

Angier ABC Board

Performance Audit Report



Alcoholic Beverage Control Commission
400 East Tryon Road, Raleigh, NC 27610
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ABC
COMMISSION
NORTH CAROLINA

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ABC

COMMISSION
NORTH CAROLINA

Alcoholic Beverage Control

CHAIRMAN:

A. D. "Zander" Guy, Jr.

December 9, 2020

COMMISSIONERS:

Norman A. Mitchell, Sr.
Charlotte

Karen L. Stout
Black Mountain

Jerry Hockaday
Chairman, Angier ABC Board
PO Box 788
Angier, NC 27501

ADMINISTRATOR:

Agnes Stevens

Dear Chairman Hockaday,

On the following pages you will find the performance audit report conducted by the staff of the ABC Commission reviewing the operations of the Angier ABC Board.

LOCATION:

400 East Tryon Road
Raleigh NC 27610

The report consists of an executive summary, an overview of the objective, purpose and scope, and a digest of your board's performance standards and related findings. Included in the findings are recommendations for action on the part of your board.

MAILING:

4307 Mail Service Center
Raleigh NC 27699-4307

I encourage you to review the report and let me know if you have any questions or require assistance in implementing any of the recommendations.

PHONE: (919) 779-0700
<http://abc.nc.gov/>

On behalf of the NC ABC Commission I thank you and your staff for your assistance and cooperation in conducting this review and in implementing the changes that will reduce expenses and increase profitability of your board.

Sincerely,

Agnes Stevens
Administrator

cc: NC Association of ABC Boards

OBJECTIVE, PURPOSE, AND SCOPE

In addition to regular and special financial audits, G.S. 18B-705 (a) authorizes the N.C. ABC Commission to conduct performance audits of all local ABC boards in the state. Performance audits are examinations of existing operating policies, practices, controls, and activities to determine those areas in which there may be a need for improvement.

The audits are designed to ensure that all local ABC Boards comply with established performance standards pursuant to G.S. 18B-203 (a) (20). The audits' scope addresses compliance with ABC laws and rules, store appearance, operating efficiency, solvency, and customer service.

To achieve the objectives of the audit, auditors:

- Review applicable General Statutes, ABC Commission Rules, and Administrative Policies
- Review applicable reports and studies of ABC boards with similar size and geography
- Consult with specialists at the UNC School of Government
- Verify compliance with Commission and Board policies
- Verify results of previous performance audit recommendations
- Review organizational chart and job descriptions
- Review ABC board annual independent financial audits
- Visit the store(s)
- Interview key ABC board personnel.

Additional and specific objectives addressed are of the following:

- Determine possible mismanagement of board funds in vacation/sick leave payout
- Determine whether board meetings are regularly conducted as required in public meeting laws
- Determine reason(s) for the tardiness of the financial audit for FY2020

GENERAL BACKGROUND

S.L. 1969-626 authorized the town to hold an election and by a passing vote of 139 to 104, an ABC store was approved. By statutory requirement, the Town of Angier is authorized to only appoint ABC board members to serve on the ABC board and to fulfill the statutory requirements and to provide oversight in opening an ABC store.

G.S. 18B-701 authorizes ABC Board members to do all of the following:

- 1) Buy, sell, transport, and possess alcoholic beverages as necessary for the operation of its ABC stores.
- 2) Adopt rules for its ABC system, subject to the approval of the Commission
- 3) Hire and fire employees for the ABC system
- 4) Designate one employee as manager of the ABC system and determine his responsibilities
- 5) Require bonds of employees as provided in the rules of the Commission
- 6) Operate ABC stores as provided in Article 8
- 7) Issue purchase-transportation permits as provided in Article 4
- 8) Employ local ABC officers or make provision for enforcement of ABC laws as provided in Article 5
- 9) Borrow money as provided in G.S. 18B-702
- 10) Buy and lease real and personal property, and receive property devised or given, as necessary for the operation of the ABC system
- 11) Invest surplus funds as provided in G.S. 18B-702
- 12) Dispose of property in the same manner as a city council may under Article 12 of Chapter 160A of the General Statutes
- 13) Perform any other activity authorized or required by the ABC law

OBSERVATION, FINDINGS AND RECOMMENDATIONS

Specific Objective #1: Determine possible mismanagement of board funds in vacation/sick leave payout to the general manager for retirement

ABC Boards are required to adopt policies and procedures for conducting business operations of the ABC system. Those policies and procedures¹ are to govern the following:

- a) Initial employment of employees, including qualifications and requirements for new employees
- b) Compensation and benefits
- c) Hours and days of work, holidays, vacation, sick leave and other matters pertaining to the conditions of employment
- d) Promotion, transfer, demotion and suspension of employees;
- e) Separation or termination of employees;
- f) Granting of salary increases
- g) Employee grievance procedures; and
- h) Any other programs or procedures as may be necessary to promote efficiency and to provide for a fair and reasonable system of personnel administration.

Although, the Commission encourages a local board to model its personnel policies and procedures after those adopted by the county or municipality in which it operates, not all policies and/or procedures at the county or city level are applicable to an ABC Board. The board shall create policies to govern successful operations and business practices and enforce human relations. NCAC 15A .1006 (c) states, "A local board shall not adopt a rule or policy that conflicts with the provisions of Chapter 18B or these Rules." Any policy that the board has adopted must be approved by the ABC Commission before implementation. The board and management require all employees to sign an acknowledgement of receipt indicating that they have received and read the employee handbook. The audit verified the existence of the document and determined the employees have acknowledged the current handbook.

In reviewing the current employee manual, the vacation and sick leave benefit plans were approved by the board and the ABC Commission and are as follows:

Angier ABC Board Personnel Manual² excerpt, "The amount of paid vacation time employees receive each year increases with the length of their employment as shown in the following schedule:

- Upon initial eligibility the employee is entitled to 96 vacation hours each year, accrued at 8 hours monthly at the rate of 12 days.
- After 10 years of eligible service the employee is entitled to 144 vacation hours each year, accrued at 12 hours monthly at the rate of 18 days.

...employees are encouraged to use available paid vacation time for rest, relaxation, and personal pursuits.

In the event that available vacation is not used by the end of the benefit year, employees may carry unused time forward to the next benefit year. If the total amount of unused vacation time reaches a "cap" equal to two times the annual vacation, further vacation accrual will stop. When employee uses paid vacation time and brings the available amount below the cap, vacation accrual will begin again."

The employee handbook was later amended to reflect a payout of up to 240 hours at the time of retirement.

The former general manager was employed with the ABC Board over ten years and retired June 30, 2020. Upon retirement, the general manager accrued approximately 651.75 hours of vacation time. After confirmation with NC State Retirement system personnel, the board voted to pay 240 hours, with the remaining to be used for retirement benefit.

¹ Rule 15A .1006 Personnel Manual

² Town of Angier ABC Board Personnel Manual

Strongly Recommended: There is no indication of mismanagement of board funds. However, the board must ensure that the employee handbook is updated as appropriate. Any changes to the employee handbook must be forwarded and approved by the ABC Commission within fifteen days prior to adoption by the local ABC board. Once approved, the board must distribute amended policies to all employees for acknowledgement.

Corrective Action Taken: The ABC Board has implemented practices that will ensure the employee handbook is approved by the NC ABC Commission as required.

Specific Objective #2: Determine whether board meetings are conducted regularly as required in Public Meeting Laws.

ABC Boards are required to hold regularly scheduled board meetings so that decisions regarding personnel, operational and other matters can be voted upon and enforced. Board meeting minutes are required to be a full and accurate account of what transpired during the course of the meeting. Voting results of board members are to be recorded in the minutes.

NC G.S. 143-318.12 requires the following from public bodies:

- a) Must have regular meetings
- b) Post schedule with the Clerk of the Board of County Commissioners or City Clerk (if the regular schedule changes, notice must be given to the clerk)

The Angier ABC Board holds quarterly meetings on the first Thursday of the month preceding the quarter at 8:00am. Board meeting minutes and other documentation are readily available and are usually kept at the ABC Board store location. The minutes are the property of the ABC Board.

³Closed sessions can only be held to permit a public body to act in the public interest. An ABC Board may hold a closed session and exclude the public only under the following conditions:

- 1) To prevent disclosure of privileged or confidential information
- 2) To consult with an attorney retained by the board in order to preserve attorney-client privilege
 - a. General policy cannot be discussed
 - b. Presence of attorney not dispositive
 - c. Board can instruct attorney concerning a claim
 - d. If board decides to settle a claim, must say so in open session and enter in the official minutes
- 3) To instruct staff or discuss the board position relating to:
 - a. Price, terms of a contract or proposed contract to buy, or lease real property
 - b. Discuss terms of an employment contract
- 4) Personnel matters
 - a. To consider qualifications for a prospective employee
 - b. To hear or investigate a complaint or grievance
 - c. To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct

In reviewing the board minutes, an indication of closed session was called. The closed session discussion was on a topic as stated by the above, personnel matters. However, after reviewing the minutes and further discussion with board members, no closed session minutes were taken. Actions were not taken in closed session; the board returned to open session to vote on the matters addressed in closed session.

Required Action: When in closed sessions, the board must keep a general account of the closed session discussion so that a person not attending the meeting would have a reasonable understanding of what transpired. If the general manager is not in attendance, the board chairman will delegate a person to transcribe the minutes. Closed session minutes must be approved in the next scheduled board meeting and are withheld or sealed from the public until the need for confidentiality is no longer necessary.

Strongly Recommended: Board meeting times and location are at the sole discretion of the ABC board. However, to ensure the public is granted access to the board meetings, the board should consider moving board meeting times or a different location.

Corrective Action Taken: The board has implemented practices that follow the Public Meeting Laws. The ABC Board response outlines the specifics. In addition, the ABC board is currently discussing additional recommendations related to meeting location and times.

³ Operations Manual for ABC Boards

Specific Objective #3: Determine reason(s) for the tardiness of the ABC financial audit FY2020.

1. NCAC 15A .0907 (a) states, "Each local board shall have its accounts audited after the close of each fiscal year by an independent certified public accountant. The auditor shall be selected by and report to the local board. The audit contract shall be on a form provided by the Commission. The audit report is due to the Commission ninety days after the end of the fiscal year, *September 30.*" *Emphasis added.*

G.S. 18B-702 (s) states, "A local board shall submit to the appointing authority and Commission an annual independent audit of its operations, performed in accordance with generally accepted accounting standards and in compliance with a chart of accounts prescribed by the Commission."

ABC Boards are only required to have an annual financial audit for the fiscal year end. However, ABC boards may choose to have quarterly or semi-annual audits to ensure transparency of records recorded and to verify accurate distributions. The Angier ABC board has elected to have a quarterly financial audit to determine quarterly distributions. Once the quarterly distributions are determined by the financial auditor, the board holds its regular quarterly meeting to approve the distribution total.

In reviewing the accounting records of the Angier ABC Board, the documents revealed a human error made by a former finance officer in doubling gross receipt entries. The entries were corrected in the latter part of August once discovered by the financial auditor. Additional investigation revealed an incorrect posting to one of the asset accounts within the fiscal year. Due to the error, the financial audit was late. The audit was due on September 30 and was received on October 22, 2020.

2. The board approved to invest \$100,000 of working capital with an investment company. A detailed analysis of investments is covered in the financial audit report. According to the Local Government Commission, the investment portfolio used is not an eligible investment source.

G.S. 18B-702 (t) states, "...A local board may invest all or part of the cash balance of any fund as provided in G.S. 159-30 (c) and (d), and may deposit any portion of those funds for investment with the State Treasurer in the same manner as State boards and commissions under G.S. 147-69.3.

Required Action: The board must divest itself of the investment portfolio mentioned in the financial audit and invest in the appropriate avenues referenced in G.S. 159-30. ABC Boards are authorized to invest part of their cash balance, as mentioned in the above statute. However, detailed research into what funds to invest and what investment firms offer should be conducted to ensure that the board is utilizing the appropriate investment vehicle.

Corrective Action Taken: Detailed in the response, the board will divest itself from the investment portfolio.

FINDINGS

1. At the time of the fieldwork, October 21, 2020, it was revealed by a board member that a gift card and cash were accepted from a customer by the former and current general manager. The customer refused to take back the gift card after numerous attempts to return it. The board decided to use the card to pay for dinner for all employees and board members in an effort to be transparent and to refrain from any personal gain. The tabs for any non-employees in attendance, were paid by the former general manager's personal account and not of the ABC board funds.
2. Another instance was discussed of the current general manager accepting a cash gift from a customer. After numerous attempts to return the monies, the customer refused to accept the cash. The current general manager used the cash to purchase a meal with another employee.

Recommended Action: As a reminder, the NC ABC Commission requires local ABC Boards to adopt a gift policy, whereas the acceptance of gifts is strictly prohibited. All employees and board members are to adhere to those policies and rules enforced by the NC ABC Commission. In the first instance it might have been a better option for the board to donate the gift card to a local charity to benefit alcohol education. In the second instance, the cash should have been deposited in the board's bank account as miscellaneous income.

Corrective Action Taken: In the response letter, the ABC Board has outlined corrective measures in accepting gifts. As a reminder, the acceptance of gifts is strictly prohibited.

Town of Angier ABC Board

P.O. Box 788
Angier, N. C. 27501
(919) 639-4881

Jerry Hockaday, Board Chairman

Thomas Taylor, Board Member
Philip Allen, Board Member
Steve Adams, Board Member
George Price Jr. Board Member

Keith Black, General Manager

November 23, 2020

Moniqua McLean
Compliance Director
4307 Mail Service Center
Raleigh, NC 27699-4307

Dear Ms. McLean,

This letter is in response to the Angier ABC Board Performance Audit Report. The audit report contained performance findings and recommendation(s) for the board from your visit on October 21, 2020.

While we accept your findings and recommendation(s), we continue to comply with the policies and procedures set forth by the NC ABC Commission and G.S. 18B.

For your recommendation, we will continue to monitor the employee handbook for any changes to be forwarded and approved by the ABC Commission prior to the adoption by our ABC Board. Once approved, we will make sure the amended policies are acknowledged by all employees.

For the required action of closed sessions, we will keep the closed session minutes after approval in our next scheduled board meeting. We will withhold/seal from the public until the need for confidentiality is no longer needed.

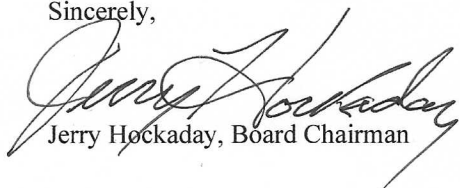
The reason for our fiscal year-end audit being late was due to sales for the month of April 2020 being mis-posted into cost of sales by our former Finance Officer/Bookkeeper. We were made aware of this error by our CPA Scott May while performing the audit. The mistake was found and corrected.

For the required action, we are in the process of divesting ourselves of the investment portfolio. More discussion needs to be made by the board as to where they want the funds invested.

We will follow your recommended actions for restriction of acceptance of gifts with an update to the policy manual. Attached is a copy of the check that Shirley Brinkley, former GM, wrote out of her personal account to repay the gift certificate of \$500 to the customer that gifted it to the store.

We will continue to strive in meeting the recommendations and requirements by compliance set forth to us.

Sincerely,



Jerry Hockaday, Board Chairman