COMMISSION MEETING

January 13, 2009

Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

José Cuevas, Jr., Presiding Officer
Midland

Steven M. Weinberg, MD, JD, Member
Colleyville

Melinda Fredricks, Member
Conroe
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AGENDA

REGULAR COMMISSION MEETING

9:00 a.m. – January 13, 2009

5806 Mesa Drive
Austin, Texas 78731
## AGENDA

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**Note:**
- Items may not necessarily be considered in the order they appear on the agenda.
- Executive session for advice of Counsel *(pursuant to §551.071 of the Government Code)* may be called regarding any agenda item.
- Action may be taken on any agenda item.

**NOTICE OF ASSISTANCE AT PUBLIC MEETINGS**

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services (such as interpreters for persons who are deaf, hearing impaired readers, large print, or Braille) are requested to contact Renee Johnston at (512) 206-3217 *(voice)* (512) 206-3203 *(fax)*, or (512) 206-3270 *(TDD)*, at least three *(3)* days prior to the meeting so that appropriate arrangements can be made.
MINUTES

REGULAR COMMISSION MEETING

9:00 a.m. – January 13, 2009

5806 Mesa Drive
Austin, Texas 78731
The Commissioners of the Texas Alcoholic Beverage Commission (TABC) met in Regular Session on Friday, January 13, 2009, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING OFFICER: José Cuevas, Jr.
COMMISSIONERS PRESENT: Melinda Fredricks
                       Steven M. Weinberg, MD, JD
STAFF PRESENT: Alan Steen, Administrator
                Joan Bates, Deputy General Counsel, Legal
                Carolyn Beck, Public Information Officer, Executive
                David Brandon, Application Development Manager,
                Information Resources Division
                Lou Bright, General Counsel, Legal Services
                Mindy Carroll, Assistant Director, Tax Division/Education
                and Prevention
                Sherry Cook, Assistant Administrator
                Loretta Doty, Director of Human Resources Division
                Bobby Gideon, Office of Professional Responsibility
                Diana Gonzalez, Director of Tax Division/Education and
                Prevention
                Emily Helm, Legal Services
                Joe Iagnemmo, Web Design Specialist, Information
                Resources Division
                Tanya Jimenez, Administrative Assistant, Executive
                Renee Johnston, Executive Assistant, Executive
                Dexter Jones, Assistant Chief of Field Services
                Jo Ann Joseph, Assistant Director, Licensing Division
                Charlie Kerr, Director of Business Services
                Richard Maness, Information Resources Division
                Susan McElwain, Director of Policy
CALL TO ORDER

The meeting of the Texas Alcoholic Beverage Commission was called to order at 10:00 a.m. by Commissioner Steven Weinberg, in the absence of Presiding Officer José Cuevas, who would be arriving shortly.

Before proceeding with the agenda items for the meeting, Commissioner Weinberg announced today, January 13th, as the beginning of the legislative session for the State of Texas.

APPROVAL OF COMMISSION MEETING MINUTES OF NOVEMBER 21, 2008

Commissioner Weinberg called for approval of the Commission meeting minutes of November 21, 2008. Commissioner Melinda Fredricks so moved to approve the minutes as written and Commissioner Weinberg seconded. The motion carried.

UPDATE ON NEW AGENT TRAINEE ACADEMY

Commissioner Weinberg called upon Joel Moreno, Chief of Field Operations, to give his presentation on the Update for the New Agent Trainee Academy. Referring to a recent photograph of the Academy’s December 2008 graduating class of 17 Certified Peace Officers and 9 Auditors, Chief Moreno spoke proudly of their level of experience ranging from retiring police personnel to a certified public accountant. At the Academy, the agency’s mission, vision, philosophy, and
guiding principles were emphasized as a driving force to promote public safety as the graduates would be serving the people of Texas. At the present time, nine Certified Peace Officers have been hired. Fourteen vacancies are anticipated for the next academy.

Commissioner Weinberg inquired if the total number of agents had been hired. Chief Moreno answered that the agency had not reached its maximum number of budgeted agents, which is about 300. He noted that before the Commission meeting, he had received a retirement notification and a resignation notice, thus reducing the number even more.

Chief Moreno advised the Commissioners that the next Academy will be in June with an expected hire date of July. He stated that plans for the next recruiting process will include visiting college campuses and other academies.

Commissioner Weinberg quizzed Chief Joel Moreno on the diversity of the December 2008 graduating class. Does the graduating class “look like the face of Texas?” Chief Moreno answered “yes.” He noted that there were both Hispanic and African American females in the class as well as Hispanic males. Commissioner Weinberg asked if any Asians had been recruited. The answer was none at the present time.

Administrator Steen commented that the agency’s strategic plan is on target in the recruitment and employment of the Hispanics and females. He noted that the agency has fallen below the ranks in the recruitment of African Americans. Assistant Administrator Sherry Cook and Human Resources Director Loretta Doty are very aware and sensitive to Commissioner Weinberg’s recruitment suggestion toward the affinity groups and are working hard to recruit them in the various regions of the state.

Administrator Steen addressed the training and the hiring process. He said it had been anticipated that the agency would experience a high turnover inside the CPO ranks due to a high number of eligible retirees. He mentioned that in all the history of the hiring practices at the agency, this year the agency has taken an aggressive approach of graduating, hiring, and posting of the agent trainees in back-to-back academies. Administrator Steen foresees this trend to continue as the agency tries to hold its high standard and credibility in the hiring of agent trainees.

Chief Joel Moreno mentioned that pay is another factor that negatively impacts the agency’s recruitment efforts in competing with the larger local and state law enforcement agencies.

Commissioner Weinberg asked about the compensation, specifically Schedule C. Administrator Steen stated as of this date, TABC lags behind large cities in pay.
He reported that the State Auditor’s report has been completed and a request for Schedule C pay increase has been made to the Legislative Budget Board. A decision is expected by September 2009.

ADOPTION OF NEW RULE §33.13, APPLICATION FOR BEER LICENSE

Commissioner Weinberg called upon General Counsel Lou Bright. General Counsel Bright briefly reviewed the adoption of the new rule, noting to the Commission it had authorized the approval to publish the proposed rule in November 2008. He requested the Commission to adopt this rule as final and binding.

Commissioner Weinberg called for a motion to approve the adoption of New Rule §33.13, Application for Beer License. Commissioner Fredricks so moved and Commissioner Weinberg seconded. The motion carried.

Commissioner Fredricks asked if a denied application could be appealed. General Counsel Bright responded that it could be appealed and that a hearing would be held under the Administrative Procedures Act.

Commissioner Fredricks asked if there had been many appeals. General Counsel Bright did not have an exact number, but said he could find out. Finally, Commissioner Fredricks questioned whether during the appeal process, had TABC been reversed in its denying an application; had it lost a case? General Counsel answered that it was very seldom that the appeal court ruled against TABC.

ADOPTION OF AMENDMENT TO §33.23, ALCOHOLIC BEVERAGE LICENSE AND PERMIT SURCHARGES

Commissioner Weinberg called upon Deputy General Counsel Joan Bates. Deputy Counsel Bates briefly reviewed the adoption of amendment to §33.23, Alcoholic Beverage License and Permit Surcharges, noting to the Commission it had authorized the approval to publish the proposed rule in October 2008. Deputy Counsel Bates stated that since that time, there had been a small change to delete the out-of-state wine only package store because TABC is using the in-state fee. No comments were received on the proposed amendment.

Commissioner Weinberg called for a motion to approve the adoption of amendment to §33.23, Alcoholic Beverage License and Permit Surcharges. Commissioner Fredricks so moved and Commissioner Weinberg seconded. The motion carried.

ADOPTION OF AMENDMENT TO §33.25, ALCOHOLIC BEVERAGE LICENSE AND PERMIT FEES AND SURCHARGES
Deputy Counsel Bates briefly reviewed the adoption of amendment to §33.25, Alcoholic Beverage License and Permit Fees and Surcharges, noting the Commission had authorized the approval to publish the proposed rule in October 2008. It deletes the out-of-state wine only package store from the licensing fees and moves the forwarding center to the rules that implement in September 2008 from the ones that implement in January 2009. She requested the Commission adopt this rule as final and binding. No comments were received on the proposed amendment.

Commissioner Weinberg called for a motion to approve the adoption of amendment to §33.25, Alcoholic Beverage License and Permit Fees and Surcharges. Commissioner Fredricks so moved and Commissioner Weinberg seconded. The motion carried.

APPROVAL TO PUBLISH PROPOSED AMENDMENT TO §34.1, GENERAL PROVISIONS OF THE SCHEDULE OF SANCTIONS AND PENALTIES

Deputy Counsel Bates explained this request involves a one word change from “section” to “chapter” to make the penalty chart not applicable to contested cases before the legal division. Previously, the entire penalty chart was in one section and now it is broken into three separate sections.

Commissioner Weinberg called for a motion to approve and publish proposed amendment §34.1, General Provisions of the Schedule of Sanctions and Penalties. Commissioner Fredricks so moved and Commissioner Weinberg seconded. The motion carried.

PUBLIC COMMENT

Commissioner Weinberg asked if there was anyone in the audience who wished to provide public comment. No one came forward to comment.

ADMINISTRATOR’S REPORT

Commissioner Weinberg called upon Administrator Alan Steen to provide the Administrator’s report on agency activities, budget issues, and staff achievements.

Administrator Steen welcomed the Commissioners back to Austin for another Commission meeting. In the audience were staff members from the Office of the Governor. Administrator Steen introduced Amanda Arriaga and Amy Baillargeon who will be replacing Julie Harker as the liaisons from the Governor’s Office. He stated that the two of them had attended a short TABC orientation on Friday, January 9, 2009.
Commissioner Weinberg gave a warm welcome to the liaisons and thanked them for their attendance at the meeting.

Administrator Steen spoke on Commissioner Melinda Fredricks’ two-day orientation/training that was held January 12-13 at the Austin Headquarters.

Administrator Steen reported the following:

- TABC is “going green” – paperless for future Commission meetings. The plan is to e-mail the agenda and attachments to the Commissioners. When possible, the audience will be able to view the agenda, PowerPoint presentations and other materials presented on the overhead projection equipment/monitor.

- The Department of Public Safety administrative staff visited the TABC Headquarters to view the agency’s technological set up. The staff has requested assistance with their Commission meeting process.

Presiding Officer Jose Cuevas arrived for the Commission meeting at 10:34 a.m. Commissioner Weinberg briefed Presiding Officer Cuevas of the agenda items that had been discussed and what was being reported.

Administrator Alan Steen continued with his report:

- Each Commissioner was sent a booklet of information on alcoholic energy drinks that was put together by the Education and Prevention Division. The booklet contains a timeline of events, communications and correspondence from the United States Attorney General’s Office on alcoholic energy drinks approved in Texas, examples of labeling of alcoholic energy drinks, and TABC Code, Rules, and Procedures. Energy drinks have been an issue in other states and may become an issue during this legislative session.

Commissioner Weinberg asked Administrator Steen if it would be fair to say that the industry has been instrumental in helping to move forward in resolving the problem of the alcoholic energy drinks. Administrator Steen replied affirmatively.

- A final Sunset Advisory hearing for TABC will be held on Wednesday, January 14th at 10:30 a.m. TABC has 30 complete issues and one outstanding issue that deals with on-line licensing. TABC has three simultaneous processes working with this issue: 1) working with the Governor’s Office to automate all licenses for business in the State of Texas (postponement of the meeting has caused some delay in this area); 2) funding has been requested to perform this work process; 3) TABC has totally revamped its internal licensing process to facilitate the effectiveness of an on-line system.
- The Licensing Re-engineering Project resulted in a new licensing application being rolled out on Monday, January 12th. The division has reduced its paper and resource burden by 50%. The Licensing Division is continuing to work toward putting and keeping the right people in business with concepts of the new, known, and extra look factor (ELF). General Counsel Lou Bright and Directors Susan McElwain and Amy Harrison have travelled throughout the state to make sure the licensing streamlining processes have not caused any problems with revenue collection partners in the tax assessors, county judges, and county clerks' offices.

- Regional Supervisors’ meeting was held at Austin Headquarters on the strategic plan and survey of organizational excellence. Meetings will be held on a quarterly basis and will comply with Governor Perry’s request to reduce the travel budget. Top level regional supervisors participated in a goal setting process to make sure the goals are being met according to the standards and directions set by the agency.

- Annual reports of financial and non-financial data have a wide range of helpful information for the Commissioners. They contain information on capital items transfers and indirect costs; historically underutilized businesses (HUB) reports; professional and consulting fees and rental space. Information on performance measures, types of licenses, tax rates per gallon and barrel, various districts and regions, dry and wet counties, elections for the past year and the consumption per capita can be found in the addendum.

- There were 43 local option elections held on November 4, 2008, with 35 different areas of the state will now be applying for new types of TABC permits.

Presiding Officer Cuevas asked if there were any problems when the licensing project went “live.” Assistant Administrator Cook answered, “No, none at this time.” Presiding Officer Cuevas quizzed further as to when and if any problems would occur, what might be expected. Assistant Administrator Cook replied that if problems would occur, one might expect them about two or three weeks into the process when it actually hits the counties. She further commented that working through a new process, one may expect to encounter a problem.

Presiding Officer Cuevas asked General Counsel Bright if, in his travels, he experienced any “push back” from any of his contacts. General Counsel Bright answered that he did not receive many questions nor was there any “push back.” He stated he had expected some objections in the handling and
revising of the certification process that goes through the city and county
government offices; however, none were received.

Presiding Officer Cuevas made his appreciation known to General Counsel
Bright and Directors McElwain and Harrison of their proactive approach in their
statewide presentations to the state and local governmental agencies.

Administrator Steen commented on how the agency has made great strides of
incorporating the state and local governmental agencies into the Licensing Re-
engineering efforts. The agency is making special efforts through external
newsletters, e-mails, and contact listings as a pipeline of communication to
reestablish that customer base.

At the conclusion of Administrator’s Steen’s comments, Presiding Officer
Cuevas voiced his appreciation of personnel incorporating the agency’s
mission’s statement through the Licensing Re-Engineering Project.

Commissioner Weinberg had a budget issue question. He saw the
Comptroller’s report in the newspaper and it was not good. He asked what
TABC was doing about the issue. Administrator Steen’s stated that after
receipt of Governor Perry’s letter requesting governmental agencies to reduce
their travel budgets, Business Services Director Charlie Kerr, Administrator
Steen and other key TABC personnel deliberated and presented a budget with
a 10% cut to the base and to the exceptional items budgets. Administrator
Steen expects to have a meeting with the Legislative Budget Board (LBB) on
January 20th or January 21st with their recommendations to the legislature for
the TABC base budget.

APPROVAL OF THE FOLLOW-UP REVIEW OF RECOMMENDATIONS MADE
IN THE SUNSET ADVISORY COMMISSION STAFF REPORT ON TABC

Presiding Officer Cuevas called upon Russell Gregorczyk, Partner, and Contract
Internal Audit Firm for TABC for his report. Mr. Gregorczyk presented his follow-
up review of recommendations made in the Sunset Advisory Commission staff
report on TABC earlier to the Audit Committee this morning. He briefly went over
some key points in his report:

Definition of Legend - Categories of Implementation Status

- Fully Implemented: Successful development and use of a process, system,
or policy to implement a prior recommendation.
- Substantially Implemented: Successful development but inconsistent use of
a process, system, or policy to implement a prior recommendation.
- Incomplete/Ongoing: Ongoing development of a process, system, or policy
to address a prior recommendation.
Not Implemented: Lack of a formal process, system, or policy to address a prior recommendation.

**Issue 1 - TABC Lacks the Clear Focus and Strategic Direction Needed in Today’s Alcoholic Beverage Regulatory Environment.**

1.1 Update TABC’s mission to better reflect today’s alcoholic beverage regulatory environment and the agency’s role in public safety issues.

Status: **Fully Implemented.**

1.2 TABC should continue refining its new performance measures and developing the capabilities necessary to effectively analyze this data.

Status: **Incomplete/Ongoing**

While the status of implementation of the Sunset recommendations relating to Issue 1.2 is being classified as Incomplete/Ongoing, further review of the issue is anticipated during fiscal year 2009 pursuant to the Commissioners’ approval of the FY 2009 internal audit plan, which includes an audit of agency-wide performance measures.

**Issue 2 - Statutory Changes Are Needed to Ensure TABC’s Enforcement Efforts Are Fair, Consistent, and Focused on Public Safety.**

2.1 Require TABC to maintain a schedule of sanctions that includes all information necessary to ensure fair and consistent application of penalties.

Status: **Substantially Implemented**

- The Commission’s penalty chart has been updated and published to reflect sanctions imposed appropriate to the corresponding violation and is posted on the Commission’s website.
- Rule 37.61 is obsolete and has not been updated to reflect changes in the statute, so it has fallen into disuse. With the amendments to statutes 11.64 and 11.641 which makes the code specific enough in its terms that it no longer needs rules to implement. Chapter 37 will be reviewed during the Commission’s rule review for repeal.

2.2 Require TABC to develop a risk-based approach to enforcement and to better measure the impact of its enforcement activities on public safety.

Status: **Incomplete/Ongoing**
The Commission still needs to establish clear benchmarks to measure enforcement activities, in addition to trend analysis to determine effective practices.

2.3 Require TABC to develop standard procedures for handling complaints and for tracking and analyzing complaint data.

Status: Substantially Implemented

- New and amended rules have been adopted regarding the complaint process: Rule 31.10 and 31.11. In addition to the adoption of the new rules an updated complaint form and procedures have been posted to the Commission’s website.

- Written procedures will be added to the Enforcement manual outlining the process used to prioritize process, track, and analyze. These written procedures will be completed by February 2009.


3.1 Eliminate label approval and testing for liquor and wine, and instead authorize TABC to register federal certificates of approval for these products.

Status: Fully Implemented

3.2 Give beer manufacturers the option of submitting laboratory analyses of their products to TABC or having their products tested by TABC.

Status: Fully Implemented

3.3 Eliminate fees set in statute for the approval of new alcoholic beverage products.

Status: Fully Implemented

3.4 Allow distributors to report retailers who are delinquent in making payments for liquor and wine by electronic mail or other means authorized by the agency.

Status: Substantially Implemented

TABC allows wholesalers to report delinquencies by e-mail, fax or mail. The form has also been updated to give the individual the option to: mail, fax or email. Management considers this recommendation Fully Implemented.
Issue 4 - TABC Should Continue Efforts to Resolve and Communicate Marketing Practices Issues.

4.1 Require TABC to develop a formal process for making policy decisions regarding marketing practices regulations, and for communicating these decisions to agency staff and the industry.

Status: Substantially Implemented

Policies and procedures have been developed and adopted 12/15/2008. Management considers this recommendation Fully Implemented.

Issue 5 - TABC Should Ensure a Consistent and Formal Approach to Investigating and Resolving Complaints Against Its Employees.

5.1 Require TABC to maintain an internal affairs function to ensure fair, effective, and impartial investigations of alleged misconduct by law enforcement officers and other employees.

Status: Fully Implemented

5.2 Require the agency to track and report complaint information to the Administrator and the Commission on a regular basis.

Status: Incomplete/Ongoing

The summary information exists within the Office of Professional Responsibility’s data bank and monthly reports containing summary will be provided in the monthly Commission reports beginning January 2009. These reports will include: number, type, outcome and trends. Management considers this recommendation Fully Implemented.

Issue 6 - TABC Should Continue Working to Make as Much of Its Licensing Process Available Online as Possible.

6.1 Direct TABC to reduce delays in the licensing process by providing for online license application, renewal, and payment of fees.

Status: Incomplete/Ongoing

- The Commission is currently working with DIR and the Governor’s office conducting a pilot project regarding on-line license applications. The pilot project is scheduled to be implemented in January 2009.
The Commission has also spent the last year re-engineering the business process in preparation of an on-line application. In order for the Commission to proceed to an on-line process, the foundation to support this type of implementation must be formulated.

The Commission is confident that a solid foundation has been built and is now waiting on necessary funding, which has been requested through the Commission’s LAR, to move forward to the next step of actually automating the application.

Issue 7 - The State Has Not Made Sufficient Efforts to Inform the Public of the Health Risks of Drinking Alcohol During Pregnancy.

7.1 Require TABC to develop rules requiring establishments that sell alcohol for on-premise consumption to display health warning signs on restroom doors to inform the public of the risks of drinking alcohol during pregnancy.

Status: Fully Implemented

Issue 8 - Texas Has a Continuing Need for the Texas Alcoholic Beverage Commission.

8.1 Continue the Texas Alcoholic Beverage Commission for 12 years.

Status: Fully Implemented

Issue 9 - System of Alcoholic Beverage Regulation is Based on Prohibition-Era Concerns and Is in Need of Revision

9.1 Require the Legislature to establish a joint interim committee to study revision of the regulatory structure for alcoholic beverages in Texas.

Status: Not Applicable

Across-the-Board Provisions Recommendations

1. Require public membership on the agency’s policymaking body.
   Status – Fully Implemented

2. Require provisions relating to conflicts of interest.
   Status – Fully Implemented

3. Require unbiased appointments to the agency’s policy making body.
   Status – Fully Implemented
4. Provide that the Governor designate the presiding officer of the policymaking body.
   Status – Fully implemented

5. Specify grounds for removal of a member of the policymaking body.
   Status – Fully Implemented

6. Require training for members of the policymaking body.
   Status – Fully Implemented

7. Require separation of policymaking and agency staff functions.
   Status – Not Implemented
   A policy has been developed and was adopted 12/15/2008 separating the responsibilities of the Administrator and Commission. Management considers this recommendation fully implemented.

8. Provide for public testimony at meetings of the policymaking body.
   Status – Fully Implemented

9. Require information to be maintained on complaints.
   Status – Fully Implemented

10. Require the agency to use technology to increase public access.
    Status – Incomplete/Ongoing
    Since the completion of audit fieldwork, TABC has developed and adopted a technology policy on 12/15/2008 and considers this recommendation closed.

11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.
    Status – Not Implemented
    TABC has developed and adopted a policy on 12/15/2008, regarding the use of negotiated rulemaking procedures and the Commission now considers this recommendation to be closed.

Presiding Officer Cuevas asked for a motion to approve the review of recommendations made in the Sunset Advisory Commission staff report. Commissioner Weinberg made the motion and Commissioner Fredricks seconded. The motion carried.

PRESENTATION ON HOUSE BILL 12, RELATING TO PHYSICAL FITNESS STANDARDS
Presiding Officer Cuevas called upon Mr. Jay Smith, a Contracted Developer of Physical Fitness Standards, and TABC’s Assistant Chief Rod Venner for their presentation. Mr. Smith spoke on the House Bill 12 statute and how it relates to the physical fitness standards for agents at TABC and the recommendations circulated in a report to the Commissioners.

Assistant Chief Venner’s report was supported by a PowerPoint presentation and distribution of a draft of the Physical Readiness Program. The drafted policy statement is as follows: The Texas Alcoholic Beverage Commission’s (The Commission) implementation of a Physical Readiness Program in compliance with the requirements of Subchapter H of Chapter 614 of the Texas Government Code for certified peace officers (CPOs) in Schedule C of the position classification salary schedule prescribed by the General Appropriations Act. The Commission expects CPOs, when reporting for duty or when called upon, to be at a level of health and physical readiness necessary to perform their law enforcement job functions in an appropriate and effective manner, without undue risk to their health and safety, the health and safety of other CPOs, or that of the general public.

The purpose of this policy is to outline the details and requirements of the program. The standards contained in the program have been validated and are based upon the minimum physical abilities necessary to perform the job functions of a Texas Alcoholic Beverage Commission CPO. The PowerPoint overview focal points presented were:

- Physical Readiness Overview
  - A phased approach covering a three-year period
  - Individual Physical Readiness Assessment
  - Mandated Compliance
  - Condition to an offer of employment
  - One-Time Phase in for CPOs hired prior to March 1, 2009
  - Failure to comply shall result in administrative separation as a CPO from the Commission
  - Non-compliance shall be documented in the CPO’s annual performance review

- Seven Components to Physical Readiness
  1. Medical Screening
  2. Testing
  3. Assessment
  4. Goal Setting
  5. Fitness Programs
6. Education
7. Remedial Training

**Minimum Requirements**

1. Vertical Jump – 17 inches
2. Bench Press – 1 repetition at 64% of individual’s body weight
3. Illinois Agility Run – 19.2 seconds
4. 300 Meter Run – 72 seconds
5. Push-ups – 16 no time limit
6. Sit-ups – 30 in one minute
7. 1.5 mile run – 19:53 minutes/seconds

**Job Tasks Simulation Test**

- Victim Extraction – 52 seconds
- Roadway Clearance – 100 seconds
  (1 minute and 40 seconds)
- Pursuit and Arrest – 113 seconds
  (1 minute and 53 seconds)

At the conclusion of the report, Presiding Officer Cuevas voiced his disappointment and disapproval of the professionalism he experienced during his physical fitness testing. He expressed concerns that the standards and testing conditions are not identical for the participants. He cited that his testing conditions were poor, such as an ill-shaped, soft gravel running track; inaccurate measurements; no mat for sit-ups; and individual testing components done out of sync. He added that participants need to be provided water and the trainers should all have some type of first-aid training. He asked for immediate improvements to be made to the program, emphasizing that no other participant should have to experience this type of treatment. Presiding Officer Cuevas’ dissatisfaction was duly noted with an apology from Assistant Chief Venner with an assurance changes would be implemented immediately to the physical fitness testing. Mr. Smith agreed that Presiding Officer Cuevas’ description was not an ideal testing environment. He stated that his company stood ready to provide feedback and assistance to TABC in this area.

Presiding Officer Cuevas complimented Mr. Smith for a fine presentation. Commissioner Melinda Fredricks thanked Mr. Smith for updating her over the telephone. She said his presentation was very thorough and professional.

Mr. Smith stated “that the strength and success of a program lies solely in the administration of the program with its policies and procedures and after having
been a party to a number of these over the years, I can say for the record that TABC has a fighting chance to having success with this program and I tip my hat to the Director and the Commission. It is a good operation that is being run here.”

Commissioner Weinberg noted that the report was very thorough and one that could be defended well. Presiding officer Cuevas noted an error in the report, listing the name of Texas Parks and Wildlife instead of TABC.

**EXECUTIVE SESSION**

Presiding Officer Cuevas made the announcement that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 12:10 p.m., January 13, 2009, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency, to discuss Open Meetings Act procedures, and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §551.

Presiding Officer Cuevas announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being January 13, 2009, and the time, 1:10 p.m. No final action, decision, or vote was made in the executive session.

**NEXT MEETING**

Presiding Officer Cuevas announced the next meeting date is scheduled for Tuesday, February 10, 2009. There will not be a meeting in March. After March, the Commission will meet on the 4th Tuesday in April (April 28, 2009).

**ADJOURNMENT**

Presiding Officer Cuevas called for a motion to adjourn. Commissioner Weinberg so moved and Commissioner Fredricks seconded. The motion carried, and Presiding Officer Cuevas announced that the meeting was adjourned.
CERTIFICATION

REGULAR COMMISSION MEETING

9:00 a.m. – January 13, 2009

5806 Mesa Drive
Austin, Texas 78731
STATE OF TEXAS

COUNTY OF TRAVIS

This certifies that the attached is a true copy of the proceedings of the Texas Alcoholic Beverage Commission meeting held on January 13, 2009.

Alan Steen
Administrator

Sworn and subscribed before me this the 29th day of January 2009.

Renee G. Johnston
Notary in and for Travis County