



**COMMISSION MEETING MINUTES**  
**July 25, 2005**

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, July 25, 2005, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

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

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

**STAFF PRESENT:** Jeannene Fox, Assistant Administrator  
  
Carolyn Beck, Public Information Officer,  
Executive  
Lou Bright, General Counsel, Executive  
Buck Fuller, Director, Compliance  
David Garza, Director, Homeland Security,  
Executive  
Diana Gonzalez, Assistant Director of Auditing,  
Compliance  
Russell Gregorczyk, Internal Auditor for TABC  
Amy Harrison, Director, Licensing  
Linda Jackson, Administrative Assistant,  
Executive  
Renee Johnston, Executive Assistant, Executive  
Charlie Kerr, Director, Business Services

Richard Maness, Systems Support Specialist,  
Information Resources  
Ruben Montgomery, Network Specialist,  
Information Resources  
Janet Ratcliff, Training Coordinator, Human  
Resources  
Garry Sitz, Director, Information Resources  
James "Sam" Smelser, Chief of Enforcement  
Rod Venner, Deputy Assistant Chief of  
Enforcement

***GUESTS PRESENT:*** Kyle Hill, Office of Jack Martin  
Fred Marosko, Texas Package Stores  
Association  
Jack Martin, Attorney at Law  
Lindsay Meche, Representing Republic Beverage  
Robert Sparks, Executive Director, Licensed  
Beverage Distributors, Inc.  
Randy Yarbrough, Wholesale Beer Distributors of  
Texas

### **CALL TO ORDER**

Chairman John T. Steen, Jr., called the meeting of the Texas Alcoholic Beverage Commission (TABC) to order, welcoming all in attendance. Chairman Steen explained that the meeting was starting later than usual because Commissioner Cuevas' flight had been delayed.

### **APPROVAL OF COMMISSION MEETING MINUTES OF JUNE 27, 2005**

Chairman Steen called for a motion to approve the TABC Commission meeting minutes of June 27, 2005. **Commissioner Madden moved that the TABC Commission meeting minutes of June 27, 2005, be approved. Commissioner Cuevas seconded the motion. The motion carried.**

### **ADMINISTRATOR'S REPORT**

Chairman Steen called upon Jeannene Fox, Assistant Administrator, to provide the Administrator's Report.

Ms. Fox explained that she was providing the report on behalf of Administrator Steen, who was out on vacation. She also mentioned that the monthly report was not available as staff were in the process of testing and finalizing data in the new Versa system. It is anticipated that the June and July monthly report information will be available for the August meeting. She also mentioned that Del Drake, who was listed on the agenda to provide the quarterly Office of Professional Responsibility report, was called out of town for other agency-related business and that Carolyn Beck would be providing the report.

Ms. Fox reported that Texas is into its second special session. TABC's role in the special session has been minimal. However, there is a tremendous amount of work being done by staff in interpreting and implementing the new laws from the last legislative session.

Ms. Fox reported that staff are working diligently to hire the majority of the new FTEs by September 1<sup>st</sup>—for the 36 compliance officer positions—and October 1<sup>st</sup>—for the 60 to 66 agent positions. She noted that it is normally a six-month process from posting of the agent positions to when the agents are actually on the job. The process has been shortened, and HRD staff are working long hours to keep on target with the shortened timeframe. Ms. Fox reported that there were over 1,200 applicants for the 60 agent positions and over 1,800 applications (some applicants applied for more than one region). Last week, 769 applicants were tested for the agent positions. Interviews will be held in the field in each region, with HR staff in attendance. Compliance officers will be interviewed in the local area of the vacancy. Ms. Fox commended HR staff for their efforts.

Chairman asked Ms. Fox to explain the written test that the agent applicants take. Ms. Fox explained that it is a basic 9<sup>th</sup>-grade equivalency test, with the exclusion of math. Applicants are allowed three hours to take the test. Chief of Enforcement Sam Smelser further discussed the overall agent selection process, explaining that applicants are rated by points on their applications, test scores, and for TCLEOSE certification. For those who have met the minimum score, the next step is the oral interview process, held in each region. The interviews are staggered for those who have applied for agent positions in more than one region. Those who are chosen are then given a psychological evaluation prior to offers of employment. Once hired, the agent

trainees are sent to six weeks of academy training. Those who are hired but are not TCLEOSE certified are sent to a separate academy in order to gain their certification. Once certified, they then would attend the other six-week academy. Chairman Steen asked how many of the applicants are TCLEOSE certified; **Chief Smelser stated that this information is still being compiled and should be known in the near future.**

Ms. Fox discussed the operating budget for FY 2006, noting there are still several budget issues to work out before the numbers are finalized. The budget issues result from unfunded legislative mandates on the agency, as well as the 2% FTE cut placed on state agencies. **Ms. Fox stated that the information will be provided as soon as it is compiled and that the small laminated note card with the facts and figures would be updated for the Commissioners.**

Ms. Fox discussed a letter she sent out to the industry the previous week concerning license and permit surcharges (Attachment 1). The letter explains that the published surcharges were almost double the current surcharges; she assured the industry in the letter that the amounts would be amended to be less than indicated. She explained that the time between signing of the appropriation bill and meeting the publication deadline for the *Texas Register* did not allow staff adequate time for the review and estimation work. The letter provided the surcharge list that would be recommended to the Commissioners at the August meeting. The letter further explained that the amended surcharges are needed to cover the law enforcement and civilian across-the-board pay raises, additional personnel, and a large increase in the indirect costs associated to TABC that is provided by other state agencies.

Ms. Fox then discussed the agency's reorganization to be effective August 1 that the Administrator had previously discussed with the Commissioners. She highlighted the Administrative Memo (Attachment 2):

- There will be one legal section. Five additional attorneys and some legal support staff will be hired.
- Homeland Security will be combined with the Enforcement Division in one office, which should provide for enhanced communication.
- The Ports of Entry supervisors will report to the compliance supervisors in West Texas and the San Antonio region, which should help them address issues quickly without having to wait for representation from headquarters.

- Oversight of the lab and label approval functions will go under the Compliance Division.
- The licensing functions in the field will be moved from the Enforcement Division to the Compliance Division.
- A new division of Education and Prevention will be established, with the hiring of mostly new staff for the division.

Ms. Fox provided an update on training activities:

- The 2005 in-service training has been completed, with 90% of employees attending. Exceptions were made for employees heavily involved in the Versa project, a priority for the agency, as well as employees who had unavoidable family issues. Ms. Fox stated that she was not aware of the agency ever having 90% of its employees trained in one year and felt that this was a great accomplishment. The 2006 in-service training will begin in January.
- A weeklong training is planned in August for all compliance officers and supervisors to receive training on licensing laws and issues. This training will prepare them for their new licensing responsibilities.
- Training in Austin Headquarters was provided to all field supervisors on the regional hiring process. Another training class will be conducted on background investigations for those staff that will be conducting background investigations on the new agents that will be hired.
- A training session is planned in September for the newly hired attorneys and compliance officers.
- TABC, in conjunction with Mothers Against Drunk Driving (MADD), sponsored a youth leadership power camp in San Angelo that ended yesterday. There were 100 staff and 550 students in attendance.

Ms. Fox reported that she, Commissioner Madden, and Russell Gregorczyk met earlier that day to discuss the internal audit on the Compliance field operations. Ms. Fox stated that Mr. Gregorczyk would provide a presentation on the report shortly, but she wanted to take the opportunity to commend Compliance Director Buck Fuller and Assistant Director Diana Gonzalez.

Ms. Fox reported that the hurricane from last weekend resulted in temporary closures of some of TABC's ports of entry (POEs). She stated that it is extremely rare for the POEs to close down.

Ms. Fox also reported that the regional Enforcement Captains and Compliance Supervisors would be meeting in Headquarters the next day to review their

combined action plans for the following year. **The summary of the action plans will be presented to the Commissioners in the near future.**

Ms. Fox briefly discussed the saturated sting operations being conducted around the state. She asked Chief Smelser to provide an update on the Sale to Intoxicated Persons (SIPs) stings that were recently conducted in Denton. Chief Smelser explained that 35 TABC agents worked with local law enforcement agencies to conduct the stings on 50 on-premise locations on Friday, July 1, which resulted in the arrest of 21 people, 17 for public intoxication and four for the sale of alcohol to an intoxicated person. In addition, 15 administrative cases were filed against permittees. Chief Smelser noted that on a typical Friday night, the Denton Police Department would book two to three DWIs; on the night of July 1<sup>st</sup>, they had none.

### **APPROVAL OF INTERNAL AUDIT OF THE COMPLIANCE DEPARTMENT FIELD OPERATIONS**

Chairman Steen called upon Russell Gregorczyk to discuss the internal audit report. Mr. Gregorczyk summarized the internal audit report of the Compliance Department Field Operations (Attachment 3), noting there were no adverse findings and only a few very minor recommendations.

**After Mr. Gregorczyk's presentation, Chairman Steen called for a motion. Commissioner Madden moved that the Commission approve the internal audit report of the Compliance Department Field Operations. Commissioner Cuevas seconded the motion. The motion carried.**

### **OFFICE OF PROFESSIONAL RESPONSIBILITY QUARTERLY UPDATE**

Chairman Steen called upon Carolyn Beck, Public Information Officer, to provide the Office of Professional Responsibility quarterly update.

Ms. Beck presented the second quarter results, based on the calendar year, for April, May, and June (Attachment 4). She reviewed the following: the number of personnel complaints as compared to the second quarter of last year; source of personnel complaints; types of allegations; disposition of the complaints; and complaints by division. Ms. Beck also discussed public complaints on code violations received in Headquarters by e-mail in the agency's complaint e-mail address.

Ms. Fox pointed out that there were a large number of complaints pending and that the pending complaints should be reduced once an additional OPR investigator is on board. The additional investigator will also help OPR be able to address complaints in a timelier manner.

### **PUBLIC COMMENT**

Chairman Steen asked for public comment; as there were none, he made the announcement for an executive session.

### **EXECUTIVE SESSION**

**Chairman Steen announced that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 2:35 p.m. on July 25, 2005, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, Sections 551.071 and 551.074.**

**Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being July 25, 2005, and the time, 3:30 p.m. He stated that no final action, decision, or vote was made in the executive session.**

### **APPROVAL OF ADMINISTRATOR'S SALARY**

Assistant Administrator Fox explained that the Legislature in the appropriations bill sets the highest maximum salary that the Administrator may be paid. She stated that it was the Commissioners' discretion to pay the Administrator any amount up to and including the maximum amount and that any increase would need to be approved by vote in open meeting by the Commissioners.

**Chairman Steen called for a motion. Commissioner Madden moved that the TABC Administrator's salary be at \$105,000 per year effective September 1, 2005. Commissioner Cuevas seconded the motion. The motion carried.**

**NEXT MEETING: AUGUST 22, 2005**

Chairman Steen announced that the next meeting of the Texas Alcoholic Beverage Commission was scheduled for Monday, August 22, 2005.

**ADJOURNMENT**

**Chairman Steen called for a motion to adjourn. Commissioner Cuevas moved that the Texas Alcoholic Beverage Commission meeting be adjourned. Commissioner Madden seconded. The motion carried, and Chairman Steen announced that the meeting was adjourned.**