
LOCAL BOARD HANDBOOK



**Indiana Alcohol and Tobacco
Commission**

Welcome from the Chairman

Thank you for accepting the responsibility of serving your community and the State of Indiana by fulfilling your duties as a member of the Local Board. The Alcohol and Tobacco Commission appreciates the vital role that local government plays in the lives of Hoosiers.

As a member of your local board, you will represent the Commission to members of your community. You will participate in public hearings at which applications for alcoholic beverage permits will be considered and voted upon. You will be able to listen and respond to the concerns of your community to ensure that all Hoosiers have a voice in their government.

As you consider the concerns of the local community, it is important that you follow state law. While each local board should be responsive to their communities, the laws regulating alcoholic beverages must be applied and enforced uniformly throughout Indiana. If you have any questions about Indiana's alcoholic beverage laws and rules, please feel free to contact me or Commission Executive Secretary and Hearing Judge, Jessica Allen. We will be happy to provide further assistance.

I thank you again for your service, and hope that you find this handbook helpful.

Sincerely,

David Cook, Chairman
Indiana Alcohol and Tobacco Commission

History of the Alcohol & Tobacco Commission

The 21st Amendment was passed by the United States Congress on February 20, 1933, and fully ratified by December 5, 1933. With the adoption of the 21st Amendment, which repealed national prohibition, the Indiana General Assembly created the Alcoholic Beverage Commission to control and regulate the sale and possession of alcohol within the state. In 2001, the name was changed to the Indiana Alcohol and Tobacco Commission (the "Commission"). The Indiana State Excise Police is the law enforcement division of the Commission. Important goals of the Commission are the prevention of underage drinking and tobacco use and the collection of revenue from the sale of alcohol and tobacco.

IC 7.1-1-1 General Purposes

The following are the general purposes of this title:

- (1) To protect the economic welfare, health, peace, and morals of the people of this state.
- (2) To regulate and limit the manufacture, sale, possession, and use of alcohol and alcoholic beverages.
- (3) To regulate the sale, possession, and distribution of tobacco products.
- (4) To provide for the raising of revenue.

Relationship Between the Commission and Local Boards

The Indiana Alcohol & Tobacco Commission is composed of four members appointed by the Governor,

one of whom serves as the Chairman. Each of the state's 92 counties has a local board, which investigates all applications for alcohol beverage retailer and dealer permits in their respective county. Each local board is made up of four members – one appointed by the Board of County Commissioners, one by the Chief Executive of the largest city or town in the county, one by the County Fiscal Body, and one designated representative of the Commission, who is usually an officer of the Indiana State Excise Police.

Local Board Organization and Compensation

Each local board elects a President, who presides over meetings and signs the meeting minutes, a Secretary, and a Designated Member chosen by the Commission, who is usually an Indiana State Police Excise Officer. The Designated Member conducts on-site inspections, takes responsibility for recording hearings and transmitting the recordings, voting sheets, exhibits, and other evidence to the Commission.

Each Local Board member receives an annual salary of \$240 from the State, paid in monthly installments. Each member also receives \$3 for each application he or she investigates and reports on. Local Board members are also compensated for mileage.

Functions of the Local Board

Ultimately, the Indiana Alcohol & Tobacco Commission is responsible for issuing or denying alcoholic beverage permits. Local boards investigate each permit application through regular meetings at which they consider applications for permits to sell alcohol, including applications for new permits, renewal of existing permits, transfers of ownership and/or locations of an existing permit. These meetings are advertised and open to the public and must be conducted in accordance

with Indiana's Open Door laws. The local board must have a quorum of three members in attendance to conduct official business.

All local board hearings are recorded in order to preserve the proceeding for full Commission review. At regular scheduled meetings, the local board takes evidence and votes on each permit application. The local board's recommendations for approval or denial are then submitted to the full Commission for final action. The Commission reviews the local board's recommendations and determines whether to uphold or reverse the action taken by the local board. The Commission normally follows the local board recommendations; however, in some instances the Commission may vote to remand an application to the local board for further proceedings or overturn the local board if, for example, the local board's decision was not based on sufficient evidence or was not in accordance with the law.

Open Door Law **IC 5-14-1.5-1 thru 8**
Public Record Laws **IC 5-14-3-1 et. seq.**

Indiana State agencies are required by law to comply with Open Door policies relating to public meetings and Public Record Laws relating to maintaining and making available public records. Local board meetings are subject to Indiana's Open Door Laws, which prohibit the local board from discussing or deciding any matters related to a permit application outside the local board meeting. Failure to abide by these laws can result in the reversal of the local board's decision and an award of attorneys' fees to the party who is damaged as a result of the violation. The following steps must be taken to comply with the Open Door Laws:

1. Post notice of local board meetings 48 hours in advance by posting a copy of the meeting agenda at the office of the agency holding the meetings. If the time, date, or location of the meeting is changed, notice of the change must be posted 48 hours in advance. If the location of the meeting is changed, the

notice must be posted at both the former location and the new location.

2. Post the agenda at the entrance to the meeting location.

The following are selected sections of those laws most pertinent to the Indiana Alcohol & Tobacco Commission and the various local boards;

IC 5-14-1.5-2

It is the intent of this chapter that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed.

"Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business.

IC 5-14-1.5-3

Except as provided in section 6.1 of this chapter, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them.

- (b) A secret ballot vote may not be taken at a meeting.

IC 5-14-1.5-4 Posting agenda; memoranda of meetings; public inspection of minutes

Sec. 4. (a) A governing body of a public agency utilizing an agenda shall post a copy of the agenda at the entrance to the location of the meeting prior to the meeting.

- (b) As the meeting progresses, the following memoranda shall be kept:
 - (1) The date, time, and place of the meeting.

(2) The members of the governing body recorded as either present or absent.

(3) The general substance of all matters proposed, discussed, or decided.

(4) A record of all votes taken by individual members if there is a roll call.

(5) Any additional information required under section 3.5 or 3.6 of this chapter or any other statute that authorizes a governing body to conduct a meeting using an electronic means of communication.

(c) The memoranda are to be available within a reasonable period of time after the meeting for the purpose of informing the public of the governing body's proceedings. The minutes, if any, are to be open for public inspection and copying.

IC 5-14-1.5-5 Public notice of meetings

Sec. 5. (a) Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight (48) hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. This requirement does not apply to reconvened meetings (not including executive sessions) where announcement of the date, time, and place of the reconvened meeting is made at the original meeting and recorded in the memoranda and minutes thereof, and there is no change in the agenda.

IC 5-14-1.5-8 Accessibility to individuals with disabilities

(d) A public agency may not hold a meeting at a location that is not accessible to an individual with a disability.

IC 5-14-3-1 Public policy; construction; burden of proof for nondisclosure

Sec. 1. A fundamental philosophy of the American constitutional form of representative government is that government is the servant of the people and not their master. Accordingly, it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Providing persons with the information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to

provide the information. This chapter shall be liberally construed to implement this policy and place the burden of proof for the nondisclosure of a public record on the public agency that would deny access to the record and not on the person seeking to inspect and copy the record.....

(q) "**Public agency**", except as provided in section 2.1 of this chapter, means the following:

(1) Any board, commission, department, division, bureau, committee, agency, office, instrumentality, or authority, by whatever name designated, exercising any part of the executive, administrative, judicial, or legislative power of the state.

(2) Any:

(A) county, township, school corporation, city, or town, or any board, commission, department, division, bureau, committee, office, instrumentality, or authority of any county, township, school corporation, city, or town;.....

(6) Any law enforcement agency, which means an agency or a department of any level of government that engages in the investigation, apprehension, arrest, or prosecution of alleged criminal offenders, such as the state police department, the police or sheriff's department of a political subdivision, prosecuting attorneys, members of the excise police division of the alcohol and tobacco commission, conservation officers of the department of natural resources, gaming agents of the Indiana gaming commission, gaming control officers of the Indiana gaming commission, and the security division of the state lottery commission.....

r) "**Public record**" means any writing, paper, report, study, map, photograph, book, card, tape recording, or other material that is created, received, retained, maintained, or filed by or with a public agency and which is generated on paper, paper substitutes, photographic media, chemically based media, magnetic or machine readable media, electronically stored data, or any other material, regardless of form or characteristics.

New Permit Applications and Transfers of Location

At a recorded hearing on a new permit or a transfer of location application, the applicant has the burden to prove they qualify to hold the desired permit at the proposed location.

An applicant may be denied for any one or more of the following:

- (1) The applicant does not maintain a high and fine reputation in the community;
- (2) There is no need for the services of the applicant at the proposed location;
- (3) The neighborhood and/or community do not desire the services;
- (4) The services at the proposed location would have a negative impact on other businesses in the neighborhood as well as a negative impact on the neighborhood in general.
- (5) The permit premises is within 200 feet of a church or school; or
- (6) The permit premises is in a residential area as referred to in IC 7.1-1- 3-38 and 905 IAC 1-18-1.

Members of the community may appear and speak in favor of or against a permit application. Persons who wish to speak or offer evidence against the applicant are known as "remonstrators." Under the Commission's rules, remonstrator means a person who appears, personally or by counsel, at the local board hearing to speak against a permit. Remonstrators who appear must register their name, address and telephone number with the local board in order to be heard. The local board may limit the testimony of remonstrators, particularly if the testimony is repetitive or is not relevant to the application at issue. The local board may consider any and all information presented at the hearing including properly submitted petitions; however, it may not consider information obtained outside the hearing process. Following the presentation of evidence by the applicant and the remonstrators, the local board votes on the application. If the application is denied, the local board notes the reasons for the denial on the local board voting sheet and advises the applicant of their appeal rights before the Commission. The local board must follow the law when taking official action on an application. The Commission will reject a

local board recommendation if the reasons for the grant or denial of a permit are not in accordance with the law.

Renewal of Existing Permits

A permit to sell alcoholic beverages is limited in duration. Each permit must be renewed annually by submitting a renewal application along with the appropriate fees to the Commission. The local board is required to examine each renewal application every two years. A permittee is not required to attend a local board hearing concerning their renewal application unless there is a pending violation with the Commission or if they has been ordered to appear by the local board or the Commission. A renewal application may not be denied without notice to the permittee and an opportunity to be heard at the local board. An application for renewal of a permit is handled similar to a new permit application; however, the local board will consider only three factors as set forth in 905 IAC 1-27-1 & 2:

- (1) Is the applicant of good moral character;
- (2) has the permit premises become a public nuisance; and
- (3) whether any criminal offenses have taken place at the permit premises.

Transfer of Ownership

When the holder of an existing permit transfers the permit to another person, the transferee must appear before the local board. The application to transfer ownership of a permit is similar to a new permit application in that the transferee must establish that they meet the eligibility criteria as a new permit applicant.

Post-Hearing Procedure

Local board voting on permit applications and reasons for denying an application are recorded. No dialogue should take place off the record.

The local board record, including all testimony and physical evidence presented at the local board hearing, becomes the record upon which an appeal can be filed and reviewed. The Commission reviews each recommendation of the local board and votes to grant, deny, or remand the application for further proceedings.

The Appeal Process

Once the Commission grants or denies an application, the applicant or a remonstrator have fifteen (15) days to appeal the Commission's action. A remonstrator may appeal the Commission's grant of a permit by filing a Petition for Intervention with the Commission. This Petition to Intervene must convince the hearing judge that the remonstrator has "standing" to appeal the Commission's decision and become an "Intervening Remonstrator.", 905 IAC 1-36-2. In order to establish standing, the remonstrator must demonstrate that a "direct injury" will result from the Commission action causing immediate or future harm to a legal interest of the remonstrator. General disagreement with a policy or injury that is common to all members of a community is not sufficient to grant standing – the remonstrator must show that they will suffer an injury distinct from other members of the community.

Even if the remonstrator cannot demonstrate standing as an "Intervening Remonstrator", anyone who remonstrated at the local board hearing may remonstrate at the appeal hearing. Only an "Intervening Remonstrator", however, has the right to appeal the Commission's decision or seek judicial review of the Commission's internal appellate process. The hearing judge has considerable discretion and is given wide latitude to conduct the appeals process in an open and even handed manner.

If no appeal is filed and no one otherwise challenges the Commission's decision, the decision stands and becomes the final agency action on the case. If, on the other hand, an appeal is initiated, the Commission's Hearing Judge notifies all appropriate parties and sets a date for a "de novo" appeal hearing.

The Hearing Judge often sets a pre-hearing conference to discuss any outstanding issues. Before the appeal hearing, the Hearing Judge reviews the transcript and audio tapes of the Local Board hearing. The Hearing Judge's review of the Local Board proceeding is *de novo*, meaning that the Hearing Judge is not bound by the local board's vote or any factual findings made by its members. At the appeal hearing and at the discretion of the Hearing Judge, the parties and remonstrators may present new exhibits, testimony, and other evidence. Since the local board proceedings are already of record, the Hearing Judge may limit testimony at the appeal hearing if it is repetitive or duplicates testimony that is already in the record.

After the appeal hearing, the Hearing Judge issues proposed Findings of Fact and Conclusions of Law to the Commission. The Commission then votes on the proposed Findings of Facts and Conclusions of Law. Such findings may reverse or affirm the local board decision, or remand the matter to the local board for further proceedings. The action taken by the full Commission on the Findings of Fact and Conclusions of Law are deemed "final agency action" and are reviewable in a court of law.

Why Are Local Board Recommendations Reversed?

A party that seeks reversal of a local board action must show that the Local Board somehow acted improperly. Local boards do not have the authority to change Indiana law or apply it differently than other counties. The local board itself is not part of the county government in which it is located; it is the local arm of a state agency. Although local boards are within their powers to investigate applications for alcohol permits and to determine whether the community needs or desires the services proposed by the applicant, they do not have the power to re-write state law by refusing to grant certain classes of permits or by imposing additional requirements such as hours restrictions or physical separations that are not required by law.

Indiana Code 7.1-3-19-11 creates the standard of review for local board recommendations. The Commission must follow the recommendation of the local board unless, upon review, it determines that to follow the recommendation would be:

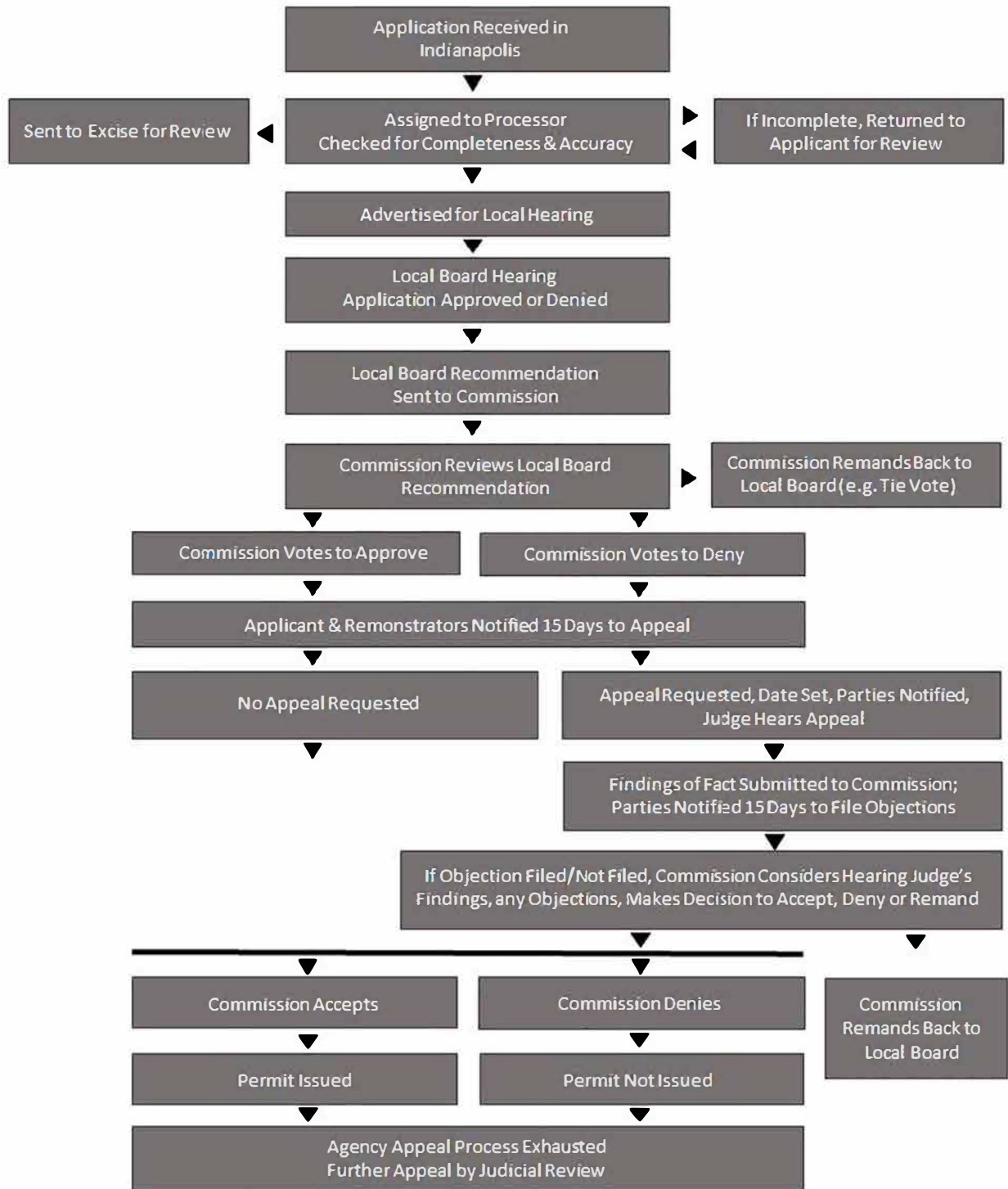
1. Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
2. Contrary to constitutional right, power, privilege or immunity;
3. In excess of, or contrary to, statutory jurisdiction, authority, limitations or rights;
4. Without observance of procedure required by law; or
5. Unsupported by substantial evidence.

Such review shall be *de novo*.

If the Commission finds the local board denied a permit on a basis that is not in accordance with the law, the Commission must grant the permit. The most common reasons a local board recommendation is not followed or is overturned on appeal are that it was “arbitrary and capricious” or was unsupported by substantial evidence. Although local board proceedings are not as formal as those followed in a court of law, local boards must still base their recommendations on the evidence before them and the current state of Indiana law.

The Commission’s review of the local board’s proceeding is *de novo*, which means the Commission is not bound by the Local Board’s vote or any factual findings made by its members.

The flowchart on the following page summarizes the appeal process:



Please note the following procedures.

Renewal:

Allow remonstrators to proceed first. If remonstrators appear to remonstrate against a permit scheduled for renewal without a violation, the permittee shall be notified to appear at the next meeting. The permit hearing should be continued until the next meeting at which a hearing will be conducted on the permit application.

New Permit:

Allow applicant to proceed first. Remonstrators then present testimony and evidence. The applicant may then present evidence to rebut the remonstrance. If the applicant wants a continuance to hire an attorney or prepare a response, he or she should be given at least one continuance.

Continuances:

A total of only three continuances should be allowed per permit application. Pursuant to Indiana law, only a Designated Member may grant continuances. Each continuance may not exceed thirty days. If a fourth continuance is being requested by any party, it should only be approved by the Executive Secretary or the Commission Chairman.

Ask if there are any persons present remonstrating against the permit, and if they have signed the remonstrance sheet.

Without a signed remonstrator sheet, the Commission will automatically assume that there were no remonstrators present. If there is no remonstrator sheet and it is determined that remonstrators were present, the case may be remanded to the local board for a second hearing.

Ask remonstrators who wish to speak against the permit to stand; verify that each person has taken the oath, or administer it again.

Speakers must position themselves near the audio recorder (it is critical that recording equipment be in good working order and positioned in such a manner that all questions and responses are clearly recorded on the tape. Failure to insure a reviewable record will likely result in a re-hearings). Each person must give his or her name and address or telephone number. After each statement, the applicant will have the right to ask questions about what has been said.

The local board must be mindful of the due process of law. The applicant or permittee shall have the right to question witnesses making complaints against him or her. All witnesses will be under oath. After the remonstrators speak, the applicant or permittee shall have the right to offer evidence in support of the application or in rebuttal to any evidence submitted by remonstrators.

Recommended Procedure for Local Board Meetings

The Alcoholic Beverage Board of _____ County, Indiana

1. Call the Meeting to Order.
2. Let the record reflect this is a meeting of the _____ County Alcoholic Beverage Board, this _____ day of _____, at am/pm. The members of the Local Board are _____, _____, _____, and _____ of the Indiana State Excise Police.
3. Are there any persons here who wish to voice opposition to any permits on the agenda today? If so, be sure you have signed in, then please stand, state the permit you wish to remonstrate against, and remain standing.
4. Will all persons in attendance seeking a new permit, requesting a change of location or ownership or seeking a renewal after violation, stand with the remonstrators and please raise your right hand: "Do each of you solemnly swear or affirm under the penalties of perjury, that the answers that you have given on your application, or any testimony you may give or in response to any questions asked by this board, to be the truth, the whole truth, and nothing but the truth?"
5. Ask the local board for a motion to approve renewals with no remonstrance.
6. New permits, changes of location or ownership, or renewals after occurrence of violation or with remonstrators are presented now.

State the permit number and type, the name of applicant, the name of business, the location and purpose of business.

Ask the applicant or applicant's representative to stand and state his or her name, and answer a list of questions put to them by the board.



WITHDRAWAL OF APPLICATION
State Form 44-186 (9-00)

Date (month, day, year)
ABC file number

Type of permit for which applied	
Name of applicant	
Address of applicant	City or town
	County
<p>This is to certify that I, _____ wish to withdraw my application for an Alcoholic Beverage Permit at _____ which is now on file at the Indiana Alcoholic Beverage Commission office at Indianapolis, Indiana.</p>	
Signature of applicant X	Date signed (month, day, year)

NOTARY CERTIFICATE		
STATE OF _____	} SS:	
COUNTY OF _____		
<p>I, _____, Notary Public, first being duly sworn on oath say that I am the above named, that I have personally prepared the foregoing application, and that the same is true to the best of my knowledge and belief.</p>		
Signature of applicant	Signature of Notary Public	
Printed or typed name of applicant	Printed or typed name of Notary Public	
Date subscribed and sworn to (Notary Public)	County of residence	Date commission expires



INDIANA STATE EXCISE POLICE
 302 West Washington Street, Room E112
 Indianapolis, IN 46204



Date: _____

Permit # _____

The _____ County Local Board is requesting your appearance at their next hearing, to be held on _____ at _____ for the following reason (s):

- _____ Failed to appear at the originally scheduled date for hearing of Transfer of Owner, Transfer of Location, Transfer of Stock, New Permit
- _____ Failed to appear for the hearing of the renewal of your permit when required, due to violations within the time period from last renewal of your permit.
- _____ Person or persons remonstrating against the issuance or renewal of your permit.
- _____ Other: _____

This is the only notice you will receive. If you have any questions, please call _____ at (317) 232-2452.

Sincerely,

Meeting Location:



LISTING OF REMONSTRATORS

State Form 42944 (10-88)
Alcoholic Beverage Commission

- During the investigation the following persons appeared and gave evidence for or against the granting of the applied for permit.

SCHEDULE - REM

ATC File Number
Date
Officer

NAME	ADDRESS	BUSINESS	FOR	AGAINST

State Excise Police District Offices



District #1

52422 County Road 17
Bristol, IN 46507

(574) 264-9480

District #2

1353 South Governor's Drive
Columbia City, IN 46275

(260) 244-4285

District #3

279 W County Road 300 N
Crawfordsville, IN 47933

(765) 362-8815

District #4

651 South Frontage Road
Seymour, IN 47274

(812) 523-8314

District #5

3650 S US 41
Vincennes, IN 47591

(812) 882-1292

District #6

6400 E. 30th Street
Indianapolis, IN 46219

(317) 541-4100

Headquarters Offices

Indiana Government Center - South
302 W. Washington Street, Room E 112
Indianapolis, IN 46204

Superintendent Matt Strittmatter
Office of Professional Standards
Media & Program Information

(317) 232-2452

(317) 232-4826

(317) 232-2469



**State of Indiana
Indiana State Excise Police**



INDIANA ENFORCEMENT OF ALCOHOLIC BEVERAGE LAWS

The Indiana State Excise Police is charged with the primary responsibility for policing the alcoholic beverage and tobacco industry in the state. The State Excise Police enforce the laws which regulate permit holders (those who are legally permitted to sell and serve alcoholic beverages) and non-permittees (those not legally entitled to sell alcoholic beverages and tobacco certificate holders).

One of the duties of the State Excise officers is representing the state on local Alcoholic Beverage Boards in each county. These meetings allow residents of the county to voice their concerns and suggestions about renewals or issuance of permits. Officers also investigate each permit location before a permit is renewed to determine whether the permittee has met legal standards and is qualified to continue selling and servicing alcoholic beverages.

You will frequently hear about the Excise Police offering statewide public information programs targeted to increase public and industry awareness about alcohol.

The State Excise Police also work closely with the alcoholic beverage industry, conducting training sessions to educate servers of alcohol.

These public information programs are just some of the positive efforts of the State Excise Police to work cooperatively with the alcoholic beverage industry and the public as an alternative to enforcement. Officers are available to make presentations to all interested schools and organizations at no cost.

For more information, please contact the nearest Indiana State Excise Police district office, which can be located on the map in this booklet.

***The Indiana State Excise Police remind you...
Education is the alternative to enforcement***



NOTES



NOTES

Lined area for notes, consisting of multiple horizontal lines.