

**AUDIT OF THE
NORTH CAROLINA
ALCOHOLIC BEVERAGE CONTROL SYSTEM**

JUNE 1996

AUDITOR'S TRANSMITTAL

June 20, 1996

The Honorable James B. Hunt, Jr., Governor
Senator Marc Basnight, President Pro Tem,
North Carolina Senate
Representative Harold J. Brubaker, Speaker,
North Carolina House of Representatives
Judge George F. Bason, Chairman of the ABC Commission
Members of the North Carolina General Assembly

Ladies and Gentlemen:

We are pleased to submit this performance audit report of the North Carolina Alcoholic Beverage Control System. The objectives of this audit were to examine the current system of ABC law penalties, to provide recommendations on methods to strengthen the penalty system, and to establish a more standardized penalty assessment system.

This report consists of an executive summary, program overview, and operational findings and recommendations. The Chairman of the ABC Commission has reviewed a draft copy of this report and his written comments are included.

We wish to express our appreciation to Judge Bason and his staff for the courtesy, cooperation, and assistance provided us during this performance audit.

Respectfully submitted,

Ralph Campbell, Jr.
State Auditor

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EXECUTIVE SUMMARY

At the request of Governor James B. Hunt, Jr., we completed a performance audit on the Alcoholic Beverage Control System (Commission). Our audit focused on the penalties assessed for permit violations, methods and procedures to strengthen the penalty system, permit file management, and permit approval process.

The Commission, established in 1937 by the General Assembly, is composed of a chairman and two associate members appointed by the Governor. The current chairman was appointed by Governor Hunt on March 1, 1996. In addition to the three appointed members, the Commission employs thirty-six individuals to oversee the daily management of the Commission. The Commission's total revenues for the 1994-95 fiscal year were approximately \$7,459,700.

This report details our findings and recommendations in the areas of organizational and operational issues. A copy of the letter of response to these findings from the Commission is included as Appendix C, page 31.

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AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

On December 6, 1995, Governor James B. Hunt, Jr. requested assistance from the Office of the State Auditor in improving the State's Alcoholic Beverage Control System. Specifically, we were asked to examine the current system of ABC law penalties, to provide recommendations on methods to strengthen the penalty system, and to establish a more standardized penalty assessment system. Governor Hunt requested the review following published reports which indicated a decline in penalties imposed by the Alcoholic Beverage Control Commission (Commission).

The State Auditor has the authority under the North Carolina General Statutes §147-64.6 for reviewing the economy, efficiency, and effectiveness of state government programs. Performance audits are examinations of operating policies, practices, controls, and activities to determine those areas in which there may be improvements in the use of public resources and the management of programs. This audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

From January 17, 1996, through March 20, 1996, we conducted the field work for the audit of the Commission. The audit was limited to the review of activities occurring at the state level of the ABC System. The term "ABC System" refers to the ABC Commission and all local ABC Boards in North Carolina. We did not audit the activities of the local ABC Boards.

To achieve the objectives of the audit, we

- reviewed applicable General Statutes, North Carolina Administrative Code regulations, and administrative policies;
- reviewed applicable reports and studies of similar organizations in other states;
- interviewed key Commission personnel, Alcohol Law Enforcement (ALE) personnel, ABC officers, local law enforcement officers, local government officials, and other states' ABC representatives;
- reviewed the organizational chart and job descriptions;
- reviewed the Commission's budgets and expenditure reports for the fiscal years 1992-93, 1993-94, and 1994-95;
- reviewed the Commission's system of permit file management; and
- examined a sample of alleged violations reported, penalties imposed, and other related documents located in fifty-six permittees' files.

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BACKGROUND INFORMATION

STATUTORY AUTHORITY

During the 1935 Legislative session, the Legislature authorized Governor J. C. B. Ehringhaus to appoint a committee to study the issue of controlling alcoholic beverages. The committee, appointed in 1936, was directed to provide a report to the 1937 General Assembly. The General Assembly enacted the Alcoholic Beverage Control (ABC) Act in 1937 following the review of the committee's report.

The ABC Act provided for the establishment of a local ABC board in each county that voted in favor of establishing a control system. In addition, the ABC Act provided for the establishment of the State Board of Control (currently the ABC Commission), consisting of a chairman and two associate members appointed by the Governor. The Commission is responsible for issuing ABC permits; authorizing the sale and consumption of beer, wine, and mixed beverages in licensed establishments; overseeing the local ABC boards; prosecuting violators of the ABC laws; and imposing penalties on permittees.

The ABC laws are contained in Chapter 18B of the North Carolina General Statutes. Chapter 18B is intended to establish a uniform system of control for the sale, purchase, transportation, manufacture, consumption, and possession of alcoholic beverages in North Carolina. The Chapter also provides procedures to ensure the consistent administration of the ABC laws.

NORTH CAROLINA STATE ABC COMMISSION

The current powers and duties of the Commission, as contained in G.S. §18B-203, are as follows:

- (a) Powers. - The Commission shall have authority to:
- (1) Administer the ABC laws;
 - (2) Provide for enforcement of the ABC laws, in conjunction with the ALE Division;
 - (3) Set the prices of alcoholic beverages sold in local ABC stores as provided in Article 8;
 - (4) Require reports and audits from local boards as provided in G.S. 18B-205;
 - (5) Determine what brands of alcoholic beverages may be sold in this State;
 - (6) Contract for State ABC warehousing, as provided in G.S. 18B-204;
 - (7) Dispose of damaged alcoholic beverages, as provided in G.S. 18B-806;
 - (8) Remove for cause any member or employee of a local board;
 - (9) Supervise or disapprove purchasing by any local board and inspect all records of purchases by local boards;
 - (10) Approve or disapprove rules adopted by any local board;
 - (11) Approve or disapprove the opening and location of ABC stores, as provided in Article 8;
 - (12) Issue ABC permits, and impose sanctions against permittees;
 - (13) Provide for the testing of alcoholic beverages, as provided in G.S. 18B-206;
 - (14) Fix the amount of bailment charges and bailment surcharges to be assessed on liquor shipped from a Commission warehouse;
 - (15) Collect bailment charges and bailment surcharges from local boards;

BACKGROUND INFORMATION (CONTINUED)

- (1) Notwithstanding any law to the contrary, enter into contracts for design and construction of a warehouse or warehouses and supervise work and materials used in the construction as provided in G.S. 18B-204;
 - (2) Provide for the distribution of spirituous liquor to armed forces installations within this State for resale on the installation.
- (b) Implied Powers. - The Commission shall have all other powers which may be reasonably implied from the granting of the express powers stated in subsection (a), or which may be incidental to, or convenient for, performing the duties given to the Commission.

LOCAL ABC BOARDS

The Commission has oversight responsibilities with respect to local ABC boards; however, each county and municipal ABC board operates as a separate entity. Each local board establishes its own policies and procedures. A local board consists of a chairman and board members appointed by the city, town, or county governing authority. The powers of the local boards include: establishing policies and adopting rules in conformity with ABC laws and the Commission's rules; buying, selling, transporting, and possessing alcoholic beverages for the operating of the ABC stores; and operating ABC stores. Currently, there are 158 local boards in North Carolina. Twenty of these local boards employ their own enforcement officers (referred to as ABC officers).

DIVISION OF ALCOHOL LAW ENFORCEMENT

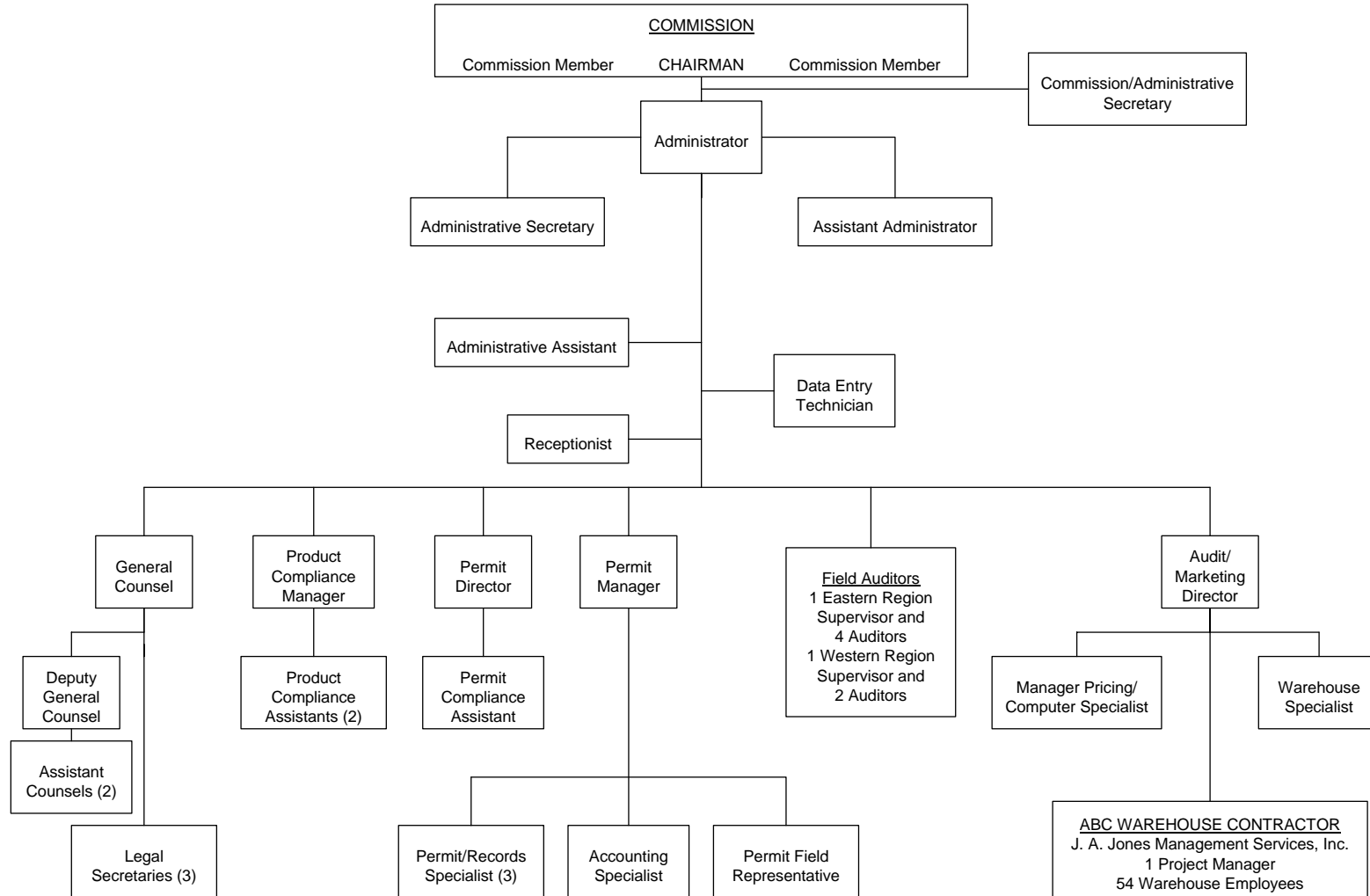
During 1949, the statewide ABC Enforcement Division was created under the Commission to enforce all ABC laws. In 1977, the Division of Alcohol Law Enforcement (ALE) was established by transferring the ABC Enforcement Division to the newly established Department of Crime Control and Public Safety. The primary objectives of ALE are the enforcement of the ABC laws and the Controlled Substance Act. ALE is responsible for controlling the sale, consumption, distribution, and transportation of alcoholic beverages. Currently, ALE has twelve district offices encompassing the 100 counties in North Carolina.

CURRENT ORGANIZATIONAL STRUCTURE

Exhibit A, page 7 depicts the organizational structure of the Commission at the time of our review. Throughout the Findings and Recommendations section of this report, the Commission staff is referred to as the "Commission management." The ABC Chairman and two Associate members are referred to as the "Commission."

NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL COMMISSION

Organizational Chart



Source: ABC Commission 9/5/95

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FINDINGS AND RECOMMENDATIONS

MONETARY PENALTIES DECREASED FOLLOWING THE APPOINTMENT OF THE PRIOR ABC CHAIRMAN IN MARCH 1993.

According to Commission management, two factors contributed to the reduction in fines collected: (1) reduction in the level of fines, and (2) fewer violation reports issued (See Table 1, page 9). The following examples illustrate the decrease in penalties levied by the Commission:

- From May 1988 through September 1992, one permittee was fined on five separate occasions for selling malt beverages to individuals less than twenty-one years old. The fines (\$600, \$1,000, \$1,500, \$1,750, and \$3,000) increased with each reported violation. Although the permittee was fined on these five previous occasions, the Commission only imposed a \$500 fine in March 1994 for the sixth violation and a \$600 fine in August 1995 for the seventh violation of the same type.
- In March 1993, the Commission levied a \$1,300 fine on a permittee for selling malt beverages to one individual less than twenty-one years old. However, the same permittee received only an \$800 fine in July 1993 for selling malt beverages to another individual less than twenty-one years old and a \$1,000 fine in May 1994 for selling to four underaged buyers on four separate occasions.

ABC COMMISSION INFORMATION	FISCAL YEAR 1990	FISCAL YEAR 1991	FISCAL YEAR 1992	FISCAL YEAR 1993	FISCAL YEAR 1994	FISCAL YEAR 1995	FISCAL YEAR 1996 TO 12/31/95
PERMITS OUTSTANDING	44,285	44,437	44,720	44,515	44,485	44,724	45,704
CASES PROCESSED							
VIOLATION CASES	981	923	643	948	588	590	289
REJECTION CASES	17	12	13	15	15	17	12
CASES RECONSIDERED	1	1	1				
TOTAL CASES #	999	936	657	963	603	607	301
COMMISSION ACTIONS							
OFFERS IN COMPROMISE	898	868	612	925	550	561	280
FINES	18	11	10	4	11	7	
SUSPENSIONS	331	306	181	198	101	92	32
SUSPENSIONS NOT ENFORCED	849	776	513	806	503	526	264
MONETARY PENALTY			3	1	12	6	
REPRIMANDS	1		1				
WARNINGS					1		
DISMISSALS	10	4	2	2	6		1
REJECTED CASES APPROVED	12	8	5	13	6	9	7
REJECTED CASES DISAPPROVED	6	4	8	2	8	8	6
POSTPONED	2						
ORDER RESCINDED				3			
RECONSIDERED	1	1	2			2	
AMENDED ORDER		1					
REVOICATIONS	14	18	14	20	13	13	3
CANCELLATIONS ORDERED	50	77	63	75	40	22	7
NO ACTION TAKEN	4	2					1
MISCELLANEOUS	2						
TOTAL ACTIONS *	2,198	2,076	1,414	2,049	1,251	1,246	601
MONETARY PENALTIES							
OFFERS IN COMPROMISE	481,425	498,400	268,650	462,450	221,350	262,950	127,150
FINES	6,800	4,800	4,350	2,950	4,400	3,750	0
TOTAL PENALTIES	\$488,225	\$503,200	\$273,000	\$465,400	\$225,750	\$266,700	\$127,150

NOTE: Cases are by the number of establishments. The establishments may hold more than one permit.
 * NOTE: Some cases have more than one action taken.
 SOURCE: ABC Commission Activity Reports.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

According to the two current Associate Commission members who served with the former Chairman, the fines levied during his administration were “probably too low.” The Commission management stated the penalty system was revised in January 1996.

The second factor, the reduction in violation reports issued by ALE, is illustrated in Table 2 for the calendar years 1992 through 1995. According to the ALE Director, the reduction in violation reports occurred after he met with the Commission staff and the former chairman soon after the Director's appointment in 1993. During this meeting, concerns were expressed regarding "frivolous" violations reported by ALE agents. Although requested, the Director stated he was not provided with examples of frivolous violations.

TABLE 2 TOTAL NUMBER OF VIOLATION REPORTS/WRITTEN WARNINGS ISSUED BY ALE		
Period of Time	Number of Violation Reports	Number of Written Warnings
January - December 1992	913	0
January - December 1993	540	612*
January - December 1994	482	1027
January - December 1995	485	894
* Written warnings issued beginning June 1993.		
Source: Director of the Division of Alcohol Law Enforcement.		

Auditor's Note:

At our request, Commission management provided the following examples of marginal (frivolous) violations:

- failure to clear tables of alcoholic beverages shortly after the 2:30 a.m. table clearing time, and
- selling alcoholic beverages on Sunday one minute prior to noon.

Following the meeting, the Director reinstated a written warning policy which allowed ALE agents to issue warnings for alleged violations not considered “clear cut and substantial.” ALE had ceased the written warning policy in approximately 1989 after learning written warning documents were not admissible as evidence of a prior history of violating ABC laws. However, ALE currently provides the original written warnings to the Commission, although they are still not used as evidence. As illustrated in Table 2, while the number of violation reports has decreased, the number of written warnings has increased. Appendix B, page 29, depicts the steps in the violation process.

Since we did not perform an examination of ALE's records, we were unable to determine if the reduction in the number of violation reports resulted solely from the reinstatement of the written warning policy.

RECOMMENDATION

We recommend the Commission periodically review the level of penalties levied against violators of the ABC laws. Penalties should be sufficient to deter repeat offenses. Further, we recommend that the Commission and ALE management work together to clearly define the types of violations which require Commission action.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

THE PENALTY GUIDELINES USED BY THE ABC COMMISSION ARE NOT PUBLISHED.

Currently, the Commission may impose penalties for any violation up to the limits as stated in G.S. §18B-104(a):

Penalties - For any violation of the ABC laws, the Commission may take any of the following actions against a permittee:

- (1) Suspend the permittee's permit for a specified period of time not longer than three years;
- (2) Revoke the permittee's permit;
- (3) Fine the permittee up to five hundred dollars (\$500.00) for the first violation, up to seven hundred fifty dollars (\$750.00) for the second violation, and up to one thousand dollars (\$1,000) for the third violation; or
- (4) Suspend the permittee's permit under subdivision (1) and impose a fine under subdivision (3).

In addition, the Commission may accept an offer in compromise from the permittee in accordance with G.S. §18B-104(b):

Compromise - In any case in which the Commission is entitled to suspend or revoke a permit, the Commission may accept from the permittee an offer in compromise to pay a penalty of not more than five thousand dollars (\$5,000). The Commission may either accept a compromise or revoke a permit, but not both. The Commission may accept a compromise and suspend the permit in the same case.

The Commission staff determine the amount the Commission may be willing to accept based on an unpublished commission policy. This offer is then communicated to the permittee and may be negotiated within guidelines established by the prior Commission in April 1993. Accepted offers of compromise are then submitted to the Commission for final approval.

ABC personnel in other alcohol-controlled states indicated they accepted offers in compromise or consent settlements within established ranges or limits. In one state, fines are imposed at the local level rather than at the state level. Several states have published policies or guidelines which are used when actions are taken against a permittee. Other states have developed penalty schedules for more common violations (see Table 3, page 12) which establish fines in dollar ranges and suspensions or revocations in days. Furthermore, one state has developed a violation grid (matrix) system (see Table 4, page 13) which identifies all types of possible violations with their corresponding level of severity.

RECOMMENDATION

In order to ensure equitable treatment of permittees, we recommend the Commission adopt and publish a written penalty schedule for more common violations and/or a violation grid (matrix) system for imposing penalties, suspensions, or revocations. The penalties and suspensions should be set in ranges to allow the Commission some flexibility in its actions against a permittee.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

<p align="center">TABLE 3 OREGON LIQUOR CONTROL COMMISSION ALCOHOLIC BEVERAGE CONTROL COMMISSION VIOLATION & PENALTY SCHEDULE NUMBER OF OFFENSES FOR ILLUSTRATIVE PURPOSES ONLY</p>							
Violations	Category	1st	2nd	3rd	4th	5th	6th
Convicted of a felony	I	Cancel					
Not operating as proposed/ operating other than as the permit allows	I	Cancel					
Make false statement to induce or prevent Commission action	II	30 days suspension	Cancel				
Interfered with investigation	II	30 days suspension	Cancel				
Sold to visibly intoxicated person/sold to minor	III	10 days suspension or \$650 fine	30 days suspension or \$1950 fine	30 days suspension	Cancel		
Allowed unlawful conduct	III	10 days suspension or \$650 fine	30 days suspension or \$1950 fine	30 days suspension	Cancel		
Failed to check identification	IV	7 days suspension or \$455 fine	10 days suspension or \$650 fine	20 days suspension or \$1300 fine	30 days suspension	Cancel	
Drinking on duty	IV	7 days suspension or \$455 fine	10 days suspension or \$650 fine	20 days suspension or \$1300 fine	30 days suspension	Cancel	
Gave liquor as a prize	V	3 days suspension or \$195 fine	7 days suspension or \$455 fine	10 days suspension or \$650 fine	20 days suspension or \$1300 fine	30 days suspension	Cancel
Advertising violation	V	3 days suspension or \$195 fine	7 days suspension or \$455 fine	10 days suspension or \$650 fine	20 days suspension or \$1300 fine	30 days suspension	Cancel
<p>CATEGORIES FOR MOST COMMON VIOLATIONS: (Most Severe to Less Severe)</p> <p>CATEGORY I - Violations that make permittee ineligible for a permit.</p> <p>CATEGORY II - Violations that create an immediate threat to public health or safety.</p> <p>CATEGORY III - Violations that create a potential threat to public health or safety.</p> <p>CATEGORY IV - Violations that create a climate conducive to abuses associated with the sale or service of alcoholic beverages.</p> <p>CATEGORY V - Violations inconsistent with the orderly regulation of the sale or service of alcoholic beverages.</p> <p>NOTE: The sanctions in this table are guidelines only and are not all inclusive. The Commission can impose a different sanction where appropriate.</p>							

FINDINGS AND RECOMMENDATIONS (CONTINUED)

FINDINGS AND RECOMMENDATIONS (CONTINUED)

TABLE 4 UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL ALCOHOLIC BEVERAGE CONTROL COMMISSION VIOLATION GRID FOR ILLUSTRATIVE PURPOSES ONLY	
DESCRIPTION OF VIOLATIONS	DEGREE OF SEVERITY
Advertising inconsistent with Commission regulations	Moderate *b
Falsification/tampering of records	Grave *b,*c
Minor employed selling/dispensing alcohol	Serious *b
Sell, deliver, or furnish alcohol to:	
A. Minor	Serious *a,*b
B. Intoxicated person	Grave *b
C. Any known habitual drunkard	Grave *b
Possess, purchase, sell, or acquire illegal alcohol	Grave *b
Refusing proper entry to authorized representatives	Grave *b
Under the influence of alcoholic beverage while on duty	Grave
Unlocked storage after/before legal hours	Moderate
Open and unmarked bottles in storage area	Moderate *b
Give away or sell mixed drinks or wine at discount prices	Moderate *b
Legend: *a - Class "A" Misdemeanor *b - Class "B" Misdemeanor *c - 2nd Degree Felony Severity Scale: <div style="text-align: center;"> ----- ----- ----- Moderate Serious Grave </div>	
NOTE: The list of violations & degree of severity in this table are guidelines only and are not all inclusive.	

THE ABC COMMISSION DID NOT ADEQUATELY MONITOR, DOCUMENT, AND SAFEGUARD FILES.

Based on information obtained from external sources, we selected a sample of fifty-six permittee files for review. We noted the following items during the review:

- Two files, each containing a violation report submitted during February 1995, could not be located during our initial review. Although documentation indicated the files had been signed out by "Legal," inquiries of the legal secretaries and subsequent follow up with the Permit Field Representative failed to locate these files. The files were located on April 10, 1996. According to documentation in the files, the Commission responded to the violation report in the first file on April 27, 1995, and the violation report in the second file on May 31, 1995. However, the Commission had not resolved either of these alleged violations at the time of the audit.
- G.S. §18B-104(c) states all fines and penalties collected for violating any ABC law will be remitted by the Commission to the State Treasurer for the General Fund. However, one file contained documentation that a permittee made a

FINDINGS AND RECOMMENDATIONS (CONTINUED)

payment to a local ABC Board after the Commission ordered the payment. According to Commission management, the Commission routinely ordered payments to be made to local ABC Boards when refilling* violations were reported. The Commission interpreted these payments to local ABC Boards as restitution for unpaid liquor taxes. However, during December 1995, the Commission instructed Commission management to cease this practice and have all fines paid only to the Commission for remission to the State Treasurer.

*A "refilling" violation occurs when an establishment refills its bottles with liquor purchased from a vendor other than its local ABC Board.

- From March 1993 through December 1995, the Commission failed to activate twenty-three previously ordered suspensions. These suspensions had been stayed on the condition that the permittees would not be found in violation of any ABC law within a specified time period. However, when these twenty-three permittees were found to have violated an ABC law within the specified period, the suspensions were not activated. During January 1996, the Commission eliminated the wording in the judgments that referred to suspending permits for a future ABC law violation.
- Seven permit files lacked supporting documentation which would provide a complete history of the permittee's background.

Files containing original documents are accessible to Commission employees and the general public. Commission employees remain with the general public during file review. However, no Commission employee is responsible for ensuring the completeness of a file following a review by another employee or the general public. In addition, the Commission does not have an in-house back-up system for permittees' records to ensure the complete reconstruction of records if destroyed or misplaced. However, destroyed or misplaced records may be reproduced from files maintained by other agencies such as ALE.

RECOMMENDATION

We recommend that Commission management strengthen the system for monitoring pending violation cases to ensure the resolution of each case in a timely manner. In addition, the names of the employees who remove permittee files should be listed on the sign out sheets. The Commission should establish a backup system for original documents. Unsupervised access to original documents should be restricted, and one or more employees should be assigned the responsibility of ensuring the completeness of each file.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

ALLEGED VIOLATIONS WERE RESOLVED WITHOUT THE KNOWLEDGE OF THE FULL COMMISSION.

According to Commission management, both the Permit Director and the former ABC Chairman have issued "Official Notices of Warnings" on submitted violation reports. During our review of the fifty-six permittee files, we found documentation indicating that twelve violation reports were reduced to Official Notices of Warnings and two violation reports were dismissed all together. These actions were taken without the knowledge or approval of the full Commission. Two of these cases included the serious allegations of selling malt beverages to individuals less than twenty-one years old.

In discussions with the two Associate Commission members, we learned that neither the Permit Director nor the former Chairman was authorized to settle cases on his own. The Associate Commission members stated the full Commission had reserved the right to decide final orders on all alleged violations reported. Our review revealed that allegations which were dismissed or reduced to written warnings **were not included** in the official agendas for review by the full Commission.

RECOMMENDATION

We recommend the Commission establish written policies for the processing of violation reports and written warnings. All violation reports, along with recommendations for penalties, should be presented during monthly Commission meetings for appropriate action. We further recommend that Commission management review the assignments of responsibilities to determine if the position of Permit Director is the appropriate one to process violation reports.

LOCAL GOVERNMENT INFLUENCE IN THE PERMITTING PROCESS COULD BE ENHANCED BY CHANGES TO THE GENERAL STATUTES.

During our audit, some local government officials expressed concerns regarding the permitting process. These concerns included:

- their perceived lack of influence in the permitting process, and
- the short time allowed for filing written objections to a permit application.

Our review of the Commission's actions confirmed that the Commission does approve ABC permits over the objections of local governments in some instances and that the response time for filing written objections may be too short. Appendix A, page 26, depicts the steps in the permit application process.

G.S. §18B-901(c) governs the issuance of permits and delineates the factors of which the Commission must be satisfied before it approves the issuance of an ABC permit. It includes other factors which the Commission "shall consider" in determining the suitability of the applicant or the business location. In addition, paragraph (d) gives the Commission the sole

FINDINGS AND RECOMMENDATIONS (CONTINUED)

power and discretion to determine the suitability and qualifications of an applicant for a permit. Further, G.S. §160A-174 limits a municipal government's ability to control the location and number of alcohol-selling establishments by restricting local ordinance creation. This statute prohibits a city from passing an ordinance which attempts to regulate a field, such as ABC permitting, for which a State statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation.

The Permit Director indicated both he and the Commission do consider the opinions and objections of local government officials regarding permit applicants. However, they feel it is the Commission's responsibility to approve a permit when the applicant has complied with all permit requirements and the local governments cannot or do not provide support for their objections.

The local governments have been asked to designate an official of the city or county, by name or by position, to make recommendations (testify at a contested case hearing or file written objections) concerning the suitability of a person or of a location for an ABC permit. This official represents the city or county in ABC permit matters to ensure compliance with local requirements. The Permit Director indicated most local governments have appointed such individuals in accordance with G.S. §18B-904(f) and have notified the Commission of such appointments. If a city or county has not designated an individual or has failed to notify the Commission of the official's name, the city or county does not have any representation or input in the permit approval process.

Before issuing a retail ABC permit for an establishment, G.S. §18B-901(b) requires the Commission to notify local governments that an establishment has filed a permit application. Local governments are allowed fifteen days in which to file written objections. If the written objection is not returned within fifteen days, the Permit Director indicated the Commission assumed the local governing body had no objection to the issuance of the permit. Although the local governing bodies have a chance to respond, several local government representatives stated the fifteen day response time was not long enough to make recommendations concerning the suitability of the applicant or the location for an ABC permit. A thirty day response period for filing written objections is more realistic. It would provide the city council/county commissioners an opportunity to review and approve the application rather than delegating this authority to a single appointed individual. However, the Commission would still have the final approval on permits.

RECOMMENDATION

We recommend the G.S. §18B-901(b) be amended to allow adequate time (up to thirty days) for a local governing body to file a written objection with the Commission. To ensure input in the permit approval process, we further recommend local governments utilize G.S. §18B-904(F) and designate an official to represent them in ABC matters. The Commission should be notified of the name of the designated official so it may update its records.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

THE APPROVAL PROCESS FOR THE ISSUANCE OF ABC PERMITS, INCLUDING QUALIFICATION REQUIREMENTS, MAY NEED REVISION.

Representatives from several local governments expressed concerns regarding the permit approval process and eligibility requirements for obtaining an ABC permit. They were particularly concerned over the increasing number of alcohol-selling establishments owned by non-residents and/or individuals who have lived in the state for a very short time. The permit approval process, with the exception of contested application case hearings, was delegated by the Commission to the Permit Director. The Permit Director reviews a permit application, along with supporting documentation provided by ALE, and either approves or rejects the application. If the application is rejected, the applicant can appeal through the appropriate channels. If the application is approved, it is forwarded to the Permit/Records Specialist who completes the process and prints the permit. (See Appendix A, page 26.)

According to the Permit Director, he determines an applicant and/or location is qualified based on several factors delineated in General Statutes, such as:

- the reputation of the applicant;
- the criminal history of the applicant;
- the suitability of the building; and
- objections from local authorities.

G.S. §18B-900 governs the qualifications for a permit and delineates the requirements to be eligible to receive and to hold an ABC permit. Interviews with ABC personnel in seventeen other alcohol-controlled states revealed that a completed application was required and some type of background check was performed. During our interviews and review of studies from other states, we noted additional qualification requirements, such as:

- fingerprint/thumbprint checks on the applicant;
- two years' state residency;
- no ownership of another liquor permit/license;
- qualified legal voter; and
- taxpayer of the county, town, city or village.

Although the Commission requires the completed application and background check, the applicant is not required to meet any of the above additional qualifications required by other states.

Although the qualifications for receiving and maintaining an ABC permit are outlined in the General Statutes, the Commission does not have written internal procedures for processing permit application documents. The absence of written procedures has contributed to inconsistencies in the approval of permit applications, as well as the processing of violations. The lack of written procedures places an additional burden on the personnel responsible for approving permit applications and processing violation reports. In addition, we could find no evidence of Commission review for approved applications.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

RECOMMENDATION

We recommend the General Statutes regarding qualification requirements be amended to require:

- **fingerprint/thumbprint checks for all applicants;**
- **documentation of background checks on all applicants; and**
- **a copy of the applicant's local business license (if required) submitted as part of the permit application package.**

We also recommend written internal procedures for processing permit applications be established and communicated to all staff. Internal procedures should be strictly followed in processing all applications. The Commission should periodically review a sample of applications to determine that all requirements have been met prior to the issuance of the permits.

THE LACK OF TECHNOLOGY HAMPERS EFFECTIVE OPERATIONS.

During our audit, we noted that the Commission does not have a networked computer system which allows communication between terminals. Work performed by the Legal Division secretaries is stored on individual personal computers. Data keyed into the ABC revenue system, permit system, or product compliance system is processed through a personal computer or the State Information Processing Services (SIPS) mainframe. The Commission recognized the need to improve its technology and has implemented several changes.

In 1994, the Commission contracted for the development of the current revenue system - a custom designed application which runs on a stand-alone personal computer. The permit system and product compliance system are also custom designed applications but run on the SIPS mainframe. During the development process for the revenue system, the Commission management discussed converting all systems to a LAN (Local Area Network) environment. Letters were sent to vendors in August 1995 to determine interest in this project. Phase I involved the study of Commission procedures and the development of a prototype for the permit and product compliance systems. Phase II would involve the upgrading and conversion of the permit system and product compliance system and implementation of the LAN.

The Commission hired a contractor for Phase I. Prior to completion of Phase I, SIPS notified the Commission that it would perform a quality assurance review on the project. The contractor completed Phase I and issued its final report to the Commission on January 24, 1996. SIPS performed its quality assurance review in early 1996 and concluded that an independent firm should review the specifications to determine if the specifications were adequate and met the Commission's technological needs. At the completion of audit field work, the independent review had not been completed and Phase II had been halted.

FINDINGS AND RECOMMENDATIONS (CONTINUED)

RECOMMENDATION

We recommend Commission management contact SIPS to determine the status of the independent review conducted on Phase I. We further recommend the Commission continue its efforts to upgrade and implement a computer network system (including a violation reporting system linked directly to the permit system) to enhance the productivity of the office and service to the public. Also, we recommend adequate computer training be provided to all the Commission staff.

THE COMMISSION DOES NOT HAVE PRINTED MATERIAL TO USE AS A MARKETING AND EDUCATIONAL TOOL FOR THE PUBLIC.

The Commission does have printed material to distribute to permit applicants and new permittees. This information describes the current ABC system and provides information on what a permittee should and should not do concerning the sale of alcohol. However, the Commission does not have printed material available to the public as a marketing or educational tool. Interviews with ALE agents indicated a need to educate local citizens regarding the current ABC system and the role and responsibilities delegated to each agency.

Conversations with ABC personnel from seventeen alcohol-controlled states revealed other states have printed material which is available to help educate the public on the operation of the ABC system. This material includes information on how to apply for a liquor permit, how to transfer a liquor permit, how to object to the issuance or renewal of a liquor permit, and community options in dealing with a problem liquor permit premises. In addition to printed material, seven alcohol-controlled states have established Hotline telephone numbers which are used for calling in complaints regarding alcohol-selling establishments.

RECOMMENDATION

We recommend the Commission develop printed materials to use as an educational tool for the public. This material should provide the public with information regarding the permit process, how they may object to the issuance of a permit, etc. Further, we recommend that ALE consider establishing a Hotline telephone number which could be used for calling in complaints or violations involving ABC laws.

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ISSUES FOR FURTHER STUDY

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NORTH CAROLINA GENERAL STATUTE §18B-901 MAY NEED REVISION.

General Statute §18B-901 states that the Commission will consider several factors in determining the suitability of a business location prior to issuing an ABC permit. One of the factors included is the distance of the establishment from a church, public school, or church school. However, the current legislation does not include such facilities as child care. Currently, the law says fifty feet is a suitable distance. However, fifty feet will not obscure the sight of the establishment nor the sounds emitting from the establishment. In addition, the law does not specify whether the distance is measured from the physical structures or property lines.

THERE ARE INCONSISTENCIES IN THE GENERAL STATUTE PERTAINING TO THE SALE TO OR PURCHASE BY UNDERAGE PERSONS.

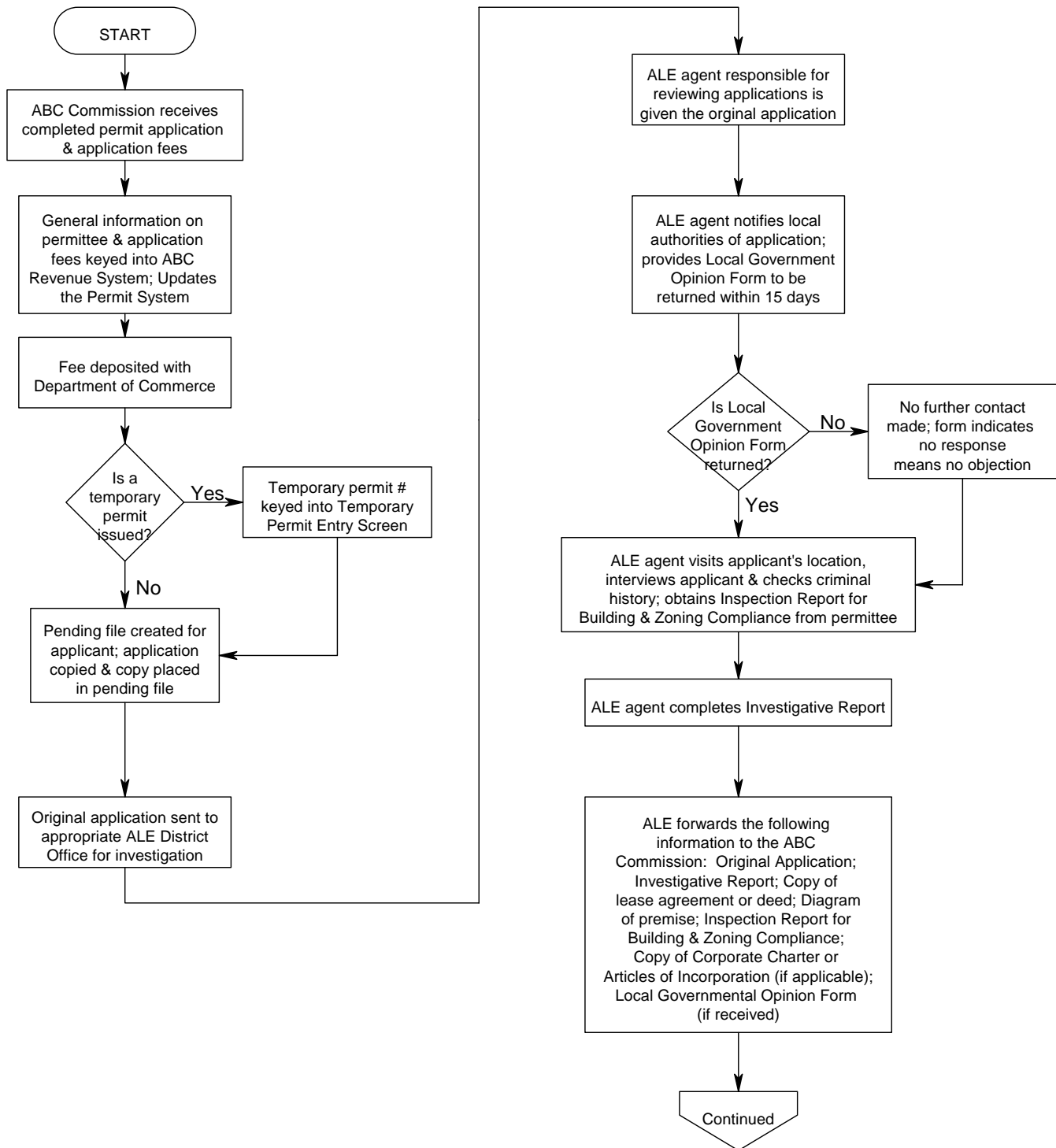
According to the current ABC laws, it is unlawful for any person less than twenty-one years old to purchase, attempt to purchase, or possess malt beverages, fortified wine, unfortified wine, spirituous liquor, or mixed beverages. Although legally underage, a person who is nineteen or twenty years old is treated more leniently for the purchase/possession of malt beverages or unfortified wine than a person eighteen years old or younger. A person who is nineteen or twenty years old is charged with an infraction for underage possession/consumption. An infraction is an unlawful act that is not a crime and is punishable by a fine of not more than twenty-five dollars (\$25.00). A person eighteen years old or younger, however, may be charged with a misdemeanor for this same type of violation. If convicted, they obtain a criminal record and may be fined and/or ordered to pay court costs. The procedure for charging and trying an infraction is the same as for a misdemeanor, but conviction of an infraction has no consequence other than payment of a fine. Also, a person convicted of an infraction may not be assessed court costs.

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APPENDICES

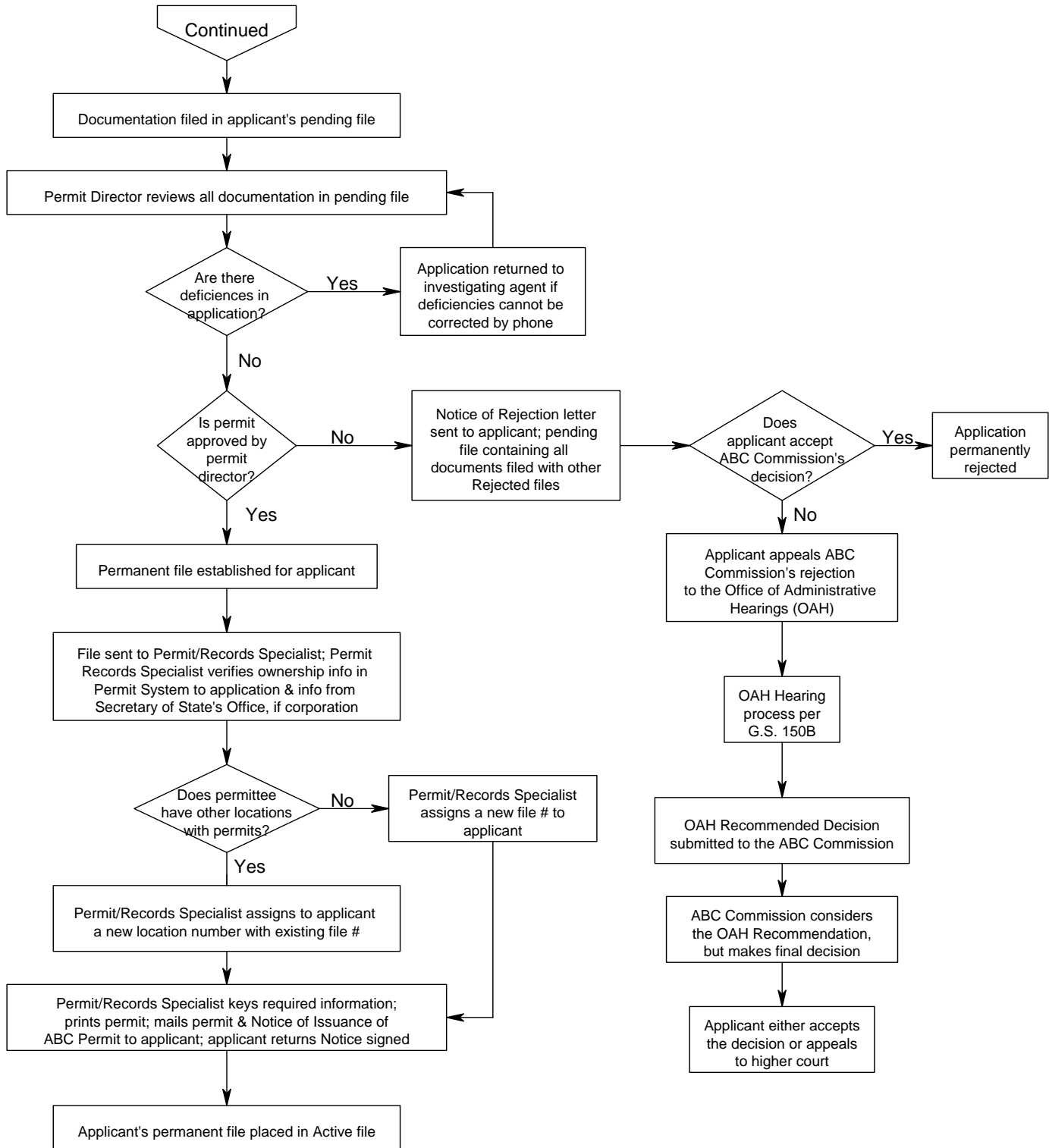
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**ALCOHOLIC BEVERAGE CONTROL SYSTEM
PERMIT APPLICATION PROCESS**



SOURCE: Commission management

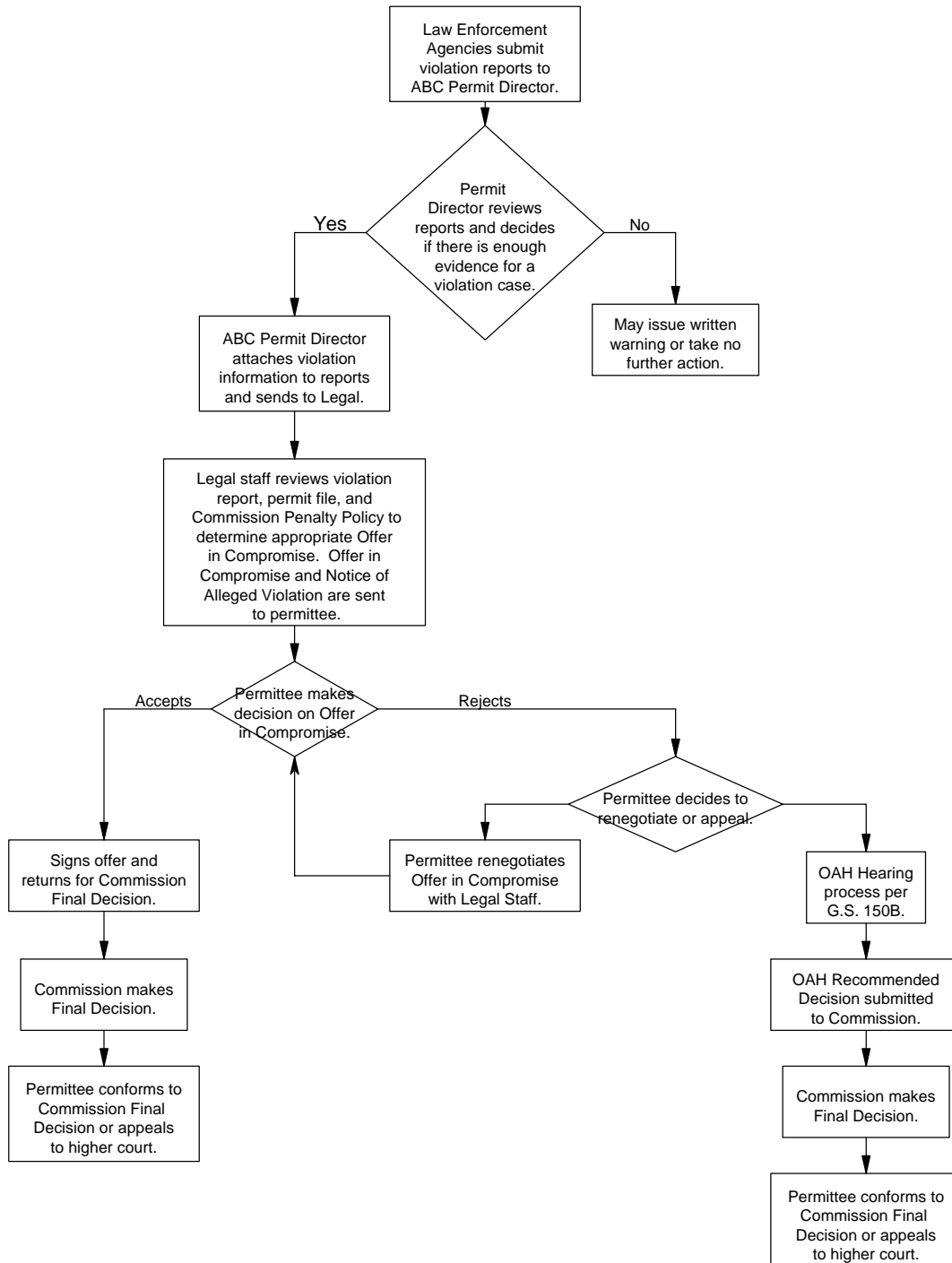
**ALCOHOLIC BEVERAGE CONTROL SYSTEM
PERMIT APPLICATION PROCESS**



SOURCE: Commission management

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**ALCOHOLIC BEVERAGE CONTROL SYSTEMS
VIOLATION PROCESS**



SOURCE: Commission management

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State of North Carolina
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June 17, 1996

The Honorable Ralph Campbell, Jr.
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Legislative Office Building
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Raleigh, North Carolina 27603-5903

Dear Mr. Campbell:

Thank you for the advance copy of the audit draft on the North Carolina Alcoholic Beverage Control System and for the cooperation extended to us by your staff. Over the past four months of this in-depth examination, it appeared that your staff learned of the enormous responsibility the Commission is charged with in overseeing a uniform system of control for the sale, purchase, transportation, manufacture, consumption and possession of alcoholic beverages in North Carolina. Enforcing the laws and rules that govern this system, while balancing the interest of all of the citizens of North Carolina, is a responsibility this Commission takes very seriously. Based on the audit objectives, your findings seem to indicate that the Commission, along with its experienced and professional staff, have served the State and its citizens well.

With regards to individual findings, the Commission concurs that:

(1) **Monetary Penalties decreased following the appointment of former ABC Commission Chairman Marvin L. Speight, Jr., in 1993.** Chairman Speight recommended penalties imposed for first offense ABC violations be reduced in an effort to help businesses to learn from their mistakes. This led to the average fine dropping from \$577.00 in 1992 to \$501.00 by 1995. Based on this, your findings would show that if the number of reported violations to the ABC Commission had remained at the level received in 1992, monetary penalties collected would have only decreased by approximately 13% with this policy change.

The Honorable Ralph Campbell, Jr.
June 17, 1996
Page 2

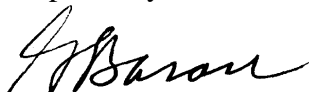
Therefore, other factors contributed to this decrease. Your report indicated that there was no review of policies and records of any law enforcement agency. Had an examination been conducted, it may have revealed that reduction of monetary penalties collected by the ABC Commission was likely due to a redirection of enforcement as it pertains to violations of Controlled Substance Act. Law enforcement should be commended for their outstanding work in fighting illegal drug activity in North Carolina.

(2) **Alleged Violations were resolved without knowledge of the full Commission.** For the past two decades, this had been a traditionally delegated responsibility to the Chairman and/or his designee. Chairman Speight used this authority to resolve alleged violations that were not considered "clear and substantial". As you found, this is the same discretion used by law enforcement officers when issuing Written Warnings. It is also similar to dismissals and acceptance of lesser pleas, for cause, by District Attorneys.

(3) **Local Government influences in the permitting process along with permit qualification requirements may need revision by changes to the General Statutes.** This Commission has always fully complied with the statutory requirements of Chapter 18B of the North Carolina General Statutes in regards to permit issuance. We have actively assisted local governments and the League of Municipalities in supporting positive changes in the past and will continue to do so. Your audit findings illustrate the Commission's efforts in assisting local governments by including restitution to local ABC boards in negotiated violation settlements. This practice was begun in 1989 to help compensate for the loss of local tax revenue. However, it was discontinued based on a legal interpretation by the Attorney General's Office in 1995.

In conclusion, the ABC Commission feels that this evaluation has not only provided this agency with an opportunity for self-examination but exonerated it from an unfair and inflammatory attack by the media last year. Many of the useful recommendations have already been implemented. Others will require additional study and refinement. The Commission recognizes the need for periodic re-evaluation and improvements in maintaining its commitment to the highest standards. We are proud of our dedicated staff and their excellent working relationship with law enforcement. We will continue to strive toward our common goals of addressing the needs and safety of all citizens in North Carolina.

Respectfully,



George F. Bason
Chairman

cc: Roland W. Leary
Howard C. McGlohon

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June 20, 1996

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