



COMMISSION MEETING MINUTES

July 31, 2006

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, July 31, 2006, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING: John T. Steen, Jr., Chairman

COMMISSIONERS

PRESENT: Gail Madden
Jose Cuevas, Jr.

STAFF PRESENT:

Alan Steen, Administrator
Glenda Baker, Assistant Chief of Enforcement
Carolyn Beck, Public Information Officer, Executive
Lou Bright, General Counsel, Legal Services
Debbie Dixon, Director of Education and Prevention
Loretta Doty, Director of Human Resources
Del Drake, Captain, Office of Professional
Responsibility, Executive
Shelby Eskew, Accountant, Business Services
Jeannene Fox, Assistant Administrator
Buck Fuller, Director of Compliance
Joe Garcia, Agent, Dallas
Amy Harrison, Director of Licensing
Gary Henderson, Enterprise Operations Team
Leader, Information Resources
Linda Jackson, Administrative Assistant, Executive
Renee Johnston, Executive Assistant, Executive
Dexter Jones, Marketing Practices, Executive

Charlie Kerr, Director of Business Services
Sonja Pendergast, Lieutenant, Dallas
Stephan Rothstein, Trainer, Human Resources
James "Sam" Smelser, Chief of Enforcement
Ashley Storm, Legal Assistant, Legal Services
Jay Webster, Plans/Programs, Information
Resources

GUESTS PRESENT: Dewey Brackin, Gardere Wynne Sewell, LLP
Janna Burleson, Analyst, Office of the Governor
Lori Gabbert, Analyst, Legislative Budget Board
Cynthia Garcia
Danielle Garcia
Dominic Giarratani, Analyst, House Appropriations
Chuck Girard, Consultant, Republic Beverage
Alan Gray, Licensed Beverage Distributors, Inc.
Fred Marosko, Texas Package Stores Association
Tom Spilman, Vice President, Wholesale Beer
Distributors of Texas
Don Walden, Attorney, TWGGA

CALL TO ORDER

Commissioner Gail Madden, in Chairman John Steen's absence at the time, called the meeting of the Texas Alcoholic Beverage Commission (TABC) to order at 1:47 p.m.

APPROVAL OF COMMISSION MEETING MINUTES OF JUNE 28, 2006

Commissioner Madden called for a motion to approve the TABC Commission meeting minutes of June 28, 2006. Commissioner Cuevas stated there were no corrections or deletions and moved that the minutes stand approved. Commissioner Madden seconded. The motion carried.

APPROVAL OF RESOLUTION IN MEMORY OF J. ADAN "ADAM" GARCIA

Commissioner Madden stated the Commission was honored to have the Garcia family in attendance. She called upon Sam Smelser, Chief of Enforcement. Chief Smelser explained that the resolution honors J. Adan

“Adam” Garcia, son of Agent Joe Garcia. Adam Garcia gave his life for his country while serving in Iraq. Commissioner Cuevas read the resolution (Attachment 1), and stated that the family was in the hearts and prayers of TABC staff and Commissioners. **Commissioner Madden called for a motion to approve the resolution honoring J. Adan “Adam” Garcia. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried.**

Commissioner Madden asked the Garcia family—Joe, Cynthia, and Danielle—to come to the dais to be presented the resolution. After presentation of the resolution, Commissioner Madden called for a 10-minute recess so that attendees could meet with the family.

ADMINISTRATOR’S REPORT

Following the recess, Commissioner Madden called upon Administrator Alan Steen to provide the Administrator’s Report. He reported the following:

- Marketing Practices Bulletin. Administrator Steen discussed the Marketing Practices Bulletin related to outdoor advertising by a holder of a private club permit or private club exemption certificate in a partially wet area (Attachment 2).
- New IRD Director. Sherry Cook has been hired as TABC’s new Information Resources Director effective tomorrow, August 1. Ms. Cook has 27 years of service with the Texas Department of Public Safety and a wealth of information technology experience.
- New Agents. Ten new agents will be sworn in at Headquarters tomorrow.
- Meetings. Administrator Steen has been involved in several meetings this past month; he noted the following:
 - Ports of Entry staff meeting in the Valley
 - Texas Package Store Association annual conference in Houston
 - Licensing and Administrative Procedures Committee meeting
- Information Technology. Administrator Steen reported the following information technology updates:
 - Licensing is now current on all originals and all beer and liquor renewals, working on those received July 25th. Administrator Steen commended Amy Harrison and her staff, noting that they have spent many late hours and weekends in order to be current.
 - The Versa LicenseEase project will essentially be complete once the surety bond issue has been resolved. Also, there are some changes that TABC and Versa each have recommended.

Administrator Steen commended Steve Haddix of Versa for his assistance as the project nears to a close. Administrator Steen stated that TABC will continue to keep improving the system. Commissioner Cuevas asked if an audit would be conducted to verify that Versa has completed everything that it was engaged to do with the system; Administrator Steen stated that an audit is being planned.

- The new public inquiry system should be ready for implementation in about two weeks. Industry members tested the system and provided recommendations that have been incorporated. The system will allow the public to go on-line to find out such things as status of a license, current licenses by type, and credit law information on late payments.
- LAR Hearings. Two hearings have been scheduled for TABC's Legislative Appropriations Request:
 - August 18, 2006 – Governor's Office and Legislative Budget Board
 - October 2, 2006 – Senate Finance Committee

APPROVAL OF PETITION BY THE CITY OF CORPUS CHRISTI FOR ORDER PERMITTING ADOPTION OF A CENTRAL BUSINESS DISTRICT ORDINANCE PURSUANT TO §109.35 OF THE ALCOHOLIC BEVERAGE CODE

Commissioner Madden called upon Lou Bright, General Counsel. Mr. Bright stated that representatives of the City of Corpus Christi could not be in attendance; however, their attendance was not required for the Commissioners' approval. He explained that §109.35 of the Alcoholic Beverage Code allows a city to petition TABC for an order that would ban possession of open containers of alcoholic beverages within a central business district. Mr. Bright stated that the City of Corpus Christi met all of the legal requirements, and he recommended Commissioner approval of their petition (Attachment 3).

Commissioner Cuevas moved that the Commission adopt an order pursuant to §109.35 of the Alcoholic Beverage Code that allows the prohibition of the possession of an open container and the public consumption of alcoholic beverages in the central business district of the City of Corpus Christi. Commissioner Madden seconded. The motion passed.

Commissioner Madden acknowledged Chairman Steen's arrival and handed the meeting over to him.

COMMISSION INVOLVEMENT IN TABC BUDGET MATTERS

Chairman Steen reported that he attended a meeting on July 11th with, among others, Governor Rick Perry and Mike Morrissey, Director of the Governor's Office of Budget, Planning and Policy. At the meeting, a memorandum was discussed. The memorandum was dated June 2, 2006, addressed to state agency board/commission chairs, and was sent by John O'Brien, Deputy Director of the Legislative Budget Board, and Mike Morrissey. Chairman Steen read a key portion of a sentence contained within the memorandum: "As a starting point for budget deliberations, an agency's baseline request for general revenue-related funds will be limited to 90% of the sum of amounts expended in fiscal year 2006 and budgeted in fiscal year 2007..."

Chairman Steen explained that it was emphasized at the meeting that the 90% cut was a starting point, and agencies needed to prioritize in order to cut their budgets. It was also emphasized that all state agency budgets need to be as transparent as possible, including perhaps, having periodic reporting of budgetary matters on websites. He added that the purpose of the meeting was to emphasize the need for more involvement of the agency boards in their respective agency budget processes.

Chairman Steen stated that we must ask ourselves two questions in this process: Are we doing what we need to be doing, and are we doing it in the most economic and efficient way possible?

To ensure the level of involvement of the board in the budget process that was requested by the Governor, Chairman Steen recommended that a TABC Budget Committee be established. He noted the success of the Audit Committee, commending Commissioner Madden. Chairman Steen added that Richard Tarr, who was conducting a peer review audit on Russell Gregorcyk, had spoken with the Chairman and was very complimentary of the Audit Committee process. Chairman Steen asked Commissioner Cuevas if he would agree to be on the Budget Committee to work with staff on budgeting matters; Commissioner Cuevas agreed.

In order to formalize the committee, Chairman Steen called for a motion that Commissioner Cuevas be named to serve as Commissioner

liaison on budget matters in a TABC Budget Committee to be comprised of the Administrator and his designated staff. Commissioner Madden so moved. Commissioner Cuevas seconded. The motion carried.

APPROVAL OF LEGISLATIVE APPROPRIATIONS REQUEST FOR 2008-2009

Chairman Steen called upon Jeannene Fox, Assistant Administrator, and Charlie Kerr, Director of Business Services to discuss the Legislative Appropriations Request (LAR) for 2008-2009 (Attachment 4).

Mr. Kerr stated that he and Ms. Fox met individually with the Commissioners the week before to review the draft LAR. The LAR is due on August 11, and Mr. Kerr stated there would be some tweaking needed before it could be finalized; however, any changes would probably be minimal.

He discussed the required 10% cut from the base budget, which, because of other factors, means that the budget is approximately 11 to 12% short, or about \$8 million short, from the base budget. He explained that the cut was made across the board for all strategies, and this would result in a cut of approximately 84 employees. The return to base from the 10% cut would be requested as an exceptional item, and all strategies would be listed into one exceptional item. Revenue collections would be able to help fund the 100% base budget; however, the additional exceptional requests could require additions to surcharges. Mr. Kerr reviewed each of the exceptional items, in priority order, that are in addition to the 10% return to base:

- Body armor – Due to a class action lawsuit for vests that were found to not meet certain law enforcement standards, TABC will receive discount vouchers that will cover the cost of replacing 59 of TABC’s 143 affected vests; the remainder would be paid by TABC. Mr. Kerr stated that if the funds were available in FY 2007, TABC would seek the authority to purchase the remaining vests. This was not yet reflected in the draft LAR under the “Acquisition of Capital Equipment and Items,” and pages 1 and 3 would be changed to move “Public Safety Equipment – Body Armor” in the amount of \$111,000 to “Public Safety Equipment – Replacement” for a total of \$561,713.
- Gasoline rider, for anticipated increase in gasoline prices.

- Mileage rider, for potential increase in mileage reimbursement as a result of the increase in gasoline prices.
- Other hardware/software acquisitions, such as maintenance and licenses.
- Two bridges as contingency riders, in the event they are opened within the next biennium.
- The transfer of \$250,000 from TABC to the Department of Agriculture, as the funds are not in the base budget and would be listed as a rider and probably also as an exceptional item.

Commissioner Cuevas discussed the three major strategies—enforcement, licensing, and compliance—noting that all are essential to the agency’s mission. Mr. Kerr stated that no strategy could be eliminated and that none of the strategies are separate from the other. Commissioner Cuevas also asked Mr. Kerr about the agency having to delay purchasing cars from the last session. Mr. Kerr explained that TABC had to forego purchasing some capital equipment, such as vehicles, mobile radios, and furniture. While the funds were available, TABC did not receive the capital budget authority to spend some of the funds. Thus, TABC ended up lapsing funds in 2006. The lapsed funding of approximately \$1.5 million was taken out of the base budget; however, this may be covered in the next biennium. Commissioner Madden asked about the vehicles that had over 100,000 miles; Mr. Kerr stated that there are approximately 30 vehicles with over 100,000 miles, and this means added repair costs as well as being a safety issue.

Commissioner Cuevas asked about the long-term vision of information technology (IT) and computer systems. Mr. Kerr stated that the agency was in good shape with regard to personal computers and servers. Except for the software updates and some hardware replacements, there are no additional requests in the next biennium for IT programs. Commissioner Cuevas asked what type of system staff use when they are out of the office, giving an example of a police officer being able to enter data into a system while out of the office. Administrator Steen responded that TABC has a manual system, whereby information is entered into the computer system database once staff return to the district office or outpost. Administrator Steen explained that the agency leases computers to ensure the systems do not become outdated as they would if purchased at this time. The vision, however, is to purchase items such as notebook computers when the price has come down in line with personal computers. Commissioner Cuevas stated that he wanted to see the agency ultimately utilize such technology.

Charlie Kerr then introduced Janna Burleson, Analyst with the Governor's Office; Lori Gabbert, Analyst with the Legislative Budget Board; and Dominic Giarratani, Analyst with the House Appropriations Committee.

Commissioner Cuevas asked about surcharges. Mr. Kerr stated that currently, TABC is collecting revenues sufficient to cover the cost of the 90% budget with the 10% added back in. However, the \$4 million in exceptional items requested (such as the gasoline and mileage riders) may require a change in surcharges.

Chairman Steen asked Mr. Kerr to explain the suggested motion concerning the authorization of the Administrator to make adjustments in any transfers between appropriation line items and capital budget items that are necessary. Mr. Kerr explained this would allow for any last-minute adjustments to the approved budget, and the Commissioners would be notified of any adjustments, even though they would not be a significant change to the appropriations request. He stated that if the Commission preferred, a Commission meeting could be held on August 10, the day before the due date, in order to approve the budget. Chairman Steen suggested that now that the Budget Committee has been established, it would be appropriate for the Administrator to consult with Commissioner Cuevas on any changes.

Chairman Steen called for a motion. Commissioner Madden moved that the Commission approve the legislative appropriations request for TABC for the fiscal year 2008-2009 biennium as presented. She further moved to authorize the submission of the appropriation request in accordance with the instructions published by the Governor's Office of Budget, Planning and Policy and the Legislative Budget Board. She further moved to authorize the Administrator—after consultation with Commissioner Cuevas—to make adjustments and any transfers between appropriation line items and capital budget items that are appropriate and necessary to submit the legislative appropriations request. Commissioner Cuevas seconded the motion. The motion carried.

The Commissioners thanked Mr. Kerr and his staff for the time and effort placed in developing the budget request. Mr. Kerr also introduced Shelby Eskew, Budget Analyst, stating that she had done an admirable job during the entire process.

UPDATE ON ENFORCEMENT ACTIVITY PLANNING

Chairman Steen called upon Jeannene Fox, Assistant Administrator, to provide an update on enforcement activity planning.

Ms. Fox stated that earlier in the spring, there were a number of questions raised concerning the execution of TABC's efforts in ensuring responsible alcohol service. Since six months had elapsed since these types of operations, management determined it would be a good time to take a step back to review them to ensure that the vision, goals, and implementation of what management had planned had actually occurred, and if not, to look at areas needing improvement.

Ms. Fox explained that during the last few months, staff have been engaged in in-depth reviews of TABC's policies, procedures, training, and implementation. As a result of those in-depth reviews, areas of improvement have been identified. Management has determined to:

- Combine all public safety operations into the normal course of routine business, rather than having specialized plans or operations. This would move enforcement efforts toward at-risk reviews and would define "at-risk" under one set of criteria.
- Amend the way areas are selected to focus TABC efforts, using more fine-tuned information. This is supported by the work that Chief of Enforcement Sam Smelser has been doing since early February by meeting with chiefs of police across the state. The Chief will continue discussions with the chiefs of police in order to foster cooperation and the sharing of information, which will aid in identifying at-risk areas.
- Enhance guidelines in the areas of undercover and arrest issues so that the guidelines are more clearly understood.
- Formalize and standardize training offered to retailers that were identified as at-risk.
- Strengthen or improve case writing, courtroom demeanor, and testimony.
- Include procedures to require more and timely detailed information on field activities.
- Ensure actions taken in the field are within policies and procedures by expanding reporting and in-depth field visits from divisional management.

- Once all in place, provide thorough training to ensure field staff can clearly articulate standards and decisions made, such as determining an at-risk location.

Commissioner Madden stated that staff have taken very positive steps to ensure public safety. Commissioner Cuevas added that the steps identified ensure follow-up, accountability, and partnership. He mentioned the problem with the mixed message on using designated drivers, and Ms. Fox stated that training will re-emphasize to field staff that TABC's goal is not citations and arrests, but to get people home safely. It will be re-emphasized that field staff should attempt to find alternatives before having to take any action.

Chairman Steen stated he had asked for this update to be on the agenda. He asked if Ms. Fox had been involved in the enforcement operations; she responded that she has been involved, being that she oversees the Enforcement Division. Chairman Steen stated that Administrator Steen had placed the Sales to Intoxicated Persons (SIP) operations on a moratorium, and he asked Ms. Fox if the SIP operations would be revived. Ms. Fox explained that the enforcement of those laws—having been in effect since 1935—would not be a separate operation; rather, it would be incorporated into the agency's normal routine of public safety enforcement. Chairman Steen then asked if this meant that the program, which was placed on a moratorium last March, would not be continued. Ms. Fox responded that after six months of operation, staff reviewed the operation and determined that it could be done in a different way, but could accomplish the same thing, without having to call it a separate operation.

Chairman Steen asked if this still met the Legislature's expectations of the additional FTEs provided for the purpose of SIP operations. Ms. Fox stated that she believed they still accomplish the same goal—ensuring responsible service—as part of the overall public safety initiatives. She stated that 59 of the 110 FTEs were for agents, and the other FTEs were for other areas in support of the public safety initiatives. She explained that Senator John Whitmire, chair of the workgroup that oversees Article V, and Representative Sylvester Turner, Chair of the House Appropriations Subcommittee, have been involved in looking at the program. Administrator Steen stated that he has had informal conversations with Senator Whitmire, and Administrator Steen believed that at this point, the operational changes do meet the Senator's expectations. Administrator Steen stated that the detail of what Ms. Fox presented still needed to be—and would be—provided to Senator Whitmire.

Commissioner Madden stated that staff were taking good steps to ensure responsible service and are doing it in an organized and informative manner. She wanted to be sure that Senator Whitmire was aware of these positive steps.

TRAINING UPDATE

Chairman Steen called upon Loretta Doty to provide a training update.

Ms. Doty reported the completion of the agency's 2006 in-service training session required of each employee. The training includes customer service, ethics, diversity, time management, and liquor law. General Counsel Lou Bright and his staff taught the ethics classes, and Headquarters Enforcement Division staff and Captains taught the liquor law courses. Human Resources (HR) staff conducted all other classes. Ms. Doty recognized HR staff Stephan Rothstein and Cheryl Ruffin for doing the bulk of the facilitation and some of the development of the classes. Ms. Doty stated that the in-service training schedule was very successful, with a 96% completion rate. Classes were taught primarily in Austin and also conducted regionally in the Dallas and Houston regions.

Next year's in-service training, to begin October 2006, will also be offered regionally, and an additional regional location will be added in El Paso. The Austin training will be held in Headquarters, rather than a hotel, since TABC has recently acquired a training room on the third floor at Headquarters. The classes will be offered biweekly rather than on a weekly time period; on those off weeks, optional computer classes in Word, Excel, Outlook and PowerPoint will be offered. Also, management development courses targeted for division directors and managers will be offered. The management development classes will deal with leadership skills, strategic planning, and personnel evaluations. Training for supervisors will also be offered, which include modules on ethics, communication, leadership styles, counseling, planning and organizing, diversity, and EEO. The target audience for the supervisory class is supervisors and lead workers or those preparing to move to that level. Integrated hiring courses will be available for those who participate in the hiring process in the agency, whether peace officers or the civilian population.

HR continues to track and monitor required training including peace officer training required by TCLEOSE. Another training that is tracked by HR is the

statutorily required Equal Employment Opportunity (EEO) and sexual harassment training. Each employee is required to take EEO and sexual harassment training within 30 days of hire and every two years thereafter. Ms. Doty described the on-line EEO training that employees can take at their desks. The on-line training is approved through the Texas Workforce Commission Civil Rights Division. EEO and sexual harassment are also covered in the diversity in-service training class.

Chairman Steen commented on his particular interest in the sexual harassment training. He asked Administrator Steen what it meant that TABC was a zero tolerance agency. Administrator Steen responded that it means that the agency has absolutely no tolerance for sexual harassment in the workplace. Chairman Steen then asked Mr. Bright to explain the prohibition on retaliation. He explained that the law prohibits treating employees differently or adversely in retaliation for exercising their rights guaranteed to them.

Chairman Steen expressed his desire, as a member of the Commission, to ensure that word got out to employees that they should not ever feel intimidated when filing any kind of complaint. He asked how to get the word out to employees.

Administrator Steen stated that first of all, the Chairman has made it clear in Commission meetings that TABC is a zero tolerance agency, and the meeting minutes reflect this. Also, Administrator Steen meets with staff across Texas and always makes it known that the agency is a zero tolerance agency in such matters and that he has an open door policy. In addition, the agency has placed an emphasis on mandatory EEO and sexual harassment training. Therefore, Administrator Steen thought that it was very clear where the Commission stood with regard to sexual harassment and retaliation matters, not to mention that such are against the law and are simply inappropriate in state government or in any work environment.

Chairman Steen thanked Administrator Steen and **noted that the discussion should be reflected in the minutes and distributed to employees.** Ms. Doty added that the Summer Conference will include personnel law updates and will cover the responsibilities of supervisors with regard to such issues as sexual harassment.

APPROVAL TO ADOPT AMENDMENTS TO §36.1, RELATING TO HISTORICAL REENACTMENTS UTILIZING FIREARMS CONDUCTED ON THE PREMISES OF A PERMIT OR LICENSE

Chairman Steen called upon Lou Bright, General Counsel, to discuss the amendments to §36.1 relating to historical reenactments (Attachment 5).

Mr. Bright reported that during the last legislative session, TABC was instructed to adopt rules governing the presence of firearms on licensed premises in the course of conducting historical re-enactments. TABC proposed a new paragraph (d), which would allow reenactments under reasonable conditions without presenting a threat to the public health, safety and welfare. As a result of a suggestion given the week before, Mr. Bright recommended Commission approval of the amendments with an additional paragraph (d)(7) to read: “The permittee provides the relevant commission district office or outpost a notice of the re-enactment at least three business days before the event.”

Commissioner Cuevas so moved, and Commissioner Madden seconded. Chairman Steen asked if anyone wished to provide public comment. As there were none, he called for a vote. The motion carried.

APPROVAL TO ADOPT AMENDMENTS TO §45.121, RELATING TO DELINQUENT LIST

Mr. Bright explained that rule §45.121 governs the limitations on the use of credit in the liquor industry (Attachment 6). He discussed the proposed amendments, which would harmonize the details of the rule with modern business practices, eliminating some language that no longer applies. Mr. Bright stated that no formal comments were received on the proposed amendments, and he recommended Commission approval.

Commissioner Cuevas so moved, and Commissioner Madden seconded. Chairman Steen asked if anyone wished to provide public comment on the proposed amendments; as there were none, he called for a vote. The motion carried.

FISCAL STEWARDSHIP REPORT: THIRD QUARTER PERFORMANCE MEASURES

Because of limited time, Chairman Steen asked if the third quarter performance measures report could be postponed. It was agreed that the report would be placed on the agenda for the next meeting.

PUBLIC COMMENT

Chairman Steen asked if anyone wished to provide public comment. As there were none, Chairman Steen began the announcement for the executive session.

EXECUTIVE SESSION

Chairman Steen announced that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 3:21 p.m. on July 31, 2006, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §§551.071 and 551.074.

Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being July 31, 2006, and the time, 3:59 p.m. No final action, decision, or vote was made in the executive session.

NEXT MEETING

Commissioner Madden suggested the next meeting be held on August 21, 2006. Chairman Steen asked Renee Johnston, Executive Assistant, to later contact the Commissioners to confirm the meeting date.

ADJOURNMENT

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