

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, JUNE 16, 2003

The Texas Alcoholic Beverage Commission met on this date at 5806 Mesa Drive, Suite 185, Austin, Texas. Members present: John T. Steen, Jr., Chairman; Gail Madden and Kel Seliger, Members. Staff present: Jeannene Fox, Assistant Administrator; Lou Bright, General Counsel; Greg Hamilton, Chief of Enforcement and Denise Hudson, Director of Resource Management. Visitors included: Tom Spilman, Wholesale Beer Distributors of Texas; Len Riley; Fred Marosko, Texas Package Stores Association; Randy Yarbrough, Wholesale Beer Distributors of Texas; Rick Donley, Beer Alliance of Texas; Glen Garey, Texas Restaurant Association; Russell Gregorczyk, Jansen & Gregorczyk and Robert Sparks, Licensed Beverage Distributors, Inc.

The agenda follows:

10:00 a.m. - Call to order.

1. Approval of minutes of May 19, 2003 meeting; discussion, comment, possible vote.
2. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement; and
 - c. discussion of management controls.
3. Fiscal stewardship of agency; discussion, comment, possible vote.
4. Presentation of internal auditor's report on Internal Audit of the Planning and Budgeting Processes; discussion, comment, possible vote.
5. Public comment.

11:00 a.m. - Announcement of executive session.

6. The commission will convene in executive session to discuss hiring an administrator, consider applications and interview applicants for the administrator's position pursuant to Texas Government Code, §551.074(a)(1).

Continue open meeting.

7. Take action, including a vote if appropriate on topics listed for discussion under executive session.
8. Adjourn.

The meeting was called to order at 10:10 a.m. by Chairman Steen.

MR. STEEN: I want to call to order the June 16, 2003, meeting of the Texas Alcoholic Beverage Commission.

The first item on the agenda is the approval of minutes of the May 19, 2003, meeting; discussion, comment, possible vote.

MS. MADDEN: So moved.

MR. SELIGER: Second.

MR. STEEN: Any discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. The minutes are approved.

Next is the administrator's report. Ms. Fox?

MS. FOX: Mr. Chairman and Members, due to the length of your schedule today, we have streamlined our administrator's report, and we will not have a usual staff report. We will defer that one until July. There are a few things I do want to bring to your attention.

In the monthly material that we sent you previously, we had an error in one of our reports. If you will look under Tab 2, under the enforcement division, the "Retailer Compliance Rate for Minor Stings," which generally indicates to you the percentage of time a retailer will decline a sale to a minor, we erroneously reported to you that it was 95 percent. Though we really wish it was 95 percent, the correct amount, as you see it now in your book, is 79 percent. I did want to point that out in case you read that and got really excited and thought, "Man we are really doing a bang-up job." We are working real hard at it, but we haven't quite made that 95 percent yet.

MS. MADDEN: This is under monthly reports?

MS. FOX: Yes, under Tab 2. The first division is the enforcement division, and it's the very last measure at the bottom of the page. That is correct, it's 79 percent. I wish we could report it was 95, and we are still going to work on that.

At the last meeting, we had an extended discussion about FAS and the mail out that we did. I wanted to get back to you and tell you that we have drafted a letter - it's also under Tab 2 and it should be the very first thing under Tab 2. This letter, we will send out under the Chairman's signature to over 900 restaurants in Texas urging them to please post the decals one more time and to look at that issue. We will also send 32 letters directed at some of the larger chains in Texas under the Chairman's signature urging them to post that decal. We do have enough decals here at headquarters to put one additional decal in that letter as we send those out.

One of the other things that Mr. Haire brought up during the discussion period was because money in our budget was an issue as far as making these signs mandatory, that surely we could find grant funding somewhere to fund these. I would like to report to you that we did look at the Federal Catalog of Domestic Assistance, the State Grant Search and other state agency web sites for those agencies that do these type of grants, and there

are no funds available for that type of measure. We have done as much as we can do in that particular regard.

There will be over 900 letters going out, in general, and I know that the restaurant association is also going to follow up with their own letter urging their members to please post these signs. Hopefully, in a couple of months we will have another report back to you on our survey of how many have posted the signs on on-premise locations.

MS. MADDEN: I thought we were just sending them to the CEO's of those.

MS. FOX: It kind of started that way, in all honesty. That's what we talked about but, when you started looking at it, there were 32 larger chains and we felt like, as our last effort to try to get compliance, that we could go ahead and send them to those 900 and be able to afford that within the monetary constraints that we have right now. We felt, with that, we have done everything we can do. Also, the latest *TABC Today* is on our web page. If you will remember, due to the budget cuts for the current year, we weren't able to mail those, but the newsletter is on our web page with a large article on FAS, also. We feel like this is the most that we can do with the constraints that we have after the large mail out that we had already done.

MR. STEEN: Mr. Garey, do you have any comments?

MR. GAREY: I want to explain a little bit about that mail out. The 32 people mentioned are the major people up in those chains. I did try to pick ones that actually have authority over this kind of thing to make a decision to put something out there. Sometimes you will see it's not necessarily the president. It may be somebody who's in charge of loss control or something along those lines. The other 900 are from our membership database, and they will actually have the name of the person who is in charge of the place. We are going to follow up with our own letter, so I just wanted to give you the same mailing list that we have. You don't necessarily have to go out to the 900. We are going to go out to all of them, the 900 plus 32, and I will actually make phone calls to the major chain people that you are going to be writing to to follow up on them. That's where those came from.

MR. STEEN: Thank you so much.

MR. GAREY: Sure.

MS. MADDEN: Thank you for your partnership in this. We appreciate it.

MS FOX: The last thing I was going to go over with you are some of the bills that passed. I know it's going to be a long day, so I didn't intend to go into any great detail. You do have a summary of those as well as the bills themselves in your book. If you have a desire, other than me just giving you a highlight of each bill, let me know. The governor has until June 22nd to veto or sign a bill or let it become law. At that time, we will send you the completed book with the effective dates and if they have been signed, vetoed, etcetera, of everything. I will do whatever you wish at this time, whether you want to go over them or just wait and see what actually passes and we would go more in depth in July and go over those. We have a large book of bills that we are trying to go through and digest and analyze and determine right now. We may have a better report for you on each one and how it's going to be implemented at the next meeting. It's up to you how you would like for me to proceed.

MS. MADDEN: Maybe we can study this between now and our next meeting and you can give us a report that's more in depth. What do you think about that?

MR. STEEN: That sounds good to me.

MS. FOX: There are 25 bills that passed. There have been only four that have been signed as of today. For those that are signed, it's indicated in your book, the effective date and that it's signed by the governor.

I will tell you that there are at least five bills that I know of that will require some type of rule change if they do pass, so we will be busy looking at those proposed rules and their changes to the current ones. If you wish, I won't go over these and we will wait until July.

MR. STEEN: I think Ms. Madden has a good plan and we'll do it in more detail at the July meeting.

MS. FOX: Okay. That concludes my report unless you have any questions on the monthly information.

We are fairly on target with our performance measures. We are a little behind in our compliance department in the number of audits that we've conducted, but I know that we will meet that measure by the end of August. We are just a little slow right now, and we are just a small amount behind in the number of locations to be inspected, but with the new agents that we have out in the field now, I know that we will catch up and be on target by the end of August.

MR. STEEN: Thank you. We will move to fiscal stewardship of the agency; discussion,

comment, possible vote.

MS. HUDSON: We've provided some information on recruitments, contract workforce and the major contracts. With regard to recruitment, this last year, we developed a new recruitment poster that was put out in September, and in working with the field, HR has developed a list of recruitment centers and those are available on our internal web page for supervisors or people out in the field when recruiting. We currently have the agent posting up and we are receiving applications through this month.

With contract workforce, we have about one person counting as an FTE, and that's for the internal audit services that we are being provided.

Under major contracts, most of those costs relate to computers. It's for the leasing of the PC's and desk tops throughout the agency and for software maintenance for the mainframe system. That's more than half of it.

Any questions?

MR. STEEN: Ms. Hudson, you say the agency reported one consultant/contract individual performing internal audit services as of May 31, 2003. Does the contract we have with Ms. McLeskey fall into this?

MS. HUDSON: It has not been enough hours to qualify as a full FTE.

MR. STEEN: Any other questions? Thank you, Ms. Hudson.

We move to presentation of internal auditor's report on Internal Audit of the Planning and Budgeting Processes; discussion, comment, possible vote.

MR. GREGORCZYK: Good morning.

MR. STEEN: Good morning. Would you identify yourself for the record?

MR. GREGORCZYK: Yes, I will. I'm Russell Gregorczyk. I am the internal auditor for TABC.

Let me give you a highlight of this audit, our key findings and some of our key recommendations. Overall, we felt that the planning and budgeting is very good at TABC. We certainly didn't find anything we considered major issues. With the exception of one recommendation, I think staff concurs with all the recommendations, and I will discuss some of those recommendations and the one that we are not in concurrence with.

We did look at the strategic planning process that was carried out the last time. It was very comprehensive, very good and met all the requirements of the LBB. We certainly had no recommendations with respect to strategic planning, whatsoever. We couldn't think of anything to improve upon in that process.

We looked at the way performance targets are done, the methodology. Performance targets are sometimes underestimated and is a difficult process because you do them so far in advance, and we certainly understand that. We also understand, especially at TABC compared to other agencies, statutory changes can often occur after those performance targets are set that will cause you to change the actual. That was a finding, but I'm not sure there's a whole lot that can be done about it. We did feel like the methodology could be somewhat better documented as to exactly how we got to the performance targets.

We looked at action plans. Each department does action plans each year. It's sort of the tactical planning that goes on. Those plans vary considerably from department to department and, in some cases, departments incorporate all the performance measures that are in the strategic plan and in other cases, that's not the case. Our recommendation there was that perhaps the action plans, the format should be standardized so that we all have the same type of action plans and sort of tie into...we think that probably there is a way to tie those action plans into the strategic plan. One of our agencies we do other work for is DIR and they have what they call their Annual Business Plan. We shared that with management. We think it's a real good way to tie in your strategic plan, your tactical plans and your budgeting into one document. I think staff is going to take a look at that plan.

I said we have one area where we don't agree. The area where we don't agree is that we made a recommendation that the trustees should approve the operating budget and any amendments to that budget. Historically, that has been the purview of the administrator. There's pros and cons on that. It certainly allows the administrator to make changes that he needs to make in a timely fashion. At the same time, we feel like it might give you more information. We did make that recommendation that the commissioners consider approving the budget. Jeannene may want to respond to this one because we did have a disagreement there. They feel like it's worked well in the past and it should stay the way it is.

Did you want to comment on that, Jeannene?

MS. FOX:

Basically, I think Russell has pretty well described it. It's not any huge

disagreement. It's just historically, it's worked well within our agency not to have budget amendments approved by the commissioners. You have delegated that responsibility of internal operations and the operation of the agency as a whole to the administrator, and we feel if we are tied to always having some changes approved by the commission, and those probably would be large changes, it might somehow hinder plans or operations or different procedures. We haven't had a problem, as Russell has pointed out in his audit. He thinks that financially you have all the information available to you. It's been well reported. So, we just feel like this is not a necessary item. Statutorily, between programs, an agency cannot transfer more than 25 percent. So, we already have that legislative or statutory cap, if you will, and we feel that we have reported appropriately, and this added measure of bringing it to the commission for their decision would not be necessary.

MS. MADDEN: I think it's important that you all have the flexibility to be able to do that, to move the money around. Sometimes, I feel that the commissioners - maybe I should speak for myself - could have a little better grasp on the budget. I don't know that I want to go as far as having to approve it because, as I say, I think that should be under the purview of the administrator. Is there any other thoughts about that, about oversight, or any kind of...

MR. GREGORCZYK: This is one that I sort of just bring to your attention and let you make the decision. Most agencies that I do internal audit for, the commissioners do approve the budget, but there is at least one other agency where that's been delegated to the administrator, so it works both ways in state government.

MS. MADDEN: I don't think the Water Development Board approves their budget. I think they leave that up to their executive director.

MR. GREGORCZYK: Like I say, it works both ways in state government. I think the main thing for the commissioners would be if you are comfortable with what you are getting in terms of management reporting, that's probably okay. You'd hate to have a problem come up and LBB or somebody say, "Gosh, those guys don't even approve the budget, so they are not even informed." I don't think that would be the case, but I felt like on this budget, we ought to at least raise the issue and let the commissioners decide if they want to continue to have it the way it's always been.

MS. FOX: If you look at the second to the last page of the monthly material that we provide you, it indicates the budget by strategies and by our resource management department. It shows you the original budget, any

adjustments that are made to that budget and expenditures and remaining budget. So, every month you are getting the information on our budget and any adjustments that were made to that.

MR. GREGORCZYK: I would say I do agree with Jeannene. We did find, and I haven't really spoken to that yet, the budget reporting process is excellent here. The system is really good. It's better than most agencies that I work with in terms of how you get your information. It comes directly out of USAS. There's no chance that it's in error, because it is right out of the state accounting system. It's a very good system. I think that probably you are getting apprised and management is certainly apprised. As far as where we stand on the budget, that's really a non issue, it seems to me.

MS. MADDEN: Management is very good about having private orientations regarding the LAR in the initial process, which is very helpful.

MR. SELIGER: Do you believe the requirements are met if when changes are made in the internal operating budget, if they were simply reported to the commission, prior to those changes being made, in case there is any exception taken by the commission or its members?

MR. GREGORCZYK: I think that's what happens realistically. When you get those reports, you are going to see budget adjustments that have been made after the fact.

MR. SELIGER: Okay. If that was to be reported beforehand, it doesn't put the commission in the position of trying to micro manage from a financial standpoint, but if there are any exceptions taken by members of the commission, prior to that being changed, any member of the commission could then take that exception. Would that meet the requirement that you think exists there for the commission to play more of a role in that budgeting process?

MR. GREGORCZYK: I think it would. There is no legal requirement for you to approve that budget.

MR. SELIGER: Right. I think what you feel would be a requirement for either efficiency or responsibility.

MR. GREGORCZYK: I think that would do it. If you are going to do it beforehand, it almost puts you in the approval process, it seems to me. I'm not quite sure I understand the difference.

MR. SELIGER: It would be more in the way of tacit approval, that being if there was nothing said or no exception taken by the commission, it would tacitly be

approved. Yes, you are right.

MR. GREGORCZYK: But you would have knowledge beforehand, if that were the case.

MR. STEEN: Just to clarify, this is recommendation five on page nine. "The Commissioners should consider approving the agency internal budget and any significant budget amendments that are necessary during the year in order to ensure that they are fully apprised of the financial operations of the agency." A question I had had, what about significant? What does that mean to you?

MR. GREGORCZYK: I think we will probably establish some kind of threshold, dollar threshold, between line items or something. Many times, the threshold is any change in 10 percent between line items, that type of thing. You would have to establish what the significant threshold would be, what you want to know. Perhaps, major contracts, something of that nature.

MR. STEEN: I'm not one to want to get involved in the day-to day-operations, and I did talk to Ms. Fox about this, but I think that's...I see your point on it. Of course, since you are our auditor and you brought it to our attention, it kind of puts us on the spot if we have some problem in the future in this area. I would be inclined to say we ought to go ahead and approve the internal budget, as long as we are comfortable that we are not being brought a lot of small changes and, if we could get the staff comfortable with what's a significant budget amendment, I think I would be in favor of that.

MR. SELIGER: Mr. Chairman, I would like a report over the last 24 months of those changes in the budget that did occur, so we will know exactly what we are looking at in terms of the subject areas and the amounts and see what we want to do then. Once again, I think we want to avoid micro managing. At the same time, we don't want to see a situation where someone took an exception to a change in budget or budgeting priority and members of the commission didn't know anything about it. What we may be talking about is simply reporting to the commission, not necessarily the requirement for commission action on the internal operating budget.

MS. MADDEN: Good suggestion.

MR. STEEN: I like that.

MS. FOX: If it's helpful to you, I don't think that in the last two years that we've had a budget item change or adjustment over five percent. Most of the time it's a very small amount, maybe from one category to the other.

Enforcement is 55 percent of our budget, so for any large things it would normally affect enforcement, and that's usually the division that we keep fully funded. As far as a whole lot of changes, I don't think there are any, but we can go back for the last two years and show you what types of changes or adjustments that we've had so that you can look at them and help you better formulate your opinion on what needs to be done.

MR. SELIGER: I think that would be helpful. What we may really be talking about is some sort of threshold. Clearly, a threshold is going to be higher than most of those changes that occur and so probably won't amount to any change in fact.

MR. GREGORCZYK: Most agencies do. We are talking about line items like salaries, travel. They have their major eight or 10 line items and they have allowed staff to move money within there up to a certain percentage between those line items. Ten percent is a pretty typical thing which is quite a bit of money actually. You have quite a bit of latitude within a 10 percent line item change in most cases. That's what many of them do. Five percent may be a figure...

MS. FOX: They get to the detailed line items, not between programs and goals?

MR. GREGORCZYK: It goes both ways. Some agencies are strictly by appropriation strategy, others are by line item for the overall agency with the strategies in there, too.

MS. FOX: We will provide the information to you both ways.

MR. SELIGER: Okay.

MR. STEEN: Ms. Fox, the issue that you are taking is about bringing budget amendments. What about approving once a year the agency internal budget? What's the problem with that?

MS. FOX: I don't have a problem with that. Historically, I don't think that we have necessarily done that. It is not required. I think there is one occasion that we actually did bring it to the commission. We generally report it in some way. We report it to you every month, and in September you will get the report that is the internal budget for that year. You are being advised of that information. You just don't have a formal vote to accept it.

MR. STEEN: We will take this up next meeting? Put it on the agenda?

MS. FOX: Yes.

MR. STEEN: Any other questions?

MR. GREGORCZYK: Can I ask a clarification on this report?

MR. STEEN: Yes.

MR. GREGORCZYK: Do you want me to finalize this report or do we want to wait for this one or put an auditor's comment that the staff will research this further and provide information back to the board?

MR. SELIGER: Wait.

MS. FOX: I think wait would probably be better.

MR. GREGORCZYK: Okay.

MR. STEEN: Would you come back to our meeting in July and be available?

MR. GREGORCZYK: I plan to be back anyway. We are going to present the audit plan for next year at the July meeting. I will be glad to do that.

MR. STEEN: Thank you for your work. Anything else?

MR. GREGORCZYK: That's all I had as far as findings and recommendations. Thank you.

MR. STEEN: Thank you.

We move to public comment. I have no cards up here. Any public comment?

Hearing none, the commission will now convene in executive session to discuss hiring an administrator, consider applications and interview applicants for the administrator's position pursuant to Texas Government Code, Section 551.074(a)(1). The date is June 16, 2003, and the time is 10:35 a.m. Thank you.

The commission convened in executive session at 10:35 a.m. and reconvened in open meeting at 4:49 p.m.

MR. STEEN: The time is 4:49 p.m. The commission meeting of June 16, 2003 is now back in open session. During executive session no votes were taken, no final decisions were made. There are no matters requiring commission action at this time.

Our next meeting is on June 30th. What time are we going to meet?

MS. MADDEN: You want to say ten or 10:30 again?

MR. SELIGER: Let's say 10:30 because of your flight. That will probably be best.

MS. MADDEN: Okay.

MR. SELIGER: Ten thirty?

MS. MADDEN: Is that okay?

MR. STEEN: Is that all right, Ms. Fox?

MS. FOX: Yes, sir.

MR. STEEN: Our June 30th meeting will be at 10:30. Have we sent any kind of notice on that?

MS. FOX: We will on Friday.

MS. MADDEN: I move to adjourn.

MR. SELIGER: Second.

MR. STEEN: The meeting is adjourned.

The meeting adjourned at 4:52 p.m.