



## MEMORANDUM

TO: Robert Klein, Chair, and  
Members of the Board

DATE: November 13, 2017

FROM: Erika McConnell, Director

RE: Director's Report

### OPERATIONS

Two new Occupational Licensing Examiners are scheduled to start on November 16. We are currently recruiting for a Criminal Justice Technician I to support the Enforcement Section, and will shortly be recruiting for an Administrative Assistant I to support the Licensing Section. With these four additions, AMCO will only have one vacant position, which we hope to fill early next year.

### AUDITS

The preliminary legislative ABC Board audit is essentially completed—the confidential first draft is expected shortly. Chair Klein and Commissioner Navarre will respond to the confidential first draft and the final draft will be provided to the Legislative Budget and Audit Committee.

I am reviewing our security policies to prepare for next year's Department of Public Safety biennial audit of non-criminal justice agencies.

### LEGISLATION

A sponsor substitute of SB76 is available from the legislative website. The Title 4 Steering Committee has met several times in the past couple of months and is seeking community support for SB 76. I have provided a copy of the bill and recommend that the board consider a resolution of support for the bill.

### REGULATIONS

- **Current Regulations Projects**

Attachment 1 to this report is a regulations projects status spreadsheet.

### SPECIFIC ISSUES

#### Interpretation of "Controlling Interest"

A change in controlling interest of a license requires a transfer approved by the board (AS 04.11.040). "Controlling interest" is not defined in either statute or regulation. I am seeking the board's support for the interpretation of controlling interest that has been standard in the office for a long time.

When examining whether or not a change of ownership is a change in controlling interest, staff considers the following:

- Has the ownership of 50% of the license changed?
- Has a person who did not used to own 50% now become an owner of 50% or more?
- Has the number of people needed to create a majority of shares changed? (Example: Person 1 owns 26%; Person 2 owns 26%; Person 3 owns 26%; and three other people own 4% each. In this scenario, any two 26% shareholders can act with a majority. They propose to change the ownership structure so that Person 1 owns 25%; Person 2 owns 25%; Person 3 owns 25%; and three other people own 5% each. Now, at least three people are needed to act with a majority.)

If the answer to any of those questions is yes, then this is considered to be a change in controlling interest and a transfer is required. However, staff applies these questions only to the entity that owns the license. If the license is owned by Entity A, which is owned by Entity B, staff does not require a change in controlling interest of Entity B to be approved by the board.

These considerations apply to all types of ownership structure: sole ownership, limited liability organizations, corporations, and partnerships.

This interpretation allows the board to see and approve the individual(s) who will control the license. Does the board agree with this interpretation?

Some licensees (or their representatives) dispute this interpretation. In a current, relevant situation, a company has issued new shares to new shareholders, diluting the shares of the existing shareholders. The entity had four shareholders, each with 25%. By issuing new shares to new shareholders, they now have eight shareholders, each with 12.5%. They submitted the following statements:

AS 04.11.040(c) says: "A person may not receive or transfer controlling interest in a liquor license issued to a ..... corporation under this title, except with the written consent of the board."

Our research on corporate law shows that a controlling interest in a corporation is generally defined as ownership greater than 50% (or 50% + .01) interest (e.g., the ability to elect a majority of the board of directors), and a 50% interest is considered a non-controlling interest.

In [our] situation, no one person received or holds a controlling (in excess of 50%) interest. Each person holds a 12.5% non-controlling interest. No person received controlling interest in a liquor license by owning a 12.5% interest in [our corporation]. No one person can elect a majority of the board of directors. Therefore, no person holds a controlling interest in the licenses. When considering how many shareholders it takes to reach a majority after [our corporation] issued new shares, it would take at least 5 of the 8 shareholders to reach majority consensus,

and not 4. The 4 new shareholders, even when combined, do not create a majority or controlling interest.

Accordingly, by our analysis, no person has received or transferred controlling interest in a liquor license after the issuance of new shares.

Under this interpretation, if no single person holds 50% interest, then there is no controlling interest under Title 4. Thus in a situation where a multitude of people own a liquor license but no single person owns 50% or more, the control of the license could shift regularly with only notification to the board. This does not seem to achieve the intent of Title 4, which gives the board the authority to review and approve the ownership (and thus control) of licenses.

### **Guidance for Package Stores in Relation to Special Event Permits**

AMCO has both found and been told about package stores providing alcohol for special events and being present at the event in such a manner as to give the impression that the package store was operating at the event, serving and/or selling the alcohol, which is not a permitted activity for a package store license (AS 04.11.150).

As set forth in AS 04.11.240, a special events permit allows the holder to sell or dispense beer or wine for consumption at the event, and the holder must be a nonprofit fraternal, civic, or patriotic organization.

AMCO's guidance is that if the owners and/or employees of a package store wish to volunteer at a special event to serve their beer or wine, they must act at the event as volunteers for the permit holder and not as representatives of the licensee. A special event is not an opportunity to directly market their package store business to the event attendees.

### **NEXT MEETINGS**

The next ABC Board meeting is scheduled for January 23 in Juneau. Applications must be complete and any other documents for the board must be submitted to our office by January 5, 2018, to be on the January agenda.

## ABC REGULATIONS PROJECTS

DOL Project Number	Topic	Date Opened by ABC	Board member point person(s)	Current Status/Notes	Date Adopted by ABC	Effective Date
	Emergency Regulation: definition of "in public"				2/24/15	
	Marijuana Regulations			Started by ABC Board; shifted to MCB once constituted		
	Recreational Site Licenses			Board voted unanimously to close project on 7/1/15		
JU2016200416	Alcohol Server Education	2/10/16	Evans moved	Sent to Law on 5/5/17; sent to Lt. Gov 8/16/17 Most of text was deleted by Law	4/13/17	9/16/17
JU2016200417	Common Carriers	2/10/16	Evans moved	Signed by Lt. Gov. 6/19/17	4/13/17	7/19/17
JU2016200418	Distillery	2/10/16	Evans moved	signed by Lt. Gov. 11/16/16	7/20/16	12/16/16
JU2016200419	Management Agreements	2/10/16 7/20/16	Evans moved	signed by Lt. Gov. 11/16/16	7/20/16	12/16/16
JU2016200420	Alternating Premises	2/10/16	Evans moved	signed by Lt. Gov. 11/16/16	7/20/16	12/16/16
JU2016200422	Restaurant Designation Permit	2/10/16	Evans moved	signed by Lt. Gov. 11/16/16	7/20/16	12/16/16
JU2016200647	Consumption at Wineries	7/20/16	Yoder moved	Signed by Lt. Gov. 6/19/17	4/13/17	7/19/17
JU2016200646	Tourism Licenses Parameters	7/20/16	Manning moved	Staff is working on the research		
JU2017200479	Bona Fide Restaurant	4/13/17	Manning moved	Voted out for public comment 7/11/17; comment period ends 9/11/17; on 11/13 agenda		
	Tribal Identification	4/13/17		Voted out for public comment 7/11/17; comment period ends 9/11/17; on 11/13 agenda		
	Background Checks	7/11/17	Ganley moved	Voted out for public comment 7/11/17; comment period ends 9/11/17; on 11/13 agenda		
	Fee for premises changes; Seasonal premises changes			Draft to board 11/13/17		
	Public convenience REPL			Draft to board 11/13/17		
	Application fees			Draft to board 11/13/17		
	Distilleries/mixed drinks	9/13/17	Manning moved	Draft to board 11/13/17		