



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Statewide Compliance With Administrative Requirements for Retail Liquor License Approvals, Renewals, and Enforcement Actions

New York State Liquor Authority



Report 2016-S-32

June 2017

Executive Summary

Purpose

To determine whether the New York State Liquor Authority (Authority) appropriately approved new and renewed licenses in accordance with the State's Alcoholic Beverage Control Law (ABC Law) and the related administrative and documentation requirements. The audit also sought to determine if the Authority complied with the administrative protocols related to enforcement actions, including the revocation, cancellation, and suspension of liquor licenses. Our audit focused on compliance with certain provisions of the ABC Law and related rules and regulations at the State level. This audit did not assess compliance with any local laws or policies that could impact licensing in specific communities, including "on premises" establishments in New York City where licensing may require input from local community boards. Matters pertaining to noise complaints related to liquor license holders in New York City were addressed separately, in another State Comptroller's audit report. This particular audit and report covered the period April 1, 2014 through August 23, 2016.

Background

The Authority was established under New York State Law in 1934 to regulate and control the manufacture and distribution of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to law. The ABC Law gives the Authority the power to issue licenses and permits for the manufacture, wholesale distribution, and retail sale of all alcoholic beverages. A three-member Board of Commissioners oversees the Authority's operations.

The Authority investigates licensees to ensure they are in compliance with the ABC Law. When a licensee is non-compliant, the Authority can impose a fine on the licensee and/or suspend, cancel, or revoke the license. The Authority has a total of 96 types of licenses and 91 types of permits. Our audit focused on the largest retail license types (On Premises Liquor, Grocery Store Beer, and Liquor Store). Between April 2014 and June 2016, the Authority issued 11,321 new retail licenses and 34,816 renewals of retail licenses in these three categories. During that same time, the Authority: assessed 5,134 fines totaling \$20.5 million; made 1,134 bond claims totaling \$1 million; and imposed 216 suspensions, 861 cancellations, and 156 revocations on licensees.

Key Findings

On a statewide basis, the Authority generally approved new liquor licenses and license renewals consistent with the ABC Law and the Authority's prescribed administrative protocols. In particular, the Authority adequately ensured that license applicants and parties seeking renewals complied with the Authority's prescribed documentation requirements. For the new license applications we selected for review, the Authority had 99 percent of the required documentation on file. For selected license renewals, we determined that all documents were submitted, as required. In addition, the Authority complied with its administrative requirements pertaining to license revocations, cancellations, and suspensions.

Key Recommendations

None

Other Related Audit/Report of Interest

[State Liquor Authority - Division of Alcoholic Beverage Control: Oversight of Wholesalers' Compliance With the Alcoholic Beverage Control Law \(2005-S-33\)](#)

State of New York
Office of the New York State Comptroller

Division of State Government Accountability

June 21, 2017

Mr. Vincent Bradley
Chairman
New York State Liquor Authority
80 S. Swan Street, 9th Floor
Albany, NY 12210

Dear Chairman Bradley:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the State Liquor Authority's *Statewide Compliance With Administrative Requirements for Retail Liquor License Approvals, Renewals, and Enforcement Actions*. The audit was performed 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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This report is also available on our website at: www.osc.state.ny.us

Background

The New York State Legislature enacted the Alcoholic Beverage Control Law (ABC Law) in 1934 to regulate the State's alcoholic beverage industry. The ABC Law created the New York State Liquor Authority (Authority), which has the power to issue licenses and permits for the manufacture, wholesale distribution, and retail sale of all alcoholic beverages. The Authority is a State agency, with a three-member Board of Commissioners (Board) that oversees operations, including rendering decisions on licensing and disciplinary matters. The Authority's headquarters are located in Albany. For operating purposes, the Authority is divided into three zones: Zone 1 (New York City), Zone 2 (Albany and Syracuse), and Zone 3 (Buffalo).

Part of the Authority's mission is to ensure that those who abuse the privilege of holding a license are fairly and firmly disciplined. The Authority has a total of 96 types of licenses and 91 types of permits. Our audit focused on the largest retail license types, which include On Premises Liquor (32 percent), Grocery Store Beer (19 percent), and Liquor Store (6 percent). These three categories account for 57 percent of all licenses issued by the Authority. Between April 2014 and June 2016, the Authority issued 11,321 new retail licenses and 34,816 renewals of retail licenses in these three categories.

The Authority's Licensing Bureau (Licensing) coordinates statewide licensing policies, standards, and initiatives, and ensures that all applicants meet the statutory requirements to obtain a license or permit. Licensing staff review all license and permit applications, and prepare detailed reports to ensure that a proper determination is made on each application. Licensing staff also verify that applicants do not have a criminal record and are not otherwise disqualified to be issued a license.

The Authority's Enforcement Bureau (Enforcement) investigates licensees to ensure they are in compliance with the ABC Law. If Enforcement staff determine that a licensee is not in compliance, the Authority may bring administrative charges. The Authority's Board reviews the work done by the Enforcement staff and may decide to impose one or more of the following penalties:

- Fine;
- Bond forfeiture;
- License suspension, which prohibits consumption or sale of liquor for a limited period;
- License cancellation, which terminates the license but allows the licensee to reapply; and
- License revocation, which terminates the license and bans the licensee from reapplying for at least two years.

Between April 2014 and June 2016, the Authority: assessed 5,134 fines totaling \$20.5 million; made 1,134 bond claims totaling \$1 million; and imposed 216 suspensions, 861 cancellations, and 156 revocations on licensees.

Audit Findings

On a statewide basis, the Authority generally complied with the administrative requirements of the ABC Law and its own policies and procedures concerning the approval of new liquor licenses and license renewals. In particular, the Authority adequately ensured that license applicants and parties seeking license renewals complied with the Authority's prescribed documentation requirements. For the license applications we selected for review, the Authority had 99 percent of the required documentation on file. Also, the Authority generally complied with the administrative requirements pertaining to the revocation, cancellation, and suspension of liquor licenses.

Retail License Approval and Renewal Processes

An applicant for a liquor license – whether a new license or a license renewal – has to meet multiple requirements, as set forth in the ABC Law. As a result, the applicant has to provide a considerable amount of information and supporting documentation to the Authority. For example, an application for a new On Premises Liquor license (which allows the licensee to sell or serve alcoholic beverages to be consumed on the licensed premises) requires documentation to show, among other things: how the applicant has possession of the premises; the applicant's costs and sources of funding; the type of operation; and whether the proposed location is within 500 feet of any existing facility with an On Premises Liquor license or within 200 feet of a school or a place of worship. The application also has to include detailed diagrams and photos of the premises. Finally, each individual on the application has to provide the Authority with a photograph and fingerprints.

To help with the process, the Authority has developed applications, forms, and instructions for each type of license, which are available on its website, to guide a prospective licensee in completing an application properly, including providing all necessary documentation.

Approval of New Licenses

For each new license application, the license examiner uses an Examiner Checklist to determine if the license applicant submitted all documents and all required information in those documents. A Deficiency Letter is sent to a license applicant when additional documentation or information is needed to approve an application. Each new license can require the applicant to submit up to 33 separate documents for review and approval. We randomly selected a sample consisting of 15 new retail licenses (5 from each Authority zone) to ensure that the required documentation and information was submitted by the applicant as part of the licensing process. We determined the Authority should have received a total of 427 documents for these 15 licenses, as some applications did not require all 33 documents.

We found that an Authority examiner completed an Examiner Checklist for each application, and the Authority received 99 percent of the documentation and information required. Authority personnel were unable to locate five documents. Nonetheless, based on our review, we concluded that the Authority sufficiently complied with its prescribed documentation requirements for applications for new licenses.

Approval of License Renewals

License renewal applications are subjected essentially to the same approval process as new license applications. Each license renewal can require up to 15 separate documents. However, because there are fewer documents, the Authority does not use an Examiner Checklist to determine if all documents have been submitted. We randomly selected a sample consisting of 15 retail license renewals, 5 from each zone. We determined the Authority should have received a total of 199 documents for these 15 renewals as, again, some renewals did not require all 15 documents. Our tests showed that all 199 documents were submitted, as required.

Retail License Enforcement Processes

The Authority has the right to revoke, cancel, or suspend any license it has issued and/or to impose a civil penalty against any holder of a liquor license. The Authority's Enforcement is responsible for investigating possible violations of the ABC Law by licensees, and works with law enforcement agencies and community groups across the State to help ensure enforcement compliance.

License Enforcement

When the Board suspends, cancels, or revokes a license, Enforcement is notified. Enforcement staff visit the establishment to serve orders (papers) on the licensee and post the enforcement action at the establishment's entrance. Staff also provide copies of the papers to the local police department to help ensure that the establishment is properly monitored.

We reviewed the enforcement calendars from each zone for June, July, and August 2016, at which time there were a total of 67 scheduled enforcement actions, including: 60 in New York City, 5 in Buffalo, and 2 in Albany. We selected a judgmental sample of 17 enforcement actions (10 from New York City, along with all 5 from Buffalo and the 2 from Albany) to verify enforcement actions.

According to Authority records, Enforcement staff served papers on all 17 establishments and provided copies of such papers to the pertinent local police departments. We also reviewed websites and made inquiries of these establishments to determine whether any were still selling alcohol. We identified one establishment in New York City with a suspended On Premises Liquor license that might have been selling alcohol, and notified the Authority. Consequently, Enforcement staff visited this establishment and determined that it neither sold nor served alcoholic beverages. Based on our review and Authority follow-up, we concluded that none of the 17 establishments sold or served alcohol at the time of our audit fieldwork.

Rescinded Actions

In certain cases, the Authority will rescind a pending license suspension, cancellation, or revocation if the licensee pays a fine before a particular date. During June, July, and August 2016, the Authority rescinded 17 enforcement actions against New York City-based establishments, 3 actions in the Albany zone, and 1 action in Buffalo. From these 21 (17 + 3 + 1) actions, we

judgmentally selected 10 actions in New York City as well as the 4 in Buffalo and Albany combined to verify proper payment of fines. For all 14 (10 + 4) licenses, we found the licensees paid their fines prior to the effective dates of the proposed enforcement actions. Thus, the Authority's decisions to rescind the enforcement actions we selected for review were appropriate.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the Authority appropriately approved new and renewed licenses in accordance with the ABC Law and the related administrative and documentation requirements. The audit also sought to determine if the Authority complied with the administrative protocols related to enforcement activities, including the revocation, cancellation, and suspension of liquor licenses. Our audit focused on compliance with the ABC Law and related rules and regulations at the State level. This audit did not assess compliance with any additional local laws or policies that could impact licensing in specific communities, including "on premises" establishments in New York City where licensing may require input from local community boards. Also, matters pertaining to noise complaints related to license holders in New York City are addressed separately, in another State Comptroller's report. This particular audit and report covered the period April 1, 2014 through August 23, 2016.

To achieve our audit objective, and to determine whether associated internal controls were adequate, we reviewed the Authority's adherence to the ABC Law related to retail licenses and enforcement, as well as to its own policies and procedures. We also interviewed Authority officials and staff. To assess whether the Authority appropriately approved new and renewed licenses, we reviewed a random sample of 15 new (out of a population of 11,321) and 15 renewed (out of a population of 34,816) retail licenses, 5 from each of the Authority's 3 zones, that were issued as of April 1, 2014, and traced them to documents in the Authority's computer system to determine if required documentation was submitted. We also verified that no Authority employees had been issued a license.

To assess whether the Authority adequately enforced revocation, cancellation, and suspension of liquor licenses for the months of June, July, and August 2016, we reviewed a judgmental sample of 17 current actions (out of a population of 60) – including 10 from New York City, 5 from Buffalo, and 2 from Albany – to ensure the Authority adequately served the establishment with required paperwork and notified the local police department as required. We also reviewed licensee websites and contacted these establishments to determine if they were selling alcohol. To assess whether establishments had properly paid fines in cases where their enforcement actions were rescinded, we reviewed a judgmental sample of 14 of 21 current actions – 10 from New York City, 1 from Buffalo, and 3 from Albany – to verify that the Authority had received the payments of the fines.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating threats to organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed 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.

Reporting Requirements

A draft copy of this report was provided to Authority officials for their review and formal comment. Their comments were considered in preparing this report and are attached in their entirety at the end of it.

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Agency Comments



ANDREW M. CUOMO
Governor

VINCENT G. BRADLEY
Chairman

GREELEY FORD
Commissioner

April 12, 2017

Office of the State Comptroller
Division of State Government Accountability
C/O Mr. John Buyce, Audit Director
110 State Street – 11th Floor
Albany, NY 12236-0001

Dear Mr. Buyce:

The New York State Liquor Authority ("SLA") acknowledges receipt of the Office of the State Comptroller's ("OSC") Draft Report regarding Statewide Compliance with Administrative Requirements for Retail Liquor License Approvals, Renewals, and Enforcement Actions dated March 17, 2017.

I am pleased that the OSC has concluded that, on a statewide basis, the SLA complies with the administrative requirements of the Alcoholic Beverage Control Law, as well as our own policies and procedures concerning the approval of new liquor licenses and license renewals. In addition, I am glad to see that the OSC has concluded that the SLA complies with the administrative requirements pertaining to the revocation, cancellation, and suspension of liquor licenses.

If you have any questions or need any clarification, please feel free to contact me at your convenience.

Most Respectfully,

A handwritten signature in blue ink that reads "Vincent Bradley". The signature is written in a cursive style.

Vincent Bradley
Chairman

Alfred E. Smith Office Building, 80 S. Swan St., Suite 900, Albany, NY 12210