MARYLAND
GENERAL ASSEMBLY

DEPARTMENT OF LEGISLATIVE REFERENCE

REPORT
of the
BALTIMORE CITY
LIQUOR BOARD TASK FORCE

December, 1994

REPORT

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BALTIMORE CITY LIQUOR BOARD TASK FORCE

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December 16, 1994

The Honorable John A. Pica, Jr.
The Maryland Senate
402A James Senate Office Building
110 College Avenue
Annapolis, Maryland 21401-1991

Dear Senator Pica:

I am pleased to submit to you with this letter the Report of the Baltimore City Liquor Board Task Force.

In May of this year, at your request, I agreed to chair a Task Force to be appointed to inquire into the operation of the Baltimore City Liquor Board. The Task Force was formed in October, and charged with reviewing the political process by which Commissioners and Inspectors are selected and appointed to the Board of Liquor License Commissioners for Baltimore City, and deciding whether the process should be changed. Specifically, we were asked to consider whether the current process should be replaced with a civil service-type system.

Pursuant to its charge the Task Force met on six separate occasions. At our first meeting we reviewed the legislative history of the Liquor Board and recent public allegations concerning its operation. The next three meetings were public hearings, when the Task Force heard testimony from government and law enforcement officials, the Liquor Board Commissioners, Executive Secretary and other employees, civic and community organizations, and licensees and industry representatives. The testimony covered a broad range of issues related to the Board and its operation, and provided the Task Force with:

(1) an explanation of the appointment process for Commissioners and Inspectors;

(2) a broad overview of the Board's operation and the roles of its members and employees, specifically with regard to complaints and inspections;

(3) details of the training of new inspectors;

(4) an insight into the Board's enforcement procedures, including the hearing process;

(5) an understanding of the respective responsibilities of the Liquor Board, the Police Department, Fire Department, Health Department and Planning Department, for enforcing laws and regulations governing the operations of licensed premises; and

(6) a range of complaints about the Board's response to community concerns and recommended solutions.

The remaining meetings focused on a review and examination of information received through the hearings and from other sources, consideration of complaints and proposed solutions and formulation of our recommendations.

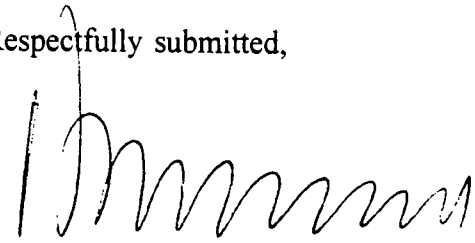
The Task Force members are well aware that our findings and recommendations reach somewhat beyond the scope of our initial charge. However, we believe that these findings accurately reflect legitimate public concerns about the Liquor Board's operations, and that adoption of our recommendations will serve to bolster public confidence in the Board.

All members of the Task Force commend you for having recognized the need for an examination such as we have conducted, and for seeing that it was promptly carried out. We would also like to acknowledge and thank the Commissioners, the Executive Secretary and the employees of the Board of Liquor License Commissioners, as well as the government officials and interested citizens who contributed to our undertaking.

Finally, we would be remiss if we did not acknowledge the invaluable help we received from the Director of the Department of Legislative Reference, F. Carvel Payne, and from Michael A. Sallustio, Esquire of his staff. Mr. Sallustio willingly and ably handled the logistics of our undertaking, researched and explained to us the liquor laws of Maryland and neighboring states, kept remarkably detailed minutes of our meetings, provided valuable input into the formulation of our report and drafted the proposed Code amendments which are part of our report.

I know I speak for all members of the Task Force in saying that we thoroughly enjoyed the challenge you afforded us, and we hope you find yourself in agreement with our recommendations.

Respectfully submitted,



Peter D. Ward, **Chairman**
The Baltimore City Liquor Board Task Force

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ENCLOSURES

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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY

Set forth below is a summary of the principal recommendations made by the Task Force. The findings and recommendations of the Task Force are set forth in more detail in Section V of this Report.

A. Qualifications/Training For Inspectors

1. Qualifications

- The Task Force recommends that prior to being appointed as an inspector for the Board of Liquor License Commissioners for Baltimore City, an individual must:

  (i) Have a high school degree or GED;

  (ii) Be a person of good moral character and integrity, as supported by a police background check and three (3) character references from individuals who: have known the individual for at least 5 years; are not members of the individual's family; are not political sponsors of the individual or other Board inspectors; and are not engaged in the manufacture or sale of alcoholic beverages;

  (iii) Undergo standard testing for illegal drug use and abuse;

  (iv) Be at least 21 years of age; and

  (v) Sign an affidavit of no conflict of interest acknowledging receipt of a copy of the State's Public Ethics Law.

2. Training

- The Task Force recommends that the Board or the Executive Secretary be required to establish a training manual for new inspectors.

B. Job Performance

1. Scheduling Structure

- The Task Force recommends that the Board or Chief Inspector be required to establish a scheduling structure for inspectors, including: a designation of day and evening shifts, taking into consideration peak evening and weekend hours; a minimum number of hours to be worked by full and part-time inspectors each week; a system of rotating inspectors periodically between day and evening shifts and every six months among the various geographical districts. The Task Force also

recommends that the Board establish a 24-hour answering service to receive complaints on a call-in basis.

2. Ethical Standards

- The Task Force recommends that the law be amended to specifically prohibit the solicitation or receipt by inspectors of political contributions or other remunerations, and that the Board specifically adopt the State's Public Ethics Law, as provided in Art. 40A, § 1-201, et. seq..

3. Removal of Inspectors

- The Task Force recommends that the Board have the authority to remove an inspector at will during the first calendar year after appointment and, thereafter, for cause only.

4. Performance Evaluations

- The Task Force recommends that the Board or the Executive Secretary establish a system of periodic performance evaluations for inspectors based on written performance standards.

C. Administrative Duties

1. Annual Report

- The Task Force recommends that the Board be required to submit an annual report to the Governor on all matters concerning its operation.

2. Notice of Hearings

- The Task Force recommends that the Board establish a registration list of community organizations for each council district, and that the registrations be accepted and renewed on an annual basis at no charge. The Board shall also send prior written notice of all hearings before the Board to all registered community organizations in the affected districts, and shall require that a notice of each hearing be posted at the affected licensed establishment in accordance with the Baltimore City Planning Committee's regulations concerning hearing notices.

3. Recording System

- The Task Force recommends that if an inspection is performed as a result of a complaint, the Board be required to send a copy of the inspection report to both the affected licensee

and the complainant. The Board shall also establish a numbered recording system for complaints and keep the complaints on file at the Board's office and available for inspection by the public.

4. Penalty Guidelines

- The Task Force recommends that the Board establish and publish penalty guidelines for all violations of local and State liquor laws and regulations committed by licensees. The guidelines will not be mandatory upon the Board. However, whenever the Board departs from the guidelines it shall state its reasons for doing so and make such records available for public inspection. The Board shall also review the guidelines on an annual basis and revise them as necessary.

5. Shared Enforcement

- The Task Force recommends that the Board coordinate its efforts with the efforts of the Police Department, the Health Department, and the Fire Department so that the full enforcement capabilities of each of these agencies can be jointly directed toward licensed establishments which repeatedly disturb the peace and tranquility of the surrounding community, in violation of applicable laws and regulations.

II. INTRODUCTION

The Board of Liquor License Commissioners for Baltimore City is a state-created agency that is responsible for inspecting and licensing 1,650 bars, restaurants and other establishments that serve alcohol in the city. The Board also has broad discretionary power to enforce liquor laws. Based on inspection reports and complaints, it can conduct hearings, levy fines, suspend licenses and close establishments that break State laws or regulations.

The Board consists of three commissioners, who are appointed by the Governor with the advice and consent of the Senate, and 33 full and part-time inspectors, who are appointed by the city's nine Senators. The Board also employs an Executive Secretary and a Deputy Executive Secretary to handle the administrative duties. This structure has been in existence for 60 years.

In January 1994, State Police conducted a raid on "The Block" following several months of undercover drug investigation. Several arrests were made and prosecutors convened a grand jury to investigate allegations of corruption in the Liquor Board. The allegations stemmed from news reports of claims contained in a search warrant affidavit that liquor inspectors were taking bribes from licensed establishments and that a Board member was a silent partner in one of the licensed establishments.

The grand jury investigation came after more than a decade of complaints from police and citizens that the Board took little action against bars on The Block, despite persistent reports of prostitution and drug deals inside the licensed establishments. More recent complaints allege that some of the establishments regulated by the Board contribute to the Senators' campaigns, and that inspectors solicit campaign contributions in the form of fund-raiser tickets from businesses they are assigned to regulate.

The Baltimore City Liquor Board Task Force was created by Senator John A. Pica, Jr., chairman of the city's Senate delegation, in May 1994 amid the above-described reports of conflicts of interest among Board members. The Task Force was charged with the responsibility of looking at the current patronage system and recommending whether commissioners and inspectors should be hired through a civil service type system. The purpose, as stated by Senator Pica, is to make recommendations that would strengthen or maintain the public confidence in the Board.

III. OVERVIEW OF STATE LIQUOR LAWS

In furtherance of its effort to make informed recommendations, the Task Force looked at systems of liquor control in other states and compared them to that of Maryland. The following is an overview of the various structures in this and other states. (Note that in a "license state", the state issues liquor licenses to private retailers, and in an "ABC state", alcoholic beverages are sold exclusively by a state-created commission or agency; and all references to section numbers are found in Article 2B of the Annotated Code of Maryland.

A. **Maryland** (License State)

1. **Local Boards of Liquor License Commissioners and Liquor Control Boards**

- Sale of alcoholic beverages in Maryland is controlled by local license and liquor boards that are created by statute. Art. 2B
  * The following information pertains only to Baltimore City.

- Board of Liquor License Commissioners for Baltimore City ("the Board") consists of 3 members appointed by the Governor with the advice and consent of the Senate for 2 year terms. Art. 2B, § 15-101(a)

- The Governor designates the Chairman. Art. 2B, § 15-101(a)

- The annual salaries are $18,500 for the Chairman and $18,000 for the other two members. Art. 2B, § 15-109

- The Board appoints an Executive Secretary and a Deputy Executive Secretary whose salaries are set by the Board;

these individuals may only be removed for incompetency or immorality, regardless of the changes in commissioners. Art. 2B, § 15-109(d)

2. Duties and Powers of Board

- To issue alcoholic beverages licenses. Art. 2B, § 15-112(a)

- Chairman of the Board has the duty to: enforce the provisions of the liquor laws; personally supervise the activities and investigations of the several inspectors and other employees of the Board; and make recommendations to the Board concerning zoning of licensees, methods of enforcement, and promulgation of rules and regulations to carry out the purposes of Art. 2B. Art, 2B, 15-112(e)(4)

- To employ a secretary, inspectors, clerical and other assistance as may be necessary; and to fix the compensation of these employees, unless otherwise provided in Art. 2B. Art. 2B, § 15-112(b)

- To employ 18 permanent part-time inspectors and to set the annual salary for these positions at not less than $1,200. Art. 2B, § 15-112(e)(5)

- To adopt rules and regulations as necessary to enable the Board to effectively discharge the duties imposed by Art. 2B. Art. 2B, § 16-301(a)

3. Enforcement

- The Board and its agents and employees are authorized to inspect and search, without warrant, at all hours, any licensed establishment, or vehicle in which alcoholic beverages may be transported or kept. Art. 2B, § 16-405

- The Board may revoke or suspend any license or permit issued under Art. 2B for any cause which, in the judgment of the board, is necessary to promote the peace or safety of the community in which the place of business is located. Art. 2B, § 10-401(a)

- The Board is required to revoke or suspend a license or permit for certain acts as specified in Art. 2B. Art. 2B, § 10-401(a)

- If the State Comptroller suspends a license or permit, the licensee or permittee may, before the effective date of the suspension, petition the Comptroller for permission to offer to pay a fine in lieu of the suspension; the fine shall be paid into the General Fund

of the State and shall not exceed $2,000 in the case of retail licenses and $50,000 for other licenses or permits; the Comptroller may accept the offer of compromise if (1) the public welfare and morals would not be impaired by allowing the licensee or permittee to operate during the period set for the suspension, and (2) the payment of the fine will achieve the desired disciplinary purposes. Art. 2B, § 10-402

- The Board <u>may</u> suspend or revoke a license after a hearing upon charges brought by the Board or a written complaint of 10 or more citizens; notice of such a hearing must be given to the licensee at least 10 days prior to the hearing; this process would does not apply in situations where the Board is required to revoke or suspend a license. Art. 2B, § 10-403

- A license that is revoked may not be reissued until 6 months after the date of revocation. Art. 2B, § 10-404(a)

4. Conflicts of Interest

- A commissioner or employee of the Board may not have any interest, direct or indirect, in any premises or business partially or wholly devoted to the sale or manufacture of alcoholic beverages. Art. 2B, § 15-112(e)(1)

- A commissioner or employee of the Board may not hold any other public office or federal, State, or local government employment, federal, State or local. Art. 2B, § 15-112(e)(1)

- An employee of the Board may not engage in any occupation, business or profession that is in any way connected or associated with the manufacture or sale of alcoholic beverages. Art. 2B, § 15-112(e)(2)

- A commissioner or employee of the Board may not solicit or receive, directly or indirectly, any commission, remuneration or gift from any person or corporation engaged in the manufacture or sale of beer or other alcoholic beverages. Art. 2B, § 15-112(e)(3)

- A person or corporation engaged in the manufacture or sale of beer or other alcoholic beverages may not, directly or indirectly, offer to pay any commission, profit, remuneration or other gift to any commissioner or employee of the Board, or to anyone on behalf of such commissioner or employee of the Board. Art. 2B, § 15-112(e)(4)

B. **Delaware** (License State)

1. **Alcoholic Beverage Control Commission**

- 5 members appointed by Governor with consent of Senate.
- 4 members serve for 3 year terms; one member serves at the pleasure of Governor as Chairman.
- Commission appoints Executive Secretary, who serves at the pleasure of the Commission.

2. **Duties and Powers of Commission/Enforcement**

- Controls manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State by licensees.
- Grants, refuses or cancels licenses for manufacture or sale of alcohol liquors.
- Investigates and prevents violations of liquor laws; seizes alcohol liquors manufactured, sold or kept in violation of laws.
- Hears complaints with regard to licensees on petition of at least 10 residents.
- Hearings not required to be public.
- Employees have police powers and are "conservators of peace" throughout state and may suppress acts of violence and enforce liquor laws.
- Employees of Commission are hired, fired and appointed by Dept. of Administrative Services.
- Makes annual reports on all matters of interest concerning liquor control, including: number of licenses granted and canceled; name and address of each person licensed; amount of alcohol sold in state; number of persons arrested for drunkenness.

3. **Conflicts of Interest**

- A Commissioner or employee may not have interest, directly or indirectly, in sale or manufacture of alcoholic liquors.
- A Commissioner or employee may not receive any commission or profit from, or have interest in a purchase or sale made by the Commission or licenses.

- Upon appointment, a commissioner must furnish Governor with statement of every interest, direct or indirect held or owned in corp. or partnership or other association. engaged in sale or manufacture of alcoholic liquors.

C. **New Jersey** (License State - similar to Mass. and N.Y.)

1. **Division of Alcoholic Beverage Control**

- Within Dept. of Law and Public Safety

- Director of Division appointed by Governor with advice and consent of Senate.

- Director's duty is to supervise the manufacture, distribution, and sale of alcoholic beverages.

2. **Powers of Director/Enforcement**

- Appoints 5 deputy directors, whose salaries are set by Civil Service Commission, but positions are not subject to Civil Service title.

- Appoints investigators and executive assistants as necessary, and sets their salaries; these positions are also <u>not</u> subject to Civil Service and are removable at will for up to 3 years after appointment, after which they may be removed for cause only.

- Violations of liquor laws carry <u>criminal penalties</u>; Director, deputies, investigators, and executive assistants, all have authority to investigate and <u>arrest</u> without warrant for violations of Act committed in their presence; and they have all powers of peace officers to enforce Act.

3. **Local Boards of Alcoholic Beverage. Control**

- Each municipality with population of 15,000 or more <u>may</u> establish, by resolution or ordinance of local governing body, a municipal Board of Alcoholic Beverage control.

- Consists of 3 persons, no more than 2 of whom are from same political party, chosen and appointed by local governing body.

- Members receive no salaries and are not civil service, and may be members of local governing body.

- Duties and powers are same as Division's with respect to issuing licenses, enforcing laws, investigating and conducting hearings.

4. **Conflicts of Interest**

- Officer or employee of the Division or local boards may not have any interest, direct or indirect, in sale, manufacture or distribution of alcoholic beverages.

- Officer or employee of the Division or local boards may not receive gifts, gratuity, etc.. from licensee or applicant for license.

D. **Pennsylvania** (ABC State)

1. **Liquor Control Board**

- Board is independent and consists of 3 full-time members appointed by Governor with advice and consent of Senate; not more than 2 members from same party, terms are staggered.

- Chairman is designated by Governor

- Annual salaries are $42,000 for the Chairman and $40,000 for the other two members.

2. **Powers of Board**

- Buys, imports, possesses for sale and sells liquor and alcohol; purchases are subject to approval of state treasurer.

- Controls manufacture, possession, sale, consumption, importation, storage, transportation, and delivery, of liquor, alcohol and beer in accordance with law.

- Fixes wholesale and retail prices for sale of liquors and alcohol at Pennsylvania Liquor Stores (P.L.S.).

- Determines in which municipalities and locations PLS's will be established.

- Leases, furnishes, equips the buildings and other accommodations required for the Act through DGS.

- Appoints, fixes the compensation and defines duties of managers, officers, inspectors, examiners, and other employees as necessary for operation of Board.

- Issues retail liquor licenses to hotels, restaurants and clubs. These licensees must purchase all alcoholic inventory, at wholesale prices, from PLS's.

- Promulgates regulations

3. **Enforcement**

- Violations of liquor laws carry criminal penalties.
- Bureau of Liquor Control Enforcement within State Police enforces liquor laws.
- Officers and investigators assigned to Bureau may investigate, arrest, search and seize, and issue citations.

4. **Hearings**

- Office of Administrative Law Judge within Board.
- Governor appoints ALJ's from list of candidates submitted by Civil Service Commission; as many ALJ's as the Board, with approval of the Governor, deems necessary; ALJ's are full-time positions.
- ALJ's must be members of PA Bar.
- ALJ's hold hearings for citations and enforcement of liquor laws.
- Bureau of Consumer Relations established by Board handles all complaints and suggestions.

5. **Conflicts of Interest**

- Members and employees of Board must comply with State Ethics and Adverse Interest Act.
- Members, employees of Board, and immediate family members of these persons, may not have interest, direct or indirect, in any other interest in state dealing with liquor, alcohol or beer.
- May not receive gift or remuneration from any person who sold or is selling or offering to sell liquor or alcohol to the Board.
- Member or employee may not use position for personal financial gain.
- Violations of these restrictions may result in criminal penalties and/or termination.

IV. SUMMARY OF ACTIVITIES AND DELIBERATIONS

In an effort to determine whether the political process by which commissioners and inspectors are selected and appointed should be changed, the Task Force developed a schedule of meetings designed to educate its members on the current appointment process and the operation of the Board. The Task Force believed it was important to hear recommendations from the community, alcoholic beverage industry, and government. Accordingly, the Task Force held three public hearings at which testimony was heard from government and law enforcement officials and current members and employees of the Board, civic and community organizations, and licensees and industry representatives, respectively. The hearings were advertised in the Baltimore Sun and various local newspapers and community newsletters throughout the city. Specifically, these hearings provided the Task Force with:

(1) An overview of the appointment process for commissioners and inspectors;

(2) A detailed and comprehensive examination of the operation of the Board and the roles of its members and employees, with regard to inspections and complaints;

(3) An explanation of the training process for new inspectors;

(4) Review of the Board's enforcement procedures, including the hearings process;

(5) A description of the Board's interaction with the Baltimore City Police Department, Fire Department, Health Department, and Planning Commission; and

(6) A list of complaints about various problems with the current system and recommended solutions

As a result of the information collected by the Task Force, it became clear that public concerns about the operation of the Board would not be addressed by replacing the current patronage system with a civil service-type system. However, it was also apparent that the current system is in need of some reform.

After reviewing the areas of concern, the Task Force concluded that the among the deficiencies in the current system are a lack of specific qualifications for inspectors, a lack of clear and comprehensive ethical standards, a lack of predictability in the Board's imposition of penalties for liquor law violations, a lack of firmly established administrative duties, and a lack of communications between the Liquor Board and affected communities. These issues are addressed in more detail in the Task Force's findings and recommendations.

V. FINDINGS AND RECOMMENDATIONS

A. Qualifications/Training For Inspectors

As noted earlier, inspectors are selected and appointed by the Senate members of the city's delegation and serve at the pleasure of the Board and the senators who appoint them. However, there is no provision in the statute that provides for the senatorial appointment of inspectors. To the contrary, Art. 2B, § 15-112(b)) provides that the "respective board shall be authorized to employ a secretary and such inspectors, clerical and other assistance as may be necessary ...". Similarly, Art. 2B, § 15-112(e-1) provides that "[i]n Baltimore City, the Board of License Commissioners shall...employ 18 permanent part-time inspectors ...".

1. Qualifications

Despite the lack of statutory authority, the city's Senators have been appointing inspectors to the Board since its creation. The Senators generally use the appointments to reward election workers or to employ out-of-work constituents. There are no qualifications and there is no test. The Board maintains a set of written job qualifications for the Chief Inspector and Inspector III positions, but there are no such qualifications for the full or part-time inspector positions.

TASK FORCE RECOMMENDATION

The Task Force finds that inspectors who are hired under the present practice are sometimes unqualified or ineffective. The Task Force recommends that inspectors be required to meet certain minimum qualifications. Accordingly, prior to being appointed as an inspector for the Board of Liquor License Commissioners for Baltimore City, an individual must:

1. **Have a high school degree or GED;**
2. **Be a person of good moral character and integrity, as supported by:**
   - **(i) a police background check; and**
   - **(ii) three (3) character references from individuals who:**
     - **A. have known the individual for at least 5 years;**
     - **B. are not members of the individual's family;**
     - **C. are not political sponsors of the individual or other Board inspectors; and**
     - **D. are not engaged in the manufacture or sale of alcoholic beverages;**

3. Undergo standard testing for illegal drug use and abuse;

4. Be at least 21 years of age; and

5. Sign an affidavit that the individual has no conflict of interest with the inspector position and acknowledging receipt of a copy of the State's Public Ethics Law.

2. Training

Currently, there are no written training procedures for new inspectors once they are appointed. In practice, a new inspector typically spends the first six weeks in the office filing complaints and inspection reports for the purpose of learning the internal structure of the Board. The inspector will then be assigned to train in the field under an an experienced inspector. In addition, inspectors are constantly kept up to date of any trends or changes in liquor laws or procedures through routine staff meetings, inner-office memos and seminars.

TASK FORCE RECOMMENDATION

The Task Force finds that there is a lack of uniformity in the training received by new inspectors. The Task Force recommends that the Board or the Executive Secretary be required to establish a training manual for new inspectors.

B. Job Performance

1. Scheduling Structure

Currently, the Board has a general list of duties for full-time inspectors, but there are no set job descriptions for part-time inspectors. Furthermore, inspectors are not required to work a certain number of hours or to be "on-duty" during any specified shifts. Each week, the Chief Inspector assigns each inspector a certain number of routine inspections to conduct within the inspector's respective district. Inspectors are also assigned a certain number of complaints to investigate each week. The number of assignments an inspector receives for any given week is based on that inspector's status as a full or part-time employee of the Board. Once the assignments are made, the inspectors conduct the inspections and investigations on their own time. In addition, the job descriptions for full-time inspectors provide that they "perform related work as required on a 24 hour call-in basis".

Testimony before the Task Force indicated that the vast majority of liquor law violations occur during the late evening hours and on weekends. However, these complaints are not officially cited because inspectors are not on-duty and cannot not be reached during these times.

TASK FORCE RECOMMENDATION

The Task Force finds that the lack of a scheduling structure for

inspectors leads to ineffective enforcement of the liquor laws and regulations. The Task Force recommends that the Board or Chief Inspector be required to establish a scheduling structure for inspectors, including: a designation of day and evening shifts, taking into consideration peak evening and weekend hours; a minimum number of hours to be worked by full and part-time inspectors each week; a system of rotating inspectors periodically between day and evening shifts and every six months among the various geographical districts. In furtherance of this requirement, the statutory authority should be amended to authorize the Chairman of the Board to delegate daily supervising responsibilities to the Executive Secretary. (Appendix). The Task Force also recommends that the Board establish a 24-hour answering service to receive complaints on a call-in basis.

2. Ethical Standards

As noted earlier, this Task Force was created amid allegations that the Board and its employees engaged in conduct that was unethical. Although these allegations have yet to be proven as fact, they have created the appearance of impropriety. As described in Section III.A.4. of this Report, Article 2B provides for certain ethical standards that govern the Board and its employees. It is not clear whether the commissioners and inspectors are governed by the State's Public Ethics law.

News reports referred to complaints by licensees alleging that certain inspectors have solicited tickets to political campaign fund-raisers for members of the city's Senate delegation, although no concrete examples of such conduct emerged at the hearings. As noted earlier, current Maryland law provides that a commissioner or employee may not "solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation engaged in the manufacture or sale of beer or other alcoholic beverages ...". Art. 2B, § 15-112(e)(3). However, it is unclear whether this provision governs the specific conduct described above.

TASK FORCE RECOMMENDATION

The Task Force finds that there is no statutory provision that specifically prohibits the solicitation or receipt by inspectors of political contributions or other remunerations, and that this conduct creates a conflict of interest among inspectors and the senators who appoint them. Moreover, the lack of a Code of Ethics for the Board and its employees promotes the appearance of impropriety. The Task Force recommends that the law be amended to specifically prohibit the solicitation or receipt by inspectors of political contributions or other remunerations, and that the Board specifically adopt the State's Public Ethics Law. (Appendix)

3. Removal of Inspectors

Currently, the law provides that the "Governor may remove any member of [the Board of Liquor License Commissioners] appointed by him ... for misconduct in office, incompetency or willful neglect of duty...". Art. 2B, § 15-110. However, there are no provisions for the removal of

inspectors. Although inspectors are appointed by the city's senators, the Chairman of the Board testified before the Task Force that the Board has the power to remove an inspector at will, and that the Board has used this power on many occasions. As noted earlier, under New Jersey law, inspectors may be removed at will for up to three years after appointment, after which time they may be removed for cause only. This essentially creates a three year probationary period during which inspectors may be removed for ineffectiveness in that state.

TASK FORCE RECOMMENDATION

The Task Force finds that the Board's authority to remove an inspector at will should be limited. The Task Force recommends that the Board have the authority to remove an inspector at will during the first calendar year after appointment and, thereafter, for cause only.

4. Performance Evaluations

Currently, inspectors do not undergo routine evaluations for job performance. In testimony before the Task Force, the Executive Secretary of the Board indicated that the Board does not have the manpower or the budget to conduct periodic performance evaluations. He stated that the Board monitors an inspector's performance based on the quality and quantity of the inspection reports that the inspector is required to complete. In addition, the community and licensees are encouraged to report any instances of inspector misconduct and these allegations are investigated and considered by the Board.

TASK FORCE RECOMMENDATION

The Task Force finds that the lack of routine performance evaluations for inspectors promotes ineffective performance. The Task Force recommends that the Board or the Executive Secretary establish a system of periodic performance evaluations for inspectors based on written performance standards.

C. Administrative Duties

1. Annual Report

Currently, the Board is different than most regulatory bodies in that it is self-sustaining. According to the Executive Secretary of the Board, the licensing fees and punitive fines are collected by the Board or the Baltimore City Bureau of Collections and deposited into the City's General Fund. The City then pays the operating expenses of the Board out of the General Fund and retains any surplus. Consequently, the Board is not required to submit an annual report of its operation, revenues or expenses to any government authority. Testimony before the Task Force indicated that the Board generates an annual budget surplus of approximately $500,000. As noted in Section III.B.2. of this Report, the liquor authority in Delaware, which is also an independent regulatory body, is required to make

annual reports on all matters of interest concerning liquor control.

TASK FORCE RECOMMENDATION

The Task Force finds that the lack of an annual report from the Board could create the appearance of impropriety. The Task Force recommends that the Board be required to submit an annual report to the Governor on all matters concerning its operation. (Appendix)

2. Notice of Hearings

The Board frequently conducts public hearings on matters affecting liquor licensees, such as the issuance, transfer, suspension or revocation of liquor licenses. Currently, the Board issues public notices prior to all hearings and sends notices to community organizations or individuals if the subject of a hearing is a complaint lodged by the community organization or individuals. Otherwise, an individual or group can pay a $25 fee to be placed on a mailing list to receive notices of all hearings before the Board.

In testimony before the Task Force, community residents complained that they are not properly informed of hearings before the Board. Such notices are inconsistent in their format and often untimely. Notices of similar hearings before the city's Planning Commission are required to be posted conspicuously, in a format specified by regulation, on the front of the affected establishment.

TASK FORCE RECOMMENDATION

The Task Force finds that the community needs to be properly notified of hearings before the Board. The Task Force recommends that the Board establish a registration list of community organizations for each council district, and that the registrations be accepted and renewed on an annual basis at no charge. It is also recommended that the Board be required to send prior written notice of all hearings before the Board to all registered community organizations in the affected council districts, and that a notice of each hearing be posted at the affected licensed establishment in accordance with the Baltimore City Planning Commission's regulations concerning hearing notices.

3. Recording System

Testimony before the Task Force indicated that once a complaint concerning a licensed establishment is received by the Board, there is no mechanism for informing the complainant of any action or inaction taken in response to that complaint. Currently, the Board typically orders an inspection of a licensed establishment that is the subject of a complaint. After the inspection is performed, the Board or the inspector then sends a copy of the inspection report to the affected licensee. The complainant is not notified of the Board's response and there are no means for the complainant to access information concerning the

complaint upon request.

TASK FORCE RECOMMENDATION

The Task Force finds that the complainant should be informed of any action or inaction taken in response to a complaint. The Task Force recommends that if an inspection is performed as a result of a complaint, the Board be required to send a copy of the inspection report to both the affected licensee and the complainant. It is also recommended that the Board establish a numbered recording system for complaints and keep the complaints on file at the Board's office and available for inspection by the public.

4. Penalty Guidelines

Currently, there are no fixed penalties prescribed for specific violations of liquor laws or regulations. Penalties are generally imposed by the Board within its discretion on a case-by-case basis. However, the Executive Secretary of the Board testified before the Task Force that for a violation of Board Regulation 3.12 - Public Welfare, the Board follows an established procedure: for a first offense, the licensee is given a choice of paying a $500 fine or challenging the allegation at a public hearing; for a second offense, the licensee faces a $1000 fine or a 10 day suspension of the liquor license; and for a third or subsequent offense, the Board will take "more stringent action".

For other violations, the Board or the Chief Inspector typically holds an informal "compliance conference" with the licensee for a first offense. For a second offense, or if the licensee refuses to comply after the "compliance conference", the Board will hold a public hearing and make a ruling within its discretion based on the evidence presented. The ruling may consist of a warning, a suspension of the liquor license, or a revocation of the license.

As noted in Section III of this Report, liquor law violations in other states carry statutorily imposed criminal penalties. In those states, the liquor authorities and their investigators have the power to arrest licensees for committing such violations.

TASK FORCE RECOMMENDATION

The Task Force finds that the Board is perceived to be inconsistent in the enforcement of the liquor laws and regulations. The Task Force recommends that the Board establish and publish penalty guidelines for all violations of local and State liquor laws and regulations committed by licensees. The guidelines will not be mandatory upon the Board. However, whenever the Board departs from the guidelines it shall state its reasons for doing so and make such records available for public inspection. The Board shall also review the guidelines on an annual basis and revise them as necessary.

5. Shared Enforcement

Currently, a public disturbance or other violation that occurs in or around a licensed establishment is handled by one of four governmental bodies, depending on the nature of the incident. Specifically, the Fire Department responds to complaints of overcrowding within a licensed establishment, the Health Department responds to complaints of excessive noise emanating from a licensed establishment, and the Police or the Board responds to most other disturbances and violations.

Testimony before the Task Force indicated that complaints of excessive noise occurring during the late evening or weekend hours typically get no response because Health Department inspectors are generally unavailable during these hours. Similarly, the Fire Department generally fails to respond to complaints of overcrowding during these hours.

TASK FORCE RECOMMENDATION

The Task Force finds that there is a consistent lack of response to complaints of excessive noise and overcrowding occurring in and around licensed establishments during the late evening and weekend hours. The Task Force recommends that the Board coordinate its efforts with the efforts of the Police Department, the Health Department, and the Fire Department so that the full enforcement capabilities of each of these agencies can be jointly directed toward licensed establishments which repeatedly disturb the peace and tranquility of the surrounding community, in violation of applicable laws and regulations.

APPENDIX: BILL TO AMEND ARTICLE 2B OF THE ANNOTATED CODE OF MARYLAND

A2

5lr0589

Bill No.: _____

Requested: _____

Committee: _____

By:

Drafted by: Michael Sallustio
Typed by: llm
Stored - 12/15/94
Proofread by _____
Checked by _____

A BILL ENTITLED

AN ACT concerning

Baltimore City – Alcoholic Beverages – Board of License Commissioners

FOR the purpose of prohibiting a commissioner or employee of the Board of License Commissioners for Baltimore City from soliciting or receiving, directly or on behalf of another person, a political contribution from certain persons; prohibiting a licensee or a person who is engaged in the manufacture or sale of alcoholic beverages from making a political contribution to certain persons; authorizing the Chairman of the Board of License Commissioners for Baltimore City to authorize the Executive Secretary of the Board to supervise certain activities of certain employees of the Board; requiring the commissioners and employees of the Board of License Commissioners for Baltimore City to comply with the Maryland Public Ethics Law; requiring the Board of License Commissioners for Baltimore City to submit to the Governor a written report on all matters concerning the operation of the Board on or before a certain date each year; making certain stylistic changes; making certain technical changes; and generally relating to the Board of License Commissioners for Baltimore City.

BY repealing and reenacting, with amendments,

Article 2B – Alcoholic Beverages

Section 15–112(e)(3) and (4)

Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.

(1994 Replacement Volume)

BY adding to

Article 2B – Alcoholic Beverages

Section 15–112(e)(6) and (7)

Annotated Code of Maryland

(1994 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article 2B – Alcoholic Beverages

15–112.

(e) In Baltimore City

(3) [No commissioner or employee of the Board shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person, or corporation engaged in the manufacture or sale of beer or other alcoholic beverages, nor from any agent or employee of such person or corporation, or from any licensee, licensed under the provisions of this article. No person or corporation engaged in the manufacture or sale of beer or other alcoholic beverages, nor any agent or employee of such person or corporation, and no licensee licensed under the provisions of this article, shall, either directly or indirectly, offer to pay any commission, profit or remuneration or make any gift to any commissioner or employee of the Board or to anyone on behalf of such commissioner or employee of said Board.]

(I) A COMMISSIONER OR EMPLOYEE OF THE BOARD MAY NOT SOLICIT OR RECEIVE, DIRECTLY OR ON BEHALF OF ANOTHER PERSON, A COMMISSION, POLITICAL CONTRIBUTION, REMUNERATION, OR GIFT FROM:

1. A LICENSEE OR OTHER PERSON WHO IS ENGAGED IN THE MANUFACTURE OR SALE OF ALCOHOLIC BEVERAGES; OR

2. AN AGENT OR EMPLOYEE OF A LICENSEE OR OTHER PERSON WHO IS ENGAGED IN THE MANUFACTURE OR SALE OF ALCOHOLIC BEVERAGES.

(II) A LICENSEE OR OTHER PERSON WHO IS ENGAGED IN THE MANUFACTURE OR SALE OF ALCOHOLIC BEVERAGES MAY NOT:

1. PAY OR OFFER TO PAY A COMMISSION OR REMUNERATION TO A COMMISSIONER, EMPLOYEE OF THE BOARD, OR PERSON ON BEHALF OF A COMMISSIONER OR EMPLOYEE OF THE BOARD; OR

2. MAKE A POLITICAL CONTRIBUTION OR GIFT TO A COMMISSIONER, EMPLOYEE OF THE BOARD, OR PERSON ON BEHALF OF A COMMISSIONER OR EMPLOYEE OF THE BOARD.

(4) [The chairman of said Board shall be the administrative officer thereof and charged with the duty of enforcing the provisions of this article. It shall be his duty personally to supervise the activities and investigations of the several inspectors and other employees of the Board. He shall examine the location and general character of the licensees in said City and make recommendations to the Board concerning zoning of licensees, methods of enforcement, and promulgation of rules and regulations to carry out the purposes of this article.]

(I) THE CHAIRMAN OF THE BOARD IS THE ADMINISTRATIVE OFFICER OF THE BOARD AND SHALL ENFORCE THE PROVISIONS OF THIS ARTICLE.

(II) THE CHAIRMAN SHALL:

1. SUPERVISE THE ACTIVITIES AND INVESTIGATIONS OF THE INSPECTORS AND OTHER EMPLOYEES OF THE BOARD; OR

2. AUTHORIZE THE EXECUTIVE SECRETARY TO SUPERVISE THE ACTIVITIES AND INVESTIGATIONS OF THE INSPECTORS AND OTHER EMPLOYEES OF THE BOARD.

(III) BASED ON THE LOCATION AND GENERAL CHARACTER OF THE LICENSEES, THE CHAIRMAN SHALL MAKE RECOMMENDATIONS TO THE BOARD CONCERNING:

1. ZONING OF LICENSEES;

2. METHODS OF ENFORCEMENT; AND

3. PROMULGATION OF RULES AND REGULATIONS TO CARRY OUT THE PURPOSES OF THIS ARTICLE.

(6) IN ADDITION TO ANY OTHER PROVISION IN THIS SUBSECTION, COMMISSIONERS AND EMPLOYEES OF THE BOARD SHALL COMPLY WITH THE MARYLAND PUBLIC ETHICS LAW, AS PROVIDED IN ARTICLE 40A, §§ 1-101 THROUGH 7-104 OF THE CODE.

(7) ON OR BEFORE JANUARY 30 OF EACH YEAR, THE BOARD SHALL SUBMIT TO THE GOVERNOR A WRITTEN REPORT ON ALL MATTERS CONCERNING THE OPERATION OF THE BOARD FOR THE PRECEDING CALENDAR YEAR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1995.