



State of North Carolina
ALCOHOLIC BEVERAGE CONTROL COMMISSION

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MEMORANDUM NO. 2616

TO: All County and Municipal ABC Boards

FROM: Michael C. Herring, Administrator 

DATE: February 16, 2000

RE: Expenditure of Public Funds

Enclosed is a memorandum from the Commission's General Counsel, Ms. Ann Fulton, which answers several questions I posed to her regarding the expenditure of funds by local ABC boards. As you read her memorandum, you will find that all local ABC board monies are public funds for the *ultimate benefit of the local city or county* and should only be spent as needed for the *operation of the ABC system*. Based on her research, she concludes that the purchase of personal items with board monies and/or the funding of parties, gifts, or non-member/employee travel are prohibited.

In our annual mailing this year to your Certified Public Accountants, it will be mandatory that all travel and miscellaneous expenses of the local ABC boards be itemized and reported to the Commission.

If your board is spending monies for any of the situations described in Ms. Fulton's memorandum, **please cease these practices immediately**. At your next scheduled meeting, please take the opportunity to officially address this matter, and if needed, adopt new standards that will properly safeguard the public funds under your care.

Please do not hesitate to contact us with questions or for assistance.

Enclosure



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To: Mike Herring, Administrator
From: Ann Fulton, General Counsel *ASF*
Re: Use of credit cards; expenditure of funds by local ABC board

You have asked several questions regarding the propriety of local ABC board members and/or employees using a board's credit cards for personal items, and the expenditure of board funds for parties, gifts, and travel expenses incurred by spouses or other non-members or employees. The scenarios described are as follows:

1. Local ABC board employees and/or members use a credit card issued to the local board for the purchase of personal items with the intent to reimburse the local board immediately or when the board receives the bill containing charges for the personal items. Often these credit cards were issued to the board for the use by its employees for official travel.
2. Local ABC board members and staff use the board's credit card or funds to pay for travel expenses of family members and/or friends with the intent to later reimburse the board for those expenses.
3. A local ABC board uses operating funds (called "working capital" by N.C. Gen. Stat. 18B-805(d)) for the purpose of paying for gifts, Christmas parties, retirement dinners, or other events for its employees and staff.

None of the scenarios described above can be a justifiable practice. Monies received by a local ABC board are public funds that will ultimately be distributed to the State and the city or county in which the board is located. N.C. Gen. Stat. 18B-805.

A local ABC board by definition is an independent political subdivision of the State, and is a creation of the General Assembly. N. C. Gen. Stat. 18B-101(8). As such, a local board has no authority except that which is provided by statute. In addition, a local ABC board member or employee is a public officer who, in the course of employment or position, receives funds from the sale of liquor for the ultimate benefit of the local city or county. In such a position, the board

member and employee hold a fiduciary position in relationship to the funds and other property owned by the board.

Several provisions in Chapter 18B are instructive: N. C. Gen. Stat. 18B-701 lists the various activities a local board is authorized to engage in. That statute provides in pertinent part as follows:

A local board shall have authority to:

- (9) Borrow money as provided in G.S. 18B-702;
- (10) Buy and lease real and personal property, and receive property bequeathed or given, *as necessary for the operation of the ABC system*;
(Emphasis supplied).

N.C.Gen.Stat. 18B-702(b) provides:

A local board may borrow money *only* for the purchase of land, buildings, equipment and stock *needed for the operation of its ABC system*. A local board may pledge a security interest in any real or personal property it owns other than alcoholic beverages. A city or county whose governing body appoints a local board shall not in any way be held responsible for the debts of that board. (Emphasis supplied).

Finally, N.C.Gen.Stat. 18B-805 provides for the distribution of revenue of a local board. Subsection (a) defines "gross receipts" as all revenue of a local board, including proceeds from the sale of alcoholic beverages, investments, interest on deposits, and any other source. Subsections (b) through (d) then designate with specific language how a local board shall distribute its receipts. The only true discretionary distributions are the amounts spent for law enforcement, alcoholism research and treatment, working capital, and money for specific capital improvements. A local board is directed first to "pay the expenses, including salaries, of operating the local ABC system." Those expenses are paid from the "working capital" account established pursuant to subsection (d), which reads as follows:

(d) Working Capital. — After making the distributions provided for in subsections (b) and (c), the local board may set aside a portion of the remaining gross receipts, within the limits set by the rules of the Commission, as cash *to operate the ABC system*. With the approval of the appointing authority for the board, the local board may also set aside a portion of the remaining gross receipts as a fund for specific capital improvements.

There is no authority in Chapter 18B for a local board to retain funds for any purpose other than that money set aside for working capital (within limits set by the Commission), and for specific capital improvements (but only upon approval of the appointing authority).

With regard to employees' or members' use of a board's credit card for personal purchases, the answer is immediately clear. A board has authority to purchase personal property **only** as necessary for the operation of the ABC system pursuant to G.S. 18B-701(10). Items purchased for personal use cannot conceivably be construed as necessary for the operation of the ABC

system. In addition, the use of board credit cards for personal purchases creates a debt that is the ultimate responsibility of the board. Again, N.C.Gen.Stat. 18B-701(9) limits the borrowing of money **only** for *land, buildings, equipment, and stock needed for the operation of the ABC system*. It simply cannot be argued that items purchased by a board member or employee for his personal use are "needed for the operation of the ABC system."

In addition to the limited authority provided to a local board in Chapter 18B, the General Assembly has enacted statutes in Chapter 14 ("The Criminal Law") that prohibit the misapplication of funds held in trust. Specifically, G.S. 14-92 prohibits a person holding money or property in trust for a county, local government agency or unit, or charitable or educational institution, from willfully misapplying such money or property for any purpose other than that for which such moneys or property is held. Any expenditure of funds for any good or service not related to the operation of the ABC board system is a misapplication of funds.

It is my opinion that the use of board funds, either through the purchase of personal items by a board credit card or by the funding of parties, gifts, or non-member/employee travel is not permitted and may even be a criminal violation under Chapter 14. At a minimum, there is no authority for a local board member or employee to make personal purchases or to expend board funds for any item or service that does not bear a direct relation to the operation of the local ABC board system, and such practices should cease at once.

I have attached copies of the criminal statute referenced above for your reference.