



## **COMMISSION MEETING MINUTES**

**October 24, 2005**

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, October 24, 2005, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

**PRESIDING:** John T. Steen, Jr., Chairman

**COMMISSIONERS**

**PRESENT:** Gail Madden, Commissioner

**STAFF PRESENT:**

Alan Steen, Administrator

Joan Bates, Deputy General Counsel, Executive  
Carolyn Beck, Public Information Officer,  
Executive

Lou Bright, General Counsel, Executive  
Brenda Craney, Human Resources Specialist,  
Human Resources

Debbie Dixon, Seller Training, Compliance

Loretta Doty, Director of Human Resources

Del Drake, Captain, Office of Professional  
Responsibility, Executive

Jeannene Fox, Assistant Administrator,  
Executive

Buck Fuller, Director of Compliance

David Garza, Director of Homeland Security,  
Enforcement

Russell Gregorczyk, TABC Internal Auditor

Amy Harrison, Director of Licensing

Jo Ann Joseph, Assistant Director, Licensing  
Gary Henderson, Enterprise Operations Team  
Leader, Information Resources  
Linda Jackson, Administrative Assistant,  
Executive  
Renee Johnston, Executive Assistant, Executive

Dexter Jones, Marketing Practices Coordinator,  
Executive  
Charlie Kerr, Director of Business Services  
Santos Saldana, Jr., HQ POE, Compliance  
Garry Sitz, Director of Information Resources  
James "Sam" Smelser, Chief of Enforcement

***GUESTS PRESENT:***

Dewey Brackin, Attorney, Gardere Wynne Sewell  
Doug DuBois, Jr., Director of Membership and  
Education, Texas Petroleum Marketers and  
Convenience Store Association  
Kyle Frazier, Representing National Association  
of Beverage Importers  
Alan Gray, Licensed Beverage Distributors, Inc.  
John Gunstream, Hudson's License Service  
Shaniqua Johnson, Budget Analyst, Legislative  
Budget Board  
Fred Marosko, Texas Package Stores  
Association  
M. Jack Martin, Attorney at Law  
Debra McQuain, Vice President, McQuain  
Agency  
Erin McQuain, McQuain Agency  
Lindsay Meche, Republic Beverage  
Michael Mims, Manager, H-E-B  
Mary Ann Pedhorsky, Batera License Services  
Robert Sparks, Executive Director, Licensed  
Beverage Distributors, Inc.  
Tom Spilman, Vice President, Wholesale Beer  
Distributors of Texas  
Jim Swindle, President, Surety Association of  
South Texas

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. Commissioner Cuevas' flight had been delayed and thus he was unable to be in attendance.

## **APPROVAL OF COMMISSION MEETING MINUTES OF SEPTEMBER 26, 2005**

Chairman Steen called for a motion to approve the TABC Commission meeting minutes of September 26, 2005. **Commissioner Madden so moved, and Chairman Steen seconded. The motion carried.**

## **ADMINISTRATOR'S REPORT**

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

### **New Hire Updates**

- Administrator Steen announced the recent hire of Joan Bates, new Deputy General Counsel. General Counsel Lou Bright introduced Ms. Bates, explaining that she had been the Assistant General Counsel at the Department of Health.
- Of the 114 new employees, nearly 90 have been hired. Administrator Steen discussed the positions that were filled and those that remained.

### **Legislative Interim Charges**

The Licensing and Administrative Procedures House Committee issued two legislative interim charges that involve TABC:

- Research ways to improve the enforcement of existing laws against underage drinking and recommend any statutory changes needed to combat the problem; and
- Monitor the implementation of Senate Bill 1850 related to the proliferation of bars and cantinas in residential neighborhoods, around

schools, churches, and daycare centers in populations of 1.4 million or more (i.e., Harris, Dallas, and Tarrant Counties) and recommend whether the statute should be broadened to apply to other counties in Texas.

#### Licensing Update

- Two teams of compliance personnel have come to Austin to receive cross-training and to assist the Licensing Division with data clean-up and application processing, since TABC is behind as a result of the conversion process. Licensing is processing original applications that were received the second week of October and renewals received in late June.
- The Information Resources Division and VERSA have resolved most of the primary issues that were preventing the full implementation of LicenseEase and eGateway. Data merges were completed to eliminate most of the duplicate entries in the database, resulting in much cleaner data and more efficient processing. IRD is working closely with Licensing to identify and solve a small number of issues with bond requirement determination and renewal generation.

#### Survey of Organizational Excellence

Administrator Steen announced that the Survey of Organizational Excellence, conducted by the University of Texas, was recently received. TABC participates in the survey each year, in which employees respond online to a wide range of survey questions. **Following analysis of the data and comparison of the results from previous years, staff will provide the Commissioners with a summary.** Administrator Steen stated he was pleased to report that the response rate for this year was 79% as compared to 52% two years ago.

#### **INTERNAL AUDIT ANNUAL REPORT FOR FY 2005**

Chairman Steen called upon Russell Gregorczyk. Mr. Gregorczyk discussed the Internal Audit Annual Report for FY 2005 in detail (Attachment 1), reviewing the recommendations and the implementation status. He discussed the internal audit peer review program, required every three years for an outside consultant entity to review and evaluate the internal audit program. Historically, Richard Tarr has provided the review, and Mr. Gregorczyk stated that he would probably arrange for Mr. Tarr to conduct it again. Chairman Steen stated that he had reviewed the 2003 quality assurance review and asked if management responded timely to draft reports from the contractor

within 30 days; Mr. Gregorczyk responded that this was being done. Mr. Gregorczyk also noted the new initiative in which the State Auditor's Office must approve any external audit services procured by a state agency.

With regard to the 2006 internal audit plan that had been approved by the Commission, Chairman Steen asked Mr. Gregorczyk if he thought he would have the time to conduct an audit of the Legal Services Division after performing the other four already approved audits. Mr. Gregorczyk stated he did not know how much time would be required for the approved four audits. **However, he could revise the plan and present a revised audit plan to the Commissioners to include the audit of the Legal Services Division for their approval. Chairman Steen asked that this be placed on the next meeting's agenda.**

#### **APPROVAL OF INTERNAL AUDIT OF ENFORCEMENT DIVISION-FIELD OPERATIONS**

Mr. Gregorczyk reviewed the results and recommendations of the internal audit of the Enforcement Division Field Operations (Attachment 2).

Some of the recommendations Mr. Gregorczyk discussed concerned the educational efforts of the Enforcement Division. One recommendation was to develop methods to validate the effectiveness of the educational programs. It was also recommended that a curriculum specialist or an advisory group review the educational curriculum. Commissioner Madden stated that she understood that TABC had a curriculum specialist sometime in the 1990s. Ms. Fox explained that a curriculum specialist had been hired for Project SAVE to participate in the development and review of the program materials. Commissioner Madden stated that the newly developed Education and Prevention Division was a very good step in this direction and would allow the Enforcement Division to focus more on public safety. Chairman Steen recalled his discussions with Joseph Califano, the founder of the Center for Addiction and Substance Abuse in New York concerning an impact study of the Shattered Dreams project. Chairman Steen suggested that Mr. Califano might be a possible contact for the evaluation of the agency's educational programs.

**Commissioner Madden moved that the Commission approve the Internal Audit of Enforcement Division-Field Operations report. Chairman Steen seconded the motion; the motion carried.**

## **OFFICE OF PROFESSIONAL RESPONSIBILITY QUARTERLY UPDATE**

Chairman Steen called upon Del Drake to provide the Office of Professional Responsibility (OPR) quarterly update. Captain Drake reviewed the OPR report for the period July 1 through September 30, 2005 (Attachment 3).

During this time, a total of 31 complaints and two incidents were reported. Captain Drake reviewed the types, sources, and dispositions of the complaints. In response to Chairman Steen's question as to why the complaints are reported on a quarterly basis, Captain Drake responded that this was one of the Sunset Commission recommendations. **Chairman Steen expressed appreciation for the report but indicated that the report would be more meaningful to him if it were more detailed. He stated that he would like to discuss this with Captain Drake following the meeting.** Commissioner Madden noted that most of the allegations were unfounded.

## **FISCAL STEWARDSHIP REPORT: FOURTH QUARTER PERFORMANCE MEASURES FOR FY 2005**

Chairman Steen called upon Sam Smelser, Chief of Enforcement, Amy Harrison, Director of Licensing, and Buck Fuller, Director of Compliance, to report on their respective areas. Each presented the fourth quarter performance measures for FY 2005 for their areas (Attachment 4).

## **APPROVAL OF 2006 COMMISSION MEETING DATES**

**Chairman Steen and Commissioner Madden agreed that the 2006 Commission meeting date topic should be held for a future meeting date in which all three Commissioners would be in attendance.**

## **APPROVAL TO ADOPT AMENDMENT TO RULE 16 TEXAS ADMINISTRATIVE CODE §33.21, RELATING TO THE AMOUNT OF PERFORMANCE BONDS**

Chairman Steen called upon Lou Bright, General Counsel, to discuss the proposed amendment to the rule relating to the amount of performance bonds (Attachment 5)

Mr. Bright explained the amendment—the addition of paragraph (b)—that was published in the *Texas Register*. The amendment sets a series of three

performance bonds. Only the Surety Association of South Texas (SAST) commented on the proposed amendment. SAST made a suggestion that performance bonds be handled in the same manner as is done for conduct surety bonds. Because of this suggestion, paragraph (b)(3) was then added to the proposed rule amendment for the Commissioners' consideration. Mr. Bright recommended that the Commissioners adopt the rule with changes to the text as originally published in the *Texas Register*.

Chairman Steen called upon Jim Swindle, President of the Surety Association of South Texas, as Mr. Swindle had registered to provide comments on this rule. Mr. Bright clarified and briefly discussed the information in correspondence that he sent to Mr. Swindle, in answer to Mr. Swindle's earlier comments and questions. Mr. Swindle then introduced himself, stating he represented the SAST, a non-profit group that represents surety bond underwriters in Texas. He stated that the concern of SAST is the potential inability for surety companies to underwrite bonds because the rule would allow revocation of the bond on showing of only a single violation of the code or rules by the licensee/permittee, unlike conduct surety bonds. Mr. Bright explained that this is a condition imposed by the statute and beyond the power of the Commission to change by rule. Mr. Bright further explained several answers to procedural questions provided to Mr. Swindle in a previous letter in response to his written questions.

Mr. Swindle asked if the bond form could be made public for comment before it was sent to the Attorney General's Office. Ms. Fox told him to see Amy Harrison after the meeting and she would provide him a copy. Mr. Swindler also requested that the statute to adjust the proposed rule be more clearly defined as to what constitutes an administrative case that would result in conviction. Mr. Bright discussed the statute to explain that, unlike the statute authorizing conduct surety bonds, the Commission has no discretion to allow revocation of the bonds only on multiple violations. Mr. Bright further explained that the purpose of the senate bill was to "raise the ante" on affected retailers (i.e., retailers selling beer and wine on-premise in cities of populations of 1.4 million or more). Therefore, the intent of the Legislature is that consequences of violating the code or rules will now be more serious.

Chairman Steen asked Mr. Swindle if he felt that his questions had been answered and if he felt comfortable with the Commissioners taking action today. Mr. Swindle responded affirmatively, explaining that he was only wanting to be sure that the intent of the Legislature had been addressed.

**Chairman Steen called for a motion. Commissioner Madden moved that the Commission adopt the amendment to §33.21, relating to the amount of performance bonds, with changes to the text as originally published in the *Texas Register*, as presented by Mr. Bright. Chairman Steen seconded the motion, and the motion carried.**

**APPROVAL TO ADOPT NEW RULE 16 TEXAS ADMINISTRATIVE CODE §37.4, RELATING TO NOTICE OF HEARING**

Chairman Steen announced the next agenda topic, the proposed new rule relating to notice of hearing (Attachment 6). Mr. Bright explained that the proposed rule would define “notice,” meaning that a hearing must be concluded within 60 days of the issuance of the formal statement of charges notice. No comments were received on the proposed new rule.

**Chairman Steen called for a motion. Commissioner Madden moved that the Commission adopt the new rule, §37.4, relating to notice of hearing, without changes to the text as published in the *Texas Register*. Chairman Steen seconded the motion, and the motion carried.**

**APPROVAL TO ADOPT NEW RULE 16 TEXAS ADMINISTRATIVE CODE §37.5, RELATING TO THE DETERMINATION OF POPULATION IN CERTAIN COUNTIES**

Chairman Steen announced the next agenda topic, the proposed new rule relating to the determination of population in certain counties (Attachment 6). Mr. Bright explained that the proposed rule would designate the decennial census conducted by the Census Bureau as the authority on the population size. No comments were received on the proposed new rule. Mr. Bright recommended adoption of the rule without changes to the text as published in the *Texas Register*.

**Chairman Steen called for a motion. Commissioner Madden moved that the Commission adopt the new rule, §37.5, relating to population in certain counties, without changes to the text as published in the *Texas Register*. Chairman Steen seconded the motion, and the motion carried.**

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

Chairman Steen announced the next agenda topic, the proposed new rule relating to out-of-state winery direct shipper's permits (Attachment 6). Mr. Bright explained that the proposed new rule—that came as a result of Senate Bill 877, which created a new permit allowing out-of-state wineries to ship directly to Texas consumers—establishes reporting requirements for importers and shippers of alcoholic beverages. Mr. Bright engaged in informal discussions with industry members, and no objections were made. Also, no comments were received on the proposed rule from the *Texas Register* publication. Mr. Bright recommended the Commissioners adopt the rule without changes to the text as published. **Commissioner Madden so moved. Chairman Steen 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 2:48 p.m. on October 24, 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 October 24, 2005, and the time, 3:44 p.m. He stated that no final action, decision, or vote was made in the executive session.**

**REMAINING 2005 MEETINGS**

Chairman Steen announced that the remaining meetings for 2005 were Friday, November 18, and Monday, December 19, 2005.

### **ADJOURNMENT**

Being no further business, **Chairman Steen called for a motion to adjourn. Commissioner Madden so moved. Chairman Steen seconded. The motion carried, and Chairman Steen announced that the meeting was adjourned.**