



Montgomery County Government

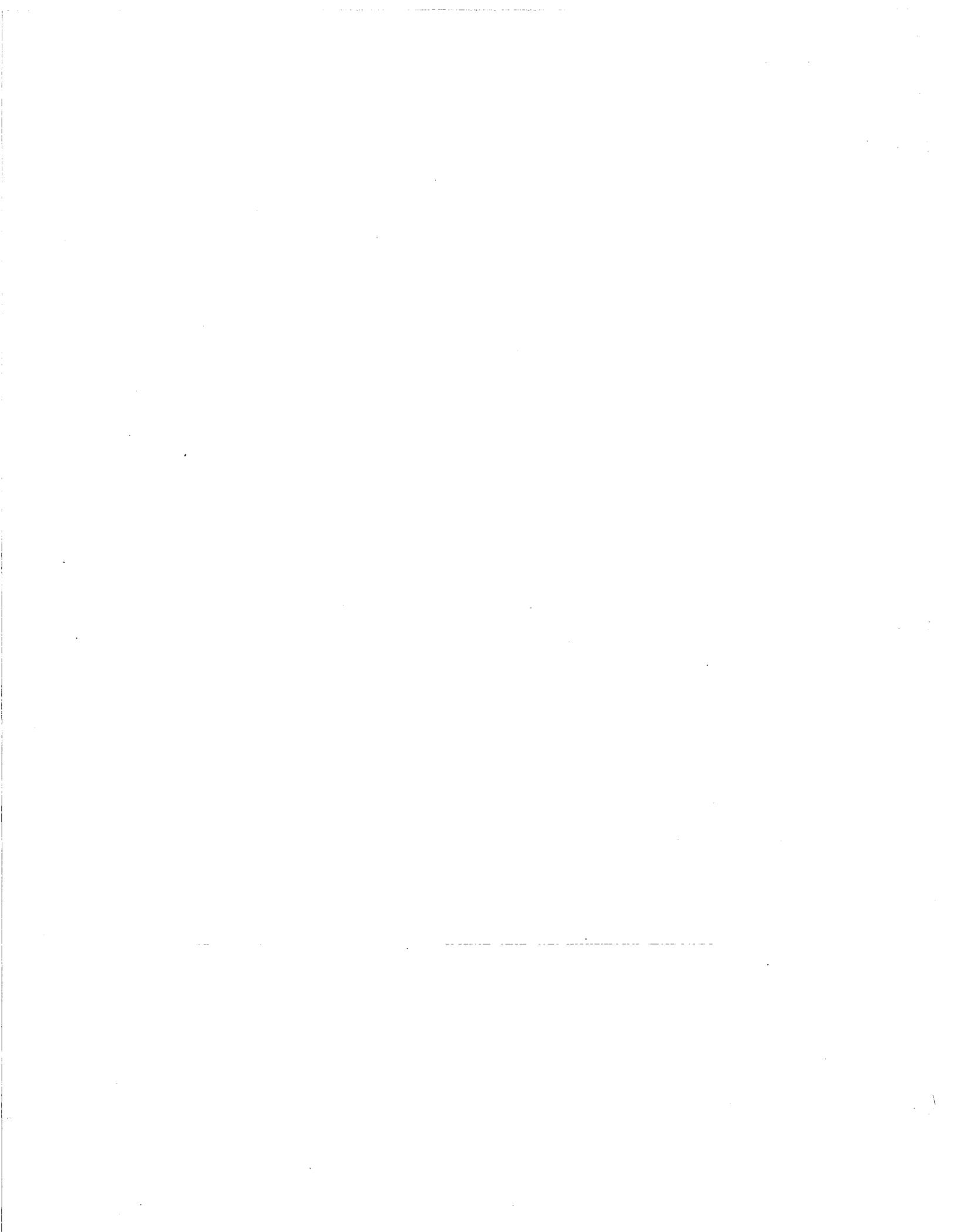
REPORT NO. 87-4

December 8, 1987

Title

A DESCRIPTION AND EVALUATION OF THE MONTGOMERY COUNTY BOARD OF LICENSE COMMISSIONERS

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I. SUMMARY AND MAJOR CONCLUSIONS/RECOMMENDATIONS

1. Summary

Article 2B, Alcoholic Beverages, of the Annotated Code of Maryland, 1987, declares it is the policy of the State to regulate and control the manufacture, sale, distribution, transportation, and storage of alcoholic beverages so as to "obtain respect and obedience for the law and to foster and promote temperance."

The power to regulate and control the sale of alcoholic beverages is delegated by the State to the various Boards of License Commissioners of the counties and Baltimore City. In Montgomery County, the Board of License Commissioners (Board) consists of five members appointed by the Executive, with each appointment subject to confirmation of the Council.

The Board has four broad functions:

- Processes applications for a license to sell alcoholic beverages;
- Hears and makes final decisions on applications for the license;
- Ensures compliance with alcoholic beverage laws, rules, and regulations; and
- Enforces alcoholic beverage laws, rules and regulations.

The Board is provided operational and administrative support by the Departments of Police and Health, the County Attorney's Office, and the Clerk of the Court. The bulk of the support is provided by the Health Department in the form of processing applications for licenses, ensuring that all zoning, jurisdictional and physical requirements are met; conducting routine and required inspections of the premises where the licensee will do business; and performing surveillance of licensed establishments to ensure compliance with the laws, rules, and regulations.

2. Major Conclusions/Recommendations

The report concludes that there are no serious deficiencies in either the operational effectiveness and efficiency of the Board or in the quality of administrative support provided to the Board. However, the report recommends a number of improvements to the basic State law, local rules and regulations, Board operating procedures, and the organization of the administrative support to the Board.

Specifically, the report recommends taking action to:

- Amend Article 2B, Annotated Code of Maryland, to give the Board authority to administratively discipline licensees who sell alcoholic beverages to minors; to prohibit off-premises delivery of alcoholic beverages; and to modify other provisions of the law;

- Develop standards and guidelines by the County Executive and County Council to assist the Board in its evaluation of applications to sell alcoholic beverages;
- Review the current organizational structure which assigns the Health Department the responsibility for administrative support to the Board;
- Establish coordination between the Board and other public and private organizations which have an interest in alcohol-related issues; and
- Adopt a number of miscellaneous improvements.

II. AUTHORITY, SCOPE, METHODOLOGY AND ACKNOWLEDGMENT

1. Authority. Council Resolution No. 11-97, adopted February 24, 1987, subject: CY 1987 Work Program of the Office of Legislative Oversight.

2. Scope. The purpose of this evaluation is to review the basic laws, policies, rules and regulations under which the Board of License Commissioners (Board) operates and evaluate the Board's operating procedures and the adequacy of those laws, policies, rules and regulations. Not included in the scope of this examination was an evaluation of the Board's specific action on any application or show cause hearing.

In addition, a general review of the Boards of License Commissioners in some of the other Maryland counties was performed. No point-by-point comparison between the County's Board and the other boards is made because nearly every county has adopted some variations to the basic provisions found in Article 2B. Although most counties and Baltimore City use a board to determine who will be issued a license to sell alcoholic beverages, there are significant differences in their operating procedures. Some of the differences in procedures of these other boards are highlighted in the report to emphasize a specific issue.

3. Methodology. The review was conducted from April through September 1987, using a variety of fact finding techniques to include:

- Reviewing Article 2B, Annotated Code of Maryland, and the County Code for all references pertaining to the regulation and control of alcoholic beverages.
- Interviewing present and former Board members and employees of State and County agencies and departments that either provide direct services to the Board or complement the activities of the Board of License Commissioners.
- Interviewing selected members of County boards and committees which have an interest in alcohol-related issues.
- Interviewing representatives of other Maryland jurisdictions on the policies, regulations and operating procedures of their Boards of License Commissioners.

4. Acknowledgment. The Office of Legislative Oversight acknowledges the prompt and courteous support from the present and former Commissioners and the many staff personnel who support the Board. Interviews were candid, information was forthcoming, and cooperation was excellent. In the course of this evaluation I found nothing that would cause me to question the individual sincerity or professional qualifications of either individual Board members or staff personnel involved in supporting the Board.

III. BACKGROUND

1. Article 2B, Alcoholic Beverages, of the Annotated Code of Maryland, 1987 declares that it is the policy of the State that, "to obtain respect and obedience for the law and to foster and promote temperance", it is necessary for the State to regulate and control the manufacture, sale, distribution, transportation and storage of alcoholic beverages. To carry out that policy, the State has empowered various State agencies, local commissioners and councils, local liquor boards, all enforcement officers, and the judges and clerks of the courts of the State with authority to administer and enforce the provisions of the State's alcoholic beverages laws, rules and regulations. In addition, the State has granted to itself authority to tax alcoholic beverages and to impose fees for various permits and licenses associated with the importation, manufacture, wholesale distribution, storage and retail sale of alcoholic beverages.

2. The purpose for the State's special attention to the regulation and control of alcoholic beverages, as expressed in the Article 2B of the Annotated Code, is for the protection, health, welfare and safety of the people of Maryland.

3. Under Article 2B, the State authorizes all counties and the City of Baltimore to displace or limit economic competition in the sale and distribution of alcoholic beverages. Under this authority, Montgomery County has assumed total and exclusive control over the importation, storage and wholesale distribution of all alcoholic beverages, and the retail sale of liquor by the bottle. Further, the County regulates the retail sale of beer, wine and liquor-by-the-drink through a licensing, inspection and enforcement system operating under the authority of the Board of License Commissioners.

IV. DESCRIPTION AND OPERATION OF BOARD OF LICENSE COMMISSIONERS

A. Legal Framework

1. The Montgomery County Board of License Commissioners is authorized under Article 2B, Alcoholic Beverages, of the Annotated Code of Maryland. Article 2B addresses all policies and provisions for the regulation and control of alcoholic beverages. Because Article 2B applies to all counties and the City of Baltimore, each with its own unique attitudes and perceptions on how alcoholic beverages should be controlled and temperance promoted, Article 2B has evolved into a complicated patchwork of broad requirements modified by specific jurisdictional exceptions enacted by the General Assembly as local legislation.

2. Included in Article 2B are all statutory provisions pertaining to the licensing and sale of alcoholic beverages in Montgomery County; and also the specific authority, powers and functions of the Montgomery County Board of License Commissioners.

3. In addition to Article 2B, the Annotated Code of Maryland, Article 27, Crimes and Punishments, addresses criminal matters relating to the sale of alcoholic beverages; and Article 28, Maryland-National Capital Park and Planning Commission, addresses the authority of the Board of License Commissioners to issue alcoholic beverage licenses for premises on which lawful nonconforming uses exist.

4. Finally, Article 2B authorizes each Board to adopt rules of procedure necessary to carry out its duties, and rules and regulations relating to the sale of alcoholic beverages particular to the jurisdiction. These regulations and procedures for Montgomery County are included in Appendix D, Rules and Regulations Governing Alcoholic Beverages, of the Montgomery County Code.

B. Composition of the Board

1. Membership. The Board is composed of five members, appointed by the County Executive subject to confirmation of the County Council. The term of each member is four years, with appointments made only to fill the unexpired terms of those who leave the Board prior to completing the full four-year tenure. The Board annually elects one of its members as chairman.

2. Qualifications. The only legally required qualification of Board members is that not more than three can be from the same political party. While not a requirement in the law, Board members have been Montgomery County residents.

3. Compensation. Effective July 1, 1986, each member now receives compensation of \$6,000 per year, with the chairman receiving no additional compensation. Prior to 1986, members received \$3,000 per annum.

4. Quorum. Three members of the Board constitute a quorum for transacting business, with at least three members who are present and voting required to concur in the approval, denial, revocation, suspension, or reclassification of an alcoholic beverage license.

5. Restrictions on Board Members. No member of the Board can have any direct or indirect interest, financial or otherwise, in the manufacture or sale of alcoholic beverages. Also, no Board member can hold any other public office or be employed by the Federal, State or local government.

6. Removal. The County Executive, with the approval of the Council, may remove any member of the Board for cause.

C. Staff Support for the Board

1. Department of Health. The Division of Licensure, Regulatory and Special Health Services provides administrative staff support to the Board with two full-time merit employees. The chief of that division acts ex-officio as secretary to the Board of License Commissioners. In addition,

employees of the division conduct routine and required inspections of licensed facilities and participate in a program of unannounced evening surveillance visits of licensed establishments which provide for the consumption of alcoholic beverages on the premises (on-sale) and off the premises (off-sale).

2. County Attorney. Legal advice to the Board is provided by the County Attorney's Office. In addition, the County Attorney represents the Board in all appeals to the courts. An attorney is present at all official Board sessions.

3. Police Department. The Police Department performs routine inspections of off-sale licensed establishments, conducts special investigations initiated by a complaint or at the request of the Board, and participates in random and targeted surveillance of off-sale establishments. The results of these activities are reported quarterly to the Director, Office of Management and Budget and the Board of License Commissioners.

4. Clerk of the Circuit Court. Upon issuance of a certificate of approval by the Board, an applicant pays the appropriate fee to, and receives the license from the Clerk of the Court.

D. Powers and Functions of the Board

1. Powers. The Board of License Commissioners has two broad powers:

- To decide on whether to issue and renew alcoholic beverage licenses; and
- To enforce compliance with alcoholic beverage laws, rules and regulations.

2. Functions. In carrying out its powers, the Board of License Commissioners performs four broad functions:

- Receives and processes applications for alcoholic beverages retail licenses;
- Conducts a public hearing for each application for an alcoholic beverage license (except one-day and uncontested renewals), and take action on each application;
- Ensures compliance with alcoholic beverage laws, rules and regulations through periodic inspections by health and police personnel; and
- Enforces alcoholic beverage laws, rules and regulations through show cause hearings and enforcement actions.

3. Each of these four functions are discussed in more detail in the following sections.

**First Function: Receives and Processes Applications
for Alcoholic Beverage Licenses**

1. A sworn application must be submitted to the Board for action on six categories of licenses relating to the sale of alcoholic beverages: obtain a new license, transfer ownership of a license, transfer the location of a license, reclassify the alcoholic beverage license (e.g., from a beer and wine license to a beer, wine and liquor license), renew a license, and obtain a special one-day license. A public hearing is always conducted by the Board on an application for a new license, the transfer of either ownership or location of a current license, and the reclassification of a license. The Board does not conduct a public hearing for a one-day license, and may require a hearing on an application for renewal either on its own initiative or if the renewal is protested. To protest the renewal of a license requires the signature of at least ten residents or real estate owners in the immediate vicinity of a licensed establishment.

2. The application process for a license to sell alcoholic beverages is quite detailed, requiring proof of County residency; certification that the applicant has never been convicted of a felony; a statement that no brewer or distiller has a financial interest in the business; and other facts relating to the character of the applicant. In addition, each application (except for a special one-day license) must include a recent photograph and set of fingerprints of the applicant and the person who will be actively in charge of the business. Not required in the application is any statement as to the applicant's financial responsibility, solvency, or capital investment in the business.

3. Applications must be submitted at least 30 days before conducting a public hearing on the application so as to permit the posting on the premises a notice of the pending application for a minimum of 30 days.

4. For all new, transfer and reclassification license applications, the Board requires a filing fee of \$150 to cover the cost of publishing a notice of each application twice for two successive weeks in two newspapers of general circulation within the County. This filing fee is in addition to the alcoholic beverage license fee, which varies from \$100 to \$2000.

5. Although the Board has broad authority and considerable discretion in the issuance of licenses, there are several significant areas in which the Board's discretion is limited. These areas pertain to the following:

- The character of the applicant;
- Zoning and code requirements;
- Certain physical requirements of the premises;
- The location of the premises in relation to other specific activities; and
- Local restrictions.

6. The character of the applicant. Article 2B requires that the Board deny a license to any applicant who "is not a fit person to receive the license." The Board has wide latitude in judging "fitness", in that Article 2B only lists two conditions where the Board must refuse approving a license: a material false statement in the application or evidence that the applicant has practiced fraud in connection with the application.

7. Conformance with zoning and code requirements. Before the Board can issue a license, the particular premises and the building in which the business will operate must conform to County zoning and code requirements. However, the Board may renew an alcoholic beverage license which had previously been issued by the Board for premises on which lawful nonconforming uses exist.

8. Conformance with certain physical requirements of the premises. Article 2B specifies a number of requirements relating to the premises where alcoholic beverages are to be sold. These requirements vary according to the type of establishment (restaurant, hotel, club) and the election district in which the premises is located. Other physical requirements pertain to the seating capacity or size of the dining area, the presence of certain amenities (golf course, swimming pool), the size of the membership of a club or organization, and the capital investment of the business.

9. The location of premises in relation to other specific facilities. Except for one-day licenses, Article 2B prohibits the Board from issuing an alcoholic beverage license to an establishment which is located within 750 feet of any secondary or elementary school, a church, any other place of worship, a public library, or a youth center sponsored or conducted by any government agency. However, the State Code also provides for three exceptions to that prohibition:

- By unanimous action, the Board can approve an application for a license to sell alcoholic beverages if the establishment is between 300 and 750 feet from a school, church, other place of worship, public library or youth center, "provided that the land upon which the building is situated in which the licensee would operate is classified in a commercial or industrial zone under the applicable zoning ordinance and is adjacent and/or contiguous to other land which is similarly classified under said zoning ordinance." (Section 52B.)

- Also, by unanimous action of participating members, the Board may approve an application for a restaurant to sell alcoholic beverages for consumption only on the premises regardless of its proximity to a school, church, other place of worship, public library or youth center, provided the restaurant is located in or within 500 feet of a Central Business District (CBD) zone or the Takoma Park Transit Impact area.

- The Board can renew or transfer ownership of a license for any establishment where, subsequent to the original granting of the license, a school, church, other place of worship, public library or youth center was erected within 750 feet of the establishment.

10. Local restrictions. With some minor exceptions, the Board is prohibited from granting an alcoholic beverage license for any establishment located in the following election districts or towns in the County: Laytonsville (1st district) and Damascus (12th district), and the Towns of Barnesville, Kensington, Washington Grove and the City of Takoma Park. The exceptions to these local restrictions are:

- Up to two licenses may be issued for on-premises consumption only to a restaurant located within the country inn zone in the 1st and 12th election districts.

- One-day licenses can be issued in the Town of Barnesville.

- A license for a country club.

- A license to sell beer for consumption during daylight hours at a restaurant or snack bar located upon land owned by the Revenue Authority and operated as a public golf course.

- A license to sell beer and wine for consumption at a restaurant located upon land owned by the Revenue Authority and operated in connection with the operation of an airport.

- In Takoma Park, the Board may issue three classes of licenses: Class B, beer and wine, hotels and restaurants on-and-off-sale; Class H, beer and wine, hotels and restaurants, on-sale only; and, Class B, beer, wine and liquor, hotels and restaurants on-sale only.

Second Function: Conducts Public Hearings and Take Action on Applications

1. As stated earlier, the Board receives applications for the following six categories of alcoholic beverage licenses:

- New license;
- Transfer of ownership of a license;
- Transfer of location of a license;
- Reclassification of a license;
- Annual renewal of a license, and
- Special one-day license.

2. For each of these, except uncontested renewals and special one-day licenses, the Board always holds a public hearing prior to taking action in closed executive session. Public hearings, with the executive session immediately following, are scheduled every two weeks on a Wednesday. Table I reports the number and outcome of the hearings the Board conducted in fiscal years 1986 and 1987, by the four categories of applications for which public hearings are always conducted.

Table I

Hearings Conducted by the Board of License Commissioners
FY86 and FY87

(Source: Department of Health: "Hearlog" Report)

	<u>Four Categories of Hearings</u>												<u>TOTAL</u>		
	<u>New License</u>			<u>Transfer Ownership</u>			<u>Transfer Location</u>			<u>Reclassification</u>			<u>TOT</u>	<u>App</u>	<u>Den</u>
	<u>TOT</u>	<u>App</u>	<u>Den</u>	<u>TOT</u>	<u>App</u>	<u>Den</u>	<u>TOT</u>	<u>App</u>	<u>Den</u>	<u>TOT</u>	<u>App</u>	<u>Den</u>			
FY86	70	60	10	76	74	2	5	5	0	6	6	0	157	145	12
FY87	71	63	8	67	61	6	1	1	0	2	2	0	141	127	14

Note: TOT = Total
App = Approved
Den = Denied

3. Except for a renewal which is being contested either by local citizens or by the Board on its own initiative, public hearings are not conducted on applications for renewals and special one-day licenses. Applications for renewals must be filed with the Board by March 31st of each year. The Board takes action on all renewals in April. (The Board is empowered to fine a licensee up to \$50.00 for each day the application is filed after March 31st). Applications for special one-day licenses may be filed at any time, and the Board usually takes action at the next scheduled meeting date. In FY 1986, the Board received and approved 215 applications for special one-day licenses; and in FY87, the Board received 246 applications for special one-day license and approved all but one.

4. At the conclusion of the public hearings, the Board, in closed executive session, votes whether to approve or deny each application. Except for establishments within 750 feet of specific buildings (school, church, any other place of worship, public library, youth center) where unanimous action is required, a majority vote of those Board members present is required for action. The Board communicates its decision on an application in the form of a resolution which contains a detailed statement of the grounds and findings forming the basis of the Board's decision and the vote of each member.

5. The decision by the Board to approve an application is followed by the issuance of a certificate of approval which enables the applicant to obtain the actual license from the Clerk of the Circuit Court. The appropriate fee for the license is collected by the Clerk, who in turn transfers the monies to the County less a five percent service charge.

6. For fiscal years 1986 and 1987, the total number of alcoholic beverage licenses issued, to include special one-day licenses, the license fees collected by the Clerk and the monies reimbursed to the County are at Table II.

Table II

Alcoholic Beverage
Licenses Issued and Fees Collected by the Clerk of the Court
and Monies Reimbursed to the County
FY86 and FY87

(Source: Records of the Clerk of the Court and Department of Finance)

	<u>Licenses Issued</u>	<u>Gross Fees Collected</u>	<u>Retained by Clerk</u>	<u>Net to County</u>
FY86	1,136	\$717,440	\$35,870	\$681,570
FY87	1,052	\$723,090	\$36,150	\$686,940

7. In an appeal from an administrative board, such as the Board of License Commissioners, the Circuit Court sits as an appellate tribunal. Appeal can be made by any licensee, an applicant for a license, or any group of not less than ten persons who are residents or real estate owners in the precinct or voting district in which the licensed place of business is located. All appeals are heard by the Court without the intervention of a jury, with the burden of proof on the petitioner and not the Board. The decision of the Court is final and effective immediately. No further appeal is permitted beyond the Circuit Court unless the Circuit Court's decision was based on a point of law that is at variance with a previously rendered court decision.

8. Records indicate that in the past seven fiscal years (FY 81 through FY 87), 19 Board decisions have been appealed to the Circuit Court. Of these, three decisions were sustained by the Court, eight were reversed, and the remainder were withdrawn by the County as a result of an opinion by the Court of Special Appeals. Most of the appeals were for Board decisions involving penalties for violating provisions of Article 2B, primarily, selling alcoholic beverages to a minor. Considering the several hundred actions by the Board in the past seven years, the number of appeals are quite small.

9. Alcoholic beverage licenses are categorized into eleven specific classes, each authorized by Article 2B to be issued by the Montgomery County Board of License Commissioners. (In addition, the Board can issue two Class C

special one-day licenses: one for on-site consumption of beer and wine, the other for beer, wine and liquor.) At Table III (next page) is a listing of the licenses within each of the eleven classes, a definition and the license fee for each class, and the number of licenses by class in effect as of July 1, 1987.

10. Article 2B authorizes additional classes which some of the Boards of other counties have chosen to issue. One such class of license which is issued in other counties but not in Montgomery County is the Class D, beer, wine and liquor license. This is a "tavern" or "cocktail lounge" type establishment where food is not required to be offered to the clientele.

**Third Function: Ensures Compliance with Alcoholic
Beverage Laws, Rules and Regulations**

1. Each application for any alcoholic beverage license (except a special one-day license) is required to include a statement by the applicant granting permission to the Board of License Commissioners, its authorized agents, and any peace officer to inspect and search at any and all hours, without warrant, the premises where the alcoholic beverages are to be sold. These inspections of the premises are performed by two County agencies and one agency of the State, as outlined below:

- Prior to the Board taking any action on the application for an alcoholic beverage license, the Health Department's Alcoholic Beverage Program Manager verifies all information on the application; confirms that a required notice is properly posted on the premises for the required 30-day period; measures the distance between the premises and the nearest school, church, other places of worship, public library or youth center; verifies that the establishment does not violate zoning or other local restrictions; verifies that a use and occupancy permit has been issued; receives a favorable police report on the applicant and manager of the business; and interviews the manager and applicant to be certain that they are knowledgeable of all rules and regulations pertaining to the sale of alcoholic beverages.

- Approximately twice a year, each licensed establishment is given a physical inspection by Health Department Environmental Health Investigators to ensure compliance with alcoholic beverage laws and sanitation and health requirements. For Class B, beer, wine and liquor license establishments, monthly inspections are conducted during the initial license year of the physical plant and to verify that the licensee is in compliance with specific alcoholic beverages laws and health and sanitation regulations.

- Unannounced night-time surveillance of on-sale and on/off-sale establishments is performed by Health Department personnel for possible violations of alcoholic beverage laws, rules and regulations.

- The Police Department conducts random surveillance of off-sale establishments. In addition, the police conduct routine and special inspections of off-sale establishments.

Table III

Alcoholic Beverages Licenses^{a)}
(Source: Health Department Records)

Category of Licenses	Total ^{a)}	Annual Fee	Art 2B
<u>Class A, Wine.</u> Consumption off premises only. [A W]	1	\$100	\$ 12B
<u>Class A, Beer and Wine.</u> Consumption off premises only. [A BW]	186	\$250	\$ 13(i)
<u>Class B, Beer and Wine.</u> Hotels and Restaurants. Consumption on or off premises. [B BW]	99	\$400	\$ 14(h)
<u>Class B, Beer, Wine and Liquor.</u> Hotels and Restaurants. Consumption on premises only. (Sale of food must be two times the sale of alcoholic beverages.) [B BWL(H-R)]	246	\$2000	\$ 19(r)(1)
<u>Class B, Beer, Wine and Liquor.</u> Hotels and Motels. Consumption on premises only. (Sale of food must be at least 50% of gross sales.) [B BWL (H-M)]	16	\$2000	\$ 19(r)(4)
<u>Class C, Beer, Wine and Liquor.</u> Fraternal, sororal or service clubs. Consumption on premises only. [C BWL (Clubs)]	20	\$1000	\$ 20(j-4)
<u>Class C, Beer Wine and Liquor.</u> Country Clubs. Consumption on premises only. [C BWL (CC)]	18	\$2000	\$ 20(j)
<u>Class D, Beer and Wine.</u> Consumption on or off premises. [D BW]	59	\$400	\$ 16(q)
<u>Class H, Beer and Wine.</u> Hotels and Restaurants. Consumption on premises only. [H BW]	58	\$400	\$ 14A(a)(f)
<u>Class H, Beer.</u> Hotels and Restaurants. Consumption on premises only. [H B]	7	\$400	\$ 9A
<u>Class C, Beer, Wine and Liquor.</u> Country Clubs and local post of national organizations. Consumption on premises only of alcoholic beverages supplied by the members. [C]	2	\$300	\$ 20(j-2)
Total Licenses ^{b)}	712		

a) Not including one-day licenses. The fee for a beer/wine one-day license is \$15; for a beer/wine/liquor one-day license, \$30.

b) As of July 1, 1987.

- Agents of the Alcohol and Tobacco Tax Division, Office of the State Comptroller, conduct random on-site inspections. These agents are empowered to inspect and search, without warrant, at any and all hours the premises of all establishments selling alcoholic beverages. (Historically, the major effort of State agents in Montgomery County has been directed at stopping the importation of alcoholic beverages from Washington, D.C. However, a District law enacted two years ago prohibiting Maryland agents from operating inside the District has essentially halted these activities.)

2. In addition to health and sanitation inspections, which are applicable to all establishments that serve food regardless of whether they have a license to sell alcoholic beverages, on-site inspections are conducted to verify that the licensees are in compliance with the following laws and regulations particular to the storage and sale of alcoholic beverages:

- The alcoholic beverage license is framed, under glass, and posted in a conspicuous location;

- Appropriate alcoholic beverages are affixed with a tax stamp;

- Appropriate records and reports relating to employees and receipts and sales of alcoholic beverages (and the sale of food where applicable) are located on the premises and maintained for the required period of time;

- Availability of vouchers to verify that all alcoholic beverages on the premises were purchased from the Montgomery County Department of Liquor Control;

- There is no evidence of adulteration of alcoholic beverages; and

- There is no evidence of gambling on the premises.

Fourth Function: Enforces Alcoholic Beverage Laws, Rules and Regulations

1. As outlined above, the County uses personnel in the Police and Health Departments to conduct surveillance and to inspect for compliance with alcoholic beverage laws, rules and regulations. When the police or health inspectors discover a violation, action by the courts and/or administration action by the Board can result.

2. There are three specific references in Article 2B to enforcement of alcoholic beverage laws. The first, Section 118(a), concerns the sale of alcoholic beverages to minors and to intoxicated persons. Under that section, the courts have sole jurisdiction and, if convicted, the person can be fined up to \$1,000, or imprisoned for up to two years, or both fined and imprisoned.

3. The second provision is Section 69, under which the Board may revoke or suspend any license for any cause which, in the judgment of the Board, is necessary to promote the peace or safety of the community where the place of business is located. Besides this discretionary action by the Board, the Board must revoke or suspend the license if the licensee is convicted by a court of a violation of any of the provisions of the law. (For example: §118(a) - sale to minors or intoxicated persons.) In addition, the Board must suspend or revoke a license for other causes, to include:

- Willful failure of licensee to comply with alcoholic beverage laws, rules or regulations;
- Making a false statement on the license application;
- Two or more convictions within a two-year period of any employee, clerk or agent of a licensee;
- Possession of alcoholic beverages for which the licensee is not authorized to sell or for which the tax has not been paid; and
- Failure to keep required records or to allow inspections of the premises.

4. The third provision of Article 2B is Section 203(p). Under that section, the Board may, in those instances where the Board can suspend or revoke a license, impose a fine in lieu of suspension or revocation. Before imposing a fine, the Board must determine that the public welfare and morals would not be impaired by allowing the licensee to continue to operate, and that payment of the fine will achieve the desired disciplinary purposes. The limit of the fine which the Board may assess is \$20,000.

5. The Board exercises its enforcement authority through a show cause hearing and Board action. In FY 86, the Board conducted 41 show cause hearings on a variety of violations, the majority of which involved the sale of alcoholic beverages to minors. Of these 41 show cause hearings, a total of 25 resulted in fines, six in license suspensions, three in revocation of the licenses, and seven in dismissals of the charges. In FY 87 there were only six show cause hearings, resulting in four fines and two license suspensions.

6. It is important to note that Section 118(a) of Article 2B bars the Board from taking administrative action against any licensee who comes before the court on a charge of violating a provision of Section 118(a) Article 2B (such as selling alcoholic beverages to a minor) if the court finds the licensee not guilty or places the licensee on probation without a verdict (commonly referred to a "PBJ").

7. Table IV lists the dispositions of charges in the District Court which involved violations to the provisions of Article 2B during the period May 1985 and August 1987. The charges included sale to minors, sale to intoxicated persons, unlawful possession, and possession of untaxed liquor. (Note: Charges for alcohol related traffic offenses, such as DUI and DWI, are not included in Table IV.)

Table IV

Montgomery County District Court Alcoholic Beverage
Charge Disposition
May 1985 - August 1987

(Source: Montgomery County Criminal Justice System Report #CJP680AT)

<u>Disposition</u>	<u>Number of Charges</u>	<u>%</u>
Guilty	90	19.6
Dismissed	45	9.8
Not Guilty	13	2.8
Nol Pros	230	50.0
STET	1	<1.0
PBJ	76	16.5
Fwd to Circuit Court	<u>5</u>	<u>1.0</u>
TOTAL:	460	100%

8. One reason for the reduced number of show cause hearings in FY 86 is an opinion by the Maryland Court of Special Appeals which held that, for the Board to exercise its discretionary authority to suspend or revoke a license under the authority granted in Section 69(a), the Board must first make a factual finding that its action is necessary to promote the peace and safety of the community. Prior to the court's opinion, the Board routinely required a licensee charged by the police of violating Section 118(a), selling alcoholic beverages to a minor, to appear at a show cause hearing. As a result of the Court opinion, the Board has ceased taking administrative action against a licensee charged with selling alcoholic beverages to a minor unless there was a conviction by the court.

Revenue Generated by the Board

1. The Board generates revenue in four areas: annual license fees, application filing fees, Board-imposed fines, and sale of publications. The license fee varies depending on the class of the license (See Table III above). An application filing fee of \$150 is required with each application for a new license, a transfer of location or transfer of ownership of the license, and for a reclassification of a license. The Board may impose a fine in lieu of suspension or revocation of a license. Finally, the Board sells an extract of Article 2B which highlights those provisions particular to Montgomery County.

2. At Table V is a list of the revenues generated by the Board for the most recent fiscal years.

Table V

County Revenues Generated by the
Board of License Commissioners
FY 86 - FY 88

(Source: FAM 301-E Reports)

	<u>License Fees</u>	<u>Application Filing Fees</u>	<u>Fines</u>	<u>Sale of Publications</u>	<u>TOTAL</u>
FY86 (Actual)	\$681,570	\$24,060	\$54,670	\$450	\$760,050
FY87 (Actual)	686,940	20,870	13,750	300	721,860
FY88 (Budget)	740,000	26,600	20,000	500	787,100

Expenditures to Support the Board's Operations

1. The Board of License Commissioners has its own budget to cover the compensation of Board members and transcribing public hearings. Within the Health Department budget are funds for the salaries of two merit employes, the Alcoholic Beverage Program Manager and an Executive Administrative Aide; regular and overtime salaries for Environmental Health Investigators who perform routine and required inspections and surveillance of licensed establishments; and funds for nighttime surveillance activities by Health Department personnel. At Table VI are listed the expenditures for the Board and the Health Department for the most recent fiscal years.

2. The three other agencies who support the Board, the County Attorney, the Police Department and the Clerk of the Court, do not record specific costs of providing assistance to the Board.

Table VI
Expenditures of the
Board of License Commissioners and of the Health Department
in Support of the Board
FY 86 - FY 88

(Source: BLC & Health Department BUD 405 Reports)

BOARD OF LICENSE COMMISSIONERS (Agency 1500)

	<u>Personnel</u>	<u>Operating Expense</u>	<u>Capital</u>	<u>TOTAL</u>
FY86 (Actual)	\$15,160	\$26,230	-0-	\$41,390
FY87 (Actual)	15,530	18,990	-0-	34,520
FY88 (Budget)	26,300	25,650	-0-	51,950

HEALTH DEPARTMENT (Agency 4528)

	<u>Personnel^{a)}</u>	<u>Operating Expense</u>	<u>Capital</u>	<u>TOTAL</u>	<u>GRAND TOTAL^{b)}</u>
FY86 (Actual)	\$116,380	\$1,790	-0-	\$118,170	\$159,560
FY87 (Actual)	128,020	2,200	-0-	130,220	164,740
FY88 (Budget)	112,520	3,000	-0-	115,520	167,470

- a) Personnel costs include estimated fringe and overtime for night surveillance of on-sale establishments.
- b) Total combined expenditures of Board of License Commissioners and Health Department.

V. EVALUATION OF THE BOARD OF LICENSE COMMISSIONERS - Five Major Areas for Improvement.

General

1. The Montgomery County Board of License Commissioners performs a highly important function in the County's overall control of alcoholic beverages. Historically, the Federal government has treated all aspects of alcoholic beverages -- the manufacture, transportation, importation, taxing, sales, and consumption -- in a special manner. Likewise, state governments have placed special attention on alcoholic beverages. In Maryland, all legislative authority on matters relating to alcoholic beverages, except for specific powers delegated to the counties and the City of Baltimore, have been retained by the State.

2. Traditionally, the counties and Baltimore have been permitted to tailor the application of State alcoholic beverage laws within their respective jurisdictions. This tailoring has extended to the operating procedures of the Boards of License Commissioners in the various counties and Baltimore City.

3. Montgomery County's attitude toward the control of alcoholic beverages stands out in sharp contrast to the other local Maryland jurisdictions. Montgomery County is the only County that has retained total control over the importation and storage of all alcoholic beverages, the wholesale and retail sale of liquor-by-the-bottle, and the wholesale of beer and wine to retail establishments. However, the County's Board of License Commissioners does not exercise a higher degree of control over the issuance of licenses than do the boards of other counties. In fact, a sampling of some other county Boards indicates that they exercise more control in the areas of issuing licenses and enforcing laws and regulations through administrative action. Some examples are illustrated in this section.

4. Overall, this examination of the Board has revealed no serious deficiencies in the operational effectiveness or efficiency of the Board, the quality of the administrative support provided the Board by the Health Department and County Attorney, or the quality of the inspections, surveillance and special investigations by the Police Department. However, this report does offer a number of suggestions where improvements can be made.

5. Specifically, this section of the report will discuss the laws, regulations and procedures governing the Board, the organizational placement of the administrative support staff to the Board, and other peripheral matters which, if implemented, could facilitate the Board's ability to exercise more efficiently and effectively its powers and functions.

Amendments to Article 2B, Annotated Code of Maryland

1. Overview. As stated previously in this report, Article 2B, Alcoholic Beverages, of the Annotated Code of Maryland, is a muddled patchwork of provisions, stipulations and requirements with an almost endless series of exceptions for the individual counties and Baltimore. It is a State law which reflects individual local attitudes and desires.

2. The Board in Montgomery County has attempted to reduce the confusion of interpreting the law by extracting and publishing in a separate document those portions of Article 2B which apply to Montgomery County. The document contains more than 100 pages.

3. Recently, there have been discussions in the General Assembly to revise Article 2B. However, whether Article 2B is totally revised or only selectively amended, the following specific amendments to Article 2B by local legislation, are recommended:

- Amend Section 118 or Section 69 to give the Board authority to administratively discipline licensees who sell alcoholic beverages to minors or intoxicated persons.

- Amend Section 115 to prohibit off-premises delivery of alcoholic beverages.

- Amend Section 158(k) to remove the prohibition from serving on the Montgomery County Board because of Federal, State and local employment.

- Amend Section 19(r) to reduce the frequency of inspections in the initial license year.

- Amend Section 150(c) to require that Commissioners be a resident of the County.

- Amend Section 63(a) to permit the Board to collect the license fee and issue the license.

4. Amend Section 118 or Section 69 to give the Board authority to administratively discipline licensees who sell alcoholic beverages to minors or intoxicated persons. As described earlier in this report, Article 2B, Section 69(a), mandates that the Board revoke or suspend the license of a licensee for ten enumerated causes, the first of which is conviction of violating any of the provisions of Article 2B. Further, Section 69(a) permits revocation or suspension if the Board finds that such action is necessary to promote the peace and safety of the community. Under Section 203(p), the administrative punishment the Montgomery County Board can impose includes a fine of up to \$20,000 in lieu of revocation or suspension.

Until recently, the Board had imposed administrative punishment on licensees who have been charged with selling to a minor. Such action was authorized under Section 69(a) in the case of those licensees whose charge resulted in a court conviction. However, for the majority of those licensees whose court disposition was other than a conviction, the Board likewise cited Section 69(a) as its authority, stating such action was necessary to promote the peace and safety of the community in which the licensee's business was situated.

A recent decision of the Maryland Court of Special Appeals reaffirmed that, for the Board to exercise its authority to administratively punish a licensee for violating a provision of Article 2B (such as selling to a minor), there must first be a conviction by a court. And, in the case of selling to a minor, if the licensee was found not guilty or placed on probation without a verdict, the Board was barred from any administrative action.

The Board should have authority to take administrative action against licensees who sell to minors, regardless of the action by the courts. The power of the Board to suspend or revoke a license, or to impose a fine of up to \$20,000 in lieu of suspension or revocation, is a powerful and compelling incentive not to sell to minors. Accordingly, Article 2B should be amended to give the Board either sole authority to enforce Section 118(a) (prohibition against sale to minors and intoxicated persons) or to take administrative action against any licensee who violates Section 118(a) regardless of the court's disposition. There is precedent for such an amendment in that four Maryland counties, Somerset, Talbot, Wicomico and Carroll, take administrative action against licensees who violate Section 118(a). Currently, the Executive branch is proposing such an amendment for the 1988 session of the General Assembly.

Another section which could be amended to accomplish the same purpose is Section 69. In that section, various counties have strengthened the power of their Boards to revoke or suspend licenses for violations of any provision of Article 2B. For example, in Howard County, the Board has authority to revoke or suspend a license if the licensee or any employee of the licensee violates any provision of Article 2B, with a court conviction not being prerequisite.

5. Amend Section 115 to prohibit off-premises delivery of alcoholic beverages. Section 115 authorizes a licensee to receive an order for an alcoholic beverage by phone and to deliver the order and receive payment at the place of delivery. However, five counties prohibit delivery to a purchaser unless under specific conditions (Garrett, Howard, Kent, Queen Anne's, and Talbot).

Montgomery County should also prohibit delivery of alcoholic beverages. Delivery of alcoholic beverages greatly reduces the control a licensee can exercise over an employee or agent. Deliveries of beer or wine are usually in conjunction with the delivery of a carry-out food item (pizza, oriental food, etc.). These deliveries are made to anyone who pays for the items at a residence or place of employment. It is logical to expect a licensee or manager to be responsible that a counter clerk or waiter within the establishment verifies the age of patrons before dispensing alcoholic beverages; however, this is quite difficult when the point of sale is away from the business premises and out of the direct observation and control of the licensee or manager.

Another reason for prohibiting retail delivery of alcoholic beverages is that the County's rules and regulations governing the sale of alcoholic beverages specifically prohibits the employment of anyone under the age of 18 from handling or selling alcoholic beverages. Many food establishments which sell alcoholic beverages employ drivers under the age of 18 for home delivery.

6. Amend Section 158(b) to remove the prohibition from serving on the Montgomery County Board because of Federal, State or local government employment. Section 158(k) contains specific prohibitions against commissioners having any direct or indirect financial or proprietary interest in any business or in any premises involved in the manufacture or sale of alcoholic beverages. Included in that same section is a further prohibition against commissioners receiving any gift or remuneration from anyone engaged in the manufacture or sale of alcoholic beverages. These prohibitions are appropriate. However, this section also prohibits a commissioner from holding any other public office "or employment, Federal, State or local." There appears to be no reason for this rigid requirement for serving on the Montgomery County Board. While employment restrictions may be appropriate for some boards, commissions and committees, it is neither appropriate nor warranted for the Board of License Commissioners and should be removed.

7. Amend Section 19(r) to reduce the frequency of inspections in the license year. Particular to Montgomery County is a statutory requirement for monthly physical inspections of the premises in the initial license year for holders of Class B, beer, wine and liquor licenses, hotels, motels, and restaurants (on-sale only). According to Health Department staff, the frequency of these inspections are excessive and put an unnecessary demand on the staff. One suggestion would be to reduce the frequency to once each month in the initial three months of the license, then reinspect on the sixth, ninth and twelfth month.

8. Amend Section 150(c) to require that Commissioners be a resident of the County. Although all present Commissioners are County residents, Article 2B does not specify that residing in the County is a prerequisite to serving on the Board.

9. Amend Section 63 to permit the Board to collect the license fee and issue the license. Section 63(a) provides that the Clerk of the Circuit Court will receive payment of the specific alcoholic beverage licensing fee and issue the license. The Clerk in turn remits the fee to the County, less a five percent service charge. In FY86, the service charge amounted to almost \$36,000, and in FY 87, over \$36,000 (see Table II). This five percent service fee which the Clerk collects was recently enacted by the General Assembly. Prior to this change, the fee was limited to \$2.00 for each license. Had that provision not been amended, the service fee the Clerk would have collected in FY 86 and FY 87 would have been approximately \$2,000 each year.

Section 63(a) should be amended through local legislation to authorize the County's Board of License Commissioners to collect the license fee and issue the alcoholic beverage license. This would enable the County to retain the full license fee. There is precedent for a county board to perform those functions in that Board of License Commissioners for Prince George's County issues the license after the applicant has paid the required fee directly to the County treasurer.

Provide Additional Guidance to the Board

1. Overview. The State has provided wide discretion in delegating authority to local boards of license commissioners to issue alcoholic beverage licenses. As stated earlier, Article 2B lists only three broad conditions for the Board to consider in determining whether to grant a license once the zoning, distance and local restrictions have been satisfied. The first is whether the license is necessary to accommodate the public; the second concerns the fitness of the applicant and the truthfulness of the statements on the application; and the third is whether granting the license would unduly disturb the peace of the residents of the neighborhood in which the business is to be located.

Interviews with current and former Commissioners reveal that they apply these three conditions in a generally consistent manner. Specifically, the Board scrutinizes the application for any derogatory information in the background of the applicant or for any evidence that the application contains any errors or omissions. Absent any indication that the applicant is not fit or that the application contains false information, and absent any objections from citizens of the neighborhood where the business will be located, the Board almost always granted the license. Occasionally, an individual Commissioner has voted against granting a license because the Commissioner was personally convinced that granting the license was not necessary for the accommodation of the public; however, very few licenses have been denied because a majority of the Board voted not to grant the license on the basis that the public was already being served. The general feeling of the Board is that, in the final analysis, it is the market place that will decide whether the public is accommodated by a licensed establishment.

Most Commissioners stated that Article 2B did not offer any other criteria upon which to judge whether to grant a license. Likewise, some Commissioners noted the absence of any standards or guidelines from either the Executive or the Council which would serve as additional guidance when evaluating an application.

This examination confirms that there are currently no published standards or guidelines from either the Executive or the Council. However, Article 2B does contain additional considerations which the Board can apply when deciding on an application for a license. Specifically, Article 2B references two additional considerations, neither of which were cited by Commissioners as criterion that they had considered in making a decision on an application. The two references are:

- Section 60(a): "If the board of license commissioners . . . determines that the granting of the license is not necessary for the accommodation of the public . . . or that there are other reasons, in the discretion of the board, why the license should not be issued, then the application shall be disapproved . . ." (Emphasis added).
- Section 42(a). "The board of license commissioners . . . shall have full power and authority by rules and regulations to limit and restrict, in accordance with a definite standard the number of licenses which they shall consider sufficient for any neighborhood." (Emphasis added).

The authority contained in these references could be used by the Board when considering whether to grant a license; however, they have not been cited because the Board has neither developed any "other reasons" to consider when evaluating an application, nor articulated a "standard" in the Board's rules and regulations for the number of licenses for a specific neighborhood or area of the County.

2. Standards and guidelines are needed from the Executive and the Council. Article 2B authorizes Boards, by rules and regulations, to limit and restrict the number of licenses in accordance with a definite standard. However, neither the Executive nor the Council has provided any standards or guidelines to the Board. It has been suggested by some licensees that there should be some finite limit to the number of licenses the Board issues; however, there are presently no criteria available to the Board to limit or restrict the number of licenses.

Additional criteria in the form of locally issued standards and guidelines or amendments to Article 2B should be developed. The State law grants wide latitude to the individual counties to develop policies, standards and guidelines for their respective Boards. This has been done so as to enable the Boards to exercise that level of control over alcoholic beverages necessary to accommodate the particular philosophy of the jurisdiction.

Numerous examples can be found in Article 2B where the local governing officials have established standards for their Boards to follow when considering whether to grant an application. Some examples include:

- Caroline County. Before a license is granted, not only must the Board be satisfied as to the moral character, but also the financial responsibility of the applicant; and the appropriateness of the location of the licensed business taking into consideration the number of licenses already issued. (An application to the Board in Montgomery County contains no reference to the financial responsibility or solvency of the applicant.)

- Harford County. The Board must publish its decisions on license applications in two newspapers, specifying the name of the licensee, type of license, and the location of the license, with the Board's decision not becoming effective until five days after publication. (In Montgomery County, only a notice of the public hearing is published.)

- Prince George's County. The maximum number of licenses authorized in each class are stated in the law and the Board is not authorized to exceed that number. (In Montgomery County, specific number of licenses are not mandated.)

- Montgomery County. In addition to the prohibition in most counties against issuing a license to sell beer for consumption on the premises to a drug store, in Montgomery County that prohibition is also applied to bowling alleys and billiard halls.

- All counties. The license fee varies by county and by class of license. As an example, a Class D license to sell beer for consumption on the premises varies from \$50 to \$275.

• All Counties except Montgomery, Prince George's and Anne Arundel. Each application for a license (except special one-day) must include a certificate signed by at least 10 citizens who are owners of real estate and registered voters of the precinct in which the business is to be conducted. The certificate must state that they have examined the application and that they have good reason to believe that all the statements in the application are true and that they are of the opinion that the applicant is a suitable person and that the premises are suitable for the conduct of a business involving alcoholic beverages.

3. Alcoholic beverage license to a convenience store which also sells gas. A recent example in the County illustrates how a lack of policy guidance resulted in a misunderstanding between the Board and the community when the Board issued a license to sell alcoholic beverages to an establishment which also sold gas.

At a public hearing in July 1986, no one appeared before the Board to testify against the granting of a license for the sale of beer and wine for consumption off the premises to an existing convenience store and gas station. After receiving a detailed presentation by the applicants' attorney, to include submission of a petition with over 200 signatures favoring the license, the Board concluded that: granting the license was necessary for the accommodation of the public; the applicants were fit persons; and the operation of the business would not unduly disturb the peace of the residents of the neighborhood in which the food store/gas station was located. The Board voted unanimously to grant the license.

Subsequently, the Council received a number of complaints from individuals and organized groups objecting to the sale of alcoholic beverages at a gas station. The major complaint was that such an arrangement "sends the wrong signal to the public" and contributes to the potential for drunk driving incidents. Some Councilmembers voiced agreement with that argument.

Board members orally defend granting of the license for the following reasons: no testimony was presented at the hearing objecting to its issuance; the long petition supporting the granting of a license; nothing in Article 2B or the Board's rules and regulations which prohibits granting a license to a retail food operation which is co-located with a gas station; and the existence of other licensees who operate gas stations on the same premises where alcoholic beverages are sold. (There are currently four other establishments, all located in the up-County, which sell beer and wine in addition to groceries and gasoline).

Recently when the licensee came before the Board for the first renewal of the license, one member voted against renewing it; however, the majority voted to grant the renewal.

4. Summary. While recognizing that discretionary authority is fundamental to the operation of any regulatory board, the exercise of that discretion should be within a framework of standards and guidelines articulated by the elected officials. Article 2B already includes enabling language under which the local elected representatives can establish standards and guidelines for the Boards of License Commissioners to use when considering whether to issue a license. In those areas where Article 2B must be amended to incorporate specific language limiting the Board's discretion, such amendments should be introduced and enacted as local legislation.

Reorganize the Administrative Support
to the Board of License Commissioners

1. Overview. Administrative support to the Board is currently provided by the Health Department, the Police Department, the Office of the County Attorney and the Clerk of the Court. The Police Department assists the Board in fulfilling its enforcement responsibility by conducting routine inspections, special investigations and random and targeted surveillance of licensed off-sale establishments; the County Attorney's Office gives legal support of the Board; and the Clerk of the Court collects the appropriate fee and issues liquor licenses. The bulk of the administrative support to the Board is provided by the Health Department.

2. Administrative support by the Health Department. Within the Health Department's Division of Licensure, Regulatory and Special Health Services, are two full-time positions, an Alcoholic Beverage Program Manager and an Executive Administrative Aide, whose duties are almost exclusively dedicated to support of the Board. This support includes receiving and processing applications, organizing Board hearings, coordinating inspections and enforcement efforts by health and police investigators and surveillance teams, and performing general administrative and housekeeping services to the Board.

The Health Department also provides support to the Board by conducting routine and required inspections of the premises where alcoholic beverages are sold. Routine alcoholic beverages inspections are conducted by Environmental Health Investigators at the same time health and sanitation inspections of the food service areas of the establishments are performed. The authority to conduct routine inspections of licensed facilities is contained in Article 2B; however, the frequency of these routine inspections is not stipulated in the law or in regulations. For several years it has been the policy that each licensed facility be inspected twice a year. In FY 86, of 1,324 routine inspections due, 662 or 50% were completed; and in FY 87, of 1,266 routine inspections due, 60% were completed.

Article 2B also requires inspections to be performed monthly during the initial year for any licensee who holds a Class B, beer, wine and liquor license, hotel/restaurant or hotel/motel in the County. According to Health Department records, in FY 86, 87% of the 599 required monthly inspections were completed; and in FY 87, 71% of the required 534 monthly inspections were completed.

3. Providing Administrative support to Board by the Health Department needs to be examined. The Board is a regulatory and licensing agency for a specific business operation, whose purpose has only a remote relationship to the public health of the community. The administrative support for the Board is misplaced in the Health Department. First, there is little connection between the functions and responsibilities of the Board -- the processing of applications and issuance of licenses to sell alcoholic beverages, and the regulation and enforcement of alcoholic beverages laws -- with the basic goal of the Department of Health which is to promote and protect the public health and to provide certain health services. (Note: the Alcoholic Beverages Program Manager is also the staff person responsible for all matters relating to the laws and regulations concerning smoking prohibitions and restrictions.)

While it may be convenient to use Environmental Health Investigators to inspect for compliance with alcoholic beverage laws at the same time they conduct health and sanitation inspections, the frequency of these inspections as established in law and policies are not being met. Also, while the effort devoted to inspecting alcohol related activities amounts to less than one work year of the total effort of the eleven Environmental Health Investigators, this requirement has contributed to the investigators' inability to meet the goal of inspecting retail food service facilities the required two times a year.

4. Possible location for the Board's administrative support function. Because of the unique role and purpose of the Board, it does not fit neatly into any other department or office in the Executive branch. In the 1979 reorganization of the Executive branch, the licensing and inspection requirements of the Board were removed from the Department of Environmental Protection because they were not related to the environment. Likewise, it does not seem appropriate to place the administrative support for the Board in the Office of Consumer Affairs because the Board's functions are not related to consumer protection. While the scope of this report did not permit a thorough study as to where the administrative support function for the Board should be assigned, the following observations are presented on the two organizational arrangements which are most often suggested. The first is to assign administrative support to the Department of Liquor Control; and the second is to create an independent and discrete organization.

● Department of Liquor Control. It has been suggested that, because the Department of Liquor Control (DLC) is involved in the purchase, storage, distribution and sale of alcoholic beverages, it would be a logical agency to provide administrative support to the Board. While on the surface this may appear to be a natural fit, there are at least two problems with such an organizational arrangement. First, the Board is responsible for enforcing alcoholic beverage laws, to include enforcing those laws which are applicable to the DLC retail stores. In the past, there have been instances when employees of the Department of Liquor Control have been cited for selling alcoholic beverages to minors. If support to the Board was made the responsibility of the Department of Liquor Control, it would be a conflict of interest in that the Director, DLC, would be responsible for enforcing the alcoholic beverage laws in the DLC stores under his supervision.

The second problem is one of perception. The Department of Liquor Control has a total monopoly over the wholesale purchase, storage and distribution of all alcoholic beverages, and the retail sale of liquor-by-the bottle. The Department operates 19 retail outlets which are in direct competition with a large number of licensees in the sale of beer and wine. To place administrative support of the Board's licensing, inspection and enforcement functions under the Director, Department of Liquor Control, would certainly be perceived as a conflict of interest.

- Create a separate independent organization. Within the County government, several boards and commissions are organized as a discrete entity: the Merit System Protection Board, the Board of Appeals, the Human Relations Commission, the Ethics Commission, and the Commission for Women. Because the Board of License Commissioners does not "fit" precisely into any existing governmental department or office, it has been suggested that a separate organization be created. Such an organizational arrangement would eliminate the confusion of the current organizational placement, ensure the Board's independence, and provide the Board with the visibility it deserves.

The nucleus of the administrative support function to the Board could continue to be the two staff positions currently authorized in the Health Department, augmented with sufficient resources to carry out the Board's inspection and enforcement responsibilities. Many Maryland counties have a separate Board of License Commissioners to which is assigned sufficient personnel on a full and/or part-time basis to provide administrative support and to carry out inspection and enforcement responsibilities. (Examples: Prince George's County, Baltimore County and Howard County.) In some of the counties, the Board's inspectors/investigators are granted limited powers of a police officer in respect to the enforcement of alcoholic beverages laws. (Examples: Prince George's, Frederick and Kent.) However, creating a separate organization would not eliminate the requirement for the Police Department to conduct random surveillance of off-sale establishments and perform routine inspections and special investigations.

5. Summary, the current organizational structure which places the administrative support element to the Board in the Health Department needs to be reviewed by the Executive. Because of the unique mission of the Board, it does not fit into the traditional role of the Health Department on any other department/office. It may require its own discrete organization.

Coordination with Public and Private Organizations Which have an Interest in Alcohol Related Issues

1. Overview. The County has several public and private organizations whose interests encompass some aspect of alcoholic beverages:

- Alcoholism Advisory Council (AAC). The authority for the ACC is found in State law (§8-313, Health General Article) and the County Code (Chapter 24). It is composed of representatives of public agencies and private organizations, and its mandate is to oversee, advise and make recommendations on matters related to alcoholism.

- Alcohol and Highway Safety Committee. This Committee of the AAC was established by the County Executive to monitor the implementation of the 66 recommendations of the County Executive's 1982 Task Force on Drinking and Driving. However, the Alcohol and Highway Safety Committee has gone beyond simply monitoring the report's implementation, and has expanded into all facets relating to alcohol and driving. Although Recommendation No. 9 of the Task Force Report addressed providing the Board of License Commissioners with additional inspection capabilities to enforce liquor laws, the Committee has had little direct contact or coordination with the Board. Recently the Committee publicly criticized the Board's decision to grant a beer and wine license to the convenience store which also sold gasoline (described previously in this report).

● Alcoholic Beverages Advisory Board (ABAB). Under authority of Section 159(c)(7), Article 2B, the County Executive appoints, the five members to the Alcoholic Beverages Advisory Board (ABAB), subject to Council approval. One of the members must be a beer or a beer/wine licensee, another member must be a beer, wine and liquor licensee, and the other three members must represent the general public. The ABAB also has three ex-officio members, the Director, Department of Liquor Control, the Chief of Police and the Chairman of the Board of License Commissioners. The Board is responsible for reporting quarterly to the County Executive on recommendations for improving alcoholic beverage control and enforcement in the County.

● Mothers Against Drunk Driving (MADD). The goals and accomplishments of MADD are well known. Together with SADD (Students Against Drunk Driving), the Maryland Coalition for Better Drunk Driving Laws, and other organizations, MADD is involved in many activities to reduce the harmful effects of irresponsible or illegal use of alcohol, improve public education and community awareness to this problem, and to engage in legislative lobbying for stronger drunk driving laws.

2. Closer coordination among the Board and other organizations. With the exception of the quarterly ABAB meetings with the Executive in which the Chairman of the Board of License Commissioners may attend as an ex-officio member of ABAB, there is currently no active coordination among the Board and the above organizations. Although each organization has its own set of specific goals, each shares the common goal to foster the responsible use of alcoholic beverages. To that end, each of these organizations should have an interest in the Board's efforts to regulate and control the availability of alcoholic beverages through the licensing process, to enforce alcoholic beverage, laws and regulations, and to promote temperance in the use of alcoholic beverages.

Miscellaneous Improvements

1. Overview. In addition to the four major observations discussed above, six suggested improvements relating to the Board are presented in this section.

2. Increase the filing fee and institute a fee for renewals. Current regulations require that a fee of \$150.00 be collected with each application for a new license, transfer of ownership or location, or reallocation. The fee is used to cover the cost of advertising as required by Article 2B. The filing fee varies with each county. For example, the filing fees in Prince George's County are \$450.00 for a new application or reallocation, and \$350.00 for an application to transfer either location or ownership. The filing fee should be increased to an amount that covers not only the cost of advertising, but also the administrative cost of processing the application.

Currently, there is no filing fee for either a license renewal or a special one-day license. The Board should require an appropriate fee for at least renewals to cover the administrative cost of processing the application.

3. Reinstitute the Department of Liquor Control in application process. In early 1977, a Memorandum of Understanding on the allocation of responsibilities for the administration and enforcement of alcoholic beverage control laws was executed by the Department of Police, the Department of Liquor Control (DLC) and the Department of Environmental Protection (DEP). (Prior to the 1979 reorganization, administrative support to the Board was provided by DEP). One responsibility in that Understanding has not been carried out in recent years and should be reinstated. That responsibility calls for the Department of Liquor Control to evaluate applications and report to the Board regarding those aspects of the premises of the proposed licensee, such as storage and delivery conditions, which are of concern to DLC.

4. Adoption of Board Rules and Regulations. Article 2B, Section 184(a), authorizes the Board to adopt rules and regulations as it deems necessary to discharge its duties. However, these rules and regulations should be adopted in accordance with Chapter 2A, Article II, Regulations, of the Montgomery County Code. Currently, the Rules and Regulations are not included in the quadrennial review required by Chapter 2 of the Code.

5. Review the Board's extract of Article 2B and Appendix D, Rules and Regulations. Because of recent changes to Article 2B, the Board's notebook of pertinent extracts of that law contains information which is no longer accurate. Likewise, portions of Part I of Appendix D, Rules and Regulations Governing the Sale of Alcoholic Beverages, of the County Code are not up to date with the current law. For example:

- Section I of Appendix D, still reflects the minimum drinking age of 18 for beer and other beverages with less than 14 percent of alcohol by volume.

- Sections 8 and 13 of Appendix D are redundant in that both concern the requirement that all alcoholic beverages be purchased from the Department of Liquor Control.

6. Institute a method whereby the Board can keep licensees informed. Currently, the Board has no means of communicating with licensees other than by individual letter. Consequently, large individual mailings are required to inform the hundreds of licensees of changes in the law and/or rules and regulations, and to announce the annual license renewal schedule. The Board should examine the feasibility of reducing their mailing requirements by publishing announcements in the Department of Liquor Control Newsletter. The DLC Newsletter is already distributed monthly to each licensee to notify them of important matters pertaining to the availability, pricing and delivery of alcoholic beverages.

7. Periodically schedule Board hearings in the evening. Some of the Commissioners suggested that public interest and participation in Board hearings could be enhanced by periodically scheduling hearings in the evening. It was also suggested that these public hearings be advertised in a manner similar to the way public hearings by the Council and Executive are advertised.

VI. CONCLUSIONS/RECOMMENDATIONS

A. Conclusions

1. Under the provisions of Article 2B, Annotated Code of Maryland, the Montgomery County Board of License Commissioners is empowered to issue and renew alcoholic beverage licenses and to enforce compliance with alcoholic beverage laws, rules, and regulations.

2. In carrying out its powers, the Board performs four broad functions:

- Processes applications for a license to sell alcoholic beverages;
- Hears and makes final decisions on applications for a license to sell alcoholic beverages;
- Ensures compliance with alcoholic beverage laws, rules, and regulations; and
- Enforces alcoholic beverage laws, rules, and regulations.

3. No serious deficiencies were found in either the operational effectiveness and efficiency of the Board, or in the quality of administrative support provided the Board.

4. In the course of this evaluation, a number of improvements were developed that affect the operation of the Board and the administrative support provided the Board.

B. Recommendations

1. The County Executive should initiate action to have the following amendments made to Article 2B, Annotated Code of Maryland, 1987, so as to:

- Give the Board authority to administratively discipline licensees who sell alcoholic beverages to minors and intoxicated persons.
- Prohibit off-premises delivery of alcoholic beverages.
- Remove the prohibition from serving on the Board because of Federal, State, or local government employment.
- Reduce the frequency of required inspections in the initial license year.
- Require that Commissioners be residents of the County.
- Permit the Board to collect the license fee and issue the license.

2. In coordination with the County Council, the County Executive should develop standards and guidelines to assist the Board in evaluating applications for licenses to sell alcoholic beverages.

3. The County Executive should direct a review of the current organizational structure which assigns the Health Department the responsibility for administrative support to the Board.

4. The County Executive should establish a coordination link between the Board and the other public and private organizations which have an interest in alcohol-related issues.

5. The County Executive should adopt a number of miscellaneous improvements to include:

- Increasing filing fees and instituting a fee for license renewal.
- Assigning the Department of Liquor Control responsibility for reviewing applications for adequacy of storage facilities for alcoholic beverages at the premises.
- Reviewing and revising the Board's extract of Article 2B and Appendix D, Montgomery County Code.
- Developing a means whereby the Board is able to inform licensees of important changes to the laws, rules and regulations, and other matters of interest.
- Scheduling some Board public hearings in the evening.

VII. AGENCY COMMENTS

Before submitting this report to the County Council, a draft copy was sent to the Chief Administrative Officer, appropriate departments and offices, current members of the Board of License Commissioners and the Clerk of the Circuit Court. Where the oral and written comments were of a factual/technical nature, they are included in this final report. Other pertinent comments are presented below in their entirety.

MEMORANDUM

November 17, 1987

TO: Andrew Mansinne, Director, Office of Legislative Oversight
FROM: Lewis T. Roberts, Chief Administrative Officer *L.T. Roberts*
SUBJECT: Draft OLO Report #87-4: A Description and Evaluation of the Montgomery County Board of License Commissioners

Thank you for the opportunity to review and comment on the draft copy of OLO's evaluation and recommendations concerning the Board of License Commissioners. The report is very comprehensive and raises a number of important issues which will directly impact public policy.

Attached are copies of preliminary comments from the various departments of the Executive Branch concerned with the report. It would be premature for the Executive Branch to take a definitive position on any of the report's recommendations at this time. However, I look forward to an active discussion with you and the County Council once the report is made public.

Again, thank you for the opportunity to comment.

LTR:psa

Attachments

* * * * *

MEMORANDUM

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight
FROM: Bernard D. Crooke *B.D. Crooke*
Chief of Police
SUBJECT: OLO # 87-4, A Description and Evaluation of the Montgomery County Board of License Commissioners
DATE: November 9, 1987

Members of my staff have reviewed your report evaluating the Montgomery County Board of License Commissioners, Draft OLO # 87-4.

The report does not recommend any changes that effect the current operation or reporting responsibilities of the Department of Police. At the same time, the department can be supportive of the recommendations for administrative changes in other areas.

MONTGOMERY COUNTY HEALTH DEPARTMENT
100 Maryland Avenue, Suite 240
Rockville, Maryland 20850
(301) 251-7470

M E M O R A N D U M

November 9, 1987

TO: Keith E. Kolodgie, Assistant to the Chief Administrative Officer
FROM: Martin P. Wasserman, M.D., J.D., Director
SUBJECT: Health Department Response to OLO #87-4, Montgomery County Board of License Commissioners (BLC)

On behalf of the Health Department, I would like to complement Mr. Mansinne and his staff for their comprehensive evaluation, analysis, and review of the responsibilities of the Board and the support provided by the Health Department and the identification of legislative changes which might make enforcement more effective.

Health Department comments on the Report are listed below:

Organizational Placement

The optimal placement of the BLC within the overall governmental structure is a problem since the BLC doesn't fit neatly into any single existing organization. Although the Health Department currently performs several licensure and regulatory functions for the County Government, each is "people-oriented" whether it be day care, nursing home or dining out facilities. In most cases this function is directly linked to the protection of the public health or the performance of traditional public health activities.

Support to the BLC, however, falls in a different "niche". The primary mission of the BLC is in conflict with the Health Department's image of protecting the public health through prevention, promotion, treatment and licensure and regulatory activities. While it is recognized that this activity will remain a County function, it is questionable whether correct placement is consistent with the overall Mission of the Health Department.

The alternative placements identified in the Report, including a stand alone function, should be considered by the County Government.

Enforcement Activities

If the Government's decision is to retain this function within the Health Department, then it would seem appropriate that enforcement of existing regulations restricting the sale and distribution of alcohol to minors and those considered intoxicated be more aggressively enforced. By expanding this effort, public health objectives to reduce teenage alcoholism, decrease drunk driving, and diminish the economic and social impact resulting from alcoholism would be satisfied. It should be noted that this represents a significant policy initiative by the Health Department with important ramifications on the relationship between the licensing agency and the licensees.

Expanding the capacity of the BLC to initiate penalties including civil fines and licensure revocation would appear appropriate. Activities to "crack down" on the sale or distribution of alcoholic beverages to minors should be intensified if BLC support remains within the Health Department.

Legislation

Specific legislation identified in the Report should be supported to meet the public health objectives mentioned above. These changes include:

- o Permitting the application of civil penalties including fines and revocation through an administrative route without need for prior criminal conviction (See attached Journal article of October 28, 1987).
- o Prohibiting off premises delivery of alcoholic beverages and the sale of same at sites where gasoline is distributed.
- o Limiting the total number of licenses provided.

Staffing

Currently, in addition to the two positions allocated to support this effort and the \$21,000 in contractual dollars to provide night and weekend inspection and enforcement, one additional staff person would be required. This effort is now conducted at the expense of restaurant and food service inspections and is potentially dangerous for the community since it increases the likelihood of food borne illness outbreaks. By implementing Mr. Mansinne's suggestion and diverting license fees from the court system, funding for appropriate staffing levels would be available to the Health Department, so that this activity could be freestanding and have appropriate staff to provide a reasonable enforcement activity to protect the young people in our County.

Recommendations

- o Remove the Board of License Commissioners from the Health Department.
- o Support legislation to permit civil penalties through an administrative mechanism, prohibit off-premises delivery and association with gasoline sale, and limit total number of licenses.
- o Divert fees from the court system to fully cover costs of program activities, restore food inspector staffing to the primary mission, and expand enforcement capability.

* * * * *

November 16, 1987

TO: Andrew Mansinne, Jr., Director, Office of Legislative Oversight

FROM: Dennis Theoharis, Program Manager *D. Theoharis*

SUBJECT: Draft OLO Report - No. 87-4

I would like to take this opportunity to commend your efforts in completing OLO report No. 87-4. It is a thorough and comprehensive report that truly reflects in an unbiased manner a concise and on-target description and evaluation of the Montgomery County Board of License Commissioners. For clarification I have made the following comments:

1. Page #5 - "Staff Support for the Board" #1 "Department of Health - Health Department employees who participate in unannounced evening inspections visit both on sale and on/off sale license establishments.

2. Page #7 - "First Function: Receive and Process Applications for Alcoholic Beverage Licenses" #2 - One does not have to be a U.S. citizen to hold an A.B.C. license. #4 - Publishing the notice of a pending application must be done in two (not three) newspapers of general circulation with the county.
3. Page #12 - "Alcoholic Beverage Licenses" - Class B, Beer, Wine, and Liquor, Hotel/Motel (Sale of Food must be at least 50% of gross sales.), i.e. the sale of food does not have to exceed the sale of alcoholic beverages.
4. Page #13 - "Ensure Compliance with Alcoholic Beverage Laws, Rules and Regulations" #1 - Only Class B, Beer, Wine, and Liquor license establishments require monthly inspections during the initial year of operation.
5. Page #20 - "Amendments to Article 2B Annotated Code of Md." #4 - Section 69(a) of Article 2B mandates revocation or suspension of a license for ten specific causes, i.e. not for any violation of Article 2B as stated in the report. Three counties are listed which have set a precedent in their local Boards to hold administrative hearings for Sales to Minors or Intoxicated Patrons violations. Carroll County was added to the list in July, 1987.

* * * * *

MEMORANDUM

November 2, 1987

TO: Andrew Mansine, Director
Office of Legislative Oversight

FROM: Robert K. Kendal, Director 
Office of Management and Budget

SUBJECT: OLO Report 87-4: Board of License Commissioners

I appreciate receiving your draft report #87-4 regarding the Board of License Commissioners. I have reviewed the summary and major conclusions and recommendations and have no comments to offer at this time. I will, however, ask our OMB analysts (Ms. Joan Pedersen for both the Board and for DLC, and Ms. Yi Dunnington for the Health Department) to examine the report closely during their budget preparation work for FY 89, especially with regard to organizational structure.

Thank you again for the opportunity to review your draft.

* * * * *

MEMORANDUM

October 30, 1987

TO: Keith E. Kolodgie, Assistant to the CAO

FROM: Barbara B. Gregg, Office of Consumer Affairs 

SUBJ: OLO #87-4 Draft Report

We agree with the judgment that this licensing responsibility should not be with the Office of Consumer Affairs.

M E M O R A N D U M

October 29, 1987

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

VIA: Keith E. Kolodgie, Assistant to the Chief
Administrative Officer

FROM: Jerome I. Baylin, Director 
Department of Liquor Control

SUBJECT: Draft Report - OLO #87-4

In reference to our recent conversation and having read the draft report, I respectfully submit for your consideration the following recommendations:

1. That provisions be made for at least one full-time inspector whose primary mission would be to inspect wine and cheese shops and restaurants covering the following two areas:
 - a. Violation of purchasing procedures that specify that all merchandise, under Article 2B, be purchased from the Montgomery County Department of Liquor Control, and,
 - b. That hotels and restaurants be inspected to insure that there is no substitution of brands at the bar or pouring level.

Andy, you and I have discussed on many occasions the various devices that licensees may use in order to purchase wines from outside of the County. The simple procedure of special ordering one or two cases of a kind from us, thereby, having on premise an invoice for said merchandise. At that point in time, the cheater licensee will bring in the same merchandise but in larger quantities from either the District or points in Maryland. We are well aware that this practice does exist, but are not capable of determining to what extent.

A trained inspector from this Department who has the full working knowledge of brands, types, sizes and suppliers would go a long way towards correcting this problem. I feel certain that once word got out to the trade that inventories are being monitored along with purchase orders, that the practice, however large or small, would diminish significantly.

This same inspector could be taught the use of those special devices that determine the specific gravity of the various pouring brands the restaurants might use. Again, a few well-placed tests on a regular basis would provide industry with the word that we are now monitoring a long neglected area of enforcement.

May I take this opportunity to complement you on the quality and evenness of your report, although I would have expected no less from as an articulate person as you are.

I do, however, not support a total prohibition of off-premise delivery of alcoholic beverages. Additionally, I am not opposed to the selling of gasoline at beer stores or the selling of beer at gas stations. I feel that this method of marketing is an accepted practice in many, many parts of the country, particularly in the South. I am undecided as to exactly "what kind of signal we are sending to whom". Do supermarkets that sell beer and wine also send "signals"?

I would be most happy to discuss my position on all of the above should you need further clarification or amplification of my views. Thank you for allowing us to comment on a job well done.

JIB:jm

MEMORANDUM

November 17, 1987

TO: ANDREW MANSINNE, Director
Office of Legislative Oversight

VIA: LEWIS T. ROBERTS, Chief Administrative Officer

FROM: CLYDE H. ~~SOBEL~~, County Attorney

RE: COMMENTS ON DRAFT OLO REPORT 87-4, DESCRIPTION AND
EVALUATION OF MONTGOMERY COUNTY BOARD OF LICENSE
COMMISSIONERS

This Office received for comment your draft report regarding the Montgomery County Board of License Commissioners. Unfortunately, the Assistant County Attorney who is most familiar with the operation of the Board of License Commissioners has recently undergone a surgical procedure, and is unable to contribute to this review and comment process. Accordingly, I would respectfully reserve the ability to give you additional comments upon his return.

Notwithstanding the limitation above, however, this Office has several broad comments on your report.

First, your recommendation of a review and revision of local rules and regulations governing alcoholic beverages will require additional resources from the Office of the County Attorney. Such a review and revision must be undertaken with a great deal of care and technical expertise, given the unique nature of these local rules and regulations and their relationship with the State law provisions of Article 2B, Annotated Code of Maryland. Unlike Executive Regulations, these local rules and regulations are subject to special rules on preemption and conflict with respect to State law. In addition, these rules and regulations will undoubtedly adversely affect certain licensees or applicants who may be motivated to litigate every aspect of them.

Second, with respect to the recommendation that the County Council and County Executive develop standards and guidelines to assist the Board in its evaluation of applications to sell alcoholic beverages, I would advise extreme caution in this area. Although general policy guidelines may be appropriate, there may be extreme pressure to be more detailed in guidance; as a result, a political element may be inserted inappropriately into the granting of licenses. This type of political intervention has led to charges of political corruption and problems in administration of the alcoholic beverage license laws in other jurisdictions.

In addition, this Office is aware of a recommendation from certain existing licensees that the number of alcoholic beverage licenses be limited to a specific number. Our Office would oppose any type of numerical "cap" on licenses, and would strongly urge a case by case analysis approach in any guidelines and standards for the Board in its evaluation of applications to sell alcoholic beverages. This latter approach has been the historic approach of the Board of License Commissioners and has worked well. A numerical cap, on the other hand, could create an artificial monopoly which could lead to a "black market" in licenses.*

Finally, this Office acknowledges that additional support resources from the Office of the County Attorney could be extremely helpful for the efficient functioning of the Board. However, the Office of the County Attorney does not have available to it, at this time, any additional resources which it can devote to the Board.**

Please feel free to call me if you have any questions with respect to these comments.

CHS/bsh
1455S/87.00000

* OLO Response: This report does not recommend any "cap" on licensees. This report simply identifies the fact that Article 2B, Section 42(a), empowers Boards of License Commissioners to limit and restrict the number of licenses, in accordance with a definite standard, which they consider sufficient for any neighborhood. (See page 23.) The author was also told by some licensees that there should be a limit on the number of alcoholic beverages. However, the licensees could neither articulate a rationale for limiting licenses nor proffer a fair criteria for the Board to use in restricting licenses. Consequently, this report recommends only that the County Executive and County Council should develop standards and guidelines to assist the Board in evaluating applications for licenses so as to exercise the level of control over alcoholic beverages necessary to accommodate our County's particular philosophy toward alcoholic beverages.

** OLO Response: This report neither concludes that the current level of support by the County Attorney's Office is inefficient nor recommends that additional legal support resources to the Board are needed. (See page 19.)

M E M O R A N D U M

November 20, 1987

TO: Andrew Mansinne
Office of Legislative Oversight

FROM: Howard Cook, Jr., Chairman
Board of License Commissioners

SUBJECT: Response to OLO #87-4

I wholeheartedly endorse OLO #87-4 as an accurate and complete legislative overview of the Montgomery County Board of License Commissioners both as they function and as they might function.

My principle concern is the basic inability of the Board to adequately audit and police license holders. It is essential for effective enforcement of the Montgomery County laws on alcoholic beverages that the administrative support to the Board stand independent of the Health Department or any other existing arm of the County Government. Further, staffing must be increased to perform a myriad of existing and new assignments, including but not limited to, inspections and audits of the license holders.

There is currently more than adequate revenue from licensees to create such an independent office. In addition, license fees may very well need to be increased in any event to make Montgomery County comparable to other jurisdictions.

Finally, efforts to change the existing alcoholic beverage code are already under way and OLO 87-4 is added emphasis to the Board's ongoing efforts in this regard. I have no quarrel with any of the conclusions of the report and applaud the thought that clearly went into this work.

Board of License Commissioners

100 Maryland Avenue, Room 400, Rockville, Maryland 20850, 301/251-7272

* * * * *

Finally, the following two oral comments were received from Mr. William Duvall, a current member of the Board:

1. Reference the recommendation concerning changing Article 2B to remove the prohibition from serving on the Board because of Federal, State, or local government employment: Mr. Duvall believes that persons who hold full-time employment in any position, private or governmental, should be prohibited from serving on the Board. He believes that positions on boards and commissions which provide compensation should not be open to persons who are gainfully employed.

2. Reference the recommendation that the Department of Liquor Control should review applications for adequacy of storage facilities for alcoholic beverages at the premises, Mr. Duvall recommends that this be approached with caution, opining that storage space is a costly expense for licensees.