



COMMISSION MEETING MINUTES
August 22, 2005

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, August 22, 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

Carolyn Beck, Public Information Officer,
Executive

Lou Bright, General Counsel, Executive

Shelby Eskew, Accountant, Business Services

Jeannene Fox, Assistant Administrator,
Executive

Buck Fuller, Director, Compliance

David Garza, Director, Homeland Security,
Executive

Amy Harrison, Director, 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
Joel Moreno, Assistant Deputy Chief of
Enforcement
Garry Sitz, Director, Information Resources
James "Sam" Smelser, Chief of Enforcement
Richard Wills, Compliance Officer, Houston

GUESTS PRESENT:

Dewey Brackin, Attorney, Gardere Wynne Sewell
Rick Donley, President, Beer Alliance of Texas
Doug DuBois, Jr., Director of Membership and
Education, Texas Petroleum Marketers and
Convenience Store Association
Alan Gray, Licensed Beverage Distributors
Shaniqua Johnson, Analyst, Legislative Budget
Board
Karen Latta, Analyst, Sunset Advisory
Commission
Andy MacLaurin, Budget Analyst, Legislative
Budget Board
Fred Marosko, Texas Package Stores
Association
Jack Martin, Attorney at Law
Lindsay Meche, Representing Republic Beverage
Charles McGrigg, Central States Counsel, Wine
Institute
Robert Sparks, Executive Director, Licensed
Beverage Distributors, Inc.
Ralph Townes, Senior Vice President Glazer's
Texas, Glazer's
Don Walden, Attorney
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.

APPROVAL OF COMMISSION MEETING MINUTES OF JULY 25, 2005

Chairman Steen called for a motion to approve the TABC Commission meeting minutes. **Commissioner Madden moved that the Commissioners approve the minutes of the July 25th, 2005, meeting. Commissioner Cuevas seconded the motion. The motion carried.**

ADMINISTRATOR'S REPORT

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

Versa Conversion

Administrator Steen reported that the agency is moving toward the latter part of the Versa conversion project. There are still some issues that are being worked out closely with Versa. The major problem deals with bonds, as this is a complex part of TABC's operations. Administrator Steen stated that there will be mergers of information performed this week and that staff are confident that the project will be moving forward. He noted that there has been a steady progression of license application processing, starting from seven the first week to 1,188 the last week of July; TABC will be on target when approximately 2,000 licenses are processed a week. Commissioner Cuevas asked if the cash issue had been taken care of. Administrator Steen stated that there is to be one more "fix" in this area scheduled this week, which should take care of the issue. Administrator Steen reiterated that the major problem at this time is dealing with the bond issue.

Marketing Practices Bulletin

Administrator Steen referred to a marketing practices bulletin (Attachment 1) that had been repealed. He explained that the agency had ruled in the past that the CO2 filter was not authorized as equipment allowable under the Alcoholic Beverage Code. However, since the passage of Senate Bill 1472, CO2 filters are now authorized.

Press Conferences

Two press conferences are scheduled this week in Dallas and in McAllen. Administrator Steen explained that TABC has been working with Inventiva to

get the message out to educate the public on laws regarding the furnishing of alcoholic beverages to minors. Commissioner Madden added that the Dallas press conference is being hosted by SMU and that Dr. Gerald Turner, SMU President, and Representative Dan Branch would be in attendance.

Presentations

Administrator Steen reported that he and other staff made presentations at the Texas Package Store Association conference in Dallas. Also, Administrator Steen presented the Bert Ford Award to Sheriff Dennis Wilson at the sheriff's county courthouse in Groesbeck.

Interviews

Administrator Steen stated that staff continue to travel statewide to interview applicants for the civilian compliance positions and for the certified peace officer (CPO) positions. The agency plans to have the civilian positions hired effective September 1, and the CPOs hired effective October 1. Administrator Steen stated he was pleased with the great response, noting that over 1,900 applications were received for the CPO positions, with a similar ratio of applications received for the civilian postings.

Summer Conference/New Law Training

Administrator Steen reported that the 2005 Summer Conference was scheduled for August 29-31 in Austin. The conference entails three days of intense training, mostly dealing with new law but also including LicenseEase, legally residing guidelines, and purchasing and monthly leave reporting. Invitations have been sent out to the industry members, inviting them to a segment of the conference devoted just for them to discuss the new laws and TABC's plans for implementation. Administrator Steen stated that a good response from the industry was expected and that **he would report back to the Commissioners.**

Safety Award

Administrator Steen announced that TABC was awarded a safety award by the State Office of Risk Management for reduction of safety-related incidents. The agency was awarded the Silver Award, which is achieved by an agency reducing safety incidents during the previous year or during the last five years by 30%. He noted that this was the second year in a row that the agency received the Silver Award.

UPDATE ON SPECIALTY LICENSE PLATES

Chairman Steen called upon Joel Moreno, Assistant Deputy Chief of Enforcement, to provide an update on the specialty license plates. Administrator Steen took the opportunity before Mr. Moreno provided his presentation to remind the Commissioners that this topic had been one that Chairman Steen was interested in and that he requested staff to look into how the agency's message could be placed on license plates.

Before he made his presentation, Mr. Moreno stated he wanted to "brag" on the agency. He explained he had come back from the National Leadership Conference, sponsored by the Department of Justice, in Tuscon, Arizona. The University of Incarnate Word in San Antonio and TABC were awarded the Success Story, for teaming together to deal with alcohol promotions and advertisements on campus in an effort to reduce underage drinking on campus.

Mr. Moreno then provided an update on the specialty license plates. He indicated that the design of the plates needed to somehow relate to Texas and that he would work with Texas universities to seek creative ideas on the design. The theme for the license plates would be "responsible consumption." Once the design is determined, the request would be submitted to the Texas Department of Transportation for approval or non-approval. If the specialty license plates were approved, TABC would be required to post a \$15,000 bond that would be reimbursed to TABC once 3,500 plates were sold. For each license plate sold, \$30 would go to a non-profit organization, as the agency would not be able to receive the money. Chairman Steen had ascertained that some state agencies had foundations—such as Texas Parks and Wildlife—in which those monies could be utilized towards the agency's programs. Chairman Steen conjectured whether TABC could set up a foundation so that the \$30 could go to TABC's programs, such as the Shattered Dreams program. Mr. Moreno noted that a state agency could receive the funds if a state legislator agreed to carry a bill to authorize that agency. **Chairman Steen requested that Mr. Moreno keep the Commissioners apprised of this effort.**

APPROVAL OF FISCAL YEAR 2006 OPERATING BUDGET

Chairman Steen called upon Charlie Kerr, Director of Business Services. Mr. Kerr presented the proposed Fiscal Year (FY) 2006 operating budget (Attachment 2), reviewing the method of finance and each of the agency's strategies, including the new Public Education Strategy.

Mr. Kerr explained that TABC had originally requested a capital budget of \$4 million; however, the conference committee authorized only \$2 million of the \$4 million capital budget rider, meaning that TABC could not purchase capital items—such as vehicles, furniture, and equipment—for all of the new 119 FTEs. TABC was able to add \$500,000 to the capital budget because of existing law that allows an agency to increase its capital budget by 25%. Mr. Kerr explained that TABC instituted savings in several ways, such as only purchasing 30 new vehicles for the 60 new agents and by not budgeting for furniture. Administrator Steen added that the agency would keep vehicles until 125,000 miles rather than 100,000 miles, thus delaying purchase of replacement vehicles. He stated that TABC would possibly consider petitioning the Legislative Budget Board at a later date for authorization of the remaining capital budget. Commissioner Cuevas asked questions about the vehicles being purchased. Mr. Kerr explained that the agency originally planned to purchase 60 new vehicles for the 60 new agents and 43 replacement vehicles. However, only 30 new vehicles will be purchased for the 60 new agents. Administrator Steen added that pickup trucks are being purchased for the sergeants to use in confiscations and for pasture parties. The lower cost of the trucks enabled TABC to purchase four more replacement vehicles.

Mr. Kerr also pointed out that the gasoline rider was approved. The rider would only be invoked when the gasoline pump price goes over \$1.50. TABC would receive \$2,000 for every cent over \$1.50. This would be in addition to the appropriations.

Chairman Steen called for a motion. Commissioner Cuevas moved that the Commission approve the Texas Alcoholic Beverage Commission operating budget and capital budget for Fiscal Year 2006 as presented; that the Commission authorize the submission of the operating budget to the Governor's Office and legislative offices in accordance with Senate Bill 1, Article 9, Section 7.01; and that the Commission authorize the Administrator or his designee to make transfers between appropriation line items and capital budget items in accordance with Senate Bill 1, Article 9, Section 6.08, Appropriation Transfers, and

Section 6.16, Limitation on Expenditures Capital Budget, that are appropriate and necessary to implement the budget. Commissioner Madden seconded the motion. The motion carried.

APPROVAL TO ADOPT NEW RULE 16 TEXAS ADMINISTRATIVE CODE §33.9, AS PUBLISHED, RELATING TO SERVICE FEES FOR ON-LINE TRANSACTION AND CREDIT CARD FEES

Chairman Steen called upon Lou Bright, General Counsel. Mr. Bright explained that the proposed new rule relating to on-line service fees and credit card fees (Attachment 3) was published in the *Texas Register* for public comment and that no comments were received. He stated that staff recommended the Commissioners' adoption of the new rule.

Commissioner Madden moved that the Commission adopt the new rule 16 Texas Administrative Code §33.9, as published, relating to service fees for on-line transaction and credit card fees. Commissioner Cuevas seconded the motion. The motion carried.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO RULE 16 TEXAS ADMINISTRATIVE CODE §33.21, AS PUBLISHED, RELATING TO THE AMOUNT OF PERFORMANCE BONDS

General Counsel Lou Bright explained that the proposed rule amendment (Attachment 4) is driven by Senate Bill 1850, which requires wine and beer retailers and on-premise beer retailers in Dallas and Houston to post escalating performance surety bonds based upon their violation history. The amendment adds Paragraph (b), which establishes the amounts of the bonds in the amounts of \$2,000, \$4,000 and \$6,000. Mr. Bright recommended that the Commissioners authorize the publishing of the proposed amendment in the *Texas Register* for public comment.

Commissioner Cuevas moved that the Commission approve the publishing of the proposed amendments to Rule 16 Texas Administrative Code §33.21, relating to the amount of performance bonds. Commissioner Madden seconded the motion. The motion carried.

APPROVAL TO ADOPT AS AMENDED THE PROPOSED AMENDMENTS TO RULE 16 TEXAS ADMINISTRATIVE CODE §33.23, RELATING TO ALCOHOLIC BEVERAGE LICENSE AND PERMIT SURCHARGES

Chairman Steen called upon Jeannene Fox, Assistant Administrator, to discuss the proposed amendments, as amended, relating to license and permit surcharges (Attachment 5).

Ms. Fox stated that on July 22nd, TABC published a proposed rule to change the license and permit surcharges. The surcharges were almost double the current surcharges. Subsequent to the publishing, a letter was sent to the industry trade groups advising them that staff would recommend amounts lower than those published as well as to recommend the effective date to be October 1 rather than September 1. Ms. Fox stated that no comments were received and she therefore recommended the Commissioners adopt the proposed amendments, as amended.

Commissioner Madden moved that the Commission adopt, as amended, the proposed amendments to Rule 16 Texas Administrative Code §33.23, relating to the alcoholic beverage license and permit surcharges. Commissioner Cuevas seconded the motion. The motion carried.

APPROVAL TO PUBLISH PROPOSED NEW RULE 16 TEXAS ADMINISTRATIVE CODE §37.4, RELATING TO NOTICE OF HEARING

Chairman Steen called upon General Counsel Lou Bright. Mr. Bright stated that the proposed new rule (Attachment 6) was also driven by Senate Bill 1850 and would define the word “notice” to mean the notice of hearing issued pursuant to Government Code §§2001.051 and 2001.052. Mr. Bright recommended Commissioner approval to publish the proposed new rule in the *Texas Register* for public comment.

Commissioner Cuevas moved that that the Commission approve the publishing of the proposed new Rule 16 Texas Administrative Code §37.4, relating to notice of hearing. Commissioner Madden seconded the motion. The motion carried.

APPROVAL TO PUBLISH PROPOSED NEW RULE 16 TEXAS ADMINISTRATIVE CODE §37.5, RELATING TO POPULATION IN CERTAIN COUNTIES

Mr. Bright explained that the proposed new rule (Attachment 7) was also driven by Senate Bill 1850. The bill contains provisions that apply to counties of 1.4 million or more in population. The proposed new rule would designate the decennial census conducted by the Census Bureau as the authority on the population size. Mr. Bright recommended Commissioner approval to publish the proposed new rule in the *Texas Register* for public comment.

Commissioner Madden moved that the Commission approve the publishing of the proposed new Rule 16 Texas Administrative Code §37.5, relating to population in certain counties. Commissioner Cuevas seconded the motion. The motion carried.

APPROVAL TO PUBLISH PROPOSED NEW RULE 16 TEXAS ADMINISTRATIVE CODE §41.56, RELATING TO OUT-OF-STATE WINERY DIRECT SHIPPER'S PERMITS

General Counsel Bright explained that the proposed new rule is a result of Senate Bill 877. The bill creates a new permit allowing out-of-state wineries to ship directly to Texas consumers. The proposed rule would establish reporting requirements, consistent with the kinds of reports and notices already required of importers and shippers of alcoholic beverages. Mr. Bright recommended that the Commissioners authorize the publication of the proposed rule in the *Texas Register*.

Commissioner Cuevas moved that the Commission approve the publishing of the proposed new Rule 16 Texas Administrative Code §41.56, relating to out-of-state winery direct shipper's permits. Commissioner Madden seconded the motion. The motion carried.

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 2:05 p.m. on August 22, 2005, 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 August 22, 2005, and the time, 3:25 p.m. He stated that no final action, decision, or vote was made in the executive session.

APPROVAL TO CHANGE THE NOVEMBER 28, 2005, COMMISSION MEETING TO FRIDAY, NOVEMBER 18, 2005, TO COINCIDE WITH TABC'S 70TH ANNIVERSARY

Chairman Steen asked what the November 18th date signified. Administrator Steen clarified that November 18, 1935, was the day that the agency came into existence. Commissioner Madden stated that a 70th anniversary celebration was in the planning stages to be held at the Driskill Hotel in Austin from 5 p.m. to 7 p.m., on Thursday, November 17, with the Commission meeting to be held at the hotel the morning of November 18, which is the agency's anniversary date.

Commissioner Madden moved that the November 28 Commission meeting be moved to Friday, November 18, to coincide with TABC's 70th anniversary. Commissioner Cuevas seconded the motion. The motion carried.

Chairman Steen asked Administrator Steen to get with Commissioner Madden on the planning details and cost issues and then report back to the Commissioners by memo.

NEXT MEETING: MONDAY, SEPTEMBER 26, 2005

Chairman Steen announced the next meeting of the Texas Alcoholic Beverage Commission scheduled for September 26, 2005.

ADJOURNMENT

Being no further business, 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.