

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
COMMISSION MEETING  
MONDAY, APRIL 28, 2003

The Texas Alcoholic Beverage Commission met on this date at 5806 Mesa Drive, Suite 185, Austin, Texas. Members present: John T. Steen, Jr., Chairman; Gail Madden and Kel Seliger, Members. Staff present: Jeannene Fox, Assistant Administrator; Lou Bright, General Counsel; Greg Hamilton, Chief of Enforcement; Denise Hudson, Director of Resource Management; Debbie Dixon, Seller Training and Andrea Luna, Grants and Planning. Visitors included: Bryan Poff, Fired Up, Inc.; Randy Cain, Ron Medillin, Glenda Medillin, Les Hanson, and Carol Hanson, Source Data; Randy Yarbrough, Wholesale Beer Distributors of Texas; Robert Sparks, Licensed Beverage Distributors; Fred Marosko, Texas Package Stores Association and Glen Garey, Texas Restaurant Association.

The agenda follows:

10:00 a.m.- Call to order.

1. Approval of minutes of March 24, 2003 meeting; discussion, comment, possible vote.
2. Administrator's report:
  - a. discussion of staff reports;
  - b. recognitions of achievement;
  - c. discussion of management controls; and
  - d. EUDL grant awards.
3. Fiscal stewardship of agency; discussion, comment, possible vote.
4. Presentation of internal auditor's report on Internal Audit of Field Office License Processing; discussion, comment, possible vote.
5. Consider publication of proposed amendment to 16 TAC §45.105 relating to conforming mixed beverage advertising to meet the standards prescribed for beer; discussion, comment, possible vote. (Outdoor Advertising by Mixed Beverage Establishments)
6. Consider proposed amendment to 16 TAC §41.52 as published in 28 TexReg 817 on January 31, 2003; discussion, comment, possible vote. (Private Clubs - In General)
7. Public comment.

Announcement of executive session.

8. Executive session:
  - a. the commission may go into executive session to consult with legal counsel regarding items 5 or 6 of the agenda pursuant to Texas Government Code, §551.071; and
  - b. the commission will convene in executive session to discuss the appointment, employment and duties of the administrator pursuant to Texas Government Code, §551.074(a)(1).

Continue open meeting.

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

The meeting was called to order at 10:04 a.m. by Chairman Steen.

MR. STEEN: I will call to order the April 28, 2003 meeting of the Texas Alcoholic Beverage Commission. The first item on the agenda is the approval of the minutes of the March 24, 2003 meeting; discussion, comment, possible vote.

MS. MADDEN: I so move.

MR. SELIGER: Second.

MR. STEEN: Any discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. The minutes are approved.

The administrator's report. Ms. Fox?

MS. FOX: We do have several staff reports this morning, but before we get to that, I just wanted to let you know that the appropriations bill did pass in the house. It does have the expected 12 and a half percent cut for TABC. We do expect to get some of that back in the conference committee, but the good news is the technology funds that we requested were included in the house bill. The senate bill is up for a vote today. We did much better in the technology area and the FTE's. We basically got back to our '02-'03 funding, so we did fairly well there. Our base budget would be around 60 million dollars for the biennium. We still don't know what the final result will be but, for right now, it looks a lot better than it did several months ago at this time.

MS. MADDEN: Good.

MR. STEEN: Could you be more specific about the technology funds?

MS. FOX: We had requested 2.3 million dollars for the biennium to transform our technology to a web-based system. Those dollar figures are in the base bill in the senate, and they are in a contingency rider in the house, so we did get the exact amounts that we asked for.

MS. MADDEN: You did for the contingency rider?

MS. FOX: Yes. We have informed Mr. Johnson to start planning and be ready. He is working on his plan to do that, and we are very excited about that part.

MS. MADDEN: I guess so. That's fabulous. But we don't count our blessings until the session is over.

MS. FOX: Not until the final day, but it does look very favorable at this point. Also, there are some additional 39 FTE's in the senate bill over and above what we currently have. That's also a good thing.

MR. STEEN: The specifics on those FTE's?

MS. FOX: Fifteen enforcement agents, seven compliance officers, six in the licensing department and one additional staff attorney, along with four licensing investigators that we currently have in grant funding. Last meeting, we talked about the grant that we received from the governor's office, and both the '04 and '05 budgets have money in there for permanent staffing in those positions.

MS. MADDEN: You've already hired those, right? The four?

MS. FOX: Three of the four. We are still working on the fourth. It also includes money for our ports of entry bridges that will be opening up in '05 in the senate dollar amount. That's not in the house amount but in the senate.

Just very briefly, there are so many different things that can happen between now and the end of the session, but there are 18 bills that have either passed out of a senate committee or a house committee that effect the Alcoholic Beverage Code. Eight of those have to do with licensing; three are in our marketing practices area; three have to do with local options; one has to do with age, the age of the employees in certain types of establishments; two are just miscellaneous and one has to do with compliance.

During the next two commission meetings, I will bring you back more detailed information about what actually passed and what it means to our operations. Also, included in those numbers is information on our direct wine shipping, and Lou is going to update you on that as well as the local option bill that has passed through the house and is now in the senate. If you will, I will let Lou update you on the wine shipment and local options.

MR. BRIGHT: If you will remember, Mr. Chairman and Members, you asked me last time about House Bill 768 and Senate Bill 770 which are bills that would allow out-of-state suppliers, under regulation, to ship directly to Texas

consumers. If you will remember when that question came up, I stood up and spoke for a period of time and didn't say much because I was unprepared. Since that time, I have given an analysis of both of those bills to you by individual correspondence. Since I gave you that analysis, nothing has happened. Ms. Mowery's bill has had a hearing in front of the subcommittee of the house committee but not a hearing in front of the full committee. Senator Madla's bill has not yet had a committee hearing.

As Ms. Fox mentioned, there have been several local option bills filed, and there has been much discussion about local options at the legislature this session. The bill to watch, the bill that has made some movement, is House Bill 1199 by Representative Krusee. It has passed out of the house. Perhaps, more significantly, I'm given to understand that everybody who cares about such things has agreed that Representative Krusee's bill represents justice in the American way, and they are in favor of its passage, so we expect it to pass.

What it does are several things. It solves the two county problem. Remember for some decades in Texas now, cities that sit in two counties simply cannot have a vote. It allows cities in two counties to vote on local option elections. In general ways, it makes it easier, but not just a brush through, to have a local option election called. It has, for example, extended the period of time that is available to people who are circulating a petition around a town or justice precinct to get the required number of signatures. It has made some adjustments to the way the county clerk verifies those signatures, to make it easier to get signatures verified somewhat, and it removes suspense lists off of voter roles in calculation of the requisite percentage that you have to have to have the election called. I'm informed by people who know about these things that when you ask for the registered voters in Travis County, for example, a lot of those names are people who have died or have been convicted of a felony and have gone to prison or moved away. They are not real voters. They go onto a suspense list. Under this bill, as I understand it, you would not then use suspense list people to calculate how many signatures you have to have on a petition. This will make it easier for local option elections to be held, by no means a walk through just in case five people decide there ought to be an election, and so everybody seems to be in agreement about that, and that will hopefully, over the coming years, remove lots of unhappiness around the state.

MR. STEEN: Any questions?

MS. MADDEN: No.

MR. SELIGER: No.

MS. FOX: Every year about this time, we have gone through March and all of the different spring breaks that happen on South Padre Island, Galveston and Port Aransas. The commission has always had an interest to know what we did above and beyond our normal activities and what was special about that. Greg is going to update you on spring break.

MR. HAMILTON: Commissioners, I'd like to give you a brief overview of what we did during spring break and Mardi Gras. This year, we received funding from the governor's office to assist us. I know that you are well aware that during that time we had to look for ways to give back seven percent, so that cut our budget. The governor's office contacted us and asked us if we wanted some funding to address the issue of spring break and Mardi Gras. They gave us 82,000 dollars to address that issue. Spring break ran from March 5<sup>th</sup> through March 27<sup>th</sup>, and this year the supervisors have advised me that the number of people patronizing that area has gone down considerably. Although the numbers went down, our citations remained the same. We wrote 2,100 citations during this three-week period, and I am very happy to report that we did not have any alcohol-related fatalities or any type of incident. The business community reports that their business went down 25 percent this year as opposed to the years past.

During Mardi Gras, which is February 22<sup>nd</sup> and 23<sup>rd</sup> and March 1<sup>st</sup> and 2<sup>nd</sup>, they also had a much lower crowd than normal. The supervisors tell me that the Houston Livestock Show and Rodeo was going on at the same time. They had bad weather. It was rainy and cold and also the high terror alert that the state was under. Normally, Mardi Gras would have anywhere from 150 to 200,000 attend the Mardi Gras. This year, they had roughly 80,000 to attend the Mardi Gras. We issued 331 criminal citations, 35 warnings and three administrative warnings. We had no incidents there as far as injuries, as far as the supervisors reported to us.

MS. MADDEN: Did your grant include the officers on bicycles?

MR. HAMILTON: Yes, ma'am. We had probably seven or eight agents at spring break on bicycles.

MS. MADDEN: You thought that was so helpful last year.

MR. HAMILTON: The agents report that those are very helpful because it's hard to maneuver a vehicle down that main boulevard because of all the cars, and they are able to ride on the bicycles and look into the cars where the youth are trying to hide their alcoholic beverages.

One of the other things that we have found during spring break, it's getting very easy cheap to go to Cancun over in Mexico. The legal drinking age there is 18 years old and, if you look on the net, you will see there is a lot of advertisement telling them to come to Mexico. That's something I think the parents here in Texas need to understand and realize. I don't know how we can advise them, but we need to figure out a way. Probably contact the PTA's and different school coalitions or community groups to advise them about the dangers of going over into Mexico and what the kids are doing.

MR. SELIGER: When you talk about sales to minors on South Padre during spring break, or anywhere during spring break, how does that enforcement effort differ during spring break than what you normally do?

MR. HAMILTON: We will have more agents. We will pull agents from around the state, and that's what the 82,000 dollars does. It assists us to pay for their travel, their overnight stay and their per diem.

MR. SELIGER: What do you see about establishment sales to minors during spring break?

MR. HAMILTON: We don't see a lot of that. One of the things that we have started doing during spring break - except we didn't do it this year - we normally have our agents do minor stings down the corridors going to South Padre Island and letting the establishments know that we are going to be checking during and before spring break. We try to blitz the area and let them know that spring break is about to start. A lot of times kids come to spring break with their alcohol already in hand. We didn't write any administrative cases for sale to minor this year. One of the things that we are seeing are a lot of kids that are 21 years of age, and they are purchasing the alcoholic beverages and somehow getting it to the youth. That's something that we need to come up with, some type of initiative to address those particular issues, because out of these 2,100 citations that we wrote, I would tell you at least 80 percent of those were minor in possession. They had to get the alcohol from somewhere. They have several big establishments down on South Padre Island that accommodates anywhere from 10 to 15,000 people inside a bar, and there's 30 or 40 bars inside these particular establishments. One of the things that we try to instill in the servers is their responsibility is also to walk around the establishment to insure that people under the age of 21 aren't consuming alcoholic beverages.

MR. STEEN: Chief, when you mention the 2,100 citations, is that just for South Padre Island?

MR. HAMILTON: Yes, sir.

MR. STEEN: Eighty percent are MIP's?

MR. HAMILTON: I would say at least 80 percent.

MR. STEEN: What are the other citations that you are issuing?

MR. HAMILTON: Making available. That's where a legal age person would have alcohol and make it available to someone underage. It doesn't only have to be somebody that's of legal age making available. A person that's 19 that has alcoholic beverages can get a citation for giving alcoholic beverages to another person that's underage. We also have public intoxication charges. We have individuals who are intoxicated, and we arrest those individuals. There are a lot of different citations that we give. Drugs - possession of drugs - we give those citations. Quite naturally, when you get individuals and alcohol together, there's going to be assaults, so we address those particular issues, also.

MS. MADDEN: Sounds like you are making great inroads.

MR. HAMILTON: Yes, ma'am, I think we are. One of the things that I'm proud to say is that we work real closely with the merchants prior to going down to spring break. We always have a big meeting and sit down and put together a game plan, if you will, to talk about how we are going to address the issue. We also talk with the merchants and tell them what we are going to be doing out there. One of the things that they do is try to get their employees prepared for this on-slot of underage kids on South Padre Island and try to get them in line and make sure they are doing everything possible to keep alcoholic beverages out of their hands.

MS. MADDEN: We appreciate your good work and your caring of this subject.

MR. HAMILTON: Thank you.

MS. FOX: I know when we started reporting on spring break, there was always something tragic that occurred, a death, a DWI-type fatality, falling off the balcony of the hotel. So, this really is good news that we can come back and report that we had a good spring break and that people were well behaved and there were no injuries and deaths. That's a marked improvement.

Next, we have a report from Debbie Dixon. If you will remember, last December we did a press conference and information on FAS. After

about four months, we are coming back to let you know where we are on that process and how many people put up signs that we can determine through sampling and things of that nature and just give you a total update on the process.

MS. DIXON: I have a PowerPoint, and I am going to bring up a web site and some other followup actions that have been going on from other agencies. We had a workgroup that consisted of TABC; the Office of the Governor; March of Dimes; Texas Department of Health; Texas Commission on Alcohol and Drug Abuse; Texas Medical Association; Texas Office of Prevention of Developmental Disabilities; a couple of concerned citizens and Jim Haire was one of those.

Our mail-out went out December the 12<sup>th</sup>, the same day as the press conference, almost the exact moment. We sent out to 36,000 locations, including the envelopes, the postage, labels, manpower and 75, plus, employees for approximately five days. They rotated in and out, but basically that's how many people were involved. TABC spent 30,572 dollars. That doesn't include the 19,000 that the March of Dimes gave to help us with the extra decals and the postage.

Seller training has required that all schools present in their curriculum a fetal alcohol syndrome section that we gave them the writeup for. We figure between October the 15<sup>th</sup> and March the 15<sup>th</sup> that 75,000 people have been through the class. That doesn't include the trainers, which is 850 trainers, that have been exposed to the fetal alcohol syndrome information. We feel like we've done quite a bit on that. Our web site has been up since around December the 15<sup>th</sup>.

The PowerPoint presentation included: Followup Inspection Results; Number of FAS Signs Posted; Establishment Type; Differences by District; Differences by Establishment Type; Differences by License Class; TABC's Fetal Alcohol Syndrome Web Site; WebTrends; TABC's *Moving Ahead* Article; FAS Warning Signs in English and Spanish; Write-up for Seller/Server Training Schools Curriculum; TABC's *Training Together* Article and other FAS-related articles that have appeared in various areas of the state.

MS. MADDEN: I think we are going to be asked at some later time to consider mandatory signage. You may not be able to answer this and, if you can't, that's fine. Could you guesstimate how much something like this would cost?

MS. DIXON: I am not sure I can.

MS. MADDEN: You've said that we've already spent how much?

MS. DIXON: We personally have spent 30,752 dollars, plus TDH gave us 19,000 dollars. That was for decals, brochures and that doesn't include the manpower that went into it. That was basically donated. The people in the agency were more than happy to help out. They thought it was a worthy cause. That's something that's not figured into the price is how many man hours it would take.

MS. MADDEN: From your presentation, it sounds like we've done yeomen's service on this. I think some of our numbers are disappointing. Some of it can't be measured. Like you were saying, the HEB's called in and asked for 500 and what have you. These numbers are based on only the establishments that were inspected, isn't that correct?

MS. DIXON: Right. I did some numbers on an estimated 8,000 locations. If five people noticed them every day for 90 days, that's 360,000 people that were exposed to them, and I think that's a low estimate. Most of these establishments have more than five people that come through.

MR. STEEN: On the amount we spent, you said we spent about 32,000?

MS. DIXON: I'm sorry?

MR. STEEN: As far as what we've spent on this?

MS. DIXON: Almost 31,000.

MR. STEEN: Break that down. What did we spend it on?

MS. DIXON: Envelopes, the postage, the labels, the decals. We paid for half of the brochures. I do have the numbers, but not with me, on exactly how that was broken down. The postage, itself, was probably 19,000 dollars.

MR. STEEN: The mailing cost and the printing of the decals. You said TDH kicked in 19,000?

MS. DIXON: The March of Dimes. I'm sorry. I may have misspoken. The March of Dimes gave 19,000. TDH paid for half of the 50,000 brochures. The 25,000 they paid for are not in our 30,000 figure.

MR. STEEN: Is there anyone here today from the governor's office? I'm going to suggest that we report to the governor's office to the appropriate person and also to the first lady's office so they have this followup information.

MS. DIXON: Okay.

MR. STEEN: I see Mr. Garey is here. I know you've worked on this for the Texas Restaurant Association. Your thoughts on this?

MR. GAREY: Yes, sir, Mr. Chairman. I could tell from your expression, you are a little surprised at the number of restaurants or on-premise places that are posting, but you will remember our initial objection was based on the fact that we get so many warnings up that it becomes less effective. I think the thing that we were focused on, and that I'm very pleased that we've gotten the numbers we have, is the seller/server training issue. That's the one that gets to our employees. It's also the one that gets to a lot of young women since we tend to employ younger people in our establishments. So, I'm really actually very pleased where we are headed on that side of it. I think you can see from the differentiation between on-premise and off-premise who has more space for signage and can afford to go at it from that direction, and certainly your volume of people that will see it in those convenience stores and grocery stores will be very high. Again, I think Ms. Dixon did a great job of guesstimating what that might be.

MR. STEEN: Thank you.

MS. DIXON: Thank you very much.

MS. FOX: One of the jobs we've also been given from the governor's office is to administer the Enforcing the Underage Drinking Laws grant, and Andrea Luna is going to make that presentation to you today. We have just gone through a long round of soliciting those requests and we've gone through and made some awards, and she will go over those that we have chosen for this year.

MS. LUNA: Mr. Chairman and Members, through the Office of Juvenile Justice and Delinquency Prevention, their Enforcing Underage Drinking Laws block grant program, we've been able to award a little over a half a million dollars to state and local agencies, nonprofit organizations and also to cities, communities and county sheriff's offices.

On November 15, 2002, we submitted a request for applications to the *Texas Register*. On February 5<sup>th</sup>, we received 27 applications. We received applications from seven local law enforcement agencies, three city/county agencies; five colleges and universities, one school district and 11 nonprofits, both statewide and community nonprofits.

The review process was pretty rigorous, and it was longer than I expected, probably due to the volume of grant applications that we received. The first step in our review process was the peer review. The peer review

consisted of eight persons reviewing and scoring on a standard application form. Four of them were from state agencies. We had TCADA, TxDOT, the Office of the Governor and the Texas Education Agency, who all award grants sometimes related to alcohol-related programs, prevention, enforcement or DWI in the case of TxDOT. We also had four of our enforcement personnel out in the field to score the programs, basically to get the enforcement personnel involved in the process, but also to get their opinion on what works and what doesn't because they do this all the time. We had two sergeants, a lieutenant and a captain to score those programs and send them back in.

After we received the scores, we averaged them out, looked at the scores from each of the reviewers. This was an anonymous process because it is public information. We discussed the scores and the highest ranking programs and what we thought we should do with them. After the first discussion with the executive team, I went into sort of a negotiation stage with some of the grantees where we liked portions of their grant or we couldn't fund at the amount they were asking for, but we wanted to know what they could do for a little less or if they could throw in some more elements that we were interested in. After talking with them, we made the final executive team decisions. I actually went back and did a little research on some of the grants and then brought that back. After we made our final team decisions, we went to contract award which is where we are right now.

We have sent out contracts to nine of the 27 EUDL grant applicants, and we are waiting on them to sign the contracts and send them back saying they accept the award.

Again, like I said, we had a little over a half a million dollars and we funded nine.

The remainder of the PowerPoint Presentation included who was funded: Randall County; Bexar County; City of Corpus Christi; West Texas A&M University; University of the Incarnate Word; MADD/Texans Standing Tall; University of Texas Health Science Center at San Antonio; Mothers Against Drunk Driving; Texas Municipal Police Association.

MS. LUNA: We are planning on our 2003 funds, what we are going to do with those from the Office of Juvenile Justice and Delinquency Prevention. That application is due April 30<sup>th</sup>. Upon approval of our application, we will receive an additional 357,000 for funding. Around 250 to 220 of that will be offered to these local programs, some of them to continue what they are doing and to some who applied this year who want to reapply next year and try again for award.

MS. MADDEN: You can reapply?

MS. LUNA: Yes. One thing that we knew when we went into this review process was that we started out with two years of funding running at the same cycle. We knew that some of the programs...we weren't going to be able to fund programs that needed continuous funding. A lot of our research programs are going to be one-shot deals, so they are not going to need funds next year, but some of the enforcement grants, they really can't go on without the extra funds, so we will ask those people to reapply and we will also send out a solicitation for others who want to put their application in.

MR. STEEN: Ms. Luna, thank you for your work on this. Who makes the final decisions on these grants?

MS. LUNA: How they are awarded to the local communities and the states?

MR. STEEN: At some point, you have to say we are choosing this organization and awarding them this amount of money. Who makes that final decision?

MS. LUNA: There was no one person who made the decision. It was a consensus from the executive team. What really made the decision clear was when we looked at what they were going to do for the amount of money we were going to award them. Then we broke it down to what are we going to get for this amount? There was pretty much a consensus. Some were shining stars and they really stood out against the other applications.

MR. STEEN: You have a final meeting where you are going through and making the final decision?

MS. LUNA: Right.

MR. STEEN: Who's at that meeting? When you say executive team, who is that?

MS. LUNA: Denise, Greg, Jeannene, Lou and me facilitating the meeting. In the rules it says the administrator or the assistant administrator would have the final decision on these if there wasn't a consensus on it.

MR. STEEN: We do this once a year or how often is it done?

MS. LUNA: Once a year, as long as funding is continued through the Office of Juvenile Justice and Delinquency Prevention.

MR. STEEN: As far as the peer review, how much time is it when you are pulling people in to do that, to rate it, how much time is involved in doing that?

MS. LUNA: It probably took more time than it really should have this year because we had so many applications. What I did was I sent them copies of just the program application and they read over those and they came in with score sheets. We had a meeting from one to five one day and they scored half of them, and they had to take them back and finish scoring and send them back to me. It took a fair amount of time. You have to go through them pretty carefully to answer the application questions.

MR. STEEN: One of my thoughts is that, of course, we are sitting here today hearing the presentation on it, but really none of us have been involved at all in the process. It might be something that would be educational for the commissioners to somehow be more involved, whether it's participating in rating the agencies or sitting in on that final meeting, or what have you.

MS. LUNA: Okay.

MR. STEEN: I would be more interested in getting more of the detail about what are people asking for, what kind of programs, that sort of thing. I don't know about you all.

MS. FOX: We can certainly include one of you. Obviously only one of you could participate in that process because it's a group meeting, but we can certainly include you in the future. This is really the first year that we have done and administered the grants ourselves and made those determinations. Andrea has done a great job of organizing this, getting the rules passed, and it is a very time intensive process to go through these applications and to make these awards.

Next year, as she indicated, the money will be a little less because we had two years to deal with. Out of that 357,000, we also award some of the grant to our self because we have a number of our own projects that we want to fund. A lot of them have to do with the public service announcements, some of the pump toppers and the different things that you have seen over the last year. Some of it has to do with media guidance that we need to better focus our message and our efforts. What are some of the other things, Andrea, that we have done?

MS. LUNA: We have media campaigns that we run throughout the year. We start with back to school in the fall. The high school football games are a big time and a big forum for us to present our message. We also have the holidays where we work closely with TxDOT. They do "Santa Claus is Coming to Town. Please Don't Hit Him." campaign. Of course, you've got new year's, and then we start into the spring break, Mardi Gras campaigns to prevent underage drinking at those events, and then Safe Prom/Safe

Graduation. Then you've got summer and the summer break time. We try to hit the biggest populations that we can on a statewide level with a consistent message at each of those times. One of the things we are looking at is an outside person to help us sort of develop a way to evaluate how we are doing this and, perhaps, help us develop a more strategic approach to where we target and what kind of messages we use.

MR. STEEN: We awarded 512,000. You are saying TABC actually gets some of this money?

MS. FOX: Part of that 357 is for each year. If we had done for two year's worth, that would have been 725, or something like that, and we awarded 512 and the difference would be - if I'm getting the numbers incorrect, let me know - the difference of that would be monies that TABC awarded itself for other grant issues.

MS. LUNA: Part of that is administrative, too. There is a cost to administer the grant.

MR. STEEN: We were talking earlier about the fetal alcohol syndrome campaign. Would that sort of thing qualify?

MS. FOX: These grants are for underage drinking. It has a target.

MR. STEEN: Okay. It's limited to that?

MS. FOX: Yes, it has a certain scope.

MS. MADDEN: One of the reasons that you are ahead of this area is because you have expertise in this.

MS. LUNA: I've worked with federal grants.

MS. MADDEN: I want to thank you because I know you've put in a lot of time on this. We were very excited that you took this over for the TABC.

MS. LUNA: It's a learning process, and I have learned by leaps and bounds over the past year.

MS. MADDEN: I'm sure state grants are different from federal grants, but there is still that underlying expertise that you have. I do want to thank you.

MS. LUNA: Thank you.

MS. MADDEN: I like your idea of getting involved a little bit, just because this is such an

interesting area to us, but we don't want to hamper your good work either. We would just like to be a part of it.

MS. LUNA: Absolutely. One thing we didn't mention is a large portion of the money that TABC is using, it goes to our college symposium, where we've taken our first real statewide look at the college campuses, tried to pull different people from the different campuses around the state together to talk about underage drinking on campuses and also some of the illegal drinking practices, such as binge drinking or fake ID's, that sort of thing. We are holding a symposium in the middle of May that some of these dollars have gone to, and we've put a lot of planning into getting teams of five. Right now, I believe, we have 15 campuses registered, so we are looking at about 75 participants. We have an administrator at the campus, an alcohol and drug coordinator, or a related person, a student, a law enforcement representative and also a community representative coming from each of these 15 campuses to look at their problems, to develop a strategic approach to targeting underage drinking issues on and around the campus and also to evaluate what they are doing. We hope to do this annually. We are going to apply for that again in this 357,000, to have them come back next year and tell us what they've been doing, because that's another initiative where a big part of this money goes to.

MADDEN: Thank you.

MR. HAMILTON: I'd like to add a comment. We are also going to apply for discretionary funding from the Office of Juvenile Justice, which they give out ten 400,000 dollar grants, competitive grants, to different states. This has been going on, I think, for the last four or five years and, over the last four or five years, Texas has not received any of this funding. We are going to go at it aggressively. We are going to have a good plan. I'm banking on receiving that 400,000 dollars.

MS. MADDEN: Good.

MR. STEEN: Ms. Luna, thank you again, and thanks for that presentation.

MS. FOX: That completes all of our staff reports, Mr. Chairman.

MR. STEEN: We next move to fiscal stewardship of the agency; discussion, comment and possible vote. Ms. Hudson?

MS. HUDSON: Yes, sir. We provided you some information this time on performance measures. We only have one performance measure that's on our watch list. It is almost out of the watch list category with the vacancies being

filled. You can see that their performance on the number of inspections has increased.

The other area that we took a look at was office leases. We don't have many coming up this next year. One of them was in Victoria. They are going to be moving into county space. The other is in Amarillo. We will either be renewing that current lease or soliciting bids. One of the things that we are doing with regards to our radio towers is we are working with DPS to co-locate on some of their towers which is decreasing the amount of money that we have to pay for tower rent. That's helping us out with our next year's budget.

MS. MADDEN: I love your reports. I think they really help us, and you are always so steady and your updates are very precise and we appreciate that.

MS. HUDSON: Thank you.

MR. STEEN: Ms. Hudson, who actually prepares all these graphs?

MS. HUDSON: I try to give credit on the bottom of them. The information comes from enforcement, but Charlie's group actually does all the pretty graphs that you see for the performance measures, and Gene Bowman puts together the ones that have to do with the leases.

MR. STEEN: They are very impressive.

MS. HUDSON: I try to give them credit for the good work they do.

MR. STEEN: Any questions? Thank you very much.

The next item on the agenda is the presentation of the internal auditor's report on Internal Audit of Field Office License Processing. Ms. Fox, you indicated we would probably...

MS. FOX: We are going to table that until next month.

MR. STEEN: We have tabled it how many times now?

MS. FOX: Yes, and I have told staff we are not going to table it again, so you will definitely hear it in May.

MR. STEEN: It's just the question of getting the public presentation on it? You've looked at the report?

MS. FOX: The staff has to do certain things with it. We have different meetings and discussions on it and then we forward our final comments to the internal auditor. He has to have a certain amount of time to prepare his presentation to you all. There just wasn't enough time for him to do that this month. In fairness to him, I don't think we were going to get it to him until the middle of last week, so that was not really enough time for him to finalize his work. It should be ready in May. We have been a little bit backlogged, you might say, because of the legislature, people having to be out of the office, holidays and illnesses that went around the office. I do apologize that we are having to table it again, but I promise we won't again.

MR. STEEN: We talked about it earlier, and there are no big surprises in there.

MS. FOX: No. There are some suggestions that have to do with the application form and instruction book, ways that we train and inform our staff of different ways their work is reviewed and things of that nature, but nothing major. It addresses some recommendations with technology of which most of it are things that we already knew. We can't do anything with some of it until we get our technology transformed, so I don't think there are any big surprises.

MR. STEEN: Any problem with tabling it?

MR. SELIGER: No.

MS. MADDEN: You've already prepared your responses to his recommendations?

MS. FOX: Yes.

MS. MADDEN: Okay. Now he has it?

MS. FOX: We were going to send it the middle of last week. I don't think it actually went over, did it, Denise?

MS. HUDSON: No.

MS. FOX: It should go today, and that will give him plenty of time to do his work and let us have one final look at it and then to share it with you all.

MR. STEEN: Mr. Bright, do we need formal action or can we just agree to move on?

MR. BRIGHT: Just don't do anything about it and it will die a natural death.

MR. STEEN: All right. Item five is to consider publication of proposed amendment to 16 TAC Section 45.105 relating to conforming mixed beverage advertising to meet the standards prescribed for beer; discussion, comment, possible vote.

MR. BRIGHT: Mr. Chairman and Members, as you may know, Section 108.52 of the holy scripture places some relatively specific restrictions on the kind of outdoor advertising that licensed premises can engage in. Section 108.07 of the code says none of that applies to mixed beverage establishments, and the Alcoholic Beverage Commission shall adopt rules deciding what outdoor advertising mixed beverage establishments should be able to do. We adopted a rule some years ago. All it says is don't let anybody from the street see what prices you are selling your liquor for. The suggestion and the idea has been around for some time that we ought to address this in rulemaking further, and kind of on the general principle that the restrictions that apply generally, at least to on-premise establishments, ought to apply to mixed beverage establishments as well.

The Wholesale Beer Distributors made a suggestion that we do that now. They proposed some rule language. We tinkered with it in nonsubstantive ways. That is before you. We think this is a good thing to do and so we request that you authorize that we publish this rule in the *Texas Register* and begin discussions with the relevant people as to what the final rule should be.

If we publish on your authorization today, the first time it will be possible legally to act on this rule will be at your June meeting. We don't expect a lot of discussion and debate about this, but we do expect some, and we think it's realistic to be able to do something in June about this.

MS. MADDEN: This just kind of levels the playing field, right? This is for consistency?

MR. BRIGHT: Yes, ma'am. We have rules that apply to people who can sell beer and wine. Those rules do not apply for mixed beverages.

MR. STEEN: Anybody here today that wants to comment on this?

MS. MADDEN: Do you need a motion?

MR. STEEN: Yes.

MS. MADDEN: I so move.

MR. SELIGER: Second.

MR. STEEN: Any discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. So, we voted to proceed with publication.

MR. BRIGHT: That's right. What will happen next is that I will draft up the relevant statements. We will send it to the *Texas Register*. Within the next 10 days, based on their publication cycle, they will publish this proposed rule text with a preamble that says, "The TABC is thinking about this. Keep those cards and letters coming. Tell us what you think about it." We will engage in informal discussions with the relevant people in trade associations that would be interested in this and start our way towards making a final recommendation to you one way or the other.

MR. STEEN: Thank you, Mr. Bright.

Item six, consider proposed amendment to 16 TAC Section 41.52 as published in 28 TexReg 817 on January 31, 2003; discussion, comment, possible vote. Mr. Bright?

MR. BRIGHT: Mr. Chairman and Members, this is a rule that we published several months ago. It is the rule that relates to the ability of private club operators to access the electronic data that's encoded on the strip on the back of your driver's license for purposes of verifying their internal records. Remember that we require that they keep accurate records of the name and current complete address of club members, and we will punish them if they fail to do that. Obviously, they are serving alcoholic beverages, so it is very important that they know the age. So, false identifications, changes in addresses of their members, those kinds of things are of immediate practical concern to private club operators.

The question has come up whether they ought to be able to scan driver's licenses and use various computer software to compare the information they have scanned with the database that may be purchased from the Department of Public Safety for verification purposes.

We have had something in the neighborhood of 140 comments about this rule. All of those comments have been favorable. They have been favorable on the theory of this is good for club operators because it is fast. It is efficient. It is accurate. It solves a lot of problems for us. We have had two commentators who are opposed to it. Their opposition, however, is

based on some fairly technical legal readings.

We have two bodies of law that apply here. We have state law and then we have a federal act. Remember, I have spoken to you about this before, the Federal Driver's Privacy Protection Act, by letter that I copied you on earlier, and it is in your briefing book today, addressed those questions. We've engaged in discussions with the commentators and looked at the law and kind of wallowed around in all of that, and I've expressed our views about that law in that letter. While I'm sure that reading that letter was pure pleasure and the highlight of your week, I don't intend, absent questions from you, to go into detail about any of that.

Let me tell you that the staff recommendation here today is that you adopt this rule for all the reasons stated in my letter, but you adopt it with a change to the text as we originally published it. If you will look in the iteration of the rule we have in the briefing book, on the last page of that rule is a paragraph presented in red. That would be the language that we suggest you adopt.

MR. STEEN: What tab are we looking at?

MR. BRIGHT: We are looking behind tab number six, Mr. Chairman.

What we have added to this language during the course of our discussions and deliberations is the last sentence of that paragraph which says, "Written consent must be obtained from the club member or prospective member when accessing electronically readable license information and proof of such consent must be maintained with the permittee's membership records." Under this rule, if you adopt it, private club operators would be able to scan driver's license information. They would be required to get the written consent from the person as they did it, and they would have to maintain proof of that written consent so, in our audit of their records, we could make sure they were complying with this rule.

The legal debate has focused primarily on the provisions of the Federal Driver's Privacy Protection Act. The Federal Driver's Privacy Protection Act, as I read it, regulates our Department of Public Safety and its contractors. Its contractors are the people who purchase this database, and they are contractually bound to DPS to make sure that they do not violate the terms of this federal law as they use the information they have purchased. That law essentially says you may not communicate that information. Information which is your name, driver's license number and your address, the information that's on the card and on the readable strip except, and in true federal legislative form, we've got about 16 or 17

exceptions, that is it's okay to use the information you've obtained in these ways. If you will look in my letter what I am primarily grappling with is whether or not this use, as I understand it, is within those exceptions, and I believe that it is.

There are several exceptions that apply. Perhaps most significant is the question of whether or not the comparison of the information that the private club has accessed by scanning on the club site, when it's transmitted to and compared with the database information, whether a verification process is going on there. As I talk about it in my letter, and as I've talked to the people who are proposing these systems to be run, I believe that it is.

Let me say now those folks are here and they are infinitely smarter, if not wiser, about these things than me. They will talk to you about this in a moment. I believe they are verifying to insure that the information they have gotten from scanning the driver's license is the most current and most accurate information.

I will add something that was not in my letter. On Thursday, I was having a discussion with Chief Hamilton about their experiences at spring break, and they discovered something at spring break that they had yet to see but expect to see a lot of in the future. They have hand scanners and, as they are checking children's ID, they will scan that electronic strip and the hand scanner will tell them that that person is over 21 years of age. They determined that that magnetic strip had been altered to show that falsely and the only way they could determine that was by comparing the name and the driver's license with the database. There is a verification. It isn't necessarily so. It is possible to tinker with that strip, so there's a verification process going on there, I believe.

One of the other exceptions under the Federal Driver's Privacy Protection Act is that you may communicate this information back and forth to parties who need it, to merchants who are using it to verify the information, if you've obtained the written consent of the consumer. That's one of the reasons why we suggest adopting this amendment that you require the club operators to obtain a written consent.

A second reason beyond the law is that there are certainly, as we've said from the outset of this rule proposal, there are certainly fairly serious privacy concerns in accessing information that we have and in releasing or publishing in any way information that's on some government file. The idea behind our proposed change to this amendment is to put the consumer in the position of being able to decide if he or she wants to do that or not.

That gives that consumer or that patron of that private club the opportunity to do that.

Once we struggled our way through the legal questions here, the second question that remains is well, if it's lawful, or at least if I'm right about it being lawful, then the question is should we do it? On those questions we have a good number of private club operators who say that they ought to be able to do this for all kinds of business related and convenience related reasons. We don't have strong objections against that one way or the other. One of the things that I do note, however, is that if club operators access this information under our rule, their treatment of that information, then, is carefully regulated by our criminal law. If they then, in fact, publish that beyond their need to verify their records, if they market it in some way, they've committed a class A misdemeanor under Section 109.61. One of the questions that arose in connection with that is what if there is no rule here and they take the driver's license and they simply photocopy the face of it? They get the same information. What restrictions apply? I think the law, and I've looked at at least - this is a new area of the law - but I've looked at at least one district court case from the great State of Illinois in which that's exactly what was happening. A club was photocopying the face of a driver's license and then taking that information and marketing it to other people. The people's whose information had been so marketed sued under the Federal Driver's Privacy Protection Act. The court then said that act doesn't apply to that exchange and, therefore, there are no restrictions that apply on what they can do with that information. Under our rule there would be some restrictions, and we think that's a reason in support of adopting the rule.

Having said all of that, there are other people here who would love to speak to you. I will shut up so they can do it.

MR. SELIGER: May I ask a question? I think this is for Chief Hamilton. How was the strip altered physically on the licenses?

MR. HAMILTON: There are people who have the capability of putting this driver's license in a computer and writing on the back of that strip. It was a very good driver's license that Al Luna showed me. It looked perfect. The only problem is that they put all of the regular information on the front of the driver's license that goes on her real driver's license, including the driver's license number, but they changed the date of birth. What they did was when they swiped the card, it read what was on the back and then all of a sudden it hit the DPS database and it read the driver's license number. That's how they messed up by putting the real driver's license number on

there, and her driver's license showed that she was 19 years old. All of the other equipment that we have used, the only thing that it reads is the back of that strip back there and if they write that strip to show that they are 21, it's going to show that they are 21 if it's not tied into a database.

MR. SELIGER: Absent that database, then, in the hands of a private club, if the strip can be altered, of what possible use, then, is that strip to determine or verify age?

MR. HAMILTON: If the individual is tied into the DPS database, if they give you a true and correct driver's license number, it's going to tell that individual that you are underage.

MR. SELIGER: Right, but our rule doesn't require, does it, that the private club have the same database with which to cross-check electronically, does it?

MR. BRIGHT: This is part of the way these proposed systems would operate that perhaps you should get more expert advice. But here is the way I understand it happens. The club, on the premises, scans the driver's license. That information, or the driver's license number, is transmitted through the magic of computer software to an organization in contract with the club. That organization has contracted with the Department of Public Safety and has purchased the database. They take the information sent to them from the club and verify it by saying who is this person according to the DPS database? Are they over 21? Do they live at the address so reported? They transmit that information, that database information, back to the club to verify who they have in front of them. Are they a member? Are they not a member? That kind of information. There is an electronic exchange between the club and between someone the club is in contract with who is a possessor of the database.

MR. SELIGER: So, our rule, then, does require them to have electronic access to that database?

MR. BRIGHT: No. It allows them to scan the card. It does not require them to do anything nor does it require them, if they choose to use all this electronic stuff, it does not require them to access the database. It allows them to do so, as I read the rule, but doesn't require them to do so. Do you follow me with that?

MR. SELIGER: I do follow you, but now I'm concerned about just what the effectiveness is from the point of view of the age of the consumer if this strip can be altered. I think if there's a corresponding database against which it can be checked, it ought to be unerring in accuracy as to the age of the consumer.

But absent that available database, if you scan this, the same 19 year old that our process caught, if you scan that and it says the young person is over the age of 21, what they have got then is a very good fake electronic ID.

MR. BRIGHT: That is correct. I suppose what occurs to me is that we are probably not going to be able to construct a fool proof system. I don't know, as I talk to my friends in the enforcement division, I don't think that they think card scanning is a fool proof system. They think it's an improvement on reading and looking and making those kinds of judgments. They think it's a tool to be used in identifying underage drinkers, but I don't think they think it's a fool proof system.

MR. SELIGER: Is it unfeasible to make as part of the rule the requirement that if you are going to scan, there has to be a database against which it can be checked? Is that feasible financially and electronically?

MR. BRIGHT: Frankly, I have not thought about that. Our dispute here has been about what is the legal result if that happens, and all of our conversations have been about clubs who want to do it in that way. Are there clubs or are there systems out there in which you can scan the license and get some kind of reading of accuracy? That is, the front of the license has not been altered in some way to reflect differently. I know those systems are out there. I would hesitate to say we ought to essentially say that's a system we won't let you use. We will make you create a contract with whoever it is that possesses the DPS database. Under our current rule, they can do it either way.

There is one further thing I should say before I be quiet, and I apologize for not saying it. There is a different point of view about my assessment of the law here. It is in some of the correspondence that we provided to you Thursday afternoon. I was not in the office on Friday. Thursday afternoon, one of the commentators sent me an e-mail expressing that point of view and saying he would not be able to be here. That's in your commission book. Please look at it. It is an e-mail from Mr. Ivy who has been in this business for a while. He knows a good bit. I wouldn't presume to speak for Mr. Ivy. I want you to recognize there is a contrary point of view. I'm reasonably convinced that I'm right with the greatest deference to Mr. Ivy, but you recognize that other people think differently.

MR. STEEN: Any more questions at this point?

MS. MADDEN: No.

MR. SELIGER: No.

MR. STEEN: I do have a citizen that signed up to speak. Randy Cain, attorney with Hilgers and Watkins, representing Source Data.

MR. CAIN: Mr. Chairman and Commissioners, I'm Randy Cain, attorney with Hilgers and Watkins here in Austin, Texas, and my client is Source Data which is a service company which contracts with private clubs to provide this service that the general counsel has just described.

With the things that the general counsel has said, I think he has described the situation very accurately and laid it out in a very understandable fashion. I will try to be brief and let you ask questions if you have any. I think that the consent amendment to this proposed rule has made it a much better rule. I think that gives a lot of comfort to everyone who's concerned about privacy protection, the ability of the consumer himself or herself to consent to the use of the information. I think this rule is a win-win situation. I think the privacy is better protected of the consumer. As the general counsel said, there is a federal court case which states that information that's manually collected, the federal act does not stop the publication or the marketing of that information. But, in Texas, because of the law passed last session by Senator Shapiro and Representative Haggerty, that makes the state law in that situation much stronger than the federal law, so information that is accessed from the magnetic strip, that information is not allowed to be published, is not allowed to be marketed in any manner. It's made available to the TABC pursuant to the rule that is required of the clubs to keep a current and correct address. I will close now and offer myself available for questions if anybody has any.

MR. STEEN: Any questions?

MR. SELIGER: I have none.

MS. MADDEN: No.

MR. STEEN: Thank you, Mr. Cain. Anyone else here that wants to speak on this issue? Mr. Bright, tell me again about Mr. Ivy. What's his interest? Who is he representing?

MR. BRIGHT: Mr. Ivy, I believe, runs a company called the Unicard System which is a system that I can't describe to you because I don't do this business myself, but is involved in a system that creates a card that allows private clubs to use that card as opposed to a driver's license. Perhaps within the sound of my voice there is a person who has a Unicard. Mr. Ivy has sold the

service to private clubs for some period of time now, and he's a lawyer, among other things, and so he has that interest. We've engaged back and forth orally. He's come and met with us. He was here at the last commission meeting, and we've exchanged correspondence on this issue.

MR. STEEN: Can I ask you to summarize, for the record, his comments on this?

MR. BRIGHT: He believes, as laid out in his e-mail, he believes there is not, in fact, a verification process that happens. He has no objection, as I understand it, when the club scans the card and the information goes no further than the premises. He believes, as I understand his point of view, that when that information is transmitted to the person holding the database, that there's not, in fact, a verification process happening there. The only reason that that process happens is to generate information from which the club creates its membership records. Analyzing exactly what happens there has been kind of the heart of what our discussions have been about. I talked to everybody involved and thought I understood it. I issued a little letter that said, "This is tentative but here's what it looks like to me. Tell me why I'm wrong." I got comments from Mr. Ivy and another commentor, a lawyer in Houston who represents a number of private clubs, and I took those comments and I studied them myself. I talked to the people who Mr. Cain represents, kind of argued through it with them a little bit and came to what I think is a clear understanding. I believe there's a verification process going on there. Mr. Ivy disagrees with that.

MS. MADDEN: When we decided to vote on publishing, I was really against this. I told you this earlier, Mr. Bright, but I have read all your documents. This man has been very busy. Let me assure you. There are a couple of things that leapt off the page in your letter that changed my way of thinking. You can guess what it is. It's the fact that the license data may not be scanned under our proposed rule without the written consent of the card holder. I think that is so important that they are going to do that. To me, that is the key, plus, of course, that the list can't be marketable. My issues and my reservations were regarding the privacy issue, and that seems to me to address that. Do you think that's a fair assessment?

MR. BRIGHT: Yes, ma'am, I do. I'm at awe at your dedication to the public business that you actually read all that.

MS. MADDEN: I read every word.

MR. BRIGHT: I think that's accurate. There's one final thing I should tell you. Here's what you can do here today. You can reject this rule and say never bother us about this again, Mr. Bright. You adopt this rule as we originally

published it. You can adopt this rule with our proposed amendments or other reasonable amendments to it. We do not have to republish if you change the language as long as the change does not affect the rights of other people that are not otherwise involved in this process. You may defer this for further consideration. Talk about it some more. See if you can get closer to the bottom of this. So those are the things that it's possible for you to do today.

MR. STEEN: Ms. Madden, what would you like to do?

MS. MADDEN: I'm prepared to vote on it. What about you, Kel?

MR. SELIGER: I'm ready to vote.

MS. MADDEN: I like it, of course, with your new amendment to the rule.

MR. SELIGER: I move we accept the rule as presented and amended.

MS. MADDEN: I second.

MR. STEEN: We are clear on what we are voting on then, which is the language that's in red? Is that right?

MR. BRIGHT: I believe I know what you are voting on. As I understand the motion, you have instructed us to publish in the *Texas Register* as adopted a new paragraph (g) to 41.52 with the language originally published, plus the addition of the sentence that I read at the beginning of my presentation.

MR. STEEN: Mr. Bright, how about we read it into the record, just to be clear.

MR. BRIGHT: Your motion or my understanding of it, Mr. Chairman?

MR. STEEN: Your understanding of it.

MR. BRIGHT: We will publish in the *Texas Register* as adopted the following addition, the following paragraph (g) to Rule 41.52. "Permittees may access electronically readable information on a driver's license, commercial driver's license or identification certificate for the purpose of verifying the accuracy of the records required by this rule. Information so accessed may not be retained longer than is reasonably necessary to insure verification. The information may not be marketed in any manner. Written consent must be obtained from the club member or prospective member when accessing electronically readable license information and proof of such consent must be maintained with the permittee's

membership records.”

MR. STEEN: Thank you. Any further discussion? All in favor, say aye.

MR. SELIGER: Aye.

MS. MADDEN: Aye.

MR. STEEN: Aye. The motion carries. Mr. Bright, thank you for your thorough work on this. We really do appreciate it.

The next item on the agenda is item seven - public comment. Are there any members of the public that would like to comment? Hearing none, we move onto executive session.

The commission will now convene in executive session to discuss the appointment, employment and duties of the administrator pursuant to Texas Government Code, Section 551.074(a)(1).

The commission convened in executive session at 11:42 a.m. and reconvened in open meeting at 12:10 p.m.

MR. STEEN: The commission meeting of April 28, 2003 is now back in open session. During executive session no votes were taken, no final decisions were made. There are no matters requiring commission action at this time.

MR. SELIGER: I move we adjourn.

MS. MADDEN: Second.

MR. STEEN: All in favor, say aye.

MR. SELIGER: Aye.

MS. MADDEN: Aye.

MR. STEEN: Aye. The meeting is adjourned.

The meeting adjourned at 12:11 p.m.