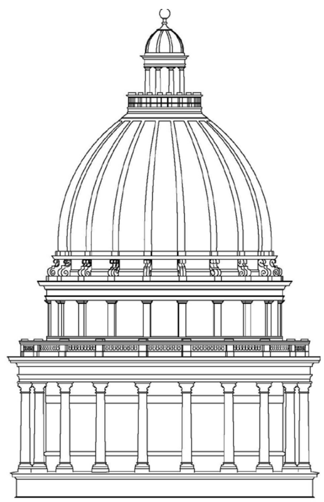
REPORT TO THE

UTAH LEGISLATURE

Number 2010-11



A Performance Audit of The Department of Alcoholic Beverage Control

October 2010

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

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JOHN M. SCHAFF, CIA
AUDITOR GENERAL

October, 2010

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Department of Alcoholic Beverage Control** (Report #2010-11). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff

John M. Schaff, CIA
Auditor General

JMS/lm

Digest of
A Performance Audit of the Department of Alcoholic Beverage Control

Chapter I: Introduction

In order to regulate the consumption of alcohol in Utah, the Legislature has established the Department of Alcoholic Beverage Control (DABC). Utah has chosen a monopoly version of the control model in order to maximize safety and revenue. Through a five-member, part-time commission structure, the DABC regulates alcohol sales to the public from state liquor stores (off-premise consumption) and the sale of alcohol from clubs and other licensed establishments (on-premise consumption). This audit examined the operations of the DABC as well as the commission that oversees this department.

Chapter II: The Commission Can Strengthen Compliance with State Statutes

Our Review Found that the Commission Has Habitually Violated the State's Open Meeting Laws. We found that 88 percent of reviewed closed meeting discussions were not in accordance with the state's open meeting laws and all closed meetings had some discussions that were inappropriate. The commission also needs to ensure that the statutorily required open meetings training is occurring. By developing a framework to aid in open meeting discussions/evaluations of potential liquor license applicants, the commission can ensure compliance with the open meetings law.

We also found that two commissioners have potential conflicts of interest that have not been adequately disclosed. These two commissioners do business with entities that are licensed by the DABC. This lack of disclosure is due primarily to an absence of rules governing conflicts of interest for the commission. To address this absence, the commission should develop rules that address conflicts of interest for the commission and how they should be disclosed. Finally, in a separate issue, we found that the Legislature may want to consider revising current liquor laws by clarifying whether commissioners are allowed to conduct business with entities that hold a liquor license.

Chapter III: Business Planning Of the DABC Should Be Improved

Changes in Utah's Population and Consumption Patterns Indicate a Clear Need for Expansion of Retail Services Offered by the DABC. Although the DABC has acted aggressively to accommodate growth in demand, it has constructed new stores and expanded existing stores without adequately considering alternatives. The DABC's business plan should consider alternatives to constructing new stores. When construction is determined necessary, the DABC should closely analyze appropriate locations and the potential effect on DABC operations.

The rapid expansion of DABC retail space without the guidance of an adequate business plan could potentially create inefficiencies and unnecessary costs that can impact profitability. Over the last five years, the amount of long-term construction and expansion debt has increased over $41 million. Our review also found that past DABC real estate acquisitions were not in line with state practices.

Chapter IV: Retail Operations Are Profitable, But Store Productivity Could Be Improved

The Statutory Markup on Retail Products Helps Ensure the DABC's Profitability. In addition to the statutory markup, the DABC has instituted a special purchasing program that has achieved cost savings and established specific policies and procedures to minimize loss from breakage and theft. Although the DABC's operations have been profitable, store productivity could still be improved. While the DABC has used internal controls to minimize shrinkage rates, it could better utilize available reporting tools to help control their largest operating expenditure, personnel.

Chapter V: DABC Licensing and Compliance Functions Can Be Enhanced

The Licensing and Compliance Section of DABC Should Enhance the Performance of Their Responsibilities. By formalizing policies and procedures for the performance of their duties, especially licensee visits, the DABC could ensure consistent treatment of all licensees. Further policies should be developed to ensure communication with the liquor law enforcement section of the State Bureau of Investigation (SBI) to reduce duplication of services.

Chapter VI: The Legislature Could Consider Some Licensing Issues

The Legislature Could Also Consider Some Licensing Issues. Specifically:

- Revising the quota for liquor licenses and/or considering the creation of an all-inclusive license for hotels/resorts to help ensure that demand is met for establishments desiring a license for on-premise consumption.

- Allowing the Department of Alcoholic Beverage Control (DABC) Commission the authority to delegate to their department's executive director the approval of single event permits and temporary special event beer permits to enhance the efficiency of the commission.

Consideration of these licensing issues could help enhance both the economic development of the state and the operational efficiency of the DABC Commission.

REPORT TO THE

UTAH LEGISLATURE

Report No. 2010-11

A Performance Audit of The Department of Alcoholic Beverage Control

October 2010

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Chapter I
Introduction

In order to regulate the consumption of alcohol in Utah, the Legislature has established the Department of Alcoholic Beverage Control (DABC). Utah has chosen a monopoly version of the control model in order to maximize safety and revenue. Through a commission structure, the DABC regulates alcohol sales to the public from state liquor stores (off-premise consumption) and the sale of alcohol from clubs and other licensed establishments (on-premise consumption). This audit examined the operations of the DABC as well as the commission that oversees this department.

DABC Regulates the Sale and Distribution of Alcohol in Utah

The DABC statute was written "for the protection of the public health, peace, safety, welfare, and morals and regulates the sale, service, storage, manufacture, distribution, and consumption of alcoholic products." In order to facilitate these goals, the DABC was established.

The DABC was created for the protection of the public and regulation of the sale of alcohol.

Throughout the country, departments of alcoholic beverage control are separated into two categories; control states and license states. Utah is a control state, one of 19 control jurisdictions in the nation. These jurisdictions "regulate their own retail and/or wholesale distribution of alcoholic beverages" and account for nearly one-third of the U.S. population. The main difference between a license and a control state is that at some point in the process, a control state takes ownership of the alcoholic product.

Utah, along with 12 other jurisdictions (12 states and Montgomery County, Maryland make up 13 of the 19 control jurisdictions in the nation), has chosen to take alcoholic beverage control one step further and maintain a monopoly on both wholesale and retail aspects of alcohol sales. As a result, only the state or a county maintains retail stores. One reason given by The Alcohol Research Group for states operating as control states is that it leads to reduced consumption and higher state revenues. Specifically, "control

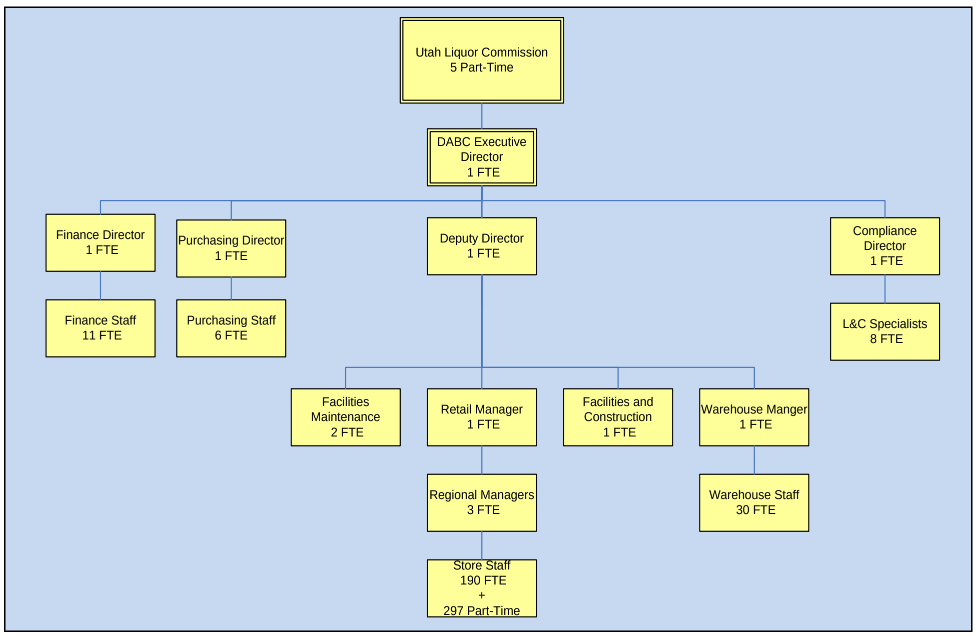
Utah, like 12 other jurisdictions, maintains a monopoly on both wholesale and retail aspects of alcohol sales.

states consume 14 percent less spirits and seven percent less alcohol per person . . . while bringing in more than three times as much state revenue per gallon of alcohol sold as spirits."

Five commissioners oversee the DABC.

The DABC is governed by a five-member, part-time commission, overseeing divisions aimed at facilitating both on- and off-premise consumption. Figure 1.1 shows the organization of the DABC.

Figure 1.1 The DABC Is Overseen by the Utah Liquor Commission. The DABC, at the direction of the Commission, oversees all aspects of alcohol distribution in Utah.



Not included in figure: Education, Technology and Human Resource Services.

The DABC regulates both on- and off-premise consumption of alcohol.

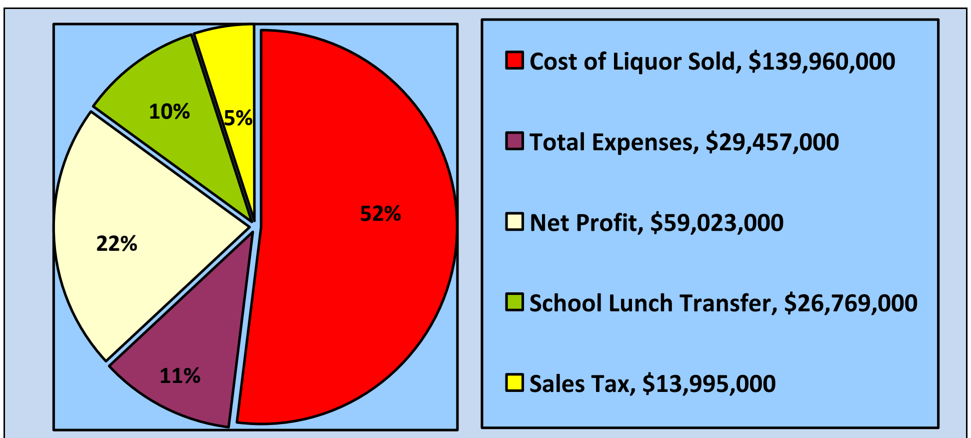
The main functions that will be addressed in this report can be divided into two basic areas of oversight: off-premise and on-premise consumption. Off-premise consumption includes retail, facilities and construction, distribution, and warehouse functions. On-premise consumption includes the compliance operations of the DABC. As shown in Figure 1.1, the commission oversees all DABC operations.

DABC Off-Premise Consumption Sales Provide Significant Revenue for the State

The revenue that DABC generates for the state in off-premise consumption sales is significant. The administration of off-premise consumption is discussed more fully in Chapters III and IV. In fiscal year 2009, the DABC's retail sales totaled $267 million. The DABC operates 44 state stores and contracts with 112 package agencies throughout the state. Figure 1.2 shows the distribution of dollars from DABC operations for fiscal year 2009. The dollars shown were primarily generated from off-premise consumption operations.

The DABC's sales totaled $267 million in fiscal year 2009.

Figure 1.2 The DABC Distribution of Dollars for Fiscal Year 2009. Net profit, school lunch transfer, and sales tax become state revenue. Percentages listed are based on total revenue of $269,307,000.



Distribution of dollars for FY 2009 was taken from the 74th Annual Report of the DABC.

Net profit, school lunch transfer, and sales tax are all government revenues. In fiscal year 2009, these government revenues totaled about $100 million dollars or 37 percent of the DABC's total distribution of dollars. Net profit is profit generated for the state's general fund and sales tax is the tax revenues generated from liquor sales. Statutorily, 10 percent of state liquor sales is required to be transferred to the school lunch program. Cost of liquor sold is the cost of purchasing the liquor and total expenses are total operating expenses for the DABC.

DABC revenues go to net profit (state's general fund), school lunch, and sales taxes.

DABC Regulates Licensing and Compliance For On-Premise Alcohol Consumption

As mentioned previously, the DABC also regulates the on-premise consumption of alcohol by licensing businesses interested in serving liquor, then ensuring their compliance with state liquor laws. The regulation of on-premise consumption will be discussed in more detail in Chapters V and VI. Figure 1.3 lists the type of licenses available from the DABC and explains what these license types are.

Figure 1.3 There Are Five Main Licenses Regulated by DABC for On-Premise Consumption. The DABC also offers on and off-premise licenses for package agencies, airport lounges, and resorts, but far fewer of these types of licenses are needed. The club license subdivides into four different types and on-premise beer licenses have one subdivision.

License Type	Description	Quota?
Club	Allows sale, storage, service, and consumption on the premises; these establishments' main sales are from alcohol.	Yes
On-premise Banquet/Catering	Allows sale, storage, service and consumption for contracted banquet activities at a hotel, resort facility, sports center, or convention center.	Yes
On-premise Beer	Allows the sale of beer for consumption on the premises; includes restaurants, bowling centers, taverns (while on-premise beer licenses do not have a quota, there is a quota on taverns).	No
Restaurant--Full Service	Allows sale, storage, service and consumption of alcohol in a business whose sales are at least 70% food; includes all types of alcohol.	Yes
Limited Service Restaurant	Allows sale, storage, service and consumption of alcohol in a business whose sales are at least 70% food; includes only wine, heavy beer and beer.	Yes

Licensing and compliance specialists oversee these license holders to ensure that all alcohol statutes of the state are being followed, including, among others, amount of alcohol sold, minors on premises, over-serving to intoxicated people, and liquor storage.

Audit Scope and Objectives

This audit was requested by the Legislative Audit Subcommittee to evaluate the overall efficiency and effectiveness of the DABC. To do this we evaluated:

- Chapter II – The commission's compliance with state statutes, specifically the open meeting laws and conflicts of interest
- Chapter III – Retail operations and expansion that facilitate alcoholic products for off-premise consumption
- Chapter IV – The productivity of retail operations
- Chapter V – The licensing and compliance section's regulation of on-premise consumption
- Chapter VI – The appropriateness of the number of alcohol licenses and the manner of their distribution

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Chapter II
The Commission Can Strengthen Compliance with State Statutes

Our review found that the Department of Alcoholic Beverage Control (DABC) Commission has habitually violated the state's open meeting laws by closing meetings to discuss the issuance of liquor licenses. Most of the closed meeting discussions of the commission did not meet the statutorily authorized purposes of a closed meeting. For example, we found that 88 percent of reviewed closed meeting discussions were not in accordance with the state's open meeting laws, and all closed meetings had some discussions that were inappropriate for a closed meeting. The commission also needs to ensure that the statutorily required open meetings training is occurring. By developing a framework to aid in open meeting discussions/evaluations of potential liquor license applicants, the commission can help ensure compliance with the open meetings law. The commission recently started keeping their meetings open to the public and they have appeared to lack a methodology in discussing which applicant should receive a license when licenses are few.

Most of the commission's closed meeting discussions failed to meet the statutorily authorized purposes of a closed meeting.

We also found that two commissioners have potential conflicts of interest that have not been adequately disclosed. These two commissioners conduct business with entities licensed by the DABC. This lack of disclosure is due to an absence of rules governing conflicts of interest for the commission. To address this absence, the commission should develop rules that address conflicts of interest and how they should be disclosed. Finally, in a separate issue, the Legislature may want to consider revising current liquor laws by clarifying whether those who conduct business with liquor license holders should serve as commissioners.

Potential conflicts of interest need to be addressed.

The Commission Has Habitually Violated the Open Meeting Laws

The commission has violated the state's open meeting laws by routinely closing meetings to discuss the issuance of liquor licenses and other issues that do not meet the statutory criteria for closing a meeting. While individual commissioners have stated that they prefer to have their deliberations in a closed meeting, statute dictates that the people's business should be conducted in the open. ***Utah Code*** 52-4-102 states:

> (1) The Legislature finds and declares that the state, its agencies, and political subdivisions, exist to aid in the conduct of the people's business.
>
> (2) It is the intent of the Legislature that the state, its agencies, and its political subdivisions:
> (a) Take their actions openly; and
> (b) Conduct their deliberations openly.

Our review found that most discussions that have occurred in closed meetings were inappropriate and should have taken place in an open meeting.

Our review of closed meeting videos since January 2009 found that most discussions held in closed meetings were inappropriate for a closed meeting and should have taken place in an open meeting. For example, we found that 88 percent of reviewed closed meeting discussion topics, in our opinion, were not held in accordance with the state's open meeting laws. In addition, all closed meetings contained some discussions that were inappropriate for a closed meeting. In every reviewed closed meeting of the commission, a representative from the Attorney General's Office was present. Because the commission is part-time, they should be able to rely on their staff and legal counsel to advise them on the legality of closed meeting discussions, but we did not see sufficient evidence of this occurring.

Commission Has Consistently Considered Liquor Licenses in Closed Meetings

Considering liquor licenses in a closed meeting has been the practice of the commission for the last 35 years.

The commission has consistently considered the issuance of liquor licenses in closed meetings. The general practice of the commission has been to automatically close the meeting to discuss liquor license applicants. In the closed meeting, the commission would decide which applicants would get a license, and then decide which commissioner would make the appropriate motions in the open meeting. According to the DABC executive director, considering liquor licenses in a closed meeting has been the practice of the commission for the last 35 years. Thus, this practice long predates any of the current commissioners involvement with the DABC.

In March 2010, the media challenged the commission's practice of closing meetings, and for the first time, the commission did not close the meeting. The commission did close their meeting in April 2010, but did not close their meetings in May through July 2010. While the commission recently stopped its practice of closing meetings to consider the issuance of liquor licenses, for years its typical practice ran contradictory to the state's open meeting laws.

State's Open Meeting Laws Dictate When a Meeting Can Be Closed to the Public. In order to ensure that deliberations occur openly, the state's open meeting laws allows meetings to be closed for certain topics only. Figure 2.1 shows the statutory reasons for closing a public meeting.

Figure 2.1 The State's Open and Public Meetings Act States That a Public Meeting Can Only Be Closed For Specific Reasons. This law was enacted to ensure that the people's business was conducted in the open.

***Utah Code* 52-4-205. Purposes of closed meetings.**

(1) A closed meeting described under Section 52-4-204 may only be held for:

(a) discussion of the character, professional competence, or physical or mental health of an individual;

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property . . .

(e) strategy sessions to discuss the sale of real property . . .

(f) discussion regarding deployment of security personnel, devices, or systems;

(g) investigative proceedings regarding allegations of criminal misconduct; and

(h) discussion by a county legislative body of commercial information as defined in Section 59-1-404.

Most closed meeting discussions were not in line with the intent of the law and closing a meeting for potential litigation is also a violation of the law.

Our review of the commission's open meeting minutes found that the general reason given for closing their meetings was to discuss the character and competence of individuals applying for licenses and any pending and potential litigation. Most closed meeting discussions were not in line with the intent of character, professional competence, or physical or mental health of an individual. We also found that very few discussions involved pending or reasonably imminent litigation. Closing a meeting for potential litigation is also a violation of the state's open meeting laws as statute only allows the meeting to be closed if the litigation is currently pending or reasonably imminent.

Most Factors Used by the Commission to Determine Licensure of Applicants Do Not Justify a Closed Meeting. The factors that are considered concerning character and competence of individuals applying for licenses are listed in Figure 2.2. Most of these factors are listed in the Alcoholic Beverage Control Act, but some factors were included because the commission determined they were relevant. Almost all of these factors do not meet the statutory requirements for a closed meeting.

Figure 2.2 Almost All Factors for Granting Licenses Do Not Meet Statutory Requirements for Closed Meeting Discussions. Assuming the application is complete, and all qualifications to hold a license are met, the commission considers the factors cited below (published by the DABC).

Location
- Proximity to and density of other alcohol outlets in the area
- Demographics/population to be served
- Proximity to schools, churches, libraries, playgrounds, or parks
- Tourist traffic
- Has location been previously licensed, or is a new location*

Physical Characteristics
- Physical condition
- Size/Square footage
- Seating capacity*
- Parking availability
- Opening date*

Applicant's Ability To Manage & Operate
- Management experience
- Past retail liquor experience
- Whether the applicant holds other alcohol licenses*
- Type of management scheme
- Violation history/or pending violation*

Nature or Type of Operation
- Type of menu items offered and emphasized
- Hours of operation
- Gross sales of food items
- Whether a seasonal business*
- (Restaurants) Emphasized service to adult clientele or to minors

Other Factors
- Nature of entertainment (sexually oriented business, etc.)*
- Change of ownership of existing location*
- Availability of licenses under the quota*
- Percent of liquor/beer sales*

** Not expressly listed in the statutes. However, the statutes allow the commission to "consider any other factor or circumstance it considers necessary."*

Management experience is arguably the only factor that may justify a closed meeting discussion because all of the other factors are disclosed in public documents. While management experience may occasionally justify a closed meeting, closing a meeting but not discussing private or personnel information would be inappropriate.

Closing a meeting to discuss character and competence while not discussing anything private or protected is inappropriate.

The Governor's *Handbook for Members of the State of Utah Boards and Commissions* states:

> The Open Meetings Act allows the Board to close a meeting to discuss certain statutorily-designated topics, but the Act does not require any meeting to be closed. Generally speaking, even if the Open Meetings Act allows the Board to close a meeting, the Board should consider whether it is in the public interest to conduct the discussion in secret. For example, the statute allows a closed meeting to discuss the character or professional competence of an individual. This provision protects that individual's privacy interests. If the individual actually prefers to have the discussion conducted openly, however, the Board may not be justified in relying on this statutory basis for a closed meeting.

While the commission may prefer to discuss the issuance of licenses in closed meetings, current statute does not allow for this.

While several commissioners stated to us that they would prefer to hold discussions regarding the issuance of liquor licenses in closed meetings, current statute does not allow for this. Although some circumstances could justify a closed meeting, our review of all closed meetings of the commission since January 2009 showed that most closed meeting discussions were not in line with the state's open meeting laws.

Review of Closed Meeting Discussions Identified Significant Violations of Open Meeting Laws

We reviewed the closed meeting video recordings for all commission meetings from January 2009 through April 2010 and found that most of the closed meeting discussions were not in line with statute. As previously mentioned, the commission stopped closing their meetings in March 2010 when they were challenged, but closed their April meeting, and did not hold a closed meeting in May through July 2010.

A significant amount of closed meeting discussions involved public information.

We found that a significant portion of closed meeting discussions centered around applicants' public information, such as location, variances, proximity, etc. The commission also routinely discussed other topics, such as rules or the interpretation of rules and legislation, in closed meetings.

In reviewing the closed meeting recordings, we isolated discussion topics and identified 66 closed meeting discussions held since January 2009. For those 66 closed meeting discussions, we compared each topic with the statutory reasons for closed meetings. When the discussion topic was relevant to one of the statutory reasons for a closed meeting, we considered that discussion appropriate for a closed meeting. As a result of our review, we determined the following:

- 58 of 66 closed meeting discussion topics (88 percent), in our opinion, were not in accordance with the state's open meeting laws.

- Only seven out of 15 closed meetings contained some discussions that were appropriate for a closed meeting.

- Of the seven closed meetings that contained some appropriate closed meeting discussions, these meetings also included other discussions that were not appropriate for a closed meeting.

- 100 percent of reviewed meetings contained inappropriate discussions for a closed meeting.

We discussed this issue with commissioners and DABC staff and both expressed concern about not being able to have frank conversations about applicants in an open meeting. While open deliberations can be uncomfortable at times, the law requires it and therefore the commission should work to ensure compliance with this law.

The law requires open meeting deliberations, whether or not they are uncomfortable.

Commission Needs to Ensure Compliance with Open Meeting Laws

The commission could enhance its compliance with the state's open meeting laws by:

- Ensuring that statutorily required annual training of open meeting requirements for commissioners is occurring.
- Developing a discussion framework to help commissioners in the determination of licensure for applicants.

Implementation of these two practices should help the commission to fulfill their statutory duties while complying with the state's open meeting laws.

Annual Training on the Open Meeting Laws Is Required by Statute, but Is Not Occurring. The Open and Public Meetings Act requires annual training on the provisions of the law. ***Utah Code*** 52-4-104 states:

> The presiding officer of the public body shall ensure that the members of the public body are provided with annual training on the requirements of this chapter.

The commission chair needs to ensure that statutorily required annual training is occurring.

This law requires the chair of the commission to ensure annual training for commissioners on the provisions or requirements of the Open Meetings Act. Staff for the DABC and current commissioners agreed that this training has not occurred. Staff for the commission and the representative from the Attorney General's Office assigned to the DABC should help the commission chair ensure that this training is occurring as required by statute. Ensuring compliance with annual training requirements will, in turn, help the commission stay in compliance with the state's open meeting laws.

Development of a Discussion Framework for Public Meetings Will Help the Commission with Open Meeting Deliberations. While the DABC has recently tried to keep their meetings open, they have appeared to lack a methodology when discussing which applicant should get a license in an open meeting. To aid the commission in having to decide which applicant will get a license when licenses are restricted in number, we recommend that the commission direct its staff to develop a framework to guide open meeting discussions of applicants. For example, a scorecard system could be developed to help the commission rank applicants according to factors that they deem most important. Factors such as geographic diversity, economic development, personal investments, etc. could be ranked to help facilitate open meeting discussions. A scorecard or similar guide could help the commission in its deliberations of applicants when faced with having to decide which applicants will receive a liquor license. While staff already provides the commission with a significant amount of information, a simplified scorecard addressing the factors that the

Development of a framework for open meeting discussions would aid the commission in issuing liquor licenses when licenses are few.

commission deems important would help commissioners in their open meeting discussions.

Potential Conflicts of Interest Need to Be Addressed

The commission should develop rules for the disclosure of actual or potential conflicts of interest for commissioners. As previously mentioned, the DABC is governed by a five-member, part-time commission. Discussions with DABC staff and individual commissioners indicated that two current commissioners conduct business with entities licensed by the DABC. While we are not stating that any commissioner is violating the law, we do recommend that the commission develop rules that require disclosure of actual or potential conflicts of interest to help prevent such a violation. In a separate issue, we also recommend that the Legislature revise some statutes in Utah's liquor laws to clarify potential ambiguities regarding the offering or soliciting of bribes or gifts.

Commission Should Develop Rules Addressing Disclosure of Conflicts of Interest

The commission should develop rules to address the disclosure of actual or potential conflicts of interest. We found that two of the current five commissioners have potential conflicts of interest in that they do business with entities that are licensed by the DABC. One commissioner is an owner of a small business that provides products to some licensees; the other commissioner's law firm represents some licensees.

We asked all commissioners to explain or disclose any potential conflicts of interest they may have. Three commissioners informed us that they have no conflicts of interest. The one commissioner whose law firm represents some licensees explained to us who his clients are. The commissioner whose business provides some licensees products would not disclose the licensees with which he does business.

Two commissioners have potential conflicts of interests that have not been adequately disclosed.

The Public Officers' and Employees' Ethics Act states in ***Utah Code*** 67-16-9:

No public officer or public employee shall have personal investments in any business entity which will create a substantial conflict between his private interests and his public duties.

While this statute prohibits substantial conflicts, it requires disclosure if an owned business is subject to regulation of the agency by which the officer or employee is employed. Although the two commissioners that have potential conflicts of interest do not own businesses licensed by the DABC, they do business with entities that are subject to regulation by the commission, creating potential for conflicts of interest. To clarify, neither commissioner is involved in liquor sales, but they have business relationships with entities who do sell liquor.

While the Ethics Act is silent on disclosure regarding this kind of potential conflicts of interest, the Governor's Office has recommended that boards and commissions establish policies on handling potential conflicts of interest. An excerpt from the Governor's Handbook for Members of the State of Utah Boards and Commissions is cited in Figure 2.3.

The commission should develop rules that dictate when and how potential conflicts of interest should be disclosed.

Figure 2.3 The Governor's Handbook for Members of the State of Utah Boards and Commissions Recommends That Commissions Address Potential Conflicts of Interest. The DABC Commission should develop a rule that addresses the disclosure of potential conflicts of interest for their members.

> The approach taken by the Board member with a conflict of interest is an individual decision. While no specific law exists mandating how conflicts of interest should be resolved, the Board could establish a policy recommending how conflicts of interest should be handled. . . Some Boards have established policies on handling conflicts of interest.

The commission should develop a rule addressing how commissioners should disclose potential or actual conflicts of interest to ensure transparency.

Liquor Laws Regarding Offering or Soliciting Bribes or Gifts Should Be Clarified

The Legislature should consider clarifying the statutory language in the Alcoholic Beverage Control Act that addresses offering or soliciting bribes or gifts. Current statute could be interpreted that commissioners may not do business with entities that hold liquor licenses. As previously mentioned, two current commissioners do business with entities that hold liquor licenses. To reiterate, our review did not identify any wrongdoing by any commissioner, but Figure 2.4 cites the statute found in Utah's liquor laws that we think should be revised.

Figure 2.4 *Utah Code* 32A-12-308 Offering or Soliciting Bribes or Gifts Should Be Considered for Revision by the Legislature. Current statutory language may prevent someone who does business with entities that hold a liquor license from being a commissioner.

> 32A-12-308(2) A Commissioner, the department director, any department employee, or any law enforcement officer responsible for the enforcement of this title may not knowingly solicit, receive, accept, take, or seek, directly or indirectly, any commission, compensation as defined in Section 67-16-3, gift as defined in Section 67-16-5, or loan whatsoever from any person, association, or corporation having sold, selling, or offering any alcoholic product for sale.
>
> Compensation is defined in statute as:
>
> 67-16-3(5) "Compensation" means anything of economic value, however designated, which is paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone other than the governmental employer for or in consideration of personal services, materials, property, or any other thing whatsoever.

The Legislature should consider revising current liquor laws by clarifying whether those who do business with licensees can be commissioners.

Commissioners for the DABC are part-time and obtain their income from entities other than the state. The question that we raise is whether or not the Legislature intended for individuals to serve as commissioners who do business with entities that are regulated and licensed by the DABC.

When commissioners do business with entities licensed by the DABC, they receive compensation for their products or services. We believe that this issue could be interpreted either way. We therefore recommend that the Legislature consider revising this statute in order to clarify whether or not individuals who do business with entities that hold liquor licenses should serve as commissioners over alcoholic beverage control. If the Legislature decides to revise ***Utah Code*** 32A-12-308, we also recommend that the Legislature consider any necessary changes to ***Utah Code*** 32A-12-306 addressing conflicting interests.

Recommendations

1. We recommend that the DABC Commission ensure that they are complying with the State's Open Meeting Laws.

2. We recommend that the DABC Commission chair ensure that annual training is occurring for commissioners on the Open Meeting Laws.

3. We recommend that the DABC Commission direct its staff to develop a methodology to guide open meeting discussions addressing the factors that they deem most important for applicants seeking a liquor license.

4. We recommend that the DABC Commission develop rules addressing how commissioners should disclose and address potential or actual conflicts of interest.

5. We recommend that the Legislature consider revising current liquor laws that address the offering or soliciting bribes or gifts and clarify if those who do business with liquor license holders should be commissioners. If the Legislature decides to revise ***Utah Code*** 32A-12-308, we also recommend that the Legislature consider any necessary changes to ***Utah Code*** 32A-12-306 addressing conflicting interests.

Chapter III
Business Planning of the DABC Should Be Improved

Changes in Utah's population and consumption patterns indicate a clear need for expansion of retail services offered by the Department of Alcoholic Beverage Control (DABC). While the DABC has acted aggressively to accommodate growth in demand, it has constructed new stores and expanded existing stores without adequately considering alternatives. The DABC reports that it works with local communities and tries to position its liquor stores where there is demand in high traffic locations. But, their brief strategic plan primarily addresses goals and past accomplishments; we find it inadequate to guide substantial growth in retail capacity. The DABC's business plan should consider alternatives to constructing new stores. When construction is determined necessary, the DABC should closely analyze appropriate locations and the potential affect on DABC operations.

The rapid expansion of DABC retail space without the guidance of an adequate business plan could create inefficiencies and unnecessary costs that can impact profitability. Over the last five years, the amount of long-term construction and expansion debt has increased over $41 million. Our review also found that past DABC real estate acquisitions were not in line with state practices.

The DABC Should Consider Alternatives to Construction

The DABC has not adequately analyzed alternatives to building new stores or expanding existing stores to accommodate growth in population and consumption. Currently the DABC operates 38 owned stores and six leased stores. They also contract with 112 package agents to provide retail sales. In recent years, the DABC has focused on store construction; it leases very few stores and recently closed its largest and best performing package agency in American Fork. The American Fork Package Agency was replaced by a 12,000 square foot state-built store in Pleasant Grove.

The DABC leases few stores and underutilizes package agencies, while other control states use these methods almost exclusively.

Other control states, specifically Virginia, Idaho, New Hampshire, Alabama, Pennsylvania, and Oregon, almost exclusively lease stores or use package agencies. The DABC has not conducted sufficient analysis and maintains no documentation on the costs and benefits of alternatives to building new liquor stores. The DABC should consider package agencies and leasing as alternatives to building new stores.

Package Agencies Could Be an Alternative to Building New Stores

Package agencies provide an alternative to state-operated retail stores. Package agencies are liquor outlets operated by private individuals or corporate entities under contract with the state for the purpose of selling packaged liquor, wine, and beer to the general public for off-premise consumption. Some states, such as Oregon, rely primarily on package agencies to provide retail sales.

In Utah, package agencies are often located in communities too small to warrant the establishment of a state store and in resorts or hotels where the outlets exist primarily for the benefit of their guests. Package agencies are classified into five types:

- **Type 1** – There are 17 Type 1 package agencies, these are operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

- **Type 2** – There are 9 Type 2 package agencies, these are operated in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

- **Type 3** – There are 30 Type 3 package agencies, these are not operated in conjunction with another business, but is in existence for the sole purpose of selling liquor.

- **Type 4** – There are 42 Type 4 package agencies, these are located within a facility approved by the commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A Type 4 package agency is not open to the general public.

- **Type 5** – There are 14 Type 5 package agencies, these are located within a winery, distillery, or brewery that has been granted a manufacturing license by the commission.

If the DABC were to consider package agencies as an alternative to building new stores, a Type 3 package agency would be the most appropriate. A Type 3 package agency is in existence for the sole purpose of selling liquor. Although the state currently operates 112 package agencies, only 30 are Type 3 and many serve very small jurisdictions. The DABC has not demonstrated that Type 3 package agencies have been adequately considered as an alternative to building new stores in larger jurisdictions.

The DABC has not adequately considered package agencies as an alternative to new store construction.

Package Agencies Compensation is Based on Volume Sold. Type 3 package agencies are compensated by the state on the basis of units/bottles sold per month. The number of units/bottles they sell determines what pay level they receive month to month. With the exception of the costs of goods sold, operations and maintenance costs are accrued by the package agent as opposed to the state. Figure 3.1 shows the compensation scale for Type 3 package agencies.

Figure 3.1 Package Agency Compensation Depends On The Amount of Product Sold. The volume of bottles sold per month determines the amount of monthly pay the package agency receives.

Pay Level	Units/Bottles Per Month	Monthly Pay
1	0 – 999	$ 2,165.65
2	1000 – 1239	$ 2,526.60
3	1240 – 1489	$ 2,887.54
4	1490 – 1739	$ 3,248.48
5	1740 – 1989	$ 3,609.42
6	1990 – 2489	$ 3,970.36
7	2490 – 2989	$ 4,331.31
8	2990 – 3489	$ 4,692.25
9	3490 – 3989	$ 5,053.19
10	3990 – 4489	$ 5,414.13
11	4490 – 4989	$ 5,775.08
12	4990 – 5489	$ 6,136.02
13	5490 – 5989	$ 6,496.96
14	5990 – 6489	$ 6,857.90
15	6490 – 6989	$ 7,218.84
16	6990 – 7459	$ 7,579.79
17	7490 – 7989	$ 7,940.73
18	7990 – up	$ 8,301.67

The DABC reported that they feel that the compensation for package agencies is inadequate, making it difficult to attract package agents. The DABC could increase package agency compensation, but the department stated that their current budget cannot address this need. According to the DABC, they have gone to the Governor to request an increase in package agency compensation to address current package agents' complaints about compensation levels. However, we found no evidence indicating that the DABC has formally approached the Governor or the Legislature to increase package agency compensation in an effort to attract more package agents as an alternative to opening new stores. Instead, they have opted for building new stores that are owned and operated by the DABC. The DABC should fully analyze the merits or drawbacks of package agencies as alternatives to state-owned and operated stores.

Package agencies allow Oregon to forgo some operations and maintenance and human resource costs.

Oregon Utilizes Package Agencies to Expedite the Sale of Alcohol. Oregon reports that using package agencies saves money on operations and maintenance. This method also affords Oregon the opportunity to forgo the cost of human resources associated with store operations.

In contrast, from fiscal year 2007 through 2011 the new retail space added by the DABC will increase facility operation and maintenance costs by $457,102. Since fiscal year 2001, full-time employment at DABC retail stores has increased by 28 percent and part-time employment has increased by 10 percent. While the DABC does currently have 30 Type 3 package agencies, it has not conducted a cost-benefit analysis for adding package agencies as an alternative to building new stores. Rather, it has focused on constructing new stores to facilitate growth. The DABC stated that some control states like Oregon sell heavy beers and wines in other retail outlets such as grocery stores which allow their package agencies to carry fewer products. While package agencies in Utah would have to carry more products than in other control states, they are still a viable option.

A Number of Control States Primarily Use Leased Stores to Expedite the Sale of Alcohol

While Oregon has chosen to use contracted package agencies, similar to Utah's Type 3 package agencies, other control states primarily lease stores. Virginia, Idaho, New Hampshire, Alabama, and Pennsylvania all either exclusively lease stores or lease a majority of their stores. To illustrate, the Alabama Alcoholic Beverage Control Board reported that leasing stores helps increase flexibility to respond to changing demographic patterns. Alabama further reported that continued examination of traffic patterns and demographic patterns obtained by different state agencies helped the commission determine when and where lease changes needed to be made.

Utah leases six stores while some control states almost exclusively lease liquor stores.

Currently, the DABC leases six stores but has not adequately considered leasing more stores as an alternative to building new stores. While other control states have used leased stores as the primary method of selling alcohol, our review found that the Utah DABC has not formally considered the merits and drawbacks of leasing stores compared to constructing new stores. A sufficient business plan that includes a cost-benefit analysis comparing leasing property with buying property would help the DABC determine the most cost-effective method of accommodating growth in demand for retail products.

Store Construction Needs Better Business Planning

The DABC has not adequately considered the long-term impact of current construction and expansion.

The DABC has not adequately considered the long-term impact of current construction and expansion. Specifically, the DABC should complete an analysis of the overall densities of liquor stores in certain regions of the state as well as the impact newer stores have on older stores in close proximity. Figure 3.2 shows that state growth patterns in population and consumption justify a need for retail expansion. Over the last five years, the amount of long-term construction and expansion debt incurred has increased over $41 million. However, without a thorough business plan guiding construction activities, the potential for inefficiencies is created.

Figure 3.2 There Has Been Significant Growth in Population and Consumption. Since 2001, there has been a large increase in state population and liquor consumption.

Fiscal Year	State Population	Consumption in Gallons
2001	2,244,314	4,028,969
2009	2,727,343	6,217,933
Percent Increase	**22%**	**54%**

Growth in consumption and population justify DABC retail expansion.

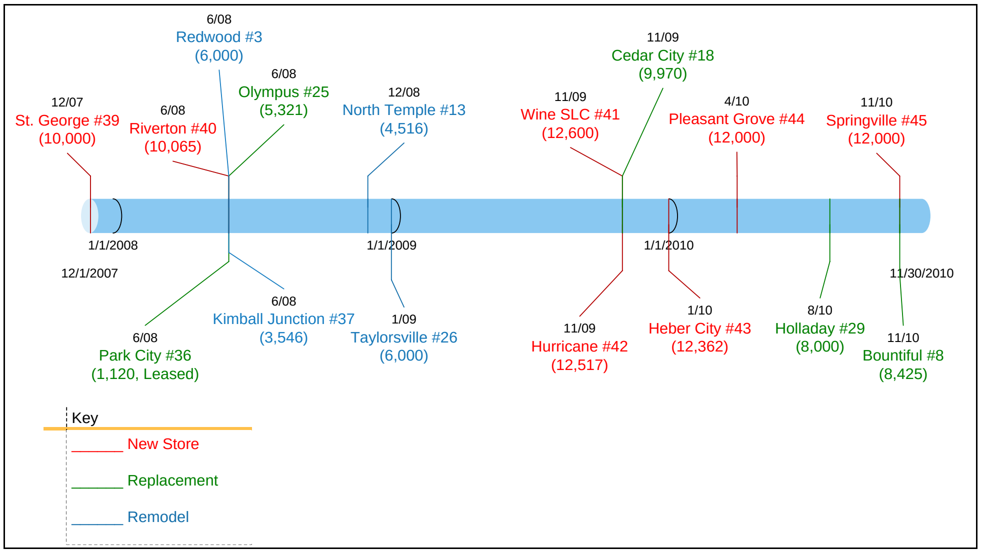
As population and consumption have increased, so has the demand for DABC retail services. This growth in demand justifies retail expansion, but expansion should be accompanied by sufficient short-term and long-term planning. Other control states have short- and long-term business plans to guide expansion.

Determination of New Store Location Needs Improved Analysis and Planning

From 2007 through 2011, construction and expansion will have cost the DABC $43 million.

Prior to December of 2007, the DABC experienced little growth in new stores or expansion of existing stores. Since then, the DABC has completed or begun construction on seven new stores, constructed five stores to replace existing stores, and remodeled four existing stores. The Department of Facilities and Construction Management (DFCM) reports that by 2011, the DABC will have spent $43 million on retail store construction and expansion. Figure 3.3 shows the recent timeframe in which the DABC has increased retail selling space by 40 percent.

Figure 3.3 DABC Has Experienced Rapid Growth. By November of 2010, the DABC will have added 134,442 square feet of retail space. In three years, the DABC will have completed seven new stores, five replacement stores, and remodeled four existing stores. The numbers in parentheses indicates the additional square footage the corresponding store added to the DABC's retail space.



**The number in parenthesis indicates the additional square footage the corresponding store has added to the DABC.*

The DABC has initiated a large volume of construction projects since December of 2007. This rapid expansion has moved forward without adequate long-term planning. The department reports that examination of population data, public demand, local government input, commercial development, real estate consultation, and demographics is undertaken with each and every new expansion project. However, we found little analysis and limited documentation of these factors.

Store placement needs to be addressed as part of the DABC's business plan.

In examining individual project documentation, our review found limited examination of the factors DABC reported being considered when expanding or opening new stores. It appeared that the department did not give preference to any specific factor when determining the size and location of new stores. We found that the DABC tries to position new liquor stores in close proximity to big-box retailers. The DABC reported that they relied on the significant planning, expense, and thought that has gone into the studies that determine where Wal-Mart, Costco, Target, Sam's Club, and Lowe's are placed. The cost near big box retail space can be expensive and the

DABC has insufficient documentation to justify the need for this placement.

The DABC maintains a monopoly on the sale of alcohol in the state, which allows the department to avoid the typical competitive market that other retailers must aggressively plan for. While the DABC may avoid the competitive market that private retailers must plan for, long- and short-term business planning still plays an important role in any retail business, regardless of market advantages or disadvantages. Although each individual liquor store is currently profitable, the DABC may be able to enhance the total agency profitability through improved business planning.

It remains unclear whether the DABC should model store placement decisions after big-box retailers as their retail environment is drastically different. Nonetheless, adequate business planning that generates a cost-benefit analysis to assess the advantages and disadvantages of determining DABC store placement based on big-box retailers' would help the DABC clarify whether or not such action is cost-effective.

The DABC has not adequately analyzed whether retail stores are placed too close together.

The DABC Should Consider Liquor Store Densities in Certain Regions. Within a ten-mile radius of some liquor stores in Salt Lake City there is an average of nearly 11 liquor stores. Both Utah and Washington counties have recently opened new stores that have further increased store density in those regions. As part of a business plan, the DABC should analyze the density of stores throughout the state to determine if some stores are located too close together. Our review found a number of examples of stores that are located less than three miles apart, for example:

- Store #1 is **0.81** miles from Store #35
- Store #2 is **2.07** miles from Store #14
- Store #4 is **2.19** miles from Store #2
- Store #12 is **0.9** miles from Store #35
- Store #20 is **0.48** miles from Store #41
- Store #25 is **2.52** miles from Store #29
- Store #44 is **2.08** miles from Store #17
- Store #32 is **2.35** miles from store #39

Many of these examples of stores located close to another have recently been constructed, remodeled, or replaced for expanded retail space. Stores #39 and #44 are newly constructed stores, Store #3 has recently been remodeled, and Stores #25, and #29 are new replacement stores. Sometimes there may be reasons to locate stores closer together. For example, Store #41 is a wine store and carries a different product mix than other liquor stores. Figure 3.3, which illustrates DABC's rapid growth, provides the time frame in which those projects took place. These close proximities may cause inefficiencies as stores placed too close together may negatively impact one another. The DABC needs to improve their long-term planning to help ensure optimal placement of liquor stores.

The DABC Should Consider the Effects of Store Expansion and Construction On Other Nearby Stores. Our review found that the DABC has not adequately considered the impact new stores may have or have had on stores in close proximity. For example, one store had its sales reduced by more than half after a new store was opened less than three miles away. Even though all liquor stores are currently profitable, stores placed too close together can unnecessarily drive up operating costs for the DABC.

Other control states report that stores located too close together cause a reduction in profitability.

Other control states have come to the determination that stores located too close to one another can reduce profitability. The New Hampshire Liquor Commission reported that a new store cannibalizing the sales of an old store is a major problem for them. In order to deal with this concern, they have considered implementing a rule that guides the distance between stores. The DABC needs to consistently review the impact new stores have on nearby older stores within the framework of a business plan. This will further aid the department in identifying an optimal distance between retail stores.

Other Control States Maintain Business Plans

The agencies that are equivalent to Utah's DABC in Virginia, Idaho, and Oregon use business plans. The Virginia Department of Alcoholic Beverage Control produces an executive progress report that details productivity, compliance, rankings, trends, and initiatives while also detailing future plans, expectations, and alternatives to chosen methods of action. Similarly, Idaho maintains a five-year strategic

Strategic business planning is part of other control states' standard operating procedures.

business plan which presents performance measures, benchmarks, strategies, and reasoning for strategies offered.

Both short- and long-term business planning of the DABC needs improvement. Enhanced planning, including adequate analysis of alternatives to construction and store placement, would help enhance the operational efficiencies of the DABC.

Past DABC Real Estate Acquisitions Were Not In Line with State Practices

In examining the acquisition of real estate for new store constructions sites, our review found that past DABC practices were not in line with state practices. The Division of Purchasing and General Services has delegated to the Department of Facilities and Construction Management (DFCM) the authority to procure real-estate related professional services such as real estate agents.

According to DFCM, the DABC used unauthorized real estate agents to secure property for the Bountiful, Pleasant Grove, Springville, Hurricane, Cedar City, and Heber City stores. The DFCM estimates that DABC's use of unauthorized buyer's agent may have put upward pressure on the price of property that ultimately resulted in increased costs of $165,000.

In December of 2009, the DABC began complying with DFCM practices.

Our review verified that DFCM personnel communicated to the DABC that the department's practice of using their own real estate agent was against the Division of Purchasing and General Services practices and needed to change. In December of 2009, DFCM personnel outlined for the DABC the rules and regulations that must be followed in acquiring property for the state. DFCM also communicated that soliciting or asking commercial real estate agents or brokers to find properties for DABC was against state code. Since December of 2009, DFCM reports that the DABC is compliant with statute in regard to the procurement of real estate services.

Recommendations

1. We recommend that before considering further construction and expansion, the DABC develop an improved strategic business plan that includes, but is not limited to:

    - Identifying alternatives to building new stores in order to accommodate growth in population and consumption, including enhanced use of package agencies and leasing

    - Examining the effect of liquor store density on profitability

    - Reviewing the impact that newly constructed stores are having on older established stores in close proximity

2. We recommend that the DABC evaluate the appropriateness of package agency compensation and develop a plan to adjust them if needed.

3. We recommend that the DABC ensure compliance with state practices for real estate acquisitions.

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Chapter IV
Retail Operations Are Profitable, But Store Productivity Could Be Improved

The statutory markup on retail products helps ensure the Department of Alcoholic Beverage Control's (DABC) profitability. Further, the DABC has instituted a special purchasing program that achieved cost savings and has also established specific policies and procedures to minimize loss from breakage and theft. Although the DABC's operations have been profitable, store productivity could still be improved. While the DABC has used internal controls to minimize shrinkage rates, it could better utilize available reporting tools to help control their largest operating expenditure, personnel.

While DABC's operations have been profitable, store productivity could still be improved.

For fiscal year 2010, the DABC was appropriated $16.5 million for all personnel services, constituting 56 percent of the department's total appropriation of $29.5 million. Legislative appropriations to the DABC for personnel have increased 33 percent since fiscal year 2006, from $12.4 million to $16.5 million.

Since 2006, legislative appropriations for DABC personnel services have increased 33 percent.

Statutory Mark-up on Alcoholic Products Helps Ensure Profitability

Generally the mark-up on wines and distilled beverages in Utah is not less than 86 percent. The mark-up on heavy beer (beer containing more than 4 percent alcohol by volume or 3.2 percent by weight) is not less than 64.5 percent. The only exceptions to this are the following:

The statutory mark-up on retail products plays the largest role in DABC profitability.

- 47 percent markup on small producers of spirituous liquor or wine
- 15 percent markup on products sold by the state to military installations
- Variable markup applied to products sold by the DABC that will be de-listed

Figure 4.1 shows the financial information posted by the DABC for fiscal year 2009.

Figure 4.1 The DABC Generated Over $267 Million In Total Sales In Fiscal Year 2009. Total revenue is primarily the difference between total sales and cost of goods sold.

Statement of Operation	Fiscal Year 2009
Total Sales	$ 267,123,335
Cost of Goods Sold	139,959,708
Gross Profit*	127,163,627
Total Other Income**	2,183,582
Total Revenue	**$ 129,347,209**
Total Expenses	**$ 28,907,966**
Net Operating Income***	100,439,243
Total Taxes Collected	40,764,114
Net Profit	**$ 59,675,129**

**Total sales – cost of goods sold*
***Total other income is mostly licensing fees*
**** Total revenue – total expenses*

In fiscal year 2009, DABC's total sales were just over $267 million, while the actual cost of the goods sold was nearly $140 million. The difference between total sales and cost of goods sold results in gross profits of $127 million. The gross profits generated by the DABC are primarily the result of the statutory mark-up on alcoholic products.

DABC sales growth is similar to that of other control states.

In terms of total sales, the DABC saw an increase of 4.08 percent from fiscal year 2008 to fiscal year 2009, which was comparable with other control states. Virginia saw an increase of 3.8 percent in sales while Pennsylvania saw an increase of 5.7 percent.

Total Profitability Is Enhanced By DABC Internal Controls

From fiscal year 2001 to 2009, DABC gross profit increased 87 percent from $68 million to $127 million. Although much of DABC profitability can be attributed to the statutory markup, their purchasing practices and internal controls have also helped increase this profitability.

A special price allowance program used in the purchase of alcohol from vendors has led to the design of an investment buy program that has generated about $23 million since fiscal year 2007 in cost savings for the DABC. Also, internal controls instituted by the department have held shrinkage rates (loss from breakage and theft) down to 0.097 percent.

DABC Purchasing Practices Have Resulted In Cost Savings

The DABC uses an investment buy program to purchase alcohol at a discounted price. The investment buying program was designed to capitalize on the capabilities brought about by the special price allowance program. Special price allowances are discounts passed on to the department via a vendor discount during an allowance period. At the end of each month, the department purchases additional stock at the reduced vendor price so that it can be sold at the regular price after the special price allowance is no longer in effect.

DABC purchasing practices have resulted in cost savings of nearly $23 million since fiscal year 2007.

The DABC holds the product in their warehouse to be sold at the regular price at the end of the promotional period. This practice has contributed to the need for the DABC to expand their warehouse, but the revenues generated from this program justify the expansion. Figure 4.2 represents the cost savings the DABC has generated from this program since fiscal year 2007.

Figure 4.2 Special Price Allowance Investment Buying Contributes to Profitability. Special price allowance investment buying has resulted in cost savings of nearly $23 million from July of 2006 through April of 2010.

Fiscal Year	Cost Savings From Investment Buying
2007	$4,733,088
2008	$5,210,385
2009	$6,038,491
2010	$6,686,730
Total	**$22,667,926**

The special price allowance investment buy program has helped the DABC achieve nearly $23 million in cost savings since fiscal year 2007. From year to year the program has grown and been important in enhancing DABC profitability.

The sustainability of the special price allowance investment buy program is directly tied to the expansion of the DABC warehouse. As

The investment buy program by itself has justified the costs of the warehouse expansion.

the demand for retail products has increased substantially since 2001, more warehouse space is being taken up by retail inventory. The DABC has recently begun a $20 million expansion of its existing warehouse that will increase warehouse capacity by 35 percent. The expanded warehouse is planned to accommodate both the growth in demand for retail products and the ongoing use of the special price allowance investment buy program. The savings DABC has garnered over the past four years through the investment buy program are enough to cover the costs of the warehouse expansion. Further savings will continue to enhance DABC profitability.

DABC Internal Controls Have Minimized Loss from Breakage and Theft

A DABC report shows that the DABC shrinkage rate (loss from theft and breakage) is only 0.097 percent. Because of variances in the way different states track this data, we were unable to compare DABC to other control states. However, in a 1981 report by our office it was reported that "the DABC's internal controls and security measures to prevent shrinkage from the liquor warehouse or retail outlets are virtually nonexistent."

Since that audit, the DABC has significantly improved internal controls. The DABC has instituted internal policies and procedures that protect products and minimize loss from breakage and theft. These include policies and procedures that specifically govern activities such as:

Internal controls have helped the DABC keep losses from theft and breakage to 0.097 percent.

- Licensee and package agency orders
- New product distribution
- Wine distribution
- Merchandise transfer
- Merchandise shipment
- Truck unloading
- Routine liquor store audits
- Routine package agency audits
- Destruction of defective merchandise
- Broken merchandise
- Product identification
- Breakage
- Warehouse productivity

DABC's implementation of these policies and procedures has helped the department successfully minimize loss from theft and breakage. While controls have held down shrinkage rates, the underutilization of available controls, particularly productivity reports, creates potential for further improvements in efficiency.

Store Productivity Could Be Enhanced

In examining DABC expenditures, we found that the most significant expenses the DABC is faced with are personnel costs and store operating costs. Of the $29.5 million appropriated to DABC in fiscal year 2010, nearly $22 million was used on retail operations. Of the $22 million, just over $13 million was spent on personnel services. Because personnel services within retail stores are DABC's largest operating expense, it is important that the DABC ensure efficiency in this area.

The DABC must ensure efficiency in its largest operating expense, personnel services.

The DABC currently produces two reports that can be used to help enhance the efficiency in store productivity. The first measures bottles sold per man-hour. The second measures actual man-hours compared to budgeted man-hours. Using these two reports in conjunction with each other could help the DABC more efficiently allocate resources between different stores.

Current Store Productivity Report Measures Bottles Sold per Man-Hour

The DABC currently generates a store productivity report that lists the number of bottles sold per man-hour. The store productivity report showed significant inconsistencies in the bottles sold per man-hour from store to store. For example, in a one month period (February 28, 2010 to March 27, 2010), stores sold anywhere from 15.72 to 91.53 bottles per man-hour. In some instances, the inconsistencies were explained by the fact that:

- Some stores with unusually high productivity levels are considered seasonal stores, which see increased traffic during peak seasons, like Park City during the ski season.

- Some stores with lower productivity levels stock higher volumes of wine which require extra staffing to accommodate customer inquiries; this would include stores like the wine store in Salt Lake (Store #41).

- Some stores with lower productivity levels are newer stores and may not see high sales because the public may not know that they are open. Statute does not allow for the promotion of a new store opening.

Retail stores are inconsistent in their production.

While some of the inconsistent figures in the DABC's report have explanations, others do not. Many stores without the factors discussed above varied in their production. Figure 4.3 shows that based on the data taken from the store productivity report, some similar stores in terms of hours of operation, are less productive than others.

Figure 4.3 Store Production Is Inconsistent. The March 2010 store productivity report reflects inconsistent bottle movement among stores that log similar man-hours.

Store #	Bottles Sold	Man Hours	Bottles Moved/Sold per Man-Hour
12-Hour Stores			
30	65,209	1,142	56.97
31	68,277	1,314	51.98
39	51,017	1,220	41.83
40	47,992	1,229	39.04
8-Hour Stores			
4	37,663	700	53.80
14	23,614	621	38.06
32	25,983	692	37.57
18	26,547	761	34.88

As shown in the figure above, some stores are inconsistent in their bottles moved/sold per man-hour. For example:

- Store #30 sold 36 percent more bottles than store #40 with seven percent fewer man-hours.
- Store #4 sold 42 percent more bottles than store #18 with eight percent fewer man-hours.

Stores moving fewer products per man-hour may be stores that could have their budgeted hours reduced. The DABC currently generates a report that measures budgeted man-hours compared to actual man-hours.

Comparing Budgeted Hours to Productivity Report Could Help Enhance Efficiency

Another report known as the store paid man-hours report compares the amount of hours a store has been budgeted by the department and the number of hours that were actually worked. This produces an over/under figure that indicates whether a store was over the amount of hours it was budgeted or under. Our review found that many stores with low productivity levels, measured by the bottles moved/sold per man-hour, were also over the budgeted amount of hours the department had authorized.

Some stores with low productivity levels were over budget on man-hours.

For example, a paid man-hours report for March 2010 compared to the store productivity report for the same month showed that some stores were under the department-wide average of 49.76 bottles per man-hour while logging more employee hours than budgeted. The following are some specific examples.

- Store #14 was 13 percent over its budgeted man-hours while only moving 38.06 bottles per hour.
- Store #18 was 16 percent over its budgeted man-hours while only moving 34.88 bottles per hour.
- Store #39 was 5 percent over its budgeted man-hours while only moving 41.83 bottles per hour.

Our examination did not find a consistent methodology in the way that the DABC budgeted for store man-hours. In fiscal year 2009, the DABC was over 16 percent of their budgeted man-hours for retail stores; for fiscal year 2010, the DABC was only over 0.24 percent. The reduction in variances between budgeted and actual man-hours was not accomplished by an increase in productivity; instead budgeted man-hours were increased. The DABC has attempted to bring budgeted and actual man-hours into line, but this was done by increasing the budgeted hours. The DABC increased the budgeted hours of this report to update it as it was not used in the past. We did not find evidence that the DABC has used this report to control staff work hours. While DABC reports they have standard staffing models,

An apparent improvement in budgeted man-hours was caused by increasing the budgeted man-hours.

our review yielded no evidence that these models or reports have been used to enhance productivity.

Use of existing reports in conjunction with each other can help the DABC's staffing determinations.

Analysis of the store productivity report in conjunction with the store paid man-hours report could help enhance the efficiency of DABC operations. The increased use of these reports in conjunction with one another can help the DABC come to better staffing determinations and could generate cost savings as personnel costs remain one of the agency's largest expenses.

Recommendation

1. We recommend that the DABC better utilize the store productivity report in conjunction with the store paid man-hours report to enhance efficiencies in retail store staffing.

Chapter V
DABC Licensing and Compliance Functions Can Be Enhanced

While having success with customer service and citizen interaction, the licensing and compliance (L&C) section of the Department of Alcoholic Beverage Control (DABC) should enhance the performance of their responsibilities. By formalizing policies and procedures for the performance of their duties, especially licensee visits, DABC could ensure consistent treatment of all licensees. Further policies should be developed to ensure communication with the liquor law enforcement section of the State Bureau of Investigation (SBI) to reduce duplication of services.

Compliance with liquor law is overseen by the DABC and the State Bureau of Investigations.

There are seven L&C specialists employed at the DABC. They cover duties ranging from initial licensing, annual licensee visits, license renewal, staffing monthly commission meetings, licensee newsletters, and others. L&C provides most of the oversight of on-premise consumption in the state. The liquor law enforcement section of SBI performs both overt and covert inspections of licensees. They are in a separate department within the state, and the DABC has no oversight of SBI.

Licensing and Compliance Should Develop Consistency and Standardization

In order to effectively ensure licensees are following statute, L&C should strengthen:

- Policy and procedure guidance for licensee visits
- Recording and tracking of noted deficiencies
- General operating policies and procedures

Providing specialists guidance for these activities would strengthen the department's oversight of on-premise consumption of alcohol and better ensure consistency for treatment of licensees.

Licensing and Compliances Operations Lack Controls to Ensure Consistency

The DABC and the SBI have split their operations into two basic duty areas. SBI covers enforcement and finding infractions to turn over to primarily the DABC for administrative adjudications/actions. L&C operates as a customer service oriented organization, with the goal of being a resource to help licensees stay in compliance instead of enforcing that compliance.

The commission has the statutory duty for the granting and revoking of liquor licenses.

The DABC's compliance duties in ***Utah State Code*** are listed under the commission duties, and the requirements of the individual licensees. 32A-1-107(1)(e) states "the commission shall . . . issue, grant, deny, suspend, revoke, or not renew . . . permits, licenses, certificates of approval, and package agencies." This section establishes the department's ability to punish licensees for wrong-doing. Later in the statute, when discussing clubs, it states that "a club licensee shall allow the department, through an auditor or examiner of the department, to audit the records of the club licensee at times the department considers advisable," and, "inspect completely the entire club license premises and the books and records of the club licensee." Similar language exists for the other license types. While this language clearly establishes the DABC's right to go into the licensed entity, nowhere in statute, aside from an annual audit of club's records, does it require the DABC to inspect all entities, or specify what is to be done if deficiencies are noted.

The DABC sees customer service as a goal to help licensees remain in compliance.

L&C Provides Strong Customer Service. The aim of this goal is to help licensees feel as though the DABC is an organization they can go to with questions. If a licensee is wondering whether they are in compliance, the DABC wants them to feel they can call their L&C specialist, and they will not be in danger at that point of losing their license. Officials for both the DABC and SBI stated that L&C specialists are not peace officers, they are there to help licensees remain in compliance with the laws. It appears that the DABC is achieving the goal of strong customer service.

Licensees have expressed satisfaction with the level of customer service provided by the L&C specialists. In the process of the audit, we conducted a survey of licensees. Many licensees have not provided the department with email addresses, so we had a low response rate of

41 respondents. Figure 5.1 shows the results regarding licensee satisfaction with L&C customer service.

Figure 5.1 The Majority of Licensees Express Satisfaction With the Customer Service Provided by L&C. The figure shows the responses to the following question: "How would you rate the customer service you received from the DABC at the time of your license application, with 1 being very poor and 5 being very satisfactory?"

1	2	3	4	5
2.5%	0.0%	10.3%	20.5%	66.7%

Over 87 percent of respondents expressed high satisfaction with the customer service provided at the time of their licensing, with only 2.5 percent, or one respondent, being below neutral. In addition to this survey question about the initial application process, in the process of visiting with club licensees, many of them made comments to the OLAG staff about how helpful their L&C specialists are to them.

87% of licensees responding to our survey are satisfied with L&C's customer service.

While L&C's customer service goals have been helpful and successful, we do not believe this should preclude them from providing specialists with procedural guidance or tracking licensee infractions discovered by the department.

Compliance Visits Have Limited Guidance

A lack of formalized policies and procedures regarding specialists' required annual visits to all licensees has resulted in inconsistent treatment of licensees. The L&C section of the DABC has a goal that every licensee overseen by the department be visited at least once a year to determine their compliance with liquor laws. While specialists were able to visit 92 percent of the licensees in 2009, they had very little departmental guidance on how these visits were to be performed. As a result, there was some inconsistency in the results of these visits.

The DABC is required by statute to visit all club licensee holders at least once per year. The DABC management has increased this requirement to include a visit for each licensee, regardless of type. Information on these visits is stored in the DABC's database. The problem with this database is, it does not provide a way to determine

DABC management requires one visit per licensee, per year.

which clubs have not had their statutorily required annual visit. It merely counts visits in total. We could not verify that each club was visited. Instead, we were only able to verify that in 2009 there were 1,671 licensees total, and specialists made 1,540 total licensee visits. This means at least 131 licensees went without a DABC visit in calendar year 2009, and potentially more as the number of visits includes multiple visits to some establishments.

At least 131 licensees went without a DABC visit in 2009.

In addition, although the DABC says they have the raw data on who has been visited, the database does not contain a report for specialists allowing them to track who has not been visited in the last 12 months. A deadline report could be very useful, given the multi-faceted nature of the specialists' responsibilities. Specialists perform duties relating to initial licensing, annual licensee visits, license renewal, staffing monthly commission meetings, licensee newsletters, and others. With the many varied tasks entrusted to each specialist, any automation of duties and scheduling would be useful in allowing them to conserve their limited time.

The DABC database does not allow specialists to track visits by date.

Before each visit, also known as audit visits, each licensee to be visited is mailed a letter specifying when the visit will be, as well as the information that the specialist will need at the visit. There is no automated letter, and each specialist sends out a different letter with different requirements. This is another situation in which automating some of the specialists' duties would help their time management, as well as the consistency of treatment of licensees.

During the audit, we accompanied the seven specialists on a total of 11 visits to various clubs throughout the Wasatch Front. On their audit visits, the specialists may have examined whether:

We accompanied specialists on visits to 11 clubs.

- The dispensing records match up with the sales records
- The alcohol is kept in locked storage after hours
- All employee alcohol server training is up to date
- The warning sign and license are visibly posted
- They own and know how to use the required ID scanning equipment
- They have an available alcohol price list
- The dispensing system pours the correct amount

These were not all examined by each specialist on the visits we were on. The examinations themselves also varied widely in extent. Figure 5.2 shows some of this variation for three of the items customarily examined by specialists.

Figure 5.2 Audit Visits Vary in Depth of Examination. Each specialist is allowed to determine the extent to which he or she wishes to examine the alcohol requirements.

Visit	Dispensing /Sales Records - # Days Reconciled	Employee Training Records Examined?	ID Scanner Records Examined
1	1	Yes	Yes
2	2	Yes	Yes
3	1	Yes	Yes
4	0	No	Yes
5	1	No	Yes
6	3	Yes	No
7	3	Yes	No
8	3	No	No
9	1	Yes	Yes
10	30	No	No
11	1	Yes	Yes

While we were able to accompany the specialists on only a small percentage of visits, Figure 5.2 shows discrepancies in the audit visits. By allowing these irregularities in operations, the department has limited its ability to ensure the commission that licensees are in compliance with alcohol statute. When these visits do notice deficiencies in licensee operations, there is inconsistency in the recording of deficiencies noted at the visits.

The department allows irregularities in licensee visits.

Methods of Recording Deficiencies is Inconsistent

Specialists neither handle nor record compliance deficiencies in a consistent manner. If a deficiency is noted on an audit visit, the specialists can handle this deficiency in any manner they see fit. They can give a written licensing compliance notice, a verbal warning, or instructions that follow-up will be pursued to determine whether the deficiency has been fixed. If a written notice is handed out, no record of this is made in the database. It is left to the specialist's discretion to determine how the deficiency will be handled.

Visit deficiencies are tracked only in a notes section.

In addition, there is no automated, traceable database record of which deficiency has been noted for which licensee. After a visit, each specialist is required to write notes in the database about the audit, and this is where a record of the deficiency is kept. This notes section cannot be searched without reading each entry to allow the DABC to determine where there are consistent problems with all licensees, or with the individual licensee. It also does not allow the L&C specialist to determine whether some non-club licensees, who have never had any deficiencies, could be visited less than once per year.

The number of deficiencies noted varies widely among specialists.

Specialists often record deficiencies they may find differently in the notes field. This does not allow a consistent view of what is happening among licensees. We read through one fiscal year worth of club notes, and there was a wide variety of discrepancy in how violations were recorded, or not recorded. Figure 5.3 shows the variation of noted deficiencies among specialists.

Figure 5.3 Recording of Compliance Deficiencies Varies Widely Among Specialists. This variation makes management of licensee compliance more difficult for the department.

Specialist	Visits With Noted Deficiencies
3	3 %
6	7
5	20
1	23
4	30
7	31
2	46

As seen above, specialists varied from recording deficiencies for almost half of their visits to only three percent. These discrepancies cannot be explained by the licensees assigned to each specialist. Licensees are loosely assigned by areas of the state, so each specialist has the same basic mix of clubs, restaurants, and other licensees. As a result, the number of deficiencies noted should be relatively comparable. These discrepancies could be remedied by automation of deficiency tracking, as well as written policies and procedures and training.

Written Policies and Training Are Essential for Consistent L&C Operations

Aside from the specialists' annual performance evaluations and plans, there are limited formalized policies for L&C specialists on how to conduct their many varied responsibilities. As a result, the specialists perform their duties differently.

There are limited formalized policies and procedures for L&C specialists.

The Licensing and Compliance section of the DABC policy manual consists of one page reading "all previous licensing and compliance policies were converted to administrative rules in June 2004." These administrative rules do not specify L&C goals, objectives or policies and procedures indicating what the specialists' specific duties are.

According to the specialists, the written performance guidance provided is in their annual performance evaluation and DHRM's job description. In addition, the new hire training provided consists of intensive study of the state alcohol statute, followed by shadowing other specialists.

The Office of the Legislative Auditor General's (OLAG) "Best Practices for Good Management" manual advises offices to "develop and prioritize goals and objectives for each year." Objectives are defined as "clear targets for specific action – specific, quantified, time-based statements of desired outcomes or accomplishments." In addition, the manual advises that "once policies are set, develop procedures to guide your staff in the implementation and day-to-day decision making relevant to your program's goals and objectives." Currently, L&C has neither policies nor procedures.

OLAG's "Best Practices for Good Management" manual advises agencies to develop policies and procedures.

By creating policies and procedures for audit visits and deficiency recording, the DABC could also strengthen its oversight of on-premise consumption.

Communication Between DABC Compliance and Liquor Law Enforcement Should Be Improved

L&C and the State Bureau of Investigations (SBI) could be able to minimize overlapping of services by improving their communication. SBI does overt visits, which are similar to L&C's audit visits, and they also have the goal of visiting each licensee once per year. In the course of accompanying the L&C specialists on 11 audit visits, three licensees reported visits from SBI within the previous month. Neither SBI nor L&C is aware when visits were made by the other organization, so it seems occasionally the two visits are made in close proximity to each other. If SBI was aware when L&C's visits had been made, they could schedule their own to maximize the supervision of the licensees.

Three licensees reported SBI visits within a month of their L&C visit.

Although both L&C and SBI say that their visits look for different things, the actual compliance requirements they are examining appear to be quite similar. When comparing the items examined on the L&C specialists' audit visits with the overt alcohol inspection checklist detailing the things SBI examines on their visits, the following items overlap:

Items examined by L&C and SBI can be quite similar.

- Age verification scanner
- License display
- Warning sign
- Flavorings labeled
- Metering devices
- Locked/lockable liquor storage
- Liquor purchased from the DABC/purchasing records
- Server training records

The only items listed by SBI not customarily examined by the DABC are server ID badges and underage servers. The DABC examines income statements and dispensing records while SBI does not. The items that are different are important, but the majority appear to involve duplication of effort between the departments, and could be more useful if spread more evenly throughout the year.

Increased communication between L&C and SBI would help eliminate overlap of services.

Other differences appear to be that licensees do not know that SBI is coming, as well as the depth of the inspection. SBI performs both covert (undercover) and overt inspections. Even the overt inspections are unannounced before the officer shows up. Increased communication between the agencies may reduce overlap of services.

Recommendations

1. We recommend that the licensing and compliance section of the DABC develop policies and procedures to ensure consistent treatment of licensees.

2. We recommend that the DABC adjust the license and compliance database to allow for more consistent, automated tracking of licensees.

3. We recommend that the DABC create policy and procedures to strengthen communication between the DABC and SBI to reduce duplication of services.

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Chapter VI
The Legislature Could Consider Some Licensing Issues

In the course of this audit, we identified some licensing issues that the Legislature could consider. Specifically:

- Revising the quota for liquor licenses and/or considering the creation of an all-inclusive license for hotels/resorts to help ensure that demand is met for establishments desiring a license for on-premise consumption.

- Allowing the Department of Alcoholic Beverage Control (DABC) Commission the authority to delegate to their department's executive director the approval of single event permits and temporary special event beer permits to enhance the efficiency of the commission.

Consideration of these licensing issues could help enhance both the economic development of the state and the operational efficiency of the DABC Commission.

The Legislature Could Consider Revising the Quota for Liquor Licenses

Utah has the most limited number of liquor licenses allowed based on population of all control states contacted. This has resulted in a new and growing scarcity of licenses. This need for more licenses can be attributed to multiple factors, including demographic changes, an increase in the number of drinkers, and an increase in the number of people going out to eat. This license shortage may negatively affect economic activity and job growth. For example, restaurant chains, such as Buffalo Wild Wings, have publically expressed reluctance to come to Utah because of a lack of liquor licenses. The creation of a comprehensive hotel/resort license would also further ease this license shortage.

Demographic changes, increases in drinkers and increases in people eating out all contribute to the need for additional licenses.

The Number of Utah Liquor Licenses May Need Adjustment

Utah has the lowest number of liquor licenses of contacted control states.

Utah's liquor license quota results in the lowest number of liquor licenses per capita of all control states contacted. Because of the growing demand due to demographic and economic changes, as well as a comparatively low number of liquor licenses allowed, the DABC has run out of club, restaurant, and limited restaurant licenses to award.

The DABC reports that demand for alcohol is increasing.

Various Factors Have Contributed to the Need for More Liquor Licenses. Intuitively it seems that if the number of licenses is tied to population, there should always be enough licenses. This has not been the case. Changes to the state have changed the demand for liquor. Such changes include demographic changes, an increase in the number of potential drinkers of alcoholic beverages, and increases in the number of those eating out. The DABC, in its justification for their proposed warehouse expansion, stated, "demand for alcoholic products is high as the demographics of the state changes. The convention and tourism industry continues to grow and strong business expansion brings a diverse population to the state."

The percentage of Utah's population that is LDS is dropping.

The demographics of Utah have also slowly been changing. A 2005 Salt Lake Tribune article reported that in 1989, 70.4 percent of the population were members of The Church of Jesus Christ of Latter-day Saints, or LDS, while in 2004, that number had fallen to 62.4 percent. A PEW Center research study in 2009 said that members of the LDS faith now make up 58 percent of Utah's population. The LDS faith strongly discourages drinking. As a result of the population being less LDS, more of that population could conceivably be drinkers.

As shown in Figure 3.2, the amount of liquor sold in Utah has increased at a far greater rate than the population. While population from 2001 to 2009 increased 22 percent, the gallons consumed in Utah for the same time period increased 54 percent. This is more than double the population increase, and likely indicates a greater percentage of drinkers among the population.

In addition to changes in the demographics and number of drinkers, the number of people eating out has increased, conceivably increasing the need for at least more restaurant and limited restaurant licenses. The Utah Restaurant Association said that the ratio of the population going to fine and casual dining establishments is going up. In addition, they state that restaurants account for only three to five percent of the alcohol consumed in the state.

The Utah Restaurant Association reports that more people are going to fine and casual dining establishments.

Other Control States Allow More Liquor Establishments. Only three of 12 other control states (including Utah) responding to an NABCA survey have a quota on full-service restaurant liquor licenses. Only one has a quota on beer and wine restaurants (limited restaurants). We contacted six of these control states for more in-depth questioning. Four have no state-wide quota at all. The two states with quotas allowed substantially more liquor licenses than Utah. Specifically,

The two control states with quotas allow more licenses than Utah does.

- Pennsylvania – allows one licensee per 3,000 people, regardless of type of license

- Idaho – allows one license per 1,500 for liquor by the drink (club and restaurant) and no quota for beer and wine establishments (limited restaurants)

Utah appears to be out of line with these control states as shown by the states quotas illustrated in Figure 6.1.

While the Number of Licenses Has Increased, There Is Still A Shortage. The number of each type of license awarded is based on a population count, so as the number of people living in the state rises, so does the number of liquor licenses to be awarded. Figure 6.1 shows the types of liquor licenses customarily meeting their quota, as well as what the quota is and how the numbers have changed due to population increases.

Figure 6.1 The Total Number of Licenses Meeting Their Quota Has Increased by 21 In the Last Year. The quota is population based. For an explanation of the license types, see Figure 1.3.

License Type	Quota	Increase from 2009-2010
Club	1 / 7,850	7
Restaurants	1 / 5,200	9
Limited Restaurants	1 / 9,300	5
Total		**21**

As shown in Figure 6.1, the total number of licenses available with shortages increased in fiscal year 2010 by 21 licenses. While the number of licenses available increased, the demand has not been met. Figure 6.2 shows the wait times for some potential licensees.

Figure 6.2 As of June, Two Club Applicants Have Been on the Waiting List Since November, a Total of Eight Months. Restaurants, while right at the quota number in June, experienced waits up to three months before some licenses were relinquished at license renewal.

License Type	Maximum Wait Time
Club	8 Months
Restaurants	3 Months
Limited Restaurants	3 Months

The figure demonstrates that the need for liquor licenses has increased. And while the quotas have been shifted around between the license types, the DABC reports that the total number of licenses in the state has not increased beyond what the population increases allowed for. DABC reported that two years ago, there was no wait time for these licenses. The DABC also reports that the actual quota amounts have not changed since 1990.

The main argument against increasing the number of allowed liquor licenses is one of safety. At our request, the DABC requested a National Alcohol Beverage Control Association (NABCA) survey of other control states concerning this issue. Figure 6.3 shows the results of that survey.

Figure 6.3 Control States See Restaurants as a Low Risk License Type. The figure shows the average response to the following question: "Rate the public safety risks in the following on premise establishments in your jurisdiction, 1 to 5, with 5 being the highest."

License Type	Average Response
Limited Restaurants	1.9
Restaurants	2.0
Beer Bars/Taverns	3.6
Clubs	3.75

These are the results of respondents to the NABCA survey, including Utah.

Night clubs and beer bars are obviously seen as the biggest risk to public safety, with restaurants and limited restaurants being rated a moderate risk at most. Due to the shortage of liquor licenses and the fact that Utah allows fewer licenses than other control states, we recommend that the Legislature consider revising the statewide quotas. The Legislature could also increase the number of available licenses without adjusting the quotas by creating an all-inclusive license for hotels/resorts.

Other states rate restaurant liquor licenses as a moderate risk at most.

The Legislature Could Consider Creating An Inclusive License for Hotels/Resorts

By creating a hotel/resort license type, the Legislature could free up licenses currently at quota. Each aspect of hotels/resorts in Utah is required to get a different license, depending on what kind of operation they want to run. Hotels and resorts can have up to six different kinds of license. The quota for three of these license types has currently been met. Figure 6.4 shows the number of licenses used by hotels/resorts in Utah.

Hotels and resorts can have up to six kinds of licenses.

Figure 6.4 33 Hotel/Resorts Occupy 122 Licenses. 79 of those licenses are types that are either at quota or close to it.

License Type	Number Occupied By a Hotel/Resort
Club	46
Restaurants	30
Banquet	18
Package Agencies	14
On-Premise Beer	11
Limited Restaurants	3

79 of the 122 licenses currently used by hotels and resorts have currently met the allowed quota, and are therefore no longer available. Snowbird Resort alone has a total of 17 licenses, including six club licenses and six restaurant licenses.

Hotels/Resorts use 79 licenses experiencing shortages.

The statute for this proposed license type could be carefully crafted by the Legislature to ensure that the DABC and, by extension, the state, does not relax controls with these licenses. For example, if one of the club licenses is cited for an infraction, this does not mean the entire hotel/resort needs to lose alcohol privileges. The statute can be written to allow for one section to be penalized while the others continue unless the problem seems systemic with the entire hotel/resort.

Creating a hotel/resort license type would free up other licenses to be used by potential clubs, restaurants, and to a lesser extent, limited restaurants. The creation of such a license is supported by DABC Commissioners, the Utah Restaurant Association, and the DABC itself.

Single and Special Event Permitting Uses Unnecessary Time

The Legislature should consider allowing the DABC to approve single event and temporary beer permits.

In order to enhance the efficiency of the DABC Commission, we recommend that the Legislature consider revising the Alcoholic Beverage Control Act to allow the DABC Commission to delegate through administrative rule, the approval of single event permits and temporary special event beer permits. This recommendation is supported by the DABC Commission and their staff.

Utah Code 32A-7-101(1) and 32A-10-301(1)(a) puts responsibility for issuing single event permits and temporary special event beer permits on the commission. The issuance of these types of permits takes up a significant amount of time at commission meetings. For example, in the commission's June 2010 meeting, temporary special event beer permits and single event permits took up five pages of a nine page agenda and about one hour of the meeting.

Eight special meetings were held in 2009 for approval of single event and temporary beer permits.

At present, these permits must be approved by the commission. Often, the commission holds a special meeting for approval of these permits because the timing of the events and the regular meeting schedule of the commission do not always coincide. In 2009, the DABC Commission held eight special meetings (in addition to their regular monthly meetings) for the sole purpose of addressing temporary special event beer permits and/or single event permit requests that were unable to wait until the next regular meeting.

Before either of these permits can be issued, the DABC is required to investigate to ensure that the applicant and the application meet all of the statutory requirements. If the applicant and the application meet those requirements, the permit will be granted. Because commission staff already perform this investigative function, we recommend that the Legislature consider allowing the DABC Commission to delegate the approval of temporary special event beer permits and single event permits to the Executive Director of the DABC through administrative rule.

Recommendations

1. We recommend the Legislature evaluate options to address the existing license shortage. Specifically, the Legislature could consider, among others, a combination of the following options:

    - Increasing the number of liquor licenses in general
    - Increasing the number of restaurant licenses
    - Creating a consolidated hotel/resort license, thus freeing up licenses

2. We recommend that the Legislature consider revising the Alcoholic Beverage Control Act to allow the DABC Commission the authority to delegate to the Executive Director of the DABC the ability to grant temporary special event beer permits and single event permits.

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Agency Response

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