

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, JULY 23, 2001

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: Allan Shivers, Jr., Chairman and Gail Madden, Member. Staff present: Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License & Compliance; Sam Smelser, Assistant Chief of Enforcement; Denise Hudson, Director of Resource Management; Charlie Kerr, Director of Fiscal Services and Vivian Rowe, Director of Human Resources. Visitors included: Tom Spilman, Wholesale Beer Distributors of Texas; Mike McKinney, Wholesale Beer Distributors of Texas; Dominic Giarratani, Legislative Budget Board; Charles McGrigg, Wine Institute; Mike McElhaney, Governors Office of Budget and Planning and Jack Martin, TABLS.

The agenda follows:

1:30 p.m. - Call to order.

1. Recognition of agency employees with 20 or more years of service.
2. Approval of minutes of June 25th and June 26, 2001 meetings; discussion, comment, possible vote.
3. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement; and
 - c. discussion of management controls.
4. Fiscal stewardship of agency; discussion, comment, possible vote.
5. Public comment.

Announcement of executive session.

6. The commission will meet in executive session to discuss the duties of the administrator under the authority of §551.074 of the Government Code.

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 1:47 p.m. by Chairman Shivers.

MR. SHIVERS: I want to call this meeting of the Texas Alcoholic Beverage Commission to order on Monday, July 23, 2001. It is one forty-seven in the afternoon. Commissioner Steen, I don't believe, is going to be able to join us today. Should he arrive before we get through this very brief agenda, we will bring him up to speed.

MS. MADDEN: Sounds good.

MR. SHIVERS: First, I'd like to recognize an employee who has been with the agency for 20 years. Carol Wright, administrative technician, joined the agency on July 27, 1981 in the Galveston Enforcement Office. As noted in her previous evaluations, "Carol consistently produces good quality work. She is exceptionally reliable and can always be depended on to keep things running smoothly, even during the hectic times." We congratulate Carol on her 20 years of dedicated service to the TABC and the citizens of Texas. Carol is unable to be with us today, and her certificate has been forwarded to her.

The minutes of our meetings on June 25th and June 26th have been circulated to the commission. Are there any changes?

MS. MADDEN: No. I move that we approve them.

MR. SHIVERS: Second. All in favor, say aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed?

Administrator's report? Mr. Yarbrough?

MR. YARBROUGH: Mr. Chairman and Ms. Madden, we have a couple of things. The one thing that most of the people here are interested in and most excited about is an opportunity to stay round and visit with our new administrator-designee, Rolando Garza, who is glad to be with us today and will be starting shortly. We are all looking forward to that opportunity. He's been very studious. He has asked for a lot of information, and we've gotten that to him for his study so he can hit the ground running on the 13th of August.

We do have a couple of things we wanted to report. Mr. Webster and his people are in for congratulations. We have gotten our mainframe computer moved to San Angelo to the West Texas DROC without a glitch, although they spent a number of hours up here and on the phone, both with the consultants and with the management of the center out there to get that done, but did it over a weekend. We came in on Monday morning with everything up and running, and it's been virtually seamless. We've been able to maintain the same fast response we had while it was here. To Jay, to Dave Getz, Gary Henderson, Mona Appling, all of those people who were actively working all weekend to insure that, we want to congratulate and thank for a job well done.

Chief Hamilton last week also was contacted by Tom Green County, San Angelo - I don't know if this is San Angelo month or what - the Citizens Against Violence there have asked us to participate with them in some problems that they have been having in clubs, as you've seen in printed media and in national media the problem of date rape and the problem of people having things put into their drinks. It has become a problem out there somewhat, and they've joined together with the sheriff's department, San Angelo PD, Citizens Against Violence and the TABC to campaign with on-premise locations to ask people to watch their drink and to caution them of the problems that can go on in licensed establishments. We are happy to participate in that program, and they will be providing us literature when we make routine inspections that we can make available and enlist the support of the on-premise locations there to protect our citizenry and make people aware of problems that can exist that will create problems for them later on. We will be getting you some information when we get that printed information in so that you can look at that.

MR. SHIVERS: Randy, do we know where people are getting these drugs? I assume we are talking about drugs like Rohypnol and that type of drugs.

MR. YARBROUGH: Not specifically. It seems from various sources all around.

MR. SHIVERS: Is that a prescription drug? Does anybody know?

MR. YARBROUGH: Some of the stuff they use is controlled substance, I mean a prescription drug. I don't have any personal knowledge of anything being manufactured in meth labs or back rooms or anything. They are acquiring it through market channels and then doctoring drinks, and so forth. It has become a problem. I have not heard of anything in Tom Green County. I think they are being proactive to insure that the problems they've seen in some of the big cities don't occur there. I think that's a good thing.

MR. SHIVERS: Apparently, it's a national problem.

MR. YARBROUGH: It really is, and we are very happy to participate and work with them in this, as well as, I'm sure, the retail association there in Tom Green County. I think it may be a pilot. We may be wanting to look at some things we might want to do in some other cities, too.

MR. SHIVERS: I wouldn't think that's good for business to have a reputation of having an establishment where that could happen to the customers.

MR. YARBROUGH: I really wouldn't think so.

The only other thing we have is our third quarter performance reports. We hit most of our goals with the exception of the one that we anticipated. We are always down after three quarters in our inspections which also relate to the cost and enforcement of inspections. It's because we do so much during the school year for the education programs, then with school out, the fourth quarter is when we do our catch up on our inspections and we will be anticipating that. Mr. Hale did point out to me that since we started our agents' class a little later than expected, we might not hit all of it, but we think we will be within the tolerance levels, the five percent level that the LBB has in our budget. So, we think we will probably end up the year hitting everything.

In ports of entry, we are beyond the tolerance level, but it's on the other side. The collections have exceeded by 10 percent, I think, what our forecasted collections were for the year. That is one I don't think anyone is going to complain about being outside the parameters because their collections have been higher than what we had anticipated.

That is where we are on our performance. We are within acceptable levels on all our other performance targets and hope to maintain that and by year-end have all of those within those acceptable levels.

MS. MADDEN: So, inspections are going to go back up?

MR. YARBROUGH: Traditionally, the fourth quarter is when we catch up because we don't have the people in the schools doing that training. We still have some retailer training, but the inspections are more of a catch up because then we take those people that were teaching those classes and spending their time in the schools, they are out doing inspections.

Chief Hamilton and Assistant Chief Smelser are also looking at our allocation of force in terms of how many people are working days and how many are working nights. Sometimes that gets out of balance, and we want to make sure that we are using our manpower that we have in the right mix, that we have people out when bars are open and checking them. It doesn't do a whole lot of good between eight and noon, checking most of the bars in town. There may be some restaurants and some retail trade that that would be fine and convenience stores, but the on-premise locations, we've got to insure that we've got enough agents working those nighttime hours and weekends to properly inspect those locations.

MS. MADDEN: Going back to the educational programs, maybe there are some officers that have a gift of public speaking and maybe some don't, so maybe there

needs to be some reshuffling or something of all that during our educational programs.

MR. YARBROUGH: We are looking at that. It's just that we've got a nine-month window there when we can do the schools. That's the only time you are going to be able to do those school programs. Traditionally, we've been a little behind on the third quarter and catch up on the fourth quarter which would be our summer hours.

That's all I have on the administrator's report. I think that also pretty much covers the fiscal stewardship which was primarily to report on our performance measures this month, unless you have any other questions?

MR. SHIVERS: Denise, do you have anything on fiscal stewardship?

MS. HUDSON: Only if you would like to hear a little bit on the budget from Charlie.

MR. SHIVERS: I'm sorry?

MS. HUDSON: Did you want to hear anything on the budget from Charlie?

MR. SHIVERS: Sure. Where are we in the last month of the fiscal year?

MR. KERR: Your handout that you have there kind of shows the increases that we are going to have for 2002 compared to 2001 budget. As you can see, almost all of those increases are the result of the riders that we have for POE and licensing. We do have some of the rent increases included in there, so that's being covered. For the last few years, we've been covering those rent increases with salary savings and other operating cost savings, so 2002 we will be able to budget that entirely. As you can see, we had some savings in our capital expenditures. That's because the master lease payments went away. The difference in that budget which was 1.2 million, I believe, in 2001...we'll only purchase 550,000 dollars worth of vehicles in 2002, and we will also be purchasing about 165,000 dollars worth of PC's. Actually, that's leasing PC's, but it will fall in this capital budget schedule here.

All in all, it looks like we are sitting pretty well for 2002. It looks like we are going to get some good equipment. We will have new PC's for about a third of the agency. We are going to go on a three-year lease cycle which will really help us keep up with the technology changes in the PC market. Based on some of the software that we run now, some of the enforcement software that we are going to be running, which is the CrisNet and all that,

it will be nice to have those computers that are able to run that software efficiently and effectively. Any questions?

MS. MADDEN: No.

MR. SHIVERS: Thank you, Charlie.

MS. MADDEN: I want to go back to Mr. Yarbrough. Maybe this isn't the right meeting. Maybe we need to do this next time. I want to talk about these resignations.

MR. YARBROUGH: I did fail to mention that we had sent you the information that you had requested last month and will be happy to answer any of those questions that you may have.

MS. MADDEN: Some of these numbers, I'm not sure they jive in that...the report is good. I think there's like 86 on this, but your resignations and retirements and terminations don't add up to the same on this.

MR. YARBROUGH: Ms. Rowe, did you bring yours with you?

MS. ROWE: No, I did not. I'm sorry.

MS. MADDEN: That's all right. Tell me a little bit about...

MR. SHIVERS: Let's see if we can find out what the discrepancy is and resolve it by our next meeting.

MR. YARBROUGH: We can give you a call, but we can go into that more in depth next meeting, if you'd like to, unless you have some general observations or questions regarding that. Part of that, as you mentioned last month, in looking at the salary issues, we are looking into developing our budget for 2002, are we just simply in the wrong pay scale for some of our positions that's causing turnover? The one thing that became very clear from looking at that was we are not losing people to private sector. We are losing people to other state agencies, which would indicate to us that our pay scale for like positions is not in keeping with what other state agencies are paying because they are going from a data entry position at our agency to a data entry position in another agency at a higher salary, even though it's a starting level position. So, we are looking at that evaluation. I've asked Mr. Kerr to factor that into what the cost would be in our budget for next year to make sure that we are not losing people to other state agencies, that we can try to evaluate those. We may need to reclassify

some of those positions.

MS. MADDEN: When we lose people or terminate people, do we have a high number of EEOC complaints?

MR. YARBROUGH: Ms. Rowe? In the last year or so, we've had very very few, and you may want to comment on a percentage basis.

MS. ROWE: We've had two or three charges in the past year that we are working on relating to terminations, but that's about it.

MS. MADDEN: Do you anticipate any of those developing into a lawsuit?

MS. ROWE: Yes.

MR. YARBROUGH: We may have one....

MS. ROWE: Two that possibly will. I'm looking at Lou because we were talking about that the other day and generally he doesn't like for me to get into a lot of expressions about what or what not.

MR. BRIGHT: We have two pending right now. The complainant has just received a right to sue letter in one. He was someone that we terminated for cause. He has 90 days to decide whether he will sue us on that. I will give the first mortgage on my soul that he will decide to sue us. I do not believe that is a threatening lawsuit at this point. Obviously, we will spend a lot of time talking about it when it comes.

There is a second matter for another employee who we also terminated for cause. We have been through an inquiry from the Department of Labor about that in response to his allegations. We talked to a lawyer from the Department of Labor, gave him some facts, and he declined to pursue the matter further. We have an EEOC complaint pending by that employee to which we have responded. In due course of time, they will issue him a right to sue letter. I believe that he, too, will file suit, and I believe that that also, as I understand the facts now, will not present a very threatening claim to us. Recognize when I say, "Will not present a very threatening claim to us," that does not mean that we will not go through two aggravating, expensive and stressful years, speaking on average. We will.

I have included some discussion of these matters in a recent report that is privileged to our new administrator, and so you may have those in writing and, of course, we can set up an executive session to talk about it in more

depth, if you'd like.

MS. MADDEN: I'd like to do that. Also, do we have a process in-house on how we handle people that are working for us that feel like they are being mistreated or they are unhappy or whatever?

MS. ROWE: We do have. We have a grievance and complaint process. I can get you a personnel manual that outlines that procedure. Every employee is given a handbook and they know what that is. Trust me, they probably know it better than I do in some instances. I can get that for you.

MS. MADDEN: Good.

MR. SHIVERS: Anything else?

MS. MADDEN: No. Thank you very much, Ms. Rowe.

MR. SHIVERS: Thank you.

Anything else on fiscal stewardship or on the administrator's report? Ms. Madden?

MS. MADDEN: No.

MR. SHIVERS: I don't have anyone signed up for public comment, but if anyone feels the need to speak, speak now or forever hold your peace.

Hearing none, the commission will now go into a closed, executive session to discuss the duties of the administrator under the authority of Section 551.074 of the Government Code. The commission will meet with its administrator-designee, Rolando Garza.

The commission convened in executive session at 2:05 p.m. and reconvened in open meeting at 2:32 p.m.

MR. SHIVERS: The commission meeting of July 23, 2001 is now back in open session. During executive session, no votes were taken, no final decisions were made. We have one last piece of business. We have to set the new administrator's salary, effective August 13th. Do I have a motion?

MS. MADDEN: I move that we set the new administrator's salary from August 13th to September 1st at 83,991 dollars and, effective September 1st, 91,000 dollars.

MR. SHIVERS: Per annum.

MS. MADDEN: Thank you.

MR. SHIVERS: Second. Any further discussion?

MS. MADDEN: No.

MR. SHIVERS: All in favor?

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed?

Motion to adjourn?

MS. MADDEN: I so move.

MR. SHIVERS: Second. We are adjourned.

The meeting adjourned at 2:34 p.m.