



## **COMMISSION MEETING MINUTES**

**January 23, 2006**

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, January 23, 2006, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

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

### **COMMISSIONERS**

**PRESENT:** Gail Madden  
Jose Cuevas, Jr.

### **STAFF PRESENT:**

Alan Steen, Administrator

Glenda Baker, Deputy Chief of Enforcement

Lou Bright, General Counsel, Legal Services

Debbie Dixon, Director, Education and Prevention

Loretta Doty, Director of Human Resources

Del Drake, Captain, Office of Professional  
Responsibility, Executive

Jeannene Fox, Assistant Administrator,  
Executive

Buck Fuller, Director of Compliance

David Garza, Director of Homeland Security,  
Enforcement

Amy Harrison, Director of Licensing

Gary Henderson, Enterprise Operations Team  
Leader, Information Resources

Linda Jackson, Administrative Assistant,

Executive

Renee Johnston, Executive Assistant, Executive  
Dexter Jones, Marketing Practices, Executive  
Jo Ann Joseph, Assistant Director, Licensing  
Charlie Kerr, Director of Business Services  
Garry Sitz, Director of Information Resources  
James "Sam" Smelser, Chief of Enforcement

***GUESTS PRESENT:***

Rick Donley, President, Beer Alliance of Texas  
Kenneth Friesenhahn, Correspondent, Texas  
Legislative Service  
Alan Gray, Licensed Beverage Distributors, Inc.  
Shaniqua Johnson, Budget Analyst, Legislative  
Budget Board  
Fred Marosko, Texas Package Stores  
Association  
M. Jack Martin, Attorney at Law  
Mignon McGarry, Republic Beverage  
Lindsay Meche, Republic Beverage  
Michael Mims, Manager, H-E-B  
Karen Reagan, Vice President, Texas Retailers  
Association  
Ed Small, Attorney, Gambrinus  
Robert Sparks, Executive Director, Licensed  
Beverage Distributors, Inc.  
Tom Spilman, Vice President, Wholesale Beer  
Distributors of Texas  
Don Walden, Attorney, Representing TWGGA  
Randy Yarbrough, Wholesale Beer Distributors of  
Texas

**CALL TO ORDER**

Chairman John T. Steen, Jr., called the meeting of the Texas Alcoholic Beverage Commission (TABC) to order.

**APPROVAL OF COMMISSION MEETING MINUTES OF DECEMBER 19, 2005**

Chairman Steen called for a motion to approve the TABC Commission meeting minutes of December 19, 2005. **Commissioner Madden so moved, and Commissioner Cuevas seconded. The motion carried.**

### **ADMINISTRATOR'S REPORT**

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

Administrator Steen reported the following activities that have occurred since the previous Commission meeting of December 19:

#### **Enforcement Efforts**

- During the holidays, over 20 interviews and 14 press conferences were held statewide with the public safety focus to promote responsible alcohol service and responsible consumption. Some of the press conferences were held in conjunction with the Texas Department of Public Safety and/or local law enforcement agencies.
- For New Year's Eve, every available agent was in force. The agency conducted 307 Sales to Intoxicated Persons operations, resulting in 70 arrests for public intoxication and 36 administrative cases against licensed establishments. Administrator Steen explained that this was a good indicator of the agency's public safety efforts.
- The agency is gearing up for some special events to be occurring in the Houston area in February: the NBA All Star Game; Mardi Gras; and the Houston Livestock Show. Commissioner Madden asked about the rodeo and stock show and other activities occurring in the Fort Worth and Dallas area. Administrator Steen explained that TABC partners with the local police departments for the major special events around the state and that the only reason he brought up Houston separately was because of the three very major events occurring during the same time period in the Houston area.

#### **New Hires**

- All attorneys in Legal Services have been hired. Two legal assistant positions are being reposted, and two legal secretaries will begin with the agency on February 1. Administrator Steen added that General

Counsel Lou Bright has arranged for a two-day seminar beginning tomorrow to bring in all of the Legal Services staff for training and planning.

- The Human Resources Division is now fully staffed.
- Debbie Dixon, formerly the Seller/Server Training Director, has been selected as the new Education and Prevention Division Director.
- Assistant Administrator Jeannene Fox has hired a new statistician, Elizabeth Wuehrmann.

### Marketing Practices

- Administrator Steen referred to the Marketing Practices Bulletin (Attachment 1) regarding wine tastings. New legislation now allows open containers of wine for tastings on off-premise retail establishments.

### Smith and Wesson Pistols

- The 107 Smith and Wesson replacement pistols are to be delivered today. After training is provided, the pistols will be reissued statewide.

### Meetings

- The State Auditor's Office is working with Business Services on an audit on expenditures; Administrator Steen stated that he expects the audit to go well.
- The Enforcement of Underage Drinking Laws (EUDL) Task Force held its annual meeting in headquarters.
- TABC staff met with the Department of Information Resources regarding House Bill 1516. House Bill 1516 deals with the consolidation of information technology in the infrastructure of 29 state agencies, of which TABC is one of the agencies.
- Along with Commissioner Madden, Administrator Steen met with a permittee in Dallas that is in a dry area but which had been inadvertently approved as a wet area by the county clerk's office.

Following Administrator Steen's report, the Commissioners asked a few questions. Chairman Steen asked about the controversial situation involving an Austin nightclub; Administrator Steen stated that the Dallas Nite Club is in its second day of hearing. Commissioner Cuevas asked if it is known how

effective TABC's law enforcement for DWIs has been statewide from past years; Administrator Steen responded that the statewide data is not available. Commissioner Cuevas asked how the Versa issues with LicenseEase are progressing. Administrator Steen stating that there are still problems being worked out, but that all-in-all most were going well. Commissioner Cuevas asked if TABC staff would be going to Houston establishments as part of a reeducation effort before the special events occur. Administrator Steen emphasized that contacts are made with retailers, police departments and others whenever there are any special events in the state where alcoholic beverages may be sold.

### **RESOLUTION IN SUPPORT OF CONTINUATION OF TABC'S NEW AGENT ACADEMY**

Chairman Steen called upon Sam Smelser, Chief of Enforcement, to discuss the resolution in support of continuation of TABC's new agent academy.

Chief Smelser explained that Commissioner approval was needed for certification of TABC's new agent academy. The agency's academy was last certified and accredited in 1985. The Commission's academy should be certified by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) every five years. TCLEOSE recently determined that there were over 100 academies throughout the state that were overdue, including TABC. Chief Smelser read the resolution (Attachment 2).

**Chairman Steen called for a motion. Commissioner Madden moved that the Commission adopt the resolution in support of continuation of TABC's new agent academy. Commissioner Cuevas seconded the motion. The motion carried.**

### **FIRST QUARTER PERFORMANCE MEASURES**

Chief Smelser presented the first quarter performance measures for FY 2006 for the Enforcement Division (Attachment 3a). Some of the highlights of his presentation included the following:

- Eighty-three agents responded to calls for help from local and federal officials during and after Hurricanes Katrina and Rita. This amounted to 4,311 overtime hours for which FEMA reimbursed the agency.

- The total number of inspections conducted by enforcement agents from September through November 2005 was short from the projected goal for this time period because of the diversion of agent efforts with the hurricanes; however, Chief Smelser stated that it is anticipated that the year-end goal will be reached.
- Because of the agency's re-focus on educational efforts with retailers, the number of retailers taught by enforcement agents increased during the first quarter.
- Administrative cases for age law and intoxication offenses increased during the first quarter.
- Criminal cases for age law decreased, intoxication offenses increased, and prohibited hours decreased. Chief Smelser explained that these are a result of the agency's concentration on public safety issues at licensed establishments.

Chairman Steen called upon Amy Harrison, Director of Licensing, to present the first quarter key measures for the Licensing Division (Attachment 3b). Highlights included:

- Original applications processed increased the first quarter. Ms. Harrison stated that some of the increase was probably a result of the "carry-over" from the fourth quarter of 2005 from being behind during the conversion process.
- Percent of original license/permit applications processed within 14 days decreased in this time period. Ms. Harrison stated that this will increase as staff continue to receive training and work through the learning curve of the new system. The Commissioners asked about the problems and complications of the system. Ms. Harrison responded that there are processing issues, but they are being addressed. She stated that staff use "work-arounds" to ensure original applications are given priority until the issues are addressed. Administrator Steen stated that there are several additional resources in place at this time to deal with the issues. He noted that staff have been using M204 for 20 years, and it will take some time for staff to be comfortable with the new Windows-based project. He also emphasized that the information being presented is over 60 days' old and that several issues have since been resolved; therefore, there should be a significant rise in the numbers reported for the second quarter. He added that staff are working closely with Versa to ensure that any remaining issues are on the top of Versa's priority list.

- Ms. Harrison discussed the high satisfaction rate of agency clients with the licensing process. The survey, of eight questions, is included with each original license or permit. Ms. Harrison stated that all negative responses are addressed. **Chairman Steen requested Ms. Harrison to provide a copy of the survey form to the Commissioners; she stated that she would provide them a copy.**

The Commissioners commended Licensing staff for their efforts, understanding that changing to a new system can be frustrating. Chairman Steen thanked Ms. Harrison for her leadership and asked that she express the appreciation of the Commissioners to her staff.

Chairman Steen called upon Buck Fuller, Director of Compliance, to present the first quarter performance measures for the Compliance Division (Attachment 3c). Highlights of the presentation included the following:

- Mr. Fuller stated that because of the increase in personnel, the output measure for the number of inspections, analyses and compliance activities was increased to 24,000 per quarter. The percentage expected for the first quarter is 25%, and the division achieved 29.3%.
- The percent of agency contacts expressing satisfaction with compliance functions was increased to 99%; staff achieved a 100% satisfaction rate for the first quarter.
- The average cost per inspection, analyses, and compliance activities was also increased because of the increased number of personnel; however, the average cost was less than projected because not all authorized FTEs were hired in the first quarter.
- Mr. Fuller explained that the measure for the number of alcoholic beverage containers and cigarette packages stamped in the ports of entry typically is not at target during the first quarter due to the seasonal nature of importations. The percentage expected for the first quarter is 25%, and the division achieved 17%.

**APPROVAL TO ADOPT PROPOSED AMENDMENTS TO RULE 16, TEXAS ADMINISTRATIVE CODE §45.106, GOVERNING THE AWARD OF PRIZES TO CONSUMERS**

Chairman Steen called upon Lou Bright, General Counsel, to discuss the proposed amendments to §45.106, governing the award of prizes (Attachment 4).

Mr. Bright explained the main reason for one of the amendments, being that the last legislative session removed the “30 or more states” restriction on promotional sweepstakes activities. He discussed the other changes in paragraphs (d) and (i) as originally published in the *Texas Register*. Chairman Steen asked if there were any comments from the public concerning the proposed amendments. As there were none, **Chairman Steen called for a motion. Commissioner Madden moved that the Commission adopt the proposed amendments to §45.106, governing the award of prizes to consumers, with changes to the text of paragraphs (d) and (i) as originally published in the December 16, 2005, edition of the *Texas Register*, as recommended by staff. Commissioner Cuevas seconded the motion. The motion carried.**

#### **PUBLIC COMMENT**

Chairman Steen asked if anyone wished to provide public comment. As there were none, Chairman Steen began the announcement for the Executive Session.

#### **EXECUTIVE SESSION**

**Chairman Steen announced that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 10:49 a.m. on January 23, 2006, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §§551.071 and 551.074.**

**Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being January 23, 2006, and the time, 2:23 p.m. He stated that no final action, decision, or vote was made in the executive session.**

## **NEXT MEETING**

Chairman Steen announced that the next Commission meeting was scheduled for Monday, February 27, 2006, at the usual 1:30 p.m. time.

## **ADJOURNMENT**

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