

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
COMMISSION MEETING  
MONDAY, MARCH 25, 2002

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: Allan Shivers, Jr., Chairman; John T. Steen, Jr., Member and Gail Madden, Member. Staff present: Rolando Garza, Administrator; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License & Compliance; Greg Hamilton, Chief of Enforcement and Denise Hudson, Director of Resource Management. Present to receive certificates of service: Sharon Roberson, Enforcement Headquarters; Ernest Guerra, General Services Department and Allen Johnson, Enforcement/Marketing Practices. Visitors included: Russell Gregorczyk, Jansen & Gregorczyk; Alan Gray, Licensed Beverage Distributors, Inc.; Fred Marosko, Texas Package Stores Association; Tom Spilman, Wholesale Beer Distributors of Texas; Glen Garey, Texas Restaurant Association; Robert Sparks, Licensed Beverage Distributors, Inc.; Misty Sulah, Brown Distributing Company; Francis Kurio, Anheuser Busch; Jack Roberts, Anheuser Busch; Mark Bordas, Anheuser Busch; Dominic Giarrantani, Legislative Budget Board and Mike McElhaney, Governor's Office of Budget and Planning.

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 February 25, 2002 meeting; discussion, comment, possible vote.
3. Administrator's report:
  - a. discussion of staff reports;
  - b. recognitions of achievement;
  - c. discussion of management controls;
  - d. state auditor's update; and
  - e. Survey of Organizational Excellence.
4. Consider approval of Revised 2002 Fiscal Year Audit Plan; discussion, comment, possible vote.
5. Fiscal stewardship of agency; discussion, comment, possible vote.
6. Briefing on "flavored beer" products and discussion on the need of a possible rule; discussion, comment, possible vote.
7. Public comment.

Announcement of executive session.

8. Executive session:
  - a. the commission may go into executive session to consult with legal counsel regarding item number 6 of the agenda pursuant to Texas Government Code, §551.071; and
  - b. the commission may go into executive session to consult with legal counsel regarding the pending litigation of Martinez v. TABC pursuant to Texas Government Code, §551.071.

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

The meeting was called to order at 1:53 p.m. by Chairman Shivers.

MR. SHIVERS: I would like to call this meeting of the Texas Alcoholic Beverage Commission to order on Monday, March 25, 2002, at one fifty-three in the afternoon. We apologize for starting late. Traffic has been a bear in some parts of the city and area.

First, I'd like to recognize employees of this agency who have been with us 20 years or more. First, is Sharon Roberson, who joined the TABC in 1982 as secretary in the Austin District Office. She's one of those anchors that holds us all together with knowledge of the agency and her outstanding work. Sharon, would you come up? We have a plaque for you. Congratulations.

MS. ROBERSON: Thank you.

MR. SHIVERS: Ernest Guerra joined the agency in March 1977. He is an inventory coordinator, responsible for the agency's supplies and other assignments. He grew up in Lockhart and has been with us 25 years. We congratulate him on his long service. Ernest, come up here. Congratulations.

MR. GUERRA: Thank you.

MR. SHIVERS: Allen Johnson is someone those of us here at headquarters have seen a lot of over the years. He joined the agency, also, in March 1977. Currently, he is our Marketing Practices Supervisor. Those who know Allen know he has had a lot of different positions in his 25 years. He's been a hearings examiner, has been director of legal, and he has a BBA and law degree from the University of Texas at Austin. He's another one of those anchors here. Allen, come up here. Congratulations.

MR. JOHNSON: Thank you.

MS. MADDEN: Mr. Chairman, before we go on, we have one other recognition or acknowledgment that we'd like to make today. I had the privilege of seeing a magazine, it just popped up.

MR. SHIVERS: May I say something about whether this in order for today?

MS. MADDEN: I thought this gentleman looked very familiar, and sure enough it was our

esteemed chairman, Bud Shivers. He is on the cover and has a wonderful story in *Philanthropy in Texas*. I just thought we ought to acknowledge that on the record. I brought some extra copies. Congratulations.

MR. SHIVERS: Thank you. Now that we've had that distraction, do we have a motion to approve the minutes of the last meeting, which I missed?

MS. MADDEN: So move.

MR. STEEN: Second.

MR. SHIVERS: Changes? All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Administrator's report, Mr. Garza?

MR. GARZA: Mr. Chairman and Commissioners, I would only want to bring to your attention this month that we have had the initial report from the State Auditor's Office on our audit of some of our licensing and enforcement activities. We are in the process of doing our management response to the State Auditor's Office. That is due the 29<sup>th</sup> of March, which is this Friday. Once we've had the chance to review any of the changes or amendments in the state auditor's report, we will be issuing our final report to the Legislative Audit Committee and to each of you. A few days after that the public will be able to access this report through the State Auditor's Office. It will be posted on their website. So we will be able to go into more detail on that report next month because it is still a preliminary report, and we have been asked not to share that beyond our own staff.

The other things I would like to bring to your attention this month - you are aware that during this time of year our enforcement folks get pretty busy in a number of different areas. Not the least of which is Spring Break along the coast. We have a lot of activities going on and I have asked the Chief to bring you a brief report on what we did this Spring Break and on some of our activities with respect to prom and graduation ceremonies. Through the efforts of Ms. Madden, we were able to meet a couple of weeks ago, when I was in Dallas, with the chief of police from Highland Park, and we have been invited to participate in a press conference that will be held in Dallas on April 3, 2002, that is named "Parents Who Host Lose the Most." That press conference will be held to draw attention to the dangers associated with underage drinking and to try

to warn and advise parents that it's probably not a good idea for them to be hosting parties and making alcoholic beverages available to minors. We will be taking part in that press conference in Dallas.

I have also asked Captain David Ball from our Austin District Office to come this afternoon and give you a briefing on the results of a major sting operation that we conducted on Sixth Street on Thursday night. This is called "Operation Fake Out" and it targets the proliferation and the use of fake identifications, particularly by young people trying to get their hands on alcoholic beverages. So I will ask the captain to come up and give his report, then I'll ask the Chief to give his report on Spring Break, "Safe Prom" and some of those activities.

As you will recall last month I had told you that our agent trainees would be doing their final leg of their intensive academy. I was corrected this afternoon when I went up to one of our young agent trainees and said, "How does it feel to be on your last week?" He said, "No, sir, we are in our last few days. A week is too long." The last few days of a very rigorous academy will culminate with a final examination, that I am sure they are already studying for, on Thursday, March 28<sup>th</sup>. Then we will host the graduation ceremony here, Friday, for the twelve new additions to the TABC family. So I'll ask Captain Ball to give his report, then the Chief, and then we would like to introduce you to our new agent trainees.

MR. BALL:

Thank you very much. Mr. Chairman, Commissioners. I have been asked to update you on an operation that we did last Thursday night in the downtown Sixth Street area in Austin. To my left is a unified poster with, I think, 27 agencies that we originated and what we termed "Operation Fake Out." It is a program where we turn the tide on underage people that are using fake ID's. As we know, the consequences for fake ID's are very low. When a minor uses a fake ID, the major consequence they normally face is rejection, if they are lucky to catch it at the door. The worst scenario is they lose their ID that they paid 100 dollars for. It is not a very smart kid that gives the ID to the police officer. Rarely do we file cases in that instance because they don't produce it or we don't witness it.

In this operation, we go in and work in conjunction with the retailers. This poster is posted at the premises, giving a warning to the underage people. The first time we did the program, we put it in all the news media prior to our coming. We told them everything except the night and the particular hour that we would be there. What we did this time, we just kept the posters out. We get all the cooperating agencies, which enhances TABC's manpower greatly, to go to the licensed premise and stand at the front door. When the doorman encounters a fake ID used to enter the

premise for the purpose of identification and to be marked as an adult, and if there is any question involving that ID, then instead of rejecting them or taking the ID away, whatever they may do, they simply turn around and ask that our officer do assistance. Then when we verify that it is fake, altered or belongs to somebody else, we call on the radio and a “paddy wagon” drives up. They are handcuffed and placed under arrest with zero tolerance. They are asked to please go back and pass the message to all of their friends that fake ID’s are serious and there are consequences. We need this message continued.

On this night, last Thursday, we had 86 volunteer officers, which included our district office. Training came out, and I want to thank them. Subtracting our people and training, I would say we had about 62 to 65 officers from other agencies show up to assist us. On top of the 86, we had our new trainees. I appreciate the assistance of the 13 or 14 trainees. So we were right at 100 officers. We divided up and went to about 17 locations and by the time you subtract your transport officers, booking officers and all that, we were down to about 60 that actually went to the premises. We would do three or four at the front door, then when they would encounter a fake ID, they would arrest them. We ended up with 52 people being arrested for 59 separate charges.

We got one very good counterfeit driver’s license. We got 16 driver’s licenses that were issued to other people and took them away from the people using them. We had another 18 merely misrepresenting their age for various flea market ID’s or something like that. This was in probably two and one-half hours. I was also told that after we were there 30 minutes, the word on the street was that TABC and other officers were out. So I would say that if we got 25 percent of the ID’s being used in the Sixth Street area in this two and one-half hours, we were lucky, and we were in the 50’s. So we have a problem and I think we put a little dent in it. We had the news media come out to video, and on the morning talk shows they did some special presentations. I think it was very successful, or not successful. I guess successful would be not to catch anybody. Thank you very much.

MR. SHIVERS: Do you have clips of the news coverage?

MR. GARZA: Yes.

MS. MADDEN: Also, the driver’s licenses that you picked up, were they the new ones?

MR. BALL: With the counterfeit, it was such chaos with so many officers I didn’t actually get to see that license. At UT at Dobie Mall, DPS recently did a

warrant there and they estimated between 500 and 1,000 counterfeit driver's licenses were manufactured by one student. We have some samples of those and they are so good, I promise you there is nobody in this room that can pick it out without a special jeweler's loop. The magnetic strip works on it. It's got the encoded polygram. It's got all the detective issues. The only way you can pick it out is that all 1,000 licenses, or however many were made, had the same number. What happens is that you run it through DPS and it comes up with a bogus name. So if you run it on the computer or look at some of the encoded features through a jeweler's loop with the micro-printing, that would be the only way to catch one.

MS. MADDEN: I was curious. I thought the reason why these were supposed to be so good was that you could not reproduce them. But you are saying that they got around that, too?

MR. BALL: He was selling these for 150 dollars a license.

MR. SHIVERS: All over the country.

MR. BALL: You'd be amazed. With color copy photograph machines, the computer technologies, it is unbelievable what they can reproduce.

MR. SHIVERS: That story got a lot of coverage because of national security implications with creating false ID's.

Have you noticed any impact in the Sixth Street area since the Austin Police Department has put in their Command District for Downtown?

MR. BALL: I think the gang activity has been reduced and problems associated with the area where people were probably afraid to go. They are trying to get the adult crowd back to Sixth Street. Austin has recently formed an alcohol team that is going to work hand-in-hand with our agency in enforcement, not only on Sixth Street, but in Austin per se. We are very lucky to have the Austin Police Department because they have a big concern. Sixth Street, hopefully, will get back to the reputation they deserve - that it's a good entertainment and safe district.

MR. BALL: I think Mr. Garza is working on getting us flyers and table tents. If we could get table tents to put on the tables, and take the flyers and pass them out at the universities it would be helpful because 59 charges, 52 people sounds like a lot, but until they stop using them - that's the only success - it's a drop in the bucket. I think if we can keep it on their minds and keep doing this program, then we can impact it a little bit.

MR. STEEN: What happens to the person who lends his driver's license to an underage drinker?

MR. BALL: Well, I've never seen that charge filed. It is a violation; I believe it's a Class B. The only way to really prove that is if the person who uses it actually gives a statement and says that he borrowed it from a friend. To get cooperation from them, generally, you have to plea bargain in their case, and it's like going from one Class B to another Class B. You really don't gain anything, so we always, pretty well, file on the "bird in the hand" and let them go deal with DPS. We turn that license over to DPS, so that when he goes out to DPS, he has to at least do some explaining.

MR. STEEN: This is a great program. Is it just in Austin, or do we do it other places?

MR. BALL: The Chief had asked in the past that other districts and regions do it, and I know several others have done it. I'll be honest, it's going to be best in an area where they have an entertainment district and where we get a large number of underage people that congregate. It can be done to a lesser extent in other areas, but I don't think it would be quite as successful. But in smaller areas, if you got five that would be a big impact compared to Austin.

MR. STEEN: Have we done it in San Antonio? Does anybody know?

MR. HAMILTON: Yes, we have.

MR. STEEN: And where did you do it in San Antonio, at St. Mary's?

MR. HAMILTON: We did it about a year or a year and a half ago.

MR. STEEN: What area?

MR. HAMILTON: It was throughout San Antonio. The only place that is like Sixth Street is the Riverwalk. What they did was select areas close to college campuses.

MR. SHIVERS: I'd like to say for the benefit of my fellow commissioners that the police chief in Austin really looks at the TABC as an asset to his overall public safety issues. As a matter of fact, there is a TABC agent - I believe you have one of your people actually assigned to the Austin Police Department, don't you?

MR. HAMILTON: Yes, sir.

MR. SHIVERS: If we'd get that kind of cooperation from other urban police chiefs it

would be great.

MR. HAMILTON: He has assured us that we would have three additional agents at their expense. We are actually going through the training right now and they are going to concentrate on enforcement and consistency and help us with investigations.

MR. SHIVERS: The city provides office space and the whole thing for them.

MR. HAMILTON: I would like to say that we have that in Houston. Also, in San Antonio and up in Dallas.

MR. SHIVERS: Great. Hopefully, it will keep spreading.

MR. HAMILTON: Yes, sir. I look at this as us gaining many more agents as opposed to us losing a lot.

MR. GARZA: Mr. Chairman, I would say, not just for the captain here, but for everyone in the room, that I personally know the operation took weeks, if not months, of preparation. Both he and Lieutenant Ferrero spent a lot of time with all the agents. It started off about eight o'clock that evening with a briefing and some of these folks didn't get to even think about going home until about four or five o'clock in the morning. It was a pretty major undertaking, and I appreciate the work Captain Ball has done in bringing this operation to us.

MR. SHIVERS: He was kind enough to invite me to accompany him on that, but I thought I would kind of ruin the idea of an undercover operation. Thank you, David.

Do you want to tell us about Spring Break?

MR. HAMILTON: Yes, sir. From March 8<sup>th</sup> to March 23<sup>rd</sup>, which was this past Saturday, we deployed extra agents. I would like to say thanks to the Governor's Office for funding and allowing us to send 20 agents over a period of 15 days - each worked four or five days - so a total of 60 agents is what we had extra from around the state to help out with Spring Break. As of last Friday, and this is an early count, we had written approximately 2,000 citations.

I'm sure that you have heard about the two incidents on the two separate beaches. First, on South Padre Island we had a stabbing. That particular incident was two locals fighting over a video camera, and an 18-year-old stabbed another kid to death.

MR. SHIVERS: Was alcohol involved?

MR. HAMILTON: No, sir. Temper was involved.

MR. SHIVERS: It wasn't particularly Spring Break related. They were just fighting over a video camera?

MR. HAMILTON: Yes, sir, that's what it was about. I think they estimated they had, up at South Padre Island, about 130,000 to 140,000 people over the three week period during Spring Break. Overall, talking with the agents - myself and the administrator went down - the agents said the crowd was pretty tempered, that they didn't have any serious problems. They did have a few folks that got upset and had a couple of fights on the beach. Our agents are normally located out on the boulevard where the kids are riding up and down the road pretty much all day. They did write, as of Friday, approximately 2,000 citations. Last Friday was the end of Texas Week. Then you have the people coming from Canada over this past week further up north, and I don't know what the count is going to be there.

MR. SHIVERS: What's the breakdown on those 2,000 citations? Were they all alcohol related or were they traffic related?

MR. HAMILTON: Yes, sir. You will have a possession of controlled substance, possession of marijuana, some of these individuals I think had a weapon on them - a gun or something like that. Normally, when we do confiscate those weapons, it's people from the local area that we get the weapons from.

Up at Port Aransas, which was the first incident, a couple was out on the beach. They had gotten in an argument I think about 12:30 on Thursday night, early Friday morning. The individual was assaulted, then the fight broke up and the kids went their separate ways. The next night the guy that assaulted the other guy was sitting in the car with his girlfriend. The guy came back with a gun, shot and killed the guy in the car and wounded the young lady. The guy doing the assaulting was 18 years old, also. He was from San Antonio, Texas. We have found out that a lot of individuals from San Antonio - at least the high school students - that's where they attend Spring Break - over at Port Aransas. They tend to have a lot of problems with kids from that area.

MR. SHIVERS: Because it's closer?

MR. HAMILTON: Yes, sir. But overall the agents have said that the crowd was very polite at South Padre Island except for those two incidents. We had a chance to visit with the chief of police there, and he said unlike the past years, these

kids were pretty well behaved and they really didn't have a lot of incidents.

MR. SHIVERS: Were our agents involved at all in the incident where the country singer got "whooped up on?"

MR. HAMILTON: Pat Green? No, sir, but I did hear a little about what happened there.

MR. SHIVERS: I would like to know, knowing his reputation for the ability to incite a crowd to almost riotous behavior.

MR. HAMILTON: Supposedly he was out with his family, and they were sitting out on the beach. A young kid about 18 years old, but was pretty big, was using foul language and Pat Green went over and asked him to "chill out." When Pat Green turned around to walk away, I guess the guy said something to him. He turned around and all he saw from there was stars. That was pretty much the incident. It was a one knock-out punch.

MR. SHIVERS: From what I've heard of Pat Green's concerts and club dates, foul language shouldn't offend him.

MR. HAMILTON: I don't even know Pat Green. I've never heard of him before.

MR. SHIVERS: My wife is in the music business, as some of you know, and she says club owners will have the biggest sales in their history when Pat Green appears, but some have said they don't want him back. It's not worth it because he stirs the crowd up in such riotous furor.

MR. HAMILTON: When the administrator and I were on the plane, we saw a lot of kids on the plane with Pat Green T-shirts on. I thought he was calling in his reinforcements to go to South Padre Island. It was a large group of kids flying to South Padre Island with the Pat Green T-shirts.

MR. SHIVERS: Apparently, he is a great hit among the college crowds. I never heard of the guy. I don't know if he has any talent or not, but apparently he draws a crowd.

MR. STEEN: Chief, could you explain the funding mechanism from the Governor's Office?

MR. HAMILTON: What we did was apply with them to fund our agents to go and stay as far as housing and per diem. I think we received about 60,000 dollars from them to allow us to put more agents on South Padre Island. The way this came about was about two years ago a member of the Criminal Justice

Division went to South Padre Island with us and saw the amount of agents we had and the amount of local law enforcement and said that we needed to have some more down there. She asked me to apply. We applied and they pay for housing and per diem. That allows us to keep our budget stable.

MR. STEEN: If we didn't have that funding and we sent them down there, we would have to pick up their housing and pay them a per diem?

MR. HAMILTON: Yes, sir.

MR. STEEN: And that's what the Governor's Office is covering?

MR. HAMILTON: Yes, sir.

MR. STEEN: Thank you.

MS. MADDEN: How did you select your 60 agents?

MR. HAMILTON: Voluntarily. Because of the shortage there were some agents in certain parts of the state that wanted to go, but they were unable. During Spring Break, whether or not it is on the beach, there are still going to be kids out and there are other duties we have and some districts chose not to allow some of the agents to go because of the shortage.

MR. SHIVERS: I think I saw Sergeant Cloud on television on some news report. He handled himself very well when being interviewed.

MR. HAMILTON: Good.

MR. SHIVERS: Of course, they interviewed some kids on the beach and they thought there were police everywhere.

MR. HAMILTON: I'm going to introduce our agents. As I was talking about shortages, I know the captains, the lieutenants and the other agents are going to be excited at the end of this week. Probably not as excited as these agents to get out there in the field. They have been going through this academy for the last five weeks. It is six weeks of training. They have had over 288 hours of training. I would like to introduce, first of all, the actual members of our training department, starting off with Sergeant Jose Primera, who is over the training division. Also, Agent Mike Lockhart and the secretary that does a lot of the paperwork to make sure these agents stay in line, and also make sure the sergeant and Agent Mike Lockhart stay in line, Gloria Villasenor.

First of all, I'd like to introduce James Molloy. He's from Grapevine. He'll be headed to Dallas. I would like for everyone to come up when I call your name because we're going to take pictures. Steven Roskey is from Houston, and he's going to Houston. Parker Wiemers is from Jacksboro, and he's going to El Paso. Gregory Francois is from San Antonio; going to Houston. Bryan Stringer is from Burkburnett; going to Dallas. Steven Carnes is from Bastrop; going to Houston. Christopher Roberts is from Corpus Christi; going to Corpus Christi. David Welsh is from Fort Worth; going to Dallas. Ryan Decuire is from Dickinson; going to Houston. Steven Poole is from Wills Pont; going to Beaumont. I would like to say something about Steven Poole. Steven Poole is our new agent who is coming from TxDOT. What he did at TxDOT was oversee grants, so he should help us out tremendously in that particular area. Brent Puente is from Raymondville; going to Houston. Craig Schmidt is from Columbus; going to Houston. Scott Zella is from Austin; going to Huntsville. Scott came on at the end of the last academy and we put him directly into the field, and I think he is also president of this class.

MR. SHIVERS: Good. Mr. Garza?

MR. GARZA: With your permission, I would ask Randy to give you a quick update on where we are on the Survey of Organizational Excellence. He has been leading a work group that has come back. Let's take a look at some of the results, then we will get back on track with the rest of the agenda.

MR. YARBROUGH: Mr. Chairman, Members. Just briefly, when we got the results of the Survey of Organizational Excellence this year we were glad there were no weaknesses below what the UT Survey considers to be problematic. What we did was take the three lowest things in our rankings to look at because we can always do better no matter what we are doing. The three things we identified were internal communications, training, and pay issues. We have sent out questionnaires to our people, asking them to give us suggestions of ways to improve those areas. We haven't gotten a lot of response back. I hope that indicates that people are not particularly worried about it.

In terms of the pay issues, the survey was done before we were able to address some of those last fall. We hope that has taken care of some of the pay issues, but it is very much on our radar screen if we need to keep those issues, especially for our support staff, our data entry type people, those people we count on to get the job done every day, to not overlook them when we are looking at pay issues. Those are the people we tried to address with pay increases this last fall, and we can't let them get so far out of line that they feel left out of the process in the future.

In terms of communications, we got several good comments from our field people as to ways we can keep people better informed. Later on this week we will try to wind up all of that, get our committee together and send out that information to all of our employees as part of the communication process, to show that we are making a commitment to do a better job keeping people informed of what we are doing.

The same way with training. We are looking at and identifying training opportunities for all of our people and making them aware of the training programs we already have so they can better participate in those. Many times we will have a training class and people simply don't know about it. So part of that ties directly in with communications. We feel these are key areas our employees identified to us in which we can do better. So we are getting back to them, helping them to understand how they can help us make a better organization by strengthening these perceived weaknesses.

MR. SHIVERS: Anything else?

MR. YARBROUGH: No, sir.

MR. SHIVERS: All right. We will move on to approval of the Revised 2002 Fiscal Audit Plan. Russell?

MR. GREGORCZYK: Good afternoon. The Internal Audit Act requires boards or commissions to approve the internal audit plan. If there is any change to the plan the act requires you to amend that plan or me to amend that plan and bring it to you for approval. There was a need to change this plan. After I developed the plan this year, based on a risk assessment, the State Auditor's Office decided they were going to do a fairly comprehensive, in depth audit. The areas they focused on were primarily licensing and enforcement, which were two of my key areas. So rather than duplicate effort, I have sort of waited on them. I did the IT audit but waited to see what areas specifically they were going to focus on. So I'm not going to do either of those audits. It just doesn't make sense.

I have been working with the auditor's office and staff, so what I'm recommending now is one of the audits that we had planned was an audit of the enforcement division headquarters operations. They somewhat looked at that and there is an area within enforcement we would like to look at and that is the grants management functions. The agency does have some grants, new grants are coming in. A new grants administrator has been hired and we think it is a very good time to look at how the grant money is handled from an accounting point of view with compliance and the overall effectiveness. So that's one area we would like to propose.

The second area, the Internal Audit Act requires certain areas to be audited on a periodic basis and those are essentially your administrative systems and controls - accounting, information resources. One of those areas is the human resource systems and controls. So I thought since the auditor's office didn't focus any time on that area that would be another good one. It is an area that is within my risk assessment as a high risk category. So what I'm proposing that we do the remainder of this year is those two audits in lieu of the audits we had planned that the auditor's office took a look at.

MR. SHIVERS: Any questions for Russell?

MS. MADDEN: No.

MR. STEEN: No.

MR. SHIVERS: I think focusing on the grants part of enforcement is a good plan. That seems to be where the greatest exposure is likely to be in that area.

MR. GREGORCZYK: Okay. We are ready to start that probably next week, hoping you'll approve it.

MR. SHIVERS: Is there a motion to approve the revised audit plan?

MS. MADDEN: So moved.

MR. STEEN: Second.

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

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed? Thank you.

Fiscal stewardship? Ms. Hudson?

MS. HUDSON: This month we looked at our website, looked at the statistics there. You can see that we've had a lot of growth and a lot more people are using our website. Also, I've heard that in some of the public forums we have received some very complimentary comments on our website and the usability of it. Our job postings page is still the most popular page, but a page that is gaining popularity on the website is where we have our forms

listed. A lot of people are going there to look at and download forms. I'd like to compliment the IT area for all the work they have done on improving it.

MR. SHIVERS: Are we getting to the point where they can fill out the forms on-line electronically?

MS. HUDSON: Not yet.

MR. SHIVERS: Are we going there?

MS. FOX: We hope to.

MR. SHIVERS: Is there a time frame?

MS. FOX: To fill them out on-line, copy and send them in or fill them out so that it is interactive with our data base?

MR. SHIVERS: Interactive.

MS. FOX: Actually, we have a whole process that the state makes every state agency go through. Do you want to address those?

MS. HUDSON: We've been looking at a project with Texas Online. We have to bring you some information on that project next month. Right now we've been looking at doing two or three types of applications for renewals. It wouldn't be the originals, but people would be able to renew on line. We will have a presentation on that next month.

MS. MADDEN: The website is really fabulous. The graphics are wonderful, it's catchy and I think it is a great website. My hats are off to everybody on that team.

MS. HUDSON: Joe and Gary do a great job of being creative and putting pretty and colorful things out there.

MS. HUDSON: The other thing we took a look at was the budget. Our budget is in pretty good shape. We've been frugal with money this year, looking at how we can have some savings that the Governor's Office has asked us to report. We do have one concern that we probably won't know the true cost of until the end of the year. That is about 64 people are eligible for retirement. Depending on how many take advantage of that, it could have a big impact on the budget at the end of the year. Last year, it averaged about 8,000 dollars per employee that retired.

MR. SHIVERS: Eight thousand dollars was the cost of ....?

MS. HUDSON: Paying out their lump sum, their retirement and sick pay.

MS. FOX: Annual leave.

MS. HUDSON: We probably won't know that amount until August. A lot of people will wait until that time to announce their retirement.

MR. SHIVERS: And then you have the cost of having to replace a lot of those people, train new employees. What is that cost of recruiting and training a new employee? Do you know that?

MS. HUDSON: No, I don't. We can look at that for you.

MS. MADDEN: Is it one area or is it all over the agency?

MS. HUDSON: They are throughout the agency. A lot of them are in enforcement, a lot in compliance, a lot of people in the field.

MR. SHIVERS: I do think it would be useful to know what it costs us to recruit and train employees and give us some idea what our turnover is doing to us. The overall cost.

MR. GARZA: I believe the State Auditor's Office has some statistics that are generic to state employees. We can certainly use those to benchmark, once we get a figure through HR, as to what ours would be like.

MR. STEEN: Ms. Hudson, I know you are providing a copy of these Fiscal Stewardship reports to the Governor's Office. I guess it is the Office of Budget and Planning. Are you getting any feedback at all from the Governor's Office?

MS. HUDSON: Yes, Mike takes a look at those and has complimented us on the information that we've been providing. Mike, from the Governor's Office, is here.

MR. STEEN: Mike, do you have any comments on this? Is this useful information to you?

MR. McELHANEY: I have found the information to be very useful. You are probably the best agency I have, and I've got 12, as far as keeping me informed on a regular basis with this. DPS does pretty good also. Both of you are very much in the league as far as keeping me informed. I do appreciate it. It is valuable

information to have. I still might have questions I would want to ask Denise or Charlie when I come.

MR. STEEN: Good. Thank you very much.

MS. MADDEN: Do you pass that on to the governor?

MR. McELHANEY: I haven't yet. I don't see the governor very often.

MR. SHIVERS: Thank you, Denise. Any questions for Denise?

Flavored beer. Randy, is that yours?

MR. YARBROUGH: Mr. Chairman, Members, I think I have inherited that. We didn't think we were getting into anything big when we first started getting some calls and questions last fall as I told the other commissioners last month, and asked if we could move forward. We started finding out more with the more questions we asked and peeled back layers.

We had a meeting last Tuesday. We had 57 people signed up from both the malt beverage and the distilled spirits industry from all over the country. Also there were the director of the Bureau of Alcohol, Tobacco and Firearms; one of his investigators; the administrator from Louisiana, Murphy Painter; the commissioner of Alcoholic Beverage Control in Kentucky, Rick Johnstone; the administrator in Alabama, Randall Smith and one of his commissioners, Phillip Lovell; an attorney representing all the control states; the assistant administrator from Tennessee, Danielle Elks; and assistant attorney general from Kansas, Laura Graham to discuss this issue. It is an issue at both the federal and state levels. We tried to keep it out of the controversial issues of taxation and whether these beverages are entertaining to kids, and mainly looked at the labels and what is in the products.

I provided in your notebooks power point slides presented to them. The biggest problem we have seen is when you add distilled spirits - excuse me - distilled spirits added directly to beer would be illegal. What has happened is people have added flavoring to the beer, making it actually a flavored malt beverage. Those flavors are very high in alcohol content. A sample that I used is that you may have a base of seven and one-half percent beer, adding two and one-half percent high concentrated alcohol flavors, then 20 percent sugars or sweeteners and the remaining 70-plus percent water to dilute the whole product down to five percent or so to allow it to qualify as beer. The question we have is whether it still retains its identity of beer or is it something else?

ATF issued some bulletins back in 1996 aimed at a whole different issue,

really trying to keep high alcohol beers out of the market place. The resulting affect of that was setting no tolerance levels for low alcohol beer so that now we have a high concentration of alcohol coming from flavors in many of these products. We are questioning that. We were very grateful to have ATF here, because after much discussion with them before the meeting, they have volunteered to take the lead in this. They have already assigned investigators to actually go to approximately 15 breweries, which make most of this product, and even ask for formulas. There is such a broad range in the formulation filed with ATF. They will actually have to go to the brewery, sit down with the brew master and look at a batch to see what is put into it to determine the alcohol content and where it comes from. Once it is blended, as someone at the meeting said, an alcohol molecule, no matter where it comes from, all looks the same under the microscope. You can't tell particularly after the fact. They plan to do the data collection and analysis starting immediately and try to conclude that by late this summer and to determine what they think would be necessary if a rule to set out the specifics of this is needed.

In the meantime, we had come last month asking for permission to look to see if we needed a rule. We plan to defer everything to BATF at this point, keep their feet to the fire and moving ahead because it is much better to have a standard nationwide than to have each state going and doing their own thing.

The second issue is the labels. They do not need a rule. All of the states concurred with the ATF analysis that we needed to make some changes. In fact, I think they agreed with us in this case that we needed to make some changes to those labels. They have agreed to contact everybody who even has already been approved and ask them to remove any reference to distilled spirits from the label, from what they call standards of identity information or brand names that would refer to standards of identity in the statement of process. On the label you would have what would normally be what they refer to as a "fanciful" name - the brand name. So you could have, for example, Smirnoff Ice which is called a "fanciful" name. Down below that it would say "flavored malt beverage containing natural flavors." They would not allow in that statement of composition either "containing the flavor of vodka, gin or any other product" or "containing the flavors of Smirnoff" because it would infer that it would have a distilled spirits product.

I got an e-mail this morning from Art Libertucci, the assistant director for Alcohol and Tobacco. He said they have gotten voluntary agreement out of every brewer, except for one small manufacturer that makes a product I've never heard of. I'm not even sure if it is approved for sale in Texas. They have gotten great voluntary compliance. What they plan to do even with that small brewer is to begin administrative action to revoke their label approval. There will be a reasonable time for people to use up

anything that is already in the market place. We have asked all the brewers that need to have it changed to go ahead and get new labels submitted to us by June 1, 2002, and begin the process of manufacturing new products. They can use up what is in the marketplace, then we will look forward to working with ATF to actually determine what the standards are for the product in the bottle. I'm very concerned. Our chemist, Janet Meisenheimer, called me this morning to say we have received a product called "Hard Root Beer." It seems like we are skating on thin ice as to what some of these products really are in terms of misleading information on the labels, as well as possibly what is inside. We will be taking a hard look at that. I'm not sure it even has federal label approval yet.

We had a very good discussion of these products. We spent three hours discussing everything from "If it isn't broken, why do you need to fix it?" to "What do you really think we should do?" ATF has asked the states to give them comment on what we think the standard should be if they were to write a rule, so we will be working closely with them. I have a meeting with the Joint Committee of the States made up of the licensed states and control states on May 7, 2002, in Washington. Mr. Libertucci was invited and has agreed to give us a status report at that meeting. So hopefully, by the end of May, I can give you a better feel for where we stand, but at the present time we hope we don't have to make any additional rules. We hope we can get good voluntary compliance from the industry as we usually do so we can make people understand what these products really are. There obviously is some misunderstanding. Even one attorney here said he sat down at the dinner table and his son was drinking a "hard lemonade." He asked him where he got it and he said from the refrigerator in the garage. People who know what they are doing can accidentally pick up the wrong product if they are not looking. We think it could be much clearer as to what these products are.

MR. SHIVERS: The alcohol content is more of a tax issue, is it not?

MR. YARBROUGH: It is with some states. If it is beer, then we have no problem taxing it as beer. There are some states that would like to tax that portion of it that comes from other things than beer as distilled spirits. To be honest, it changes its identity when it becomes a flavor. There is an allowance for a tax withdrawal in that process. There is no difference in the flavors that you find in your pantry. If you look at those flavors you will find they are very high in alcohol content too. There is a big difference in that some of them are 38 percent, 40 percent alcohol and 93 percent alcohol, which is almost pure spirits. We did have someone from the Flavor Extract Manufacturer 's Association attend the meeting and we asked if he could explain whether all flavors have to be that high in alcohol content. He hedged a little and said it depended on what someone was looking for in a flavor. They pledged their willingness to cooperate with us too on any

information we or the federal government needs.

MR. SHIVERS: I'm not sure that the regulatory authorities are ever going to keep up with all the different labels. The real question on identity that the state can make between something called "hard lemonade" with slightly misleading labeling is that the retailer is just going to have to display this stuff with other alcoholic beverages, not put it in the same boxes with soft drinks. The public safety issue seems to be the overall alcohol content. You don't want someone buying something they think is beer and finding out it has been "slugged."

MR. YARBROUGH: Right. All of these products are under five percent alcohol by volume, yet you don't know where that alcohol is coming from.

MR. SHIVERS: It doesn't make any difference does it? Like you said earlier, alcohol is alcohol.

MR. YARBROUGH: Alcohol is alcohol unless it doesn't meet the standards of identity. Once you have determined standards of identity, it gets right in the middle of the tax issue as well as the distribution issue.

MR. SHIVERS: So we are worried about the taxing issue?

MR. YARBROUGH: We are first of all worried about determining what it is. If there is no beer left in it or if it is so small, then should it be allowed to be called beer?

MR. SHIVERS: But that's a taxing issue.

MR. YARBROUGH: Indirectly, yes, sir. It is not only taxes. There is a distribution issue. Beer can be distributed in places where distilled spirits cannot. So it is not just a tax issue. We are trying to avoid the monetary issue, but we have to determine what it is first. It can be sold in grocery stores and convenience stores if it is beer.

MR. SHIVERS: Maybe we ought to revisit the whole alcoholic beverage tax structure.

MR. YARBROUGH: That would be for you, Mr. Chairman, to make a recommendation that I'm sure you would have a lot of comment on.

MR. SHIVERS: I can see eyes rolling across this room right now.

MR. YARBROUGH: Because the nature of the product itself is somewhat controversial, we have tried to keep the tax issue out of it.

MS. MADDEN: Has the public risen up? Have you gotten calls?

MR. YARBROUGH: We have gotten some complaints. I believe Mr. Garza said that Mr.

Hacker, who is the spokesperson for the Center for Science and Public Interest and Dr. Peter Cressy, who represents DISCUS, were on Nightline or some news program.

MR. GARZA: They were on a cable network Friday evening debating the issue back and forth.

MR. YARBROUGH: There have been a number of public interest groups that have said they are concerned about this. Again, many of them are concerned that the appearance of these products might lead kids into favoring them, since they are also so sweet - there is a lot of sugar in them. We are trying not to address that issue; instead just determine what they are first. Then if we need to look at those other issues too, in terms of distribution, it will give us a better feel for what we are talking about.

MR. SHIVERS: I understand the tax issue and I understand the areas of permitted sales. But in terms of fooling kids into drinking these things, I'm not sure I buy that argument. That's up to the retailer not to sell them to kids in the first place.

MR. YARBROUGH: That is true. We brought some samples and set them up for the commissioners last month. I think Mr. Steen had a question about what the product really is. It depends on the store. A store with plenty of shelf space will segregate those. Some convenience stores where there is tight shelf space you may have one product right next to the Coke display, right next to the beer display.

MR. SHIVERS: I understand the problem. If the industry doesn't find some solution along with the regulatory authorities, the state legislature and the Congress is going to find a solution for them.

MR. YARBROUGH: That is what we are urging, that we work together to find the solutions in the best interest of everyone so that we don't have to do it for them.

MR. SHIVERS: You don't have a rule that you need us to vote on?

MR. YARBROUGH: We do not. We hope to hold ATF's feet to the fire to come up with a rule by late summer. They have asked us what we think should be in that rule if they are to draft it. It would be much better to have a uniform rule nationwide than one state by state. We did make very clear, as did all the other state administrators, that if ATF chooses not to act or delays unnecessarily, we think this is a very serious issue and we would not be afraid of drawing up a rule and getting that process underway.

MR. STEEN: Mr. Yarbrough, at the last meeting I was looking at that "Mike's Hard Lemonade," which if you just look at the front of the label that is all it says, "Mike's Hard Lemonade," correct?

MR. YARBROUGH: Right. You actually have to look at the back to find that it is beer.

MR. STEEN: And it looks like lemonade. Someone told me after the meeting that it actually tastes like lemonade.

MR. YARBROUGH: After you left, we opened that sealed one and smelled it. You can smell the alcohol content, but if it was very cold it would probably taste like a strong lemonade.

MR. STEEN: Where do you think it is headed, in terms of labeling on that product?

MR. YARBROUGH: We asked them to be clearer that this is actually an alcoholic beverage because some of the people complained only Texas requires it to say "beer." My response to that is that it would be fine with me. You can still put "beer" very small if you put "flavored malt beverage" somewhere more prominent. Most have done a good job, but others are seen to hide the fact that this is an alcoholic beverage, as we showed you last month. We will be trying to work with those to encourage them to voluntarily make that clearer to people. We think that much can be done on that. It meets the standard of our rule. We can't just turn that down because it does meet all the necessary requirements, so they are legal. But I think working together we can get it more prominently displayed to the public that this is an alcoholic beverage. Even in the commercials you have to listen very carefully to determine it is an alcoholic beverage. Some of those have changed due to pressure and are doing a better job in their broadcast commercials.

MR. SHIVERS: That is certainly the simplest approach for the manufacturer. Just put "alcoholic beverage" on it and they can call it anything they want to, so long as it prominently says "alcoholic beverage" and it has so much alcohol in it.

MR. YARBROUGH: I think your definition and theirs might be two different things. That is one of the contentions.

MR. STEEN: You know we had a discussion about labels when we had some lewd labels. What was the name of that one that had that label?

MR. YARBROUGH: The Bad Frog Beer.

MR. STEEN: Is that one gone, do you know?

MR. YARBROUGH: Mr. Bright and I were talking about that the other day. We haven't seen that in the market place recently. I'm not sure but that our arguing over it didn't give it more advertising than it could have ever bought. They were in the business of selling labels as opposed to selling beer.

MR. STEEN: We had this discussion because we are ultimately responsible for what happens out there in the market place. I was concerned that these things get approved and we as a commission never know about it.

MR. YARBROUGH: We have been looking at that much closer because you asked us at that time if there was anything that appeared to be controversial to bring that to you before we approved it. That is the reason I brought up the hard root beer today. I haven't even seen it yet and it may clearly say that this is an alcoholic beverage. We have seen a backing away from things that appear to be egregious. There was a period there where it seemed that people were just marketing outrageous labels. That seems to have subsided for the time being. It seems to go in waves, so I'm sure at some point in the future we will be addressing that issue again.

MR. STEEN: I sort of feel that way about "Mike's Hard Lemonade." It is being sold out there right now, and we learned about it after the fact.

MR. YARBROUGH: It never even crossed our radar screen. When we looked at it the feds had already approved it; it didn't look controversial. A lot of it will be how it is marketed, how it is advertised when you look at it, and they look at hundreds and hundreds of products every week. Nothing jumped out at us. It is amazing the number of products the lab sees every week and those are only the ones that we test. When we look at some of the wines and so forth, we simply see a label. We never see a product behind it. On the beers and spirits we do get actual samples of any new product and we look at those. It may be that we get numbed somewhat because of the sheer number of products. That one didn't seem to us to raise any issues when we first got it in. After the fact, we began asking some of the questions as you did. Who is it being marketed to? How is it being displayed? ATF has as much concern about that as they do about what is in it. If they are marketing this to kids to get them started, then that's a separate issue from just approving the label. We don't find that out usually until after it gets into the marketplace. The thing about the new flavored beers that we have seen in the news clips is in talking to Wall Street analysts about these, an average of 30 to 40 million dollars per product is the advertising budget to advertise and promote these products. They are big budget, big dollar promotions that are coming on line and we are going to be looking at them very closely.

MR. SHIVERS: Questions for Randy? Thank you. It was a good presentation. Anything else Mr. Garza?

There is no public comment. No one signed up for it. I am informed by Mr. Bright that we have no need for an executive session today, so if there is nothing else to come before the commission, do I have a motion to adjourn?

MS. MADDEN: I so move.

MR. STEEN: Second.

MR. SHIVERS: The meeting is adjourned at 2:54 p.m.