



COMMISSION MEETING MINUTES
March 15, 2004

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, March 15, 2004, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING: John T. Steen, Jr., Chairman

PRESENT: Gail Madden, Commissioner

STAFF PRESENT: Alan Steen, Administrator

Jason Anderson, Web Administrator,
Information

Resources Department

Mona Appling, Database Administrator,
Information Resources Department

Carolyn Beck, Public Information Officer,
Executive

Lou Bright, General Counsel

Tom Dickson, Lieutenant, Austin

Debbie Dixon, Seller Training Coordinator,
Compliance

Dale Evans, Manager, Houston Compliance

David Ferrero, Captain, Austin

Jeannene Fox, Assistant Administrator

Buck Fuller, Compliance Division Director

Robert Gonzalez, Sergeant, San Antonio

Steve Greinert, Accounts Examiner,

Compliance
Brian Guenthner, Program Specialist,
Licensing
Division
Christina Guerra, Lieutenant, San Antonio
Roy Hale, Program Specialist/Grants
Coordinator, Enforcement
Chris Hamilton, Sergeant, Dallas
Gary Henderson, Programmer, Information
Resources Department
Linda Hubbard, Administrative Assistant,
Executive
Denise Hudson, Director of Resource
Management Division
James Irvin, Radio Shop Telecommunications
Specialist
Debra Jones, Lieutenant, Beaumont
Renee Johnston, Executive Assistant,
Executive
Shaun Jordan, Program Administrator,
Licensing
Division
Anthony Keel, Agent, Dallas (and Family)
Charlie Kerr, Director, Business Services
Section
Richard Maness, Systems Support Analyst,
Information Resources Department
Ora Miller, Human Resources Specialist, HR
Carie Nguyen, Database Administrator,
Information Resources Department
Lisa Oney, Administrative Assistant, Human
Resources/Training
Sharon Roberson, Administrative Assistant,
Enforcement
Garry Sitz, Director, Information Resources
Department
James "Sam" Smelser, Chief of Enforcement
Gloria Villaseñor, Administrative Assistant,
Enforcement/Grants
Taz Wallace, Agent, Wichita Falls (and Family)

Frank Westerfield, Compliance Officer,
Galveston
David Zaharias, Programmer, Information
Resources Department

GUESTS PRESENT: John Brancato, Owner, La Bodega Winery
Hannah Calvert, Program Administrator, Texas
Safety Network
Les Constable, Owner, Brushy Creek
Vineyards
Delia Cuellar, Consumer
Merrill Davis, Managing Director, Public
Strategies
Rick Donley, President, The Beer Alliance of
Texas
Gary Elliott, Owner, Driftwood Vineyards
Gary Gilstrap, Texas Hills Vineyard
Russell Gregorczyk, Jansen and Gregorczyk,
CPAs
Gregory Hamilton, Former TABC Chief of
Enforcement
Sharon Hull, Wine Institute
A.J. Johnson, TABC Retiree
Fred Marosko, Texas Package Stores
Association
Charles E. McGrigg, Wine Institute
Lindsay Meche, Block/Republic Beverage
Company
Sherry Muller, Chief of Staff, Office of Senator
Frank Madla
Rick Naber, President, Flat Creek Estate
Fred Niemann, Attorney, Representing Texas
Package Stores Association
Gina Puente-Brancato, Past President of
Texas
Wine and Grape Growers Association and
President of La Bodega Winery
Vivian Rowe, TABC Retiree (and Family)
Jessica Schenk, Program Administrator, Texas
Safety Network

Kel Seliger, State Senator and Former TABC
Commissioner
Allan "Bud" Shivers, Jr., Former TABC
Chairman
Robert Sparks, Executive Director, Licensed
Beverage Distributors, Inc.
Logan Spence, Advisor, Office of the Governor
Tom Spilman, Vice President, Wholesale Beer
Distributors of Texas
Sterling W. Steves, Attorney
Cord Switzer, Fredericksburg Winery/Switzer
Family
Dick Trabulsi, President, Richard's Liquors and
Fine Wines

CALL TO ORDER

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

RESOLUTION HONORING VIVIAN ROWE

Commissioner Gail Madden read the resolution honoring Vivian Rowe (Attachment 1). Ms. Rowe introduced her family members and stated that employees are the greatest resource the agency has. **Ms. Madden moved that the TABC Commissioners approve the resolution honoring Vivian Rowe. Chairman Steen seconded the motion. The motion carried.** Ms. Rowe was presented the resolution and merit of certificate award.

Chairman Steen acknowledged the presence of Gregory Hamilton in the audience.

RECOGNITION OF AGENCY EMPLOYEES WITH 20 OR MORE YEARS OF SERVICE

Chairman Steen called upon Buck Fuller, Compliance Division Director, to introduce an agency employee under his division with over 30 years of state service. Mr. Fuller recognized Frank Westerfield, who was employed

by TABC in 1973 as an auditor. He later transferred to the Houston office, where he aspired through the ranks to Regional Supervisor. Mr. Westerfield retired in August 2002 and then reapplied and rejoined the agency as a Compliance Officer. The Commissioners presented a gift clock and plaque to Mr. Westerfield.

Chairman Steen called upon Sam Smelser, Chief of Enforcement, to introduce those employees under his division with 20 or more years of state service.

Mr. Smelser introduced Captain David Ferrero, who was employed by TABC in 1984. Mr. Ferrero began with the agency as a Training Officer, then Sergeant, and later as Lieutenant in the Austin District Office. He was promoted to Captain over the Austin region on September 1, 2002. Captain Ferrero was presented with a plaque to recognize his service to the Commission.

Mr. Smelser introduced Sergeant Robert Gonzalez, who was hired as an Agent from San Antonio and first assigned to the Odessa District Office in 1984. He later transferred to the Laredo Outpost/McAllen District, where he was eventually promoted to Sergeant. He managed the Corpus Christi District Office for three years, transferring later to the San Antonio District Office. In San Antonio, Sergeant Gonzalez manages the field agents covering Bexar County. The Commissioners presented Sergeant Gonzalez a service award plaque.

Mr. Smelser discussed the service of Lieutenant Debra Jones. Lieutenant Jones began her career with TABC in 1984, spending over 13 years in the San Antonio office, notably working on Project SAVE and serving as TABC's liaison to the Drug Enforcement Administration's Organized Crime Drug Enforcement Task Force. She was promoted to Sergeant in El Paso and subsequently promoted to Lieutenant in the Beaumont office. Lieutenant Jones was presented a service award plaque by the Commissioners.

The next recipient Mr. Smelser introduced was Agent Taz Wallace. Agent Wallace was assigned to the Fort Worth office in 1984. In 1988, he transferred to the Wichita Falls office where he is presently assigned. Agent Wallace recognized his family members in attendance, and received a service award plaque by the Commissioners.

Mr. Smelser stated that the next two recipients—Agent Daniel Ochoa and Agent Jon Robinson—were unable to be in attendance. Mr. Smelser stated that Agent Ochoa was employed by the agency in 1984, having been stationed in Baytown, Laredo, McAllen, and Odessa, and is currently stationed at the Belton Outpost office. Agent Robinson was also employed by the Commission in 1984, having been stationed in Odessa, Paris, Waco, Lampasas, and Austin, and is currently assigned in Llano. **Chairman Steen requested that Mr. Smelser convey the Commissioners' appreciation to Agents Ochoa and Robinson.**

Administrator Alan Steen also noted that there was a retired employee in attendance that he wished to recognize. Mr. Steen stated that A.J. Johnson, formerly from the San Antonio office, took advantage of the state retirement incentive in January 2004. Mr. Johnson worked for the agency for 19 years, 11 months, and 26 days. Mr. Johnson will receive a service award plaque to recognize his service to the Commission (for 19 years, 11 months, and 26 days), and Mr. Steen wanted to publicly recognize Mr. Johnson. Mr. Johnson addressed the Commissioners, stating that he has enjoyed working for TABC.

Brian Guenther—standing in for Licensing Division Director Amy Harrison—introduced Shaun Jordan. Mr. Jordan began his career with TABC in 1983. He was hired as a Data Entry Clerk in the Licensing Division. He is currently a Program Administrator in the Licensing Division, supervising the Data Entry Section. Mr. Jordan was presented a service award plaque by the Commissioners.

2003 ALLAN SHIVERS, JR., AWARDS FOR EXCELLENCE IN PUBLIC SERVICE

Chairman Steen stated that the Commission was honored to have Alan Shivers, TABC's former Chairman, in attendance to present the employee of the year awards. Chairman Steen explained that the annual employee of the year program began in 1995 under Mr. Shivers' leadership. After Mr. Shivers retired from the Commission, TABC's governing board renamed the annual awards program in his honor in February 2003.

Chairman Steen stated that the Allan Shivers, Jr., Award for Excellence in Public Service recognizes the outstanding performance and

accomplishments of agency employees in two categories: Commissioned Peace Officer and Non-Commissioned Peace Officer. Chairman Steen asked Mr. Shivers if he would present the awards, and asked that the audience give a round of applause to recognize Mr. Shivers.

Mr. Shivers expressed appreciation to the Commissioners for inviting him to present the awards. Before he announced the name of the Commissioned Peace Officer Employee of the Year, Mr. Shivers provided the background of the employee:

The employee joined TABC in 1996, performing undercover work in Beaumont. In 1998, he transferred to the Dallas District Office, where he worked a variety of assignments from enforcement to licensing. He is the lead trainer for new agents whose first assignment is the Dallas District Office. The employee's knowledge of the area and people has been a great asset to those new agents. This employee is willing to put in extra hours to ensure that the job gets done, and that it gets done right. The employee is vigilant in his day-to-day responsibilities for enforcement of the alcoholic beverage code.

Mr. Shivers announced the winner of the 2003 Allan Shivers, Jr., Award for Excellence in Public Service by a Commissioned Peace Officer to be Agent Anthony Keel. Mr. Shivers presented the award to Mr. Keel, with Mr. Keel's wife by his side during the presentation.

Mr. Shivers provided the background of the employee who won the Non-Commissioned Peace Officer Employee of the Year Award:

The employee received her Bachelor's of Business Administration in Management Information Systems from the University of Houston in 1994. She began her career with the Commission in 1997 as a Programmer I, moving steadily up the ranks since that time. She is currently the agency's Database Administrator III.

Mr. Shivers announced the winner of the 2003 Allan Shivers, Jr., Award for Excellence in Public Service by a Non-Commissioned Peace Officer to be Carie Nguyen. Mr. Shivers presented the award to Ms. Nguyen.

RECOGNITION OF KEL SELIGER

Chairman Steen stated that it was an honor for the Commission to have State Senator Kel Seliger, TABC's former Commissioner, in attendance. Chairman Steen asked Senator Seliger to come to the front to be recognized by the Commission. Ms. Madden read the resolution honoring Mr. Seliger, passed at the November 24, 2003, Commission meeting (Attachment 2). Senator Seliger addressed the Commission, expressing appreciation of staff and the Commissioners for their outstanding and dedicated service to the State of Texas. Senator Seliger stated that he would always treasure the time he had served with the Commission.

RECESS

Chairman Steen announced that the meeting would be recessed for 20 minutes for a reception to honor those individuals recognized in the meeting.

APPROVAL OF JANUARY 26, 2004, COMMISSION MEETING MINUTES

Chairman Steen called for a motion to approve the TABC Commission meeting minutes of January 26, 2004. **Ms. Madden moved that the Commissioners approve the minutes of the January 26, 2004, meeting. Chairman Steen seconded the motion. The motion carried.**

ADMINISTRATOR'S REPORT

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

Hirings

Mr. Steen reported on agency hirings since the January Commission meeting. Mr. Steen introduced Garry Sitz, new Information Resources Director, who came to TABC with over 28 years of information technology experience, most recently as Director of Development at GalleryWatch.com. Mr. Steen announced the promotion of Sam Smelser to Chief of Enforcement effective February 16, 2004; Mr. Smelser has been

with TABC for over 27 years. Mr. Steen also reported that the final hiring phase for 22 agents has been completed; the agents will begin training on April 4. Mr. Steen noted that this would be the first time in quite a while that TABC would be almost fully staffed with agents.

Automation

Mr. Steen stated that Garry Sitz has conducted a full agency assessment of the agency's automation skills, strategies, and needs. Several vendors have been invited to meet with Mr. Sitz and staff to look at various automated systems. Mr. Sitz and his staff are also planning to visit other states to review their systems. **Mr. Sitz will provide an update on TABC's automation progress at the April Commission meeting.**

Spring Break

Officers have been convening at Galveston and South Padre Island for enforcement and prevention efforts during spring break. A grant from the Governor's Office is funding the costs for overtime and travel of the officers. Mr. Steen announced that the Governor has proclaimed the month of April 2004 as Youth Alcohol Awareness Month.

Strategic Planning

Mr. Steen reported that TABC's strategic planning process is underway. Supervisors at Headquarters, Field Enforcement, Compliance, and Ports of Entry offices are conducting strategic planning sessions to assess the internal needs of the agency. A meeting with Headquarters and Field Supervisors is scheduled in Austin on March 29 and 30. Also, a roundtable meeting involving senior staff and outside interested parties is scheduled in Austin on April 6. Mr. Steen stated that the Commissioners will be involved in the process for input and direction. Also, statewide strategic planning forums are being conducted and will be completed by the end of March.

Training

Mr. Steen discussed ethics and workplace harassment/discrimination training. Two one-day sessions are being planned for all Headquarters staff: Ethics (to be provided by General Counsel Lou Bright) and Avoiding Workplace Harassment and Discrimination through Better Treatment (contracted through Sheila Gladstone, an attorney in Austin). This will be expanded to include all field staff training.

Meetings

Mr. Steen discussed some of the various meetings that he and TABC staff been involved in:

- Meeting in Dallas with representatives of Republic Beverage Company and Glazers regarding pricing and billing service issues;
- Meetings with regional staff in Dallas, San Antonio, and Beaumont/Conroe areas;
- Individual meetings with State Senator Tommy Williams, Conroe Chief of Police Charlie Ray, Jefferson County Judge Carl Griffith, and Beaumont Chief of Police Tom Scofield;
- Meeting with Ken Nicholas of the Governor's Office regarding homeland security issues; and
- Testifying at the House Committee on Licensing and Administrative Procedures in Pharr, Texas, regarding underage drinking. **Mr. Steen will alert the Commissioners of dates and locations of future hearings.**

Sunset Advisory Commission Review

Mr. Steen stated that he and staff met with Karen Latta, TABC's Sunset project manager, regarding TABC's review process to begin April 15, 2004. Public testimony on TABC is scheduled for November 16 and 17, with the decision on TABC by the Sunset Commission to be made on December 14 and 15, 2004. The information about the review process and schedule is located on the Sunset Advisory Commission's website. **Chairman Steen requested that he and Ms. Madden be kept up-to-date on the review process; Mr. Steen assured him that information will be shared with them during the entire process.**

FISCAL STEWARDSHIP OF AGENCY REPORT

Chairman Steen called upon Denise Hudson, Director of Resource Management Division, to provide the agency report on fiscal stewardship. Ms. Hudson reviewed the report (Attachment 3) with the Commissioners. She discussed the legislative caps for the first quarter 2004, noting that TABC is below all of the legislative caps. Also, she reported on the status of the agency's recycling and conservation program.

APPROVAL OF INTERNAL AUDIT ON GENERAL SERVICES SECTION

Russell Gregorczyk reported that the Internal Audit report on General Services Section was covered with Ms. Madden earlier that day in an Audit Committee meeting. Mr. Gregorczyk stated that there were few findings or issues in the report (Attachment 4). The audit covered general administrative functions of the agency such as printing, mail operations, supplies, property management, fleet management, leasing, radio communications, warehouse management, and purchasing. Mr. Gregorczyk reported that the overall findings did not contain issues of noncompliance with state statutes and did not find any weaknesses in internal controls in those areas. Minor recommendations were made, however, to increase the effectiveness and efficiency of the operating units. Mr. Gregorczyk stated that the key recommendations dealt with policy documentation.

Ms. Madden moved that the Commissioners approve the Internal Audit report on General Services. Chairman Steen seconded the motion. The motion carried.

UPDATE ON ENFORCEMENT OF UNDERAGE DRINKING LAWS (EUDL) AWARDS

Chairman Steen called upon Roy Hale, Grants Coordinator, to provide an update on the Enforcement of Underage Drinking Laws (EUDL) Awards (Attachment 5).

Mr. Hale explained that TABC had a total of \$334,500 to distribute to organizations as grants for the enforcement of underage drinking laws. He explained the peer and staff reviews of the applications. After the results were tallied, the recommendations were forwarded to the TABC Administrator and Assistant Administrator on March 8, 2004. Nine of 14 applications were recommended for the grant awards. Mr. Hale stated that it was the EUDL Task Force's objective to have a geographically dispersed assortment of programs. Mr. Hale reviewed each of the nine programs:

- Star Council on Substance Abuse (Erath County, \$27,000)
- Mothers Against Drunk Driving (Statewide, \$54,000)
- University of Texas at San Antonio Health Science Center (Statewide, \$50,000)
- Texans Standing Tall (Statewide, \$56,000)

- University of the Incarnate Word (Bexar County, \$20,000)
- Alcohol and Drug Abuse Council of Deep East Texas (Nacogdoches County, \$45,000)
- Sul Ross State University (Brewster County, \$22,500)
- Texas Municipal Police Association (Statewide, \$30,000)
- Randall County Sheriff's Office (Randall County, \$30,000)

REPORT ON LICENSING STANDARDS INVESTIGATIONS/HOMELAND SECURITY

Chairman Steen called upon Sam Smelser, Chief of Enforcement, to discuss licensing standards investigations (Attachment 6).

Mr. Smelser explained that the agency received additional resources from the Legislature at the last legislative session to assist TABC in licensing standards investigations. The goals for this effort are to ensure that applicants for licenses and permits issued by TABC are in compliance and meet all statutory requirements and to cooperate and share intelligence information with appropriate agencies on issues of interest.

Mr. Smelser discussed the 29 additional personnel to be hired in this effort and their staffing locations. He stated that the licensing investigators, agents, and compliance officers located in the field locations will operate as a team, with each employee in this effort bringing a unique talent and expertise to the unit. This will result in better cases, a more complete work product, and a larger number of reviews being concluded in a timely manner.

Areas of focus of the investigations will be on:

- Activities or items of a questionable nature in applications;
- Suspicious activity observed during routine or normal inspections and/or investigation actions; and
- Information gathered from informants directly related to the alcoholic beverage industry.

Ms. Madden asked Mr. Smelser about licensing services that take money from potential applicants to handle their applications and do not submit the applications to TABC in a timely manner. Mr. Smelser agreed that this is a problem and oftentimes TABC is blamed for the delay when in fact the

application was not submitted to TABC by the licensing service for a long period of time.

Chairman Steen asked if the coordinator position would be housed in Headquarters Enforcement; Administrator Steen confirmed that the position would be housed in Headquarters and would serve as the coordinator, and not the supervisor, of the field staff.

CONSIDERATION OF PROPOSED REQUEST FOR ATTORNEY GENERAL OPINION REGARDING RULEMAKING AUTHORITY ON OUT-OF-STATE WINE SHIPPING

Chairman Steen called upon General Counsel Lou Bright. Mr. Bright summarized the complex issues regarding TABC's authority to regulate shipments of wine from out-of-state suppliers to Texas consumers, specifically, whether TABC has the rulemaking authority to require that such shipments be channeled through Texas package stores. Mr. Bright stated that one of the decisions needed by the Commissioners was whether TABC should seek an Attorney General's opinion on the issue. Mr. Bright stated that TABC has received a number of opinions from the industry and others and recommended that the Commissioners hear public comment on the issue before discussing the issue in closed session.

PUBLIC COMMENT

Chairman Steen stated that he had several registration cards for public comment on the out-of-state wine shipping issue. Because of the large number of people who had registered for public comment, Chairman Steen requested that each person limit his or her comments to no more than five minutes.

Sterling Steves, Attorney from Fort Worth, stated that he had been co-counsel in the *Dickerson v. Bailey* case. He stated he was for the Texas wineries and wanted them to grow. He commended Commission staff for their helpfulness and stated that he considered it a pleasure to work with General Counsel Lou Bright. Mr. Steves cited statistics from the editor of *Impact Magazine*: Based on a 10-year consumption per capita basis, 70% of all alcohol consumed in the state is beer and ale; 20.4% is "booze"; and 9.7% is wine. Mr. Steves stated that the underage drinking problem deals primarily with beer. He also noted that only 5% of the Texas population

lives in dry areas. Mr. Steves summarized his remarks stating that he wanted the best for Texas and that he would work with TABC staff on this issue.

Cord Switzer, of Fredericksburg Winery, stated that the winery is a small family business that has been working with TABC since 1986. Mr. Switzer stated he had an easier solution than sending the suggested letter to the Attorney General: he requested that TABC allow wineries to ship in and out of the state. He stated that he did not think this would happen, however, and suggested the second alternative would be to go ahead and submit the letter. He discussed the need for the industry to be able to grow, with part of the growth feature being the ability to ship without various constraints. He stated that this is needed for the economic growth of the State of Texas, the Texas wine industry, small wineries, and small businesses. Mr. Switzer stated that he did not understand why citizens of Texas must give up their freedom of choice. If an individual is prevented from ordering wine from his winery for shipment, he explained, that individual's freedom of choice has been taken away. He also did not understand why we do not operate under the free enterprise system in Texas. He stated that under a free enterprise system, he would not be encumbered by barriers to shipment and would be free to do interstate commerce. He read part of a letter he sent to the Chief of Staff of the Governor's Office on March 6, 2004, stating that he was also addressing this to the Commissioners: "On this day in 1836, the Alamo fell. I would call on the Governor of Texas using the words from the famous letter by Lieutenant Colonel Travis: In the name of liberty of patriotism and everything dear to the American character, come to our aid."

Dick Trabulsi, President of Richard's Liquors and Fine Wines, stated that he owns eight package stores in the Houston area, with his specialty as a wine merchant. As a small businessman in the alcoholic beverage industry whose family has been in the business for over half a century, he requested that the Commissioners enact a rule that complies with *Dickerson* that would place out-of-state wineries under the same regulatory requirements as Texas wineries. Because the nation and the state have made the determination that alcoholic beverages should be regulated, he believed that the regulation should apply to everyone. Mr. Trabulsi discussed the competitive disadvantage to Texas businesses when out-of-state wineries can ship directly to Texas consumers without regulation. Mr. Trabulsi spoke highly of General Counsel Lou Bright, but noted that he and Mr. Bright disagreed as to whether an Attorney General opinion should be sought. Mr. Trabulsi stated his belief that the

Commission did not need to seek an opinion. Rather, he believes the Commission has the clear authority to write a rule to answer the specific question of *Dickerson* by placing out-of-state wineries under the same regulations as Texas wineries.

Les Constable passed on making comment as Gina Puente-Brancato, Past President of Texas Wine and Grape Growers Association and President of La Bodega Winery, would be making comment. Ms. Puente-Brancato introduced herself, stating she represented the members of the Association. She stated that the ability to ship would enhance the members' businesses and customers in a variety of ways:

- The ability to ship would satisfy the customers' needs in various locations in Texas. Ms. Puente-Brancato stated that shipping is a customer service issue; it is convenient for customers visiting wineries in Texas to have wine shipped directly to them.
- The ability to ship contributes additional revenues to Texas wineries that are too small for statewide distribution (such as "mom and pop"/boutique wineries).
- The ability to ship will trickle down quickly to the state's economy. Ms. Puente-Brancato cited results of an informal survey estimating that wineries were losing sales of over 650 cases to out-of-state customers and over 550 a cases a month to in-state customers, translating to an estimated \$2.6 million loss annually to the state's economy. She stated that these revenues would enhance the state's economy and create more jobs for Texans. She stated that the Association believes that these revenues would be additional dollars to the state's tax base.

In summary, Ms. Puente-Brancato asked for the Commissioners' support for free enterprise by allowing the shipping of wines to any location based on language of the recently passed constitutional amendments.

Rick Naber introduced himself as President and co-owner of Flat Creek Estate, a small boutique winery in the hill country. He stated that he came before the Commissioners as a voice and Vice President for the Texas Hill Country Wine Trail. Also, he is a board director of the Texas Wine and Grape Growers Association. He supported the points that Ms. Puente-Brancato made earlier and recommended that the Commissioners allow direct shipping of wine according to the new constitutional amendment.

Gary Gilstrap introduced himself, stating he was a wine maker and ex-pharmacist. He recounted how he recently had the opportunity to work in the tasting room at his hill country winery where he had over 800 visitors that particular weekend. One visitor—a gentleman from a major Texas city—told Mr. Gilstrap that he directly receives wine shipments from California. He was interested in Mr. Gilstrap’s winery shipping directly to him. Mr. Gilstrap explained that the wine would need to be shipped to a liquor store near where the gentleman lived. Because of the inconvenience, the gentleman opted to not have the wine shipped. Mr. Gilstrap asked the Commissioners to remove the “shackles” from the Texas wineries so that they can be competitive, grow, and make money for the state and local areas. Mr. Gilstrap stated that Texas wineries can make a big impact on small communities by bringing in tourists.

Gary Elliott stated he owns Driftwood Vineyards, a small winery that sells approximately 1,000 cases of wine a year. At that level of production, the wine can only be retailed through the winery’s tasting room. He stated that two of the most frequent questions he receives from visitors in the tasting room are: “Where can I find your wines?” and “Can you ship?” He answers their questions stating that the wine can only be purchased retail from the winery which makes just enough profit to stay in business and that the issue of shipping has not yet been decided upon by the State of Texas. Mr. Elliott expressed his hope to be able to ship freely so that he could distribute his wine through package stores rather than only being able to sell from his tasting room. In order for the winery to grow, he stated he must be able to sell by both retail and shipping methods. Mr. Elliott discussed being told by distributors and package stores that they expect a product to sell on its own. Mr. Elliott emphasized that the best way for a product to sell on its own is to create demand. Demand is created by the direct selling/shipping to customers. Once there is demand, then the product can be placed in stores. Mr. Elliott explained that direct shipping to customers in the beginning will then create the market demand that the package stores need to sell the product.

Ms. Delia Cuellar provided a handout to the Commissioners (Attachment 8), stating she was a consumer from Houston. She stated that TABC was originally established 70 years ago to prevent anyone or any organization from monopolizing the distribution of alcoholic beverages. Today, there are new channels of distribution (such as the Internet) that were not anticipated or established when TABC was organized. Ms. Cuellar cited a

recent report from the Federal Trade Commission concluding that states could significantly enhance consumer welfare by allowing the direct shipment of wine to consumers. She stated her belief that TABC could find a way to allow direct shipment of wine. She referred to a study from the American Medical Association (in Attachment 7) indicating that direct shipping does not promote underage drinking. She expressed her belief that the major cause of underage drinking is advertising. Ms. Cuellar stated she supported the interpretation of recent court rulings outlined by Mr. Lou Bright in his letter dated December 5, 2003. She also pointed out that shipping is not inexpensive; however, people who want to have wine shipped to them are willing to pay.

EXECUTIVE SESSION

Upon conclusion of the public comments, Chairman Steen announced that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 3:28 p.m. on March 15, 2004, and an executive session would be held to consult with Legal Counsel regarding rulemaking authority on out-of-state wine shipping and personnel matters and to discuss the duties and responsibilities of the Administrator (Government Code, Sections 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 March 15, 2004, and the time, 4:30 p.m. He stated that no final action, decision, or vote was made in the executive session.

Chairman Steen called for a motion. **Ms. Madden moved that the Commissioners table consideration to seek a formal Attorney General's opinion regarding TABC authority to regulate shipments of wine to Texas consumers, but with instructions to the Administrator that he take the necessary steps to obtain an informal letter opinion from the Attorney General on this matter. Chairman Steen seconded the motion. The motion carried.**

ADJOURNMENT

Ms. Madden moved that the Texas Alcoholic Beverage Commission meeting be adjourned. Chairman Steen seconded the motion. The motion carried, and the meeting adjourned.

