaries of a military reservation, or in a large construction site in a remote area specifically designated by the director.

(b) The permit shall specify that alcoholic beverages may be served for cash either in a beverage dispensary facility for consumption on the licensed premises only or on a retail package store basis for consumption off the licensed premises only.

(c) If sales are for consumption off the licensed premises, consumption is limited to the area within the boundaries of the military reservation or the designated remote area. In this case, the holder of the permit must post in a conspicuous place on the premises a notice to the public of the specific area within which consumption may take place.

(d) A holder of this permit may sell alcoholic beverages only to an employee of the contractor.

(e) It shall be grounds for suspension of this permit or for refusal to grant the permit upon reapplication, if the board finds evidence that alcoholic beverages sold by a holder of this permit are being consumed outside the boundaries or the designated area, are being sold to non-employees.

(f) An applicant for this permit must obtain written approval from the commanding officer of said military reservation or the prime contractor of the remotely situated project. A copy of the approval must accompany the application to the board. Permission must be obtained yearly and submitted upon reapplication for the permit. Lack of permission is grounds for suspension or for denial of the permit. The permit may also be suspended upon the discretion of the director.

(g) In no event shall a conditional contractor's permit be transferable, nor shall it be valid after the completion of the permit holder's contract or closing of said military reservation.

(h) The conditional contractor's permit fee shall be \$300.00 per year.

Sec. 50. Warehousing Permit

(a) Upon appropriate application, the director may issue a warehousing permit authorizing the holder thereof to stock, warehouse or otherwise store alcoholic beverages in a place other than the original licensed premises. A separate permit is required

for each separate storage facility. The application for the permit must set out the location of the storage facility and the security provisions for protecting goods stored within from becoming accessible to any person other than the licensee/permit holder and his employees and agents.

(b) The warehousing permit shall be displayed in a conspicuous place at the storage facility.

(c) If any product other than alcoholic beverages is stored in one facility, the premises containing the alcoholic beverages must be secured from any area where the other storage takes place;

(d) A warehousing permit is only available to a licensee with a current active license under Title 4;

(e) The warehousing permit fee shall be \$50.00 per year.

Sec. 60. Special Use Permit

Upon appropriate application, the director may issue a special use permit as deemed necessary and appropriate under the circumstances.

ARTICLE IX
MISCELLANEOUS PROVISIONS

Sec. 10. Forms

The director has the authority to prescribe all forms for use by the board.

Sec. 20. Fees

The director has the authority to set fees for administrative procedures.

Sec. 30. Definitions

(a) "board" means the Alcoholic Beverage Control Board or their designated representative.

(b) "director" means the executive director of the Alcoholic Beverage Control Board.

(c) "licensed premises" means the premises covered by the current license as approved by the board and as designated in the license file of the board.

NOTICE OF THE PROPOSED CHANGES
IN THE REGULATIONS OF THE ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE IS HEREBY GIVEN that the Alcoholic Beverage Control Board, under authority vested by AS 04.05.020 and 04.05.030(e), proposes to adopt a comprehensive set of regulations in Title 15 of the Alaska Administrative Code to implement and clarify Title 4 of the Alaska Statutes titled "Alcoholic Beverages"; and to repeal in its entirety the present set of regulations designated as 15 AAC 20.010 through 15 AAC 20.270.

NOTICE IS ALSO GIVEN that any interested person may present oral or written statements or arguments relevant to the proposed action. Written comments may be made by mailing them to the Alcoholic Beverage Control Board at 201 East Ninth Avenue, Anchorage, Alaska 99501. Written comments should be received at the Board's Anchorage office by MAY 31, 1979.

The ABC Board will hold public hearings over the Legislative Tele-Conferencing Network on TUESDAY, MAY 22, 1979. All interested persons are invited to attend at the following locations:

Ketchikan Information Office 415 Main Street, Room 301 (11 a.m.-8 p.m. Pacific Time)	Juneau: Capitol Building, Room 123 (11 a.m.-8 p.m. Pacific Time)
Anchorage Information Office 1024 W. Sixth Avenue (9 a.m.-6 p.m. Alaska Time)	Fairbanks Information Office Building F, Room 250 101 College Road (9 a.m.-6 p.m. Alaska Time)
Nome Information Office Governor's Conference Room State Office Building (2nd Floor) (8 a.m.-5 p.m. Bering Time)	

Public comment from all communities will be heard at all locations.

Oral comment may be presented to the ABC Board during the hearing at the above locations according to the following schedule:

Ketchikan: 11:00 a.m. - 12:30 p.m. Pacific Time
Juneau: 12:45 p.m. - 2:15 p.m. Pacific Time

Lunch Break: 2:15 p.m. - 3:15 p.m. Pacific Time
(one hour) 12:15 p.m. - 1:15 p.m. Alaska Time
11:15 a.m. - 12:15 p.m. Bering Time

Anchorage: 1:15 p.m. - 3:00 p.m. Alaska Time
Fairbanks: 3:15 p.m. - 4:45 p.m. Alaska Time
Nome: 5:00 p.m. - 6:00 p.m. Bering Time

Persons wishing to present oral comment should notify in advance the moderator of their local teleconference center and advise of the length of time they expect to take. Requests for permission to comment should be directed to the following offices:

Ketchikan Information Office
415 Main Street, Room 301
Ketchikan, Alaska 99901
Phone: 225-9675

Legislative Affairs Agency
Teleconference Network
Pouch Y
Juneau, Alaska 99811
Phone: 465-4980

Anchorage Information Office
1024 W. Sixth Avenue
Anchorage, Alaska 99501
Phone: 278-3668

Fairbanks Information Office
Building F, Room 250
101 College Road
Fairbanks, Alaska 99701
Phone: 452-4449

Nome Information Office
Box 25
Nome, Alaska 99762
Phone: 443-2770

Persons who do not notify the moderator in advance may, if time allows and with the permission of the moderator, be permitted to comment after all scheduled persons from their locality have finished.

PLEASE TAKE NOTE: Oral comment for an individual is limited to 10 minutes; a person speaking on behalf of an organization may have up to 15 minutes. Unscheduled persons may speak within the time limit set by the moderator.

Copies of the draft of the proposed regulations may be obtained by writing to the ABC Board, 201 East Ninth Avenue, Anchorage, Alaska 99501. Copies are also available for review at all Department of Revenue field offices at the following locations:

103 State Office Building
415 Main Street
Ketchikan, Alaska 99901

240 South Franklin Street
Juneau, Alaska 99801

675 Seventh Avenue
Fairbanks, Alaska 99701

United Airlines Building
2033 Sixth Avenue, Suite 770
Seattle, Washington 98121

Copies have also been mailed to municipal managers/clerks of all incorporated cities.

The proposed set of regulations contains nine articles, titled as follows: Administration, Licensing, Licenses, General Provisions Regarding Licensees and Licensed Premises, Enforcement, Adjudication Procedure, Special Provisions, Permits, and Miscellaneous.

New topics not previously covered by regulation and changes in regulation are as follows:

Authority delegated to director increased (p. 2)

Any interested person may invoke a formal administrative hearing regarding approval or denial of a license (p. 6)

License must be surrendered when conduct of business ceases or licensee ceases to exercise authority (p. 10)

Licensee has 90 days to notify board of plans whenever premises are lost (p. 10)

Management agreements clarified (p. 11)

Applicants for restaurant license must submit a menu (p. 12)

Clarifies procedures for obtaining a community liquor license (p. 14)

Phase-out of duplicate beverage dispensary licenses (p. 15)

New licenses under AS 04.10.260 may be granted only when population quota in class is full (p. 16)

Storage and warehousing security required (p. 17)

Prohibits employees from drinking while on duty (p. 18)

Provides for designation of "restaurant premises" under AS 04.15.020(d) (p. 20)

Clarifies transfer proceedings regarding debts of business (p. 20)

Clarifies role of percentage leases (p. 21)

Clarifies contraband (p. 21)

Establishes reporting and record keeping requirements for licensees (pp. 22-23)

Provides for notices of violation and for cease and desist orders to be issued against licensees who violate Title 4 (p. 25).

Clarifies procedures for civil enforcement under the Administrative Procedure Act for suspensions and revocations of licenses (pp. 26-29)

Clarifies procedure for applying the population criteria to granting of licenses and signing of petitions (p. 31)

Establishes procedure for granting licenses when a class previously filled becomes open (p. 32) .

Prohibits purchase of alcoholic beverages for someone else for a fee (p. 34)

Prohibits anyone but licensees and licensed common carriers from transporting alcoholic beverages (p. 34)

Sets out requirements for telephone and mail order sales (p. 34)

Clarifies duties and responsibilities of secured creditors (pp. 34-35)

Sets hours for business on election days in unorganized areas of state (p. 36)

Exempts caterers of non-profit charitable organizations' fund-raisers from the permit fee (p. 39)

Revises special events permit to provide that any person may apply (p. 39)

Establishes a warehousing permit (p. 40)

Establishes a special use permit (p. 41)

Present regulations retained in general substance within the proposed regulations are as follows:

15 AAC 20.010 - Art. V §60, .030 - Art. V §60(a)(3), .040 - Art. VII §150,
.060 - Art. V §10, .080 - Art. IV §40(d),
.090 - Art. IV §130, .100 - Art. VII §120,
.110(b) - Art. IV §50, .120 - Art. VII §80,
.130 - Art. IV §150, .140 - Art. IV §150,
.150 - Art. III §10, .170 - Art. III §20,
.180(a) - Art. II §110, .190 - Art. II §§110 & 120,
.200 - Art. IV §40(h), .210 - Art. II §130,
.220 - Art. VIII §20, .230 - Art. VIII §30,
.240 - Art. VIII §40, .260 - Art. III §50,
.270 - Art. IV §160(g)

Present regulations not retained in the proposed regulations are as follows:

15 AAC 20.020, .050, .070, .110, .160, .180(b) and .250.

The ABC Board, upon its own motion at any time after the completion of the hearings and June 15, 1979, may adopt any or all of the proposed regulations substantially as described above without further notice or may decide to take no action on them.

DATED: May 1, 1979.



Patrick L. Sharrock
Patrick L. Sharrock
Executive Director
Alcoholic Beverage Control Board