



**COMMISSION MEETING MINUTES**  
**June 27, 2005**

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, June 27, 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

Doris Board, Sergeant, Austin District Office

Lou Bright, General Counsel, Executive

David Cagle, Agent, Beaumont District Office

Pete Champion, Sergeant, San Marcos Outpost

Charlie Cloud, Sergeant, Fort Worth District  
Office

Debbie Dixon, Program Specialist, Seller Training  
Section, Compliance

Loretta Doty, Director, Human Resources

Del Drake, Captain, Office of Professional

Responsibility, Executive  
Shelby Eskew, Accountant, Business Services  
Dale Evans, Regional Compliance Supervisor,  
Houston District Office  
Jeannene Fox, Assistant Administrator,  
Executive  
Buck Fuller, Director, Compliance  
Mike Gardner, Agent, Dallas District Office  
David Garza, Director, Homeland Security,  
Executive  
Sandra Garza, Taxpayer Compliance Officer,  
Brownsville Port of Entry  
Cindy Gethers, Administrative Assistant,  
Licensing  
Loretta Green, Accounts Examiner, Fort Worth  
District Office  
Leonard Guzman, Agent, Floresville Outpost  
Amy Harrison, Director, Licensing  
Gary Henderson, Enterprise Operations Team  
Leader, Information Resources  
Linda Jackson, Administrative Assistant,  
Executive  
Renee Johnston, Executive Assistant, Executive  
Anthony Keel, Agent, Dallas District Office  
Charlie Kerr, Director, Business Services  
Gregory Lewis, Agent, Houston District Office  
Dyer Lightfoot, Lieutenant, Odessa District Office  
Terry Longoria, Clerk, Houston District Office  
Rafael Portillo, Taxpayer Compliance Officer, El  
Paso Port of Entry  
Janet Ratcliff, Training Coordinator, Human  
Resources  
Tricia Rutledge, Agent, Austin District Office  
Robert Samford, Agent, Corpus Christi District  
Office  
Garry Sitz, Director, Information Resources  
James "Sam" Smelser, Chief of Enforcement  
Loretta Smith, Accountant, Business Services  
Ruby White, Secretary, Dallas District Office  
Nicol Young, Clerk, Dallas District Office

Justa Zavala, Taxpayer Compliance Officer,  
Progreso Port of Entry  
Jimmy Zuehlke, Sergeant, Training Section,  
Human Resources

***GUESTS PRESENT:*** Dewey Brackin, Attorney, Gardere Wynne Sewell  
Rick Donley, President, Beer Alliance of Texas  
Karen Lightfoot, Guest  
Fred Marosko, Texas Package Stores  
Association  
Lindsay Meche, Representing Republic Beverage  
Christian Ninaud, Policy Analyst, Sunset  
Advisory Commission  
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, welcoming all in attendance.

### **RECOGNITION OF AGENCY EMPLOYEES WITH 20 OR MORE YEARS OF SERVICE**

Chairman Steen called upon Sam Smelser, Chief of Enforcement, and Buck Fuller, Director of Compliance, to discuss the accomplishments of staff being recognized for 20 or more years of service (Attachment 1). The following staff were recognized for 30 years of service: Dyer Lightfoot and Robert Wallace. Dale Evans was recognized for 25 years of service. The following staff were recognized for 20 years of service: David Cagle, Nigel Crowe, and Terry Longoria. Robert Wallace and Nigel Crowe were unable to attend the recognition presentation; however, each would be presented their plaques at a later time.

### **APPROVAL OF COMMISSION MEETING MINUTES OF MAY 23, 2005**

Chairman Steen called for a motion to approve the TABC Commission meeting minutes of May 23, 2005. **Commissioner Cuevas stated that being there were no corrections or deletions, he moved that the minutes stand approved as presented. Commissioner Madden seconded the motion. The motion carried.**

## **ADMINISTRATOR'S REPORT**

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

Administrator Steen recognized field staff that were in attendance; he explained that they were in Headquarters attending training, and he had invited them to the Commission meeting. Administrator Steen discussed the following:

### **Sunset Bill**

- TABC's Sunset bill was held up in committee and did not pass during the legislative session. TABC will go through the Sunset process during 2006-2007. The Sunset Commission will limit its review to the appropriateness of recommendations made by the Sunset Commission. In the report to the Legislature, the Sunset Advisory Commission will be able to include any recommendations they consider appropriate.
- In the meantime, there are many commonsense recommendations in the report that are already operational or in process of becoming operational in TABC: risk-based approach to enforcement efforts by developing regional action plans; focus on research and data; enhancement of TABC's education programs; update of the penalty chart; and transfer of certain responsibilities from commissioned to civilian staff to increase enforcement time on public safety issues.
- There is a tremendous amount of work ahead of TABC over the next year involving such areas as the Versa project, developing a new strategic plan, and hiring and training over 100 FTEs. However, staff will now have the opportunity to complete the work before the next Sunset review.

### **Budget**

- TABC was originally funded for 119 new positions with an FTE cap of 700.5 positions. However, Article IX then reduced all state agency FTEs by 2%, reducing TABC's cap to 686.5 positions.

- There are some unfunded mandates in FY 2006-2007 from the Legislature affecting state agencies, such as longevity pay, hazardous duty pay, and certain reclassifications. It will be up to each individual agency to find the funds within the agency's budget.
- State employees were approved a 4% across-the-board pay raise in FY 2006 and 3% in FY 2007. CPOs will receive an increase this year, anywhere between 9% and 24%, depending upon their job and experience level.

Commissioner Madden congratulated staff on their successful efforts during the legislative session.

Human Resources/Training Update

- Postings of the new positions have begun so that hiring and training can be accomplished effective October 1, 2005.
- A total of 1,956 applications were received for the 64 agent positions. The approximate diversity breakdown of the applicants is as follows:
 

Asian/Pacific Islander	- 1%
African-American	- 13%
Hispanic	- 37%
American Indian	- 1%
Caucasian	- 47%
Other/Unknown	- 1%

Approximately 22% of the applicants are female. TABC is accepting applications for non-certified CPOs, which helps expand the applicant pool and diversity base. Approximately 30% of the agent applicants are non-certified. Those non-certified applicants that are selected will be sent to a six-week academy school for certification.

- TABC is nearing completion for the new requirement that all employees receive 20 hours of documented in-service training. The training includes: customer service, time management, basic computer skills, basic and advanced liquor law, diversity, safety, use of force, search and seizure, and report writing.

Special Session

- TABC staff are closely watching the special session; however, there has been no TABC involvement at this point. TABC's only role in this special session might be to serve as a resource witness in committee meetings, should alcoholic beverage taxes be proposed to help fund public education.

### Licensing/VERSA System

- Since May 27, when M204 usage ceased, Licensing and Information Resources Division staff have put in a total of over 1,000 hours of overtime.
- Administrator Steen stated that staff stepped up to the plate to accomplish this huge project, working late hours and attending several late-hour meetings.

### Marketing Practices

- Sixteen Marketing Practices Bulletins have been published on the agency's website since the program's inception. Two were published since the last Commission meeting (Attachment 2): MPB015, Infusion of Vodka and/or Other Distilled Spirits, and MPB016, Advertising Product on Delivery Vehicles.

### Legislation Affecting Code

- Staff are in process of reviewing the 27 bills passed from the 79<sup>th</sup> Legislative Session related to the Alcoholic Beverage Code to determine what it means to the agency and to the industry. The summer conference being planned in August will be used to train supervisors on the new law changes. In addition, TABC will communicate to the industry how the agency plans to operationalize the changes during the conference.

Chairman Steen thanked Administrator Steen for his informative report. Commissioner Cuevas reiterated Commissioner Madden's earlier comments commending staff during the session and agreed that the conference would be an ideal way to train staff.

**Chairman Steen asked that the in-house card on TABC facts and figures be updated to reflect the legislative changes; Administrator Steen stated that it would be updated once all of the information is collected in its entirety.**

### **FISCAL STEWARDSHIP REPORT: THIRD QUARTER PERFORMANCE MEASURES**

Chairman Steen called upon Chief of Enforcement Sam Smelser, Director of Compliance Buck Fuller, and Director of Licensing Amy Harrison. Each

provided a report on performance measures and action plan information as of the third quarter for their respective divisions (Attachment 3).

Following the presentations, Commissioner Cuevas asked how the personnel costs were budgeted for the conversion. **Administrator Steen stated that six positions—to be ended in August—were funded; however, he would need to get back with the Commissioners on the exact amount.**

### **LEGALLY RESIDING GUIDELINES**

Chairman Steen called upon David Garza, Director of Homeland Security, to discuss the guidelines on “legally residing.”

Administrator Steen requested that he be able to say a few words before Mr. Garza began his presentation. He explained that he inadvertently missed introducing a new employee during his earlier report. He introduced Janet Ratcliff, TABC’s new training coordinator. Ms. Ratcliff came from the Lottery Commission and had been a high school English teacher for 15 years.

Administrator Steen opened the presentation, providing a brief background on when the issue was brought before TABC earlier in the year. David Garza explained that the issue concerned the qualification of resident aliens to obtain alcoholic beverage licenses and permits. For purposes in determining qualifications for an alcoholic beverage license or permit, the Texas Alcoholic Beverage Code defines a United States or Texas citizen to include a person who legally resides in the state for the prescribed period of time. Thus, the issue evolved around what constituted “legally residing.”

Mr. Garza reviewed the draft guidelines on “legally residing” (Attachment 4), with the summary as follows: If an individual has authority to be in the United States as determined by the appropriate federal agency and this is documented by either a valid Employment Authorization Document and/or non-immigrant visa allowing for the ownership of a business or employment by its holder and has met the time requirement for legally residing in the state, then TABC will deem that person to be qualified to hold a license or permit, absent other lawful grounds for disqualification.

The guidelines will be disseminated via e-mail or letter to the field as agency policy. Chairman Steen asked how this issue had been dealt with in the past; Mr. Garza responded that there had been a wide variety of interpretations by

staff in the past, and that the guidelines should reduce confusion and ensure consistent interpretation.

The Commissioners commended Mr. Garza and staff for the work done on the guidelines.

### **TECHNOLOGY TRANSFORMATION UPDATE**

Chairman Steen called upon Garry Sitz, Information Resources Director, to provide an update on the technology transformation project.

Mr. Sitz provided an update on the project, commending staff from all divisions on their outstanding teamwork. He explained that the system went “live” on June 6. The old system, in place for 20 years, took three years to design and test before it could be implemented. The new system, however, has taken a little over a year. Mr. Sitz stated he was pleased with the outcome. He noted that one of the biggest challenges facing staff was getting out of the “comfort zone” to adjust to a new system. The new system should make things much easier for all, now that operational data is automated and can be made into graphs and other reports without having to be done manually.

Mr. Sitz commended all staff involved in the project, but wanted to specifically recognize three members of his staff for their leadership in the project: Gary Henderson, Mona Appling, and Jay Webster.

Chairman Steen asked Mr. Sitz how the system is working today. Mr. Sitz stated that it is working well, and as expected, there are some issues to work through, none of which were major, such as alignment problems on the license print and some duplicate data in the database.

Chairman Steen and the other Commissioners expressed appreciation to staff and requested that Mr. Sitz convey their thanks.

### **APPROVAL TO PUBLISH PROPOSED NEW RULE 16 TEXAS ADMINISTRATIVE CODE §33.9, RELATING TO SERVICE FEES FOR ON-LINE TRANSACTION AND CREDIT CARD FEES**

General Counsel Lou Bright discussed the proposed new rule relating to service fees for on-line transaction and credit card fees (Attachment 5). He recommended Commissioner approval to publish the proposed new rule in

order to invite public comment for the Commissioner's possible consideration at the September Commission meeting.

Chairman Steen asked how the fees were determined. Mr. Sitz replied that the Department of Information Resources prescribed the \$.50 service fee and 2.25% credit card fee. Commissioner Cuevas asked how much the fees would generate annually; Mr. Sitz replied that the TABC would not receive any funds from the fees, as those fees would be passed on to a contractor. He stated that it was not known the amount that would be generated because it is not yet known how many people may wish to take advantage of the service.

**Chairman Steen called for a motion. Commissioner Madden moved that the Commissioners approve the publishing of the proposed new rule, §33.9, relating to service fees for on-line transaction and credit card fees. Commissioner Cuevas seconded the motion. The motion carried.**

#### **PUBLIC COMMENT**

Chairman Steen asked for public comment; as there were none, he made the announcement for an executive session.

#### **EXECUTIVE SESSION**

**Chairman Steen announced that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 2:55 p.m. on June 27, 2005, and an executive session would be held to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, Section 551.074.**

**Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being June 27, 2005, and the time, 4:12 p.m. He stated that no final action, decision, or vote was made in the executive session.**

#### **NEXT MEETING: JULY 25, 2005**

Chairman Steen announced that the next meeting of the Texas Alcoholic Beverage Commission was scheduled for Monday, July 25, 2005.

## **ADJOURNMENT**

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