

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, MAY 19, 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; Buck Fuller, Director of Compliance; Amy Harrison, Director of Licensing; Jim Johnson, Director of Information Resources and Debbie Dixon, Seller Training. Present and recognized for 20 and above years of service: Pete Champion, San Marcos Enforcement; Laban Toscano, Bryan Enforcement and Steve Boyer, Dallas Compliance. Visitors included: Russell Gregorczyk, Jansen & Gregorczyk; Jim Haire; Randy Yarbrough, Wholesale Beer Distributors of Texas and Charles E. McGrigg, Wine Institute.

The agenda follows:

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

1. Recognition of agency employees with 20 or more years of service.
2. Approval of minutes of April 28, 2003 meeting; discussion, comment, possible vote.
3. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement;
 - c. discussion of management controls; and
 - d. compliance/ports of entry activities
4. Fiscal stewardship of agency; discussion, comment, possible vote.
5. Presentation of internal auditor's report on Internal Audit of Field Office License Processing; discussion, comment, possible vote.
6. Public comment.

Announcement of executive session.

7. Executive session:
 - a. the commission will convene in executive session to confer with the general counsel regarding litigation pending against the agency under the authority of Texas Government Code, §551.071; and
 - b. the commission will convene in executive session to discuss hiring an administrator, consider applications and interview applicants for the administrator's position pursuant to Texas Government Code, §551.074(a)(1).

Continue open meeting.

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

The meeting was called to order at 1:30 p.m. by Chairman Steen.

MR. STEEN: I want to call to order the May 19, 2003, meeting of the Texas Alcoholic Beverage Commission.

The first item on the agenda is recognition of agency employees with 20 or more years of service. We have three. Where is Chief Hamilton?

MS. HUDSON: He's on his way.

MR. STEEN: I will call on our director of compliance, Buck Fuller.

MR. FULLER: We'd like to recognize Steve Boyer. Steve was re-employed with the Texas Alcoholic Beverage Commission as a Compliance Officer I on July 1, 2002. He was first employed with the agency from 1973 until his retirement in May of last year. Steve began his career in auditing with a brief stay in headquarters, followed by a transfer to Houston where he served as an assistant supervisor and regional supervisor. In 1998, Steve transferred to the Dallas regional office as a compliance supervisor where he remained until his retirement. Throughout his career, Steve has always represented this agency in a professional and positive manner. We commend Steve for his dedication and many years of service to the TABC and the state. He is a valuable asset to this agency, and we appreciate him. Steve is also an avid fisherman and outdoor sportsman. Congratulations, Steve, on your 30 years.

MR. STEEN: Thank you for your many years of service.

MS. MADDEN: Steve is working in Dallas right now and I have gotten to know him very well. He can answer any question that you can think of about the TABC. He is just a wonderful ambassador for our agency, and we are so excited to give you your plaque today.

MR. BOYER: Thank you very much.

MR. STEEN: Chief Hamilton?

MR. HAMILTON: We have Sergeant Pete Champion in the back with his wife, Gayle, and his supervisor, Captain Ferrero. Pete Champion has been with the agency since 1978. He has been assigned to El Paso and the McAllen office. He's presently serving in our San Marcos outpost. He receives many letters from citizens and organizations in the communities in which he works for his work and leadership. I was talking to him briefly just a minute ago - he stays extremely busy - and he was telling me that he's the manager and coach of a girls' and boys' baseball team. I was asking him about his tan, and he said he is out there Monday through Thursday

coaching. Pete is definitely an asset to this agency, and I want to applaud him for his 25 years of service to the TABC.

COMMISSIONERS: Congratulations.

MR. CHAMPION: Thank you.

MR. HAMILTON: The next individual I'd like to recognize is Sergeant Laban Toscano. He, too, has been here 25 years. He's presently stationed in the Bryan outpost. He was promoted out of the San Antonio district office in 1994. Laban's employment records continuously make reference to his loyalty, professionalism and dependability. He has been commended by his supervisors for his ability to complete the most challenging tasks. Laban also serves on our college coalition located in Bryan. He is the individual that has served for the TABC on a national level. He is very active in coalitions in the Bryan area, and I applaud him for his 25 years of service.

COMMISSIONERS: Congratulations.

MR. TOSCANO: Thank you.

MR. HAMILTON: I would also like to recognize his captain who is out in the audience. He's located in Abilene, and he's Captain Byron Bush.

MR. STEEN: Those of you that we've just honored are welcome to stay at the meeting or, if you'd like to go do other things, that's just fine. This would be a good time to leave if you want too.

Next on the agenda is the approval of the minutes of the April 28, 2003, meeting; discussion, comment, possible vote.

MS. MADDEN: So moved.

MR. SELIGER: Second.

MR. STEEN: All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. The minutes are approved.

Next is the administrator's report. Ms. Fox?

MS. FOX:

Mr. Chairman and Members, you will remember last commission meeting, we spoke a little about our EUDL grant funding. Part of that funding we award to other entities, but we do keep part of it for ourselves. One of the things that we started last year, in line with our goals that we outlined in our strategic plan, is to focus on underage drinking on the college campus.

We started that process last summer when we had a presidents' forum. We invited presidents from colleges and universities throughout Texas. We talked to them about the problem, what an issue it was and tried to get some commitments from them that they would work toward that problem.

The second phase of that effort had to do with the Judicial Think Tank that we had in August or September where we brought in judicial officers from those campuses - judges, prosecutors, other law enforcement, TABC - so we could find out what the barriers were in prosecuting underage drinking.

The third phase of that kind of culminated this last week on Thursday and Friday when we had the very first Texas College and University Symposium and Team Training. That involved 16 invited campuses. We only had 15 that came, but we originally invited 16 that would come so that we could help provide them the tools necessary to leave with a strategic plan and a roadmap to addressing underage drinking on their campus. There were a couple of requirements with that. You had to have a community member, a student, a law enforcement component. You had to have a judicial officer and another member of the university.

MS. MADDEN:

Excuse me for interrupting. Can you give us two or three examples of some of the universities and colleges that attended?

MS. FOX:

I would love to. I am going to read you that list, because I don't want to leave anyone out. SMU in Dallas; Southwest Texas State in San Marcos; Sul Ross State out of Alpine; University of Incarnate Word in San Antonio; Texas A&M in Corpus; Schreiner University out of Kerrville; Texas Tech out of Lubbock; University of Texas at Arlington; University of Texas at San Antonio; Prairie View University; University of Texas at Permian Basin from Odessa; Texas A&M College Station; St. Edwards University; Texas Southern and University of Texas here in Austin.

We had a good variety of colleges throughout the state. Our goal was to make sure that each of these teams had necessary information and the resources and the skills to continue any initiative they had started or all the information they needed to start a new initiative and move forward with that.

We told them we would be a real success with the symposium if when they left there on Friday afternoon that they had a roadmap to lay out their enforcement and preventive measures. They had networked with these other universities and colleges and met other people doing the same types of efforts on their campuses so, hopefully, they would have someone to talk with and collaborate with, get good ideas from and they would be aware of all the resources around the state, whether it's state resources or resources from other organizations such as Texans Standing Tall or MADD or something along that nature.

From the surveys that were done at the end, I think it was a big hit. I think we made a lot of inroads. One of the things that they did at the end - and we only gave them a few minutes a piece - was to lay out what their plan was. From the few minutes that they had at a very high level, we are all very excited about their plans. We also have their detail plans that we will go over, but I believe it was a great success. We are looking forward to having them all back next year to report on how well their plans went, what they learned from it, what they would do differently and, hopefully, at that point pick out some of the best practices so that we can share with other colleges and universities that didn't attend or as we look at a new way of expanding that next year.

We were all quite pleased with that. Ms. Luna did an excellent job in putting everything together. You heard her report a couple of weeks ago. It was very well received.

MS. MADDEN: It sounds outstanding. Next year when we do it, if we can get a little earlier notice, I think all of us would like to attend.

MS. FOX: We certainly will. There are enough operations going on each day, and I know that at some point, if you all three wanted to come, there would be things to do, and we will certainly let you know on that.

MS. MADDEN: Sounds like it's very outstanding and successful at the same time.

MS. FOX: We are very pleased.

MR. STEEN: Just some examples of the plans or initiatives that they are taking?

MS. FOX: Is Andrea in here?

MR. HAMILTON: I can give them that information. One of the things is to get students involved in what's happening on the campuses. The big push or initiative right now is the environmental approach. They feel that if you can

address the environment in which these students live, that you can change the incidence of alcohol abuse on college campuses. That's a real big initiative that's happening around the country. The big thing was the judicial officers and also the students are not only going to work on their campus, but they are going to go out in the community and talk with the establishments who sell alcoholic beverages about these different promotions that are going on that's detrimental to the students of that particular area. They are also going to be working real closely with TABC when the freshmen come in. That's just some of their game plans. I know that every one of them did want to include not only the campus police but also TABC and the local law enforcement in addressing the issue, coming out during freshmen orientation and visiting with the kids and letting them know what the laws are, and also going out and have a community forum with the licensed establishments around the campus to address the issue of alcohol abuse.

MS. FOX: One of the very positive things, I thought, is when you sat and looked at these 15 groups, Texas A&M College Station, their community member was a package store permittee. I thought that was a great positive step in involving the industry in this issue, too, as they work on the college communities and their issues.

MR. HAMILTON: Not only was he a member, but he was the president of that coalition.

MR. STEEN: Thank you. Any other questions?

MS. MADDEN: No.

MR. SELIGER: No.

MS. FOX: One other thing of note is that we start with our introductory meeting with the sunset commission tomorrow. We will get started on our sunset process and have our overview on that. That is something I know the staff will be paying a lot of attention to in the next 12 months. I don't know exactly what our schedule will be. They should give me a schedule tomorrow about when they will actually be out here working specifically on this agency.

MS. MADDEN: Can you give us an update on how that meeting comes out in an e-mail?

MS. FOX: I will be glad to.

MR. STEEN: Ms. Fox, I know you've been through it before, but give us an overview on the sunset process.

MS. FOX: We did go through sunset in 1993. My memory may not be as good as it should be. During that time, I know that we did an initial survey, an initial questionnaire that we answer. We put together - and we already have some of that documentation - historical information about the agency. They visit with the agency as well as all parties in the industry on what issues may be coming up, what our impediments are, what are the good things, the bad things, etcetera. They spend a lot of time visiting with a lot of people outside the agency itself. Then they come up with a report and recommended statutory changes that they give to the sunset commission which is composed of the senators and representatives.

MR. STEEN: Thank you.

MS. FOX: That's all I have today for the administrator's report. Buck Fuller is going to give us a presentation on the compliance and ports of entry activities.

The PowerPoint presentation included total number of FTE's and vacancies; ports of entry (POE) locations along the Texas-Mexico border; POE revenue collection; POE containers stamped; POE confiscations and POE booths. Field operations included compliance regions and field personnel locations; audits - excise taxes; private club fee analysis; food and beverage - analysis and inspections - interviews and instruction - new location inspections; special investigations; cash and credit law cases; seller training - trainer testing, inspections and monitoring and record inspections; destructions; summary suspension; capital equipment inventory and confiscated property inventory. Headquarters operations included POE headquarters; credit law; excise tax, seller training; audit review and quality control; support - local distributor stamps; temporary membership cards and suspension orders.

MR. STEEN: Mr. Fuller, with all these varied activities, how do you organize your staff in terms of who reports to you?

MR. FULLER: We have a very good structure. Our organizational chart has four regional supervisors and Santos Saldana who organizes our six ports. The organizational chart is...

MR. STEEN: How many people report directly to you?

MR. FULLER: We have six POE supervisors and four field compliance supervisors, and we have an assistant director of compliance, Diana Gonzalez, and Steve Carlson who is the supervisor over headquarters operations. I'd like to thank Santos Saldana and Steve Carlson for their help in putting these maps and graphs together. I didn't bring the organizational chart before you, but we have a lot of longevity in the compliance department. We have a number of employees with well over 30 years. Mr. Boyer was another example of that. Robin Isbell in Amarillo just got his 30 years not

too long ago. We have a lot of tenure. We have a lot of institutional knowledge. I'm concerned about when we lose that institutional knowledge because everything we do is core driven and statutory driven.

MR. STEEN: Any other questions?

MR. SELIGER: No.

MS. MADDEN: No.

MR. STEEN: That was a great presentation. We appreciate it.

MS. MADDEN: Thank you.

MS. FOX: Fiscal stewardship.

MR. STEEN: We are ready for that?

MS. FOX: Yes.

MR. STEEN: Fiscal stewardship of the agency. Ms. Hudson?

MS. HUDSON: We provided you some information on the workforce that we currently have. You can tell that we've maintained pretty level over the last three years. The only real change has been in tenure where we have seen the number of individuals with less than 10 years increase, and that's due, in part, to the number of agents that we just hired, the new agents.

We are doing very good on our legislative caps. Part of that can be accredited to the budget cuts. With less money, we are finding that we are spending less on travel, especially out-of-state travel. We expect to stay well below those through the end of the year.

MR. STEEN: Thank you. Any questions?

MR. SELIGER: No.

MS. MADDEN: No.

MR. STEEN: Next item is presentation of internal auditor's report on Internal Audit of Field Office License Processing.

MR. GREGORCZYK: Good afternoon.

MR. STEEN: Good afternoon.

MR. GREGORCZYK: This is our first audit to bring forth to you this fiscal year. We have been working on this one quite a while. I think we started back in December, November. Back in the fall we actually began the work, and it's taken a good while working back and forth between us and staff to get this one to this point.

The term "Field Office License Processing" is probably somewhat of a misnomer.

MR. STEEN: Would you mind identifying yourself, just for the record?

MR. GREGORCZYK: I'm Russell Gregorczyk. I'm the internal auditor for the commission, and this is our third year.

MR. STEEN: Thank you.

MR. GREGORCZYK: This is somewhat of a misnomer. Let me speak to the purpose of this audit. The state auditor, as you recall, was here last year. Although they didn't identify any areas within license processing that they thought were problematic, they did comment on the high error rate in the field offices. They suggested actually that we consider that as part of our audit and I put it in the audit plan.

At the beginning of the year, Mr. Garza asked us specifically though to not focus solely on the error rate and to try to expand it to look at the whole license processing. The audit probably should be termed the "License Processing Process" because we did look at the field error rates and the field offices. We actually visited six field offices as part of this audit work. We also looked at what goes on at headquarters, and we had a pretty heavy emphasis on what can be done automation wise because it is a fairly manual process in many areas in terms of the amount of data that flows through the old system that we have in place. Our purpose was to look at those three areas. The error rate, the whole application processing and what can we do to automate.

It's a very long report. I hope you've at least had a chance to look at it. I would like to spend five minutes or so and cover some of our key findings and key recommendations if I can.

MS. MADDEN: We would like for you to do that because this report is huge. I know it took a lot of work to do it. It took a long time to read it. I think you have a lot of good recommendations that I thought were interesting.

MR. GREGORCZYK: Let me do that then. Stop me at any point and ask questions. We broke it down, as we do all our audits, into audit objectives. When we begin an audit, we always bounce these audit objectives through management so it's clear what we are going to look at and management concurs. In most cases, we hope management concurs in what we are going to look at, and they help drive what we are going to focus on.

The first audit objective deals with the license form itself and the instructions. We spent a lot of time going through this back in the fall. We had several meetings with staff even after the first drafts were out. It's changed somewhat because what we found out only recently, within the last month or so, it turns out that the instructions we had did not match the form. In other words, we were looking at a current set of instructions and an outdated form. We had a number of recommendations initially about the instructions don't match and they are not in sync with the license form itself. It turns out that those were in error. I don't know if it was our fault or the staffs'. I'm not going to lay blame on either one, but we did spend a lot of time and we were looking at apples and oranges there, so that didn't prove effective in terms of the initial recommendations that we had.

We did a lot of surveying as part of this audit. We surveyed licensing services, the field office staff, the headquarters staff. We got really good feedback on all of those. One of the things I guess I'd like to say with respect to this first finding is that most folks do think that the form itself is very well organized. There is an awful lot of data there so it's somewhat crowded in some cases. Most everybody, the field office staff, the licensing staff, feel like it's a pretty good document. Approximately two-thirds of the respondents, 67 percent of the field office staff and a majority of the licensing services, feel like the application is very tough for applicants to fill out without some kind of technical assistance. It's just not something they can pick up and read the instructions and probably do on their own. It's very difficult.

MS. MADDEN: I notice it was based on the IRS application. Did I read that right?

MR. GREGORCZYK: I think that was the model they used when they redesigned it several years ago. They took a look at the IRS and how that form is laid out and the instructions. Jeannene can probably comment better than I.

MS. FOX: It was done that way because we found with the old form we had tried to put the questions with the instructions all on the same piece of paper, have all of the questions on the back and 15 instructions. The effort in redesigning that form was to give more detailed instructions with more specific steps for people to go through to eliminate errors and questions

and just not knowing when they filled out the form. If you tried to incorporate all that in a form, your form would have been this thick, so basically the decision was made to have a booklet where they could go through question one, two with the application by it at the same time.

MS. MADDEN: Sounds like the concept was good but there seems to be some confusion about this. There is a high percentage that said the error rate was high and a lot of people didn't understand it. Is that correct?

MR. GREGORCZYK: That was the feeling of the field office staff and some of the licensing services. The comments from headquarters was they didn't think much else could be done in terms of simplification.

MS. FOX: We have Amy Harrison, Director of Licensing, here, too, if you want to direct any of your questions to her.

MR. GREGORCZYK: One of the areas of disagreement between us and perhaps the licensing staff was we felt perhaps one thing that might be helpful were samples. We've gone around and around on that issue. I think the staff response is they feel like if you have samples people might just quote them verbatim, put in the sample answer and cause more problems than not. The surveys that we did of the field office staff and the licensing services, they thought samples might be helpful to folks trying to fill out the form because they are complex. It's kind of a mixed bag on that. There really seems to be two schools of thought on that and either one could be correct. I'm sure if you put samples out there, you would get some people that just turned in a sample application with the same answers that were on the sample.

MS. MADDEN: Wouldn't that be a red flag? Wouldn't people pick up on that pretty quickly?

MR. GREGORCZYK: I would hope so as far as catching those errors. We did make that recommendation. You can read the management response from TABC. They feel like perhaps that's not really a good idea. I don't know if that's something they want to pursue. It was interesting that the field office staff that do work with the applicants, they felt that perhaps that would be a good idea.

We did feel like perhaps an expanded web-based tutorial instruction would be helpful for people who have access to the web and are knowledgeable. That might be an easier way to get some of the information. The instruction book is good, but it is very long. You have to cross-reference back and forth. We felt a web-based tutorial might be a more efficient means of completing the application.

Audit Objective 2 we took a look at the licensing services. Many applications are done or completed by licensing services. If we are having high error rates, it stands that some of those are coming from licensing services themselves who hold themselves out to be experts. They tried to look at the training and the guidelines. Generally, I think, TABC does a good job of providing as much as they probably can to those licensing services. I think staffs' opinion is they hold themselves out to be experts, so it's not really our job per se to make sure they are adequately trained. We will provide them as much guidelines, as much information as we can, but that's really their job to make sure that they know how to fill out those applications.

MR. STEEN: People that are applying, how many use a licensing service?

MS. FOX: Thirty-three percent. The way we calculate that number is from the customer satisfaction surveys that we get back. One of the questions that's asked is did you use a licensing service or did you complete this form by yourself? That's just a sample of the whole population, but that's the only information that we have. That seems to stay pretty standard, 32 or 33 percent over the last several years.

MR. STEEN: What do licensing services charge?

MS. FOX: They actually vary and it depends on whether you have a wine and beer permit or a mixed beverage permit. They charge a lot more for a mixed beverage permit. Amy, do you have any current figures on that?

MS. HARRISON: It varies from the area, from the population and the permit type. Wine and beer can run anywhere from 1,000 dollars in the Austin area to about 500 in the Houston area. It does vary according to where you are in the state, in addition to what type of permit.

MR. STEEN: What expertise are they bringing to the table? Why do you need a licensing service?

MS. HARRISON: In my opinion and from what I have seen, the majority of the reason why a licensing service is used is to do that running to obtain the certifications, to be going to your city secretary's office and obtain their certification, the comptroller's office, to the county judge and then to the county clerk. So, a large portion of the types of permittees that use those services are using them as runners as much as anything else.

MR. STEEN: So, it's for convenience?

MS. HARRISON: Yes.

MR. STEEN: You mentioned here on your recommendation about questions that cause the most errors. What kind of questions cause the most errors?

MR. GREGORCZYK: I think, in general, we said the staff should determine which questions cause the most errors and provide that type of information back to the licensing services.

MS. HARRISON: The questions that we are writing on the most are those that are simply unanswered, those answers being yes or no. We felt like to provide samples to that we could do, but yes or no, they should be giving a truthful answer. Those questions that are a little more complicated in nature, investigative type questions, where just giving a truthful answer is what we would prefer to get rather than to get an example that they have just regenerated from something else we've given them.

MR. STEEN: What type of questions?

MS. HARRISON: What's the original source of your money? Many times it's inheritance. It could be a savings from your employment. We get answers like that and then they show to have been unemployed for the last five years, so that might be something we question.

MR. GREGORCZYK: Our point was that if there are certain questions that seem to be causing problems. One thing I sort of failed to mention and one of the recommendations is the system really doesn't allow TABC to know which licensing services make...there is not any way to capture error rates by licensing services. It's really kind of hard to know, to pin it down in terms of if these errors are being made by applicants themselves or by licensing services. We did feel like if you can identify those things that are causing the most problems, let's get the word out to as many people as we can, especially licensing services. If they are filling out a third of the applications, that's a way to reduce your error rate.

We did recommend that probably the system ought to be able to capture that information. Again, I don't know that staff thinks that's really useful to know, what the error rates are by licensing services. We thought it might be helpful to know which ones are making errors. I'm not sure there's much you can do about it. They are not certified or anything else, but knowing may be helpful in terms of trying to target those error rates.

MR. STEEN: How many licensing services are there approximately?

MS. HARRISON: I would say about 330, but I could be wrong. I haven't checked that in some time.

MS. FOX: A lot of those also include attorneys who do that as part of their legal service.

MR. STEEN: Off the top of my head, if you did somehow publish it, put it on the web site or something, it would give consumers an opportunity to see who are the better services and maybe would be an incentive for the services to be more careful.

MR. GREGORCZYK: We thought about that, too. At one point, we had some idea that they should be certified somehow through training or something. Again, I think it's staffs' position it's not per se our job to train these folks who are getting paid to do this. That might be an option.

MS. FOX: I think at this time some of our answers to a lot of these issues are waiting for our technology transformation. Once we can move onto a web-based system, things will be easier to capture and we can include some of these things once we do that. At this time, these recommendations are almost asking for capture manually or to start a new system to capture that. That I don't know would be really effective in what we have because once we stop processing applications to do this, then we are going to decrease the time that we spend on the applications. I think these are issues that we can look toward when we get our technology money and we start transforming that process.

MS. MADDEN: Under one of your recommendations you mentioned that the licensing process manuals should be made available on the WAN. Can we do that right now?

MR. GREGORCZYK: Which one specifically?

MS. MADDEN: It's on page five. You said that we should make our manuals available through the wide area network.

MR. GREGORCZYK: I was going to talk about that.

MS. FOX: We are working on that. That's something that we can do in a short time.

MR. GREGORCZYK: I was going to talk about that one a little bit more. I'm on page 11 now....

MS. MADDEN: I know you are, but I went back when she referred to the technology because there was a question I had in my mind.

MR. GREGORCZYK: We did look at training. A lot of training is provided to the field office staff and a lot of good guidelines. They have two very comprehensive manuals. That was one of the recommendations. Right now they are in hard copy format and they are pretty thick and you have to take some time and effort to get in there and look. It's probably easier to pick up the phone and call Amy. We thought if they were on the web, it might make them easier to access through key word searches and similar things. It might cut down on some of those phone calls. I'm not sure. Time will tell, I guess, if they are able to do that. That was one of our recommendations.

I went to part of the training in the fall where the field office staff came in and one of the big issues was in trying to insure accountability for where these errors start and who should be catching them, and it's a term we call chargeable errors. Chargeable errors are kind of a hot item, or were at the meeting I was at, in terms of what is a chargeable error. A lot of time and effort was spent in the training trying to flush out what those are so that field office staff would know and be able to correct those. Our feeling was in looking at it, and even after this training, we surveyed them and it seemed to us a large percentage of them still said we are not clear on what's a chargeable error. The only definition we could find was a chargeable error is any error that should have been caught in the field. That may be a little bit too easy. In essence, things that they should catch - questions that aren't completed. It requires a yes or no answer and nothing's there. Those are obviously chargeable errors, but in some cases it's not quite that clear cut. We did think if you are going to hold them accountable and have this issue of chargeable errors, then we need to have a very clear definition of what that is with as many examples as possible. Again, that was one of our recommendations.

Kind of a related issue, when we went to the field, some of the folks that are actually down in the trenches doing this, they indicated the flow was not coming all the way back to them in terms of the chargeable errors. Clearly, if you are going to have this accountability system in place, the people at the bottom level need to know. They need to get that information to them. The flow of information needs to go all the way back down to that lowest level in terms of the chargeable errors.

We looked at the procedures at headquarters and we really didn't identify anything that can change. I think Jeannene is correct. We tried not to focus too much effort on manual changes and other things that need to happen, because the big change that needs to happen is obviously a re-engineering and a new system. The system is pretty old. It's not going to last a whole lot longer. We didn't focus a lot of time, but we didn't see

anything that jumped out at us and neither did the state auditor as far as problems with headquarters license processing. We didn't have any recommendations in that area.

We tried to look at some kind of correlation. Can we look at certain factors in certain regions and see is it a workload issue? Is it experience and other things? We did a lot of data analysis and we really couldn't find any correlations between factors that would tell us why the error rates are so high in some regions. The only one that we found is in those regions and those districts that have the most seasoned people make fewer errors. Clearly longevity is an issue. People that are more experienced are not going to make the same errors as newer staff, but that's about the only correlation that we could find in looking at the data that we looked at.

We looked at the TABC code to see if there are any things there that are really going to keep us from doing online application processing and other things. There may be some problems, but we didn't see anything that really jumped out at us that said that's really going to preclude you from doing it. Things like electronic signatures and other such things. They are all possible now. Certainly we think TABC needs to work with the Department of Information Resources as you move forward on those types of things. They are doing a lot of things with the state portal and other things with respect to electronic signatures. But, we didn't see anything major there that was going to be a problem.

MR. STEEN: When an application is signed is it notarized?

MS. FOX: Yes.

MR. STEEN: That creates a problem with the electronic signatures?

MS. FOX: I think there's also some things underway to have things notarized electronically. I'm not the expert on that yet, though.

MR. GREGORCZYK: I'm not really sure, but I think you are probably right.

MR. STEEN: For example, those personal financial statements that we have to do, you can complete the form on the internet, but you must print it in order to sign it and get it notarized before you mail it in. You can't complete the process over the internet.

MS. FOX: That is one of the concerns that came up when you started looking at doing applications over the internet or electronically because the statute's clear that the forms are required to be notarized and sworn to, and

anything that's false on that statement is perjury. It's a very strong enforcement tool that we have when we start processing or investigating those applications and the information that's found therein. That's one thing. We want to make sure we don't lose that enforcement tool as we go about trying to do this electronically.

MR. GREGORCZYK: I think there will be ways around those issues. I'm the internal auditor at DIR, also, so I have some familiarity with what they are doing with what's called Texas OnLine and certainly they are making a lot of progress in that area. Many agencies that have different types of licensing are going through DIR. I'm sure some of those have notary requirements on similar things.

MR. STEEN: What are they doing about it?

MR. GREGORCZYK: I will try to find out and let you know at your next meeting. The Texas OnLine is our next audit over there and I will know a lot more after we complete that audit.

MS. FOX: Lou has done some review of that for us already.

MR. BRIGHT: There is a provision in the Texas Business Commerce Code that I am not eminently familiar with, but the purpose of that provision is to say this. If there is a form that requires a notary signature, a certification like that, you can send it in then you can have the notary send in electronically his or her affirmation of that signature and it has the same effect as if it were done in pen and ink. I don't know exactly how that would work because you are talking about two different transactions - my signature, Ms. Lyle's affirmation of my signature. There is a legal structure by which that can be done.

MS. HUDSON: DIR also makes use of a swear button. It allows you to swear to with an encrypted e-mail and that authenticates that you are swearing to what you sign. That's some of the technology that they have put in place.

MR. GREGORCZYK: We actually covered that on page 18, as Denise pointed out to me, the swear button technology. In terms of the automation, what clearly needs to happen is a re-engineering, not necessarily just automating the current process, but a whole re-engineering of the process. Hopefully, it looks like from my discussions with Denise, that you are actually going to get some money to do that. That's what really needs to happen here with respect to the license processing, taking the senior staff and the field office staff and creating some kind of a team to do some kind of re-engineering of the process.

I will stop at this point and respond to questions if you have any.

MS. MADDEN: You make a recommendation on page 18 - I think it's an excellent one - that we should have a re-engineering committee comprised of senior management and appropriate line staff. Are we doing that right now?

MS. FOX: We will be doing that as part of that transformation process.

MS. MADDEN: When? This is something we can be doing now to kind of tee us up. I guess I want to hit the ground running if we get this.

MS. FOX: I think you will be very pleased to know that Jim Johnson, who is our director of IRD, has a plan that we have already started working on in the assumption that we would get technology money. Part of that plan has to do with increasing and improving the skills that we have in our current department, making sure we are up to level with the state of the art. Jim, would you like to expand on that? He has a 33-month plan that we have already started working on.

MR. JOHNSON: Yes, ma'am, basically the plan currently is in two phases. We are currently in phase one. We are looking at the executive team - not in total, but a good group of them - as being a part of that core development team. As we move through the schedule, if you will, there are milestones that we will hit. As a development team, we would come to them and make project recommendations. Phase two is scheduled to start on the first of September. No coincidence that that would be the day we probably would be able to start spending money. That's scheduled to go for 33 months.

As far as a committee, I as an IRD director, look to the executive team as being a steering group where I would be able to bring recommendations to, particularly in terms of project progress. If there's problems, they are the first ones that need to know and need to make a decision on which way we would go. Obviously, we would make recommendations to them. I don't know if that would answer your question.

MS. MADDEN: Would you consider in this equation maybe having someone from the private sector? Do you think something like that would be helpful?

MR. JOHNSON: I would almost want to have them on the development team. A couple of users will be selected as we go forward and do what we call the requirements of the new system, and they are part of that development team. They don't sit full-time like a programmer would or an engineer would, but they would be a resource available to that team to do that. In terms of outside assistance, I'm not adverse to that. I think it's a good

idea. I'd just want to know what form that would take.

MS. FOX: Part of the transformation is hiring some outside consultant group members.

MR. JOHNSON: Currently it's six FTE's worth of outside help. Would that be similar?

MS. MADDEN: A lot of organizations bring in somebody just to have an objective eye. They don't have a lot of power or anything. They see things with a little bit different view. I don't even see it as a pay thing. We could get somebody that would give us a couple of hours after you have come up with a plan.

MR. JOHNSON: By statute, we are going to receive a review by what's called a quality assurance team that's made up of the state auditor's office and I believe the comptroller's office. There's a move afoot to include some DIR people and some LBB people in that. We are already working on what's called a risk assessment mitigation plan for them. Since the project is over a million dollars, by statute they have oversight and they are free. They are going to take a look at all the major risk areas that we could encounter as a project, which, I think, is the safeguard you are talking about. I always welcome a second, third and fourth opinion, especially when we are going to spend money.

MS. MADDEN: Sounds like you have been very thorough.

MR. JOHNSON: I've tried to be, ma'am. Any other questions for me?

MR. STEEN: Thank you. Any others?

MS. MADDEN: I don't think so.

MR. GREGORCZYK: Any other questions for me?

MR. STEEN: I want to ask a general question. As you went through this procedure was there anything that particularly concerns you or troubles you?

MR. GREGORCZYK: I think most of it is reflected in the report. From my perspective what troubles me is can the current system be maintained until you get the new system up and going because that's really a big question. It's a pretty old antiquated system in terms of the information technology. That will be a challenge, especially while you are trying to build this new system. I felt like this was probably our most comprehensive audit that we've done for you in terms of really going out and looking and spending a lot of time

and effort on it. We certainly tried to cover everything that we could think of in the report. It is an audit that crosses all the agency almost. It really hits everybody, too. Again, that's why we made the recommendation that we think you need this re-engineering team. It's fine to have the executive staff as a steering committee but you need these folks in accounting and licensing and enforcement from the field to really get this to work right and build a system that will work.

MS. MADDEN: You sure thought things through. I just have one last question. On page 22, you mention in regard to the field office staff in helping people fill out their application, and you give the worst case scenario. Would there be any liability there? Do we do that a lot? Do we sit there and help people fill out their application and is there a liability for that?

MR. GREGORCZYK: My understanding is you do. Sometimes you have to guide them through the process.

MS. FOX: As a general rule, we do not fill out the application for them. From time to time, there is an exception to that because you have an applicant who can't for one reason or another and they need some assistance and then we do that. As a general rule, because it's a sworn document, it could have a lot of misleading information. The applicant is to fill out their application. For those that really need some help, we do help them.

MS. MADDEN: We don't do it because it's a language barrier, do we?

MS. FOX: Sometimes.

MS. MADDEN: That could be a problem.

I think this report is amazing. Thank you so much for taking so much time with it. I'm sure Ms. Fox was a great help. You had to really dig, I can tell.

MR. GREGORCZYK: We enjoyed doing this one. It was a challenge.

MS. MADDEN: Stuff like that takes time. I'm sure it was very time-consuming. It's very enlightening.

MR. GREGORCZYK: It was so time-consuming that I'm a little bit concerned about doing our last audit. I'm going to meet with Mr. Fuller this week. We are scheduled to audit the compliance department, and I think we are going to have to bite off a part of the compliance department rather than auditing the whole compliance department. Of course, we've already audited the ports of

entry.

MS. FOX: I don't think he will mind.

One thing I did want to add and just point out, I know Russell addressed that as far as the field process, there wasn't a whole lot of recommendations as to what to do. There is obviously in the first part of this report concern that the field doesn't understand what chargeable errors are or how it's tracked, etcetera. We have already started a process that Chief Hamilton and Amy are going out to visit each district office to visit with the supervisors and the staff that process applications with a sampling of what they have done the month before and to go over it in great detail so we can eliminate any misunderstandings or confusion or unknown. Just clarify the situation to make sure everyone understands what those errors are and how to correct them. We've already done Austin. I think both sides found out a lot of information during that particular time. Things like, "Oh well, that's why I'm making all those errors." I think that will be helpful. It's going to be very time-consuming, but we are trying to do that fairly quickly, although there's a large number of offices to go to. I think that will also benefit the field staff.

MS. MADDEN: Thank you.

MR. STEEN: Thank you for your outstanding work. We appreciate it.

I think I speak for the commission when I say it's as high a priority as we have to get moving on this re-engineering.

MS. FOX: We are very anxious to get started on it.

MR. STEEN: I concur with what Ms. Madden was saying about what can we be doing today to move it along.

MS. FOX: I know that when Jim first came on board, he found there were a number of processes and procedures that we had internally that needed to be changed or amended or new things put in place to get us in the proper position before we start a project of this magnitude, because the worst thing would be to get the funding for that technology change and then internally we were not able to handle it and we had some type of huge delay or failure because of our own internal part. He has focused his first several months here - more than several months - getting all that in place and ready to go so that when September 1st gets here, we are ready to hit the ground running. We have 24 months of the funding to do it in and we have a 33-month plan, so we know we do not have any time to lapse.

MR. STEEN: Thank you. Any other questions?

MR. SELIGER: None.

MR. STEEN: We now move to public comment. I do have a card from Jim Haire and some prepared remarks.

MR. HAIRE: I'm Jim Haire from Tyler, and I appreciate the chance to follow up on the health warning sign program. I first want to thank TABC for addressing the need to increase awareness of FAS in Texas. I also want to thank the TABC employees for their time and the March of Dimes for their financial support.

TABC was kind enough to share the results from their survey of about 1,500 locations that showed 90 percent of the on-premise businesses and about 75 percent of the off-premise businesses are not displaying the voluntary health warning signs. I was involved in surveying 46 restaurants, primarily in Tyler, Dallas, Abilene and Midland and there were zero signs displayed. This survey included 16 large statewide chain restaurants. Discussions with some of those restaurant managers and other employees indicated that these restaurants, as you might imagine, are managed by corporations that do not delegate signage decisions out to the individual locations. With the rather safe assumption that their other locations are not displaying the signs, this represents another 550 locations you can assume are not displaying signs, also.

MR. STEEN: Mr. Haire, before you go on, when you say you were involved in surveying restaurants, that was just...

MR. HAIRE: There was a number of things going on around the state in this regard, but what I got my hands on before this meeting were 36 that I did; five that a volunteer in Abilene did and five to six more in....

MR. STEEN: This was your own survey that you all undertook?

MR. HAIRE: Yes, I put forth the effort myself. The March of Dimes has something going on in that regard, but I think they might have been derailed by the legislature. They have been multitasking, also. There have been other efforts out there, but this is what has been pulled together at this point in time to add to what you all did.

It's 46 that I have been a party to; thirty-six on my own, 10 from someone else and....

MR. STEEN: Have you provided the results of that survey to us?

MR. HAIRE: No. This is my first mention of this to TABC. I have detailed notes if Ms. Fox would like to see any of it. I think that I slowed down when I saw that I had 18 or so of the major chains and, after talking with the managers, and so forth, of a few of them, I realized that what they were doing represented what they were doing across the state. On their web pages you can tell that the 18 I looked at had about 550 total across the state. I thought that's a pretty good reading. I got your survey and that was a large survey...

MR. STEEN: What are the 18 chains? Could you tick those off for us, the names?

MR. HAIRE: I can tell you Chili's, for example; On the Border; Outback; Houston's. If you can imagine every large chain in Texas, I saw them all in either Tyler or Dallas. I can't think of one I didn't see. One or two, which I did not realize, their corporation owns several large chains that are not even in this 550. So, there is a large number. I put more weight online on these large chains because all you have to do is go to Chili's or Pappadeaux or Pappasito's and you pretty well realize where most of the product is being sold as opposed to a few mom and pop restaurants in Odessa, Texas or somewhere. I think between what you all had and what we extrapolated, it's a pretty significant survey.

I've been visiting with some of the other proponents of the sign program and we believe it would be appropriate at this time for TABC to adopt a mandatory sign program. An issue just as important as going to a mandatory sign program is making sure the decals and signs are of sufficient size, style and number to be seen and easily read. In the on-premise businesses, we would propose that TABC require the decals similar to those used in the voluntary program to be placed on the mirrors in women's restrooms and, in addition, an eight and a half by 14-inch sign carrying the warning in English and Spanish to be displayed. I came up with a larger sign and you can see - I've got an attachment of that here - you could have both English and Spanish, although the bottom half I repeated in English since I didn't know the Spanish words, but you see for effect how it would look. The bottom half would be done in Spanish on this 14-inch sign I have here.

In off-premise locations, only the eight and a half by 14-inch sign would be displayed. This size sign allows the warning to be displayed in English and Spanish on one sign as I said, so handling at all levels it would reduce the cost and so forth. It's larger print also makes it many times more legible than the smaller decals.

It also appears to be more effective in each case to use the wording from Arizona's sign than the wording on our decals. Their message is 40 percent shorter and, therefore, is more likely to be read and absorbed than the longer message. I think our message has 27 words and their message has 16 words. The pertinent information is about the same in both signs. The longer message in two languages also does not fit on the eight and a half by 14-inch paper when you use the larger print which is more legible. A sample of the eight and a half by 14 is attached, as I mentioned. Also, there's other signs attached as information and the Texas decal. Our decal is attached. As you can see, I was at the copy machine the other day and I got a personal check and overlaid it across the decal. As you can see, it kind of puts it in perspective. It's a good reference as to how small our decal really is. When you think about walking into a place like Pappasito's or someplace like that and finding one of your personal checks on the wall, it would be pretty difficult, really.

There has been some discussion also about the value of placing health and warning notes on menus. I think the two signs discussed here will do the job if they are placed as we've discussed.

It's tempting, at this point, to dive off into the justification for this but that's already been done last summer by a group of people that know a lot about Fetal Alcohol Syndrome. This commission, along with the governor and the first lady, have already acknowledged that the health warning signs are the right thing to do for Texas families.

We would appreciate very much TABC's consideration of these two signs for this program. If you have any questions, I will be glad to answer them.

MS. MADDEN:

Mr. Haire, your commitment to this is so astounding. I just have to commend you for your dedication to this subject because it is a horrendous problem. You mentioned when you first approached the microphone, you thanked us for our time and the March of Dimes for their money, but we have put in 30,000 dollars in this project and I think that's pretty significant, especially in a period of time when everybody has been cut back and everybody is worried about the budget shortfall. I hope you will understand if we drag our feet on this that a lot of it will be budgetary constraints.

I do have to say that there's a place in Dallas where all the young people go, all the young adults with their darling small families, and one day I went in there to get some pick up food. It's very popular. All the tables were filled, so I just walked over to the bar to sit down and wait for my dinner that I was going to take home and there was the sign. So, there are

places, and this was a chain I might add. I think there are some concerned citizens out there and some people trying to highlight this particular issue. I do thank you.

- MR. HAIRE: In response to the financial difficulties in our state right now, we are aware of that, personal and statewide, also, but I assume there are grants like from TCADA, TDH, the governor's office that could perhaps be accessed to float this thing.
- MR. STEEN: Ms. Fox, when the governor sent out the letter, it went to each permit or license holder?
- MS. FOX: Yes, sir, about 39,000.
- MR. STEEN: Would Chili's just get one letter?
- MS. FOX: No. Each location got a letter.
- MR. STEEN: Each location got a letter. I'm wondering if that's something we could do, is make an effort with those larger chains?
- MS. FOX: Send out another letter?
- MR. STEEN: He's talking about 18 of them so why don't we write the CEO's saying we would appreciate it very much if they would do this?
- MS. FOX: We could probably identify the large chains and send out a second request letter that we sent you these. It's certainly a strong health issue, an important issue, and could you please put the sign up - something along that line.
- MR. STEEN: What do you all think?
- MR. SELIGER: I think it's a good idea. It's clearly a public health issue and a valid public health issue. What we've done is sought the voluntary compliance of sellers and servers around the state. It doesn't have to be voluntary. It clearly can't be if there is no desire to comply. It's really pretty much up to them.
- MS. FOX: I know at this time that due to the budgetary constraints that we have, you know, we've had to leave 20 positions vacant; we had to give back 1.9 million dollars out of our current budget, and we simply do not have the money in the budget to do that at this time.

MS. MADDEN: I love the idea of the 18 letters to the 18 CEO's.

MS. FOX: We can certainly do that.

MS. MADDEN: That would be doable.

MS. FOX: Actually they cost more than 30,000 dollars. We spent 30,000 dollars last time, but the March of Dimes spent over 19,000 dollars. So, for us to even copy that effort would take at least 50,000 dollars. I'm sorry, we just simply do not have it in our budget right now. We cross our fingers every day and sit on pins and needles that we will get through August.

MR. STEEN: Mr. Haire, if we could work with you, if you could help us identify the chains.

MR. HAIRE: Yes. I'll just fax those...

MR. STEEN: I'd be happy to sign a letter like that. We could make it a stern letter that we expect them to do this.

MR. HAIRE: Let me just add that last summer when we discussed all of this, the consensus of the commission of the TABC, I thought at that time, was we made a case for the mandatory program. I think you, Mr. Steen, said we made our case and you agreed with us but you wanted to try a voluntary program first. Now we have tried the voluntary program and your own survey showed 90 percent were not complying. Our brief survey showed something like zero percent. So, I was just hopeful that we could look at a mandatory program if this didn't work out and it obviously has not worked out.

I'm having a hard...where shall I start...I was just hopeful that we could have a mandatory program if and when that didn't work out. I think 90 percent...and I think on-premise was the key area because that's the area where the drinks don't carry a warning. In a grocery store, any alcoholic package you pick up will technically have a warning on there. It may be hard to find or hard to read, but it will be on there. Seven out of eight drinks that I demonstrated to you all in on-premise locations don't have them. I think the restaurant association, in their own words, they concurred. There may be as many as 4,000 babies born each year with some level of mental retardation because of this. We've complied with what you all said. You said let's give this thing a chance on a voluntary basis. I swallowed hard and said fine. We did our survey, you did your survey, and it didn't work out.

MS. MADDEN: Of course, that was before the big axe dropped with the 10 billion dollar shortfall.

MR. HAIRE: Right. But, I assume we are talking in the neighborhood of 50,000 bucks for something like that. Since the governor put his name on this thing and the first lady went down to San Antonio and held a press conference, I would think it would be pretty high on the totem pole for a 50,000 dollar grant. Could we ask them?

MS. FOX: I'm not aware of any grants from the criminal justice division. We usually focus on grants in the governor's office that's always directed towards underage drinking. I'm not aware of any. It doesn't mean there's not, but I'm not aware of any grants that we could apply for for FAS type notification. I don't know anything about TCADA or the Department of Health, if they have any. I have never heard of any.

MR. STEEN: If we got a positive response from the CEO at Chili's, do we have the decals to send?

MS. FOX: We still have a supply of decals. Debbie, how many do we have?

MS. DIXON: They are distributed all around the state. Each of the offices and outposts have them so they can distribute them. I'm not sure how many are out there right now, but I have approximately 500 in my office.

MS. FOX: We have a small supply. If they are interested in doing it, they can get them and do it. Let me suggest that perhaps we work on drafting a letter, get a listing of the chain restaurants. I will work with Mr. Glen Garey at TRA. They do a newsletter. Maybe we can get something else out imploring them to please post the signs again and do a letter and see what kind of a response we get to that.

MR. STEEN: Okay.

MR. HAIRE: Let me just add also since there was zero among them, among the 17 or 18 large chains that I did, there had to be some...you would think one would make a clerical error and put them up, but no one had them up anywhere, and I've looked for them in Dallas, Austin, Tyler. They must have a reason. There must be a reason for them to not to have done it.

Does this mean that a mandatory program is just not possible? We listed earlier like 22 other states that had mandatory programs and we talked about 4,000 babies being born each year with some level of mental retardation. We are talking about 50,000 dollars. We are talking about

the fact that TDH's own survey says that most women in Texas of childbearing age are not aware of this. We also know that this is the only product being sold that causes birth defects that doesn't carry a health warning. These people were given a letter from the governor saying please do this. They were given the decals and they refused.

Some of these days you are going to lock the door and not let me back in here then it will be over with. We won't have a chance. I just felt like last summer you had a great plan. You said, "Jim, March of Dimes, all you people, you justified this thing. We admit that, but we are going to do a volunteer program first." We said okay. I remember Mr. Seliger saying, he stood right over there in that corner and said if this doesn't work out in six months, I'll vote for a mandatory program.

MS. MADDEN: But that was before the 10 billion dollar shortfall and that has impacted everybody, Mr. Haire. It makes us feel kind of badly because we think this is a horrible issue, too. We'd love to do something about it.

MR. HAIRE: If 50 or 60,000 dollars appears available in a grant somewhere, can we do a mandatory program?

MS. MADDEN: I don't think we can commit to a mandatory program before we have the money. I wouldn't feel good about that.

MR. STEEN: I'm trying to think of when we launched this. Wasn't it December?

MS. FOX: December was the press conference.

MR. STEEN: So, it's the beginning of the year, and we haven't really hit six months yet. I think we are going to try to push a little bit on the voluntary compliance and we can keep talking about it.

MR. HAIRE: Okay. Thank you for your time.

MR. STEEN: Thank you, Mr. Haire. Anything else?

The commission will convene in executive session to discuss hiring an administrator, consider applications and interview applicants for the administrator's position pursuant to Texas Government Code, Section 551.074(a)(1).

The commission convened in executive session at 3:07 p.m. and reconvened in open meeting at 5:50 p.m.

MR. STEEN: The commission meeting of May 19, 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.

The meeting is adjourned.

The meeting adjourned at 5:51 p.m.