

State of Ohio Liquor Control Commission
Testimony before the Senate Finance Committee

Presented by:

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May 16, 2011

Chairman Widener and members of this committee, my name is Mark Anderson and I am the Acting Executive Director of the Liquor Control Commission. It is my sincere hope that by the time I finish my testimony, you will have a better understanding of what the Commission's function and purpose is under Ohio Law. It is also my goal that you will have a better understanding as to how our operations are funded under the law, as well as which state account is the ultimate beneficiary of the funds raised through the Commission's operations.

Liquor Control Commission Mission

The Liquor Control Commission is an adjudication and rule making agency that oversees the alcohol beverage industry. The mission of the Liquor Control Commission is to provide fair and impartial hearings for the protection of the public and permit holders, and to ensure compliance with the liquor laws of the Ohio Revised Code and rules in the Administrative Code. In addition, the Commission serves the people of Ohio through the adoption and promulgation of rules, standards, and requirements established to carry out Chapters 4301 and 4303 of the Revised Code.

The Commission's work primarily stems from the activities of the agencies related to liquor control. They include Public Safety, the Attorney General's Office, Taxation and the Division of Liquor Control – Commerce. The Liquor

Control Commission regularly interacts with these agencies in an effort to more efficiently utilize our common resources. Public Safety provides the enforcement side by citing permit holders for alleged violations of liquor law. Once the permit holder is cited, the Attorney General's Office acts as prosecutor before the Commission. Examples of citation cases are fatality cases due to serving an intoxicated person, illegal gambling, drug abuse and serving to an underage person.

The Division of Liquor Control is responsible for handling liquor permit applications and issuing permits. However, it is through the Commission that permit holders are afforded the opportunity to appeal the decision of the Division concerning liquor permit applications and appeals of liquor permit non-renewals.

As an adjudication body, the Commission functions as any court system and has the same duties and obligations. This includes ensuring due process, considering evidence, subpoenaing witnesses (including law enforcement personnel), taking depositions, granting/denying motions, among many other duties.

FUNDING

The Commission is not General Revenue Funded (GRF). In fact, in a time of economic constraints, the Commission deposits money into the General Revenue Fund at the minimum of four times a month. In FY 2010, the Commission collected \$1,190,850.00 in fines from citation cases. For the first half of this fiscal year, \$643,050.00 was collected. All these forfeitures are deposited into the General Revenue Fund.

The Commission's funding source is Fund 7043 – the Liquor Control Fund, not the GRF. The primary source of revenue for this fund comes from retail and wholesale sales of spirituous liquor.

In addition to the forfeiture collection, through our hearing process, the Commission works with the Department of Taxation in recovering delinquent taxes. By this effort, over a million dollars is collected annually in delinquent tax cases.

Commission Staff

The Commission is comprised of three members appointed by the Governor with the advice and consent of the Senate for six-year terms, as well as five full-time staff. The present members of the Commission are Deborah Pryce, who is the newly appointed Chairwoman, Vice Chair Paul Booth, and Member Michael J. Shaheen. The staff of the Commission is comprised of me as Acting Executive Director, an Assistant Director/Rules Administrator (vacant) and three administrative assistants, one of which is vacant.

A search is being conducted for a new Executive Director. And the Commission will need to fill the Assistant Director/Rules Administrator and the vacant administrative assistant position.

Commission Activities

Administrative hearings are the bulk of the Commission activities. During FY 2010, just under 3,500 cases were docketed before the Liquor Control Commission (1849 citation cases, 1381 tax cases and 236 appeals of Division of Liquor Control orders). Thus far this fiscal year, the Commission has heard 2676

cases (1249 citation cases, 1266 tax cases and 161 appeals of Division of Liquor Control orders). It is anticipated that the number of hearings will continue at this level in the next biennium and more than likely increase. Commission staff prepares voluminous paperwork prior to the hearings and perform all aspects of issuing decisions upon completion of the hearings.

In addition to the hearings, one of the main activities of the Commission is to promulgate rules that regulate the sale and distribution of alcohol in Ohio. The Commission has been diligent in our rule review and updates.

Budget Request for the FY 2012 and 2013 Biennium

The Commission requests \$753,933 for FY 2012 and \$754,146 for FY 2013. With the reactive nature of the Commission hearings, it is hard to predict how associated costs for hearings will fluctuate. The costs of court reporting, production of transcripts, witness fees and subpoenas in a large part depend upon the activity generated by permit holders and the Commission's partner agencies.

When the Attorney General's office subpoenas witnesses for citation cases, the commission pays the costs. In addition to subpoena fees, under Ohio Revised Code 119.094, the Commission is also obligated to pay mileage and witness fees for those who are subpoenaed. These costs have recently increased. Witnesses for adjudication hearings who were reimbursed at ten cents a mile are now reimbursed at .505 cents. Also, subpoenaed witnesses are compensated at twelve dollars (\$12.00) for a full day's attendance and six dollars (\$6.00) for half a day. For example, for the hearing day of March 23, 2011, twenty-five (25) witnesses were subpoenaed, resulting in the Commission paying a total of \$3,767.83 for one day in witness and mileage fees. The following day, \$7,070.97 was paid for witnesses.

As an adjudication and rule-making body whose decisions are appealable to court, a court reporter must be hired for purposes of recording and transcribing the hearings. The Commission pays the court reporting company sixty (\$60) per hour for hearings. There are generally 36 to 43 hearing days per year. Hearings routinely last at least five (5) hours each hearing day. If a transcript is required, we are charged \$4.95 per page and an additional \$15 for binding and delivery. Depending on the length of the hearing, one transcript can cost well over \$800. And, this is the best price available in this area.

The Commission's expenditures are entirely comprised of personnel costs, purchased services and maintenance charges, with the bulk going to full-time employees. The Commission is not requesting any amount for equipment. The Commission is a perfect example of an agency doing more with less. A review of the Commission's budgets over the past few years will confirm there have been no unnecessary purchases and any surpluses were deposited into the GRF.

Thank you for allowing me to testify and I am more than happy to answer any questions.