



## **COMMISSION MEETING MINUTES**

**March 27, 2006**

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, March 27, 2006, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

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

### **COMMISSIONERS**

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

### **STAFF PRESENT:**

Alan Steen, Administrator

David Alexander, Captain, Region 2

Jessica Arechiga, Data Entry Operator, Licensing

Linda Ashbee, Accounts Examiner, Licensing

Glenda Baker, Assistant Chief of Enforcement

Carolyn Beck, Public Information Officer,  
Executive

Robert "Hank" Blanchard, Lieutenant, Amarillo  
District Office

Craig Bobo, Sergeant, Wichita Falls Outpost

Lou Bright, General Counsel, Legal Services

Liza Castillo, Data Entry Operator, Licensing

Elaine Cheser, Accounts Examiner, Licensing

Carrie Coulter, Program Administrator, Licensing

Louis Dewitt, Jr., Agent, San Antonio District  
Office

Debbie Dixon, Director of Education and

## Prevention

Loretta Doty, Director of Human Resources  
Del Drake, Captain, Office of Professional  
Responsibility, Executive  
Latisha Estrada, Clerk, Licensing  
Jennifer Evans, Program Administrator, Licensing  
Jeannene Fox, Assistant Administrator,  
Executive  
Artie Freeman, Agent, Beaumont District Office  
Buck Fuller, Director of Compliance  
David Garza, Director of Homeland Security,  
Enforcement  
Diana Gonzalez, Assistant Director of  
Compliance  
Lizbeth Gonzalez, Accounts Examiner, Licensing  
Loretta Green, Accounts Examiner, Fort Worth  
District Office  
Mari Beth Hammond, Clerk, Licensing  
Amy Harrison, Director of Licensing  
Cindy Hart, Administrative Assistant, Licensing  
Gary Henderson, Enterprise Operations Team  
Leader, Information Resources  
Sandy Higdon, Accounts Examiner, Licensing  
Linda Jackson, Administrative Assistant,  
Executive  
Lorri Johnson, Accounts Examiner, Licensing  
Renee Johnston, Executive Assistant, Executive  
Jo Ann Joseph, Assistant Director of Licensing  
Shaun Jordan, Program Administrator, Licensing  
Charlie Kerr, Director of Business Services  
Salvador Moralez, Sergeant, El Paso District  
Office  
Jackie Morgan, Clerk, Licensing  
Audrey Navarro, Administrative Assistant,  
Licensing  
Carmen Nelson, Temporary Employee, Licensing  
Julie Nichols, Program Specialist, Licensing  
Debbie Niemtschk, Accounts Examiner,  
Licensing  
Jose "Joe" Pena, Auditor, McAllen District Office

Sonja Pendergast, Lieutenant, Dallas District Office

Jose Pineda, Accounts Examiner, Licensing

Khristi Polk, Accounts Examiner, Licensing

James Poole, Agent, Kerrville Outpost

Julie Ross, Accounts Examiner, Licensing

Santos Saldana, Program Administrator, Ports of Entry Headquarters

Dexter Saterfield, Accounts Examiner, Licensing

Teresa Shed, Accounts Examiner, Licensing

James "Sam" Smelser, Chief of Enforcement

Marc Solomon, Accounts Examiner, Licensing

Clifford Stech, Compliance Auditor, Waco Outpost

Tiffany Taylor, Data Entry Operator, Licensing

Lanatasha Thomas, Clerk, Licensing

Tammy Toney, Administrative Assistant, Licensing

Shara Tome, Administrative Assistant, Licensing

Roy Touchstone, Accounts Examiner, Licensing

Stacy Vasquez, Administrative Assistant, Licensing

Rod Venner, Deputy Assistant Chief, Enforcement

Cindy Vrabel, Administrative Assistant, Licensing

Bob Wallace, Compliance Supervisor, Region 2

Bobby Wright, Accounts Examiner, Licensing

Liz Wuehrmann, Statistician, Executive

***GUESTS PRESENT:***

Mark Bordas, Anheuser-Busch Companies

Rick Donley, President, Beer Alliance of Texas

Doug DuBois, Jr., Director of Membership and Education, Texas Petroleum Marketers and Convenience Store Association

Lori Gabbert, Budget Analyst, Legislative Budget Board

Alan Gray, Licensed Beverage Distributors, Inc.

Fred Marosko, Texas Package Stores Association

Jack Martin, Attorney at Law

Mignon McGarry, Republic Beverage  
Michael Mims, Manager, H-E-B  
Karen Reagan, Vice President, Texas Retailers  
Association  
Allan "Bud" Shivers, Jr., Former TABC Chairman  
Robert Sparks, Executive Director, Licensed  
Beverage Distributors, Inc.  
Tom Spilman, Vice President, Wholesale Beer  
Distributors of Texas  
Randy Yarbrough, Wholesale Beer Distributors of  
Texas

### **CALL TO ORDER**

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

### **2005 ALLAN SHIVERS, JR., AWARDS FOR EXCELLENCE IN PUBLIC SERVICE**

Chairman Steen announced how honored the Commission was to have Allan Shivers, Jr., TABC's former Chairman, in attendance to present the employee of the year program, which began in 1995 under Mr. Shivers' leadership. After Mr. Shivers retired from the Commission, TABC's governing board renamed the annual awards program in his honor in February 2003. The Allan Shivers, Jr., Award for Excellence in Public Service recognizes the outstanding performance and accomplishments of agency employees in the two categories of Commissioned Peace Officer and Civilian. Chairman Steen thanked the employees who took the time to submit nominations to honor their colleagues, and he thanked the agency's department directors for serving on the awards committee.

Mr. Shivers expressed appreciation for the Commission's kindness in inviting him to present the awards. Mr. Shivers announced that the winner of the 2005 Commissioned Peace Officer Employee of the Year was Sergeant Craig Bobo.

Mr. Shivers provided the following information about Sergeant Bobo:

Sergeant Bobo began his career with TABC in December 1987. He was assigned to Houston and attended the Harris County Sheriff's

Academy where he was the class president. Two weeks before graduation, he was notified that his first duty station would be Amarillo, Texas. After finding Amarillo on a map, he reported for duty in the latter part of March 1988 and quickly found out that “penny loafers” are not suitable footwear for Amarillo! Craig soon transferred to San Angelo and spent many years there until he became Sergeant in 1999 and accepted assignment in El Paso. Craig transferred to Wichita Falls in 2000 and has made it his home with his wife Monica and daughter Abby. He has a bachelor’s degree in Law Enforcement and Police Science from Sam Houston State University and holds a Master Peace Officer certification from TCLEOSE. During his 18 years with TABC, Craig has developed many meaningful relationships with the people he works with and is a “good neighbor” to the people he serves. His work in developing the agency’s field training program is a great example of his dedication to the agency and his willingness to serve. Craig is a great motivator in the office and is recognized as “The TABC” in the Wichita Falls area where he is well respected throughout the community.

Mr. Shivers then presented the star award to Sergeant Bobo.

For the Civilian Employee of the Year, Mr. Shivers stated that the awards committee came up with a tie vote. He announced the two Civilian Employee of the Year award winners, Loretta Green and Julie Ross, and provided the following background information:

Loretta Green was born in Powell, Wyoming, moving to Texas when she was five years old. She married her husband, David, in 1973. She and David spent 24 years raising their two sons in Marshall, Texas. Loretta worked for the Marshall Independent School system for 13 years. After their sons graduated high school, they moved to Fort Worth, where Loretta began her career with TABC in 2001 as an Administrative Technician. She later was promoted to her current position as an Accounts Examiner. Loretta is a hard worker and goes the second mile to assist TABC’s permittees. She comes in early and stays late processing applications to ensure that licenses and permits are issued in a timely manner. She is well respected by her co-workers, and she represents the agency in a professional manner daily. Here are a couple of quotes from some customer

satisfaction surveys that mentioned Loretta: "Loretta Green is as helpful as any state employee I have every seen!" and "The Fort Worth office, Loretta Green in particular, is very professional and helpful."

Julie Ross began employment with the TABC in December of 1989 as a Records Control Clerk in the Licenses and Permits division until 1991, when she left to relocate to California. She couldn't stay away, however, and was re-employed as an Administrative Technician I in Licensing in November of 1994. Julie worked her way up to Administrative Technician IV by 2000, and was reclassified in 2001 to Accounts Examiner V. Julie has been married for 15 years to her husband Scott, and has 2 daughters, Ashley and Taylor. Julie has 11 years of experience in licensing as an application processor and possesses invaluable knowledge of the division. She is and has been a vital part of the Versa team, and has put forth untiring hours of hard work toward the success of the conversion. She takes initiative and willingly assists her co-workers and other agency personnel to ensure that the Licensing Division's and the agency's goals are met. Julie is a team leader, and is a true example of excellence in the support of the mission of TABC. It is employees like Julie that make our agency shine.

Mr. Shivers then presented a star award each to Ms. Green and to Ms. Ross.

Chairman Steen thanked Mr. Shivers for attending and presenting the employee of the year awards.

### **RECOGNITION OF AGENCY EMPLOYEES WITH 20 OR MORE YEARS OF SERVICE**

Chairman Steen announced that the individuals who were being recognized for their 20 or more years of service had a combined total of 340 years of service with the agency (Attachment 1).

#### **30 Years of Service**

Chairman Steen called upon Assistant Administrator Jeannene Fox. Ms. Fox provided highlights of Buck Fuller's career with the agency. Mr. Fuller was

presented with two plaques and a clock in recognition of his 30 years of service.

Mr. Fuller then provided highlights of Clifford Stech's career with the agency. Mr. Stech was also presented with two plaques and a clock in recognition of his 30 years of service.

### 25 Years of Service

Chairman Steen called upon Sam Smelser, Buck Fuller, and Amy Harrison to talk about their employees who were being recognized for their 25 years of service with the agency. The Commissioners presented service award plaques to Glenda Baker, Jose Pena, Tammy Toney, and Cindy Vrabel.

### 20 Years of Service

Chief of Enforcement Sam Smelser recognized nine employees with 20 years of service: David Alexander, Hank Blanchard, Louis Dewitt, Artie Freeman, Salvador Morales, Randy Motz, Sonja Pendergast, James Poole, and Eddie Torres. Randy Motz and Eddie Torres were unable to attend the meeting, and will be presented their plaques at a later date. The Commissioners presented service award plaques to the other seven employees in recognition of the years of service.

Chairman Steen thanked everyone for attending the awards presentations. Commissioner Cuevas took the opportunity to state how proud he was of what staff have accomplished and the great respect that has been earned during the Commission's 70 years of existence. He commended staff for their team effort, urging everyone to "hang together" to "weather the storm" of the news media. He stated that the agency is doing the right thing, and because of what staff are doing, TABC has prevented some tragic mistakes and saved some lives.

### **APPROVAL OF COMMISSION MEETING MINUTES OF FEBRUARY 27, 2006**

Chairman Steen called for a motion to approve the TABC Commission meeting minutes of February 27, 2006. **Commissioner Madden so moved, and Commissioner Cuevas seconded. The motion carried.**

## **ADMINISTRATOR'S REPORT**

Chairman Steen called upon Administrator Alan Steen to provide the Administrator's Report. Administrator Steen thanked the Commissioners and the many people who came to participate in the awards presentations. Administrator Steen discussed the following:

### **Spring Break Activities**

Administrator Steen stated that spring break has wrapped up and he was pleased with the efforts of staff and the good support of the local communities.

- Sixty days prior to the start of spring break, TABC staff met with retailers from the Galveston and South Padre Island areas in order to discuss what would be occurring and to garner support of the retailers. Seventy retailers attended, which was an increase from previous years. Staff felt that the meeting helped promote a smooth transition.
- Staff conducted a statewide minor sting covering the I-35 corridor and other major arteries leading to the coast. Over 300 minor stings were conducted.
- Because of greater awareness of the retailers, compliance for all stings was 85%, which is a 5% increase over the statewide average.
- During spring break, about 1,000 tickets were issued each week for minors in possession and public intoxication. Administrator Steen noted that there were a few noteworthy accidents that occurred: one involved the unfortunate death of a young man who had been consuming alcohol and another incident resulted in injuries of two pedestrians. Administrator Steen stated that those were the only incidents he was aware of at the time; however, there may be more that are discovered over time.

### **Sales to Intoxicated Persons (SIP) Operation**

Administrator Steen discussed the SIP operation in Region 2 that was receiving media attention. He noted that SIP operations have been conducted statewide since 2001. The reason for the operations is for TABC agents to intervene with persons who are intoxicated in public to the extent that they pose a threat to their safety or the safety of others, before they get behind the wheel of a vehicle. Administrator Steen stated that there has been misinformation in the press coverage, and that staff are attempting to explain the program. He stated that he would ask the Office of Professional Responsibility to conduct an internal affairs investigation into this particular operation. He stated that if any problems are identified, they would be addressed.

### Strategic Planning

Strategic planning public forums and industry meetings have begun across the state in February and continue through March. Senior staff from headquarters and the field will be meeting on March 30<sup>th</sup> and 31<sup>st</sup> to discuss the input gained from the forums and meetings. The target date to present the recommendations to the Commissioners for approval is May, in order that the plan can be submitted to the Legislative Budget Board in June.

### Vacancies

- Administrator Steen reported that Garry Sitz, former Director of the Information Resources Division, left TABC to work at the University of Texas. Jay Webster will temporarily assume the duties under the supervision of Administrator Steen until a new Director is selected. The position is being posted.
- TABC has 15 agent vacancies that will be made available to those agents on the eligibility list to begin employment May 1<sup>st</sup>.

Administrator Steen concluded his report and asked the Commissioners if they had any questions.

Commissioner Cuevas commended Carolyn Beck, TABC's Public Information Officer, for her representation of the agency to the media. Commissioner Cuevas noted to Administrator Steen that he thought the decision to have the Region 2 SIP operation investigated by internal affairs was a sound decision and that any problems that may be found can be addressed. Commissioner Cuevas expressed appreciation for Administrator Steen's leadership and for the teamwork of staff. Commissioner Madden added that some of the negative media coverage may have been because not everyone was willing to hear the facts, noting that the Administrator—in an attempt to clarify the agency's program—had been left holding indefinitely on the phone with a radio talk show, although he had identified himself.

Commissioner Cuevas asked if the agency experienced any financial gain for issuing public intoxication tickets. Administrator Steen responded that the money from the fines goes to the local community and not to TABC. He stated that TABC uses its resources provided by the legislature to do its part to address public safety issues.

Commissioner Cuevas asked if Captain David Alexander would be covering this operation in his Region 2 update. Administrator Steen explained that Captain Alexander's Region 2 update had been scheduled several months prior and that it was a coincidence that the update was on the agenda at the same time of the media coverage concerning Region 2's recent SIP operation; however, it would be included in his presentation.

Commissioner Cuevas mentioned that there were two unfortunate accidents that occurred over the weekend in Dallas and Austin. Administrator Steen briefly discussed the alcohol-related injuries and deaths that occurred: a father killed in Dallas and two Dallas police officers left in critical condition; a police officer in Arlington was injured; and two young people were killed in the Austin area. Commissioner Cuevas asked if the focus of compliance was more on the establishment than the customer; Administrator Steen confirmed this stating that the ultimate goal is for retailer and server responsibility. He added that the current situation deals with both issues of over-serving and persons who are intoxicated in public to the extent that they pose a threat to their safety or to the safety of others.

Commissioner Cuevas asked Administrator Steen if he thought that the seller-training curriculum provided a strong enough message as to their responsibilities. Administrator Steen stated that the training provides a very strong message. He went on to say that the agency has been sending a very strong message concerning retailer and server responsibility. This has been accomplished by:

- Issuing a press release in August 2005;
- Holding press conferences in each region;
- Staff making speeches around the state;
- Including the information in TABC publications; and
- Having 59 agent positions added to the agency as well as 35 additional compliance staff to perform duties once done by agents, thus allowing more agents on the street.

Administrator Steen stated that a major concern he had with some of the press coverage was the misconception that the SIP operation was a new operation.

Administrator Steen also emphasized that it is not the intention of the agency to hassle people having a good time. Rather, TABC agents focus on the obviously intoxicated person who stands out as being very intoxicated. He said that there was the misconception that agents sat in a bar counting the

number of drinks a person had; he stated that TABC does not have the time or resources to do that. Administrator Steen stated that the portable breath test is voluntary, and of those persons arrested who volunteered to take the test, the average blood alcohol was .17, over two times the legal limit. Another misconception is that difficult field sobriety tests, such as reciting the alphabet backwards, were being given by agents in determining arrests. Tests are used such as reciting portions of the alphabet forward, being able to stand on one foot, etc. Administrator Steen stated agents are not trying to trick people. Further, agents attempt to find safe alternatives to arrest, whenever possible when it's in the best interest of public safety, such as releasing the intoxicated person to a responsible person.

Commissioner Cuevas asked Administrator Steen to convey to all employees that Commissioner Cuevas supports them. He stated that he was confident that people would realize that what is being done is reasonable and in good judgment, and that DWIs and alcohol-related fatalities are being reduced as a result of TABC actions. Commissioner Madden added that Commissioner Cuevas' sentiments were stated on behalf of all the Commissioners.

## **ENFORCEMENT UPDATE ON INTERNAL AUDIT RECOMMENDATIONS**

Chairman Steen called upon Sam Smelser, Chief of Enforcement, to provide an update on the internal audit recommendations of the Homeland Security Section of the Enforcement Division.

Chief Smelser stated that the internal audit focused on procedures and policies regarding investigations that are initiated or closed by Homeland Security. Nine elements were identified in the audit. Chief Smelser stated that the outline of the document has basically been completed. The document will guide and direct staff from when the Accounts Examiners initially take in original applications, through auditing, to the Licensing Standards Investigators in the field, back to Licensing, and then to Homeland Security. Chief Smelser stated that staff are in process of fine-tuning the document, which is about 80 to 85% complete.

## **REGION 2 UPDATE**

Chairman Steen called upon David Alexander, Captain of Region 2. Captain Alexander reiterated that his presentation was not scheduled because of the media attention being given to Region 2. He presented the Region 2 update for

enforcement activities (Attachment 2). He discussed the press conferences that were held in Region 2 and discussed the various operations that have been conducted in Region 2, such as the SIP, Minor Sting, Shoulder Tap, and Prohibited Hours operations. He stated that these operations have been making a difference in Region 2.

Bob Wallace, Compliance Supervisor, presented the compliance activities (Attachment 2). He discussed the licensing and routine investigation activities being taken on by compliance staff that had been activities the agents had performed.

### **DISCUSSION AND POSSIBLE VOTE ON DIRECT REPORTING OF GENERAL COUNSEL TO COMMISSION**

Chairman Steen stated that he had requested the agenda item regarding the discussion and possible vote on direct reporting of the General Counsel to the Commission. He then called upon Lou Bright, General Counsel, and asked him if this topic was something that could be discussed in executive session, based on the notice of the agenda which states "Executive session for advice of Counsel...may be called regarding any agenda item." Mr. Bright explained that in the context of discussing agenda items, most discussions are usually public matters. However, it may come up in part of the discussions in which he—as General Counsel—would need to provide the Commissioners some type of advice that is protected by the attorney/client privilege. Therefore, the notice that Chairman Steen referenced allows an executive session for that purpose.

Chairman Steen asked, noting that he wanted to give public notice of this, whether there were any legal impediments to having the General Counsel report directly to the Commission. General Counsel Bright stated that he believed there was, citing Rule 31.1, which is not a statute. The rule delegates that authority from the Commission to the Administrator. Therefore, for the General Counsel to report directly to the Commission, the rule would need to be changed, of which the Commission has the authority to do.

Chairman Steen asked Mr. Bright to explain the process and asked if it could be done at the meeting that day. Mr. Bright stated that it could not be done that day, as a proposed amendment would need to be published in the *Texas Register* for at least 30 days before the Commission could act upon the amendment in public session. He explained that for several years, it has been the agency's practice to first obtain the Commission's approval by motion and

vote in order to publish a rule change. He stated, however, that he did not believe that the practice was legally required, but that the Commissioners would need to make a motion and vote in a public meeting—i.e., a Commission meeting—to adopt a rule.

Chairman Steen asked Mr. Bright what action the Commission could take that day. Mr. Bright responded that it depended on what the Commission wished to do. The Commission could vote to authorize staff to draft and publish an amendment changing Rule 31.1 in the *Texas Register*. At this point, Commissioner Madden asked if the Commission could discuss the philosophy of doing this, noting the background information already provided to them in a letter sent by Mr. Bright. Commissioner Madden stated that she had some questions and wondered if perhaps Mr. Bright should go over the information with them.

Mr. Bright explained that after Chairman Steen had asked him to give thought to whether there were any impediments to making the organizational change, he researched the request thoroughly. Mr. Bright stated that he believed that there were impediments, and he hoped he had clearly conveyed this in his letter, noting that he counseled against it for various practical and organizational reasons. He replied that he would be happy to answer any questions that the Commissioners had.

Commissioner Madden asked Mr. Bright why he cited the two examples—Texas A&M and the Texas Commission on Environmental Quality (TCEQ)—in his letter. Mr. Bright first explained that this kind of arrangement with state agencies is unusual, and he also knows of some agencies that have attempted the arrangement but had later changed it. Mr. Bright looked at state agency websites and found 14 that had their organizational charts posted on their websites. Of those 14, only the TCEQ and Texas A&M had something other than the legal function of reporting directly to the executive director. Mr. Bright added that from the information he researched, he was not aware of any other university system or an institute of higher education in the state other than Texas A&M that has the general counsel directly reporting to the board. Mr. Bright also did not find any regulatory agency, including law enforcement agencies, that are organized in this manner. Mr. Bright stated that TABC is not bound by what other agencies do in such matters, as each agency has its own unique structure, mission, and culture.

Mr. Bright stated that he mentioned Texas A&M and TCEQ because they have a direct link between the general counsel and the board. However, their situations are different from TABC's. For example, TCEQ has a general counsel that reports to three full-time salaried commissioners that are located at the agency. TCEQ has a legal division that reports to the executive director. TCEQ's legal division functions similar to that of TABC's Legal Services Division. He reminded the Commissioners that because of TABC's recent reorganization, there is no longer an Office of General Counsel, although he—as General Counsel—heads up the Legal Services Division.

Commissioner Madden expressed concern that the Commission may be getting into the day-to-day operations of the agency if the legal counsel reports directly to the Commission. She referred to a board member orientation that she and Chairman Steen had attended in June 2000 when Governor Bush, now President, specifically told new board members that they are to make policy for their agencies but that they were not to get involved in the day-to-day operations of their agencies.

Chairman Steen stated that Mr. Bright, of course, would not have an interest in this going forward. Chairman Steen stated that he did not see this as the Commissioners getting involved in directing TABC's day-to-day operations and that operationally, the General Counsel would continue to work on the same basis with the Administrator. Chairman Steen did think it was important that the Commissioners receive independent advice directly from the General Counsel as they receive from the Internal Auditor. Chairman Steen expressed the difficulty he had with the discussion in that he did not want the discussion to focus on the current General Counsel, as this would be a policy change. Chairman Steen said that he had talked with people at Texas A&M where they have a large legal department, and they have not experienced any practical problems with the way their legal department is run.

Chairman Steen stated that Mr. Bright's letter implied that the General Counsel would only be dealing with the Commissioners; however, Chairman Steen expressed his belief that the current way the Legal Services Division operates would not change should the General Counsel report directly to the Commission. He stated that he thought it was important for the Commissioners to have counsel appointed by them. He suggested the following language: The General Counsel shall be appointed by the Commission upon recommendation of the Administrator, shall report directly to the Commission with access to the Administrator, shall be evaluated by the

Commission with input from the Administrator, and may be dismissed or reassigned without cause subject to the pleasure of the Commission. Chairman Steen stated that what he described was similar to a bylaw provision of the Board of Regents of the Texas A&M University System.

Chairman Steen referred to Mr. Bright's letter and stated that what he had asked of Mr. Bright was whether there were any legal impediments. Mr. Bright apologized, stating that he did not remember the word "legal." However, he stated that it was part of his obligation to the Commission as their counsel to provide the best advice he could and that this was the best advice he could provide. He stated he was ready to discuss this at length with the Commissioners.

Chairman Steen expressed his reluctance to continue discussing the matter, as it was probably a matter to be discussed in executive session. Commissioner Madden agreed with Chairman Steen, stating that if it could not be discussed that day in executive session, then perhaps it could be done in executive session at next month's Commission meeting. Chairman Steen admitted that it was hard to discuss issues right then and there, as the Commissioners cannot discuss matters in advance of the meeting without being in violation of the open meetings law. Commissioner Madden stated that she was not opposed to making a motion to go into executive session to discuss the matter. Or, if that was not permitted under the open meetings law, then it could be placed on next month's agenda for them to discuss it in executive session.

Commissioner Madden asked Chairman Steen what his thoughts were. He responded he wished to move forward, but asked Commissioner Cuevas what his thoughts were. Commissioner Cuevas asked for clarification as to when the matter could be discussed in executive session. Mr. Bright responded that the Commissioners could not discuss the matter in that day's executive session because it was not posted in the agenda but could be posted in the agenda for April's meeting. Commissioner Cuevas stated that he did not know what he was inclined to do at the moment, as he was hoping to get more information. Mr. Bright suggested that the April agenda be posted in the same manner as before but include "to discuss the duties, responsibilities and evaluation of the General Counsel" in the executive session part of the agenda.

Commissioner Madden addressed the Chairman, stating that she did not want to impede on his desire to move forward; however, she stated that she thought

the Commissioners would feel more comfortable in discussing the matter in executive session, even if it must take place a month away. She asked Commissioner Cuevas' thoughts. Commissioner Cuevas stated that he would probably feel more comfortable in discussing it in executive session. He stated that he could see both sides, being that the Midland City Council, of which he was part of, had a general counsel reporting directly to them. On the other side of the picture, he said that the city council members are elected officials, not appointed members of a commission. Therefore, there is a difference in that particular example because the TABC Commissioners are not elected and do not have everyday contact with staff. He stated that he was willing to discuss it further. Chairman Steen asked Commissioner Cuevas if he ever felt that he exercised administrative responsibility over the general counsel when he was a city council member. Commissioner Cuevas responded that he did not.

Chairman Steen stated that he did not have the time to do it himself, but he wished that someone would look at all the other state agencies and commissions. He stated that he had talked with the top people at the Texas A&M University System, and they felt that their system worked well and felt that this was the direction that state agencies and commissions should go. Chairman Steen stated that having a general counsel report directly to a agency or commission makes it clear that his or her responsibility and loyalty are to the agency or commission, not to individuals. He again expressed the difficulty he had in discussing this, as he was not trying to reflect on the current General Counsel. He stated that this would be a policy change that would presumably be in place when he and Mr. Bright were no longer with the Commission. Chairman Steen emphasized that he wanted this done right, and that it not be based on the particular situation.

Mr. Bright explained that the point of his letter in talking about the ethical consideration of Rule 1.12 and the rules that govern lawyers, was to stress that his obligation as counsel towards the Commission is the same regardless of how the organizational chart is organized; that being Mr. Bright represents TABC, not any individual within it. The obligations that he has as counsel are to the Commission, only through the people who happen to be acting for the Commission and only in that particular exchange. Mr. Bright stated that what organizational charts do, however, is have an effect, particularly over time and sometimes immediately, to control the kinds of things that matter within the life of the organization, such as communication flows, commitments and engagement, etc. Mr. Bright assured Chairman Steen that whatever

organizational structure the Commission deems best will be made to work. Mr. Bright agreed with Chairman Steen that they both were speaking about which organizational structure best suits the needs of this agency. He offered to provide the Commissioners whatever advice or information they needed while grappling with the issue.

Commissioner Cuevas stated that Rule 1.12 really stood out for him, recognizing how it could become political where two Commission members may not like the General Counsel and dismiss him/her, and this could result in “revolving” General Counsels. Whereas when the General Counsel’s job is to give good, honest answers to the institution that’s called TABC and not to certain personalities, then there could be miscommunications of what the Commissioners may feel, whether the General Counsel is protecting those against the Commission, etc. He stated that if this were the case, then it would be more of a communication disconnect than reorganization. Mr. Bright discussed the implication of the ethical consideration of Rule 1.12. He stated that because of Rule 1.12, it would not be ethical for the Administrator to censor or edit the General Counsel’s communications to the Commissioners or for the General Counsel to allow that to occur.

Chairman Steen stated that he wished to move forward. He asked what Commissioner Madden’s pleasure was in the matter. Commissioner Madden asked Commissioner Cuevas if he felt comfortable with the situation when he was on the city council. Commissioner Cuevas responded he was with the general counsel reporting to the city council; however, the only difference was that he was an elected official, which has greater implications than an appointed official. Chairman Steen stated that the people of Texas elect the Governor who in turn appoints the Commissioners to represent the people in the state of Texas. Commissioner Cuevas stated he was willing to postpone the discussion until April in order to get more information. He did state that he was “not there right now.”

Chairman Steen stated that the topic would be placed on the April agenda by including an executive session: “to discuss the duties, responsibilities and evaluation of the General Counsel.”

### **PUBLIC COMMENT**

Chairman Steen asked if anyone wished to provide public comment. Doug DuBois, of the Texas Petroleum Marketers and Convenience Store

Association, asked to provide comment. He stated he wanted to thank the Commission and commend staff for working with his industry. Specifically, he wanted to commend staff for attending the industry's statewide meeting in Galveston on February 10 and providing the managers awareness program to the industry members. He stated that the training was well received and deemed very valuable to the members. Commissioner Madden thanked him for his acknowledgment.

### **EXECUTIVE SESSION**

**Chairman Steen announced that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 3:05 p.m. on March 27, 2006, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §§551.071 and 551.074.**

**Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being March 27, 2006, and the time, 3:45 p.m. He stated that no final action, decision, or vote was made in the executive session.**

### **NEXT MEETING**

Chairman Steen stated that the next meeting was scheduled for April 24; however, he had a conflict that day. It was agreed that the next meeting would be held on April 17, 2006. As TABC's hearing with the House Licensing and Administrative Procedures was scheduled for 2:00 p.m. or upon adjournment on April 17<sup>th</sup>, it was determined that the meeting should begin at 10:00 a.m.

### **ADJOURNMENT**

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