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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 3, 2000

Mr. Edward F. Kelly
Chairman
State Liquor Authority
84 Holland Avenue
Albany, NY 12208

Re: Report 99-F-57

Dear Mr. Kelly:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by the State Liquor Authority (SLA) as of February 18, 2000, to implement the recommendations contained in our prior audit report, *Investigator Productivity* (Report 95-S-138). Our report, which was issued February 18, 1997, examined the effectiveness of the enforcement activities of the Division of Alcoholic Beverage Control.

Background

New York State's Alcoholic Beverage Control Law (Law) regulates and controls the manufacture, distribution, and sale of alcohol in the State. The Law created the State Liquor Authority (SLA), a three-member board responsible for enforcing the Law and taking administrative disciplinary action against licensees who violate the Law. SLA carries out its responsibilities through the Division of Alcoholic Beverage Control (ABC) in an effort to protect the general public and consumers.

ABC's Enforcement Unit investigates complaints of alleged misconduct by the State's 27,517 licensees and the 19,935 temporary permittees. These investigations range from searches of government agency and public records to field investigations of a licensee site. Findings of serious violations are referred to ABC's Legal Unit for administrative disciplinary hearings. Final decisions and disciplinary actions are made by the SLA Board. Disciplinary actions may consist of the revocation, cancellation or suspension of licenses, including monetary fines and/or bond forfeitures.

ABC enforcement operations are located in three zones: New York City, Albany and Buffalo. The Enforcement Unit employed 32 investigators at a cost of about \$1.5 million for the

1999-2000 fiscal year. For calendar year 1999, the three zones combined reported completing 7,182 investigations.

Summary Conclusions

In our prior audit, we found that ABC had not implemented the necessary management controls over its enforcement efforts, including establishing an effective system to measure the productivity of its investigators. We also found that ABC had not clearly defined the priorities for investigations to provide the necessary direction to staff. In addition, we identified several improvements ABC could make to ensure that its resources are used in the most efficient manner.

In our follow-up review, we found that ABC officials have implemented the recommendations contained in our prior audit report. ABC officials have established a system to measure the productivity of its investigators. Additionally, ABC defined its investigation priorities and communicated them and provided guidance to its investigators. ABC is in the process of implementing a computerized enforcement module to their information system that will provide efficiencies to their enforcement function.

Summary of Status of Prior Audit Recommendations

Division officials have implemented all seven prior audit recommendations.

Recommendation 1

Develop a system to measure Enforcement Unit performance which includes measurable goals and objectives and the use of performance indicators.

Status - Implemented

Agency Action - ABC has implemented performance measurements. It has established the performance indicator of number of cases completed per month by each investigator and the number that remain open. The Director of Enforcement has determined the number of cases that an investigator can complete per month to be 10 to 15 taking into consideration variables such as the difficulty of the case.

Recommendation 2

Perform routine comparative analyses of performance indicators among investigators and zones. Follow up on variances to identify good and bad techniques.

Status - Implemented

Agency Action - The three zones are required to submit monthly reports that include numerous investigation and caseload statistics which are the source for the performance indicators. The Director of Enforcement told us that he performs routine analyses when reviewing the reports and shares his findings with the supervisors and the three zones during monthly meetings. Although the Director has not retained documentation of the analyses, he told us that documentation will be kept when the computerized reporting system is complete. In the meantime, we encourage the Director to create and retain documentation of the analyses.

Recommendation 3

Determine whether ABC has the authority to seize, retain, and dispose of evidence, such as gambling devices and gambling proceeds.

Status - Implemented

Agency Action - The Counsel's Office has issued a legal opinion stating that seizure of evidence by investigators is not permitted by statute, except, in connection with an arrest that would be made based on their status as peace officers. It is agency policy that investigators do not make an arrest or issue a summons for criminal violations. Therefore, investigators have been instructed not to seize evidence.

Recommendation 4

Develop and implement current policies and procedures for Enforcement Unit operations, including guidelines for collecting, retaining, and disposing of evidence.

Status - Implemented

Agency Action - ABC has established uniform, statewide procedures to serve as the primary source of guidelines for Enforcement operations and to eliminate operational differences among the three zone offices. We observed that evidence is secured in locked rooms and logs are maintained to establish accountability.

Recommendation 5

Assign referrals that do not require special investigative knowledge to non-investigative staff.

Status - Implemented

Agency Action - ABC was able to obtain an investigative aide position to do routine work in all three zones.

Recommendation 6

Increase emphasis on establishing relationships with police agencies by presenting "Train the Trainer" and "Meet the Chief" programs to them and monitor the effects on high quality police referrals.

Status - Implemented

Agency Action - ABC obtained a grant from the Governor's Traffic Safety Committee to fund a comprehensive law enforcement training program and established a law enforcement liaison position to coordinate the program. The goal of the project was to conduct a coordinated and comprehensive training program for State and local law enforcement agencies on the Alcohol Beverage Control Law. By improving police officer awareness of the ABC Law and procedures for referring cases to the SLA, the program aimed to improve the cases referred by the police so that they would not need further investigation by ABC. Success of the training program is measured by how many complaints are rejected by SLA counsel and are sent back to the investigating police department. For example, in Zone I the number of referred cases that had to be returned to the investigating agency declined from 245 in 1998 to 99 in 1999.

During the three-year grant period, the SLA reported that it provided 186 training sessions for 4,615 officers. Although the grant expired in September 1999, the Division continues to provide training to police departments as well as the "Meet the Chiefs" program. ABC determined that the "Train the Trainer" program was not effective because the individuals who were trained did not go back to their agencies and train others.

Recommendation 7

Consider referring some cases to law enforcement agencies where possible.

Status - Implemented

Agency Action - The Enforcement Bureau has placed renewed emphasis on police referrals for certain violations, particularly those dealing with "sale to minor" cases, and other criminal violations. This initiative is included as part of the law enforcement training program. Additionally, new procedures require that all police referrals be processed by the Counsel's Office in the respective zones. These referrals are sent directly to Office of Counsel if they are received by the Zone Enforcement Office. Enforcement is still responsible for issuing Advise Letters or conducting further investigations based on determinations of police department referrals made by Zone Office Counsel.

Major contributors to this report were William Nealon, Stephen Goss, Charles Krahula, and Jorge Vázquez.

We thank the management and staff of the Division of Alcoholic Beverage Control for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Carmen Maldonado
Audit Director

cc: Charles Conaway