

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

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: Allan Shivers, Jr., Chairman and John T. Steen, Member. Staff present: Doyne Bailey, Administrator; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License & Compliance; Greg Hamilton, Chief of Enforcement; Rolando Garza, Director of Resource Management; Denise Hudson, Director of Fiscal Services and Charlie Kerr, Internal Auditor. Present to receive certificate of service: Sylvia Cobos, Laredo. Public comment was received from: Mike McElhaney, Governor's Office of Budget & Planning; James M. Greaves, Beverage Marketing Technologies, Inc.; Steve Shaw, Attorney; David Duran, HEB; Wade Spilman, Wholesale Beer Distributors of Texas; Ellen Ward, Texans Standing Tall; Esther Dieckmann, Presa Coalition for Legislative Advocacy; Terry Micek, Coors; B.J. Hassell, MADD, Heart of Texas Chapter; Kristin Dunham, MADD; Dean DeSoto, Community Alliance for Traffic Safety; Frank Gugudan, Community Alliance for Traffic Safety and Tom Mobley, retired DPS Trooper.

The agenda follows:

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

1. Recognition of agency employees with 20 or more years of services.
2. Approval of minutes of February 28, 2000 meeting; discussion, comment, possible vote.
3. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement;
 - c. discussion of strategic plan; and
 - d. discussion of management controls.
4. Consider petition submitted by the City of San Angelo, Texas, under §109.35, Alcoholic Beverage Code, requesting permission to prohibit the possession of open containers and public consumption of alcoholic beverages in the central business district as defined by the map attached to the petition; discussion, comment, possible vote.
5. Fiscal stewardship of agency; discussion, comment, possible vote.
6. Consider proposed amendment to marketing practices rules allowing for certain types of electronic advertising by alcoholic beverage manufacturers; discussion, comment, possible vote.
7. Consider publication of proposed amendment to 16 TAC 45.106 relating to sweepstakes and games of chance; discussion, comment, possible vote.
8. Consider proposed amendment to 16 TAC Chapter 50 to require participation in seller-server training by all licensees and permittees authorized to sell or serve alcoholic beverages at retail; discussion, comment, possible vote.
9. Public comment.

Announcement of executive session:

10. Executive session:
 - a. the commission may go into executive session to consult with legal counsel regarding items 6, 7, or 8 of this agenda pursuant to Texas Government Code, §551.071.

Continue open meeting.

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

The meeting was called to order at 1:41 p.m. by Chairman Shivers.

MR. SHIVERS: I will call this meeting of the Alcoholic Beverage Commission to order on Monday, March 27th. It is one forty-one in the afternoon.

I'd like to take this opportunity to recognize an employee who has been with this agency for 20 years. Sylvia Cobos has been at the Laredo outpost, starting first in our ports of entry program and now in our enforcement division. She is well regarded for her dedication, loyalty and hard work in that role.

I also want to recognize Agent Eddie Torres who brought her here today.

Would you come up, please?

MR. SHIVERS: Congratulations.

MS. COBOS: Thank you.

MR. SHIVERS: Minutes of the February 28th meeting were mailed to the commissioners. Are there any changes, comments or discussion on this?

MR. STEEN: I move they be approved.

MR. SHIVERS: Second. All in favor?

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed?

Administrator's report? Mr. Bailey, please, sir.

MR. BAILEY: Mr. Shivers, briefly under discussion of staff reports, I've asked Rolando

Garza to give you a quick overview of a contract that TABC is entering with Texans.

MR. GARZA:

Chairman Shivers and Commissioner Steen, the document that I set out before you earlier refers to a *Compact With Texans*. By way of background, Senate Bill 1563, which was adopted last legislative session, calls on all state agencies to show added work in the areas of customer service standards and performance measures.

Each agency, including TABC, has been directed, under this legislative bill, to develop a compact, which essentially outlines our services, our programs and our activities and tells every citizen in the State of Texas who may have an interest or a need to do business with us, how they can contact us; how they can file a complaint; where we are reached, whether it be on the web-site, by phone, e-mail or in person.

This document has been sent over to the Governor's Office of Budget and Planning and to the Legislative Budget Board for their review and their input. Once it is adopted, the final document will be a part of the agency's strategic plan which is due June 1st.

One of the key points behind this whole initiative is that state agencies, such as TABC, develop means of providing services that are accessible to citizens across the State of Texas. We've been asked to take a look at our operations in terms of our office locations; communications with citizens through publications; if we do have a web-site, how accessible and how easy is it for people to navigate through that web-site and how people can reach this agency, essentially, 24 hours a day, seven days a week.

This document is the beginning of a long project. It requires each state agency to appoint a customer relations representative. Mr. Bailey has appointed Claire Myers to fill that role for this agency. Unfortunately, she's not here today to lay out some more of the background on this document. She will play a key, pivotal role throughout this whole process.

Secondly, and just of equal importance, is the fact that this agency will have to report on June 1st of each even numbered year on its success and progress made in developing performance standards with regard to customer service, and that's what this document is. It tells people who we are, what we do and how they can contact the TABC.

I'd be glad to answer any questions for you.

MR. STEEN: On the customer relations representative, what will she end up doing?

MR. GARZA: Claire Myers, Mr. Steen, will eventually be the focal point where any citizen in the state or anywhere in the country, for that matter, wanting to reach TABC, has a question, they will know which department to go to, trying to navigate their way through whatever bureaucratic maze we may have, Claire will be called upon to be that steward and guide those people to the proper source to get that information in a quick manner. Hopefully, her position will be such that she will become so familiar with the agency and all its operations that she will be able to be on-line and be accessible to people at all times when they have questions about this agency.

MR. STEEN: How will that impact on her existing responsibilities?

MR. GARZA: I would defer to Mr. Bailey on that, but I would hasten to add that I think it's a golden opportunity for someone new to the agency to be able to develop some good background and to be able to gain some invaluable knowledge in every program that this agency offers. I think she's up to the challenge. She's indicated to me she's very interested in pursuing this.

MR. STEEN: Thank you.

MR. SHIVERS: Is she going to have some responsibility for web-site design and what we do on that, because that seems to be the central source of...

MR. GARZA: She will be an important player in making sure that information we develop is accessible on the web and that we also use the input we get from customer surveys, Mr. Shivers, to make sure that we develop and enhance those web-sites and those programs as we receive that input from citizens that tell us they want to see some other information on that web-site that we, heretofore, may not have put out there.

MR. SHIVERS: Great. Thank you.

Mr. Bailey?

MR. BAILEY: That's all.

MR. SHIVERS: Mr. Steen, do you have any questions on the monthly reports?

MR. STEEN: No.

MR. SHIVERS: I do. Chief Hamilton, this may fall under your department. In the first

page of the monthly reports - "Average % Increase in Knowledge of SAVE Program Content."

MR. HAMILTON: Yes, sir?

MR. SHIVERS: How do you derive those numbers? Particularly, how do you derive the goal?

MR. HAMILTON: First of all, when we started doing this, one of the things we do is we take samples from the field and we average the score before the individual has the class and then we take an average afterwards. One of the things that causes this low to be up and down is that it depends on the individual that's doing the teaching. Sometimes the kids play with the officer, as far as taking the exam, act like they don't know anything. It's a matter of building rapport with the kids before the class starts. Some kids go in and they just blow the test off. In other cases, kids will take the exam and they are serious at the beginning of the course. Is that what you are talking about as far as the low of 97 percent and then the low of...

MR. SHIVERS: I think you are answering my question. I was really interested in how you came up with the numbers.

MR. HAMILTON: It's a sample. We are taking samples throughout the State of Texas. We get our agents to go out and give a pre-test and a post-test, and we will sample one different area.

MR. SHIVERS: Do you track this by the agent that's doing the instruction?

MR. HAMILTON: Yes, sir.

MR. SHIVERS: How did you come up with the 50 percent goal?

MR. HAMILTON: When we first started this, that was something that the LBB suggested that we do.

MR. SHIVERS: Thank you.

Ms. Fox, on the original licenses processed within 14 days, it looks like we are slipping a bit from last year. What's going on there?

MS. FOX: We had one month, the month of November, of which we only processed 89 percent within 14 days. Generally, we process anywhere from 96 to 98 percent within 14 days. In our division, the workload is such that we have

no spare time, so when we have a month of when everything that could go wrong, goes wrong - there's death in the family; there's jury duty that takes an employee out for two weeks; there is extended illness - there's no one there to do that work except those people, so when we have a collective absence, they just get behind and there's no other way to catch up. So, that one month of 89 percent causes that to be below the 95.

MR. SHIVERS: What's the training time required to have someone familiar enough with the work to be able to do this?

MS. FOX: On original applications?

MR. SHIVERS: Yes.

MS. FOX: About a month. We do hire temporary employees to do jobs when we find ourselves vacant in positions, to do filing and things that don't require extensive training, of which would be wasting most our time because they would be gone before we could utilize them.

MR. SHIVERS: Okay. Thank you.

Anything else for anybody, John?

MR. STEEN: No.

MR. SHIVERS: We have a petition submitted by the City of San Angelo under Section 109.35 of the Alcoholic Beverage Code requesting permission to prohibit the possession of open containers and public consumption of alcoholic beverages in the central business district as defined by the map attached to the petition. Mr. Bright?

MR. BRIGHT: Mr. Chairman and Mr. Steen, this is a petition, as you said, under Section 109.35. The City of San Angelo wishes to issue an ordinance that there not be open containers in their central business district. They have passed a resolution to that effect which is in the materials before you. They have given us a plat or diagram as required by the statute of what their central business district is. That comports with the statutory definition of central business district. It's my judgment that they have met the legal requirements for you to approve this petition.

MR. STEEN: I move approval.

MR. SHIVERS: Second. Any discussion? All in favor?

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed? Okay, San Angelo now prohibits open containers downtown.

Fiscal stewardship of the agency. Mr. Bailey?

MR. BAILEY: Mr. Shivers, as you will recall, in the early part of February, we received a letter from the Governor's Office with a list of questions that were intended to help us focus on whether or not we, as an agency, and you, as commissioners, are doing the things necessary in order to provide good fiscal stewardship. What we did was took those questions and prepared a response to each and gave them to you in the last commission meeting with the intent of you looking those over, and we will answer any questions that you have. I don't particularly have anything else to add to that. I can tell you that Denise Hudson is here and she's prepared to answer any questions that you have in that regard. She and her staff did a good part of the response.

MR. STEEN: I didn't have an opportunity to look at it at the last meeting. I've looked at it now, Mr. Bailey, and it's good work. I appreciate the thoroughness of it, but I do have a couple of questions.

MR. SHIVERS: Go ahead.

MR. STEEN: Under the category, "Do We Have A Good Budget," you referred to a budget committee, and I just wanted to know who's on the budget committee?

MR. BAILEY: What we have been doing for the past several years is, essentially, the executive staff - that's myself and Randy, Lou Bright and each of the division directors - meet. Oftentimes, we have representatives from the departments in if there is a particular issue. We review how much of our budget we have spent. We consider requests from the agency for purchases of everything from some piece of computer equipment to some other outlay, and the committee considers that and makes a decision about whether or not it can be afforded and it's in the best interest of the agency and then we go from there.

Our experience has been, of course, about the only money we have that can be negotiated is salary lapses, money where a vacancy has occurred and the salary has not been paid, and that gives us some money each quarter to consider. We just had our quarterly budget committee meeting

last week, and it was the most bleak that we've had in a long time. We are staying within all of our caps and are able to meet our necessities.

MR. STEEN: Also, looking at this part on the budget, and it just brought it to mind that...what's our annual rent fee here?

MR. BAILEY: Statewide?

MR. STEEN: Yes, I guess, statewide. I was thinking particularly of headquarters.

MR. BAILEY: Denise?

MS. HUDSON: I don't have the exact number with me but, as I remember, it's about 1.2 million for statewide rent.

MR. STEEN: What's the history of why we are renting here? I guess at some point we were in state offices. How did that happen, Mr. Bailey?

MR. BAILEY: There are others here much better suited to answer that than I am, but I can tell you briefly that the agency was invited to leave their state office space and find space that they could rent. The agency located this building. At the time, the market in Austin was at its best, and they got a very good deal here. At the time, this building housed nearly all TABC staff. Since then, of course, a good number of people have been transferred to the Comptroller's Office and bingo was transferred to the Lottery Commission, and so the Austin component as been reduced, as you know, over the last 10 years or so. As that has occurred, we've given up space in this building, and they have been able to rent it to other clients for a better square footage rate. We are also, of course, in the process in Austin now of having a market that's at its worst for the renter, and we did ask for, and was approved in the last legislative session, an increase for rent at this building.

MR. STEEN: When does our term end here?

MR. YARBROUGH: August 31st.

MR. BAILEY: August the 31st, and we've been in negotiations with the person who owns the building to continue to stay here.

MR. STEEN: There is no one talking about this agency going back...

MR. BAILEY: Yes, there was quite a bit of talk about it. Before the last legislative

session, as you know, there was some effort by the General Services Commission to plan and have plans for a huge state office complex at the old Austin airport, Mueller Airport. We were considered to be prime tenants for that state office building. In the last legislative session, that seemed to be vetoed. There is no current discussion about moving us into any state...in fact, to my knowledge, there is no state office space available for an agency our size.

MR. SHIVERS: Randy, help me. When was this agency last in a state office building?

MR. YARBROUGH: I believe we moved at the end of 1977 or the first part of 1978, if memory serves me right. We were in the Sam Houston Building prior to that...

MR. SHIVERS: Then you were in the Jefferson Building.

MR. YARBROUGH: We were in the Jefferson Building until we moved here, some eight or nine years ago.

We checked before this came up to see if there would be other state buildings on the market or if GSC had space available and were told that there simply...unless the airport property became a state complex area, that there was no other state space available.

In general, the legislature has looked at agencies that were either self-funding or were special funds or were not general revenue funds, to move them out of state buildings into rentable space because it wouldn't affect the GR. At the present time, they haven't moved many of them back in, as the capitol complex, even though they are building and building, those agencies seem to be expanding into that space, as well as the legislative staffs and support agencies.

MR. SHIVERS: As I recall, six or seven years ago, just before this agency went through sunset the last time, we had a proposal to purchase this building.

MR. YARBROUGH: We had a signed contract to purchase this, but the legislature chose not to fund it at that time.

MR. SHIVERS: For Mr. Steen's benefit, that contract purchase price was at a little less than a third of the current asking price for this building.

MR. YARBROUGH: Sometimes we may find ourselves penny-wise and pound-foolish.

MR. STEEN: What's our rental rate right now here?

MR. YARBROUGH: Our renegotiated rate is about 24 dollars a square foot, which is about average for commercial office space in Austin. In addition to trying to stay here, we looked around. We could find very little office space available for the amount of lease that we needed, and if we found anything, when you added the cost of the move to that, we found it was the most cost effective to try to renegotiate and stay here.

MR. STEEN: What was our rate before it was renegotiated?

MR. GARZA: Right under 15 dollars. About 14.92. It will go up to about 22.50 the first year and then 24 dollars after that.

MR. STEEN: Under this heading, "Are We In Compliance," it said for the first quarter of Fiscal Year 2000, we were below the budgeted FTE cap by 17.2 FTE's with 510.3 full-time equivalents. Could someone comment on that?

MR. BAILEY: Most of those vacancies were a result of the peace officers in the agency. As you know, as vacancies occur, we hold those vacancies until we have enough so that we can hire a group of 10 or 15 at a time. We put them through the new agents' school and then send them to their assignments. As a matter of practice, at any given time, we may have several agency vacancies. The other vacancies occur as a result of people resigning or retiring and the lapse between the time of their final day and the time we get the position filled.

MR. STEEN: So there is nothing unusual about that figure?

MR. BAILEY: No, sir. In fact, I think, in comparison, we do pretty well with other state agencies. I will point out to you, and I think you may remember from our appearance before some of the committees in the last session, the financing authorities are very keen on an agency maintaining vacancies. They feel like if we are able to maintain a vacancy, we don't really need that position, so there is always close scrutiny on every agency as to vacancies that have remained open.

MR. STEEN: Under this title, "Do We Have A Strong Internal Control System," it looked like there were three or four questions that weren't answered under that heading.

MR. BAILEY: Are we getting good independent information, etcetera?

MR. STEEN: Did I miss something or we just...

MS. HUDSON: Those were more related to the internal auditor's role and position, and I believe Charlie was working on something else to answer some of those questions.

MR. STEEN: Mr. Kerr?

MR. KERR: Do you have a question, Mr. Steen?

MR. STEEN: There are four questions....

MR. KERR: These would have been submitted by me. I don't know if they didn't get submitted at the same time this was submitted, but we did answer these questions.

MR. STEEN: Would I be putting you on the spot just to ask you just to address those questions or would you rather do it...

MR. KERR: No, not at all.

MR. STEEN: Okay.

MR. KERR: What is it in specific that you...

MR. STEEN: There were four questions. "Are we getting good independent information about our operation? Is our internal auditor charged with looking aggressively at our operation? Does our internal auditor report findings directly to board/commission? Do we follow up on audit findings and other reports to institute improvements?"

MR. KERR: Yes, these are all pretty standard questions that, actually, you would be more aware of than I would because you are the one that receives my report, so you have to sort of determine whether or not you feel like you are getting that independent information. I have a very good relationship with management here, but I also know, and Mr. Shivers and I have talked before as far as the independence that I have here, and it is sufficient that I can do any studies that I need to do, and the information that you get, I feel, is the information that you need to determine whether or not this agency is actually achieving its goals and being good stewards of the money that it is appropriated.

MR. SHIVERS: Except for the administrator, are you not the only employee of this agency that reports directly to the commission?

MR. KERR: Correct.

MR. STEEN: Do you feel comfortable with the amount of communication you have with the commission?

MR. KERR: So far, the openness is there. I could communicate with you more if you wish that. I sort of leave it up to you on how much communication you really want to have with me. The lines are always open, though, and I encourage you to communicate any problems you have with me or any concerns that you have, and I would be happy to look at those and talk with you about those. We are limited to a one-on-one discussion or an open meeting discussion like we are doing now.

MR. SHIVERS: You are always available to come see us in person, should we ask you? In Mr. Steen's case, to come down to San Antonio, you are happy to do that or come to my office?

MR. KERR: Sure. I submitted you a letter that I commented on this letter from the Governor's Office, and the fact that I thought this agency did a very good job as far as its fiscal responsibility. We have a strong fiscal services department, and we have a high integrity of management here at TABC. That, in itself, is much more assurance that you will have that good fiscal responsibility and be good stewards of the appropriations that you get.

MR. STEEN: Mr. Bright, if he found something that was sensitive that he wanted to talk to the commission about, are those his only two choices? He could talk to us one-on-one or appear, like he is now, in open session. Is it permitted that we can talk to the internal auditor in closed session?

MR. BRIGHT: I don't believe so. I looked at that question at some point a year or so ago, and I don't believe the law has changed since that time. There are seven specific kinds of topics in which you can meet in executive session. Discussion with the auditor is not one of them, nor does discussion with the auditor fit in one of the others. For example, it is not a discussion about personnel. It's not a discussion about litigation or contract negotiations.

Prior to September 1st of last year, you could, of course, meet with any member of the staff in what was called a staff briefing, as long as you just asked questions and the staff responded to that. Our act said that a meeting was not taking place in terms of the Open Meetings Act. That's no longer possible. Now, it is not possible for two of you to sit in the same room, except in a posted public meeting like this and exchange

information with Mr. Kerr.

MR. STEEN: Thank you. That's all the questions I have.

MR. SHIVERS: Thank you, Charlie.

MR. BAILEY: Mr. Steen, is there any other information that we can provide you in regards to this? I had intended to have the staff draft up a letter that the commission can respond to the Governor's Office and tell them we had the discussion. Is there anything else you...

MR. STEEN: I guess one of the things we haven't discussed is, looking at the governor's letter, he recommended that we periodically ask ourselves and the chief executive officer the attached questions about your agency's fiscal condition. He recommended to review these matters at least quarterly would not be too frequent, considering their importance. I'm just asking the question - how often should we do this?

MR. SHIVERS: You might want to take a section and do them every month. Do them all quarterly. Divide them into thirds.

MR. BAILEY: We can include it as part of the administrator's report under one of those listed items, if you prefer?

MR. SHIVERS: Why don't we do that. Just divide them into thirds and we will do one every meeting and that way we will...

MR. STEEN: It will be on the agenda if we want to talk about it?

MR. SHIVERS: Yes.

MR. STEEN: Okay.

MR. SHIVERS: We will review it every quarter. We will get through all of them once a quarter.

MR. STEEN: I think Chairman Shivers at the last meeting said that once we finish this discussion we ought to somehow report back to the Governor's Office. That's the letter you are talking about?

MR. BAILEY: Yes, sir. Mike McElhaney, from the Governor's Office of Budget and Planning, is here. Mike, would you have any comments you'd want to make on this?

MR. MCELHANEY: Our letter was intended to get you to thinking what you should be looking at and to be aware of your responsibilities, because we know when you are first appointed and we have a session over at the capitol, you don't get into too much detail with it. It's one of three letters that you are going to receive from us. The next one will be on the strategic planning process, itself, and how you are getting involved in the strategic plan and those types of things.

I will say that I've got 10 other agencies that I monitor. Your agency went into more detail in answering all these questions than any other one that I had. It was apparent that a lot of work has been going on here. Your agency is the best one that I probably have as far as fiscal stewardship and as far as always getting things submitted to our office on time. Your budget is clear the first time, answering the questions that we ask. This is one of the rare ones that I have that I don't have to spend quite as much time on as some of the others that are smaller but much more troublesome.

MR. SHIVERS: Do you have TCADA?

MR. MCELHANEY: No, sir. I've got DPS. They are pretty big, and they cause quite a few problems all the time. As many people as they have in their fiscal department, we still have to ask them two or three times for the same thing to get the right answer.

Your *Compact With Texans* that we received, I reviewed it. It was the nicest looking of all of them, the colors and all that. We are going to send you back a letter saying that we do think you could improve your compact in one area only. That would be with respect to waiting times for customers. You didn't go into much detail as far as how long it takes for an average person to get a license. That was one of the main aspects of the bill that came out that generated all of this, was for customers to have a better idea of how long they were going to have to wait at each agency before they get assistance. Other than that, it was a good *Compact With Texans*, very good.

MR. SHIVERS: I'm sure Ms. Fox will give us that information pretty quickly, won't she?

MS. FOX: The reason it wasn't included is because our licensing process is unlike a lot of state agencies in that we don't have control over that process the entire time due to the fact that they have to go to the Comptroller's Office, the city, the county, the county judge and run an ad. That's not a process that we have any control over, and it's dependent, solely, based on the amount of time the applicant puts into that process and how quickly they

do it. So, that was the reason. We have a rule of thumb, though, generally it's four to six weeks, but that can be a lot less or it can be a lot more, depending on what city you are in.

MR. MCELHANEY: At least we were looking for averages, if nothing else.

MS. FOX: We do have that information in the application instruction book, but we didn't feel it was appropriate at this time to put it in the compact because it does vary so much and we have no control...

MR MCELHANEY: That is one of the items on our checklist that does have to be addressed in your compact before we will be able to approve it. LBB may look at it differently than we do. Each office will separately approve the compacts, independent of each other. That's our comment so far.

MS. FOX: I think they had indicated to us it was okay not to have that time frame in there, but we will go back and work on that.

MR. MCELHANEY: We have independent thoughts on that.

MR. SHIVERS: Is this monthly review of a third of these questions every month...

MR. MCELHANEY: I think it's a good idea to do it that way. I also do receive each month your monthly reports that you get. I appreciate Denise sending these to me because it does help me monitor your budget and seeing if anything's going to pop up that wouldn't surprise up. We don't like surprises. That's the last thing we want up there.

MR. SHIVERS: Neither do we.

MR. BAILEY: Gas per gallon and rent. We will continue, then, with that.

MR. SHIVERS: Thank you very much.

Consider proposed amendment to marketing practices rules allowing for certain types of electronic advertising by alcoholic beverage manufacturers. Mr. Bright?

MR. BRIGHT: Mr. Chairman and Mr. Steen, this item is in response to a petition that has been presented to us that we engage in rule making. The petition is presented by a company called Beverage Marketing Technologies, Inc. who are represented by Mr. Jim Greaves here today and their attorney, Steve Shaw.

They have a program that Mr. Greaves will explain to you and demonstrate to you. Essentially, as we understand it, the program is that there is an interactive computer program placed in retail accounts. The purpose of that is to provide consumers who walk into that grocery store, wherever it is, information about the specific brands of wine that are provided in that retail store.

We have discussed this in the past with Mr. Greaves and Mr. Shaw. We believe that it violates several provisions of our rules as presented. They are now asking you to alter those rules. The staff opposes that request, and the basis of that opposition has been presented in page one and two of my letter to you of March the 10th and, of course, in my letter to Mr. Shaw explaining what we would say today. Mr. Greaves and Mr. Shaw, of course, will make their presentation, and there are possibly other members here in the audience who want to speak about this.

The heart of our objection is this. While Mr. Greaves' company is not otherwise engaged in the alcoholic beverage business, they accept money from members of the manufacturing tier and the response of that acceptance presents particular kinds of advertising and marketing materials about the brands of wine that are made by those manufacturers being offered in that retail account. The issue there, then, is that through the agency of a third party, Mr. Greaves' company, the manufacturing tier is providing an advertising benefit for retailers.

We have a statute and a rule that governs the value of that, how much they can provide to any specific retailer and, secondly, we have a rule, and it is that rule that defines the term inducement that says that members of the manufacturing tier cannot provide advertising in any shape that benefits a specific retailer as opposed to retailers as a class.

What troubles us is that in this structure and this business proposal that Mr. Greaves has, that that advertisement is tailored specifically for that retailer. That's a nutshell of the basis of our objection to this proposal.

Your options at this point are this. You may agree with the staff and believe that this is a bad idea and reject this proposal, in which case, under the terms of the Administrative Procedures Act, we are obliged to explain that to Mr. Greaves in writing and explain our reasons, therefore, in writing. You may decide to explore this further. We do not, at this point, have a rule amendment drafted. If you decide to explore this idea further, think it is worth further discussion, if not absolute enactment, let me suggest that the appropriate thing to do about that would be to instruct the

staff to conduct whatever meetings with industry groups and public groups that might be interested in this, bring a rule amendment back to you for publication in the *Texas Register*.

MR. SHAW: Steve Shaw, speaking for Mr. Greaves. I clearly disagree with the staffs' position as it relates to this as what I describe as nothing more than an advertising specialty which we have dealt with in many instances before the commission. I believe that the code already provides for this very use. I believe it can, and I believe Mr. Bright has said so in his letter of March the 10th, that we could adopt a definition only of the way advertising specialties are dealt with in the code that would allow this product to be used in Texas.

It's already being used in numerous states. Pennsylvania, New Hampshire, Washington, Utah, Michigan, California, a number of states, and Mr. Greaves can go into that if you would like to hear from him.

The way the technology has progressed has made this a fairly unique device, certainly unique to me, and I've seen a number of things in the 26 years that I've been before you. It is now the fact that a person could sit out in the parking lot of the local package store and obtain all of the information that Mr. Greaves is about to show you. The way that we interpret the rules, he can't come inside the store and get the very same information. With that, Mr. Greaves being an expert on how the device works, we'd like to at least have the opportunity to show you what it does. It has an information base that has absolutely nothing to do with alcohol sales. It is very varied in the information it provides and I believe, because of the information that it provides, and he can tell you what customers get from the machine, you will see it actually provides about 50 percent of its time in general information, such as recipes, cooking with different alcoholic beverages, as opposed to just being a promotion of a particular retail product.

With that, I turn the program over to Mr. Greaves if you would be kind enough to let him to at least demonstrate it briefly.

MR. GREAVES: Unfortunately I can't show the audience and you. I'm setting up to show you.

I'm the president of Beverage Marketing Technologies. We developed this software a number of years ago, and we've rolled it out to most of the other states in the country, including most of the control states and it is found to be legal in all of those states.

The machine stands a little taller when it's in an actual store setting. I just brought a smaller version of it. The machine plays full-motion video, what we call the attraction for customers. When a customer comes up and wants some information about wine, for instance, you can sort by type of grape, country of origin, matching food with specific wine. I'll go through a couple of sorts real quick.

At this time, the Choice Master's speaking kiosk was demonstrated to the commission.

MR. SHIVERS: The machine does this for liquor and beer, also?

MR. GREAVES: It does it for wine, liquor and beer, depending on what's carried in what store. There is a party planning function. If there is a cocktail party, you come in and plug in the various features about it, in terms of how many hours the party is going to last and it prints up a list. There is a printer attached to this. It got banged up coming out of the airport today. I'm not sure it's working. It wasn't working a few minutes ago.

You can search by food. You can find quick and easy recipes. This is a very popular feature. People do not know what wine goes with what food, and they are fairly intimidated about it. All these wines, again, are in that store, but they come up randomly, so there is no favoritism shown among the brands. It's just information.

MR. STEEN: Mr. Greaves, could I ask a question?

MR. GREAVES: Sure.

MR. STEEN: Who's paying you to do this?

MR. GREAVES: Here, we have an example of Calloway (sp). Calloway (sp) pays me 50 cents per month per store to list their products in that store. I don't care what products are in that store. Whatever products are in that store, my company calls on them. It's basically just the service of providing the information, much like a shelf label, only it doesn't fall down. It doesn't get lost. It's interactive. It can be updated overnight whenever there's new labels and information about that.

MR. STEEN: What happens if a manufacturer refused to pay you?

MR. GREAVES: His product is still in the store and is found in the store and it does come up, but it doesn't have this enriched information about it. So, we won't know what awards and ratings it's got because we don't have that

information available to us.

MR. SHIVERS: What does the store pay you?

MR. GREAVES: The store doesn't pay me.

MR. SHIVERS: What does the store get paid?

MR. GREAVES: The store doesn't get paid, either. There is no financial transaction between myself and the store. The store looks at it as a customer service, and the producers look at it as a way to get information to the consumer. Fifty cents is obviously not a lot of money. It's well below your 87 dollar rule. The way we are able to make money is there are a lot of products in the stores.

MR. SHAW: Chairman Shivers, that's somewhat confusing. In Lou's letter, it was his understanding there was rent paid. It's in the second paragraph of his letter, and that's not correct. I believe that would be a problem, but that is not what occurs here. That may be where you got that idea. It's in his March 10th letter.

MR. GREAVES: We do not pay the store. We are not owned by anybody in the three-tier chain. We are a private company. The stock ownership is not with anybody like Seagrams or any of the distributors. We are truly an independent entity that puts these things in stores all across the country. We are actually talking to Canada right now.

MR. SHIVERS: Do you program from a central server?

MR. GREAVES: Yes. It's programmed centrally. It's tied in by the internet. This machine will call out at night. It just finds out that it's got paper in it and that it's working, and if there's any new information about Mondavi Chardonnay, if it gets a new award and rating, it's automatically downloaded. Right now, they have to print all those cards up and distribute them to the people who then stick them up in the store and they fall down.

Really, all we are doing is the exact same thing. We are just doing it electronically. The machine is owned by us. We keep rights to the machine.

MR. SHIVERS: Do you have capability of putting prices from other...say someone wanted to survey the prices in the store that this machine was in, compared to prices, say, across the country for the same product. Do you have the

capability of doing that?

MR. GREAVES: No. We probably have the capability of programming it, but that's not our intention. Our intention is to tie it to the retailer's program. That's why we tie it to what's in the retailer's inventory.

MR. SHIVERS: I know several retailers who have expressed an interest in having it that way so they can say, "We have the lowest price available for this product and you can look it up for yourself and see."

MR. GREAVES: We don't do that.

MR. SHIVERS: And they will say, "If ours is higher, we will match it."

MR. GREAVES: That's not what we are here for. In a matter of fact, I have David Duran from HEB with me today who is one of my potential customers and the person who sort of got this started in Texas, and he very much looks at it as a customer service in trying to provide detailed information to the consumer in a very confused marketplace, where there's over a thousand products in the store. How does that consumer get that information? Again, the retailer doesn't own this machine, so we are not giving this machine to them. We are simply getting the floor space and, in return, we are able to...

MR. SHIVERS: Do you pay the retailer for floor space?

MR. GREAVES: No. I don't pay the retailer and the retailer doesn't pay me. It is truly revenue neutral. The information is available out on the web, it's just that we can bring it into the store where the person is making a decision. Like I said, we have been doing this for several years in Pennsylvania and many, many other states and many chains.

Mr. Bright's second point about that it's advertising for a specific retailer, I take issue. In effect, it's just an electronic sign. By definition, any sign is for a specific retailer, because it's going to go into that specific retailer's store. I feel that it's exactly like a shelf talker. It's just that it's cheaper and it's more efficient to distribute the information this way. Steve and I have spent a good deal of time talking about it. While we are a new media, because of what's going on with information technology, we really feel we fit right within your rules, but I understand Mr. Bright's point that we are different, but that's information technology these days.

MR. STEEN: Once you set these up, you don't do any advertising, as such, on them?

MR. GREAVES: It depends on whether you consider...

MR. STEEN: What you are showing us, you are just getting information.

MR. GREAVES: That is correct. The only advertising, per se, would be the video spot which runs like a TV commercial. It just cycles through, and there are a variety of different...here's one playing now. You can listen to it. I'm sorry not everyone else can see it. Then, that plays until the customer comes up and asks it. If customers aren't interested in this, they just walk right by it. It's really to satisfy a customer's desire to learn something about the product that we put it in here. Again, it's a confused marketplace, over a thousand products, and it's just very difficult for the consumer to get any information. All of this information is available to them on the web. They can go out and do this on their own, but we make it available to the consumer right at the point of purchase.

MR. STEEN: As the store changes it's inventory, how does that work?

MR. GREAVES: Because we tie into the store's inventory system, into their back office, we pull out the UPC codes - I don't want to bore you with technical stuff - but we pull out the UPC codes of what's in inventory and so, therefore, we know what's in inventory and we match our data base, which has over 18 thousand products in it, automatically to that. So, we don't have to come down and reprogram every machine every month. We do it through the internet based on the store's inventory.

MR. SHIVERS: Mr. Bright, your objection is that you think this is contrary to 102.07, specifically, to furnish, give or lend money, service or thing of value to a retailer?

MR. BRIGHT: That is correct. Bear in mind that paragraph (b) of that provision says that they may furnish advertising specialties up to...the statute says 78 dollars. Pursuant to your regulatory authority to raise that, Rule 45.117, I believe (c), says that that may be up to 87 dollars worth of value per brand per year, and that the limits for different brands cannot be pooled to overcome that 87 dollar limit. In that respect and the staffs' understanding, the advertising specialty, which we have defined as a thing designed to promote alcoholic beverages that may have a utilitarian function, the advertising specialty is not what Mr. Greaves has called the enhanced or enriched material about a specific bottle of wine. It is the computer stand, kiosk itself, and the program that goes with it. That, we suggest, is worth more than 87 dollars per year.

I think the heart of our objection, however, is more closely that this is certainly advertising material. While we may describe it as just facts about the wine, of course, a good deal of advertising dollar is spent to give you the facts about our product, so we think that means advertising. It is, as Mr. Greaves has so carefully explained to you, specifically tailored for that store and therein lies the heart of our objection. It is one thing to spend a lot of advertising dollars saying, making information available to consumers, "Drink Lou's lager because it's good and good for you." In light of our three-tier relationships, we believe it's something else again to say, "Drink Lou's lager at Doyne's Bar and Grill," or to tailor my advertising so that it is specific to Mr. Bailey's bar and grill. That's the heart of our objection here.

MR. GREAVES: But any sign that would be in the store would be specific to that retailer. That's what we are. We are just an electronic sign. We don't feature any one particular store. We feature the store that it's in.

MR. SHIVERS: The retailer doesn't get the benefit from the manufacturer. Mr. Greaves does.

MR. GREAVES: Correct.

MR. SHIVERS: Does he not?

MR. BRIGHT: No. I would disagree with that. Let me say it in a better way. I believe the staff would disagree with that.

MR. SHIVERS: I assume one can make the argument that the retailer receives benefit indirectly from the manufacturer through this.

MR. BRIGHT: That's correct.

MR. SHAW: That's the nature of all advertising. If it says, "Bud Beer" - in fact, there's a fallacy in that argument. The eight-foot Budweiser sign that's in the liquor store, you think that thing costs 87 dollars? I mean, we have stretched these rules so far to accommodate different circumstances...

MR. SHIVERS: I was going to comment on the geek that thought up this 78 dollars, plus inflation, plus this and that, but I won't.

MR. BRIGHT: Let me make a comment about that. First, I think the staff would disagree that any sign is specific to a particular retailer, and by that I mean that you are quite right, every member of the manufacturing tier spends a

tremendous amount of money on signs. They put those signs in various accounts and those signs are transferrable from account to account. Mr. Greaves has very capably made sure that the presentation that his product offers is specific to that store and that's different. That's different than saying, "Drink Lou's lager because it's good and good for you." I think we would disagree with that point. Of course, Mr. Shaw brings out the point that big signs cost more than 87 dollars. Hopefully not, and hopefully when they do and when they are advertising a liquor product, that we catch them at it and we say unpleasant things to everyone. Recognize that the provisions of 102.07(b), for reasons which are obscure to me, do not apply to the beer industry.

MR. SHIVERS: Perhaps some members of the audience should suggest to the legislature that the audit function of this agency has been removed to the Comptroller's Office and these calculations are more properly done by those people.

MR. BRIGHT: That sounds like my cue to sit down, Mr. Chairman.

MR. SHIVERS: I think I need to know more about this. I'm not ready to make a decision on this one today.

MR. STEEN: I feel the same way. We can keep our dialogue going...

MR. GREAVES: Yes, it could go on. I agree.

MR. STEEN: How many states are you in now?

MR. GREAVES: Twenty, and orders for....this is a brand new set of technologies. MCR is our technology partner. They've put these in the store and they maintain them, all paid by me.

I can't get back to the fact of who we are guarding here. It seems to me that this is for the...so the people of Texas can make an informed decision at the point of sale. There is no favoritism involved here. It's strictly an information-based media. Yes, one could say that it's advertising because any information about a product is advertising, but the whole design, and I happen to be a retailer by background, but the whole design was so I could get this information to the consumer and let him make the decision. All the wines in the machine, they come up randomly. There's no favorite spot. It's as fair as we can make it.

MR. STEEN: If you were allowed to do this, and once you had these in the stores, what

if Coors came to you and said, “We want to pay you extra to actually run a little ad for us.”

MR. GREAVES: We only have two types of ads. We only have this video ad and the yellow button ad. I don’t know what else they could do, but if there was a separate program going on, as I understand it, they would have to get clearance, anyway. We are just the media of the delivery. It would still have to get cleared...

MR. STEEN: Are you doing that in any of the other states where you are running a little beer ad or something on these?

MR. GREAVES: There are beer ads, yes. We are not currently, but if they came to us with a program which was legal and appropriate, we would run it for them. It’s a matter of what the states want. In Pennsylvania, they have the right to turn down any ad that goes in the machine, as would any of the retailers. If Mr. Duran did not like a particular ad, he might have thought it was risqué or something, which has happened in Pennsylvania...they didn’t turn it down, they just sort of looked at it, then we take it out. Again, our whole mission is to educate the consumers.

MR. SHAW: We just think this is a vast improvement, and rather than relying on the stock help at the wine warehouse to get your information, that this is so much simpler. We come to you asking prior approval. We are not in the State of Texas. HEB is here to observe. We ask for your approval, and we think it can be done with a simple change in the definition of advertising specialty. It’s taken us a number of months to get this far. We greatly appreciate your help in sending us back to the staff or however you would like to direct us.

MR. SHIVERS: Is Mr. Duran here from HEB?

MR. GREAVES: Yes. David, stand up.

MR. SHIVERS: Why don’t you tell us what advantage this is to HEB and why you think it’s not any different from what you get from other alcoholic beverage wholesalers.

MR. DURAN: Quite honestly, we’ve been looking at doing something like this for quite some time. We’ve been trying to find a source of information that would allow our customers to make educated decisions at the point of purchase, so we’ve been toying with signage. We’ve had consultants come in and look at all kinds of signage in the department. We’ve used a number of

different publications and actual signs on the shelves. We've even talked about electronic shelf tags that would have information, so we've got a team of people working today on touch screen kiosks throughout the stores that actually give information at different gathering points, like the front-end where customers are waiting and may be looking for information about services around the city or recipe ideas that they can get at different points around the store. We've been working on things like that. This just happens to be one that's ready to drop into the store. Because of that, we are obviously very interested in a way that we can get something to our customer right away that allows them to learn about the different types of grapes. Obviously, from playing around with the screen, you can see that just about anybody who has any kind of question about a type of wine or a type of food and wine pairing, the information is in there. That's the real advantage for us, is that we have an automated way of helping a customer. It's an electronic wine steward that anybody can access at any time.

MR. SHIVERS: Thank you.

MR. GREAVES: This machine isn't what drives his selection as to what products go in the store. It's exactly reverse. We are not cramming something down that David has to buy what's in this machine. It's exactly the reverse. David makes the buying decisions just like he always does, and we simply tie into it automatically. In a matter of fact, I don't even know - I could find out - but I don't know what decisions he's made, what products he's put in the machine. It's all done programmatically because of the UPC codes. It's all linked to UPC codes. He will change and continue to change his product mix all the time. We are not forcing anything down on the industry one way or another.

MR. DURAN: Frankly, we are not as interested in it being specific to us as we are in just that a customer can walk in and access any type of Cabernet Sauvignon or any type of Chardonnay and be able to research it and get some information that helps them make that decision.

MR. SHIVERS: Thank you. Mr. Spilman, would you like to speak on this issue?

MR. SPILMAN: The staff was kind enough to send us a memorandum and a letter proposing, say, a rule change in this regard and asking for our input. So, I'm here in that regard, to provide some input. Certainly, as the program was explained in the letter, we concur with the judgment of the staff, itself. Additionally, as explained, we believe that it probably violates the cooperative advertising prohibitions in the statute and the rules. I understand there was some correction here today made that there is not

going to be any kind of rent from the retailer, which may cast some different light on it. I don't understand what the retailer is going to pay. It was my understanding it was going to be a fee from the manufacturer to carry this service, and I understand that continues. That there was some kind of rent of the machine going to be charged to the retailer, which was my understanding, from Mr. Greaves testimony, that they don't contemplate getting anything from the retailer. Is that what you now have said?

MR. GREAVES: That is correct.

MR. SPILMAN: That was a little bit different than explained in the letter. Obviously, we think it needs to be explored considerably further, and ultimately and finally whatever rule is suggested or proposed needs to be looked at very carefully in the light of statutory prohibitions against illegal inducements from the manufacturing wholesale level of the business. We've spent a year and a half talking about these marketing practices as, of course, you remember, Mr. Chairman, and...

MR. SHIVERS: An area of which I dearly love and am so fascinated with.

MR. SPILMAN: Some of those things we had a false impression about when we started. We all came together and our whole purpose was to make it understandable for everybody so we could understand what the program contemplates, to see if, in fact, it is consistent with the statutes and the rules. I think there's considerable and further investigation that needs to be made here with reference to exactly what kind of a rule is contemplated for a change, because we don't, any of us, want there to be things that are not easily understandable and easily followed; the instructions that everybody has about them are concise and all can follow them. So, that's our testimony here. Certainly, as proposed, as we understood it, we concur wholeheartedly with the staff that it couldn't be done under the existing rules, so it would, in fact, require some kind of a change. What that change is going to be, everybody here has to eyeball it, I'm certain.

MR. SHIVERS: It's apparent there was some original confusion on what the proposal was, and I think it bears more information. Mr. Bright?

MR. SPILMAN: And, of course, the rules may be different with reference to wine, liquor and beer.

MR. BRIGHT: Let me apologize and rend my garment about making a mistaken statement. When I drafted this letter, I had a clear memory in my mind of

Mr. Greaves, in one of our several meetings, telling me that on occasion the retailer would pay for the privilege of having it. If that's in error, mea culpa. That does not, in my view, change the legal analysis here. Probably the most important issue that we deal with here is this idea of whether or not it is an inducement and ought to be an inducement for a member of the manufacturing tier to provide advertising that directly or indirectly benefits a specific retailer as opposed to a class of retailers. In terms of what might or might not violate that rule, the idea behind that rule, it does not matter if the advertising benefitting the retailer is paid for by the retailer or not, which is why our code, in similar situations, uses words like, "furnish" instead of just saying, "give" or "rent." Let me try to ameliorate my sin by saying that it doesn't, in my mind, at least, change my legal analysis.

Let me go on and say something about cooperative advertising. There is a great tendency in situations like this to look at a proposal, as Mr. Greaves and Mr. Shaw have made, and say to ourselves we don't see that the fabric of western society will unravel if we allow this to happen or construe our rules and our code such as to allow it to happen. One of the things that I've learned the hard way, since I've been here at the Alcoholic Beverage Commission, is that when you draft a rule or when you interpret your rules so that Mr. Greaves' program is all right, that decision has consequences about what we must then, in consistency, say about other programs that we think are not so all right. By that, I mean, we think, and one of the clear impressions we had from that whole marketing practices exercise that we went through, was one of the primary means by which an upper tier member can and often will ingratiate themselves to members of the retail tier, and use that over time to overcome the independence of the retail tier member, is through advertising budget and through advertising efforts. If we begin to carve exceptions to that rule, I'm not sure that we are sure we know where that's going to lead. That's an argument that I'm usually reluctant to make, but you should know that it's an argument that has bitten me in the past.

MR. SHIVERS: I'm not sure, but what we have carved so many exceptions to these rules, that we have not created a jigsaw puzzle already. Having said that, let me reiterate what I said last month. This whole area involving the internet, whether it's purchasing or advertising or communications, is something that the industry and the staff needs to take a much closer look at - and the legislature, for that matter. It's obviously with us today and only going to expand its presence in our lives.

I, for one, need to understand how this potentially erodes the independence

of the retailer and how it violates the code. I'd like to ask you to work on that and help me understand that a little better between now and the next time we bring this up.

MR. BRIGHT: Okay. Would you like a rule drafted?

MR. SHIVERS: I think we have to solve the problem of whether you think it violates the code, first, which you obviously do, and I need it explained to me so that I can understand it. So far, I'm a little unclear as to whether I understand it or not.

MR. BRIGHT: Remember, Mr. Chairman, that you have vast interpretative authority. That is, when you pass a rule...

MR. SHIVERS: Until some judge grabs it.

MR. BRIGHT: Whatever else you can do, or cannot do, with regard to your rules, you can define terms, like what an advertising specialty is. We can certainly grapple with that beast. A rule like this would have to, at a minimum, I think, make clear that this is not an advertising specialty within the meaning of 102.07. Our rule would then also, in some way, I think, have to make clear that this is not what we have traditionally thought of at this agency as cooperative advertising, contrary to our Rule 45.110. I don't think that those are undoable and, if you'd like, we can certainly do that.

MR. SHIVERS: If someone wants to provide an advertising specialty to a retailer that is less than 78 dollars individually but, in the aggregate, you may have a box full that's tied to a super bowl promotion or whatever, we'd probably approve that, would we not?

MR. BRIGHT: I'm not sure exactly. That manufacturer...

MR. SHIVERS: Key rings, little football players, something.

MR. BRIGHT: That manufacturer can give things of low value in the liquor industry, but only up to one dollar in the beer industry, can give things of value to...

MR. SHIVERS: Suppose you give them 500 dollars worth of them. Individually, they are worth less than a dollar.

MR. BRIGHT: To consumers.

MR. SHIVERS: Yes.

MR. BRIGHT: What we think that word...

MR. SHIVERS: Why is this different because it's one unit that thousands of consumers touch?

MR. BRIGHT: There is a phrase in the statute that says this. "Permittees covered by subsection (a) of this section may not pool or combine their dollar limitations to provide a retailer with advertising specialties valued in excess of the maximum permitted under this subsection." What I think we think that means is this. That if you have a thing that is worth more than what the legislature says they can give them, you can't justify that excess value by saying, "Well, that thing does more than advertise this one brand, because I get 87 dollars worth of value of that thing from this brand and another 87 from that brand." We think clearly that's what pooling values means. However, they can give them a basket full of stuff and say, "This thing advertises Brand A and it costs 25 dollars. This thing advertises Brand B and it costs 25 dollars." On down the line, none of those things add up to 87 dollars and they advertise different brands. Don't look at me that way. I didn't invent this.

MR. SHIVERS: I'm not sure but there's another way to look at it.

MR. BRIGHT: There may well be and that's the point about me stressing, I suppose, meeting after meeting the vastness of your regulatory authority. That is, you may...

MR. SHIVERS: You always scare me when you say that.

MR. BRIGHT: You may define these terms subject to two criteria. Number one, does it comport with the objectives of the act when considered as a whole and, number two, do you have some reason for that statutory definition? Those are pretty broad criteria. I suppose I need to say that these are in the specific and in the general troubling issues and, at least from my perspective, probably 90 percent of the trouble we deal with on a day-by-day basis. How do we, having the obligation to make this language mean something, an obligation that we can't just shrug off, make sure that that doesn't do an unnecessary injustice to Mr. Greaves or create a system in which the language, over time, becomes meaningless? We try to do that through the way we recommend these rule things to you, whether it sounds like *Alice in Wonderland* or not. Sometimes it does to me, too.

MR. SHIVERS: I need to think about this in greater depth and length based on what we've heard and seen today. Mr. Steen?

MR. STEEN: I agree with you. Mr. Bright, when you were talking about your understanding that the retailer might be paying something, Mr. Greaves, you seemed to be wanting to say something else.

MR. GREAVES: I would like to tell you that I am turning down retailer dollars. I'm not. That's just our general plan. If the retailer wanted to pay me, that's good revenue to me. I share Mr. Bright's feeling on that. If that isn't germane to the discussion, if there is no inducement to the retailer, which is the issue, and that's where we part company. If I was to sell this to them, that would be...it just isn't going to happen.

MR. STEEN: Are retailers paying you in other states?

MR. GREAVES: In some states, small retailers pay me, but in the grocery business, that's not the way grocery works.

MR. SHIVERS: That's your primary target market for this?

MR. GREAVES: My primary target market is the grocery stores because they don't have anybody who can answer any of the questions. In the smaller stores, they do have people. Now, whether they are qualified or not, or how effective they are, is another issue, but our primary target is the grocery stores across the country. Again, Mr. Duran will make his decision as to what to buy. It is revenue neutral to me.

MR. SHIVERS: Would you like staff to draft us a proposed rule? Would that be helpful, or do you want to think about this for a while?

MR. STEEN: I'd like to think about it, read up on it.

MR. SHIVERS: Can you provide us some more reasoning on it? Think about your legal arguments a little more and help me understand the violation.

MR. BRIGHT: That would be a labor of love, Mr. Chairman.

MR. SHIVERS: I'm sure.

MR. GREAVES: If you would like to speak with me, I can come down at another time.

MR. SHIVERS: Thank you very much. I'm sure we can individually communicate with you either by e-mail or by telephone, if we'd like.

Let's go on to item seven. Consider publication of proposed amendment

to 16 TAC §45.106 relating to sweepstakes and games of chance. Mr. Bright?

MR. BRIGHT: This item is on your agenda in response to a petition that we engage in rule making to amend 45.106, and the staff believes, at least, you ought to publish this. Here's why. Our statute says for both liquor and beer, in different places, that members of the manufacturing tier can provide gifts to consumers of essentially unlimited value, if that gift is offered through the agency of a sweepstakes that is nationally conducted, and nationally conducted means simultaneously offered in 30 or more states. Historically - and we have a Rule 45.106 which pretty much replicates that statutory command and the conditions contained in that statute.

I think since the time this statute was adopted, the way that we have interpreted the word, "sweepstakes," we've interpreted it to exclude processes by which the winner is determined by some exhibition of skill or knowledge. We have said a sweepstakes should be something wherein a prize is awarded solely by chance. The requestor in this matter brings to our attention that that's not necessarily what the word, "sweepstakes" means. When I look at the dictionary in my office, I see that's right. One of the several definitions offered by sweepstakes is that it is a contest or a competition. The Third Court of Appeals tells us that if a statute is ambiguous and we may pass a rule interpreting it if the statutory word or phrase may be interpreted by reasonably well-informed people in two or more different senses. So, we think that the word, "sweepstakes," and whether it does or does not include competitions, is subject to a bit of debate.

Having said that, we have the legal authority to pass it, in my judgement, and raises the question of whether you should pass one. As I've said in my letter to you and, I believe, in my letter to our friends to the industry, that is a question that the staff is interested in hearing comment about, and so we would recommend...I prepared a draft of a rule. That draft, essentially, adds a new paragraph (a) and a new paragraph (b) to this rule. We recommend that you publish it so we may begin the debate.

MR. SHIVERS: Mr. Spilman, would you like to comment on this?

MR. SPILMAN: Yes, sir. Again, as Mr. Bright advises you, he has notified the industry of this proposal back in early March, and suggested that we might want to appear with reference to it. We do disagree with the staff in this regard. We think any such rule, as this, even as you propose to publish it, ought to be one that all can agree on, by looking at it, the plain language of the rule,

as to what exactly is to be submitted.

It was generally our impression, from talking to some of the members of the staff, that they really contemplated that this would...the kinds of things this would involve were not as extensive as we suggested might be available under such a rule without further explanation. I think if the desire is really to be certain that we are proposing for publication a rule, if adopted as published, that there will be some certainty about what is permissible activity under such a rule, then there needs to be some further work done on this proposal before it is published.

Do we really contemplate that this will permit mud wrestling contests, battle of the bands, comedian contests, male and female body building contests - just what all do we contemplate - wet t-shirt contests, nationwide, in order to promote the business specific to a given licensed premises? So that is our trouble in looking at it, is what is it we are contemplating authorizing here? As has been stated many times, and even today, the unintended consequences of the kind of rules that are passed - assuming it is clearly within your authority to do it, as has been suggested by your counsel - whether or not it is advisable to do it or not, we would question, and, certainly, not without more specificity. Just to say, you know, any kind of contest or anything based on skill or competition - it's pretty clear what everybody has contemplated that sweepstakes have meant as the statute was put into place and as the rules have been put in place with reference to sweepstakes. Everybody thought it was a random selection. Nobody thought it was any kind of a contest based on skill or athletic abilities, or whatever, to be judged. I think what is really being contemplated here by the requestor may be one thing, but what the rule might be opening it up to, is uncertain. This is our concern.

I applaud this administrative agency for having in its rules a situation where you have a hearing, based on whether or not a rule should be published, then if you determined it should be published, then you have a hearing where the public is free to come in and speak to you. I think that kind of caution and great care will bring about good rules that everybody understands exactly what they authorize and permit.

So, it is our position that you need to do a little more work here with the requestor. We were able to get a letter which the requestor tendered in December of 1999, in which they asked that both the statute and rules be amended. Apparently, there has been some considerable discussion since December of '99, and they have determined that this could be accomplished maybe by just amendment to the rule without the necessity

of changing the statute. It is interesting to note that the requestor did request that the statutes be amended, too, in Texas. That statute that's on the books has been interpreted by this agency, to this point, at least, until this consideration, that sweepstakes were a certain kind of definable terms, albeit some dictionaries have said it can also include skill or contest, not based on random selection, as I hear it, and I think that is correct.

The whole question is is what are we opening it up to, and that's our reason to be here. We are here in response to the request to provide input if we thought it was appropriate. We do think it's appropriate. We think it would be appropriate for the commission to say, "Okay, we are going to publish a rule." Tell us what that rule will authorize so we will know, with some particularity and specificity, what is permissible in Texas if such a rule is adopted. That's what we are asking. Take that additional time to see if we can really understand and specify with particularity what it is you are being asked to authorize and limit it to that, certainly, for your staff who are asked to enforce it; the industry who is asked to follow it, and the public who is asked to understand it. Any questions?

MR. SHIVERS: Thank you.

MR. STEEN: Is Mr. Siegel here today?

MR. BRIGHT: I beg your pardon. I should have said this. Mr. Siegel asked me to ask you for your forgiveness for him not being here. He works in Chicago, and he just couldn't make it here today.

MR. STEEN: Mr. Bright, why did he write the letter? What did he specifically have in mind?

MR. BRIGHT: I apologize to you. He represents a member of the manufacturing tier, I think, in the distilled spirits industry...

MR. STEEN: It looks like on his letter it says, "Re: Jagermusic and Other Related Contests."

MR. BRIGHT: I think that's a distilled spirit. He had asked Mr. Johnson, our director of marketing practices, if that was permissible in the State of Texas, and he said, "No, given the way we have interpreted the word sweepstakes to date." Mr. Siegel asked us to engage in rule making about that. He did, in fact, ask us to change the statute. As I explained to Mr. Siegel in my letter, which you have a copy of, we can't do that. We do have this authority.

Mr. Spilman is right. There are interesting, possibly troubling, questions presented by this. For example, we have a primary interest in preserving the three-tier system, as I've talked about. If, in fact, we know because of prior applications to Mr. Johnson and others of us here, "May we do this in the State of Texas?" - some of the contests that we have said are contests and not sweepstakes, heretofore, have been things like battles of the bands. If, for example, we have a band contest that's going to provide a number of bands playing, and that's sponsored and funded by an upper tier member, could and should that happen on the premises of a specific retailer? Probably not. We have said in other context that that is providing a thing of value to a retailer. We have a rule that interprets that - our public entertainment facility rule - and I believe that would be banned by the inducement rule.

Would this rule, as we propose it, present such a threat of violations of that rule that the rule that we propose is a bad idea? We don't know the answer to that question. Can that problem be dealt with by our other rules, as we have done? Remember, for example, Rule 45.110 says these provisions apply notwithstanding any other rule. We don't know the answer to that question, and the kinds of things Mr. Spilman suggests should be discussed, can be discussed either before we publish it or after we publish it, but it's the kind of discussions that publication of a rule invites.

We also have other interesting questions. For example, we know in other states Guinness offers a well-publicized essay writing contest, by which you can win a pub in Ireland. Is that a threat to public temperance? We don't know.

MR. SHIVERS: I think we get the picture. Why don't we think about this one a while? We have two choices. We can either send this back to the drawing board, rethink the proposed rule, or we can publish it and draw on it during the period of publication, as long as it takes us to settle it. What's your pleasure, Mr. Steen?

MR. STEEN: Mr. Bright, how do you feel about that, about thinking about this a little bit more before we publish it?

MR. BRIGHT: I don't have any particular objection, and I don't think the staff would either. We have adopted an informal practice here of inviting concerned people to come talk to us pre-publication. I think we know who would be concerned here. We can conduct those meetings between now and some commission meeting in the future. We would then present this rule or

some version to you at a meeting and we'd fight out the wisdom of that rule at the publication stage. I think that's absolutely doable.

MR. SHIVERS: Let's hear from Terry Micek, briefly, please.

MR. MICEK: Thank you, Chairman, Commissioner. I'm here to agree with everything I've heard from counsel and Mr. Spilman, and that is you do have a bonafide issue in front of you as was explained. We request that you go ahead and publish so that that can be responded to.

Let me give you a good example. Coors Brewing Company is involved in many types of sweepstakes in all 50 states, simultaneously at once, and we've not had complaints on those. But, the sweepstakes is a random drawing, and that's what you currently allow. We would like to think, as you perhaps have watched on television, that we could have a sweepstakes where a winner would come to the Cotton Bowl and kick a field goal, and if they make it at 40 yards, they make a million dollars instead of 10 thousand. That's a contest within the sweepstakes, and to allow for progressive, non-harmful entertainment in the way of the sweepstakes, we think is a good idea, and we would like to have the rule published for comment or the amendment to the rule published for comment.

MR. SHIVERS: Thank you. Is there a motion to publish? Hearing no motion to publish, work to see if we can get a better rule to publish.

MR. BRIGHT: We will do that.

MR. SHIVERS: Comment period is open without publication.

Item number eight. Consider proposed amendment to 16 TAC Chapter 50 to require participation in seller-server training by all licensees and permittees authorized to sell or serve alcoholic beverages at retail. We seem to have quite a list of people here. Does everyone want to talk on this or have you come together in groups? B.J. Hassell?

MS. HASSELL: Good afternoon.

MR. SHIVERS: Before you start, Ms. Hassell, let me ask all the speakers...we've been here for about an hour and thirty minutes. Let's see if we can make this as brief as we can today.

MS. HASSELL: Do you want to take a break?

MR. SHIVERS: No. I think Mr. Steen and I both have appointments later this afternoon in our offices and we need to get back to them.

MS. HASSELL: Let me introduce myself. I'm B.J. Hassell, and I'm the victim services coordinator with MADD, Heart of Texas Chapter, which is located here in Austin, but my service area is 10 counties in and around central Texas.

Time allowing, I'm not going to go into the case load that I have, but I would inform you that I deal with a very tragic situation, being victims and survivors of drunk driving crashes. The last two that I've had, that are pending grand jury indictment here in Travis County, the alleged drunk driver has been proven in the investigation that they were both coming from bars. I would urge you to please publish this rule. It does say in here, "...in the interest of the welfare, health, peace, temperance and safety of the people of the state." From where I stand, I couldn't say it any better, so I urge you to do that, please. Thank you.

MR. SHIVERS: Thank you, ma'am.

MR. STEEN: In the course of investigating these cases...

MS. HASSELL: Police investigation?

MR. STEEN: You are looking into these cases, and you said that the people involved in these accidents had come from bars?

MS. HASSELL: Yes, sir.

MR. STEEN: Do you know anything about the people that sold the liquor to them?

MS. HASSELL: Were they server trained?

MR. STEEN: Yes.

MS. HASSELL: I don't know that. I do know that I've referred them to civil litigation, and I'm sure...one of the alleged drunk drivers did have insurance, one did not. One ended up in death, and the other, the health care cost of one survivor right now is two million dollars.

MR. STEEN: Could you find that out?

MS. HASSELL: Sure. On those two particular cases?

MR. STEEN: Yes.

MS. HASSELL: Sure.

MR. STEEN: Thanks.

MR. SHIVERS: Ellen Ward, Texans Standing Tall?

MS. WARD: Good afternoon. Texans Standing Tall is a statewide coalition of concerned citizens, task force groups, agencies and organizations who are seeking to reduce the current unacceptable levels of underage drinking. We are approaching this through policy approach, and those policies are intended to reduce risk and liability for all. You've already heard, and I'm sure you are well aware, of the consequences of underage drinking as it affects traffic crashes. There are lots of strategies to address this. Zero tolerance laws are intended to deal with that underage driver who is inexperienced, immature, especially vulnerable to the effects of alcohol, even in small amounts.

One of the strategies that is very highly thought of to reduce the underage drinking consequences is responsible alcohol sales and service. Studies indicate that especially when this is linked with effective compliance checks, that this is a very successful strategy. The Texas Alcoholic Beverage Commission has an outstanding reputation in that arena around the nation. We get calls constantly from other states wanting to know about the compliance process in this state. It's so well thought of.

Mandatory server/seller training also, in studies, has been shown to improve ID checking as a result of the training. Those responsible sales and server programs are more likely to be successful when they have a policy development component, focus on skills development coupled with active learning, and if they are implemented community wide. We know that when they are implemented on a voluntary basis, so often it's the outlets who are already the good citizens who participate. Voluntary implementation will allow more problematic outlets or those most likely to sell alcohol to minors to easily avoid training. So, for this reason, Texans Standing Tall certainly applauds TABC for continuing to improve the server/seller training and for considering mandatory implementation of these changes, mainly so that there will be a level playing field among retailers and a healthier, safer environment for our youth. Thank you.

MR. SHIVERS: Thank you.

MR. STEEN: Thank you.

MR. SHIVERS: Questions?

MR. STEEN: No.

MR. SHIVERS: Esther Dieckmann, who has given us, I believe, written testimony. Would you like to expand on that or add to it?

MS. DIECKMANN: Good afternoon, Mr Chairman, Commissioner Steen. My name is Esther Peralez-Dieckmann, and I am a member of the Presa Coalition for Legislative Advocacy in San Antonio, Texas. I thank you for the opportunity to speak with you this afternoon. On behalf of our coalition members from central and south Texas, I would like to share our comments about the proposed rule changes we are discussing today, especially those related to seller/server training in the State of Texas.

First of all, we would like to commend TABC for bringing all of the stakeholders in this issue together for some very positive constructive dialogue. It wasn't an easy task, and I think a lot of times we demand a great deal from our agents, from our enforcement groups. So, at this time, I would also like to recognize the fine work that TABC is doing all over the State of Texas, especially in our enforcement division under the direction of Gregory Hamilton.

I don't think anybody here today disagrees with the idea that we all share the same desire to seek changes that reduce risk and liability for the retailers and increases the health and safety of our community without compromising adults' legal right over the age of 21 to purchase and consume alcoholic beverages.

In general, we believe the proposed changes are a positive step toward increasing the effectiveness of seller/server training. We believe it is necessary and appropriate and to review and update this process and to bring the fees up to a level that is more consistent with today's economy.

In our research of the issue of mandatory seller/server training and after reviewing numerous studies, we find a great deal of evidence to support that mandatory seller/server training is an effective and necessary mechanism in preventing alcohol violations and reducing sales to intoxicated patrons and minors. However, we would like to clarify that the research shows mandatory seller/server training must be used in conjunction with increased enforcement and compliance checks for

maximum effectiveness of such programs. Education alone, while having an impact, is not as effective.

I would like to address concerns that have been raised about the burden that mandatory training places on some retailers. We appreciate the fact that mandatory training places certain outlets, such as those in rural communities, at a disadvantage, due to the distance from training centers. However, there are two important factors to illustrate why it is crucial to require such training, especially in these areas.

The misuse of alcohol is not confined just to urban areas. According to a report from the National Center on Addiction and Substance Abuse at Columbia University, which was commissioned by the U.S. Conference of Mayors and funded by the U.S. Drug Enforcement Agency, substance abuse problems of rural communities now rival those faced in bigger cities. The study shows that eighth graders in rural areas are 29 percent more likely to have used alcohol in the past month and 70 percent more likely to have been drunk in the past year. Past month alcohol use by seniors was also higher, and tenth graders in rural areas were more likely to have been drunk in the past year than tenth graders from larger cities.

In a similar study of National Household Surveys conducted by the Substance Abuse and Mental Health Services Agency, reveals that rural residents report a greater incidence of problems associated with alcohol use than do urban residents.

Another serious concern for rural communities is access to treatment and emergency medical response. Approximately one-fourth of the population in the United States resides in rural locations. The average citizen will require ambulance services at least twice in their lifetime. Delays in receiving care in sparsely populated areas puts citizens at greater risk of injury or death than those in urban areas. These communities often organize volunteer emergency response teams. However, since the 1970's, there has been a 42 percent decrease in the number of these volunteers.

Given the limited manpower and resources of TABC and other law enforcement agencies, given the increased rates of alcohol misuse in rural communities and limited access to emergency medical response and treatment, the burning question for us is can we afford to further jeopardize the health and safety of these communities by not requiring training of all establishments?

We recognize that there are conscientious retailers who are already

requiring such training of their employees. However, we understand that approximately half do not require such training. It is that majority that cause the greatest concern. We ask that you consider a rule requiring mandatory seller/server training of all licensed establishments in the State of Texas and that such training be accompanied by increased enforcement and compliance checks. Thank you for allowing me to speak. Copies of our sources are available to you upon request.

MR. SHIVERS: Thank you very much.

MR. STEEN: Thank you.

MR. SHIVERS: Kristin Dunham, MADD?

MS. DUNHAM: Hi, my name is Kristin Dunham and I'm a member of Mothers Against Drunk Driving. I come to you today to talk to you about the cost of this issue. I know that is a concern about the training and the costs that are going to arise from that. But, I want to talk to you about the cost of alcohol-related crashes in the State of Texas. They are at about 11 billion right now. That's seven billion in monetary and four billion in equality of life that people are surviving from that and living with now.

I know that this server training is not going to eliminate that, but I think it will make a dent in that. We need all the dents we can at this point in time to help bring that down, to help bring the fatality level down and the injury level down.

I'm a survivor of a drunk driving crash and, because of that, I speak to a lot of high schools and middle schools on a regular basis. I hear, firsthand, the ease that they have in getting alcohol. In middle school, sixth, seventh and eighth graders are coming to me and telling me how they can get alcohol and how they are getting drunk off of it already and that they know what it does. When you get up into the high school level where they are driving and they are out there more, they can go to a club and they can go to a 21 and older club and not have a problem. They know the spots to go and they know the spots not to go. If we can increase the strength on that side of it, with carding and with serving and being responsible, I think we can help lower that number of fatalities and injuries all around for everybody. Thank you.

MR. SHIVERS: Thank you. Dean DeSoto?

MR. DESOTO: Good afternoon, commissioners. My name is Dean DeSoto. I will try to

keep my remarks brief. I am the executive director of the Community Alliance for Traffic Safety in San Antonio, Texas. I am the executive director of this non-profit educational alliance, which has been a seller training program since 1991, if memory serves correctly.

During my career in transportation safety, I've had 16 years of progressive experience with the U.S. Department of Transportation, the National Highway Traffic Safety Administration, the Texas Department of Transportation, the Governor's Office, in the Clements' administration, and also the National League of Cities, the Texas Department of Public Safety and a myriad of state and local organizations. We are also licensed by the Texas Education Agency, the Texas Commission on Alcohol and Drug Abuse - I kind of say that carefully - and the Texas Alcoholic Beverage Commission for seller training.

Today, as a boy of 10, I remember one of the first books I read was the combined works of Aristotle and Plato, and I was taken by Socrates and a soliloquy about being the gadfly on the rump of society. In Texas, I think we would roughly interpret that as being a horsefly, but I won't say where that is.

I'm going to say Socrates made this point that always stuck with me - the unexamined life is not worth living. By examination today, the beverage commission is taking heroic steps and I'm really impressed with that. This thought has been a very intuitive and a very motivational thought for me for many, many years.

One has to take a look at this issue in the bigger picture. We are continually concerned by the issues of alcohol and misuse in our state today. In 1998, 57,645 Texans were arrested for drunk driving in our state. During the decades of the 1990's, we had approximately 190 thousand Texans arrested on a yearly basis for public intoxication, and we don't even have to talk about the minor problems that we have going on in all of our communities.

When contrasted with this, we have 39 thousand licensed premises in our state, so this brings to the simple person, which I am, that somewhere we are having illegal sales, either knowingly or unknowingly, wittingly or unwittingly, and we only trained 47 percent of the servers in the State of Texas. I think education is part of our answer. I know the beverage commission has been pro-active in these issues over the last 10 years that I've had an opportunity to work with you all. I think, to make this comparison or analogy, would be like to...when we have a licensed

premise apply for a license, we go through the procedures of having fiscal and legal and moral responsibility for the license. We cross all these “t’s” and we dot all these “i’s” to make sure that people know what they are doing when they are selling alcohol. That’s the very important thing to do.

That’s the same thing for automobiles on our roadways. With automobiles, we make sure it’s insured and inspected on a regular basis, and it meets all the federal and state guidelines, which there are books and books of those. The reason is because the automobile, when used responsibly, is very helpful to us. We also license the drivers of the automobiles because they are very important. They are the human factor. The part that needs to be licensed. The part that needs to know how to operate the vehicle properly.

Right now, we have voluntary training, and we are effective about 47 percent of the time, by my calculations. So, both with the licensed premise and the automobile, these are issues that we need to clearly look at and determine where we go from here. Of course, our agency is strongly in support of mandatory training.

Our non-profit agency has the distinction of the only program that has been called upon in civil court on three occasions to defend the program and the process of the commission. We have done this on these occasions and have been successful in all our cases that we have had to work with in those civil suits.

The suit that I personally testified was in Hays County, Texas. The plaintiff was trying to recover 2.1 billion dollars. On behalf of the premise that we were working with, they did demonstrate a good record, and they did do the right things. But, our success has been the result of hard work, continuity and tenacity, and we’ll continue this effort because we feel it’s the right thing to do.

One good piece of news, and I know you are going to hear it again and again today, is what can we do to provide training in the rural areas? Behind me, the lady in yellow, is Diana Mullins from the National Traffic Safety Institute. She’s the regional director for Texas, and she is already in the process of licensing her programs with the commission. She has 500 instructors statewide. She has 520 sites, if memory serves, statewide to provide seller training. Most of these are in small rural cities I’ve never heard of because I live in San Antonio, but I feel very confident in Diana’s ability and her staff to make this a reality for you or at least part of a reality.

Last year, you commissioners took time out of your busy schedules to attend some of the seller training programs in the state. I would like to take this opportunity to thank Commissioner Steen. He attended our program. Technically, you are a licensed server as you did pass your test, sir. I think it's really super that you would take time out of a very busy schedule to see what's going on in our state.

I ask you, in summing up, please give us the opportunity to train the other 53 percent of the sellers and servers who do not have the training. You will find that we are ready, able and committed to make an important difference. By continuing to work together, we will make a difference on the issues of DWI, public intoxication and, of course, our minors, which will continue to be a problem.

In my life, I've always enjoyed the thoughts of Will Rogers. So, to quote him in closing, "Good judgment always comes from experience, and a lot of that comes from bad judgement." Thank you for your time and consideration.

MR. SHIVERS: Thank you. Frank Gugudan?

MR. GUGUDAN: I'm Frank Gugudan. I work for Mr. DeSoto. Just a little bit about myself. I'm from Hawaii. I'm a transplanted Texan. The military did that. After 32 years in the military, I retired two years ago, to be exact, and one of my main jobs was to instruct. I have worked with literally hundreds of soldiers, counseling them with their drug and alcohol problems. I teach this course because it literally saves lives. I don't want to sound religious, but that's part of my business. Mr. DeSoto, I think, he missed his calling. He really is in the ministry and the mission because his entire program saves lives, and I really appreciate that.

I think the best way to share with you is to share the kind of comments that we get from the students. I count it a real privilege to be able to teach in San Marcos. Ninety percent of the students are college kids who you can't tell them anything because they know everything. Right? You want to hire them before they hit 20.

They come to the class thinking they know everything. After four hours, they put it in writing or they tell me - and I have an evaluation session at the very end. They go, "Wow, and I thought I knew everything. Boy, it was good to hear and learn all the rules that you taught us tonight to help us do our job better." That comes from not only college kids, but also the older folks who have come to that class several times.

In closing, I recently had students come up to me and say, "This is four hours?" I said, "Yes, if you are going to get certified in this class." "Well, I've taken a one hour class." I said, "Well, you can either leave now or sit for four hours and get a certificate." After the four hours, without exception, they have said, "Wow, there was a lot more to learn than just that one hour." We are here in the business to save lives. Thank you very much.

MR. SHIVERS: Thank you. Tom Mobley?

MR. MOBLEY: Good afternoon, Chairman Shivers and Commissioner Steen. It's a privilege to be here to speak on behalf of safety. I'm a retired state trooper. I've been in the business for 35 and a half years, and I've investigated accident upon accident where alcohol was a factor. The very first fatal accident that I investigated was east of Crosbyton, Texas, involved a drunk driver. I've been waging a campaign ever since against people who consume alcoholic beverages and then try to drive an automobile. I know that some of them probably got their beer or alcohol - back in those days, they got it from the bootleggers. When I first started out with law enforcement, bootleggers were quite prevalent on the plains. Everybody that could, sold illicit beverages. If we could train our servers and sellers to the point where they understand that they have an obligation to the rest of the public to turn loose a person out of their store that's sober, then we'll have a big step in the right direction. I appreciate the time you've given us and, hopefully, it will be of benefit to the State of Texas.

MR. SHIVERS: Thank you, sir.

MR. STEEN: Thank you very much.

MR. SHIVERS: We have received a letter from LaNell Painter and she asks that her letter be entered into the minutes of today's meeting.

"I am LaNell Painter, and I am writing you concerning the TABC meeting on Monday, March 27. I understand that one of the items on the agenda is the issue of mandatory seller/server training. I feel that this training should be mandatory.

"My stepson, Jeremy Painter, died in Austin in November of 1997 of alcohol poisoning because of irresponsible serving of alcohol.

"I am asking that you remember our son and please make the decision to

make this training mandatory.

“From my own investigation, I do not believe that bartenders school is enough training for someone to be responsible for serving alcoholic beverages. They can kill. We know.

“Sincerely, LaNell Painter”

Is there a motion or any discussion on the proposal? Mr. Bright?

MR. BRIGHT: May I be heard?

MR. SHIVERS: Please. Briefly.

MR. BRIGHT: If you are inclined to pursue this further, as you may well be, I've got two suggestions to make. First, I am not absolutely positive that that rule is what ought to be published. I would suggest that you instruct the staff, as you have in other rules, to conduct some discussions between now and your next meeting with the relevant people, at least, to come up with a reasonably accurate, or as accurate as we can, assessment of the impact that this would have on small businesses - one of the things that we put in our publication notices in the *Texas Register* - what would be the fiscal impact on the agency, itself. I think we can come up with something that would be a presentation for you and some more careful analysis...you know, we have all of our rules now pending for an amendment in Chapter 50, so there may be some more rule making that we would have to do to make this happen.

MR. SHIVERS: I'd like you to do that and include an analysis of the effect on 106.14 of the code.

MR. BRIGHT: I have some legal things to say to you, if you are inclined to hear them. I would like to say...

MR. SHIVERS: Why don't we include that with our further consideration on this? I'm not prepared to act on this today.

MR. BRIGHT: Okay.

MR. STEEN: So, it would be on the agenda for next meeting, Mr. Bright?

MR. BRIGHT: Yes, it would, unless, for some reason, the staff would come back to you and, with your concurrence, your individual concurrence, and say, for

whatever reasons, we are not able to make that presentation yet. I think that would involve some report as to why not.

MR. SHIVERS: I'm concerned about the language in 106.14(a). "For the purposes of this chapter and any other provision of this code relating to the sales, service, dispensing, or delivery of alcoholic beverages to a minor or an intoxicated person or the consumption of alcoholic beverages by a minor or an intoxicated person, the actions of an employee shall not be attributable to the employer if...". It's the "if." If we take away the "if," then you've essentially negated 106.14, I think, but I would like a little more analysis on that.

MR. STEEN: We can have that discussion in executive session, but I don't agree with that.

MR. BRIGHT: I'm sorry. I have things to say to you at some point in the future in executive session. One of the effects a mandatory rule would have would be that all members of the retail tier would be able to avail themselves of the restraint that is offered by 106.14. We call the defense a restraint.

MR. SHIVERS: Thank you.

Item number nine - public comment? Is there any additional comment? Hearing none, the commission will now go into a closed, executive session to consult with general counsel on agenda item number eight.

The commission convened in executive session at 3:37 p.m. and reconvened in open meeting at 3:50 p.m.

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

Is there a motion to adjourn? We are adjourned. Thank you very much.

The meeting adjourned at 3:50 p.m.