

OFFICE OF THE CITY AUDITOR

City and County of Honolulu
State of Hawai'i



Audit of Selected Management Issues of the Honolulu Liquor Commission

A Report to the
Mayor
and the
City Council of
Honolulu

Report No. 05-02
April 2005

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Submitted by

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CITY AND COUNTY
OF HONOLULU
STATE OF HAWAI'I

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Foreword

This is a report of our Audit of Selected Management Issues of the Honolulu Liquor Commission. The audit was conducted pursuant to Council Resolution 03-223 that requested the city auditor to review the investigative and enforcement functions of the Honolulu Liquor Commission. The city auditor selected the commission's organizational structure and personnel management practices to review because these are essential to effective management and the fulfillment of the commission's responsibilities.

We wish to acknowledge the cooperation and assistance of the liquor commissioners, management and staff of the liquor commission and others who we contacted during this audit.

Leslie I. Tanaka, CPA
City Auditor

EXECUTIVE SUMMARY

Audit of Selected Management Issues of the Honolulu Liquor Commission

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This audit was conducted pursuant to Council Resolution 03-223, requesting the city auditor to review the investigative and enforcement functions of the Honolulu Liquor Commission. The city auditor selected the commission's organizational structure and personnel management practices to review because these are essential to effective management and the fulfillment of the commission's responsibilities.

Background

In 2002, a number of liquor control investigators assigned to the Enforcement Services Section of the Honolulu Liquor Commission were indicted and subsequently either pled or were found guilty of federal extortion and/or fraud criminal charges. Concerns related to these criminal activities prompted the request for the review of the commission's management practices.

The Honolulu Liquor Commission is responsible for the enforcement of state liquor laws within the City and County of Honolulu in accordance with the provisions of Chapter 281, Hawai'i Revised Statutes (HRS). This includes the licensing of facilities, monitoring compliance with the laws, and enforcement of legal requirements by liquor licensees. In 1965, the power to appoint members of the commission was transferred from the state to the county and the commission itself was re-established under county regulatory and fiscal control. Today, the liquor commission is administratively attached to the Department of Budget and Fiscal Services but personnel actions are generally left to the commission. Since 1990, the commission administrator has had sole jurisdiction, power, authority and discretion over commission staff, but the commissioners retain authority to appoint and remove the administrator.

In accordance with Section 281-17, HRS, the commission determines the amount and manner of payment of fees for licenses, permits, and filing fees in conjunction with fulfillment of the requirements of the statute. The fees are used to offset the costs and expenses directly related to the

operational and administrative costs incurred by the commission in performing its duties.

Summary of Findings

Oversight and management of the Honolulu Liquor Commission are inadequate. The commission has lacked the necessary leadership and guidance to implement changes and proactively address the challenges it faces. These inadequacies affect the entire commission organization and are not limited to its investigatory enforcement responsibilities. Furthermore, ineffective personnel policies and management, coupled with the negative perception of commission management, has hampered the agency's small but hard-working staff, and also hinders the ability of the commission to effectively achieve its mission.

Finding 1: Overall, we found that the oversight and management of the Honolulu Liquor Commission are inadequate and require improvement to ensure that the commission fulfills its responsibilities pursuant to the provisions of Chapter 281, HRS. However, we found that there is sufficient latitude within Chapter 281, HRS to effectuate the changes needed.

- Although Chapter 281, HRS, provides that enforcement of the provisions of the state liquor laws should be administered at the county level, the statewide character of the law ensures consistency of regulatory purpose between counties.
- While the liquor commission is an independent decision-making and rule-making body, there are provisions intended to ensure the accountability of the commission and commissioners. These include:
 - the mayor's appointment and removal of liquor commissioners, subject to council approval;
 - applicability of city ethics code requirements to the commission;
 - submission of an annual report to the mayor, who may request that specific issues be addressed within the report;

- administrative attachment of the commission to the Department of Budget and Fiscal Services provides for budget and fiscal oversight by the city administration; and
- city council's authority to control all of the commission's expenses by ordinance.
- The Honolulu Liquor Commission's adjudication responsibilities may hinder its ability to effectively oversee the administration of the commission's functions.
- Many responsibilities are appropriately delegated to the administrator for implementation, but the commissioners lack the communication and orientation to effectively oversee the administrator's actions.
- There are insufficient published policies and procedures to assist the commissioners in fulfilling their duties.
- The exempt employee status of the administrator may not be warranted and appears to limit commissioner oversight.
- Commissioners do not make effective use of evaluation and review processes to assess the performance of the administrator.

Finding 2: Management continues to be hampered by ineffective operational practices. While a number of steps have been taken to address past problems, a number of issues either have not been addressed or are being ineffectively pursued. As a result, the potential effectiveness of the commission to perform its duties is hampered.

- Senior management's actions undermine supervisory-level staff. Supervisory decisions are overridden by senior management with no explanation, and may occur without informing supervisors.
- Administrative services section personnel report that they are "micromanaged", with experienced staff no longer able to make decisions without consultation.

- Effective communications continues to be lacking. Staff report that attempts to communicate are discouraged and there are few effective channels to communicate with management. Communications or suggestions are often perceived as hostile, and staff lack involvement with operations.
- Policies, procedures and other written directives and documentation are lacking and outdated.
- Personnel-related decisions do not appear to be made in the best interest of commission operations. Position vacancies are not aggressively pursued. An essential management position remains vacant. Purported efforts pertaining to reallocation and/or repricing of positions have not been pursued. Other initiatives to secure personnel resources necessary for effective operations have been ineffective.
- The commission's training programs for staff, commissioners and licensees are inadequate and disjointed. Training of commissioners is primarily on-the-job with little formalized training of published operational guides. Staff training continues to lack coordination and the effectiveness of licensee training is questionable.
- The commission's administrative management is reported to be unresponsive and unsupportive of staff.
- While advocating the need for creation of an internal affairs review process, there is little indication that management has been actively pursuing its implementation.

Issues Requiring Further Examination

During the course of our review, we identified a number of issues or concerns that could not be addressed in this review. However, these issues may have a significant impact upon the commission and we recommend that the following be reviewed in further detail.

- Current practice permits the transfer of a portion of collected fines to be transferred to the county general fund. Funds from fines are used for educational purposes. Given concerns with the adequacy of

existing training programs, diversions of fines to the general fund may not be advisable.

- Auditing licensees is an essential element of the commission's responsibilities. The commission as presently configured cannot fulfill its audit-related responsibilities.
- The transfer of the liquor control enforcement investigation responsibilities to the Honolulu Police Department has been suggested as one option but requires resolution of a number of functional issues. These functional issues should be examined before a decision is made.

Recommendations and Response

We recommended that the Honolulu Liquor Commission:

- work proactively with the liquor control administrator to adopt specific goals and objectives for job performance; and
- ensure that senior management takes steps to implement effective open management and communication practices.

We also recommended that the liquor commission direct the liquor control administrator to ensure that:

- thorough, consistent training programs are implemented and properly documented;
- a staff reorganization plan be completed within an agreed upon time frame; and
- all necessary steps are taken to fill the deputy administrator position.

We further recommended that the liquor commission initiate actions to:

- assess the concept of creating an adjudication board separate from the commission;

- at a minimum, propose charter amendments to re-classify the administrator position as an excluded class position;
- study the feasibility of transferring liquor enforcement investigatory responsibilities to the Honolulu Police Department; and
- thoroughly review the commission's auditing of licensees and allocation of funds from liquor violation fines by the Department of Budget and Fiscal Services' Internal Controls Division.

We recommended that that liquor control administrator should:

- work proactively with the liquor commissioners to identify and fill necessary vacant positions;
- ensure that administrative directives and other policies and procedures are reviewed and updated;
- implement, with review and approval of the commissioners, an internal affairs review process; and
- ensure that budget preparation guidelines accurately reflect the commission's self-sustainable position.

Finally we recommended that the mayor should:

- ensure that liquor commissioner nominees fully understand the requirements, ethical obligations and workload time demands implicit in accepting a nomination; and
- quickly and thoroughly review questions concerning liquor commissioners' behavior.

In response to our draft audit report, the Honolulu Liquor Commission reported that the commissioners and commission administration accept and will undertake to implement each of the recommendations listed in the draft audit report. The commission noted that it has initiated work on a comprehensive long-range strategic plan and intends to utilize the audit report to supplement the ongoing strategic planning process.

Furthermore, the commission commented that, to effectuate a proactive management team approach to changes needed, it must include entities

external to the commission that are integral components of these governmental processes.

Finally, we are encouraged that the commissioners and commission administration have committed to undertake the recommendations in the audit but emphasize that the commission must assume the leadership and responsibility for implementation of needed organizational and operational changes.

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Chapter 1

Introduction

This audit was completed pursuant to the Honolulu City Council's Resolution 03-223, requesting that the city auditor review the investigative and enforcement functions of the Honolulu Liquor Commission. The resolution requested that the audit include, but not be limited to: 1) the management controls used by the liquor commission to safeguard the investigative and enforcement functions from abuse, misconduct, and criminal acts; and 2) the state statutes, city charter provisions and city ordinances that would need to be amended, repealed or adopted in order to reform the liquor commission's investigative and enforcement functions.

The city council, in requesting the audit, noted that eight liquor commission staff had been indicted on federal charges of extorting and accepting bribes from establishments they were supposed to investigate. The council member who introduced the resolution noted that the indictments are indicators of the need for major reform and changes in operations, but do not identify the root cause or problems that need to be addressed.

We selected the Honolulu Liquor Commission's organizational structure and personnel management practices as the focus of this audit because these are essential elements in the effective management of the liquor commission and both directly affect the performance and function of the commission in the fulfillment of its responsibilities.

Historical Overview

The Territorial Legislature originally formed the liquor commission in 1907 with the adoption of Act 119. Act 119 provided for the creation of county board of license commissioners, appointed by the governor, and represented the first decentralization of liquor regulation to the local government level. In 1918, the liquor commission was terminated when the United States Congress imposed prohibition in Hawai'i as a war measure. The prohibition was extended in 1921 when the provisions of the National Prohibition Act of 1919 were extended to Hawai'i. In 1933, the Territorial Legislature through Act 33 reauthorized the creation of county-level liquor commissions in anticipation of the end of prohibition. The liquor commission has existed in a variety of configurations since that time. Prior to 1965, the liquor commissions

were formed at the county level, but the appointment authority to fill commission positions was vested in the governor (both territorial and state). The operating costs of the commissions were offset by revenues from the commissions' licensing and enforcement practices with excess funds going to the General Fund of the State Treasury.

In 1965, as a result of Act 172, Session Laws of Hawai'i (SLH) 1963, the power to appoint members of the county liquor commissions was transferred to the counties, and the commissions were re-established under county regulatory and fiscal control. Mayor Neal S. Blaisdell placed the Honolulu Liquor Commission in the Department of Finance as a "separate division" in the Mayor's Directive No. 142, dated December 28, 1964.

In 1973, Honolulu's city charter was amended, and formally attached the liquor commission to the Department of Finance for administrative purposes, noting that the duties and functions of the commission shall be as provided by law. With the 1998 citywide reorganization, the commission became administratively attached to the new Department of Budget and Fiscal Services, which assumed many of the functions of the former Department of Finance.

Prior legal opinions noted that the director of finance – and now budget and fiscal services – has the power of oversight (review and approval) over all budget requests. While the Honolulu Liquor Commission has control over its personnel-related issues, the city administration – through the budget and fiscal services director – exercises some influence over the commission on personnel matters and operations through the budget review and approval process, including those related to hiring and compensation of commission staff.

Prior to 1990, Section 281-17(4), Hawai'i Revised Statutes (HRS), provided the commission with the sole jurisdiction, power, authority and discretion over commission staff. Act 171, SLH 1990, shifted the authority over commission personnel to the administrator of the liquor commission. Today, the commission retains the authority to appoint and remove the administrator but all other staffing decisions rest with the administrator.

The administrative rules of the liquor commission are subject to the review and approval of the mayor. Liquor commission rulings are not subject to mayoral review but may be appealed through the judicial process in accordance with state statute. While the statute permits liquor

commissions to be established at the county level to enforce state liquor regulations, each county's mayor has the power to appoint the commissioners with city council approval. The unique jurisdictional status of the liquor commission has been a source of concern because there is a perceived lack of oversight due to the state/county role in the creation and administration of the liquor commissions.

The Honolulu Liquor Commission is responsible for the enforcement of state liquor laws within the City and County of Honolulu. This includes the licensing of facilities, monitoring compliance with the laws, and enforcement of legal requirements by liquor licensees. Some of the commission's activities can be naturally conducive to abuse and illegal activities if not properly overseen by monitoring and enforcement, as evidenced by a recent incident involving about 40 percent of the authorized enforcement services section staff positions.

In 2002, six investigators and two supervisors, or approximately 80 percent of the night shift enforcement investigators employed by the Honolulu Liquor Commission were indicted and subsequently either pled or were found guilty of federal extortion and/or fraud criminal charges. Since the 2002 indictments and convictions, the Honolulu Liquor Commission worked with a managing director's task force to identify, address, and implement operational changes to minimize the potential for similar criminal activity. However, it appeared that the work of this task force stopped in late 2002 and did not reconvene until early 2004. News articles reported that former Commission Chair John Spierling was instrumental in leading reform efforts within the commission, but Mr. Spierling died in May 2004. Commissioner Dennis Enomoto was elected the chairperson of the commission effective July 1, 2004.

In addition to issues with liquor commission staff, there have been periodic issues with individual commissioners, ranging from apparent conflicts of interest to other issues affecting their ability to serve in the capacity of commissioner. There also have been operations issues, including problems with collecting outstanding fines. In response to this issue, commission management has contended that much of the fines are uncollectible and that it needs to improve its practice of writing off uncollectibles.

During the 2004 state legislative session, bills were introduced to vest the counties with the authority to control their respective liquor commissions. The rationale for the proposed legislation was that the existing statutes afford no practical statewide or county oversight over the operations of

the commissions. The governor and the Hawai'i State Association of Counties supported these measures; however, liquor industry representatives voiced concern over the proposed legislation. The proposed legislation was not acted upon by the legislature. Similar legislation is proposed for action in the current (2005) legislative session.

In addition, then Mayor Jeremy Harris publicly endorsed the concept of transferring the enforcement and inspection functions of the Honolulu Liquor Commission to the Honolulu Police Department. However, this proposal met with staffing and operational concerns by the police department, including its reluctance to assume these additional functions.

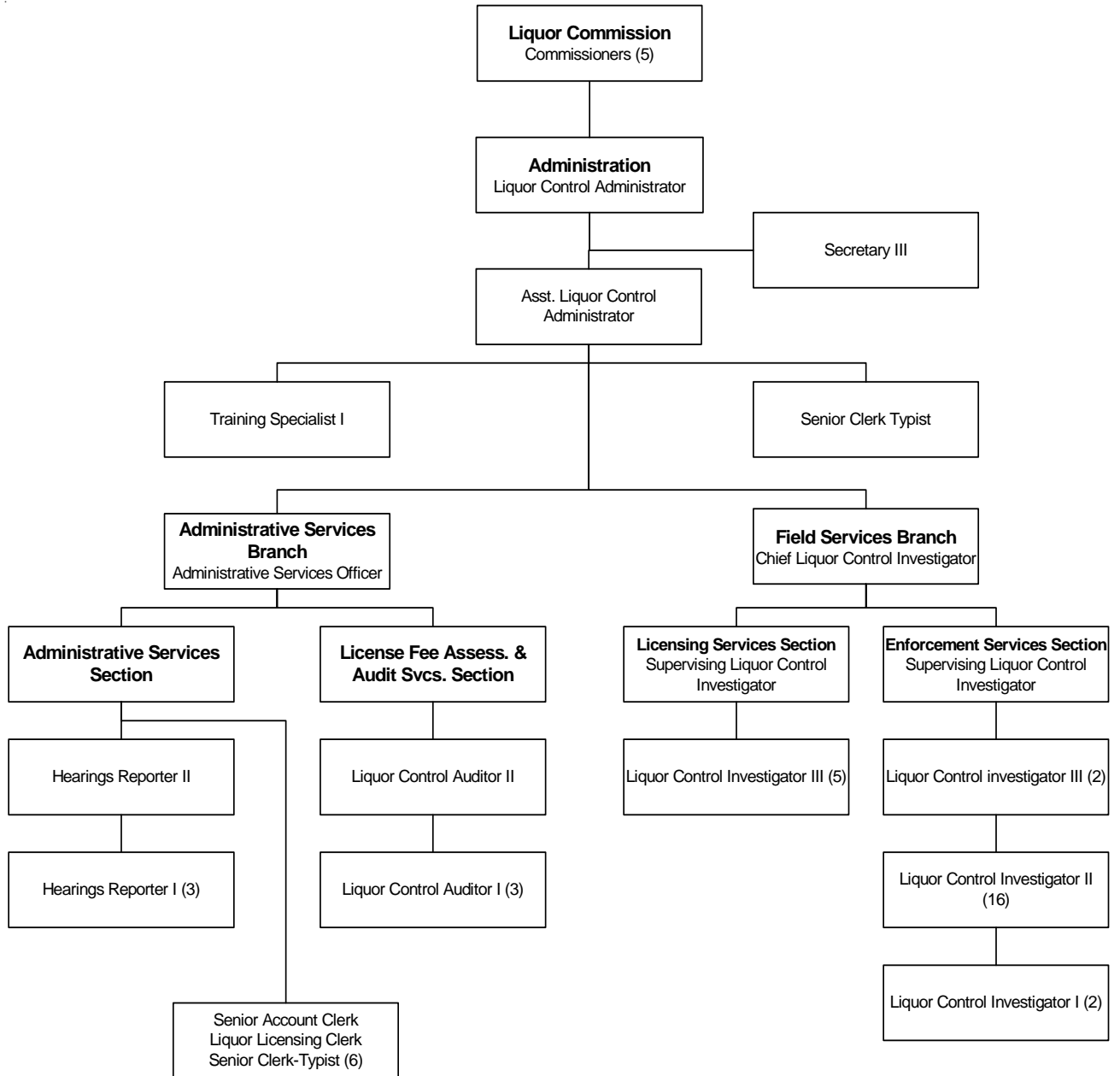
Most recently, it was reported that the Federal Bureau of Investigation was again reviewing the records of the Honolulu Liquor Commission for an as-of-yet undisclosed purpose.

Liquor Commission Administration

The Honolulu Liquor Commission is headed by five commissioners and has sole jurisdiction, power, authority and discretion to grant, refuse, suspend and revoke any license for the manufacture, importation or sale of intoxicating liquor within the City and County of Honolulu. In Honolulu, the commission also administratively hears and adjudicates liquor control violations committed by liquor licensees. Each commissioner is nominated by the mayor and confirmed by the city council. Commissioners serve for an initial five-year term and may be nominated to serve an additional term for a total service term of up to 10 years. The service terms of the commissioner positions are staggered, with one position coming up for appointment each year. Commissioners whose terms have expired continue to serve in a holdover capacity until their replacements have been nominated and confirmed.

An administrator is hired by the commissioners and is responsible for the overall operations of the commission. The commission itself is broadly divided into two functional sections, the Administrative Services Branch and the Field Services Branch. Administrative services includes support for commission meetings, processing of licenses and server registration, audits of licensees and general support services for the commission's activities. Field services includes licensing servicing, which completes background and other research in conjunction with licensee applications and adjudication of violations, and enforcement services that involve the review, inspection, and citing of licensees found in violation of the liquor laws. The current organization of the liquor commission is shown in Exhibit 1.1.

Exhibit 1.1
Organization Chart of the Honolulu Liquor Commission



Source: Honolulu Liquor Commission

Liquor commission is required to be self-sustaining

The liquor commission is authorized under Section 281-17, HRS, to determine the amount and manner of payment of fees for the licenses and permits and filing fees held in conjunction with the fulfillment of the requirements of the statute. Fees and other funds collected, with the exception of fines, are used to offset operational costs of the commission, and are subject to review and approval of the mayor and city council. The commission charges license, filing and photo identification fees in conjunction with its normal work. Section 281-17.5(b), HRS provides that these license fees and any monies collected are to offset the costs and expenses directly relating to operational and administrative costs incurred by the commission in performing its duties. However, Section 281-17.5(e), HRS, provides that any funds in excess of 20 percent of the commission's current budget shall be returned or credited annually to existing licensees.

Section 281-17 (3), HRS, provides that any educational programs be limited to licensees and their employees and that these programs be financed from monies collected from the assessment of fines against licensees. While it appears that educational programs must be funded from fines, their use may not be limited only to education purposes. The commission has requested an interpretation from the Department of the Corporation Counsel on this matter, but management reports that an opinion has never been rendered.

Fees and fines collected by the commission are deposited into the Liquor Fund. Funds deposited into this fund are transferred into the county general fund to pay for the administrative and operating costs of the commission. The commission may propose adjustments in the fee structure, but must demonstrate that the increases are necessary to meet operational requirements of the commission.

The city administration can also assess a management fee equivalent to five percent of income for support services provided to the commission. Exhibit 1.2 shows the commission's revenue collections and Exhibit 1.3 illustrates the commission's current expenditures.

Exhibit 1.2
Liquor Commission Revenue Sources and Amount

FISCAL YEAR	LICENSE FEES	FILING FEES	FINES	PHOTO ID	MISC	TOTAL RECEIPTS
FY1999-2000	\$2,475,471	\$2,200	\$247,200	\$122,680	\$10,661	\$2,858,212
FY2000-01	\$2,529,116	\$8,200	\$200,825	\$115,720	\$7,265	\$2,861,126
FY2001-02	\$2,571,142	\$4,600	\$204,045	\$105,940	\$19,679	\$2,905,406
FY2002-03	\$2,498,241	\$3,600	\$334,170	\$125,640	\$30,303	\$2,991,954

Source: Department and Agency Reports, City and County of Honolulu

Exhibit 1.3
Liquor Commission Expenditures

FISCAL YEAR	SALARIES & WAGES	CURRENT EXPENSES	EQUIPMENT	TOTAL
FY1998-99	\$1,400,883	\$333,810	\$16,655	\$1,751,348
FY1999-2000	\$1,685,953	\$349,686	\$26,001	\$2,061,640
FY2000-01	\$1,539,427	\$408,246	\$40,285	\$1,987,958
FY2001-02	\$1,611,300	\$682,451	\$19,402	\$2,313,153
FY2002-03	\$1,492,551	\$714,482	\$17,363	\$2,224,396

Source: City and County of Honolulu, Executive Program and Budget Reports

Objectives of the Audit

1. Review and assess the organizational structure of the Honolulu Liquor Commission in meeting its responsibility to implement the provisions of Chapter 281, Hawai'i Revised Statutes.
2. Review and assess the personnel management practices of the Honolulu Liquor Commission.
3. Make recommendations as appropriate.

Scope and Methodology

We reviewed Chapter 281, HRS, the rules and regulations of the Honolulu Liquor Commission, and the resulting interpretation and application of management principles and practices as they affect the operations of the commission. Our primary focus was an examination of these rules and laws and their effect upon the commission's administrative functions—the day-to-day administration and internal management, the enforcement, oversight, and execution of rules and regulations, and the education, monitoring and training of staff. We reviewed the financial operations of the commission only to the extent of our review of the commission's personnel administration.

We reviewed past, current, and any planned personnel management practices and how they address personnel management issues identified in previous audits as areas for concern for the commission. We also reviewed previous management audits and internal reviews to assess the extent that previously identified problems/issues have been addressed. We also examined past, current, and proposed organizational structures and proposals for change concerning the Honolulu Liquor Commission.

We conducted a review of relevant documentation, including the liquor commission's policies and procedures, annual and other reports, budgets, revenue and expenditure documents, evaluation reports and plans, and legal and other documentation relating to the commission's fulfillment of its mission.

We conducted interviews with liquor commissioners, commission administrative staff, personnel from other related agencies, such as the Honolulu Police Department, the Departments of Budget and Fiscal Services and Human Resources, licensees and other persons or entities identified as involved with liquor control, regulation and use.

We also conducted on-site observation and reviews of the commission meetings, and staff functions. We conducted a search of Internet and other literature sources to identify other industry information or commonly utilized practices and standards.

This audit was conducted from September 2004 to February 2005 in accordance with generally accepted government auditing standards (GAGAS).

Chapter 2

Inadequate Management and Oversight of the Honolulu Liquor Commission Hampers the Ability of the Commission to Effectively Fulfill Its Responsibilities

Oversight and management of the Honolulu Liquor Commission are inadequate. The commission has lacked the necessary leadership and guidance to implement changes and proactively address the challenges it faces. These inadequacies affect the entire commission organization and are not limited to its investigatory enforcement responsibilities.

Furthermore, ineffective personnel policies and management, coupled with the negative perception of commission management, have hampered the agency’s small and hard-working staff and also hinder the ability of the commission to effectively achieve its mission.

Hawai‘i has had a long history of “shared control” over liquor regulation, from county liquor commissions to state laws regulating the social use of liquor. Today, the Honolulu Liquor Commission continues to be charged with the responsibility for enforcing state liquor laws in the City and County of Honolulu. In 1963, the power to appoint the county liquor commissioners was transferred from the state to the counties and placed the county liquor commissions under county regulatory and fiscal control. We found that this arrangement ensures that statewide public interests related to the use and control of alcohol are addressed while permitting each county some degree of administrative autonomy to determine how best to apply and enforce liquor laws within their county. While issues of “home rule” have been a pertinent, ongoing issue, we found that the most problematic issue today – the lack of adequate oversight over the management and operations of the commission – can be reasonably addressed under existing laws governing the commission’s operations.

Summary of Findings

1. Overall, we found that the oversight and management of the Honolulu Liquor Commission are inadequate and require improvement to ensure that the commission fulfills its responsibilities pursuant to the provisions of Chapter 281, Hawai‘i Revised Statutes

(HRS). However, we found that there is sufficient latitude within Chapter 281, HRS, to effectuate the changes needed.

2. We also found that management continues to be hampered by ineffective operational practices. While a number of steps have been taken to address past problems, a number of issues are either not addressed or are being ineffectively pursued. As a result the potential effectiveness of the commission to perform its duties is hampered.

Oversight and Management of the Honolulu Liquor Commission are Inadequate

Issues surrounding the oversight and management of liquor commission can be complicated due to the statewide nature of the liquor control statute, and the unique status of these commissions and boards in relation to state and county governmental bodies, given the nature of individual county level implementation of regulations and controls. Since counties are afforded the ability to administer the program as appropriate to the needs of the home county, we believe that the concerns regarding the operations of the Honolulu Liquor Commission can be addressed under the existing legal framework. However, it will take a renewed commitment from all of the stakeholders to exert proper management oversight over the operations and management of the Honolulu Liquor Commission.

State laws ensure statewide consistency while promoting local control

Similar to other states, Hawai‘i attempts to minimize the problems associated with the social use of intoxicating liquors through a statutory system of control implemented by the individual counties. The state’s delegation of this responsibility to the counties is implicit in the power of counties to create county liquor commissions or liquor control boards as defined in Section 281-11, HRS. The county police powers specified in Chapter 46, HRS, county charters and ordinances further recognize that counties have the necessary legislative authority to fulfill these responsibilities through its power to legislate in the interest of health, safety, and welfare.

The authority for counties to regulate alcohol is specified in Chapter 281, HRS, which provides a limited, uniform framework of regulating intoxicating liquors. The primary focus of Chapter 281, HRS, is on liquor sales and usage restrictions, and in prescribing the proper scope of liquor-related business and licensing. It also provides administrative, structural guidance to the counties but limited guidance on

implementation or objectives to be met. Chapter 281, HRS, sets forth a policy preference that liquor control is best implemented at the county level through county administrative boards with discretion in their organization and implementation to meet these control objectives. Although there is no apparent interface between county liquor commissions and the state government, in terms of reporting or oversight, the prescriptions and prohibitions of Chapter 281, HRS, are intended to provide a uniform administrative structure and control foundation sufficient to implement liquor control at the county level. The establishment and operation of the individual county liquor commissions and adjudicative boards in accordance with the provision of Chapter 281, HRS, is evidence of the counties' acceptance of the delegation and the responsibility to regulate intoxicating liquors within their separate jurisdictions.

County oversight over the liquor commissioners exists

The establishment of a liquor commission is intended to protect the health, safety and welfare of the respective county by regulating intoxicating liquors. While the state retains plenary statutory authority over the liquor commissions and the power to change or reform the current regulatory scheme, flexibility is afforded each county in the manner in which liquor laws are administered. The authority for liquor commissions with the counties promotes “home rule,” and as a result, implementation in each county level may vary. In providing this flexibility, there are a number of specific provisions granted to the counties that afford administrative oversight over the operations and management of the commissions.

There is no statutory authority or rule that indicates that the council, mayor, or any executive officer may dictate a regulatory agenda or prescribe the activities of the liquor commission. This creates a degree of autonomy for the commission, preserves the independence of the liquor commission as an administrative decision-making and rule-making body that may make legally binding rules and decisions, and promotes the ability to set its own regulatory agenda to fulfill its regulatory purposes. However, there are other provisions to hold commissioners accountable for ensuring that their regulatory responsibilities are being upheld.

Mayor possesses control and oversight responsibility over commission

Section 281-11, HRS, gives each mayor the authority to appoint and remove persons to serve as liquor commissioners subject to the advice

and consent of the county council. The mayor is also empowered to initiate actions to remove commissioners when warranted.

Overall county administrative oversight and review is built into the commissioner appointment and removal process. County liquor commissioners are appointed by the mayor and approved by the city council. Under existing procedures, one of the commissioner positions is normally available for appointment on an annual basis. Thus the mayor and city council can exert influence and oversight upon the composition of the commission through the commissioner selection and approval process.

In addition, the mayor with the approval of the city council may remove a commissioner. The existence of this provision implies that a commissioner position has performance conditions, duties or responsibilities related to the position, as well as accountability to the respective county mayors and councils for the duties and responsibilities delegated. While there are safeguards present to protect the commissioner selection and approval process from undue political influence, it is clear that some level of executive review of each commissioner's performance is also intended by the powers related to the possibility of appointment and removal of commissioners from service.

Diligence is needed in selection of commissioners

The mayor has an implicit good faith obligation to appoint commissioners who are qualified to fulfill the regulatory purposes of the commission. The statute prohibits the appointment of commissioners who are currently either in or possess interests in businesses that manufacture or sell liquor. Even after appointment, the restriction on non-participation in the liquor business for commissioners is ongoing and should be monitored. In addition, commissioners or potential appointees cannot hold elected political office or seek political office coincident to their service on the commission. If such disqualifying incapacities occur, the mayor is to proceed with the removal of the offending commissioner with the advice and consent of the council. This imputes control responsibility on the mayor over commissioners to avoid and prevent ethical violations.

Commissioners face considerable ethics and time commitment requirements.

Each member of the liquor commission must swear a public oath to execute the duties of a commissioner according to law. This oath

triggers other county officer status and related obligations as accorded by state and county laws, especially those related to matters such as conflict of interest, gifting, and ethics. These good government obligations are particularly important because commissioners can easily be exposed to ethical issues and situations on a daily basis. In addition, commissioners meet on a weekly basis, and have considerable requirements necessary to diligently perform their duties.

As a matter of policy, the commissioners and administrative staff are bound to act according to the standards of conduct in Article XI of the Honolulu City Charter. This section of the charter requires the Honolulu Liquor Commission, its members and employees to act according to the highest standards of ethical conduct, serve the public interest, and put the public interest first. Additionally, with respect to the City Ethics Code, the commissioners of the Honolulu Liquor Commission are considered officers, and the commission's administrative staff members are considered employees of the city. Thus both the commissioners and the administrative staff are required to both undergo training on and act appropriate to the prescribed standards of ethical conduct. Such training is not only intended to inform commissioners and staff of their responsibility but also to ensure that they are held to the ethical standards expected of city officers and employees.

Accountability of commissioners should be monitored

As noted above, the mayor has the power to remove commissioners from office. Though the conditions for removal are not specifically enumerated in the section related to removal, it is reasonable to conclude that commissioners could be removed for dereliction of their duties, not abiding by the legal restrictions on personal enterprise and affiliation, requirements for ethical behavior and supervision, and other reasons that have rendered them unable to fulfill the role of a commissioner.

A review of news articles, previous reports and testimonial evidence shows that there has been periodic concern that individual commissioners have exhibited inappropriate behavior. Failure to track and review such concerns has the effect of undermining the public's confidence in commissioners' ability to faithfully perform their responsibilities. It is therefore essential that the mayor ensure that the performance of commissioners is tracked and that allegations or concerns about improper behavior are quickly and adequately addressed. In one instance, a commissioner found to be in violation of the ethics code failed to correct the condition after being advised to do so. There are other reported conflicts, including a former commissioner soliciting licensees

for business purposes, to allegations of commissioners accepting free food and drinks from licensees. While allegations may or may not be substantiated, the existence of such impressions among the public and commission staff does little to advance accountability for the work of the commission.

County oversight over its local liquor commission also exists

In addition to the oversight provided to the county in the power to appoint and remove commissioners, there are also several provisions that provide some degree of input and oversight of the operations of the commission as well. These oversight provisions are found in the nature of the administrative attachment of the commission and the resulting influence upon the budgetary process of the commission.

Mayoral review of annual report

Additionally, the commission is required by law to submit an annual report of its operations and business activities to the mayor. Furthermore, Section 281-15, HRS, provides that the mayor may request that certain issues be addressed within the report. The generality of the clause, “*with such other matters of information and comment as the elected executive head may deem appropriate*” provides the mayor with direct authority for ongoing executive review and promoting accountability from the commission. Also, in accordance with the provisions of Chapter 91, HRS, the mayor has the power to review and approve administrative rules of the liquor commission. While commission decisions pertaining to licensing and adjudication are not subject to such executive review, it appears clear that the ability and opportunities for administrative oversight exist for the mayor’s exercise and discretion, especially as it relates to issues or matters of concern relating to the commission and its operations.

Limited executive control by administrative attachment

The Honolulu Liquor Commission is administratively attached to the Department of Budget and Fiscal Services. The concept of “administrative attachment” refers to the relationship created between a department and a commission or board by assigning it to a department for administrative purposes. Administrative attachment in practice results in similar treatment of the liquor commission as if it were a division under the control of the budget and fiscal services department with respect to certain administrative matters. However, matters such as personnel administration or pursuit of its administrative agenda are left to the commission’s discretion. However, because the department may

exercise budget and fiscal oversight, the department in effect can exert considerable influence over the personnel of the commission. In addition, current protocol requirements require that the liquor commission copy its communications to the mayor and the department, which could provide additional information and an opportunity for administrative oversight over the commission.

Departmental and council level budget oversight exists

The liquor commission prepares and submits its financial requirements and budget requests to Department of Budget and Fiscal Services for review, approval, and inclusion within the department's budget. As another layer of review, the council through the legislative budget process can also provide a significant basis of review over the liquor commission by exercising its funding discretion, including the possibility of placing conditions and criteria on funding.

In addition, the council has the authority to control by ordinance the payment of all expenses of the commission, including member expenses and compensation, and staff expenses and compensation in accordance with Section 281-16, HRS. It also has the authority to direct fees and other moneys collected by the liquor commission to a special fund, which was created in 1978 to pay for the commission's operational and administrative costs. In addition, the budget and fiscal services department has the authority to develop procedures for administration of the commission's special fund account with council approval. These budgetary and statutory practices also provide the executive branch and the city council with the opportunity to influence the operational funding aspects of the commission.

Personnel administration rests with the commission

Section 281-17(5), HRS, grants the liquor commission administrator authority over the personnel administration, its at-will personnel and staff. The administrator possesses the power to supervise the duties of liquor commission employees. Under applicable civil service law and rules, the liquor commission also must implement personnel policies, rules and regulations related to its employees. As the agent of the liquor commission, the administrator is required to apply these in matters of personnel administration. The commission as a body has the sole discretion to appoint, remove, and evaluate the administrator, while the liquor commission and its administrator have joint responsibility to oversee a rational personnel administration system for commission staff based on merit.

Liquor commissioners have policy-making and administrative oversight responsibilities

In general, Chapter 281, HRS, authorizes the Honolulu Liquor Commission to assume police powers to enforce regulations on intoxicating liquors, and to be responsible for the local enforcement of the chapter. These responsibilities are also tasked via delegation from the liquor commissioners to the administrator, with the administrative support provided from commission staff. The Honolulu Liquor Commission has promulgated its own set of rules, the *Rules of the Liquor Commission*, which in addition to the chapter are intended to guide the operations of the commission. In the interest of public health, safety, and welfare, the commission is granted regulatory powers intended to control, supervise, and regulate the manufacture, importation, and sale of liquor through investigation and education. In practice, the commission is responsible for regulating intoxicating liquors by overseeing all licensing, administration, adjudication, and all other related activities to ensure compliance and enforcement of applicable local, state, and federal liquor laws.

With the exception of the commission membership and organizational requirements of Section 281-11, HRS, focusing on commission size, member qualification, and compensation, the commission is empowered through the statute and its administrative rulemaking power to set rules, policies, and practices for its regulatory purposes. Such statutory authority provides counties with latitude to organize their individual commissions for the purposes of Chapter 281, HRS.

Counties have organized differently to achieve the same regulatory purposes. For example, Hawai‘i and Maui counties have chosen to set up organizations with discrete entities for liquor adjudication, liquor control licensing, and administrative services to efficiently administer their regulatory purposes and responsibilities. In contrast, Honolulu utilizes a single commission to administer licensing requirements and adjudicate liquor law violations. Such a single commission offers the potential advantage for commissioners to have background knowledge and familiarity with licensees in adjudication issues. A possible drawback is that the need for commissioners to remain impartial for adjudication purposes may hamper its effective oversight of the commission’s operations.

Adjudication function may hinder administrative oversight

The Honolulu Liquor Commission’s functions as an adjudication board to hear and pass judgment on licensees that have been cited for violations of the liquor laws. Both commissioners and commission administration note that, in order to avoid possible charges of prejudice,

commissioners are kept at arms length from staff that may be involved with the adjudication. This practice is intended to avoid charges of bias. However, as a consequence, the commissioners have been effectively isolated from oversight of commission operations. Staff note that there are few communication avenues available between commissioners and staff to discuss concerns. In order to assure that effective management oversight by the commissioners is necessary, it may be advisable to consider creation of a separate adjudication board such as Maui and Hawai‘i counties have implemented. This permits the commission to assume its oversight responsibilities without fear of prejudicing adjudication cases. While we have not evaluated the financial costs, we note that the additional costs for an adjudication board are fairly nominal, entailing primarily a per diem cost per board member that is approved by the city council. The commission already has in place the necessary support mechanism to support the adjudication responsibilities of the commission. Separation of the adjudication responsibilities from the volunteer commissioners may also encourage them to assume more of the policymaking activities for which they are charged. We found that this practice, coupled with other delegations of duties to the administrator, has resulted in a lack of effective oversight by the commissioners.

Commissioners’ role primarily ministerial and adjudicative

Chapter 281, HRS, stipulates that any action requiring a hearing or public meeting is reserved to the commission. By implication, any other functions or duties may be delegated to the administrator. Rule 17.4 of the *Rules of the Liquor Commission*, notes that in the interest of efficiently meeting its responsibilities, the commissioners may delegate to the administrator duties and functions *that do not require a hearing*. To promote efficient operations, the commissioners have largely delegated duties and functions not requiring a hearing to the administrator. The administrator has further delegated these tasks to various staff personnel. In addition, the administrator also oversees the direct operations of the commission in provision of administrative services and field services. Administrative services are intended to provide support for the commissioners in performing their duties, for licensing and for monitoring fee collections. Field services are intended to provide all inspection and enforcement activities.

This passes the responsibility for the achievement of all other functions from the commissioners to the administrator and administrative staff. This is in keeping with Chapter 281, HRS, which provides that the

commissioners have oversight over the administrator, but the administrator controls all other personnel-related activities. As a matter of administrative oversight, the administrator is directly responsible to the commissioners for administering and achieving the delegated functions and responsibilities.

Communication between commissioners and administration variable in effectiveness

Liquor commissioners constitute the policy and decision-making body of the commission. We found that the reported perceived effectiveness of communications between individual commissioners and the administrator to be quite varied, ranging from very good to uncommunicative and unresponsive. Concern was expressed that commissioners necessarily had to limit communication with some staff in order to ensure that issues relating to adjudication and licensee applications remain at arms length due to the commission's quasi-judicial function. This practice is intended to minimize any opportunities to prejudice or compromise matters that may appear before the commission.

In this situation, commissioners must rely on the administrator to act as the conduit for communications. However, concern was expressed that there is little follow-up and matters that should be communicated back to commissioners are either insufficiently communicated or unresponsive. Another commissioner expressed that the administrator, while guiding improvements in operations, lacks accessibility and has negatively impacted efforts to maintain good communications with staff. While considering issues of personality differences and perception of role, the comments received from both staff and commissioners raise concern that the lack of effective, meaningful communication by the commission's administrative management negatively impacts on the ability of the commission to fulfill its responsibilities.

Oversight of administrator by commission is lacking

The relationship between the commissioners and administrator is intended to promote effective operations by consolidating management responsibility while still maintaining that the commissioners exercise an oversight role. However, this type of administrative delegation can only be implemented through the existence of policies and practices that are operative between the commissioners and the administrative staff. The absence of such formal administrative guidance from the commissioners will make it difficult to provide the necessary oversight and management of the operations of the commission through the administrator.

We found that commissioners, while having differing perceptions of their oversight responsibilities, lacked effective policy and management oversight over the administrator. As a result, commissioners do not exercise effective oversight to ensure that the administrator remains accountable for his actions. Without an effective means to oversee the administrator, commissioners have effectively limited their roles to ministerial and adjudication matters and have become ineffective in providing policy oversight and monitoring on the administration of the commission. To its credit, the current commissioners appear to recognize the need for more effective oversight, stating that a strategic planning effort has been initiated to address management concerns.

Operations of the commission are virtually at the sole direction of the administrator and its management team, and lack an effective avenue to establish goals, measure performance, or oversee operations of the commission. Also, there is no effective means to address and assess present and former staff concerns about management practices.

We have noted a narrow operational application of the powers of the commissioners, where they believe that they only have the direct discretion to appoint and remove the administrator. This provision, in combination with the delegation provision of the *Rules of the Liquor Commission*, Rule 17.4, has been applied to mean that commissioners should have no input into the daily operations or utilization of the administrative staff. In combination with the factors above, this has resulted in reducing the commission's functions to ministerial and adjudicative functions; has expanded the sphere of the administration's control over the key operations and functions of the commission; and has reduced the oversight of the commission over its administration. Commissioners we spoke to felt that generally they were unable to effect or influence staffing and personnel operations of the commission since commissioners are limited in their direct oversight over the activities of the administrator.

Prior to 1990, commissioners had direct authority to hire and fire commission employees. In 1990, this authority was transferred from the commissioners to the administrator. This is not an unreasonable or unusual practice. The administrator is similar to a chief executive or operating officer and in that capacity should have the powers necessary to control the administrative operations of the commission. However, commissioners retain the policy oversight and management responsibilities for the commission. While the 1990 change removed direct control, commissioners are still charged with the responsibility to

ensure that state liquor laws are observed and that commission policies affecting the commission's administrative operations are followed.

While it is clear that the administrative staff is responsible to the administrator, the administrator's responsibility to the commissioners is not diminished or abrogated by the statutory ceding of staff control to the administrator. The responsibility of oversight over the administration logically extends beyond the initial hire or removal of an administrator. It also includes oversight to ensure that the functions of the agency and its regulatory activities and operations as delegated are efficiently performed. This kind of oversight by the commissioners is rationally related to and supports the proper exercise of power to remove or renew the administrator.

Commissioners reported that the administrator and staff have improved the licensing and adjudication process, resulting in hearings of the commission generally proceeding more rapidly and reducing the length of time for the hearings. However, commissioners also acknowledged that they have little knowledge of staff processes and exercise essentially no oversight over the administrator. This relationship appears at least to be tacitly encouraged by the actions of the administrator, who maintains a separation between the commissioners and any oversight of the operations of the commission. We note in a March 4, 2004 letter to the editor that commissioners, through review of weekly reports provided by the administrator, covered all aspects of the commission organization. However, our review of a sample of these reports found that they are primarily statistical reports and do not provide an avenue for effective management oversight.

For example, we found that the content of current internal controls is not evident in the written guidance of the *Rules of the Liquor Commission* or the controlling statute, and is assumed to be a matter of unwritten practice or internal guidance. With the fundamental nature of periodic change and rotation of commissioners, such unwritten practices can easily be lost or changed. Despite this current state of affairs, the ultimate responsibility of achieving the aims of the agency and meeting the state regulatory functions rests with the commissioners. Section 281-17(5), HRS, clearly notes that the commissioners maintain oversight over the administration of the commission to meet its regulatory purposes, and that it meets its duties under the law. To their credit, the commissioners appear to recognize this concern, indicating that they have initiated a strategic planning process to address such concerns.

Employment status of administrator may limit oversight

Commissioners currently believe that the administrator's exempt employee status, with its civil service protections, leaves them with no effective oversight or control over the administrator. As a result, commissioners have done little to influence the personnel management practices of the commission.

We found that the administrator's exempt but included employment status is used and interpreted to discourage commissioner oversight. For example, an annual performance appraisal of the administrator is required under city civil service procedures. While reviews can be a useful tool in measuring performance, we found that the appraisal of the administrator lacks any useful information. The standard civil service evaluation form used by the commission is void of any specific objectives and criteria to effectively measure the performance of the administrator. Thus the commissioners' potential to monitor and ensure the efficiency and effectiveness of the administrator is limited by the commissioners' inability to hold the administrator accountable for his actions and attainment of commissioners' directions. Two commissioners noted to us that the present performance appraisal methodology is ineffective and therefore they did not bother to complete the evaluation form for the administrator.

The evaluation process may be tainted and ineffective because the entire evaluation process appears to be controlled by the administrator. Personnel appraisal forms for the administrator are distributed to the commissioners and collected by the administrator. There also is no collective review or assessment of the administrator's performance by the commissioners apart from this controlled evaluation process.

Exempt status may not be warranted

Problems dealing with the lack of oversight reflect the commissioners' failure to recognize that they can exert oversight and establish accountability goals and objectives as a means to compel the administrator to pursue particular courses of action. This problem appears to be amplified by civil service protections discussed above that are afforded the exempt position classification of the administrator. Civil service protections are intended to ensure that merit principles are employed in a fair, unbiased assessment of the administrator's work performance. While these protections are important, we believe the appropriateness of such a designation should be evaluated. Under existing law, Maui and Hawai'i counties have created equivalent positions that are excluded from civil service. Since the Honolulu Liquor Commission administrator is equivalent to an executive management

position and given the position and responsibilities of the position, there are merits to re-evaluating the exempt status of the position. However, officials of the Department of Human Resources note that in accordance with Chapter 76, HRS, a charter amendment would be required to change the position classification of the administrator. Such a change in the liquor commission administrator's position classification will require this executive-level position to be responsive and align with the policy direction and management of the commissioners – the policy-making body of the commission.

Oversight of administrator possible through evaluation and review

Representatives from the Department of Human Resources confirm that while the annual review of the administrator may utilize a “standardized” evaluation form, the evaluation can be modified to include elements tailored to the liquor commission, such as specific goals, objectives, and expectations of performance of the administrator. The commissioners should work with the administrator to establish clear goals and expectations along with specific performance criteria to be used to evaluate the administrator's progress and performance in achieving such goals and expectations.

Management Continues To Be Hampered By Ineffective Operational Practices

The liquor commission administrative staff is responsible for supporting all activities of the commission, including providing administrative support to process license applications, monitoring and auditing financial performance of licensees, as well as providing related licensing investigatory services. The current administration is led by a senior management team consisting of the liquor control administrator (administrator), assistant liquor control administrator (deputy), administrative services officer and chief liquor control investigator are responsible for directing the overall operations of the commission staff. The deputy position has been vacant for a number of years, and current management has utilized the services of a special assistant to the administrator, who is retained on a temporary contract basis.

In 1988, management and internal control audits conducted by the Department of Finance, and a private investigation company report on the liquor commission identified a number of operational issues that warranted attention. While there was an initial response to the management audit in 1988, it took over 14 years for the commission to follow up, or revisit the findings and recommendations of the audit. The

timing of the follow-up appeared to be prompted by the formation of a managing director's formation of an interagency task force to address operational problems, resulting in part from the federal indictment of eight commission investigatory personnel.

We found that despite a number of steps purported to be responsive to management concerns identified in these audits, management and operations of the liquor commission continue to be problematic. Continuing management concerns, coupled with the lack of effective oversight over the commission's administration, has resulted in the failure to effectively address fundamental operational issues, poor staff morale, and continued concerns that the commission is unable to fulfill its responsibilities.

Problematic supervisory practices

A recurring theme encountered during interviews with present and former staff is that senior management's actions undermine supervisory-level staff. Supervisory-level staff are a key element in ensuring the effective operations of an organization. Liquor commission management has emphasized the importance of the role of supervisory-level staff in the causation and prevention of the type of illegal activities experienced. We found concerns both in the undermining of supervisory authority and failure to delegate authority.

Supervisory personnel reported that senior management would often override their decisions. Such decisions may be made with little rationale provided, and, at times, are made without informing or consulting with the affected supervisor. One example noted that management regularly overturns recommendations or requests for training from supervisory staff without informing the supervisor of the decision or consulting the supervisor prior to the decision. While it is the prerogative of management to make such decisions, the manner in which the decisions to override supervisory-level staff are made and communicated can have a negative effect upon staff morale and the level of trust between supervisors and management.

Within the administrative services section, we found concerns that individuals who had supervisory-type roles were being "micromanaged." For this section, routine decision-making is now concentrated in the administrative services officer position although it was previously left to the discretion of lower level staff. While it is a management prerogative to determine where decisions are made, the apparent concentration of routine decision-making at a higher level may not be efficient or

warranted, particularly when long tenured, experienced employees are involved. Similar concerns were also voiced that decision-making at this level was unresponsive and/or made with no explanation or consultation. Questioning administrative services management by staff on these issues reportedly resulted in closed responses. Again, such behavior can have the effect of lowering staff morale and confidence in the management to effectively oversee operations of the commission. These issues are of particular concern because much of the work in support of the liquor commission's full charge for enforcement of state liquor laws is accomplished through the administrative services section.

Continued communications problems reported

The 1988 management audit found that there was little communication and coordination among staff. Recommendations at that time called for the institution of regular staff and supervisory meetings. An internal review completed in 2002 reported that the commission was in compliance with these recommendations, noting that the recommended meeting had been instituted.

We were provided minutes of monthly supervisory meetings and noted that they were also open to all staff to attend. Supervisors informed us that they routinely informed their appropriate sections of information, as appropriate. We were also told that there are regular senior management team meetings, but no minutes or documentation of such meetings were provided in our request to document the various staff meetings.

We found that despite the institution of regular staff meetings, the majority of existing staff and all former staff members we talked to felt that communication between staff and management was ineffective. Staff reported that communication processes generally are ineffective. There was no process through which staff can provide management with input, to communicate programmatic issues or suggestions to management. When issues or concerns are expressed, management is reported to be unresponsive.

Commission staff noted that although the monthly supervisory meetings are open to all, it is understood that they must have permission to speak up or voice concerns. Concerns or problems voiced are sometimes perceived as hostile by senior management. Several staff commented that management's reaction to such comments or speaking up at meetings usually results in no follow-up action, or comes at the risk of

being labeled as a “disgruntled employee” and risks possible reprisals from management.

Several staff also noted that supervisory meetings include reports on meetings and news, but do not provide guidance or discussion of substantive issues. Non-supervisory staff who attend meetings are not expected to speak or contribute to the discussion without prior approval of supervisory staff. Staff noted that direction from management, specifically the administrator, may bypass lines of supervision. Supervisory personnel may only learn of administrative guidance or a decision from management indirectly from other staff. Concern was also voiced about the lack of transparency in management. While staff acknowledged that some management decisions are appropriately kept at the senior management level, many other decisions that affect common operations and provide guidance and direction would be better supported with the involvement and input from staff.

In a relatively small organization like the liquor commission, which relies on the effective performance of its staff, ineffective communication lowers overall staff morale and hinders the commission from effectively performing its responsibilities. Staff from all areas of the commission’s operations expressed concern that ineffective, closed and even hostile communication patterns stifles cooperation and creates negative feelings that are disruptive to operations.

Observed documentation inadequate as administrative guidance

In organizations such as the liquor commission, it is important to have up-to-date, substantive rules, regulations, directives and other written documentation available for consultation. Such information may be used as a clear guide for direction and actions. Specific directives are useful to guide staff members in the execution of their individual job requirements and ensure that there are clear guidelines provided to monitor and guide staff performance. As part of our review, we requested copies of official rules, regulations and other documents that would attest to the existence of this kind of written administrative guidance. However, we found that what was provided to us was often outdated, no longer applicable, or insufficient to guide staff operations.

Policies and procedures provided included outdated procedure manuals, with content referring to the Department of Finance, which ceased to exist in 1998. During our background reviews, older references were made to “operations manuals” that were provided to commissioners during their training and orientation. Instead, present commissioners

have been given a commission-published booklet of rules and regulations, that is admittedly out-of-date. When queried about additional guides, operations manuals or other written guidance to assist the commissioners in their function, no commissioner was able to produce or demonstrate that such information had been provided.

In comparison, a representative from the Honolulu Police Department noted the importance of administrative directives in the police department. Such directives can be very specific and are intended to provide guidance to staff in proper response to a variety of situations. We were provided a bundle containing approximately 164 administrative directives for commission operations. Staff noted that at one time all staff members had their own administrative directives binder, but that in present practice distribution is at the supervisory level only. We reviewed the directives and found many possessed dated, inaccurate information. For example, Administrative Directive AP-30, *Liquor License Fees, Publication Costs and Filing Fees*, was last updated as of December 8, 1993, but fees were increased in 1995. Administrative Directive L-108, *Licensing Investigators Working Hours and Lunch Hours*, specifically references four employees, none of whom are currently employed by the commission. Administrative Directive, AP-29, *Use of Liquor Commission Vehicles*, dated January 13, 1997, may not reflect current vehicles used by the liquor commission and does not reflect the relocation of Department of Facility Maintenance's Automotive Equipment Service's move to Halawa Valley. In addition, directives covering topics such as parental leave, use of cellular telephones, Polaroid cameras, and even mileage reimbursement appear to be outdated. One staff noted that the current administrator does not appear to utilize the administrative directives.

Staffing issues not aggressively pursued despite vacancies in critical regulatory areas

The liquor commission has been hampered by a lack of sufficient staffing in a variety of areas to effectively perform its functions. The commission is responsible for a wide range of activities relating to enforcement of state liquor laws. However, we found that staffing shortages and other personnel practices negatively impact the ability of the commission to fulfill its responsibilities. To its credit, commission staff have demonstrated flexibility and dedication in being willing to accommodate the needs of the commission. However, there are operational limits to an agency that is understaffed.

Continuing deputy administrator vacancy affects organizational continuity

The current administration has elected to keep the deputy position vacant since the former incumbent retired in 1998. Noting that a pending review of its organizational structure was underway, administration created a temporary contract position, special assistant to the liquor control administrator, to assist the administrator while the pending design of the reorganization was completed.

After more than six years, there has been little progress in completing the proposed reorganization. Recent reorganization proposals have not presented any feasible restructuring that would either redefine or significantly alter the function and purpose of the deputy position. Moreover, there are still no efforts to fill this position. In December 2003, a commission status reported indicated that the commission management expected to fill the deputy position during Spring 2004. This did not happen, and there is an unwarranted continuing reliance upon the temporary contractual special assistant position to fulfill the duties of the deputy.

The official position description describes the deputy position's responsibilities as:

"Under the general supervision of the Liquor Control Administrator, this position assists in the overall administration of the office of the Liquor Commission with primarily responsibility for daily operations; assists in reviewing, planning, developing, and administering the policies and rules relating to the operation of the Liquor Commission; administers the overall programs of the licensing, investigative/audit, regulatory/enforcement and administrative services activities of the Liquor Commission; assumes the duties of the Liquor Control Administrator in his/her absence."

The deputy position is intended to be able to step in and fulfill the functions of the administrator on an as-needed basis and promote continuity of organizational leadership. While there may be a need to adjust the specific job description and duties of the deputy administrator position, the importance of the position as the first back-up position to the administrator remains unchanged.

The special assistant performs a limited range of duties, which are directed by the administrator and is not subject to the same selection

criteria and review afforded the deputy position. There has been discussion to convert the special assistant position to a permanent special counsel to the administrator position. However, no evidence was presented of any attempt to pursue this option. While the special assistant can serve a useful function for the administrator, as a temporary contractual position, it does not provide assurance of continuity and uninterrupted operations.

With the continued vacancy, the chief liquor control investigator, the administrative services officer, and the special assistant have at various times been called upon to fulfill the administrator's position. While all positions in the commission include "other duties as assigned", the effect of this continuing vacancy is to unnecessarily place additional demands upon existing positions that should be handled by the deputy position and results in the assignment of organizational leadership authority in unpredictable or arbitrary ways.

In addition, the failure to fill the deputy position results in a perceived leadership vacuum in management. Liquor commissioners in their oversight role may find it difficult to terminate the administrator without potentially seriously handicapping the operations of the commission. Commissioners in their decision-making process should not be restricted because of a perception that the administrator is indispensable to the operations of the commission. Organizations need to maximize the ability for continuity of operations within its organizational limits. The continued failure of the commission to fill the deputy position is contrary to this practice.

Some personnel assignments and allocations appear arbitrary and unresponsive

In 2001, the administrator noted that management wished to explore the concept of a multiskill worker concept in administrative services and support areas. Under this concept, staff would be cross-trained to serve in a number of capacities as need demanded. Staff, in these areas we interviewed, noted that they are asked to perform in such a multiskill capacity. However, formal efforts have not been initiated to effectuate such a change and staff does not appear aware that such an adjustment is being contemplated. Use of a multiskill worker concept implies a flatter, more equitable personnel classification system since skills and training would be more equalized. If in fact the commission is implementing such de facto assignments of personnel, there are formal civil service and position adjustments required that have not taken place.

In July 2002, the commission requested the upward reallocation of its liquor control investigators. The administrator reported to us in August 2004 that he understood it had been turned over to the managing director's office but was not aware of the status of the request. However, as far back as September 2002, the managing director had requested to be advised if he needed to "prompt" the budget and fiscal services department with respect to personnel actions. The Department of Human Resources noted receipt of the request, noting the request was routed to the Budgetary Administrative Division of the Department of Budget and Fiscal Services in accordance with standard administrative procedures. The requests were returned to the liquor commission by the budget and fiscal services department on March 4, 2003 to respond to various questions about the duties and responsibilities of the new positions. As of December 2004, the reallocation requests had not been resubmitted to the Department of Human Resources.

Liquor commission personnel also reported that requests to *reprice* (instead of reallocate) or adjust salaries of various positions, based on justification of additional duties and responsibilities, have never been acted upon. The Department of Human Resources noted that five repricing requests had been received during a 15-year period from FY1985-86 and FY1999-2000. The decision in each of these cases was that the current salary ranges were appropriate to the duties of the positions. Human resources personnel report that since 2002, all requests for repricing are now the responsibility of the appropriate collective bargaining unit. There is no longer any obvious role for the liquor commission to initiate repricing requests. Department of Human Resources reported that to their knowledge no unions have yet sought to initiate repricing negotiations.

Understaffing of audit function diminishes key commission regulatory function

During the course of our review, we found that the commission's audit function was staffed with only one auditor. The current official organizational structure calls for three in-house auditors with an additional supervisory auditor, all under the general supervision of the administrative services officer. A commission audit can be a detailed operation involving the physical inspection of licensee premises as part of its review. One management staff member noted that the goal is to complete an audit of all licensees once every five to ten years, even though the commission lacks a schedule for tracking of such audits. Another staff member noted that informal audits of licensees are

generally conducted on a once every ten-year cycle. It was reported that only about 25 audits are completed annually.

Given that there are approximately 1,400 licensees on Oahu and assuming that 25 audits are completed each year, it would take approximately 56 years to complete an audit cycle of each licensee. Even if all audit positions were filled, it would still require 14 years to complete an audit cycle related to adherence of licensees to regulatory criteria.

The audit of licensees is an essential element of the commission's responsibilities to ensure compliance with liquor laws. However, there appears to be no organized effort to ensure that all licensees are audited on a regular and timely basis. Current staffing shortages exacerbate this situation. While there was continuous recruitment to fill the vacant auditor positions, staff report that finding qualified personnel willing to apply for the commission auditor positions has been time consuming. Moreover, staff involved with auditing licensees report that there is little supervisory guidance over their work.

Initiatives to secure necessary resources ineffective

Commission management also reported that the commission has been subject to staff vacancy cutbacks that were in place for the entire city. When asked about the rationale for the freeze on filling vacant positions and other budget restrictions, we found conflicting opinions. We were informed that vacancy cutbacks were imposed upon the commission despite the fact there is a dedicated funding source that can be used only for the commission's operating expenses. The commission does not compete with other city agencies for general funds. However, the city administration still imposed budgetary restrictions upon the commission to be consistent with other city agencies. A commission official further disclosed to us that the commission had sufficient revenues to cover filling of many of the various vacant positions. One management official noted that the budget as approved, reflecting a vacancy cutback of \$234,800, was adequate and in his opinion did not present a problem for the commission. On the other hand, we were also informed that during meetings of the managing director's task force on the liquor commission, the managing director was told that filling vacant positions awaited a pending increase in the fee schedule to meet an anticipated operating deficit. This position is maintained despite the presence of approximately \$1.5 million in reserves shown in the commission's special fund. This amount is well over 50 percent of the commission's projected expenditures for FY2003-04.

While the commission could have appealed directly to the city council for the restoration of vacancy cutback positions by the city administration, its management chose to comply with the vacancy position “freeze” imposed by the city administration. We disagree with this premise and position of the commission. While the commission is a city agency, it is also charged with the responsibility to secure the resources necessary to meet its objectives. While revenues may fluctuate with the economy, securing necessary resources to perform its function is incumbent upon the staff and management of the commission. In discussions with other agencies, we found, for example, that the Honolulu Police Department works with the police commission to identify needs that are not met in the budget submitted by the city administration. Additional police needs are identified and representatives from both the department and commission appear before the council to lobby for unfunded needs. While obtaining resources is the responsibility of the liquor commission and its management, we were concerned that management-level staff expressed to us that they were “comfortable” with the budgets submitted by the city administration, despite the severe staffing shortages in various areas.

As shown by the previous examples, this seems to show that critical needs and fundamental changes advocated by management are not aggressively pursued. As a result, there is little effective change implemented to help the commission fulfill its responsibilities.

***Training program
inadequate and disjointed***

Proper training is an essential component to the administration of Hawai‘i’s liquor laws. To be effective, it is essential that all parties – commissioners, commission staff and licensees – are knowledgeable about liquor law requirements. While steps have been taken to address training inadequacies, overall we found that training continues to be inadequate and disjointed. As a result, the commission continues to be hampered in its ability to effectively administer state liquor laws.

Commissioners training is incomplete and inadequate

Liquor commissioners are charged with the responsibility to oversee administration of the state liquor laws for Honolulu. In Honolulu, knowledge of the laws is important because the same body is responsible for licensing as well as adjudicating licensee violations. While we found references to a “commissioners’ operations manual” in some of the literature reviewed, we found that this “manual” does not currently exist.

In our interview with the commissioners, we found that their interpretation of the training they received varied greatly. One commissioner commented that training was provided, but was unable to provide any specific details. Two commissioners noted that on-the-job-training was the primary training method used, while some commissioners referred to commission-published rules and regulations as the only published materials used for training. While this publication is a compilation of state laws and city and county regulations regarding liquor laws, none of the commissioners were able to identify any formal training programs to help them understand and execute their role as commissioner. Comments to us noted that training consisted of observing a couple of commission meetings, but for the most part, commissioners were left to learn about responsibilities and duties on their own.

Licensee training effectiveness questionable

Effective administration of state liquor laws can be fostered through the effective communication of rules and regulations to licensees. During our fieldwork, we observed that all commission-provided training and business is conducted in English. However, it appeared that a significant number of licensees appearing before the commission did not possess a good grasp of the English language. It appeared in hearings attended by our staff that some licensees did not understand what was transpiring. Some commissioners have addressed this problem by pursuing the multilingual publication of liquor rules and regulations. However, a training officer for the liquor commission expressed concern that the broad use of multilingual publications created a control problem because staff were unable to monitor and control what information is conveyed in non-English formats.

Several commented that one of the ways to address the concerns about potential illegal behavior of liquor commission investigators or other staff members who have contact with licensees is to ensure that licensees are properly educated and understand their rights and obligations. Comments were made that foreign national licensees may come from cultures that permit or even accept behavior that may be considered unacceptable and illegal here. It is often noted that business practices such as offering “payments” to enforcement personnel may be viewed by some licensees as acceptable business practices from their experience. However, if licensees are educated and understand that such actions are illegal and can result in punitive consequences to both enforcement personnel and licensees, it may help in controlling the environment that is conducive to this type of illegal behavior.

Server training classes are mandatory. However, the training officer in charge expressed concern that this training program may also be ineffective. Again, concerns arose that non-native English speakers did not understand the training. Others voiced concerns that there is very little monitoring of those taking the classes. Training of licensees and their employees can be an effective tool to ensure compliance with applicable liquor laws, but this can only be accomplished through an effective program of server training.

Staff training not coordinated

The 1988 management audit found that there was little staff time or resources allocated for the proper training of investigators. As a result, there was no consistency or standard procedure used by enforcement personnel in their investigatory work. To address these problems, the commission created a training specialist position to provide training for staff as well as all server-training classes. However, we found that despite this staffing and assigned responsibility, there appears to be little centralized coordination for staff training. Those charged with providing training reported a lack of support and guidance from management. Furthermore, communication between those responsible for training and management was reported to be weak to non-existent by training specialists. Proposals for training programs are not responded to or acted upon. Staff expressed concerns that issues or problems brought to management either resulted in no action or are met with a “hostile” response and implied threat of reprisal. As a result, there is no assurance that training programs align with management priorities.

In fairness to the commission, we did find additional staff training has been provided from varying sources. However, similar concerns about management’s lack of guidance or meaningful direction were also voiced. One supervisor noted that management overrode requests for staff training with little or no explanation to the supervisor. A common complaint about the lack of transparency in decision making was voiced. Subordinates would be informed of decisions by management without informing the immediate supervisor.

A recurring concern is that the role of the training specialist in coordinating and overseeing staff and licensee training is still not clearly defined, despite the creation of the position nearly 10 years ago. As a result, while certain elements and training aspects are identified, a coordinated, well-maintained training program with records of training received by staff is not evident. The commission was unable to provide

a comprehensive record of training completed by staff, or a schedule for regular and updated training.

During meetings of the Managing Director's Task Force on the liquor commission, the need for comprehensive and formal training was noted. At that time a representative from the Honolulu Police Department offered to assist the commission in the development of a comprehensive training program. In subsequent discussion with that person, it was noted that while the police and commission investigatory staff continue to work closely together, there is some concern that training for commission investigators needed to be more complete. The police department was willing to assist the commission in developing such a program but did not have the resources to actually conduct the training. The commission has never acted upon this offer.

Efforts to improve accountability lacking

A major concern about the liquor commission has been a lack of accountability. A review of past incidents relating to the commission shows periodic concerns about the lack of accountability of commissioners to observe ethical standards, a management structure that lacks sufficient checks and balances to prevent illegal and/or undesirable behavior, and acknowledges and accepts its role in guiding the operations of the commission. While we recognize that there are inherent limitations associated with its size and limited resources and acknowledge the difficulty of control when supervisory-level staff are involved, we found that the management efforts necessary to minimize the potential for recurring incidents to be generally lacking.

Lack of administration accountability for staff activities

The 1988 management audit found a lack of effective controls over the actions of investigators. In response to the audit, a number of changes in operations intended to promote increased management and control were implemented. These changes included assurance that supervising liquor control investigators' (Investigator III) working hours coincided with the investigators they supervised. The primary concern in 1988 was that investigators supervising the night shift worked on day shift hours. A second recommendation was that these supervisory personnel be shifted from a non-supervisory collective bargaining unit (Bargaining Unit 3) to a supervisory unit (Bargaining Unit 4) with the reasoning that the shift to a supervisory unit would enable them to monitor and implement necessary management changes for the investigators.

The commission notes that changes in working hours for the supervisory investigators were made. Conflicting responses were noted pertaining to the change in bargaining unit. One response noted that the change had been considered, while another stated that the commission had elected to pursue reallocation rather than change the bargaining unit. We note that the request for reallocation was submitted in July 2002, or 14 years after the completion of the management audit. While management contends that upgrading the investigator positions is a key factor, position classifications continue to remain unchanged from 1988. While there have been three administrators since the 1988 management audit, the current management structure has been in place for over six years. The pursuit of fundamental changes in operations or organization requires management to take a proactive approach instead of merely reacting to external audits or crises.

In our interviews with senior management, the indictments were characterized as complete surprises and without any forewarning. Several former employees disagreed, stating that management chose to ignore warning signs. Some contended that management's attitude discouraged speaking up and that voiced concerns were not addressed. Management appeared unwilling or disinterested in effectively addressing such concerns.

As previously noted, the prevention of fraud and other illegal activities can never be failsafe but there are practices and methods to minimize the opportunities for these events to occur. One suggested method is to ensure that even top-level management is aware of the day-to-day activities of investigators. A Honolulu Police Department official noted that, especially in activities similar to the commission investigators, the head of the division is fully aware of what is taking place on a daily basis.

Common fraud prevention practices note that when supervisory-level personnel are involved, detecting and preventing collusion can be more difficult to implement and manage. Liquor commission management acknowledges that supervisors of high integrity are an important deterrent to corruption, noting that in their opinion, having strong first-line supervision has been a problem in the past. However, simply having confidence in supervisors is not a good management control to prevent fraud and corruption and can in fact create the perceived opportunity for more fraud to take place. Supervisory personnel indicted in 2002 had been placed in those positions by management. Fraud prevention and detection requires the active, continuous involvement of senior management that we found is lacking.

While immediate concerns were addressed through the use of temporary hires, a number of other problems were identified. One of the issues that became evident, and we believe is characteristic of concerns about management, is that commission management fails to take a strong proactive role in seeking its own solutions. Responsibility for the occurrence of illegal activity is placed on supervisory-level staff, with little acknowledgement from senior management of its responsibilities in controlling them. To management's credit, a number of steps have been taken to provide additional training and improve the screening of potential new hires. However, we also found that a number of staff find management to be generally unresponsive to requests to be more involved in investigatory operations. This results in a general lack of support from senior management and has the effect of undermining staff confidence in management's ability to effectively address operational concerns.

The reports of management's unresponsiveness are found throughout the organization. Administrative services, which is separate from field services and investigations, also expressed concern and frustration over the inaction by management to address pressing issues.

The managing director's task force meetings were established to address the immediate problems facing the commission as a result of the 2002 indictments of investigatory staff, which then resulted in significant loss of personnel. However, the meetings of the task force stopped for almost a year before a request was sent to reconvene. Upon reconvening the task force, the managing director clearly noted that the lead for this type of corrective action concern should come from the commission, working with the budget and fiscal services department.

Lack of organized internal affairs review process

Liquor commission management, and others familiar with the commission we spoke with, agree that a problem with the commission is the lack of a dedicated internal affairs unit. An internal affairs unit would be assigned to quickly, thoroughly, and impartially review allegations of inappropriate behavior or actions involving commission staff. Such internal affairs units exist in other enforcement organizations such as the Honolulu Police Department. While commission management has noted the importance and desire to create such a unit, there has been little indication that management has been actively involved pursuing its establishment.

Commission management noted in 2002 that the request for the internal affairs position had been submitted to the human resources department,

returned for additional work, and was due to be resubmitted in December 2002. In a status report to the managing director dated December 5, 2003, it was reported that this request was at the Department of Human Resources. However, a human resources management staff stated that the department does not have such a request.

Issues Requiring Further Examination

During the course of our review, a number of issues or concerns were identified that we were unable to address within the scope of this audit. However, these issues may have a significant impact upon the commission, and we briefly review several of these concerns here that we recommend for further detailed examination.

Allocation and use of fines

Fines are assessed and collected from licensees that violate state liquor laws. Chapter 281, HRS, provides that funds collected from fine assessments be utilized for educational purposes. Although not specific in the law, educational purposes are being interpreted to apply to both staff and licensees. We believe this to be a rational use of funds collected from fines. Presumably, fines are assessed in part because of the licensees' failure to understand the state liquor laws. In addition, proper training of staff and commissioners is necessary to ensure the efficient operations of the commission.

Our concern is that inadequacies in the training program for both licensees and staff have been identified and may require additional funds to correct. Current practice permits the transfer of a portion of the fines collected to the county general fund. While there may not be a specific prohibition against the transfer of fine funds in this manner, we believe that this practice may be contrary to the intended use. The result may be that some educational programs that could improve the performance of the commission in meeting its responsibilities are not implemented because fines are being transferred to the general fund.

Adequacy of commission's effort to audit licensees

As noted earlier, the commission audit staff consisted of one staff person prior to and during the course of this review. Although continuous recruitment was also currently underway, staff voiced concerns that the commission was not competitive with other organizations looking for similarly qualified personnel. That, coupled with the negative publicity of the commission, could have a continuing negative effect on recruitment.

Furthermore, we note that even with a full complement of audit staff, there is no established program to ensure that all licensees are periodically audited. Verbal goals provided for periodic audits of licensees may not be realistic even with a full staff. There was no recordkeeping or monitoring system to indicate that an impartial, tracking and monitoring system of licensees was in place. A major function of the commission is to ensure that licensees fairly and accurately report liquor-related transactions and that applicable fees are collected. As presently configured, the commission's audit section cannot fulfill its responsibility.

Transfer of enforcement investigatory function to the Honolulu Police Department

The proposal to transfer the enforcement investigatory functions of the commission to the Honolulu Police Department has been suggested several times. Such a move received the verbal support of former Mayor Jeremy Harris and a former police chief. While there are a number of factors that would make such a change desirable, there are a number of significant issues that would require resolution before such a decision can be made.

Upgrading of commission investigatory staff

Liquor commission management indicated to us that an issue of major concern for its enforcement staff is that they presently are not authorized to carry firearms. Proponents note that commission enforcement personnel are equivalent to police officers and that investigators' duties can put them in harm's way. Increasingly, commission enforcement officers contend that the ability to carry firearms would address and allay concerns of officers exposed to these situations. However, opponents contend that carrying firearms would escalate the potential for violence and that use of police officers is called for.

Another contention is that liquor enforcement officers are not properly classified when compared to the job duties and personal safety elements of other similar positions. While recognizing the dangerous aspects of their job responsibilities may serve as justification to increase the classification of such staff, the Department of Human Resources personnel informed us that there are other personnel in the city authorized to carry firearms that are not classified at a level equivalent to police officers.

Transfer would address structural problems

One of the problems facing the liquor commission is that a small, permanent enforcement staff can create inherent limitations to the

effectiveness of enforcement. Enforcement officers quickly become known to licensees, which can negatively impact on the officers' performance because the element of surprise associated with inspections is frequently mitigated. Moreover, familiarity may promote the formation of inappropriate personal relationships with licensees. With a small fixed number of employees, there is also little ability to rotate officers to ensure the changeover of investigatory staff and to minimize the opportunity for collusion that can lead to illegal activity. Proponents noted that more resources, rotation of staff, and more sophisticated internal monitoring programs similar to the Honolulu Police Department could effectively help to minimize the opportunity for illegal behavior to reoccur with the commission staff.

Many functional issues of a transfer require resolution

However, before such a move could be seriously considered, there are many functional issues that would need to be identified and resolved. For example, if the enforcement function were transferred, would such enforcement officers be responsible to the liquor commission or would they report to the police commission? While a previous legal interpretation found that it was permissible to transfer liquor commission funds to the police department in order to enforce liquor laws and rules, how would the funding be determined relative to the other funding requirements of the commission? What enforcement responsibilities would remain with the commission? Would training and qualifications for the liquor enforcement positions change? Would statutory changes be required or could such an action be achieved contractually between the two commissions?

Conclusion

The Honolulu Liquor Commission is responsible for ensuring that state liquor laws are applied and enforced in the City and County of Honolulu. Recent, highly publicized events have resulted in questioning the degree to which the commission is meeting its responsibilities and whether any fundamental changes in the governance of the commission are warranted.

Our review of selected management issues focused primarily on the governance structure and personnel management of the commission. We found that there are inadequacies in the governance of the commission, but that these can be addressed within the context of the existing legal structure. Chapter 281, HRS ensures a basic level of uniformity between counties in the regulation of alcohol use. However, the statute

also affords each county the latitude to adjust the administration of the liquor laws to suit each county's situation. The city administration has oversight over the operational rules and regulations of the commission, and is responsible for the nomination, continued monitoring and oversight of individual commissioners. These controls provide the opportunity for adequate county input into the operations of the commission, but have not been sufficiently utilized.

Similarly, the liquor commissioners have oversight over the administration of the commission in addition to their licensing and adjudicating responsibilities. However, the lack of written policies and procedures, inadequate training, and lack of clarity on the oversight responsibilities given its adjudicatory function, has relegated the commission to the licensing and adjudicating functions. There is little effective oversight of the administrator and operations of the commission. As a result, there is little accountability of the administrator, the commissioners have become too far removed from their oversight responsibilities, and there is no effective means for personnel-related concerns dealing with the administrator and its management team to be addressed.

Lack of both an effective means to ensure accountability and a proactive management effort makes it difficult to effectively address operational concerns of the commission. Fundamental changes such as a proposed reorganization, coordinated training programs, and training and staffing of the commission have been talked about, but little progress has been made toward implementing such changes. Changes such as these can be time consuming, complicated and may require considerable dedication by management to implement. We are cognizant that the commission, like other public agencies, must navigate through multiple layers of government processes. It is therefore essential that, in order to effectuate the changes needed, a proactive management team approach that is responsive to staff needs and is focused on accomplishing the mission of the commission is needed. While some concerns and desires have been identified, the commission management has not exhibited the leadership and guidance necessary to achieve meaningful change.

Recommendations

1. The Honolulu Liquor Commission should:
 - a. work proactively with the administrator to adopt specific goals and objectives for job performance, which are subsequently used to evaluate and assess the administrator's performance;

- b. direct the administrator to:
 - 1) ensure that a thorough, consistent, and documented training program is developed and provided to new commissioners, and that existing commissioners are routinely updated and kept current with responsibilities and duties;
 - 2) establish an appropriate timeframe for the proposed reorganization plan. Any reorganization plan should include clear description and identification of duties of the proposed senior management team, including descriptions of the qualifications of persons to hold the positions;
 - 3) take all necessary steps to fill the deputy administrator position;
- c. ensure that, as part of its oversight responsibilities, senior management implements effective, open management and communication practices and that the commission develop procedures to independently evaluate managements' implementation efforts;
- d. assess whether effective administrative oversight of the commission necessitates the creation of an adjudication board separate from the commissioners;
- e. consider proposing charter amendments to, at a minimum, re-classify the administrator to the excluded class. Similar evaluation should also be considered for the deputy administrator position;
- f. study the feasibility of transferring the liquor enforcement investigatory responsibilities to the Honolulu Police Department; and
- g. work with the Department of Budget and Fiscal Services to have the Internal Controls Division to conduct a thorough review of the commission's processes and practices relating to:
 - 1) auditing of licensees, and
 - 2) allocation and utilization of funds received from liquor violation fines.

2. The liquor commission administrator should:
 - a. work proactively with the liquor commissioners to identify and fill necessary vacant staff positions. This should include, but not be limited to: filling vacant positions, removing administratively imposed freezes on vacant positions necessary for effective operations, and actively pursuing the necessary fee adjustments to support proper staffing of the commission. The administrator must actively pursue both of these issues to the city administration and the city council.
 - b. ensure that the administrative directives and other appropriate policies and procedures are reviewed and updated. This should include:
 - 1) procedures and protocols for investigator actions that are clearly defined and routinely followed;
 - 2) a clear rationale and program for selection of licensees to be audited, a plan to achieve full review of licensees is implemented, and necessary resources secured to achieve these objectives;
 - 3) clearly identified staff duties and responsibilities; and
 - 4) clear guidelines, requirements, minimal acceptable requirements of licensee applications and supporting documents, and provided to all licensee applicants, investigators, commissioners, applicants and others involved in the license process;
 - c. implement, with review and approval of the commissioners, an internal affairs review process; and
 - d. work with the commissioners and Department of Budget and Fiscal Services to ensure that budget preparation guidelines and criteria realistically reflect the commission's fiscal self-sustainable position.

3. The mayor should ensure that:
 - a. nominees, during the nomination and confirmation process of liquor commissioners, understand and accept the workload and ethical obligations that are implicit in the commissioner role; and
 - b. a quick and thorough review follows upon any questions concerning the behavior of appointed commissioners.

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Response of Affected Agency

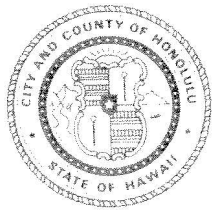
Comments on Agency Response

We transmitted drafts of this report to the commissioners and liquor control administrator of the Honolulu Liquor Commission on March 15, 2005. A copy of the transmittal letter to the commission chair is included as Attachment 1. On March 28, 2005, the liquor control administrator requested an extension to the deadline for submission of a written response. The city auditor granted the commission an extension to April 8, 2005, to submit its response. The commission's response is included as Attachment 2.

In its response, the Honolulu Liquor Commission noted that to a large extent the recommendations of the draft audit report are identical to the goals of the commissioners and commission administration. Within this context the commissioners and commission administration accept and agree to undertake the implementation of each of the recommendations listed in the draft audit report. The commission further noted that it intends to use the constructive criticism and observations contained in the audit report to supplement and help improve on the quality of the commission's recently initiated strategic planning process.

The commission further noted in its response that, as an administratively attached agency, various entities external to the commission are jointly responsible for achieving any fundamental changes in its operations. The commission indicated its commitment to work collaboratively with these external entities.

Finally, we are encouraged that the liquor commission has committed to undertake the recommendations in the audit as part of its strategic planning initiative, but emphasize that the commission must assume the leadership role in its pursuit of organizational and operational improvements.



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LESLIE I. TANAKA, CPA
CITY AUDITOR

March 15, 2005

COPY

Mr. Dennis Enomoto, Chair
Honolulu Liquor Commission
Pacific Park Plaza
711 Kapiolani Boulevard, Suite 600
Honolulu, Hawaii 96813-5249

Dear Mr. Enomoto:

Enclosed for your review are four copies (numbers 12, 13, 14, and 15) of our confidential draft audit report, *Audit of Selected Management Issues of the Honolulu Liquor Commission*. If the commissioners choose to submit a written response to our draft report, the comments will generally be included in the final report. If the liquor control administrator also wishes to respond, you may elect to submit a separate or a combined response. However, we ask that you submit your response to us no later than 12:00 noon on Wednesday, March 30, 2005.

For your information, the mayor, acting managing director, each councilmember, and the liquor commission administrator have also been provided copies of this **confidential** draft report.

Finally, since this report is still in draft form and changes may be made to it, access to this draft report should be restricted to those assisting you in preparing your response. Public release of the final report will be made by my office after the report is published in its final form.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie I. Tanaka".

Leslie I. Tanaka, CPA
City Auditor

Enclosures

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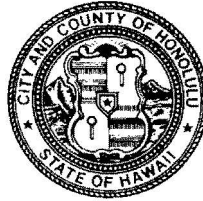
LIQUOR COMMISSION

CITY AND COUNTY OF HONOLULU

711 KAPIOLANI BOULEVARD, SUITE 600 • HONOLULU, HAWAII 96813-5249
 PHONE: (808) 523-4458 • FAX: (808) 591-2700 • TOLL-FREE PHONE: 1-800-838-9976 (select "4")
 E-mail address: liquor@honolulu.gov • INTERNET: www.honolulu.gov/liq

**C & C OF HONOLULU
 CITY AUDITOR**

MUFI HANNEMANN
 MAYOR



April 8, 2005

DENNIS ENOMOTO
 CHAIR

CLYDE J. EUGENIO
 VICE CHAIR

CHU LAN SHUBERT KWOCK
 VICE CHAIR

DANNY KIM
 COMMISSIONER

WALLACE W. WEATHERWAX
 ADMINISTRATOR

Mr. Leslie I. Tanaka, CPA
 City Auditor
 Office of the City Auditor
 1000 Uluohia Street, Suite 313
 Kapolei, Hawaii 96707

Re: Draft Audit Report of Selected Management Issues of the Honolulu Liquor Commission

Dear Mr. Tanaka:

Thank you for the opportunity to comment on the above-referenced draft audit report, which we received on Tuesday, March 15, 2005, and for granting an extension of time to submit our response.

We view the audit process and the draft audit report as another opportunity to reflect on the organizational health of the Liquor Commission, and to intelligently plot future steps designed to improve and strengthen the organization. To a large extent, the recommendations of the draft audit report and the goals of the Commissioners and Commission administration are identical. As meeting these goals sooner, rather than later, can only benefit the organization, the Commissioners and Commission administration accept and undertake to implement each of the recommendations listed in the draft audit report.

Early this year, the Commission started work on a comprehensive, long-range strategic plan. This effort included face-to-face meetings between the Commissioners and all Commission staff, wherein staff members were invited to directly express concerns, complaints and suggestions about Commission administration, management, operations, and mission. The three sessions (enforcement; licensing/training; and administrative services) were well attended and elicited candid responses. Additional input from the Commissioners and staff was gathered by way of a web-based survey that provided anonymity for respondents. It is our intention to use the constructive criticism and observations contained in the audit report to supplement the previously obtained input and thus improve the quality of the Commission's strategic planning process.

We believe that this pro-active approach to organizational challenge is characteristic of the Commission in recent years. We note without excuse, however, that our unique existence as an "administratively attached" organization has likely hindered, rather than enabled, our ability to achieve the type of responsive, dynamic organization that the draft audit report urges us to become. The draft report itself recognizes the challenges of overcoming organizational inertia in a government agency:

... Fundamental changes such as a proposed reorganization, coordinated training programs, and training and staffing of the commission have been talked about, but little progress has been made toward implementing such changes. Changes such as these can be time consuming, complicated and may require considerable dedication of management to

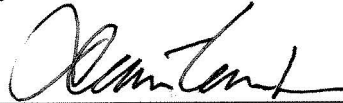
Mr. Leslie I. Tanaka, CPA
April 8, 2005
Page 2

implement. We are cognizant that the commission, like other public agencies, must navigate through multiple layers of government processes. It is therefore essential that, in order to effectuate the changes needed, a proactive management team approach that is responsive to staff needs and is focused on accomplishing the mission is needed...

While the directive to the Commissioners and Commission administration is clear, we propose that the need for pro-active leadership, responsiveness, and accountability must necessarily include those entities external to the Commission. Without this recognition of joint responsibility, the Commission will be hampered in obtaining fundamental changes with optimum speed. We look forward to working collaboratively with these entities in the future.

Finally, we wish to thank you for your recognition of the hard-working, resolute Commission staff who continue to serve our regulated industry and the public.

Sincerely,



DENNIS ENOMOTO
Chair



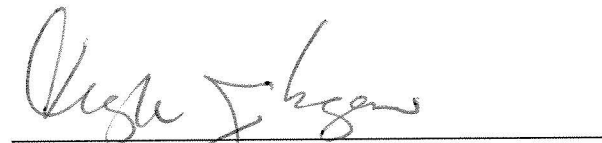
CHU LAN SHUBERT KWOCK
Co-Vice Chair



DANNY KIM
Commissioner



WALLACE W. WEATHERWAX
Liquor Control Administrator


CLYDE J. EUGENIO
Co-Vice Chair

cc: Honorable Mufi Hannemann, Mayor
Jeff Coelho, Managing Director
Mary Patricia Waterhouse, Director, Department of Budget & Fiscal Services