

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, NOVEMBER 26, 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; John T. Steen, Jr., Member and Gail Madden, Member. Staff present: Rolando Garza, Administrator; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Sam Smelser, Assistant Chief of Enforcement; Brian Guenthner, Director of Licensing; Vivian Rowe, Director of Human Resources; Charlie Kerr, Director of Fiscal Services and Gene Bowman, Director of General Services. Visitors included: Rick Donley, Beer Alliance of Texas; Tom Spilman, Wholesale Beer Distributors of Texas; Mike McKinney, Wholesale Beer Distributors of Texas; Alan Gray, Licensed Beverage Distributors, Inc.; Fred Marosko, Texas Package Stores Association; Robert Sparks, Licensed Beverage Distributors, Inc. and staff of the State Auditor's Office.

The agenda follows:

2:00 p.m. - Call to order.

1. Approval of minutes of October 22, 2001 meeting; discussion, comment, possible vote.
2. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement;
 - c. discussion of management controls;
 - d. ethics policy; and
 - e. statistics on highway fatalities.
3. Fiscal stewardship of agency; discussion, comment, possible vote.
4. Public comment.

Announcement of executive session.

5. The commission will meet in executive session to evaluate the administrator under the authority of §551.074 of the Government Code.

Continue open meeting.

6. Take action, including a vote if appropriate, on topics listed for discussion under executive session.
7. Adjourn.

The meeting was called to order at 2:06 p.m. by Chairman Shivers.

MR. SHIVERS: I call this meeting of the Texas Alcoholic Beverage Commission to order. It is Monday, November 26th at six minutes after two in the afternoon.

Minutes of the past meeting of October 22nd have been mailed to the commission. Are there any changes?

MS. MADDEN: No. I move approval.

MR. SHIVERS: Is there a second?

MR. STEEN: Second.

MR. SHIVERS: All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

Administrator's report. Mr. Garza?

MR. GARZA: The first thing I'd like to do this afternoon is welcome some guests that we have from the State Auditor's Office. We will be seeing a lot more of these people during the next two or three months as they will be conducting their field work of an audit here with licensing and enforcement. Sandy Donoho, I believe, is the project manager. Sandy, would you please stand? Juan Sanchez is the assistant project manager. Other members of the team are Sherry Sewell, Liz Prado, Rene Valdez and Shaniqua Johnson. They will be spending some time with us starting this week. We will be submitting periodic reports to you on the status of this audit. If you have any questions, they would be glad to address those for you this afternoon. If not, certainly, we will come to you in ensuing meetings with periodic reports on where we are on this audit. It will be, I believe, for the months of December, January and February. It will culminate in a published report during the month of March.

The other thing I have for you today is Chief Smelser is here with some updated information on DWI fatalities. Mr. Chairman, you have been asking about those issues at the last couple of meetings. Lastly, General Counsel Bright is going to give us a report on our recently revised and updated ethics policy. Chief?

MR. SMELSER: Chairman Shivers, we've got the information - it's in your packet - about the miles of roadway in Texas and the number of deaths that have occurred in comparison to California. In trying to put the numbers together, we had to be careful - and I'm not sure we didn't try to compare apples and oranges - but you can see that Texas has quite a few more miles of roadway than California. While the alcohol-related crash deaths in Texas are more than they are in California, in comparison with the

population and in comparison with the number of highway miles and with the number of automobiles that they have registered in California versus Texas, I think you can see maybe the balance there. Was there anything in specific that you...

MR. SHIVERS: All the statistics we've had presented to us in the past have been comparing the actual deaths due to DWI on a state-by-state basis. We know there are variations in the way those statistics are collected. I really think a better way to look at it is deaths per road miles driven or miles of road there are; vehicles that really give you a frequency measure rather than just a raw number because you've got different populations. I think it would be interesting to look at the age distribution of these deaths and see if you can get some real information that would help you attack the problem.

MR. SMELSER: See if we can break it down a littler further, then?

MR. SHIVERS: Yes, to see if we can find exactly where the problem is and where we need to put our resources, perhaps together with another agency such as TCADA and schools.

MS. MADDEN: That's a great idea.

MR. SHIVERS: Statistics on how many deaths there were in various states didn't really tell us very much about what the problem was.

MR. SMELSER: Yes, sir.

MR. GARZA: Do you want to hear about our ethics policy?

MR. SHIVERS: I do.

MR. BRIGHT: Good afternoon, Mr. Chairman and Members...

MR. SHIVERS: Although I am somewhat of the opinion that if you need an ethics policy, you've got a real problem. Go ahead, Mr. Bright.

MR. BRIGHT: I'm thinking about that. I'm not sure I would quibble with that all that much.
If you will look between Tab 2 and Officer Smelser's highway statistics, you will find our new and improved and shiny ethics policy. We have talked about this and fiddled with it and decided that with some amplification we like this policy. One of the reasons behind looking at it is

that we had essentially ethical provisions scattered throughout our employee manual. This is something that will appear in our employee manual and on our employee Intranet.

The first purpose of this policy, I think, is to put all of those kind of provisions in one place, to as clearly as we can articulate our expectations and our aspirations for the quality of performance here at the TABC and to explain consequences for not living up to those things. This policy pretty much repeats as clearly as we can a compendium of the minimum standards that apply to the conduct of any public servant, and that is taken from Chapter 572 of the Government Code, Chapters 36 and 39 of the Penal Code and, of course, Section 5.05 of our own beloved Alcoholic Beverage Code. It talks about the general headings under ethical standards, conflicts of interest, gifts and benefits, use of public resources, how we handle public records and political activities and articulates the relevant standards there.

I said we like this policy with some amplification. The next phase of this project is under construction now, and we hope to be coming within the next few weeks. What we intend is on our employee Intranet site to have what I will call amplifying, explanatory information. By that, I mean we will probably have links over to other relevant ethic sites, not the least of which, of course, would be the Texas Ethics Commission which publishes a number of explanatory opinions about what we mean in the statutes by gifts and benefits and those kinds of things. Certainly, other sites like Michael Josephson's Institute of Ethics out in San Diego, the Southwestern Law Enforcement Institute's Ethics Center for Police Officers up in Dallas or other links that our employees ought to have access to.

Mostly what we would probably do, or what we hope to do in our developing, are some textual materials about exactly what this language under, for example, conflicts of interest might or might not mean; some examples of fact patterns that would or would not violate those policies. It's kind of in that effort that we hope to give our employees some more concrete understanding about what these standards are and how those standards will interact with their personal lives; what they can and can't do.

We also hope in that textual material to grapple with what is the real beast when you talk about ethics and public servants. When we say how do we expect ethical public servants to behave, of necessity what we end up doing is saying, "Here are the bottom line rules and if you violate those

rules, the prosecutor will get after you or the administrator will fire you.” Of course, obeying the rules is not what we think of when we say ethical person. So, in that explanatory material we hope to elaborate on kind of the distance between obeying the rules and obeying the appearance of impropriety, living up to the highest standards of integrity and impartiality and all those things. That’s our story about the ethics policy.

MS. MADDEN: Mr. Bright, is there some sort of a chain of command if there is a breach? How do you filter that out if there is a breach of ethics? Does the supervisor notice it?

MR. BRIGHT: Yes, we would certainly hope so. I think in my mind if someone behaves in an unethical way, some employee here, that is analogous to if they do other things that we don’t explicitly think of as ethical but that are some kind of employee misconduct. That is, we would normally handle that through our chain of command in whatever way is appropriate, ranging from, “That was poor judgment when you did that. Please don’t ever do that again,” up to, “You’re fired for an ethical violation.”

You will notice one of the things that we mentioned in our overview is that there is a good bit of ambiguity as to what we do and do not mean in any specific fact situation about the best conduct, and we encourage our employees as much as we can to, first, not to do anything that they have a reasonable belief is unethical and, secondly, to seek advice. We say and start a discussion about how ought this commission behave in this situation. That discussion we reference can be carried on through the supervisory chain, if relevant, through human resources and, of course, through their ethics advisor who just sits in his office all day and looks out the window and says, “Gee, I wish somebody would ask me a question.”

MS. MADDEN: And, that’s you.

MR. BRIGHT: That would be me, yes, ma’am.

MS. MADDEN: Who does Mr. Garza report to?

MR. SHIVERS: The three of us.

MS. MADDEN: Since our esteemed chairman lives in Austin, I would think you would take on most of that.

MR. SHIVERS: Right, and I’m sure Mr. Garza understands what we all do that just because something is not specifically prohibited in this ethics policy

doesn't mean you can do it. I'm reminded of the words of a famous lawyer of this city, Bob Heron (sp), in talking about whether they would have policies in their law firm. He said, "We are not going to have any policies. We are just going to do what's right." Do not take this policy to say that just because it's not in here, doesn't mean you can do it. You cannot do wrong, no matter whether it's written down or not.

John?

MR. STEEN: Mr. Bright, I had brought an ethics policy that I had received from the Governor's Office. I think that's what got this going.

MR. GARZA: Yes, sir. Absolutely.

MR. STEEN: How does that compare with what we have before us now?

MR. BRIGHT: I don't have that governor's policy in front of me right now. We looked at that and talked about that, and I think to the extent that you could frame our reaction to that as objections, it was not the content but the style. As I remember, that was a long list of thou shalt nots. We kind of want to put that element into our ethics policy, that being ethical is more than thou shalt not. It is doing that extra that separates acceptable from good. I think you would find that if someone acted in contrary to one of those specific commands in the governor's policy, you would find somewhere in this policy that they had violated one of those principles. I think this states in a more general way, which in the context of discussing those kinds of things listed in the governor's policy, gave rise to this idea that since we do, in fact, live in the computer age, that we can explain in a kind of non policy, practical sort of way what kinds of things might add up to be a conflict of interest or an acceptance of an unwise or unlawful benefit, the sort of things that are contained in that governor's policy.

MR. STEEN: This is going to be in the employee's policy manual?

MR. BRIGHT: Yes, sir.

MR. STEEN: Say there is a situation where there has been an ethical lapse and you confront the employee with it and the employee says, "I never read the ethics policy."

MR. BRIGHT: Of course, in the law there's that famous statement that ignorance of the law is no excuse. All of our employees receive a copy of the employee manual, and we tell them pretty clearly, "You are responsible for what's in here and you are responsible for the standards of conduct and if you turn a

blind eye to this you can end up in a lot of trouble.” We supplement that through our training, formal and informal. It is quite possible, and in the course of going through a number of employment disputes in my career, I’ve had employees who had some kind of adverse personnel action say, “I never heard of that before. I never read that.” The real answer from this agency, from the administrator, from this commission is, “Well, you should have because it’s your responsibility as an employee here to know.” We try to help them, both, like I say, through the Internet and through our training that we give them.

MR. STEEN: Could we require our employees to sign something?

MS. ROWE: They currently do that, sir. Vivian Rowe, HR. Excuse me. We have them acknowledge that they’ve read and they understand the employee handbook upon receipt. We don’t know that they have read it but, again, we leave it up to them. We keep those acknowledgments in the personnel folders.

MR. STEEN: Could we also have them specifically acknowledge the ethics policy?

MS. ROWE: We are having them acknowledge the entire handbook which includes the ethics policy as well. It wouldn’t be a problem to put that separate. We are saying you have all these policies and this is the handbook as contained therein, and you are acknowledging receipt of these.

MR. SHIVERS: I’m not sure you want to elevate one part of the policy over another one. You want them to understand the entire handbook, including the ethics policy.

MR. BRIGHT: Let me tell you just as, I suppose, kind of an anecdotal supplement to that. Some of this is subject, I suppose, to the speculation that anecdotes are subject to. I spend a good bit of my time traveling around, formally and informally, talking to people about ethics issues. It really is my sense that there’s not an awful lot of confusion among the employees of this agency about what the general ethic standards are. If we have ethical lapses, and I don’t know that we’ve had any what I would call serious ones since I’ve been here, but if and when we do have ethical lapses, I think what we are not likely to get is, “Gee, I never heard of that rule,” but something more in the order of, “Well, you know, I guess I just got weak there for a minute,” or “I didn’t think you guys were going to find out about this,” something along that line. I’ve got a general sense, however, that where our employee base is is not that they are unaware of these rules. So, our training and our communications with them are pretty much directed

more to helping them do what's right in the face of, perhaps, conflicting temptations.

MR. SHIVERS: You can't inoculate people against an occasional case of the stupids.

MR. BRIGHT: Say again, sir.

MR. SHIVERS: You can't inoculate people against an occasional case of the stupids.

MR. BRIGHT: I suppose all of us, in the face of a specific fact situation where we are solely tempted to have an inclination to say, "Yes, but that policy certainly doesn't apply to me, does it," when usually the answer is, "Yes, it does."

MR. SHIVERS: I've tried that defense on more than one occasion.

MR. BRIGHT: I have, with mixed success, I ought to say.

MR. GARZA: The other challenge I think, too, Mr. Steen, is with regard to this whole area of ethics is in terms of when there is a breach, when there is a violation, to what extent do we administer discipline to that employee? I think General Counsel Bright is correct. Oftentimes, when there is a violation, the employee says, "Well, I didn't realize that that was going to subject me to probation or demotion, certainly not to termination." I think the challenge to management and throughout the agency is to make sure people understand that we just didn't come up with a policy just to suffice it to say we have a policy in ethics, but to understand there are consequences to violations of the policy.

MR. STEEN: Are we expected to adopt this today?

MR. BRIGHT: No, I don't believe so, sir. I suggest, at least, it is a matter for the development of the personnel policies, as the others we have developed.

MR. SHIVERS: This is informational for us.

MS. MADDEN: This brings up something else. Mr. Garza, you talked about the fact there have been some changes in the organizational chart on who reports to who. Could you get us an updated organizational chart? I assume you have one.

MR. GARZA: We can get you one before you leave this afternoon. The only changes that have occurred since I came on in August is General Counsel Bright is a direct report to me. The internal affairs office, Captain Del Drake, is also a

direct report and our public information function, who is Claire Myers, reports directly to me. There have been no other changes to the organizational chart as we speak. I would also say that I've only been here for three months, and I certainly want to leave the door open as I make assessments and reviews to come back to the board at some point if I do make some recommendations for change.

MS. MADDEN: Sure.

MR. STEEN: I guess I will abide by what you say, but it seems like as a commission if this is an ethics policy, it would be appropriate for us to be adopting it as a commission.

MR. BRIGHT: I certainly wouldn't quibble with you about it. If you want to vote on it, that's great. My general understanding is that the development of internal policies like that is a matter that is delegated to the administrator. But, I'm almost reluctant to say that because I don't want you to get the understanding that if you have delegated something to the discretion of the administrator, for example, the supervision of the general counsel, that doesn't mean that he gets to do anything that you don't like. You always have the right and the authority and the power to say, "You know, we don't like that, and we want you to do something different," or "Whatever it is you've been doing in this area, please knock it off."

MR. SHIVERS: We could always take the power back.

MR. BRIGHT: You certainly may, both generically and on individual situations.

MR. STEEN: This is important to the Governor's Office. It's important to us. It seems like it reaches that level of importance where we ought to say this is the policy coming from the commission.

MR. BRIGHT: I certainly wouldn't argue with you about that, Mr. Steen.

MR. SHIVERS: Why don't we have a motion to endorse the policy?

MR. STEEN: So moved.

MS. MADDEN: Second.

MR. SHIVERS: All in favor of endorsing the policy adopted by the staff, say aye.

MR. STEEN: Aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed? How's that? We didn't remove any delegation. We just endorsed what you've done, Rolando.

MS. MADDEN: Nice compromise.

MR. GARZA: Thank you.

MR. SHIVERS: Is that all for your report?

MR. GARZA: Yes, sir. I guess I ought to point out, in case the commissioners are wondering where our regularly attending division directors are, Mr. Guenthner is sitting in for Ms. Fox who is involved in important personnel matters down in South Texas as we speak. The chief is sitting in for Chief Hamilton who is out of state up in the Washington area, I believe, attending a conference, and Ms. Rowe is sitting in for her supervisor, Ms. Hudson, who had a medical appointment this afternoon. It was not an organized boycott by all three of our division directors, and they are aptly being represented by these three folks.

MS. MADDEN: Mr. Yarbrough?

MR. YARBROUGH: Yes, ma'am.

MS. MADDEN: I had the pleasure of visiting with Susan Combs, our agriculture commissioner, about 10 days, two weeks ago. She was waxing eloquently about the TABC, and I wanted to tell you all that. She was particularly complimentary of Mr. Yarbrough. It had to do with your involvement in the wine bill. Could you update us on that and give us a brief summary of that bill? She was just enamored with your involvement.

MR. YARBROUGH: Thank you, Ms. Commissioner. I think she's happy about the 250,000 dollars we sent the Agriculture Commission. House Bill 492 by Chairman Swinford was passed this last session to assist the Texas wineries. That bill set up a committee under the Department of Agriculture to market Texas wines. Commissioner Combs asked me to serve on that along with her staff and representatives of the industry, from the wholesale tier, from the wineries, as well as the package stores association. She can do things that the industry cannot do, itself, to avoid three-tier problems. So, her department, along with her Go Texas Program, will be promoting Texas wines, will be trying to get retail stores -

both the package stores who are involved in the program as well as other retail locations - to feature Texas wines at periodic times throughout the year to build and grow the Texas wine industry. A great assistance to getting the bill passed as well as the program underway goes to the package stores association who worked hard to participate in it. They have signed up to feature these wines for shipping.

If you go to a winery now, purchase wine at the winery, they can ship it directly to your home. If you like that wine so much, and you don't want to make a trip to the winery, you can call back and they can ship it to any of the package stores closest to you that are participating in the program. They will, along with that and the invoice, have a card that Ms. Combs is providing for them to send on to you, "Your wine is here. Come pick it up." They will work together to try to make it available to people in the easiest way possible to work within the system. We think this is a program that the wineries are certainly ecstatic about. I think the package store people's willingness to participate goes a long way to helping us to build a better and bigger Texas wine industry.

MS. MADDEN: Thank you.

MR. SHIVERS: Do you have anything else, Rolando?

MR. GARZA: No, sir.

MR. SHIVERS: Fiscal stewardship of the agency. I think, Ms. Rowe, that's you today.

MS. ROWE: Thank you. We have provided you a November fiscal stewardship report. I'm assuming it's behind Tab 3 of your notebooks on workforce summary, judgments and claims, historically underutilized business usage and property losses. The first sheet, "Workforce Summary Fiscal Year 2001" is a report you saw that the auditor's office distributed during the legislative session. We tried to make a composite of this for the year 2001. I think their information given to you was for year 2000, which was the most recent they had at that time. I'm not going to read all of this. You have had it. It just kind of gives us a staffing overview of employee turnover, salary expenditures, salary breakdown by the number of full-time employees by the three salary schedules that we have, FTE full-time employee trends, turnover comparisons - all employees - and that's important - all employees - because that figure denotes those temporary and part-time employees as well. So, you will see a higher figure there because of the turnover and because of the part-time people that we have employed this year. The

workforce breakdown, and I think she made a significant note here, that 61 percent of the commission's workforce is 40 years of age or older and 31 percent of the workforce has less than five years of experience. You can tell that we are kind of on the mature side with less experience. If you have any questions, I will try to address portions of that, as well as Charlie Kerr who did most of the salary related information. Judgments and claims, Mr. Kerr is here.

There is one area I will point out to you on that. On the judgments and claims, workers' comp, you will see a big increase from the year '99 to 2000 to 2001. What happens on workers' comp claims is that somebody might file in '99 and their judgment is not paid out until that following year, based on impairment rating and other things like that and, trust me, it doesn't take very long for one of those claims to shoot up real high. That was an obvious jump that I was kind of curious about, and that's what we found there.

Mr. Gene Bowman is here if you have any questions on HUB information and Rick Hewlett for property losses.

MR. SHIVERS: You've got better than a 50 percent increase in turnover in 2001. Why?

MS. ROWE: I think because of the part-time people we've had to utilize, especially during the time when we could not get some of our jobs filled in the lower entry levels. In licensing, more so, we've had to have quite a few part-time people during the summer just to help us get over the load. We used some temporary employees at the ports of entry during seasonal times, so that has pushed it up quite a bit this time.

MR. SHIVERS: Do you have a breakdown as to how much of this increase is due to part-time employees?

MS. ROWE: I have not. I can provide that. If I recall, I had done some data and given it to the executive team, and 11 individuals were counted as part-time. I'm thinking maybe 78 is what we are looking at. Eleven out of that were part-time employees. As well, we had two that the state would not count because they left from TABC and went to another state agency, so those wouldn't be included in here. I think it's about 11, Mr. Shivers.

MR. SHIVERS: You've almost got a flip-flop between tort claims and workers' comp claims in terms of trend. Can you or Charlie Kerr enlighten me about that a bit more? I heard your explanation, but it seems to me if injuries are occurring in one year and the claim during the following year, you would have a fairly steady trend. That isn't what you have here.

MR. KERR: Some of those tort claims are directly related to traffic type accidents with enforcement vehicles generally. Those have been on the decrease lately, fortunately. Some of these...

MR. SHIVERS: Where are the workers' comp claims coming from?

MR. KERR: Workers' comp claims would be similar accidents, but they involve obviously some type of injury. This will be an employee-related injury versus a claim to an outside person that was injured in the accident.

MR. SHIVERS: One could not assume that the driving is getting any better. Just who's getting hurt has changed.

MR. KERR: That could be said, also. I think the accidents have dropped some on the vehicles. We haven't spent as much money on car repairs.

MR. SMELSER: It comes in three's, Mr. Shivers.

MR. SHIVERS: I'm sorry?

MR. SMELSER: It comes in three's. If I have a wreck, I have two or three more within a period of a couple of months, then it will die off for six months and I won't have any.

MR. SHIVERS: Why is that?

MR. SMELSER: I can't tell you, Mr. Shivers.

MS. ROWE: Sometimes, the way I like to explain it in my small, limited mind is that when you take on new things and you try new endeavors as a department. For instance, our bike patrol, we had to teach those individuals how to properly ride those bikes. It was a little curve for them to learn and a couple of them did get spilled before they managed to successfully do that endeavor so we would have our bike patrol. Those are two that just kind of stand out in my mind. We try to advocate safety, we really do, but with an organization this size and as much as we do - I'm not making excuses - I don't know that this is that insurmountable.

MR. KERR: Just hope we don't go to horses, Mr. Shivers.

MR. SHIVERS: Let's not beg for trouble.

This isn't a huge agency, a medium size agency, and you start getting claims like this; tort and workers' comp together are paying almost 170,000 dollars so far in 2001. Maybe we ought to look at everything we are doing, if we're not giving people enough training because we've got them doing too many other things or what is it?

MR. KERR: It's really hard to see a trend in this. We've looked at it before. We have lots of training. We have safety training. It really just kind of depends on randomness almost. I mean, it doesn't really have a trend that we can see that's based on anything whacking as far as training or other than what Vivian just mentioned about new programs and all of that. We will continue to look at it to see if there are any things that we can do.

MR. SHIVERS: I hear you but I don't like the answer. That's an expense that we ought to try to reduce as much as possible, to the extent it's cost effective to reduce it, unless we can figure out what the factors are that are causing these increases.

MR. KERR: Ironically, claims have actually gone down in the last couple of years, but the amount of money has gone up because, like we mentioned, the previous year's claims are starting to hit.

MR. SHIVERS: I understand.

Gail, do you have any questions?

MS. MADDEN: I'm kind of concerned about our 50 percent turnover, also. I just want to make sure that we remain vigil about that. I think that's unusually high to jump from 10 percent to 15.4. I understand it's probably part-time and licensing but maybe we can address that.

MR. KERR: Actually, the positions that turned over in fiscal year 2001, we had a 50 percent rate of information technology positions which are your data entry people, your programmers, so that was pretty high in that. Administrative support was 32 percent. So, those two areas are where most of that occurred. Your administrative support, I think, will include your licensing techs.

MS. ROWE: Again, those are your lower entry jobs, and we've had a problem with trying to keep the pay commensurate with the task. If they find something better, they just go. We've tried a lot of...

MR. SHIVERS: I understand. Up until last year, information resources people have been

hard to keep simply because of the disparity in salary between the private sector and the state. My guess is that has turned around.

MS. ROWE: It has.

MR. KERR: I believe that has turned around a little bit this year.

MS. MADDEN: In this economy, too, we should be doing better.

MR. SHIVERS: Job security has taken on a whole new meaning.

MS. MADDEN: Exactly.

MR. GARZA: We were recently able to do some reclassifications in this area where Charlie and Vivian are talking about in the administrative support function. That won't necessarily guarantee that these folks will stay with the agency, but we certainly look at that as a means of trying to stem that tide. As Ms. Rowe stated, these are some of the lowest paid employees in state government, not just here at TABC. Many of these folks, you will find them holding down two jobs just to be able to make ends meet. By doing a reclassification and giving them a slight salary increase, in Brian's shop primarily, we hope to be able to address that, not only here in Austin but also in the field with some of our licensing ad techs.

MR. SHIVERS: We should all understand the cost of this turnover is not just the quantifiable costs and retraining and recruitment. You lose momentum in the organization due to that retraining and you lose that continuity of knowledge and experience. It just slows you down and makes you overall less efficient. It's a hard thing to quantify, but it is a real genuine cost.

MR. KERR: It certainly is.

MR. SHIVERS: John, do you have something?

MR. STEEN: I was just going to ask someone to address this HUB usage.

MR. KERR: I think Mr. Bowman can do that for you.

MS. MADDEN: While he's coming to the microphone, Mr. Garza, your issues that you are trying to address in licensing, are they already implemented?

MR. GARZA: Yes, ma'am. Those were effective the first of this month. Those reclasses went through and those folks have seen a salary increase as a result of that.

MR. BOWMAN: In your enclosure there on the historically underutilized businesses, the state breaks it down into six categories; four of which we had actual purchases or contracts in 2001. Obviously, we don't do any heavy construction, and we do very little building construction. Primarily, we always have commodity purchases which is your consumable supplies, forms, things of that nature. We do some professional services and other services.

In commodity purchasing, the goal they want you to reach for is 12.6 percent. In 2001, we did 10.1 percent. Other services, 33 percent. We did 10.4 percent. We had no special trade or professional services with historically underutilized businesses; however, in 2001 in the category of professional services we only had one contract for 9,182 dollars. In the other category of professional services we did a total of 34,712 dollars in 2001.

We had two very lean years in 2000 and 2001 as far as budget. Really, to get into other services, professional services and some of your bigger contracting services, it takes a capital budget or it takes money other than normal operating expenses such as rent, salary and consumables.

MR. STEEN: These are goals, so if we are not in compliance, what are the implications of that?

MR. BOWMAN: The State Auditor's Office doesn't measure you with necessarily meeting this goal as far as the percentage. They measure you on the program that you've set up. Basically, they are going to look at four different areas when they come in and look at the HUB program. They are going to look at planning, outreach, reporting and subcontracting. They are going to make a determination if you've made a good faith effort to succeed in these four areas. They look at certain things, such as your policy, such as your outreach, forums that you attend, going out soliciting and signing HUB's up, trying to put subcontractors together with contractors that are HUB's. They are going to look at your overall marketing plan to try to solicit HUB's to do business with the services that you need.

We do have coming up in 2002, in the next few months, we are actually going to have some building construction that we haven't had in the last year or two. That will be in El Paso where there's a bridge remodeling contract that GSA - General Services Administration of the federal government - is putting together, of which we are going to participate whether we want to or not because they are basically tearing down the

booth that we are in and we will have to rebuild at another site. We will be able, probably in this area, to pick up some HUB business in special contracts.

As far as commodity purchasing, here in Austin, Texas, we buy most of our consumable supplies from the central store. We are required to do that by law. We can make some inroads as far as getting our percentage up a little higher in the field offices where we buy consumable supplies through a credit card. Some areas of the state we do some subcontracting credit for mechanical repairs on the cars if we can find a HUB business that's a garage. We get some subcontracting through gas purchases through the state gas card, Voyager. These are far and in between because there's not a whole lot of registered dealers out there that handle a particular gas that might qualify for the Voyager Card.

We are making inroads as far as the development of a HUB protege plan that's being formally adopted as this point. The administrator has looked over it, and I think we will probably try to put that in place in December. That basically involves subcontracting, where we put a contractor and a subcontractor together and say, "Look, the contractor may not necessarily be able to do everything for us but here is a small subcontractor that wants to get into the business," and the main HUB can be a mentor. That's what the mentor/protege program is all about is getting subcontractors that you wouldn't normally do business with into the picture. It is kind of a mentoring process that's being implemented.

We do attend probably four to six forums a year in various parts of the state. HUB outreach programs, such as that, where we actually take contracts to these forums and present them for bid to the HUB vendors that are present. We have a formal HUB coordinator who is also the purchasing manager. We've added one more additional staff person to our staff to handle routine purchasing to free up this HUB coordinator so that she can become more involved in these outreach programs.

In the part of outreach and planning, I think we are positive in those areas. Reporting, we've always reported and met all the requirements as far as reporting standards of GSA which is currently now the Texas Building and Procurement Commission. We file a formal report in the packet that you have each month showing what we did for the previous month in those areas. We are working, like I say, in the subcontracting arena with the implementation of our mentor/protege program. Any questions?

MR. STEEN:

Thank you for your report.

MR. SHIVERS: I take it if we meet all the state's goals, we have a prima facie case that our marketing and outreach and planning has been successful. Is that correct?

MR. BOWMAN: Sir?

MR. SHIVERS: If we meet the state's HUB goals, it's a prima facie case that our planning and marketing and outreach program has been successful? Is that correct?

MR. BOWMAN: I think these personnel here with the State Auditor's Office will probably be looking at our plan. I think we've done everything we can to meet that. To fail this program, you would have to fail in three of the four areas.

MR. SHIVERS: If you reach the goals, you've made a good faith effort.

MR. BOWMAN: That's correct.

MR. SHIVERS: Let's try harder.

MR. BOWMAN: Now, as far as the actual percentage, you are not graded on the percentage. It's just the effort that you put into it.

MR. SHIVERS: I think we need to try a little harder in this area. Thank you, Gene. Public comment? No one is signed up for it. Anybody in the mood to speak? No? Okay.

The commission will now go into a closed executive session to evaluate the administrator under the authority of 551.074 of the Government Code.

The commission convened in executive session at 2:50 p.m. and reconvened in open meeting at 3:22 p.m.

MR. SHIVERS: The commission meeting of November 26, 2001 is now back in open session. During executive session, no votes were taken, no final decisions were made.

Before we adjourn, I have one announcement. The commission will not meet in December, so I wish all you a most happy, blessed holiday season. I hope you all stay safe.

If I can have a motion to adjourn, we will see you all next year.

MS. MADDEN: I so move.

MR. STEEN: Second.

MR. SHIVERS: We are adjourned at three twenty-three.