



COMMISSION MEETING MINUTES
January 24, 2005

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, January 24, 2005, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING: John T. Steen, Jr., Chairman

PRESENT: Jose Cuevas, Jr., Commissioner
Gail Madden, Commissioner

STAFF PRESENT: Alan Steen, Administrator

Glenda Baker, Assistant Chief of Enforcement
Carolyn Beck, Public Information Officer,
Executive

Lou Bright, General Counsel, Executive

Dan Cullers, Captain, West Texas Region

Doreen Debish, Administrative Assistant,
Information Resources

Del Drake, Captain, Office of Professional
Responsibility

Loretta Doty, Director, Human Resources

Shelby Eskew, Accountant, Business Services

Jeannene Fox, Assistant Administrator,
Executive

Buck Fuller, Director, Compliance

David Garza, Director, Homeland Security,
Executive

Diana Gonzalez, Assistant Director of Auditing,
Compliance

Amy Harrison, Director, Licensing

Gary Henderson, Enterprise Operations Team
Leader, Information Resources

Larry Howard, Compliance Supervisor, West
Texas Region

Linda Jackson, Administrative Assistant,
Executive

Renee Johnston, Executive Assistant, Executive

Dexter K. Jones, Director of Marketing Practices,
Executive

Jo Ann Joseph, Assistant Director, Licensing

Charlie Kerr, Director, Business Services

Joel Moreno, Deputy Assistant Chief of
Enforcement

Garry Sitz, Director, Information Resources

James "Sam" Smelser, Chief of Enforcement

GUESTS PRESENT:

Dewey Brackin, Attorney, Gardere Wynne Sewell
Lani Clark, Paralegal, Office of Attorney Jack
Martin

Glen Garey, General Counsel, Texas Restaurant
Association

Karen Latta, Policy Analyst, Sunset Advisory
Commission

Fred Marosko, Texas Package Stores
Association

M. Jack Martin, Attorney at Law

Lindsay Meche, Republic Beverage

Michael Mims, Director of Licensing, H-E-B

Robert Sparks, Executive Director, Licensed
Beverage Distributors, Inc.

Randy Yarbrough, Wholesale Beer Distributors of
Texas

CALL TO ORDER

Chairman John T. Steen, Jr., called the meeting of the Texas Alcoholic Beverage Commission (TABC) to order. He explained that Commissioner Cuevas' plane was delayed and he would be in attendance shortly.

APPROVAL OF COMMISSION MEETING MINUTES OF DECEMBER 20, 2004

Chairman Steen called for a motion to approve the TABC Commission meeting minutes of December 20, 2004. **Commissioner Madden moved that the Commissioners approve the minutes of the December 20, 2004, meeting. Chairman Steen seconded the motion. The motion carried.**

ADMINISTRATOR'S REPORT

Chairman Steen called upon Administrator Alan Steen to provide the Administrator's Report.

Administrator Steen stated that the entire agency was blessed with a safe holiday season and staff were able to take well-earned time off. He reported on the following:

Legislative Activities

The 79th Legislative Session began on January 11, 2005. Administrator Steen and Commissioner Madden attended the opening session and the swearing-in ceremony of Senator Kel Seliger, former TABC Commissioner. Also, Chairman Steen and Administrator Steen met with staff at the Governor's Office to discuss TABC's relationship with the State Office of Administrative Hearings; the Governor's Office met with other state agencies, also.

Agent Activities During Holidays

Administrator Steen noted that New Year's Eve is one of TABC's busiest times of the year. He reported that there were no major incidents, and there was a strong, professional showing of agents.

TABC Insider

The *TABC Insider* is available on the Intranet. Administrator Steen stated that this is good information about the agency's activities. He noted that this is an

intensive effort, but one that results in worthwhile information for others. The Commissioners have been receiving copies, and copies will be made available to anyone who wishes to receive them.

Annual In-Service Staff Training

The agency will begin its first annual in-service staff training in February. The 20-hour-per-year-per-employee training will be held in Headquarters. The training is a result of work group recommendations and staff input. Administrator Steen noted that the agency has always provided in-service staff training; however, the agency is placing more focus and resources into this effort. Next year, the training will be expanded to 40 hours.

Office of Professional Responsibility

Administrator Steen stated that Del Drake's presentation would focus on two areas: 1) The Office of Professional Responsibility's new policy and procedures, and 2) the 2004 calendar year complaints report. Administrator Steen commended the many staff that were involved in the development of the policy. The new policy and procedures were a result from suggestions from staff around the state and from the Sunset Review recommendations.

New Employee Introductions

Administrator Steen introduced Doreen Debish, Administrative Technician in the Information Resources Division under Garry Sitz, and Linda Jackson, Administrative Assistant in the Executive Office under Jeannene Fox. The Commissioners welcomed Ms. Debish and Ms. Jackson.

Because Commissioner Cuevas was not yet at the meeting, it was decided that the Office of Professional Responsibility presentation be held until later in the agenda.

TEXAS JOINT TERRORISM TASK FORCE

Chairman Steen called upon Jeannene Fox, Assistant Administrator, to provide an update on the Texas Joint Terrorism Task Force.

Ms. Fox stated that there are terrorism task forces throughout the state that are headed by the FBI. TABC has informally worked with these task forces in the past. In October 2004, TABC committed six of TABC's homeland security commissioned peace officers to six of the task forces around the state. These task forces are located in Austin, San Antonio, Houston, Dallas, McAllen, and El Paso. Ms. Fox explained that the staff must undergo a top-level security clearance before they are

official members; it is anticipated that this may occur around March 2005. After the officers have been cleared, TABC will enter into a formal memorandum of understanding with the FBI. The officers would then be under the supervision of the FBI, with TABC paying their salaries. The federal government would pay for any overtime pay, cell phones, office space, etc. Ms. Fox noted that local police agencies and other state and federal agencies are also members of these task forces.

In response to Commissioner Madden's question as to whom the TABC officers would report to, Ms. Fox stated that the one from the Austin District Office would report to Homeland Security Director David Garza, and the others in the field offices would report to their respective Captains. However, all information would be collectively funneled through the Homeland Security Office in Headquarters.

Chairman Steen asked what job duties the officers were performing at the present time. Ms. Fox stated that they are currently doing investigative-type work in the field. She noted that most of these individuals have already worked on an informal basis with the task forces. Ms. Fox clarified that the work they perform as members of the task force will always be related to the licensed premises that TABC regulates.

APPROVAL OF RESOLUTION FOR SUBMISSION OF 2005 SPRING BREAK AND MARDI GRAS PROJECT GRANT APPLICATION

Chairman Steen called upon Joel Moreno, Deputy Assistant Chief of Enforcement, to discuss the 2005 Spring Break and Mardi Gras Project grant application.

Mr. Moreno stated that the grant was basically the same one that was awarded to TABC last year for the Spring Break and Mardi Gras project. The grant would allow TABC to bring in agents across the state to assist local officials in enforcing the underage drinking laws and other alcohol-related violations. Also, some of the grant money would be used for public information materials. TABC requested \$129,000 and would provide a match of \$19,000 through manpower and usage of vehicles. The areas for the Spring Break project are South Padre Island and Port Aransas; for the Mardi Gras project, Galveston.

Mr. Moreno stated that after the Commissioners approved and signed the resolution (Attachment 1), he would submit the information to the Governor's Office.

Commissioner Madden moved that the Texas Alcoholic Beverage Commission approve the resolution for submission of the 2005 Spring Break and Mardi Gras Project grant application. Chairman Steen seconded the motion. The motion carried.

FISCAL STEWARDSHIP REPORT: FIRST QUARTER KEY PERFORMANCE MEASURES

Chairman Steen called upon Buck Fuller, Director of the Compliance Division, Amy Harrison, Director of the Licensing Division, and Sam Smelser, Chief of Enforcement, to provide the fiscal stewardship report (Attachment 2).

Charlie Kerr, Director of the Business Services Division, presented on behalf of Sam Smelser. He reviewed the first quarter key performance measures for Enforcement, noting that agents devoted more time to inspections the first quarter than projected, and thus spent less time than usual on licensing standards investigations and public education. He stated that the number of inspections made exceeded the target for the first quarter. Also, the average cost per inspection was slightly lower than projected. He reminded the Commissioners that these are annual measures and it is common to see fluctuations on a quarterly basis.

Amy Harrison discussed the first quarter performance measures for Licensing. She explained that original applications are given priority over renewals. Licensing has three persons dedicated for the processing of original applications; resources are shifted as needed to ensure that the applications receive priority. For the first quarter, Licensing achieved 99.8% for the key measure of "Percent of Original License/Permit Applications Processed Within 14 Days." Last year, TABC issued over 98,000 licenses and permits; the total projected amount for FY 2005 is around 99,000. Ms. Harrison explained that TABC exceeded the projected amount for the average cost per license/permit processed in FY 2004 because of the agency receiving homeland security funds late in the legislative session. Thus, the funds were not calculated in the projections; however, the money is tracked. Ms. Harrison stated that the licensing performance measure projections are on target.

Buck Fuller discussed the performance measures for Compliance, stating that they are all on target for the first quarter. For the key measure "Number of Inspections, Analyses, and Compliance Activities," TABC is at 27.5% of its annual projection. Mr. Fuller briefly reviewed the first quarter numbers for the inspection/compliance activities, the compliance/administrative actions, and the number of reports analyzed. For the "Average Cost per Inspection, Analyses, and Compliance Activities," the actual average cost for the first quarter was \$28.82, versus the projection of \$31.82. Mr. Fuller explained that the variance was due to FTE position vacancies that resulted in lower-than-expected costs.

Mr. Fuller discussed the measures for the Ports of Entry (POE) section. The projection for the "Number of Alcoholic Beverage Containers and Cigarette Packages Stamped" is 25%; the department achieved 22.4%. Mr. Fuller stated that historically, the first quarter is lower and then picks up in the second quarter. For

the first quarter, a total of 559,319 alcoholic beverage containers were stamped, and 585,619 cigarette packages were stamped. Along the border, 49% of containers stamped are alcoholic beverage containers, with 51% of the containers being cigarettes. However, on the revenue side, 70% of the revenue comes from alcohol and 30% of the revenue comes from cigarettes, due to the different tax rates. Mr. Fuller also discussed the number of alcoholic beverage containers and cigarette packages confiscated. For the first quarter, 2,344 containers/packages were confiscated, which is 22% of the annual projections for confiscations. Historically, the first quarter is lower than the other quarters of the year.

Jeannene Fox noted that TABC divisions are exceeding their targets in most areas. She attributed this to the hard work of staff and to the increased focus in the area of planning. Action plans have been developed by region and by division, resulting in greater productivity throughout the state.

Commissioner Cuevas entered the meeting room, and Chairman Steen welcomed Commissioner Cuevas to the meeting.

OFFICE OF PROFESSIONAL RESPONSIBILITY POLICY

Chairman Steen called upon Del Drake, Director of the Office of Professional Responsibility (OPR).

Mr. Drake presented the policy and process for Employee Misconduct Complaints and Investigations (Attachment 3). He reviewed the policy statement, which was one of the Sunset recommendations: The TABC OPR will coordinate and be a central reporting point for all employee misconduct complaints and investigations and will be responsible for the thorough, objective, and expeditious review and investigation of all complaints against TABC personnel regarding allegations of illegal acts and/or employee misconduct. Mr. Drake noted the strong “zero tolerance” policy prohibiting retaliation toward anyone who reports allegations of misconduct.

Mr. Drake discussed the priorities of reported allegations, which are based on the severity of offense. Priority 1 allegations are the most serious and are to be reported immediately. The investigation for Priority 1 allegations must be completed within 10 working days. Priority 2 allegations deal with less serious issues such as rudeness and courtesy complaints and must be reported no later than the next working day. Priority 2 investigations must be completed within 20 working days.

Complaints may be reported orally or in writing. Written complaints can be made by writing a letter, sending e-mail, or using the TABC Complaint Form available on

TABC's public website. Mr. Drake noted that there will also be a condensed version of the policy on the public website. Mr. Drake briefly reviewed the disposition of complaints. If any investigation is submitted with a sustained allegation, the offices of the General Counsel and Human Resources must review the complaint investigation.

Mr. Drake discussed the reporting requirements of his office. OPR will collect data to identify problem areas with employees, training, and/or policy. This information will be submitted to the Administrator and Division Directors, who will then take appropriate action if needed. In addition, OPR will provide quarterly reports to the agency administration on the complaints and findings.

Commissioner Madden commended staff for the comprehensiveness of the policy. Mr. Drake stated that several people were involved, noting the hard work of Mary Cardwell, Lou Bright, and others. The detailed policy was a result of suggestions provided by Sunset staff. Ms. Madden stated that there is a great deal of work involved and asked Mr. Drake if he would be hiring any support for his office. He responded that he and Administrator Steen have discussed hiring of staff if the upcoming budget is approved.

Commissioner Cuevas concurred that the document was very good and comprehensive. **He suggested that Mr. Drake may want to add to the complaint form an area for an email address as well as a section that asks when the preferred time of day would be for contacting the complainant. Mr. Drake stated that these would be added to the complaint form.**

Chairman Steen asked who had made the determination of which offense should be placed under Priority 1 and Priority 2. Mr. Drake responded that staff made the determination that anything that could result in harm or injury—anything that requires immediate response—is a Priority 1. Chairman Steen asked if the Commissioners—as the agency's policy-making body—were being asked to approve the policy. Administrator Steen responded that formal approval was not needed as the investigative policies are already in place. He stated that the direction of the policy was not being changed, only being expanded to greater detail. He stated that this presentation was being provided as an informational item to the Commissioners; however, if the Commissioners wished to approve policy, then that certainly could be done. Commissioner Madden stated that it appeared that much of the policy was already in place and being implemented. Chairman Steen asked Lou Bright for his opinion; Mr. Bright responded that there is no legal requirement that such internal policies be approved by Commissioner vote. He stated that historically, staff have kept the Commissioners informed of internal policies, rather than having a formal Commission vote. However, it was entirely up to the Commissioners if they wished to vote on internal policies.

Mr. Drake then provided a report on the personnel complaints and incident reports for calendar year 2004 (included in Attachment 3). During calendar year 2004, OPR recorded 106 personnel complaints and received 9 incident reports. He clarified that incidents are reports that are submitted by employees concerning such issues as found property, vandalism of state property or incidents that may eventually turn into a personnel complaint. Of the 106 personnel complaints 65 were from the public, 34 were from agency employees, and 7 were anonymous.

Mr. Drake reviewed the complaints by division and by location. He reviewed the types of allegations and complaints. The highest number of the allegations/complaints—43—was in the area of courtesy/rudeness/unprofessional conduct. The second highest number—12—was in the area of conflict of interest. Chairman Steen asked for an example of conflict of interest. Mr. Drake gave the example of an employee who has some type of a questionable association with a licensee or permittee. Commissioner Madden asked about the seriousness of the complaints of courtesy/rudeness/unprofessional conduct. Mr. Drake stated that the majority of these complaints will be in the Enforcement area, simply because Enforcement agents comes more into contact with the public than other divisions. He stated that the majority of those complaints arise from people who are attempting to get out of a ticket or some type of problem.

Of the 106 personnel complaints, 80 were unfounded. Mr. Drake briefly reviewed the disposition of the complaints and noted that five of the complaints are still under investigation. A total of 87 employees were involved in the complaints. Three employees had three complaints each, and five employees had two complaints each.

Commissioner Cuevas noted that the San Antonio Region had the highest number of complaints. Mr. Drake explained that it was high because of Spring Break activities, as South Padre Island is in Region 5. The Lubbock Region was the second highest, and Mr. Drake attributed this to a news media blitz after a permittee had been interviewed by the news media.

Chairman Steen asked Administrator Steen if he sees all complaints. Administrator Steen stated that he and Del Drake have weekly standing meetings in which the complaints and issues are discussed.

Chairman Steen commended Mr. Drake on his report and **asked that he utilize PowerPoint presentations in his future reports so that the audience can see the information. Mr. Drake stated that he would use PowerPoint presentations for his presentations.**

REGION I UPDATE

Chairman Steen called upon Dan Cullers, Captain of Region 1, and Larry Howard, Compliance Supervisor of Region 1.

Captain Cullers provided an overview of Enforcement Region 1 utilizing a PowerPoint presentation (Attachment 4). He stated that Region 1 is comprised of a population of 2,589,100; 3,975 licensed locations; 121,802 square miles; and 46.6% of the state land mass. He stated that Region 1 is the largest region in the state. He reviewed some of the region's cooperative efforts with other organizations. Chairman Steen asked what cooperative efforts TABC was involved in with the air force. Captain Cullers gave an example of TABC working with the Air Force base security police to identify underage personnel that go to off-base clubs and to report any violations or arrests of their personnel.

Captain Cullers reviewed Enforcement Region 1's Direction Plan, highlighting the following:

- Region 1 will conduct minor stings on 435 on-premise and 985 off-premise locations before the end of the fiscal year.
- Each district will conduct at least one undercover SIPs operation per month that will result in 60 to 120 locations by the end of the fiscal year.
- Each district will re-sting non-compliant locations that are identified within 30 to 60 days.
- Each district will conduct inspections totaling a minimum of 3,120 licensed premise locations for the region by the end of the year. The objective is to inspect at least 78.5% of the total number of licensed locations in the region.
- Each district will conduct 1 to 2 Cops in Shops inspections per month.
- Each district will conduct 2 to 12 Operation Fake-Out programs.
- Each district will conduct 2-12 Shoulder Tap programs by the end of the fiscal year.
- Each district will offer educational programs to retailers that are found to be in violation during minor stings in SIPs (sale to intoxicated persons) operations.

Chairman Steen asked for more information about the Shoulder Tap and SIPs programs. Captain Cullers explained that the Shoulder Tap program is

intended to ensure that adults who may be approached by minors to purchase alcoholic beverages are not compelled to do so. The SIPs program is an undercover operation where agents observe if any intoxicated persons are being served alcohol in a licensed location.

Captain Cullers continued highlighting the Direction Plan:

- Each district will conduct educational programs to local area law enforcement agencies.
- Each district will continue to contact industry members to offer safe programs for their employees.
- Each district will continue to offer the Shattered Dreams program for area high schools.
- Each district will continue to work special events such as Safe Prom/Safe Graduation, rodeos, college functions, and other special events.
- Each district is conducting follow-ups on administrative warning tickets to ensure compliance.
- Each district will continue to conduct district meetings to ensure that information is conveyed on policy or procedural changes, officer safety issues, and other pertinent information.
- Districts conduct traditional patrol activities. Inspections will be conducted with the focus being on quality and not quantity. Staff are being rededicated to obtaining and maintaining a strong work ethic. All other activity will focus on improving or impacting the safety of the public.

Captain Cullers discussed the divisional cooperation in Region 1. Agents and Compliance Officers cooperate and assist each other on complex investigations. Also, Agents complete licensing standards investigations that are assigned from the Licensing Division, such as possible subterfuge ownerships and citizen protests. Agents perform background investigations for Human Resources and routinely assist the training unit by teaching in-service classes as well as Beverage Code updates to local agencies.

Larry Howard, Compliance Supervisor, provided an overview of Compliance Region 1 utilizing a PowerPoint presentation (in Attachment 4). He discussed the five Compliance offices in the region, noting that there are 102 counties covering over 122,000 square miles with over 2½ million Texas

citizens in Region 1. The office locations in the West Texas Region 1 are: Amarillo, Lubbock, El Paso, Odessa, and Abilene. There is one Compliance Officer per office location. Their duties include: custodianship of a confiscated property room; being the district property officer; monitoring seller/server schools through open inspections, undercover inspections, and records inspections; and handling inquiries from the public and from licensees and permittees.

Mr. Howard reported the following for the 2003-2004 fiscal year:

- Compliance Region 1 conducted 20 excise tax audits of wholesalers, distributors, wineries, and ports of entry operations. The region's action plan for 2005 calls for 25 excise tax audits.
- The region conducted 39 private club analyses. For 2005, the region will conduct 50 analyses.
- The region conducted 76 food and beverage analyses to ensure BG and BE licenses and permits meet the 50/50 ratio of food to alcohol sales. For 2005, the region will conduct 82 food and beverage analyses.
- The region conducted 49 food and beverage inspections of accounts that hold the mixed beverage or private club permits. For 2005, the region will conduct 65 inspections.
- The region conducted 252 new location inspections.
- The region conducted 20 special investigations, mainly involving the credit law and private club subterfuge operations.
- The region administered 11 seller-training tests and inspected 5 seller-training schools.
- The region handled over 400 cash credit law cases.
- The region handled 2,730 taxpayer inquiries.

Mr. Howard reviewed the Compliance Region 1's action plan for 2004-2005:

- The region will conduct all new location inspections as required.
- The region will inspect all local distributors in the region to ensure that they have the records required as part of the stamps and stamp law.
- The region plans to inspect 14 seller-trainer schools.
- Mr. Howard will require two formal office evaluations and two formal field visits on all Compliance Officers.

Mr. Howard then discussed issues particular to each location:

- El Paso is the sixth largest metro area in Texas by population, with a great number of economic activities, which leads to many new locations for TABC to inspect. Also, there are border issues with regard to custom bond warehouses and several large wholesalers and distributors.
- Amarillo has several private club registration permittees. In addition, there are licensees and permittees operating in other states.
- Lubbock has a large number of wineries in its region.
- Odessa is a large district for both Compliance and Enforcement, requiring both to be very organized and diligent in their duties.
- Abilene has several private clubs and has a large number of wholesalers and distributors due to its central location.

Mr. Howard referenced Chairman Steen's earlier remarks about TABC activities with Air Force bases. Mr. Howard stated that Lieutenant Randy Motz of the Abilene office provides monthly orientation sessions with new personnel at Dyess Air Force Base.

Chairman Steen asked Mr. Howard to explain the custom bond warehouse issue in El Paso. Mr. Howard used the example of a particular wholesaler in El Paso that only received one particular brand of tequila from Mexico. The tequila would go into a custom bond warehouse. When the wholesaler was ready to sell the tequila, an invoice would be issued from the distillery in Mexico to that wholesaler and the tequila would be shipped from the custom bond warehouse. Thus, the wholesaler never truly took possession of the tequila and did not have any tax issues.

Chairman Steen asked for examples of the 408 cash credit law cases. Mr. Howard stated that most of those are cases in which beer distributors receive bad checks by retailers. Beer distributors are required by law to notify TABC when they receive checks with insufficient funds. When this happens the first time, the retailer is given a warning; the second and third time it happens, the retailer's permit is suspended for a certain number of days, depending on whether it was the second or third time. Chairman Steen asked if staff spent a great deal of time on this. Mr. Howard stated that it does not take much time when notifying the retailers as the letter is a standard letter.

The Commissioner expressed appreciation for the presentations on Region 1.

PUBLIC COMMENT

Chairman Steen asked if there was anyone who wished to make public comment; there were none.

NEXT MEETING: MONDAY, FEBRUARY 28, 2005

Chairman Steen announced that the next meeting of the Texas Alcoholic Beverage Commission was scheduled for Monday, February 28, 2005.

ADJOURNMENT

Commissioner Madden moved that the Texas Alcoholic Beverage Commission meeting be adjourned. Commissioner Cuevas seconded the motion. The motion carried, and Chairman Steen announced that the meeting was adjourned.