

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, NOVEMBER 27, 2000

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: Doyne Bailey, Administrator; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License & Compliance; Sam Smelser, Assistant Chief of Enforcement and Denise Hudson, Director of Resource Management. Present to receive certificates of service: Darla Elam, Licensing; Raymond Rayos, Licensing and Clifford Stech, Waco Compliance. Visitors included: Less Constable, Texas Wine & Grape Growers Association; Robert Sparks, Licensed Beverage Distributors, Inc.; Tom Spilman, Wholesale Beer Distributors of Texas; Alan Gray, Licensed Beverage Distributors, Inc.; Rick Donley, Beer Alliance of Texas; Fred Marosko, Texas Package Stores Association; Doug DuBois, TPCA; Glen Garey, Texas Restaurant Association and Jack Martin, TABLS.

The agenda follows:

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

1. Recognition of agency employees with 20 or more years of service.
2. Approval of minutes of October 23, 2000 meeting; discussion, comment, possible vote.
3. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement; and
 - c. discussion of management controls.
4. Consider requesting legislative changes to various provisions of the Alcoholic Beverage Code relating to the issuance, duration and conditions of licenses and permits; discussion, comment, possible vote.
5. Public comment.

Announcement of executive session:

6. Executive session:
 - a. the commission will meet in executive session to consult with legal counsel regarding pending litigation pursuant to Texas Government Code, §551.071.

Continue open meeting.

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

The meeting was called to order at 1:38 p.m. by Chairman Shivers.

The following employees were recognized for 20 or more years of service to the agency, and the commission extended their appreciation and congratulations to each one.

Deborah Johnson is an administrative technician in the Houston office. She began her employment with the agency as a part-time employee in the file department in the Houston office and was later hired as a full-time secretary. Once the agency designated the position of administrative technician to work applications, Deborah moved into that position and has been there ever since. She is married to Winfred and they have a son and a daughter, Van and Windy.

Herb Murillo began his career with the agency in 1970 as a temporary employee. A year later he was hired permanently as a Tax Collector I. Herb has held the title of tax collector, tax inspector and taxpayer compliance officer. He became a supervisor in March of 1996 and oversees seven bridges which span an area of 250 miles. Herb is married to Josie and they have two children, Herb III and Erikka.

Darla Elam began her career with the agency on June 3, 1974 in the licensing department as a clerk typist. In 1985, Darla left the agency for a short time when she and her family moved to Lampasas. She returned to the agency in 1987 where she is currently employed as a method and procedures specialist in licensing. She was selected Employee of the Year in 1995 and was cited for her honesty, dedication, hard work, knowledge and experience. Darla has three daughters, Jamie, Stacy and Dana and a grandson, Hunter.

Raymond Rayos began his career in the licensing department in November 1975 as a clerk. He is currently one of three employees within the department whose primary responsibility is processing applications for original licenses and permits. Last fiscal year, these employees processed 21,174 original applications. Since 1996, Raymond and his wife, Candy, have volunteered their time to the Victims Assistance Team of Lockhart. They have two children, Rene and Marisa.

Cliff Stech began his career with the agency in November of 1975 as an Auditor I in the Corpus Christi office. Since that time, Cliff has worked in Beaumont and Longview and today he is a compliance officer in the agency's Waco office. Cliff is very active in his church and enjoys spending time with his three children, Laurie, Tim and Brent.

Chairman Shivers called for a motion to approve the minutes of the October 2000 meeting. He stated that the members have had an opportunity to review the minutes and asked if there were any changes. Ms. Madden made a motion to approve the minutes, and the motion was seconded by Mr. Steen.

Chairman Shivers asked Doyne Bailey to give the administrator's report. Mr. Bailey reported that Russell Gregorczyk has signed a contract to perform internal audit services for the agency. Mr. Gregorczyk will report to the agency on December 1st and will begin a risk assessment.

Mr. Bailey also reported that the human resources department has initiated a sergeant promotional process, however, due to the unexpected illness and surgery of Chief Smelser, that process has temporarily been put on hold. Chief Smelser has returned to work and the process is

expected to continue in the near future. Mr. Bailey stated that the human resources department has also initiated the interview process for nine new agent trainee positions. The agency received approximately 170 applications for these positions.

MR. BAILEY: Gene Bowman has reported that the agency participated in the state's surplus auction on November the 18th, where they sold 17 cars and made about 55,000 dollars. That's a very good number for us in regards to recouping some of that loss.

MR. SHIVERS: Good.

MR. BAILEY: That's all the information I have for you. If you have any questions, I will be happy to try to answer those.

MR. SHIVERS: Questions? Mr. Steen?

MR. STEEN: Just elaborate a little further on the automobiles.

MR. BAILEY: As you well know, in recent years we've tried to schedule the purchase of new vehicles so we get a few each year rather than buy a whole bunch at one time. As our vehicles reach their limit in terms of miles - we are running about 100,000 miles on each car. In previous years, we were running much more than that, but because the legislature was kind enough to fund some new vehicles each year, we've been able to turn them in right at 95 to 100,000 miles, and we feel like that's helped with the resale value. That resale is done in conjunction with the state General Services Commission, and there will be property and vehicles from a lot of state agencies at that auction. In fact, Gene tells me that when DPS has a large number of surplus vehicles, that helps our prices some, and we get that money back to our budget as a result of that.

MR. STEEN: Good. Thank you.

MR. SHIVERS: Do you have any questions on the administrator's report?

MS. MADDEN: No.

MR. SHIVERS: I have a couple on the enforcement division. Sam, I'm glad you are back.

MR. SMELSER: Yes, sir?

MR. SHIVERS: I hope you are strong enough to take this.

MR. SMELSER: I hope so, too.

MR. SHIVERS: It appears that most of our performance measures for October seem to be a bit below the year-to-date totals for last year. Is there a particular trend going on there? I know we are fairly early in our fiscal year.

MR. SMELSER: I don't have a reason why those figures are lower. Is that what you are asking me, sir?

MR. SHIVERS: There are fewer complaint investigations and inspections are down a little bit. The one that improved the most are the number of persons attending educational presentations.

MR. SMELSER: The only thing that I can surmise is the push that we had prior to September, the end of the fiscal year. It's a downtime now and they don't have that pressure for those performance measures to be up for the first month in the fiscal year. It will fluctuate. It historically has throughout the year. It will climb from this point through February and March and then slump off again. Then, prior to September of 2001, we will see an increase again. It's how the supervisors will focus the time spent when they look at these figures to start encouraging them to go up.

MR. SHIVERS: Of course, you are only two months into your fiscal year.

MR. SMELSER: That's correct, yes, sir.

MR. BAILEY: Keep in mind that we are about nine agents short of our full authorized strength.

MR. SHIVERS: I noticed that.

Jeannene, in compliance, it's down a little, but not significantly. Is that seasonal?

MS. FOX: Yes.

MR. SHIVERS: Or is it due to the fact that you have had so much turnover in your department?

MS. FOX: In compliance, it's a little seasonal and there's a little lag. If you are looking at the reports processed and analyzed - is that the area you are focusing on?

MR. SHIVERS: Yes.

MS. FOX: We had some people out for a little bit of time, and that causes those numbers to go down a little bit. We also had a little bit of a problem of some accounts not reporting timely. That also affects those numbers.

MR. SHIVERS: Can someone help me with ports of entry?

MS. FOX: I will try to.

MR. SHIVERS: The revenue seems to be down pretty good from last year. Alcohol and cigarette containers stamped so far are down from this time last year. What's going on there? Has the economy changed?

MS. FOX: There's about 100,000 dollars that we are down for the first two months of this year. At first, I would have probably told you it's cigarettes, but that's not entirely true. About 50,000 dollars of that is cigarettes and about 50,000 dollars is alcohol. We are down almost 99,000 packages of cigarettes that came across.

If you will remember, this time last year, we were going back and forth on what we allowed across and what we didn't allow across. The first part of September everyone could bring anything back and it was taxed. It didn't have to have a warning label, and then it had to have the warning label, and then we had a lawsuit that changed that. So, we've had a lot of variance on that. That probably does affect it a little bit on that particular measure, but it was like the first two weeks in September when there was a lot more coming across than what we allowed.

Basically, when you look at the figures, both alcohol and cigarette packages coming across are down from the previous year, and the trend is down for the summer. It was also going downward.

MR. SHIVERS: What explains the difference in confiscations? Same thing?

MS. FOX: The fact that they are higher or...

MR. SHIVERS: It looks like they are lower this year than they were last.

MS. FOX: That huge amount last year, the 7,000 that we had the first two months of last year compared to the 1,200, is cigarettes, and that accounts for that number of cigarettes. I think after the first two weeks in September we did not allow anything across that did not have the proper warning label, so we

confiscated over 6,000 packages coming across those first two months because of the failure of the warning label. We don't confiscate that many anymore. We are back to a normal level of about three to 400 a month, so that huge difference was not alcohol. It's pretty much cigarettes.

MR. SHIVERS: Okay. Any other questions?

MS. MADDEN: No.

MR. SHIVERS: John?

MR. STEEN: I had a question on the status of some of the lawsuits that we have. I guess we can do that in executive session?

MR. BRIGHT: We have that on our executive session agenda. If you would prefer to discuss it there, so would I.

MR. STEEN: Okay.

MR. SHIVERS: Probably would be better.

Do you have anything else?

MS. MADDEN: No.

MR. STEEN: Ms. Fox, I was going to ask you about your employee situation. Just give us a report on that. I know you have had some difficulties. How is it now?

MS. FOX: That difficulty pretty much is primarily in the licensing department. It's still pretty severe. I think we have four positions vacant, as we speak. We have several that we filled just this last month, but it's still a constant turnover. Generally, on the exit surveys that we do have returned to us, it's too much work, too much stress and not enough money.

We are focusing on processing original applications, because we are short staffed in a lot of areas and letting the renewals get a little behind. But, we are making sure we keep those originals processed and issued as quickly as possible. I don't see that we are going to make a whole lot of headway until we can do something with the salary structure.

MS. MADDEN: We are asking for four new ones in our LAR?

MS. FOX: We are asking for some additional staffing, that is correct, in our appropriations request. Hopefully, the state, as a whole, will address the issue of salaries across-the-board.

MR. SHIVERS: It's my understanding we are not the only agency that's having problems with administrative technician positions or equivalent positions. They are all having the same problems because of the paygrade.

MS. MADDEN: There's all kinds of articles. I know we've had them in the *Dallas Morning News* and you can get them off the internet, too, about how people are fleeing Texas government because, as you said, of the paygrade.

MR. SHIVERS: It's particularly hard here in Austin because of the competition.

MS. MADDEN: Exactly.

MR. SHIVERS: In the private sector, the unemployment rate is hovering somewhere below two percent.

Number four - legislative changes to various provisions of the Alcoholic Beverage Code relating to the issuance, duration and conditions of licenses and permits. Jeannene, do you want to present that?

I think Tom Spilman signed up to say something about this. Tom, do you have some comments before we get into this?

MR. SPILMAN: No, go right ahead. I will wait for Jeannene.

MR. SHIVERS: There are six general categories. If you will just run through the categories and make brief comments, we can ask questions.

MS. FOX: Okay. Basically, we make these suggestions with an eye to streamlining and eliminating what we believe to be some unnecessary requirements in the licensing structure and procedures that we now have in place.

The first one has to do with eliminating the requirement of a performance bond and only having bonds submitted to this agency to secure payment of taxes and the conduct surety bond for retailers. The performance bond that we are talking about eliminating is a bond that's been required for at least over 30 years. It is a small amount, generally 1,000 or 1,500 dollars and, as far as I know, to my knowledge, we have never collected on one of these bonds because the agency has always had punitive measures

available to it when it found a licensee or permittee that failed to abide by the code and the regulations. So, this is a bond that I think is no longer necessary, does not meet its intended purpose and it's just an added expense and paperwork for the industry, as well as for the agency to process. So, we would recommend eliminating the requirement of this bond.

MR. SHIVERS: Makes sense to me.

MS. MADDEN: Yes.

MR. SHIVERS: Okay.

MS. FOX: One of the things that we hope to do is to try to position the agency to take advantage of the internet and any type of e-commerce that would streamline and make the procedures easier for the agency, as well as making them more available. One of the restrictions in the code requires that payment of a permit fee be done by cashier's check or money order, and that's it - no cash, no credit cards, debit cards or anything else. Because how we might want to accomplish this purpose - we are not sure of all the details right now - we would like to have a statutory change to give authority to the commission to, by rules, provide other means by which payment could be done. So, this is just broad to allow us later to bring forward to you recommendations on how we could proceed on that.

One of the ideas that we have in mind is that we have agent's permits and agent's beer licenses which involve no local option issues, no city ordinance issues, and we feel that's a perfect one that could be issued over the internet, but we'd have to have some means of payment such as a credit card or a debit card that we could accept. That is sort of the ideas and lines that we are looking towards. We just want to position ourselves to be ready for that.

MS. MADDEN: Let me ask you something. It makes perfect sense to me. Will the legislature give us that kind of flexibility? Historically speaking, would they do this? Obviously, you think so or you wouldn't have brought it to our attention.

MS. FOX: We certainly hope so. I think the latitude or the authority of this commission and our code is very broad as far as rulemaking is concerned. I'm sure Lou could elaborate on that much better than I can, but we do feel like this is something that's very viable and would probably be acceptable to the legislature. Do you want to add anything?

MR. YARBROUGH: Ms. Madden, this would also be pretty much in line with the direction they have been giving agencies to try to position themselves to take advantage of e-commerce and overcome the statutory impediments that might get in the way. I think this would probably be looked at very favorably because it doesn't bind anyone. If we felt like someone was at risk, we could still require a cashier's check or money order for those people, but it would give us the ability to branch out if we felt like it was in the best interest of all the people, as well as the agency. The same thing is true on any carrying charges, finance charges, bank charges. It could be structured in this way to pass on those charges or absorb them, however we felt was best structured.

MS. MADDEN: Thanks.

MR. SHIVERS: Okay.

MS. FOX: A permit expires when it expires if it hasn't renewed, but there is a provision currently in the code that gives them 10 extra days after expiration date to file their renewal application with the appropriate fee, and we can go ahead and renew that permit. During those ten days, they are not authorized to operate during that time because they must cease at the expiration time, but it would give them 10 days to file a renewal.

What we have recommended here is to extend that to 30 days and to charge a little bit more for that opportunity to 200 dollars per location rather than 100 dollars per permit fee. I think this goes hand-in-hand with the current web site that we have now showing expirations that are posted two weeks after a license or permit has expired. That would give an extra two weeks for them to get out and get a renewal filed. It's much easier, quite frankly, to renew a permit than it is to go through an original, and I think you've all probably been contacted by various people at some time that have let their license expire and we have nothing that we can do to help them because it's already past the 10 days and past their expiration. So, this would give them a little bit of extra time to take care of that.

MR. SHIVERS: It gives them a little more extra time and lessens our workload a little bit, hopefully. If they can't keep up with when their licenses expire, they get to pay for the privilege of the extension.

MS. FOX: That's true, and we do feel that 30 days is very generous.

MR. SHIVERS: It sounds like an equitable solution to me.

MS. MADDEN: Yes. Let me ask you something. Obviously, you've thought this through about raising it to 200 dollars. This probably sounds real greedy, but is there any way we can raise it a little bit more?

MS. FOX: You know, I would be the first one to tell you that there were many differences of opinion on our staff on what that fee should be - 500, 1,000. It used to be 200 per permit, so if you, for instance, had a bar, let's say, that had a mixed beverage permit, a late hours and a beverage cartage, that was 300 dollars if you filed late. We felt like maybe looking at per location was more logical, because it's not three separate forms. It's really the same form we are going to be processing, and that 200 dollars is fair, but I would assure you that the staff certainly feels like 500 dollars is well worth the privilege of not having to file an original application. If you would like to change that, we are open to that amount.

MS. MADDEN: I think we are being real generous to raise it to 30 days. I'm all for that. I just think it makes good sense. Do you think 200...

MR. STEEN: I have a suggestion. Do we have to put a dollar amount in there or can we have it done as per our rules?

MS. FOX: You can pass a rule on it.

MR. STEEN: In other words, aren't we asking that they put a specific dollar amount in the statute so, if we want to raise it, we have to go and change the statute?

MS. FOX: We could do that. We would have to strike that section that already states the dollar amount in the statute and do it as per rules of the commission.

MR. STEEN: That way we could change it.

MS. FOX: There is already authority in the code for you to set fees that are not otherwise set in the statute.

MR. SHIVERS: I think that's a good suggestion.

MS. MADDEN: Yes.

MS. FOX: You just want to do that by rule?

MR. SHIVERS: It will give us some flexibility. If we decide 500 is the amount we ought to have and that seems to be putting a burden on some very small businesses - where it's a mom and pop operation, and with all their other

concerns, they happen to forget to renew their licenses - if 500 becomes too onerous, then we can adjust it by rule rather than having to go back to the legislature. Or, if we find out 200 isn't encouraging people to get their licenses renewed on time, we can raise it and give them a little more encouragement.

MS. MADDEN: I think that's a great idea.

MS. FOX: Okay. You would have great support from the staff on that.

MR. SHIVERS: Next one? Extend the expiration date.

MS. FOX: One of the things that we do feel like is very important is perhaps lengthening the life of a license or permit. Right now, all licenses and permits expire one year from issue date, and if we are trying to look at the workload that that department is experiencing, and you take into account how often a permit expires, you take into account the rate we actually renew from those that apply for renewal, it makes really good sense to extend that expiration date to two years, and that would be the recommendation of the staff.

If you look at the statute, that would also mean you have to go in and change so many different sections so that you can keep that revenue stream constant, which is a real concern for our surcharge estimates and our own revenue estimates that we have to do, that we would recommend, rather than changing all those sections, that the commission be given the authority to pass a rule to determine the length or life of a license or permit.

So, as I explained to Mr. Shivers, if this was really the dumbest idea that we've ever had, we can go back and correct it, and it wouldn't be in the statute. It is our expectation that if this did come to pass that we would recommend that the licenses and permits be changed to two years.

We don't want to indicate in the statute that you have the authority to extend the life of a particular permit or a particular license, and that's why we indicate the expiration date of a permit class, so it's an entire class at a time. About 75 percent of the workload of the licensing department is renewals, so that would, hopefully, cut down half of that 75 percent each year to a more manageable level.

MS. MADDEN: I think that's a great idea.

MR. SHIVERS: Okay. Five?

MS. FOX: The fifth item has to do with consolidation of certain licenses and permits that we have. The idea here was to combine some permits to eliminate a specific permit or license where they are secondary type permits, and that basic privilege could be added to the basic permit or to the primary license or permit. Then, there are a few isolated ones we would like to eliminate because they are no longer needed and have not been used in a long period of time, and then a few of these classes we would like to combine simply for streamlining and simplification.

One of the things that makes programming on the computer of our particular license system so extremely complicated is the number of licenses and permits that we have, number one, and, number two, the exceptions for everything that we have to go through. As we are asking for monies to re-engineer our database, it would certainly simplify and help in the programming process, as well as training new employees in that process, if some of these were combined for logical reasons. Do you want me to go through each one of those, Mr. Shivers?

MR. SHIVERS: Each of the permits and licenses?

MS. FOX: Yes.

MR. SHIVERS: I don't think so. John, do you think there's a need to do them all?

MR. STEEN: No.

MR. SHIVERS: Ms. Madden?

MS. MADDEN: No.

MR. SHIVERS: Record retention?

MS. FOX: Record retention is really nothing more than trying to have beer distributors and beer manufacturers maintain their records for four years rather than two. This makes it consistent with what we require for liquor permittees. I think it's probably fair and truthful to say that we all thought it was four years during sunset when things were being changed. It kind of slipped through the crack and ended up it didn't get changed when the others were changed to four years. That's all that this does.

MS. MADDEN: When was our sunset?

MS. FOX: '93.

MS. MADDEN: When are we due for that again?

MS. FOX: 2005, I believe.

MR. YARBROUGH: It's 12 year periods, unless the legislature reorganizes and either shortens or lengthens a period.

MR. SHIVERS: I understand that you have given us some suggested language attached to your transmittal letter that you would like us to give you latitude to modify the language as you get input from either members of the legislature or industry or our own people in the field. Is that correct?

MS. FOX: That is correct.

MR. SHIVERS: Okay. Any questions of Jeannene right now?

MS. MADDEN: Do you want a motion?

MR. SHIVERS: Let's hear from Tom Spilman first. Tom, do you want to speak on this?

MR. SPILMAN: Good afternoon, Mr. Chairman, Commissioner Steen, Commissioner Madden. I really didn't have anything to add. I actually thought there was something in the code that made it mandatory that a Spilman speak at one of these meetings every time. I just really want to let you know that we will be ready to meet with the staff as soon as we meet with our people, which should happen as early as next week at our board meetings. We have a process that we have to go through to really sit down and study these issues.

We just applaud Jeannene and her staff for trying to get things moving on getting some of these consolidations going, and we look forward to working with Jeannene and the staff once again on another project. That's all we have.

MR. SHIVERS: Thank you. I hope you and your members will be supportive of this. We appreciate your help so far.

MR. SPILMAN: We look forward to working with you. Thank you.

MR. SHIVERS: Thank you. Is there a motion to...

MR. STEEN: What exactly are we doing?

MR. SHIVERS: We are authorizing Ms. Fox and her staff to refine this language so that we will make proposals to the legislature to make these changes in the code.

MR. BAILEY: Mr. Steen, two sessions ago, when Jeannene brought forward the consolidation, we simply took those to the committee that oversees the agency, and separate members of that committee took certain pieces to introduce. I anticipate that's what will happen this time.

MR. YARBROUGH: If I could interject, too. The reason behind this is the only way to change that is for the commission to act and make that representation to the legislature, which empowers us to explain those clearly and explain your position on these without being in violation of the agency or state employee lobbying prohibitions in the appropriations bill. We can explain to legislators and express the will of the commission, but not as a staff, unless the commission actually takes an official position on a change in the law.

MR. STEEN: Okay. Thank you.

MR. SHIVERS: I think these are all in line with our attempts to try to make this agency's operation more efficient by streamlining and consolidating sections of the code to allow us to operate it more efficiently in the interest of the people of the State of Texas.

MS. MADDEN: Sounds good to me.

MR. SHIVERS: May I have a motion to authorize the staff to carry forward our wishes to the legislature?

MS. MADDEN: I so move.

MR. STEEN: Second.

MR. SHIVERS: Any further discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed? Good. Go forth and do well.

Public comment. We've heard from Tom Spilman.

The commission will now go into a closed executive session to consult with legal counsel regarding pending litigation pursuant to Texas Government Code, Section 551.071. Excuse us, please, briefly.

The commission convened in executive session at 2:10 p.m. and reconvened in open meeting at 3:03 p.m.

MR. SHIVERS: The commission meeting of November 27, 2000 is now back in open session. During executive session no votes were taken, no final decisions were made.

Do we have motion to adjourn?

MS. MADDEN: So moved.

MR. STEEN: Second.

MR. SHIVERS: We have a motion and a second to adjourn. All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. We are adjourned. Thank you.

The meeting adjourned at 3:04 p.m.