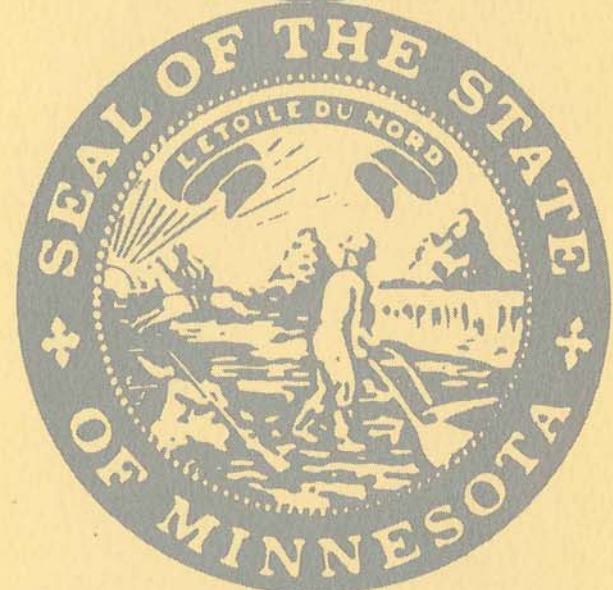
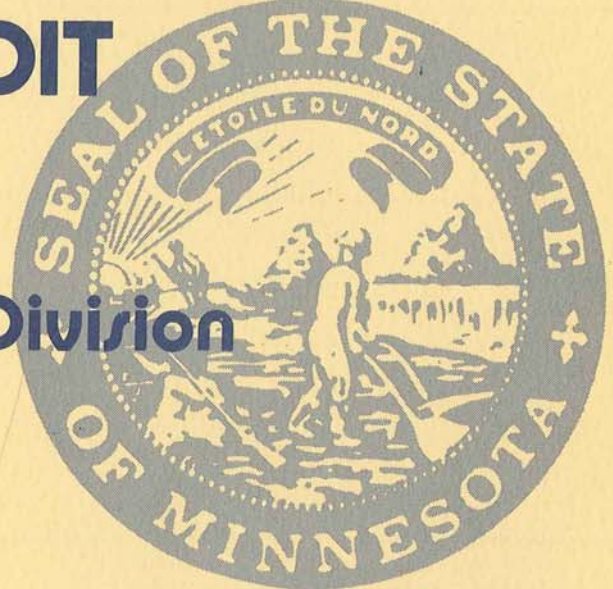


**Minnesota
State Legislature**

**LEGISLATIVE AUDIT
COMMISSION**

Program Evaluation Division

**LIQUOR CONTROL
AUGUST 9, 1978**



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APPENDIX: AGENCY RESPONSE

REPORTS OF THE LEGISLATIVE AUDIT COMMISSION

SUMMARY OF FINDINGS AND RECOMMENDATIONS

Three issues provide the basic criteria for our evaluation of the Liquor Control Division (LCD).

1. Uniformity. Is the LCD promoting uniform liquor law enforcement throughout the state?
2. "Filling the Gaps." Is the liquor regulation function providing essential services unavailable at the local level?
3. Managerial Efficiency and Effectiveness. Is LCD managed in an efficient and effective manner?

To assess these issues we examine the activities of the Licensing and Inspection and Enforcement Sections of LCD.

LICENSING

FINDINGS:

We find that LCD licensing as currently conducted has little effect on the liquor industry beyond that exercised at the local level and thus has little effect on promoting the uniform application of state liquor laws and regulations. In addition, forms management and licensing procedures are often inefficient.

- Licensing activities have little positive impact on the uniform enforcement of state liquor laws.
- The forms management process is overly complex, redundant and time consuming.
- License renewal procedures are cumbersome.
- Duplications and omissions are found in Agency files.

RECOMMENDATIONS:

We discuss in Chapter Four of the report the general issue of whether certain LCD functions should be maintained. If it is decided to continue present licensing functions, the following recommendations should be implemented:

- The Department of Public Safety should automate the licensing process where possible. The LCD should consider instituting an automated or computerized system for preserving license data,

updating files and master lists, issuing automatic renewal notices and retrieving information whenever necessary. We estimate that a fully computerized system could be maintained by two full-time staff properly trained in managing the system as opposed to the five full-time equivalent positions currently allocated to this function.

- To improve the effective implementation of license review and discipline we recommend that:
 - a) applications be checked more carefully for contradictions and falsifications.
 - b) information provided by licensees regarding previous convictions be utilized.
 - c) the Liquor Control Division diligently encourage and assist clerks of court to comply with Minnesota Statute 340.85 (2) which requires that clerks of court submit information regarding liquor law convictions to the Division within ten days after the conviction.
 - d) the Director of Liquor Control examine a five year violation history of each applicant at license renewal time.
 - e) the LCD establish a clear policy regarding license discipline. This policy should clearly specify the conditions under which license discipline will be taken.
- To improve the general efficiency of the licensing process we recommend that LCD:
 - a) devise a more efficient method of sending out renewal notices for licenses and permits.
 - b) coordinate renewal dates in such a way that licensees can renew their permits at the same time their licenses are renewed. This would require a rule change.
 - c) develop and implement a short license renewal form.
- The Department of Public Safety should analyze the contemporary need for each type of permit and identification card and recommend legislative action to delete those which can no longer be justified.
- The state should consider collecting a fee for approving and registering licenses. This may require a change in statute and/or rule.

INSPECTION AND INVESTIGATION

FINDINGS: INSPECTION

We find that agents lack a common standardized approach to their inspection activities.

- LCD management provides insufficient guidance concerning what to look for in compliance inspections.
- What agents look for during inspections varies considerably among agents.
- No common procedure exists for determining which establishments are inspected and when they are inspected.
- No common method of recording the results of inspections exists.

RECOMMENDATIONS: INSPECTION

- ◉ The inspection process should be standardized.
 - a) A common checklist specifying what to look for during inspections, common training and supporting educational materials would help agents do a more effective job. More clearly defined procedures and communication from the central office are required.
 - b) LCD should develop a systematic approach for selecting establishments for inspection. This approach would take into account the number of agents and volume of work required and should be based on the audit principal of a limited number of detailed unannounced inspections conducted at random. The deterrent effects of such inspections would no doubt be increased by such a process.
 - c) An inspection checklist on each retailer should be maintained in central and district offices to be used for following up infractions, scheduling inspections and checking previous problems. Analysis of checklist records would yield statewide measures of compliance, types of violations encountered and would permit an assessment of the value of inspections.
- ◉ The relative priority of inspection activities over investigations should be reemphasized.

FINDINGS: INVESTIGATION

Our interviews with law enforcement officials and liquor control agents lead us to conclude that investigation activities do not result in the delivery of essential and expert services not already available to local authorities.

- ◉ While the Agency receives numerous calls for assistance, agents are used in low level supportive roles in most instances.
- ◉ Local law enforcement agencies generate the bulk of complaints rather than periodic inspections.
- ◉ Agents lack some necessary resources and any authority to effectively carry out investigations.

RECOMMENDATIONS: INVESTIGATION

- ◉ The complaint process should be formalized so that complaints about suspected liquor law violations are filed and organized by district. This would permit efficient investigation of complaints and minimize travel expenses. Written feedback should be sent to district agents and agents should maintain a file of complaints and outcomes for future reference.
- ◉ In response to reduction in staff, the Agency must make efforts to redefine agents job tasks and responsibilities. The time spent of the present diverse activities of inspections, investigations, contacts with public officials and meetings could better be focused rather than diffused across several activities. From present agency priorities, a primary emphasis on inspections seems appropriate.
- ◉ Agents need further training and informational resources such as up-to-date copies of relevant statutes and rules if they are to serve as technical experts on investigations of liquor law violations.

MANAGEMENT

We find program administration to be inadequate in three areas: goal clarification, accountability and communication.

- Management has failed to clearly define and operationalize Agency goals.
- Agency resources are not managed adequately.
- There is a lack of management control and accountability.
- Communication problems exist among Division staff in the central office and between the central office and field staff.

SUMMARY: POLICY ISSUES AND ALTERNATIVES

If the legislature wishes to maintain all or some of the functions of LCD this report has identified a number of recommendations which will result in improved Agency effectiveness and efficiency. The Agency has not performed well and major changes are warranted if a decision to continue LCD is reached.

If it can be determined by the legislature that liquor law enforcement may be safely left to local communities, the decision follows to abolish the inspection and enforcement activities of LCD. Our finding that LCD activities in this area are ineffective means to us that such action would not have a noticeable effect in Minnesota on liquor law enforcement. LCD's exercise of license discipline and its collaboration in cases of legal action against individual wholesale or retail establishments is now undertaken mainly at local initiative. In effect, in licensing matters, the Agency rubber stamps local decisions for all license holders (with the exception of a limited number of manufacturers, importers and wholesalers who are licensed solely by the state).

Thus, if LCD were suddenly relieved of responsibility for inspecting retail establishments and approving licenses issued by local jurisdictions for such establishments there would likely be no discernable impact on the industry.

INTRODUCTION

The Program Evaluation Division of the Legislative Audit Commission was directed to conduct an evaluation of the Liquor Control Division (LCD) of the Department of Public Safety. After carefully reviewing the issues surrounding liquor regulation and interviewing legislators and state officials we designed a study focusing on these general issues:

1. Uniformity. Is the Liquor Control Division promoting uniform liquor law enforcement throughout the state?
2. "Filling the Gaps." Is the state liquor regulation function providing essential services unavailable at the local level?
3. Managerial Efficiency and Effectiveness. Is LCD managed in an efficient and effective manner?

The evaluation involved two principal stages of investigation. In order to describe the purposes, structure and operations of the Agency, we first developed an "Evaluability Assessment" which was presented to the Legislative Audit Commission in June 1977. That report outlined some of the basic evaluation issues which guided our work. The second stage involved collecting and analyzing data relevant to the Agency's performance.

Chapter One of this report provides a brief overview of the Liquor Control Division including a discussion of the organization and functions of the Agency. In addition, the structure of the evaluation is explained.

Chapter Two describes and analyzes the licensing functions of LCD and includes findings and recommendations for improvement.

Chapter Three reviews the inspection and investigation functions of the Agency. It also presents findings and recommendations for improvement.

Chapter Four addresses the major policy issues associated with regulating the liquor industry. This chapter presents issues that need to be addressed by the legislature as well as the Agency.

During the course of our study LCD took a number of steps to correct problems we identified. While we cannot comment on the long term effect of these changes, we do want to acknowledge the sincere response of the Agency. The response by the Department of Public Safety at the end of this report presents a list of these corrective actions.

CHAPTER ONE LIQUOR CONTROL: AN OVERVIEW

LIQUOR CONTROL POLICY

Minnesota's liquor control policy is not clearly defined. The state first enacted legislation to regulate the liquor industry in 1934 (M.S. 340). This legislation does not provide a clear policy statement or define state goals. Even if it did, the policy of that era would probably have little practical application today. Improvements in local law enforcement and administration have ameliorated many of the problems associated with the post-Prohibition period. In addition, societal conditions and attitudes have changed over time. Thus, contemporary concerns are quite different than those of the 1930's. Amendments over the years to Chapter 340 have done little to improve our understanding of liquor control policy.

To assess the current state liquor control policy, we examined what state agencies actually do to regulate the liquor industry. This responsibility currently rests with the Liquor Control Division (LCD) of the Department of Public Safety. LCD is responsible for:

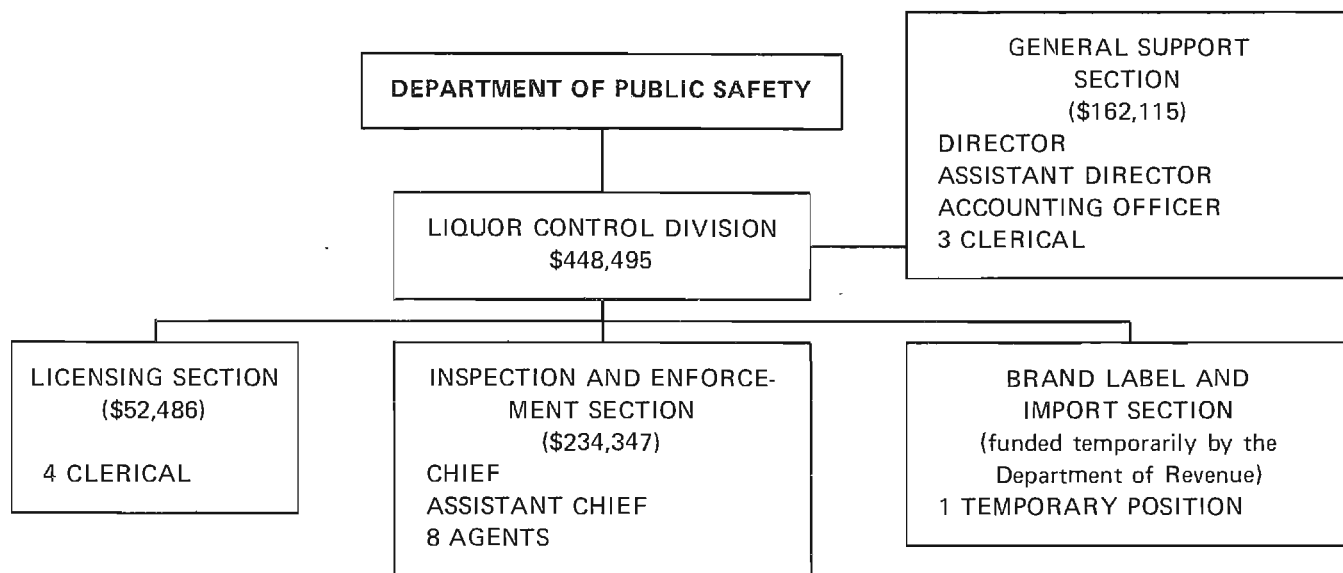
1. Inspecting and licensing liquor manufacturers, importers, wholesalers and retailers.
2. Conducting special investigations of suspected liquor law violations.
3. Helping to maintain an orderly market through brand-label registration, and promoting price competition through wholesale price filing.
4. Providing general services and technical assistance to vendors, law enforcement agencies and the public.

It appears that these responsibilities are aimed at promoting uniform liquor law enforcement and providing essential services unavailable at the local level. They are also aimed at maintaining an orderly and competitive market place and generally protecting consumer interests.

ORGANIZATION AND FUNCTIONS

To carry out liquor control responsibilities a Liquor Control Commission was established in 1934. In 1975, staff functions were transferred to the Department of Public Safety. The Liquor Control Division is headed by a director, appointed by the Commissioner of Public Safety. It contains four sections: Licensing, Inspection and Enforcement, Brand Label and Import, and General Support. The Division organization and FY78 budget is detailed in Figure I-1.

FIGURE I-1



LICENSING SECTION

The Licensing Section issues licenses to manufacturers, wholesalers, importers and common carriers; approves licenses for off-sale retail, municipal liquor stores, clubs, on-sale licenses in seven towns, wine only, and county licenses; registers locally issued licenses for on-sale retail establishments; and issues consumption and display permits.

INSPECTION AND ENFORCEMENT SECTION

This section has a staff of two supervisors and eight field agents located throughout the state. They are responsible for conducting pre-license inspections for initial licenses issued or approved by the Division and conducting periodic inspections of all licensed liquor retailers, manufacturers and wholesalers in the state.¹ The Inspection and Enforcement Section also assists local law enforcement agencies in investigations and obtaining evidence of liquor law violations.

¹Pre-license inspections are not routinely done when ownership of a license is transferred.

BRAND LABEL AND IMPORT SECTION

This section is responsible for registering brands of liquor which may be sold in Minnesota and maintaining records of shipment manifests to track the flow of liquor into the state. The shipment manifests are also routed to the Department of Revenue for tax auditing purposes. No permanent funding is currently available for this activity in the Division budget, but one position is being temporarily supported by the Department of Revenue.

GENERAL SUPPORT SECTION

This budgetary category includes the director, assistant director, accounting officer and three clerical positions. It provides general management and support to the operations of LCD.

THE STRUCTURE OF THE EVALUATION

This evaluation focuses on the impact, effectiveness and efficiency of certain significant activities of the Liquor Control Division. It includes analysis of the major activities of the Division where the greatest expenditure of funds and personnel takes place. It does not include a review of two activities: brand-label registration and wholesale price filing. These activities make up a minute portion of Agency activities. After consultation with the Legislative Audit Commission it was determined that the scope of the study should be limited to the licensing, inspection and enforcement functions of the Agency.

By choosing to play a role in the liquor industry, the state has added a very small layer of control over a much larger and more extensive local law enforcement effort. Over time, local governments have acquired a greater role in liquor control and regulation as the state's role has diminished.

The current justification for state involvement in liquor regulation is based on two major goals: assuring uniform law enforcement across Minnesota and filling gaps in services. These issues provide the basic criteria for our evaluation.

1. Uniformity. Is the LCD promoting uniform liquor law enforcement throughout the state?
 - a. What impact has the state licensing function had on the liquor industry?
 - b. What impact has the inspection function had?
2. "Filling the Gaps." Is the liquor regulation function providing essential services unavailable at the local level?
 - a. Is useful technical assistance available and effectively provided by LCD?
 - b. Does the Agency provide useful investigative support to local units of government?

In addition to these criteria, we also examined the overall effectiveness and efficiency of Agency management.

3. Managerial Effectiveness and Efficiency. Is LCD managed in an efficient and effective manner?
 - a. Is the licensing process performed efficiently and effectively?
 - b. Are management objectives clearly defined and understood?
 - c. Is management control adequate?

To assess Agency performance with regard to these questions we reviewed the activities of the Licensing and Inspection and Enforcement Sections. We monitored LCD operations, interviewed clerical staff and field agents as well as administrators, and talked with a number of local law enforcement officials. Further, staff reviewed internal documents, LCD records and other materials relevant to Agency operations.

CHAPTER TWO LICENSING

INTRODUCTION

This chapter presents findings and recommendations with regard to the licensing activities of the Liquor Control Division. We find that the work associated with issuing or approving liquor licenses is not being performed effectively or efficiently and that LCD licensing efforts as they are presently conducted have little impact on the liquor industry.

SCOPE AND AUTHORITY OF LICENSING

State licenses or permits are required by law for virtually all segments of the liquor industry. The Liquor Control Division processes approximately 22,000 licenses, permits and identification cards annually. There are 20 major categories of licenses, 9 categories of permits and 7 types of identification cards.¹ Table II-1 presents a summary of licenses, permits, and identification cards issued by LCD. Table II-2 summarizes the licenses approved or registered by the Division.

The LCD issues licenses to manufacturers, importers, wholesalers and common carriers. The Division has complete authority in deciding whether to grant these licenses. The state charges a fee, established by statute, for all licenses issued by the Division. The LCD also has the authority to approve licenses in the following categories: 1) off-sale retail, 2) club on-sale, 3) wine only, 4) all county liquor licenses, and 5) on-sale licenses for Aurora, Biwabik, Chisholm, Ely, Eveleth, Gilbert and Virginia. In these cases, the local governing body votes to grant the license, and then the LCD must approve the license before the municipality or county can issue it. The state collects no fee for approving these licenses.

Municipalities have complete responsibility for the issuance of on-sale retail liquor licenses. However, these licenses must be registered with the LCD within 10 days of issuance. There is no state fee for registering licenses.

¹Data regarding the number of licenses issued, license renewal dates, the degree of state authority pertaining to each type of license and the statutory reference for each license type can be found in the staff paper entitled Liquor Control Division: Licensing Study Report.

TABLE II-1
LCD ISSUED LICENSES, PERMITS AND IDENTIFICATION CARDS
FY 1977

<u>Licenses</u>	<u>Number Issued</u>
Manufacturers	17
Wholesalers	191
Importers	249
Common Carriers	<u>11</u>
	Subtotal
Duplicates and Sunday Sales	468
	<u>941</u>
TOTAL	(1,409)
 <u>Permits</u> 	
Vehicle	4,202
Consumption and Display	1,186
Brand Label Registration	1,777
Other	<u>294</u>
TOTAL	(7,459)
 <u>Identification Cards</u> 	
Retailers	4,208
Salesperson	1,721
Other	<u>232</u>
TOTAL	(6,161)

TABLE II-2
LICENSES APPROVED OR REGISTERED BY LCD
FY 1977

<u>Category</u>	<u>Number</u>
Off-Sale Retail	1,706
On-Sale Retail	3,107
Wine Only	<u>125</u>
	Subtotal
	4,938
Sunday Sales	<u>1,367</u>
TOTAL	(6,305)

The Division issues nine categories of permits which are required either by statute or rule. The majority of permits issued are for the purpose of:

- ⊗ regulating vehicles used for transporting intoxicating liquor,
- ⊗ registering brands which may be sold in Minnesota,
- ⊗ regulating who may sell set-ups and under what conditions.

The Division also issues seven types of identification cards which are required by rule. These cards authorize salespersons to solicit orders for intoxicating liquor, authorize retailers to place orders, and identify distillery representatives who may not solicit orders.

PROCESSING LICENSES

When a license application is received it is processed by clerical staff. If it is to be issued or requires approval by LCD it is forwarded to the Inspection and Enforcement Section. The Inspection and Enforcement staff is responsible for checking to see whether applicants have been previously convicted of liquor law violations and conducting pre-license inspections where required.

There are a number of additional requirements which must be met for each license and permit issued by LCD.

1. For licenses issued by LCD the applicant must submit a formal detailed application, a fee and, for most licenses, show evidence that a surety bond has been posted.
2. For licenses approved by LCD licensees must also submit an application and demonstrate that a surety bond has been posted. In addition, for off-sale license approvals the municipal clerk must submit certain documents verifying the local approval.
3. For licenses registered by LCD a brief certification report must be submitted by municipal clerks. Municipalities are responsible for conducting a preliminary background and financial investigation of the applicant.
4. For most permits and identification cards issued by LCD a short application and five dollar fee are required.

These activities make up the majority of the licensing workload.

FINDINGS

As noted in Chapter One, two criteria for judging the performance of LCD are uniformity and efficiency. We find that LCD license processing has little effect on the liquor industry beyond that exercised at the local level and thus has little effect on promoting the uniform application of state liquor laws and regulation. In addition, the forms management and licensing procedures are inefficient.

- ⊗ Licensing activities have little positive impact on the uniform enforcement of state liquor laws.
- ⊗ The forms management process is overly complex, redundant and time consuming.
- ⊗ License renewal procedures are cumbersome.
- ⊗ Duplications and omissions are found in agency files.

LICENSING HAS LITTLE IMPACT ON THE LIQUOR INDUSTRY

The question of uniform enforcement of state liquor laws is most directly addressed in Chapter Three with reference to the impact of inspection activities. However, during our analysis of the Licensing Section one major finding was evident with regard to the impact of state licensing activities on the liquor industry.

- ⊗ The Division almost never denies the issuance or renewal of licenses. The Division does not keep careful records of such things and therefore it is not possible to document the actual number of denials. However, when interviewed, neither the Director nor the Assistant Director could provide any examples of the LCD denying or revoking a license within the past two years, although the Division processes approximately 6,000 licenses annually. The Agency does claim to withhold license approval in the pre-license inspection process until corrective actions are taken, but there are no records which can document the extent of these actions.

THE FORMS PROCESS IS OVERLY COMPLEX AND REDUNDANT

- ⊗ Although license applicants are required to submit a great deal of information licensing clerks report that no more than a third of it is routinely used.
- ⊗ The forms are redundant. That is, applicants are often required to submit more than one type of application which often require the same information.
- ⊗ While properly completed license applications are normally processed quickly, time delays of a few days to as long as several months occur frequently. Licensing clerks report that for as many as half of certain kinds of transactions, documents received are incomplete. This may be due at least in part to the fact that applicants have difficulty figuring out exactly what is required of them.

LICENSE RENEWAL PROCEDURES ARE INEFFICIENT

- ⊗ No license renewal forms are used by LCD. Therefore when renewing a license the licensee must submit the same lengthy application required for the initial issuance of a license.
- ⊗ Clerks keep a manual record of each license holder and send out renewal notices as required. No automated process exists for sending out renewal notices.
- ⊗ Renewal dates for licenses, permits and identification cards are not coordinated. It is not unusual for license holders who often are required to obtain several separate licenses and permits to correspond with LCD three times during the year. In addition, because licenses and permits are generally not processed by the same clerk the number of times information gets filed is increased as more clerks become involved in the process.

THERE ARE DUPLICATIONS AND OMISSIONS IN AGENCY FILES

- ⊗ A brief spot check of LCD files revealed apparent contradictions, serious omissions and falsifications. Clerks report that they are not responsible for checking past applications in conjunction with the current application for contradictions nor for verifying any information provided by applicants. According to the Agency this is done by the Enforcement Section, but all they check is the current license application and not previous applications. The Enforcement Section maintains a card file on people who are convicted of liquor law violations. This file is used for the violations check done by the Enforcement Section. However, the adequacy of this file may be questioned since it is based on incomplete information. A brief check of this file revealed that violation information provided by

applicants is not routinely entered in this file. Furthermore, it was reported by the person responsible for keeping this information that at best only one-third of the courts submit conviction information to LCD.

- ⊗ There is a good deal of unnecessary duplication in record keeping. Each licensing clerk maintains a master list of their license holders. Master lists are updated manually on a daily basis resulting in a continuous need for each clerk to notify staff regarding changes, additions or deletions.
- ⊗ Each clerk also maintains a license card file which duplicates pertinent information from the master lists. In addition, the receptionist maintains a current file of all licensees and permit holders which results in another duplication of license data.

THERE EXISTS AT LEAST ONE SERIOUS COMMUNICATION BREAKDOWN

- ⊗ A serious communication problem exists in the management of license review. One significant breakdown in communication is that the LCD director has been making decisions regarding license renewal based on what he believed was a five year violation history of the applicant, when in fact the information provided by staff is only for the current licensing year. This explains why the director thinks it is rare to find repeat violators.

RECOMMENDATIONS

The Liquor Control Division's licensing system is in need of fundamental reform. In Chapter Four we discuss the issue of whether certain functions of LCD should be maintained. If it is decided to continue the present licensing function of the Division, the following recommendations should be implemented:

Recommendation II-1:

The Department of Public Safety should automate the licensing process where possible. LCD should consider instituting an automated or computerized system for preserving license data, updating files and master lists, issuing automatic renewal notices and retrieving information whenever necessary. We estimate that a fully computerized system could be maintained by two full-time staff properly trained in managing the system as opposed to the five full-time equivalent positions currently allocated to this function. Even without computerization simple and traditional alternatives might be implemented, such as: 1) installing mechanical devices such as addressograph machines, or 2) key-punching data cards and using a card sorter to periodically identify who needs to be sent renewal notices.

Recommendation II-2:

To improve the effective implementation of license review and discipline we recommend that:

- a) applications be checked more carefully for contradictions and falsifications.
- b) information provided by licensees regarding previous convictions be utilized.
- c) the Liquor Control Division diligently encourage and assist clerks of court to comply with Minnesota Statute 340.85 (2) which requires that clerks of court submit information regarding liquor law convictions to the Division within ten days after the conviction.

- d) the Director of Liquor Control examine a five year violation history of each applicant at license renewal time.
- e) the LCD establish a clear policy regarding license discipline. This policy should clearly specify the conditions under which license discipline will be taken.

Recommendation II-3:

To improve the general efficiency of the licensing process we recommend that LCD:

- a) devise a more efficient method of sending out renewal notices for licenses and permits.
- b) coordinate renewal dates in such a way that licensees can renew their permits at the same time their licenses are renewed. This would require a rule change.
- c) develop and implement a short license renewal form.

Recommendation II-4:

The Department of Public Safety should analyze the contemporary need for each type of permit and identification card and recommend legislative action to delete those which can no longer be justified.

Recommendation II-5:

The state should consider collecting a fee for approving and registering licenses. This may require a change in statute and/or rule.

It seems reasonable and appropriate for the state to collect a nominal fee to defray some of the cost of approving and registering licenses. A \$5 fee would generate approximately \$32,000 annually, while a \$10 fee would generate approximately \$64,000.

CHAPTER THREE INSPECTION AND INVESTIGATION

INTRODUCTION

This chapter presents findings and recommendations with regard to the inspection and investigation activities of the Liquor Control Division. We find that inspections of wholesale and retail establishments are performed in a perfunctory manner and are not conducted in a standardized uniform fashion. Further, with few exceptions, agents do not bring a significant degree of technical expertise to investigations over and above that available at the local level. Finally, we find that management control is weak, and there is a good deal of ambiguity among agents concerning the proper role of the LCD as an inspecting, licensing and/or enforcement agency.

ACTIVITIES

The Inspection and Enforcement Section is responsible for inspecting wholesale and retail establishments, conducting special investigations and providing general services and technical assistance.¹ Table III-1 presents a detailed breakdown of where agents spend their time. Figure III-1 shows the breakdown of state LCD districts.

INSPECTION

Inspections consist of two types: 1) prelicense inspections of applicants seeking a state issued or approved license, and 2) compliance inspections of retail and wholesale license holders to check for compliance with state liquor laws and rules.

¹For a detailed discussion of these findings see the staff paper entitled: Liquor Control Division: Report of Agent Activities.

**TABLE III-1
TIME ALLOCATION BY ACTIVITY***

<u>Activity</u>	<u>Percent Allocated</u>
Inspections	58%
Investigations	13%
Contacts with Public Officials	11%
Peace Officer Meetings	3%
Trials and Hearings	2%
Travel	8%
Other	5%
Total	100%

**This is based on interviews with all Liquor Control Division Agents. An analysis of agency time records confirms agent perceptions.*

Prelicense inspections must be completed before an initial license is granted. Agents are responsible for checking for structural and other requirements applicable to each category of license. Agents also answer questions about state liquor laws.

Periodic inspections are more routine in nature, but because of the large number of liquor establishments that require inspection, comprise the largest amount of time and expenditure. Agents generally check for violations of applicable laws and rules including such items as price advertising, tampering with stock, untaxed liquor and related problems. The intent of such inspections is to regularly check establishments in each assigned district on an unannounced basis, to serve as a deterrent against unlawful practices and to inform licensees of legal requirements, issue warnings and obtain leads for further investigations.

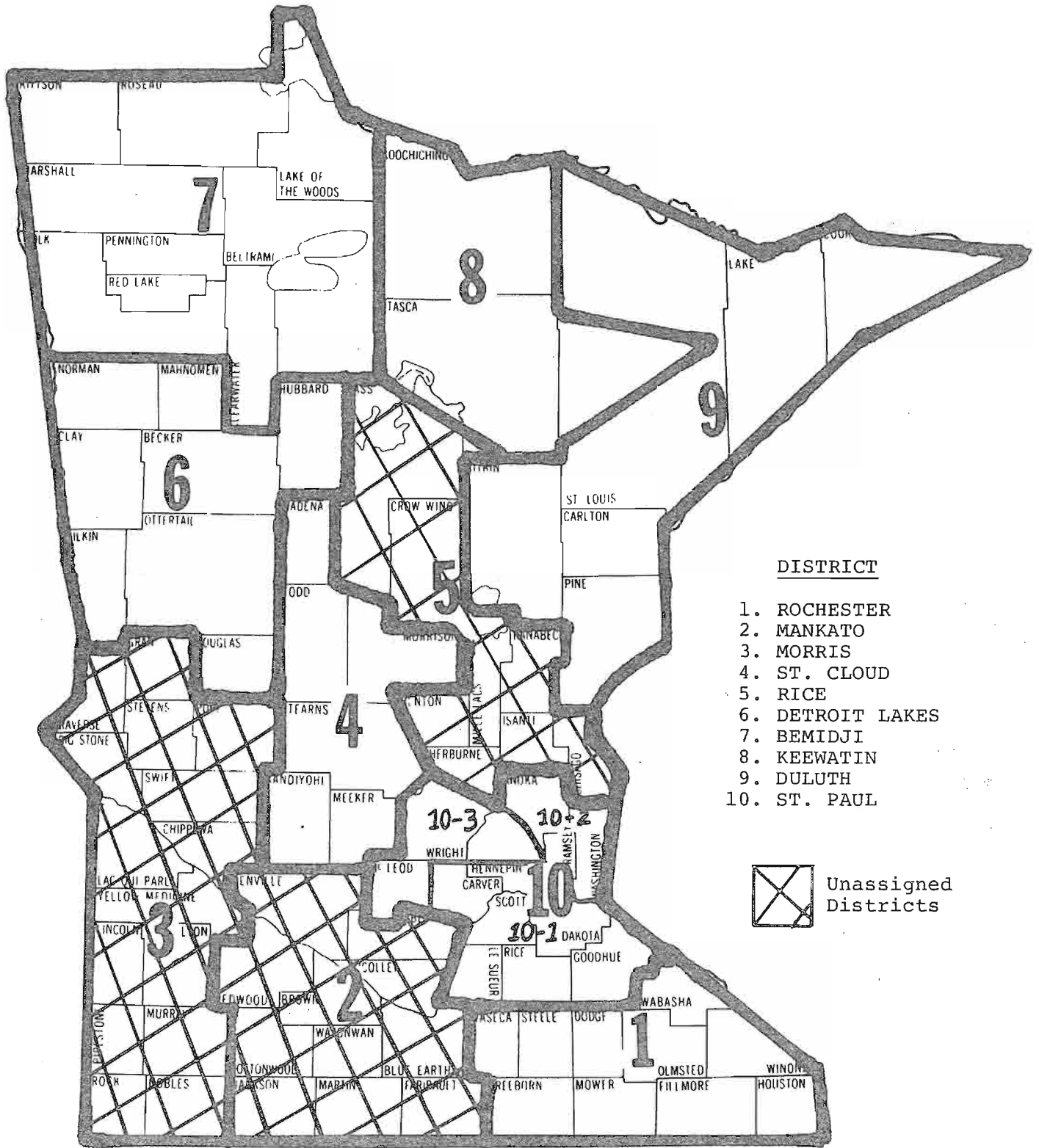
According to LCD records, agents conducted nearly 10,000 inspections in 1977. Agency records do not permit us to break down this number between pre-license and compliance inspections. There are also no adequate records of the outcomes of these inspection activities.

INVESTIGATIONS

Complaints of suspected violations are received by agents or by the central office. If the alleged violation concerns fairly minor liquor infractions, the agent will generally visit the licensee to investigate the complaint. If the complaint concerns a major liquor law (such as unlicensed sales) the agent's responsibility is to obtain evidence necessary for prosecution in a court of law. These investigations are generally coordinated out of the central office, and require either a pair of liquor agents or one agent working in cooperation with a local law enforcement official. Generally, investigations to obtain evidence are assigned to an agent from outside the LCD district, in order to allow undercover work by someone unknown to the licensee. If evidence is obtained, the agent submits the evidence to the local prosecuting attorney and generally signs a written complaint. These investigations are done with the knowledge of local law enforcement agencies and in many instances they are conducted in support of local efforts.

Agency records do not permit an accurate compilation of the number of special investigations conducted by LCD. The Agency reports 774 special investigations for 1977. However, these are actually units of time spent on investigation and do not accurately reflect either the amount of time devoted to investigation efforts or the number of actual investigations undertaken. The Agency also reports that LCD investigations resulted in 23 convictions last year, but we did not study the role of LCD in these particular cases. In general, we are unable to comment on the number of investigations or their outcomes.

**FIGURE III-1
LIQUOR CONTROL DIVISION
FIELD AGENT DISTRICTS**



SERVICES AND ASSISTANCE

Inspection and Enforcement staff are also involved in a number of general activities in support of the liquor regulation function. These include:

1. Contacts with Public Officials. As a means of developing information sources on liquor violations, agents routinely visit local public officials and law enforcement personnel. These contacts are also intended to answer any questions by local officials regarding liquor laws and rules.
2. Price Surveys. Every few months agents survey a sample of retail establishments to record retail prices of selected brands in an effort to monitor the effects of the 1973 Multiple Distribution Law in terms of retail liquor prices. Since there are currently no requirements covering retail pricing practices, these surveys are conducted for informational purposes, rather than for compliance to any legally required retail pricing system.
3. Peace Officer Meetings. Agents attend periodic meetings of peace officer associations within their assigned districts. The purpose of this attendance is to maintain rapport with local law enforcement personnel, share information and respond to questions. The Director of LCD or agents occasionally make presentations at these meetings.
4. Trials and Hearings. Agents appear at trials and hearings to testify on evidence obtained in those investigations which lead to prosecution or local or LCD license review hearings.

FINDINGS: INSPECTION

As noted in Chapter One, one basic criterion for evaluating the Liquor Control Division performance is the extent to which LCD activities promote uniform compliance to state liquor laws and regulations. In reviewing LCD activities we find that agents lack a common standardized approach to their inspection activities.

- LCD management provides insufficient guidance concerning what to look for in compliance inspections.
- What agents look for during inspections varies considerably among agents.
- No common procedure exists for determining which establishments are inspected and when they are inspected.
- No common method of recording the results of inspections exists.

LCD MANAGEMENT PROVIDES INSUFFICIENT GUIDANCE

Agents are not provided with sufficient guidance concerning what to do or what to look for during compliance inspections. Specifically, the agents have not received sufficient training. They do not use standardized inspection forms nor record findings from inspections in a uniform fashion. Each agent has his own system of checking for violations and his own priority for what constitutes an important violation.

INSPECTION ACTIVITIES VARY CONSIDERABLY

- In the absence of standardized materials and clear policy direction from LCD, we found that what agents are actually doing in their inspection activities varies considerably.

- There is disagreement among agents concerning which activities are important in inspections.
- Although there was general agreement concerning the appropriateness of certain activities, our data show that these items are not checked consistently from one inspection to the next.

NO PROCEDURE EXISTS FOR SELECTING ESTABLISHMENTS FOR INSPECTION

- A systematic approach for selecting establishments for inspection is lacking and the required number of inspections constitutes an unreasonable volume of work.
- Agents are expected to inspect all establishments in their district periodically. Until recently officials expected establishments to be inspected twice a year. This is nearly a mathematical impossibility unless only the most perfunctory inspections are conducted. Even annual inspections of all establishments constitutes an unreasonable work load.
- Agents do not select establishments for inspection in any systematic way which would guarantee that each establishment in the territory is covered within a given time period, or is given a definite chance of receiving a meaningful annual inspection.

NO ADEQUATE RECORDS OF INSPECTIONS ARE KEPT

- Neither the central agency nor individual agents keep a standardized or uniform record of the results of their inspections. Thus, no meaningful record is available regarding what was found, whether warnings were delivered, or what further action was taken.
- In fact, agents do not know how many license holders are in their districts. They do not have a consolidated list of district license holders. Rather, they must rely on six separate statewide master lists for retail licenses plus other lists for wholesalers. A consolidated list is necessary for the effective conduct of the inspection process.

FINDINGS: INVESTIGATION

Another criterion for evaluating the LCD is the Agency's ability to provide essential services not provided elsewhere. Our interviews with law enforcement officials and liquor control agents lead us to conclude that investigation activities do not result in the delivery of essential and expert services not already available to local authorities.

- While the Agency receives numerous calls for assistance, agents are used in low level supportive roles in most instances.
- Local law enforcement agencies generate the bulk of complaints rather than periodic inspections.
- Agents lack some necessary resources and any authority to effectively carry out investigations.

AGENTS ARE USED IN LOW LEVEL SUPPORTIVE ROLES

- While individual agents may provide useful and effective services they are not prepared to bring a high level of technical expertise to investigations and are used in low level supportive roles in most instances. Little meaningful or relevant training is provided to agents.

THE YIELD OF INVESTIGATIONS FROM INSPECTION ACTIVITY IS QUITE LOW

- Agents report that most complaints originate at the local level. Inspection activities uncover very few violations. This is not surprising in light of the perfunctory nature of these inspections.

THE AGENCY LACKS NECESSARY RESOURCES TO BE EFFECTIVE

A number of key limitations decrease agent effectiveness:

- The number of field agents has decreased from 18 to 8 over the past five years. However, the utilization of LCD agents has not been adjusted accordingly. This results in a strategy where staff cannot adequately perform any one of a series of duties. It is simply impossible to carry out the same level of activity with 8 individuals as with 18.
- The lack of arrest powers and peace officer status is discussed later. However, it is important to note here that keeping with an important policy, LCD agents have shifted from an investigation and enforcement emphasis to performing licensing and inspection functions.
- A monthly travel allowance of approximately \$300 is often inadequate because this allotment must cover routine travel costs incurred during inspection trips as well as extensive travel required for undercover operations.

FINDINGS: SERVICES AND ASSISTANCE

As discussed previously Inspection and Enforcement staff provide a number of services and carry out activities in support of liquor regulation. With regard to these activities in support of liquor regulation. With regard to these activities we present our findings.

CONTACT WITH LOCAL OFFICIALS IS NOT SYSTEMATIC

- No system exists to keep track of which law enforcement officers are contacted or which are not contacted, what complaints officers make, or outcomes of these complaints.
- No system exists to check if municipal and county clerks report all local liquor convictions to LCD for use in the license renewal process.

LCD'S PARTICIPATION IN TRIALS AND HEARINGS IS DIMINISHING

- As agency activities have shifted from investigations to inspections agents participate in fewer prosecutions and testify in fewer trials than previously.

FINDINGS: MANAGEMENT

A final criterion involves management and efficiency of operation. This was discussed with regard to licensing in Chapter Two. We find inspection and investigation administration to be inadequate in three areas: goal clarification, accountability and communication.

- Management has failed to clearly define and operationalize Agency goals.
- Agency resources are not managed adequately.

- There is a lack of management control and accountability.
- Communication problems exist.

MANAGEMENT HAS FAILED TO PUT AGENCY GOALS INTO OPERATION

- Most importantly we find that agents have an ambiguous view of the Agency's mission. The Department of Public Safety and top management appear to have a clear understanding of what LCD's role should be — primarily that of an inspecting and licensing agency. But some field agents and their supervisors, many of whom are holdovers from the days when LCD played a more aggressive investigation and enforcement role, feel differently. This ambiguity and inability of LCD management to effectively communicate the mission of the Agency continues to adversely affect performance.
- Agents do report that they perform inspections and, in fact, spend most of their time on these activities. However, they believe they could be more effective if they did more investigations and fewer inspections. This reflects a high level of uncertainty on the part of agents as to whether LCD is a regulatory agency or an enforcement agency. Official policy describes LCD as a regulatory agency, but day-to-day management decisions indicate enforcement is still perceived as a crucial function.

AGENCY RESOURCES ARE NOT MANAGED ADEQUATELY

- As noted previously, agents are asked to carry out many of the same tasks they did when the Agency was two and one-half times as large. No comprehensive regrouping and consolidation of effort has occurred as a result of decreasing staff.
- The workload distribution is uneven and causes morale problems among agents. This is in part due to the agents' desire to spend more time on investigation related activities. When an unequal distribution of assignments occurs morale falls. Further, supervisors carry out certain investigations rather than assigning them to agents, which produces additional morale problems.

THERE IS A LACK OF MANAGEMENT CONTROL AND ACCOUNTABILITY

- Management controls over field agents are weak. With the decentralized structure of the organization, supervisors need to have a way to ensure that employees comply with Agency policies. There is little evidence that this is presently done.
- Supervisors do not check records in the field offices. They visit agents in the field approximately once or twice a year while conducting investigations or attending peace officer meetings. There is no evidence that supervisors check which license holders agents inspect, how often they inspect them, or to what degree.

COMMUNICATION PROBLEMS EXIST

- A major problem with inspections and investigations is the low level of communication among supervisory staff and agents. No system of regular communication exists. Agents have one or two annual meetings and have no regular communication with the central office. The three agents in the Twin Cities have weekly meetings with the supervisors, but one of the outstate agents said he once did not receive a call from the office for over a month. Other outstate agents are in more frequent contact, but this varies by agent and the amount of communication itself creates a morale problem.

RECOMMENDATIONS

The Liquor Control Division's inspection and investigation system is in need of fundamental reform. In Chapter Four we discuss the issue of whether certain functions of LCD should be maintained. Assuming that it is decided to continue the present agency role in inspection and investigation, the following recommendations should be implemented:

Recommendation III-1:

The inspection process should be standardized.

- a) A common checklist specifying what to look for during inspections, common training and supporting educational materials would help agents do a more effective job. More clearly defined procedures and communication from the central office are required.
- b) LCD should develop a systematic approach for selecting establishments for inspection. This approach should take into account the number of agents and volume of work required and should be based on the audit principal of a limited number of detailed, unannounced inspections conducted at random. The deterrent effort of such inspections would no doubt be increased by such a process.
- c) An inspection checklist on each retailer should be maintained in central and district offices to be used for following up infractions, scheduling inspections and checking previous problems. Analysis of checklist records would yield statewide measures of compliance, types of violations encountered and would permit an assessment of the value of inspections.

Recommendation III-2:

The relative priority of inspection activities over investigations should be reemphasized. Investigative activity should not include perfunctory low level investigations for local law enforcement agencies. Investigations should, where necessary, be conducted to provide a high level of technical expertise otherwise unavailable to local agencies.

Recommendation III-3:

The complaint process should be formalized so that complaints about suspected liquor law violations are filed and organized by district. This would permit efficient investigation of complaints and minimize travel expenses. Written feedback should be sent to district agents and agents should maintain a file of complaints and outcomes for future reference.

Recommendation III-4:

In response to reductions in staff, the Agency must make efforts to redefine agents' job tasks and responsibilities. The time spent on the present diverse activities of inspections, investigations, contacts with public officials, and meetings could better be focused. From present agency priorities, a primary emphasis on inspections seems appropriate. The potential morale problem that this might create among agents and supervisors who see a greater importance for investigations needs to be considered in this decision.

Recommendation III-5:

Agents need further training and informational resources such as up-to-date copies of relevant statutes and rules if they are to serve as technical experts on liquor investigation.

CHAPTER FOUR

POLICY ISSUES AND ALTERNATIVES

This chapter discusses the policy issues raised by our evaluation and alternatives to the current system of liquor regulation. These issues require legislative consideration.

Our findings clearly indicate that the Liquor Control Division's activities are not efficient or effective in controlling the liquor industry. In particular the Agency does not effectively promote uniform compliance to state liquor laws and significantly does not provide local law enforcement agencies with assistance of the sort which is otherwise available to them. Further, management of the Division is inefficient; controls are weak and communication is poor.

TERMINATION/SUNSET

The possible termination of all or part of current state liquor control activity deserves legislative consideration. Such decisions are not within the scope of Legislative Audit Commission research activities but require the exercise of political judgment. In debating such decisions it is essential to review findings regarding the major activities of LCD to assess the potential impact of termination.

LICENSING

The primary purpose of state liquor licensing is to issue licenses to manufacturers, wholesalers and importers and to approve and register locally issued licenses.

While the state issues licenses for manufacturers, wholesalers and importers, LCD does not concentrate its efforts nor devote much time to these activities. There is no doubt a need for controlling these elements of the industry. However, whether the current role of the Department of Revenue and other supporting legislation requiring various state and local inspections may be sufficient to warrant abolition of LCD activity in this area is a question for the legislature to decide.

The question of local license review is much clearer. Current LCD review activities are not making any observable impact on the issuance of local licenses. Licenses are rarely if ever denied by LCD and information review procedures are haphazard and inadequate. If these activities were terminated no impact would be evident nor would it be likely to make any difference in the issuance of local licenses.

This is not to imply that an effective license review process would not result in more control over the issuance of local liquor licenses. In fact, we believe that such activities might well result in increased number of denials. However, the current system of review has not worked and the legislature must decide if a more vigorous review process would result in benefits that would justify the cost of these activities.

It remains to be determined if there are additional benefits that result from the license review process. We believe that the only substantial product of this process as it currently exists is the maintenance of a record of all licenses. Whether such lists are necessary or require the attention of five full time employees is questionable.

INSPECTIONS

The inspection activities of LCD are aimed at bringing about uniform compliance to state liquor laws. We have found that current Division activities do not result in uniformity because no standardized approach to inspection exists. If a standardized process were implemented it could help in bringing about some degree of uniformity in the industry. However, with a small staff a random audit process would be required whereby many fewer establishments would be visited but more in-depth regulatory reviews would occur. Such a process could be conducted by the state or by local law enforcement agencies if standard forms, direction and training were provided by the state.

If current inspections of retail establishments were terminated there would be little impact on the liquor industry in the short term. If the legislature desires to continue to regulate the liquor industry over time there is a need for a uniform standardized regulatory process which would require inspections. Who should conduct these is a decision the legislature must make.

INVESTIGATIONS

Currently the primary role of the state in investigations is to provide technical and field support to local law enforcement agencies. We have found that current investigation activities are in fact undertaken mainly at local initiative. Eight agents cannot be expected to provide much impact on liquor law enforcement manpower in any case. Further, the technical assistance function is very limited by the lack of expertise and training of LCD agents. They are simply spread too thin and lack sufficient expertise to play a significant investigative role.

If LCD were relieved of its investigative responsibilities there might well be no discernable impact on liquor law enforcement. Even a highly trained staff of this size, as currently deployed on a limited part-time basis could not be expected to bring about significant improvements or impacts.

TECHNICAL ASSISTANCE

LCD does not provide much technical assistance in the area of liquor law enforcement although it is theoretically in a position to do so. A well trained staff could be of great assistance to local agencies and the industry. The goals of bringing about uniform law enforcement and filling gaps in local services could well be met, at least in part, by the provision of expert technical assistance. However, given current resources the termination of these activities would have no significant effect.

BRAND LABEL REGISTRATION AND WHOLESALE PRICE FILING

We did not examine brand label registration or wholesale price filing during our evaluation. We cannot, therefore, comment on the possible consequences of terminating these activities. However, since these

activities make up only a small part of LCD efforts they could be easily maintained, if desired, at minimal cost to the Department of Public Safety or some other state agency.

SUMMARY

If it can be determined by the legislature that liquor law enforcement may be safely left to local communities, the decision follows to abolish the inspection and enforcement activities of LCD. Our finding that LCD activities in this area are ineffective means to us that such action would not have a noticeable impact on liquor law enforcement. LCD's exercise of license discipline and its collaboration in cases of legal action against individual wholesale or retail establishments is now undertaken mainly at local initiative. In effect, in licensing matters the agency rubber stamps local decisions for all license holders (with the exception of a very limited number of manufacturers, importers and wholesalers who are licensed solely by the state).

Thus, if LCD were suddenly relieved of responsibility for inspecting retail establishments and approving licenses issued by local jurisdictions for such establishments there would likely be no discernable impact on the industry.

IMPROVEMENT OF AGENCY PERFORMANCE

If the legislature wishes to maintain all or some of the functions of LCD this report has identified a number of recommendations which will result in improved Agency effectiveness and efficiency. The Agency has not performed well and major changes are warranted if a decision to continue LCD is reached.

APPENDIX
AGENCY RESPONSE

OFFICE OF THE COMMISSIONER

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**STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
SAINT PAUL 55155**

July 28, 1978

Eldon Stoehr
Legislative Auditor
Legislative Audit Commission
Veterans Service Building
St. Paul, Minnesota 55155

ATTN: Bruce Spitz, Deputy Legislative Auditor

Dear Mr. Stoehr:

The Legislative Audit Commission's Program Evaluation Report of the Liquor Control Division presents a compelling need for the legislature to review the overall liquor policy of the state. It also presents convincing arguments to review the administration of the Liquor Control Division.

The Department of Public Safety strongly encourages the legislature to review and revise the statutory mandates which govern the state's liquor control function. In addition, the department will continue and intensify its efforts to improve the effectiveness and efficiency of the current operation.

Outlined below is a number of areas which merit consideration in the determination of the state's policy and in the evaluation of the current operation.

POLICY ISSUES:

The implementation of the report's recommendations for the improvement of the current administration should lead to increased efficiency and effectiveness of the Liquor Control Division's operations. However, the policy issues and alternatives presented in Chapter Four of the report clearly merit legislative review. In addition to the issues presented in that portion of the report, there are two significant factors which have contributed to the problems that are evident in the Liquor Control Division and should be addressed by the legislature.

First, the division has experienced a simultaneous reduction of staff and increase in responsibilities. Since 1960 the authorized complement of the Liquor Control Division has been cut from 35 to 19 positions, a 46 percent reduction affecting both field agents and clerical staff. During the same period, the number of licenses requiring Liquor Control Division approval and/or registration has more than tripled from 2,128 to 6,568.

Second, the liquor control policy of the state is not clearly defined. The Department of Public Safety concurs with the Legislative Audit Commission report in that "the legislation does not provide a clear policy statement or define state goals" and that "amendments over the years to Chapter 340 have done little to improve our understanding of liquor control policy." These statements echo a Department of Public Safety report made to the Governor and the legislature in 1976. That report stated that "ambiguous and obsolete language in the liquor laws have caused problems in regulation, enforcement and adjudication." The report concluded with the following language:

It is therefore recommended that a study of Chapter 340 be undertaken for the purpose of grouping like subjects, removing inconsistencies and redundancies and making substantive amendments to bring the liquor laws into focus with present day problems and needs. Should the legislature choose to appoint an interim commission to undertake such project, the Department of Public Safety would willingly offer assistance.

The legislature is conducting a review of portions of the liquor licensing laws; we urge that a comprehensive legislative review of the state's policy be undertaken as soon as possible. A legislative clarification of the state's liquor policy is necessary to determine what impact the state administration/control should have on the liquor industry. Such a determination is desirable in the consideration of the termination or alteration of the state's current liquor control function.

The Department of Public Safety will prepare materials which will be made available to the legislature as it reviews the state liquor policy. Recommendations for the revision of Chapter 340 are also being prepared to assist in that review.

EVALUATION ISSUES:

A preliminary review has disclosed a number of issues which should be considered in the evaluation of the alternatives presented in the Legislative Audit Commission Report.

The report indicates that improvements can and should be made in the administration of the Liquor Control Division. A critical deficiency noted is the lack of statistical records necessary to judge the impact of the function. The Department of Public Safety is scrutinizing its records to compile quantifiable information for the evaluation of current functions. The Liquor Control Division has instituted procedures which should result in improved performance indicators. For example, agents are now required to maintain uniform records on the number of establishments in their districts, the results of their inspections and investigations, as well as documentation of compliance and requests for assistance. The daily activity reports have been modified to include more qualitative information about contacts with the industry and public officials. The division has established procedures necessary to provide composite information concerning the number of license denials, suspensions and revocations. Until these statistical records have been maintained for a period of time, it will be difficult to evaluate the division's impact on the liquor industry.

The Legislative Audit Commission's report contends that the division has little or no impact on the industry. It bases this conclusion largely on the absence of documentation of license denials. However, license denial is only one criteria of effectiveness. License issuance is primarily a local responsibility. The department denies the allegation that it "rubber stamps" local decisions. The division assists local jurisdictions in proper license determination. This assistance takes two forms: (1) Advice prior to local determination and (2) withholding state approval until corrective actions have been taken. The Liquor Control Division conducts on-site inspections prior to the issuance of new licenses and has recently expanded this practice to include license transfers. Improved recordkeeping should allow evaluation of the impact of these actions.

The Legislative Audit Commission report does not examine a number of Liquor Control Division functions which may have significant impact on the industry. These functions include the promulgation and enforcement of rules, the regulation of the industry regarding marketing and sales, the registration of brand labels, and the provision of general consumer protection. A study of these areas should be included before determination of the function's actual and potential value.

The report does make a number of recommendations that appear to be sound and valuable suggestions for the improvement of the division. During the course of the study, the Liquor Control Division took immediate action to correct problems brought to its attention by the Legislative Audit Commission. Consequently, the division began implementation of many of the recommendations prior to the issuance of the formal report. In addition to the previously noted improvements in records maintenance, the division has already taken the following corrective actions:

1. A short license renewal form has been developed.
2. Procedures for verification of conviction data have been established.
3. Five-year violation histories are being maintained and reviewed in license determination.
4. Inspection checklists have been developed and implemented.
5. Inspection procedures have been defined and agents have been provided training and written instructions.
6. The complaint process has been formalized.

The Department of Public Safety will monitor the implementation of these recommendations and make every effort to insure their effectiveness. The department will carefully examine the remaining recommendations and direct the implementation of those found to be feasible, practical and cost-effective.

These efforts will be supplemented by a comprehensive review of the division for the purpose of making further improvements and developing alternatives for maximizing the effectiveness of the current operation. The department has recently completed a similar study which has produced valuable results in the Fire Marshal Division.

Eldon Stoehr
Page 4
July 28, 1978

SUMMARY:

We do not agree with the allegation that the state has no impact on the liquor industry in Minnesota: Without statewide controls, any uniformity of licensing and inspections would undoubtedly disappear. Local units of government could be expected to resist taking over liquor control functions because of their lack of personnel and supportive financing. If they were to attempt control, the resultant imbalance in the degree of control would increase the probability of unfair trade practices, neglected revenue collection and negative consumer impact.

The impact of the state on its growing liquor industry has obviously lessened in recent years with the reduction in personnel and funds. Several options exist to increase the impact of the state; our departmental study will explore these options and determine a position to be offered to the legislature.

Sincerely,



Edward G. Novak
Commissioner

EGN:bjm

CC: Senator Nicholas Coleman

**REPORTS OF THE
LEGISLATIVE AUDIT COMMISSION
PROGRAM EVALUATION DIVISION**

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*out of print

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