

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
COMMISSION MEETING  
MONDAY, JULY 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; Denise Hudson, Director of Resource Management and Greg Hamilton, Chief of Enforcement. Visitors included: Robert Sparks and Alan Gray, Licensed Beverage Distributors; Ted Thomas, Glazer's Distributors; Joe Duea, BLM North America; Larry Molinari, Perlick Corp.; William Shilling, Shilling and Associates; Randy Yarbrough and Mike McKinney, Wholesale Beer Distributors of Texas; Fred Marosko, Texas Package Stores Association; Rick Donley, Beer Alliance of Texas; Mike McElhaney, Office of the Governor; Valerie Onyett and Alfonso Royal, Legislative Budget Board and Travis E. Poling, San Antonio Express News.

The agenda follows:

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

1. Consider resolution in memory of Mario Lopez: discussion, comment, possible vote.
2. Approval of minutes of June 16, 2003, and June 30, 2003, meetings; discussion, comment, possible vote.
3. Administrator's report:
  - a. discussion of staff reports;
  - b. recognitions of achievement;
  - c. discussion of management controls;
  - d. legislative update; and
  - e. sale to intoxicating beverages, enforcement activities.
4. Fiscal stewardship of agency; discussion, comment, possible vote.
5. Internal auditor's report on Internal Audit of the Planning and Budgeting Processes; discussion, comment, possible vote.
6. Consider publication of proposed amendment to 16 TAC §45.113 relating to line cleaning services by beer distributors; discussion, comment, possible vote. (Gifts, Services and Sales)
7. Public comment.

**Announcement of executive session.**

8. Executive session:
  - a. the commission may convene in executive session to consult with legal counsel regarding item 6 of this agenda pursuant to Texas Government Code, §551.071; and
  - b. the commission will convene in executive session to consult with legal counsel pursuant to Texas Government Code, §551.071, regarding *Dickerson v. Bailey* and anticipated and pending legal claims against the commission.

**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 1:30 p.m. by Chairman Steen.

MR. STEEN: I want to call to order the Monday, July 28, 2003, meeting of the Texas Alcoholic Beverage Commission.

Before we move to the agenda, I want to recognize in the audience, Alan Steen, who is our new administrator. He is just visiting today, but we want to welcome him and have everybody say hello to him.

Alan, do you want to come forward and say a few words?

MR. A. STEEN: Mr. Chairman and Commissioners, thank you for the opportunity to say a few words. I appreciate that. I look forward to the first day of August. I'm as excited as I can be. I've had the opportunity to travel the state and here at headquarters, meet the people. I really look forward to working with the professionalism and dedication that they have for what they do. I also have gotten the opportunity to meet with some of the stakeholders in Texas and look forward to working with them as well. So it's going to be a real challenge, a real drive towards doing what's best for the Texas Alcoholic Beverage Commission and the people of Texas. I look forward to it.

MR. STEEN: I look forward to August first.

The first item on the agenda is consideration of a resolution in memory of Mario Lopez; discussion, comment, possible vote.

Ms. Madden?

MS. MADDEN: "WHEREAS, Mario E. Lopez, Jr., Taxpayer Compliance Officer of the Texas Alcoholic Beverage Commission, departed from this life on the 6<sup>th</sup> day of June, 2003; and

"WHEREAS, his outstanding service with the Commission led him to achieve a position of leadership both within the Commission and the community; and

"WHEREAS, the favorable impression of the Commission reflected to the community he served his personal ethics and integrity; and

"WHEREAS, all his endeavors, large and small, reflected a sense of humor and righteousness which never failed; and

"WHEREAS, as an emissary of the Commission in his position as a Taxpayer Compliance Officer, he was a role model for all his fellow employees; and

"WHEREAS, his wisdom, personality and character earned the respect of all those who knew him; and

“WHEREAS, Mario E. Lopez, Jr. gave all of us a lesson on how to live our lives to the fullest and how to never take our loved ones for granted.

“NOW, THEREFORE, BE IT RESOLVED by the Texas Alcoholic Beverage Commission that this salute to the memory of Mario E. Lopez, Jr. be entered into the records of this Commission so they will forever reflect the esteem of the Commission and its staff; and

“BE IT FURTHER RESOLVED that a copy of this resolution be presented to his beloved parents, as an expression of our gratitude and a token of the high regard in which Mario E. Lopez, Jr. was held by all in the Commission.”

MR. STEEN: Do you move for the adoption of the resolution?

MS. MADDEN: Yes, I do.

MR. SELIGER: Second.

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

MR. SELIGER: Aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

Ms. Fox, I understand his supervisor is here?

MS. FOX: Yes, Mr. Saldana. Santos Saldana.

MR. STEEN: Mr. Saldana? Would you like to come forward? Would you like to say a few words about Mr. Lopez?

MR. SALDANA: I work here in Austin and Mario worked out in El Paso. He was really well liked by everybody there. In just thinking about the guy, he was beautiful; had a great smile, was a good guy. He will be really missed. He was a leader; he had great humor; he was a fine guy. I'm really happy you all did this for him. It's really touching.

MR. STEEN: Ms. Fox, there is no member of the family here today?

MS. FOX: That's correct.

MR. STEEN: So we will get copies of this to his mother and father? And how do we go about doing that. Will somebody in the El Paso office deliver it to them?

MS. FOX: We can do that. His mother actually lives in Big Springs and his father lives in El Paso, so we will insure that both resolutions get delivered to them.

MR. STEEN: Thank you very much.

We move to the approval of the minutes of the June 16, 2003, and June 30, 2003, meetings; discussion, comment, possible vote.

MS. MADDEN: I move that we adopt them.

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: If you'll remember about a year and a half ago, the Governor's Office of Criminal Justice delegated to the TABC the responsibility of administering the OJJDP grants that we get from the federal government. These grants are used for enforcing underage drinking, so all are directed towards that. Generally, they are about 360,000 dollars. I am very pleased to announce that we did just receive this last week the grant for 2003. Seventy-five thousand dollars of that 360,000 dollar grant will be retained by the TABC for us to use for measures directed towards underage drinking, but the remainder of that, the 285,000 dollars, will be an opportunity for us to award grants to those who apply and we deem that they are worthy of those particular amounts. One of the things that was discussed after the awarding of the grants last year or earlier this year was that the commissioners wanted to get more involved with those grants; in the directions that they went and what they were aimed at. Obviously, all have to be directed towards underage drinking, but I think you wanted a little bit more information or perhaps the opportunity to be involved in that. The current process starts with, obviously, the agency getting the money and then we put out a Request for Proposal. We gather the information from the interested parties. We then have the peer review that's done by four state agencies that are also in the business, if you will, of receiving grants or giving grants and four of our field staff that review these, based on set criteria and then

these are put in a ranking. The executive team basically reviewed those, made recommendations to the administrator and that's how final determinations were made.

Last fall when we first adopted the rules that govern the way we administer grants, the authority of determining the grantees was delegated to the administrator in Section 32.5 of our rules. So it was his sole final determination. If the commission now chooses to be involved in that process, we need to first of all decide how you want to be involved. If you want to make those final decisions then our rules will need to be changed. I am told that, generally, in the awarding of grants that that is not done by commissioners, but usually by the staff or by the executive director. So the other option is that one could be just part of the peer review process or part of the executive team review process making those decisions.

We tried this last year to spread the grants throughout the state so they all weren't located in one area of the state, to look at educational institutions as well as law enforcement and as well as community groups. We pretty well, with the grants that were awarded, covered all those areas in different parts of the state.

I bring this to you today because it is not on the agenda, so you cannot vote on it, but to start the discussion that we need to put it on the August agenda. You can start thinking about how you as commissioners would like to be involved in this process.

That is one process in awarding the grants. The other process that also I had understood you had an interest in was being involved in what the agency determined or how we determined to spend the 75,000 dollars of this grant that is awarded to us. In the past we have used this to do radio advertisement; we've used it to partner with various groups, such as the pump toppers that you see at the convenience stores. We have also used it to try to get some media review of what we have done and some direction and evaluation of our past operations. So we will send you some more information throughout the month. We will send you a list and a breakdown of our past grantees that we had presented to you in commission meetings before, and know that this will be on the August agenda for the commissioners to determine how you would like to interact in that process.

Any questions?

MS. MADDEN:

Jeannene, when you were going through the steps reviewing the grants, I have done a little bit of that and it is very time consuming to give it your best. You have to be in on the beginning and, so, I bet there is a lot involved as far as time.

MS. FOX:

Right.

MS. MADDEN: I think you are talking about four or five meetings.

MS. FOX: Yes. Andrea Luna is our grant administrator and she was unable to be here today, but if I remember correctly – Denise, you’ll help me if I get my dates wrong – it seems as though we put out the Request for Proposals in December and I think we finally awarded them in April, so it was a long process. Part of it was waiting for proposals to come in and a lot of organization that Ms. Luna did takes a lot of time, but there are different parts in there that, if one of you wanted to be involved in that, it could be just the last review when the executive team does the review. So there are different steps and it wouldn’t necessarily mean that you would have to do the whole thing.

MS. MADDEN: If we came in at the end like you’re saying that we could that would not require a rule change?

MS. FOX: If you just participated with staff in reviewing and looking at the proposals and their ranking and making sure that we met our goals, then no, there would not be a rule change necessary because that group still recommends to the administrator and he makes that final decision.

MR. STEEN: What is the rule number you referred to?

MS. FOX: 32.5.

MR. STEEN: And those are rules that we adopted?

MS. FOX: You adopted last fall.

MR. STEEN: If we want to do something different we would just change the rule?

MS. FOX: Yes, we would have to go through that normal publication that we do and adoption.

MR. STEEN: Any questions?

MR. SELIGER: I don’t.

MR. STEEN: Thanks.

MS. FOX: That rule is pretty lengthy, the whole chapter 32, but most of it deals more with mechanics of what the grantees have to do once they receive their award.

MR. STEEN: But in terms of the final decision you were referring to 32.5(d)?

MS. FOX: Yes. That's all I have on the grants.

I did want to bring you up to date, just in general on some of the bills that passed. You've gotten all the bills that passed, so I thought today I would just highlight a few that maybe have some real effect on the marketplace as we see it out in the retail level or some others that really have some major difference on the operation of the agency. The first bill would be House Bill 1056. Those are in your book under tab three, under the first blue divider.

MR. STEEN: It's on page one, you're talking about House Bill 1056?

MS. FOX: Yes, House Bill 1056 by Hamilton had to do with the age you have to be in order for a minor to work at a licensed establishment. It laid out that, basically, the change in the law was you could be under 18 and work in an establishment that has a food and beverage certificate, which generally is a restaurant, and be a cashier. Normally, you can't be under 18 and participate in the sell, service or delivery of alcoholic beverages. This made an exception for those that would be a cashier; generally, being a cashier and accepting the money as part of a sale. This exempts that out so someone could be under 18 and be a cashier so long as they still did not serve the alcoholic beverages. That was the main part of that bill.

House Bill 1114 by Moreno had to do with the selling of alcoholic beverages to intoxicated persons. Currently, at this time our statute indicates it is an offense, if a permittee or person knowingly sells to an intoxicated person. The statute was changed so that it reads "with criminal negligence" so it will be easier for our cases on sales to intoxicated persons.

House Bill 1199 has to do with local option elections. Lou has had a lot of meetings and discussions with the Secretary of State. I'm just going to let him briefly go over that with you.

MR. BRIGHT: House Bill 1199 did pretty substantially reform local option procedures in this state. It did it in some pretty technical ways. The bottom line on that is that it will now be easier for communities and jurisdictions to have local option elections. It will be less likely that the result of those elections will be overturned by subsequent court challenge. The counties and the cities who hold these local option elections are not directly regulated either by us or by the Secretary of State's office, but as you may know, my phone and their phone rings a good bit during the course of a year and we give a lot of advice. We have met with them to make sure that our reading of the various provisions of this law was the same and that they would get the same general answer and interpretation from TABC that they got from the Secretary of State's office. The Secretary of State's office is taking some steps to upgrade the information in the data banks they have about what is wet and what's dry in the state of Texas, and while we have not had those

meetings yet, we promised each other to sit down in the same room and make that upgrading a joint project between them and us.

MR. STEEN: Thank you.

MS. FOX: On the next page, House Bill 2005, another bill by Moreno, has to do with the licensing process. Currently, under the statutes for applying for a permit, which is a wholesaler, a liquor store or mixed beverage permittee, the requirements are that if you've been convicted of a felony, three years must have elapsed since the termination of your sentence. If it's an on premises beer license, it must be three years; if it's an off premises beer license, it's two years; and if it's a beer distributor, it's also two years. This bill has gone in and upped the years to five and made it consistent across the board. So it has to be five years since the termination of a felony conviction before you can be qualified for a liquor or beer license now. That gives us more consistency along our length of time.

The next page we have HJR 85, which is proposing a constitutional amendment. We will have an election on September Thirteenth, of which there will be an amendment that has to do with the operations of a winery, whether it is in a dry or wet area. So this is a little bit unusual that we do this. This amendment will allow us to have consistent statutes between wineries whether they are wet or dry. A winery in a dry area will now, hopefully if this passes, will be able to do everything that a winery in a wet area can do, involving on premises sales, tastings, who they may sell their product to and things of that nature.

Senate Bill 1273 had to do with suspensions and alternatives to suspensions, but primarily our civil penalties that we attach to violations after they have been adjudicated or agreed to. It deletes our ability to assess those penalties based on the economic impact that it might have, but rather directs us as an agency to look at the type of permit, the type of violation, extenuating circumstances and previous history of that particular permittee. This bill will, perhaps, need some rules to be passed. We haven't yet as a staff finished analyzing this in determining exactly how it's to be implemented. So we may come back at a later date with a rule request.

Senate Bill 1380 is the last bill, by Armbrister. It basically puts into statute what we have in our rule on public entertainment facilities and then it goes a little further in widening the scope of the approved activities on that particular location in those facilities. It still keeps the basic premise of having an independent concessionaire selling those alcoholic beverages.

Those are pretty much the primary bills. Do you all have any questions on any of the others?

MR. STEEN: Any questions?

MR. SELIGER: No.

MS. MADDEN: No.

MR. STEEN: Thank you, Ms. Fox.

MS. FOX: We have a staff presentation by Mr. Hamilton today.

MR. HAMILTON: Chairman Steen, Commissioners Madden and Seliger, bear with me, I'm technically challenged.

I have been tasked to give you an overview of some of the things that are going on as far as enforcement activities in the enforcement division. I am very proud to do so. Anytime I get an opportunity to let you know what the enforcement division is doing, it makes me happy. I'm going to try to be brief. I remember last time I gave a presentation it was supposed to be 15 minutes and I think it went 55 minutes, and as I looked around the room I saw people's eyes glazing over. I promise you today that I will not do that.

The PowerPoint presentation included: "Enforcement Strategy"; "Law Enforcement Activities"; "Specific Law Enforcement Programs"; "Key Enforcement Performance Measures"; "Other Enforcement Performance Measures"; "Summary – SSIP Activity FY 2003 – YTD 3<sup>rd</sup> Qtr"; Charts on "Minor Sting Attempts FY 2000 – FY 2003 (YTD 3Q)" and "Minor Sting Compliance Rate FY 2000 – FY 2003 (YTD 3Q)."

MR. STEEN: Chief Hamilton, one thing you did mention, that when you go in and they do comply, you follow it up with a letter?

MR. HAMILTON: Yes, sir. That's normal procedure.

MR. STEEN: Congratulating them for complying?

MR. HAMILTON: Right.

MR. STEEN: And the establishments would not have known?

MR. HAMILTON: No, sir.

MR. STEEN: They don't know they have been stung until they receive the letter saying "you did good"?

MR. HAMILTON: Right. That's correct. And also one of the things in El Paso, our lieutenant there, Rod Veneer, has gone to the legislators, the state reps there. The state reps have agreed that when we go to a place and the individual doesn't sell, the state reps send a letter also. I think that's Representatives Moreno and Pickett.

Again, I would like to say in closing that our agents have been tasked to do a lot of things out there and, as I said earlier, we were 24 down. I don't think they publicly get enough pat on the back. I would like to do that today at the commission meeting and say that I have never been this proud to work with an organization with the mindset that the agents that are working with this agency right now have shown in trying to reach the goals. I have told them that I promised the commissioners that we will make those goals as far as the inspections are concerned, and I believe we are going to make it. We are down now, but we've got two months to go. I think that the agents are focused, and the supervisors are focused, and we will make that goal.

Do you have any questions?

MS. MADDEN: I just want to say, please convey to your agents that we, the commissioners, are very proud of what they have done. I think this is pretty phenomenal, especially being 24 agents down. So those that hung in, God bless them, and thank you for all you are doing.

MR. HAMILTON: Thank you.

MR. SELIGER: Chief, I know it has been of great interest to you and you have been actively working on colleges to address underage drinking on college campuses – binge drinking and things like that. You probably saw this article in the last couple of days, and please correct any inaccuracies. I forget who did the study, but I believe it said they are not seeing a decrease in drinking on college campuses. If you had a chance to read that would you reflect on that a little bit and say what are the shortcomings?

MR. HAMILTON: I haven't had a chance to read the article that you are talking about, but I did read an article about binge drinking where there is a lot of colleges that are going to a "normative behavior module" is what they call it. What they are trying to do is convince kids – put up posters around the campus and let the kids know that everybody doesn't drink to get drunk - that individuals are drinking responsibly. This has been called a "norming" is what they have been trying to do. The research that I have read is that that's not working right now. That trying to have this proactive campaign is not working on the college campuses where they did this research. As far as what you mentioned, I haven't read that article yet.

MR. SELIGER: Maybe what I read really had more to do with what you are talking about. If you were to conjecture, why is it not working?

MR. HAMILTON: I couldn't answer that.

MR. SELIGER: Okay, well thank you.

MR. STEEN: Chief, I have a question. You call that Stopping Sales to Intoxicated Persons, what do you call that? Sip?

MR. HAMILTON: SSIPS. Yes, sir.

MR. STEEN: You said that 94 percent of the establishments sold to – what did you call them?

MR. HAMILTON: Pseudo-patrons.

MR. STEEN: Pseudo-patrons. But I was looking at the summary of the SSIP activity where it said the number of inspections was 1,457, and then you showed criminal violations found, administration violations found. How to you relate those numbers?

MR. HAMILTON: The 364 I believe, is that correct?

MR. STEEN: If you added the criminal and administrative violations?

MR. HAMILTON: Well the 364 is not, even though it's SSIPS activities, where we are going in to look for sales to intox, when we get there we don't always find a bartender or clerk or waitress selling to an intoxicated person. We might find disorderly conduct; we might find a minor in possession; we might find an intoxicated person inside a licensed establishment and then, at that particular time, we have to take action and we leave that location. In a lot of cases they didn't make the sale to intox because there was another violation and our agent had to address those particular issues. As far as the administrative violations, those violations range from the person selling to an intoxicated person, the individual or clerk or waitress or the bartender having narcotics on them – those individuals could be intoxicated. So that's where you have the difference there. As far as the pseudo-patrons, there is no violation that we can file on those individuals because, as I said, our people that we sent in during that particular time were not drunk. They were just acting like it. So you can't file a case on those individuals. And all we were doing was trying to find out how bad the problem was.

MR. STEEN: All right. Did you do follow up with the people that sold to the pseudo-intoxicants?

MR. HAMILTON: We contacted them and let them know what had occurred.

MR. STEEN: What explanations did you hear from people?

MR. HAMILTON: I couldn't tell you right off. I know that as we do some of these things that some of these folks say they didn't appear intoxicated to them, or they didn't see that, or we were real busy at the particular time.

MR. STEEN: But they are aware that it is a problem selling to an intoxicated person?

MR. HAMILTON: Yes, sir, they sure are.

MR. STEEN: And how do you relate that to the seller/server training that we do?

MR. HAMILTON: How would I relate the problem? I think in order for seller/server training to be effective, I think first of all that you've got to get a buy-in from the management. If the management is not pushing it then the employees really don't care. So I think that seller/server training in my opinion, Greg Hamilton's opinion, is that you've definitely got to get buy-in from the management and let them push that down.

MR. STEEN: Thank you very much.

Fiscal stewardship of the agency; discussion, comment, possible vote, Ms. Hudson?

MS. HUDSON: Yes, sir. We've provided some information this time on the Interagency Radio Task Force. This last session they have created another task force that we will also be looking at this year. It is the Public Safety Radio Communication Council. They will also be looking at statewide communications and how these programs can be implemented. We are committed to staying working with both of these groups and Gene Bowman's area will be participating in both of these groups now. DPS did apply for some eight frequencies that are now going to be used statewide, and we are in the process of changing our radios so that we can access all of these frequencies.

The other bit of information we included was some information on our operating budget. Even with the seven percent cuts that we had to make we have done very good staying within our budget. We do have about 13 people, I think that when I sent you the letter there were about 10 people that had announced their intent to retire, and I think that's up to 13 now, so we may see some people retiring at the end of the year. Charlie's got some more information on that, if you are interested.

MR. STEEN: Thank you, Ms. Hudson. Is that all?

MS. HUDSON: Yes.

MR. STEEN: Thanks.

Internal auditor's report on Internal Audit of the Planning and Budgeting Process; discussion, comment, and possible vote.

MS. FOX: In our June Sixteenth meeting, Mr. Gregorczyk presented his audit on the planning and budgeting processes. As his audit indicated most of our planning budget is very well done. We did have one open recommendation left. On page nine, under tab five, page nine, recommendation number five. He had indicated that the commissioners should consider approving the agency internal budget and any significant budget amendments. The staff was opposed to that recommendation, basically, on the fact that historically the commissioners have delegated the routine operations of the agency to the administrator. It leads to very efficient and timely operations and decisions to be made. We felt like if we had to have all budget amendments approved or even significant ones approved that it could delay operations being done, and it would not be as efficient as before. There is certainly no problem in presenting the agency internal budget to the commissioners for approval. We propose doing that in the August meeting of each year as that budget is developed for the beginning of the year in September.

We do still oppose doing budget amendments. I would offer an option to that. If you look under tab three in the normal reporting that we do to the commissioners, three pages from the back you will find a title called, Fiscal Services Department. In that particular report on that page, what we are representing to you are appropriation strategies and the budget allocated to each of those strategies. We show you now the original budget, the adjusted budget, our expenditures in the remaining budget. We have

proposed that we add another column to that particular chart to indicate any monthly adjustments that were done in the prior month. So rather than asking for approval of budget adjustments, we would be reporting to you the next month any adjustments that we did make so you could see those on a monthly basis, ongoing. That's perhaps the compromise there that would still provide you with all the information that you need. I know in the past audits, Russell has indicated, as far as our financial reporting and our planning and budgeting, that we have a very good system at the agency and that there are not any problems here in that reporting. You get a lot of that information through the Fiscal Stewardship Report, the monthly reports that we send you and any other special reports that we give you throughout the year. So that would be our recommendation to you.

MR. SELIGER: If you do add an additional column would you find it too burdensome to add below that a note on what the justification is? Mr. Gregorczyk, do you find that would satisfy some of the requirements in terms of comprehensiveness?

MR. GREGORCZYK: I think it would. If you will recall the finding was, as the auditor, we just want to make sure you are aware of all of the financial oversight of the agency. Even if it is after the fact, I don't think there is a problem with that. You will have been apprised of what budget changes occurred and why they occurred.

MR. SELIGER: So if we didn't change it, the fact that we are aware of its change and have...

MR. GREGORCZYK: Staff has already agreed to provide you with the upfront budget to start with. Certainly, that seems like a good compromise to me from our initial recommendation, if it is something the board wants.

MS. FOX: You'll notice the information that Mr. Kerr sent you indicates that for appropriation strategy adjustments we have less than one percent of the amount – it's like point six percent – in changes to our budget between those budget categories or strategy categories. It is less than 200,000 dollars for fiscal year 02, and so far for fiscal year 03, there's only been 90 thousand dollars. And certainly, Mr. Seliger, that little descriptive paragraph underneath that chart, we can add exactly what any of those changes were for.

MR. SELIGER: I think it makes it somewhat more comprehensive.

MS. FOX: I agree.

MR. SELIGER: Do you?

MS. FOX: Yes.

MR. SELIGER: I assume an awful lot of these changes come when there are positions unfilled and, obviously, there are some budgeted funds that are available for reallocation or allocation. I don't know that the commission itself needs to pass on the allocation of everyone of those dollars.

MS. FOX: If you will look at that information, too, you will see that a lot of the adjustments are year-end adjustments. They are, frankly, adjustments we have to make, so just notification to you at the end of the process will be sufficient.

MR. STEEN: Tell me again where it would appear in this report. Would it be under Resource Management?

MS. FOX: Resource Management Division, Fiscal Services Department.

MR. SELIGER: They will add another column there and then a note underneath essentially.

MR. STEEN: Well, Mr. Gregorczyk, I just want to be clear. This is acceptable to you?

MR. GREGORCZYK: Yes, it is. Our recommendation was that the budget probably should go to the board and any significant budget amendments, so I think it clearly meets our intent, which was to keep you apprised of the financial operations of the agency. It's not a pre-approval process, but I think that will certainly address the staff's concern – that is, to have an efficient way to move money when they need to – without having to wait for a board meeting. I think it certainly is a good compromise it seems to me. It keeps you apprised and achieves what we thought should happen.

MR. STEEN: Do we need any formal action on that?

MR. GREGORCZYK: We probably need to revise the existing management response in the report to reflect this.

MS. FOX: If you are happy with that compromise then we will adjust our response to that recommendation and Russell may then file it.

MR. STEEN: Mr. Bright, do we need to do anything formal?

MR. BRIGHT: I don't think so.

MR. STEEN: Thank you. Do you have anything else?

MR. GREGORCZYK: No, we are finishing up our work this month and next meeting we will have the final audit plan and the final audit that we have done.

MR. STEEN: Thank you.

MR. GREGORCZYK: Thank you.

MR. STEEN: Consider publication of proposed amendment to 16 TAC Section 45.113 relating to line cleaning services by beer distributors; discussion, comment, possible vote.

MR. BRIGHT:

Mr. Chairman and Members, as the attendant item says what is before you is the question of whether or not you should publish a proposed amendment to our rule 45.113 as a proposed amendment. So that presents you with three options today. You can decide not to publish this proposed amendment and that would end our consideration of this issue, or you can decide to publish this proposed amendment. We would do so in the *Texas Register*, which would be our formal request for comment on this proposed rule. We would come back at some point, no earlier than your September meeting, and ask you for a vote as to whether that rule or some amended version of that rule ought to be adopted as a final rule. Finally, you can defer a decision on this matter et al. and send it back to staff for such other further discussions as you think wise and necessary.

So what are we talking about here today? We are talking about the relationship between upper tier members, primarily beer distributors, and retailers – retailers of beer. As you know, we regulate that relationship, the flow of goods, benefits, and services very closely and very narrowly. One of the things that beer distributors are permitted to do under our rule is give the service of cleaning draft beer dispensing lines to make sure they are clean. They typically do it, I understand, by some kind of chemical cleaning. There is a new thing under the sun and one of the articulations or examples of this new thing is a machine called a BLM 2000. The BLM 2000 I am given to understand is a box, it's a machine; it clamps to the draft beer dispensing line and it stays there all the time. What it does is that it sends electromagnetic pulses through the beer line and it keeps it clean in that way. It is a new way of cleaning beer lines.

Now the question that the use of this device, or more accurately the provision of this device to beer retailers, presents us with is the question of whether this is like beer line cleaning services, which we have said is acceptable under our current rules, or whether it is more like the provision of equipment, fixtures or supplies to retailers by the beer distributor. The reason I use that language pretty carefully is that there is a provision in our code 102.14 that says that whatever else they may do beer distributors may

not provide retailers equipment, fixtures and supplies. We have talked to the people who are interested in this. We have exchanged some correspondence, which is in the file in front of you. On, I believe, the Fourteenth I wrote a letter to the interested people, telling what the staff thinks about this. After some consideration the staff is of the opinion that because this is a machine, because it stays in the retail account all of the time, it is more like equipment that is being supplied to the retailer by a beer distributor and, therefore, is not the kind of thing we think our rules should authorize. So our recommendation to you is to not authorize publication of this rule because our rules should not accommodate it, in our judgment. That judgment is buttressed by the fact that apparently this is not a wide standing or a widespread practice in the industry. One of the things when we believe, come to the conclusion that our rules ought to say, "No, you may not do this," one of the considerations that we need to think about is what kind of impediment we are putting on commerce generally. Because it is not widespread we don't think that this is an onerous or a kind of a difficult impediment we are putting on commerce. In that light I ought to point out that, of course, we are here and you have no authority to say that retailers may not use this device at all. We can speak not at all about that. All we are saying is that distributors and manufacturers may not supply it to retailers. That's our recommendation. I believe there may well be some folks who are here to tell you otherwise and you should give them close attention.

MR. STEEN: I just have one card up here from Randy Yarbrough, representing the Wholesale Beer Distributors of Texas. Randy?

MR. YARBROUGH: There may be some other people who didn't know to fill out a card that are in favor of that.

For the record let me state my name is Randy Yarbrough. I'm here today representing the Wholesale Beer Distributors of Texas. We have talked to our distributors at their board meetings this summer and universally all of them were opposed to this for all the reasons Mr. Bright laid out already. We don't really come to you today speaking for or against the equipment itself, whether it works, doesn't work, whether it's the greatest thing since sliced bread, but simply that we do believe that it is a piece of equipment and as such the statutes clearly prohibit a beer distributor from providing that to someone in the retail tier of establishments. If the retailer wanted to buy that himself directly from the manufacturer of this equipment that would be something up to him.

The other thing we talked to our members about was whether any of them had had experience. Of the board none of them did, some of them knew about it, but all of them said they didn't believe that would alleviate them of their responsibilities of cleaning the lines in the ways they are contractually bound to with their manufacturers. In fact, a couple of manufacturers have provided others, that I believe were given to Mr. Bright and are in your books, saying that this equipment would not meet their requirement for line cleaning. So, we come before you today, just being very brief, to say that we would oppose the publication of the rule because we believe that's beyond the jurisdiction of the commission to publish a rule to give equipment to members of the retailer tier. I'd be happy to answer any questions if you have any.

MR. STEEN: Thank you, Mr. Yarbrough.

Do we have anybody else? State your name for the record, please.

MR. DUEA: My name is Joe Duea. I'm with Bio-Signal Corporation, BLM North America Division. I'm sorry, I didn't know of the filling out a card to speak.

MR. STEEN: No problem.

MR. DUEA: I appreciate the opportunity, Mr. Chairman and Commissioners, to be here today. I represent the manufacturer of the BLM 2000 device. If it is okay with you I would like to review what the equipment is, maybe some history of how it has started to be used in the state of Texas, and then some future growth in terms of how it is intended to be used by the beer manufacturers in the future, if that would be acceptable.

The device itself is an electronic maintenance system for draft beer lines. The device is intended to take a clean draft line and keep it clean for a longer period of time. One of the issues in draft beer is that over time it develops bio-film in the tubing and that needs to be removed, as Mr. Bright said, through a chemical process, to strip that bio-film out, so the line remains clean and the end product tastes like it is supposed to. The BLM 2000 attaches to the draft line and broadcasts an audio frequency, utilizing a fairly new, but becoming widespread, technology called "audio frequency technology." The technology that is used in the medical field for sanitizing and limiting the growth of bio-film, initially now, has been applied in the draft industry because of the prevalent problem of the bio-film accumulation.

The device, itself – if I could actually just show it to you – not to dispute Mr. Bright, but the term “machine” is a bit misleading. It is simply a control unit that generates this audio frequency. This would be attached, say, on a cooler wall in a retail establishment and attached to that device is a transponder – this is the entire size of the unit. It actually just tie-straps to the beer line itself. So, it’s not a permanent installation, like in the tubing or anything like that. It’s a device that’s just attached to the tubing on the outside. This is in essence like a speaker and this is like a radio. It’s generating this audio frequency, broadcasting it into the beer, and it creates two things: one, an environment that is unfriendly for the growth of this bio-film. It prevents the reproduction of bacteria, yeast and mold so it doesn’t grow. The second action is that as it’s broadcasting a sound – it’s a very low frequency, but it does it at a very rapid pace – it almost creates a mechanical motion inside that tubing to sort of continually scrub the inside of the tubing.

What has happened is when we initially worked with some beer distributors in the state of Texas, before the initial installation at a distributorship that has locations in Plano, Denison, Wichita Falls, we contacted the former assistant chief to make certain that it would be an acceptable piece of technology in terms of line cleaning service that the beer distributor could use. At that time the former assistant chief indicated that that would be perfectly acceptable because the equipment, the device itself, the ownership is maintained by the beer distributor. It is not given to the establishment. If in fact, say a particular distributor has three of the five lines that are in a retail establishment, and one of those lines switches to another distributor, they remove that particular transponder, take it away and they will use it in a different establishment. So, it is permanent that it is always attached to the line while that distributor has that draft line, but it is not a permanent installation. It remains the property of the beer distributor. What we’ve been working with the brewing industry around the country, and actually around the world, is to develop the criteria that this is actually accepted line cleaning practice or a line maintenance practice, I should say. Line cleaning still needs to be done on a regular basis through this chemical means. Again, this device is a maintenance device that keeps the lines clean longer. The third largest brewery in the United States did approve, and has approved for about three years, the use of this and it is actually part of Coors Draught Services Manual. If you like, I have copies of the pages that are involved. It’s actually part of their standard line cleaning practice as an option for distributors to use. The other two largest brewers in the United States, at this point because of confidential agreements for testing and approval processes, I can’t really discuss. In Europe and other parts of the world, those brewers are utilizing this technology as part of their standard line cleaning service. For example, Miller in Europe has approved it and are beginning installations all across Europe for the use of this for their standard line cleaning and maintenance service.

As we understand in the state of Texas, because the line cleaning service is allowed but equipment is not given away, again, going back to our original conversation with TABC, was that we understood that this was going to just become part of the standard line cleaning service of beer wholesalers. That's the approach we took as we moved forward to continue to market this product in the state of Texas. As an example, another state with almost identical laws with the state of Texas, Virginia, has recently written us back with approval because of the exact explanation I'm giving – that a beer wholesaler was using this device as part of their standard line cleaning practice. They have actually given written approval of the BLM 2000 under that regard. If they were to give the equipment away as an inducement for business, first off, we would not endorse that and that's not part of what we are trying to do, and, of course, the state would not allow that as well. We are fully aware and very understanding of the need for laws to prevent the use of equipment for the inducement for business and that is why we have approached this with those beer distributors in Texas that we have talked to in regards to it just becoming part of their line cleaning services standard practices.

Do you have any questions?

MR. STEEN: Do you have any questions?

MR. SELIGER: I don't think so.

MR. STEEN: Thank you very much.

Anyone else?

MR. MOLINARI: I'm Larry Molinari. I'm with Perlick Corporation and Perlick Corporation is a manufacturer of beer dispensing equipment nationwide, or internationally, for that matter. We sell beer dispensing systems to 75 percent of the chain accounts. When you go into an Applebee's or a Red Lobster or Olive Garden and you have a draft beer, it's going to be coming out of our beer systems. If you go down and enjoy a beer at your stadium or arenas across the country, 75 percent of the stadiums and arenas use our draft beer dispensing equipment. Of course, we are out of Milwaukee, Wisconsin and Milwaukee has had a reputation for beer, but St. Louis has usurped us recently, but so be it. So, draft beer is very key to the Perlick Corporation, though we sell other equipment like refrigeration equipment, bottle coolers, frosters, glass washers, the kind of equipment you see in a beverage and bar environment.

When I think of beverage and bar environment I've got to also commend your enforcement practices, which I learned earlier, where responsible

drinking is a key issue. We are in a privilege industry and we appreciate the opportunity to be in front of you because this is a privilege industry. We, by no means, can sell our equipment without the consent of bodies like yours and we respect very much your authority. As suppliers we feel privileged to be able to participate. We are very much for responsible drinking. I don't want to defer too much, but I do want to comment on, Mr. Seliger, your observation about the problems of binge drinking in the young, it is a big problem in Wisconsin, particularly among college campuses. It seems like two things are going at the same time. We in Wisconsin, nationwide are doing the kinds of enforcement practices we learned are making some difference in DWI, certain areas among adults, in certain establishments being more aware of not serving underage drinkers. You are making progress from what we can see in the statistics that I've been seeing, except in one area, and that's the youth and binge drinking. It's a huge problem. I have three teenagers and I talk to them all the time about that. Everyone who has young people knows what a danger that is. I commend your questions about that and we are supporting you and feel that's very key – though I'm deferring a bit from my topic. I want you to know that we, as equipment manufacturers are very much in favor of what you're doing and supporting it, doing everything we can through our associations, through monies that we give our associations, and through policies and programs to solve that same huge, huge problem – not solve it, but do a better job than we are right now. At any rate I feel for your concern. We are concerned as well.

Draft beer is a very pristine product. Brewers do a wonderful job of putting together a fine product. It's not pasteurized. It's in a container; it's very environmentally beneficial as well. Draft beer, rather than having to deal with all these little glass bottles, environmentally, and throwing them away, you have one container that is reusable. It's very efficient; it's good for society; it's good for the state of Texas; it's good for the nation's environmental situation to have the draft beer package. Unfortunately, the draft beer package is having problems. A smaller and smaller share of the beer consumed in the nation today is being consumed through a draft beer package. And we at the Perlick Corporation, of course, because our life bread is draft beer and it's a very important thing to us, we are concerned about that trend. We have been concerned about that trend for a long time. When BLM came along, we looked at it, researched it because we'd been unsuccessful trying to figure out ways we can get this product back in the spot that it should have been. It used to be 15 percent of all, when I started in the business 30 years ago, 15 percent was in a draft package. Now it's at nine percent, the draft package. You say, "Why is it decreasing? What's wrong?" The main problem is that people don't have confidence in draft beer anymore. We've all gone out to a restaurant, had some draft beer, and what happens? It didn't taste good. Draft beer should taste better. It's

not pasteurized. The brewery does a grand job getting that beer to the establishment and it doesn't get through to the customer. Why doesn't it get through to the customer? It's what Joe Duea was talking about. The bio-film builds up in there; you've got contamination in there, which alters and affects the taste of the beer. So, people drink the beer then say, "Well, I better have a bottle beer." It is a big problem all around the nation. We have seen this as a solution. We've embarked on a program – I don't know if I should, some literature and other information, Mr. Bright?

MR. BRIGHT: You certainly may.

MR. MOLINARI: Here's a piece that we put together. This is what we want to do and we feel it is part of the solution. It's what we call a PureFlow system. As the name implies, we feel that draft beer service could be improved. Now we sell equipment so what are we doing with, how can we have an effect on line cleaning? We guarantee when it's in the keg, it will come out and you can pour it. We guarantee that. We do a better job than anyone else, but we can't guarantee that it is going to taste good. Now we have a service network around the country – we've got the largest service network of people that install and service beer systems. So, we go around to our installation service network and set up a system for cleaning and maintaining beer systems. First of all, you have to clean properly. This is not a magic bullet. You have to clean the lines thoroughly and properly, and we have a whole formula, which we are advising and we work with people at Bio-Signal to develop procedures. So, first of all you clean it, then you want to maintain it. This device does a job maintaining it like we've never seen before. We have it in areas where this is permissible by law and we have brewery approval. Incidentally, only Coors uses this. Anheuser-Busch and Miller say the lines ought to be cleaned every two weeks, but they have made exceptions. We have major installations all over the country that utilize this technology, and even in Anheuser-Busch's backyard we have a BLM installed and are using these cleaning technologies, these concepts of cleaning the beer systems and maintaining them, and they are giving a wonderful draft product. You can imagine going to venue like that and being able to order a glass of beer that is pristine and wonderful tasting. We are able to get it with this. In six or seven major venues we have done this, and regions of the country we've implemented a PureFlow-like system, where we have our service agents coming in and doing the line cleaning.

In this state the beer wholesalers do the line cleaning. In other states you have the end user or the retailer would contract with a line cleaning person, which would be a PureFlow person. Those are the areas we have been most successful to date in putting this concept across of offering the PureFlow service.

Mr. Yarbrough, I apologize for not being able to get in front of the beer wholesalers to give them our concepts and give them a presentation on why we think it would be in the best interest to look at this favorably. I think that if we have an opportunity to go in front of them, I certainly would like that, to try to get this view point that I think they would see as quite beneficial and favorable to their best interests – that interest of giving a good quality draft to the people in the state of Texas.

At any rate, we feel if with your acceptance of this change in this law, we feel if you could so allow that, we could come and work with the beer wholesalers in the state. We could, utilizing this technology and utilizing and training in proper line cleaning, we think we can make a difference in making this draft package that is environmentally friendly, something that is on the rise in the state of Texas instead of in decline. We think that with this technology we can make it happen.

We also agree with Joe Ducea that this is not a piece of equipment, but this is part of the cleaning system, a part of the cycle. You see with our PureFlow, we show that as something that the PureFlow person or line cleaning person brings to the job site when they contract with the retailer. When the contract is over with the retailer, the agreements that the PureFlow service person has clearly states within the agreements that this comes out. It's not the retailer's. As a matter of fact, I should make this point, too. We don't want to – with respect with what Mr. Bright says, we had an opportunity to talk with him on the phone – and I don't want to in any way come out against, I appreciate his point of view. I appreciate the point of view of staff. I can understand that and in no way want to be an adversary. I just want to come in and give some more information, I guess is the point. The retailer, we don't want the retailer to own this technology because the key to the technology is that you have someone who is trained in line cleaning first; second, someone who will look after the system. In other words, come in every eight weeks and do a proper job of line cleaning, make sure that those transponders are putting out the right signal, make sure the plug's in because it doesn't work very well without a plug, make sure that the retailer's establishment is using proper procedures as it relates to draft beer. It must have somebody come in.

Early stages when we first started selling this product, we were selling it to retailers. We were going to go to our chain accounts and say, "Let's put it in." But we backed off that because in certain areas people would buy this device, put it on and say, "Well, I guess I've solved my line cleaning problems forever." That's not what we want, so we don't want to sell it to retailers. We only want to sell it to people that are trained. We sell it to a wholesaler, the wholesaler that we would sell to, we would put through extensive training on line cleaning. We would give them a device which

tells them that the units have a proper signal, so every time they go out to the retail establishment they would check the signal. We would give them a preventative maintenance program, which you see outlined in this. It goes over all aspects of the system so that it is performing correctly. Our program, our plan, would be to use this in conjunction with doing a better job of cleaning so that the people and the retail establishments in the state of Texas have the benefit of the latest technology used around the world. We are using it selectively in North America, whether it is Anheuser-Busch, Miller or Coors, establishments with their beer nationwide are getting the benefit of this technology right now.

We think the areas where we've got a real high concentration of PureFlow type cleaning service agents, we've seen a difference. In Denver, I mean you get some draft beer in Denver. All Coors lines in Denver have BLM's on them and you go into any of those establishments, that beer tastes good. It is unbelievable the change this product has made, and the training. It's not just the product, with all due respect to their product, but it's also the system of proper cleaning and properly taking care of those lines so that you can get a good draft beer. Draft beer is being improved in the City of Denver because of this new technology.

In this town you know technology. It's part of your lifeblood in Austin. You're a center known worldwide for technology, and it would seem odd that being in the center you would not give your retail establishments the opportunity to utilize a new technology which, in Europe and several places in North America, is proving to solve a problem that has bedeviled us nationwide. We, Perlick Corporation, are ecstatic and happy over this chain of events, the fact that this new technology is coming on stream and helping us out to do a better job with draft beer. We would hope that you would open your mind to changing your existing regulations so that this technology could be used. We will support you in any way possible.

Now I think that someone that hasn't weighed in here, which I think is someone who should weigh in, is the Coors Brewing Company. Unfortunately, we were not able to get the people there. Because of the amount of time and effort and R and D that the Coors Brewing Company has put into this product, they have spent years looking at it and I think they should be in here. I would say this, it's not a matter of if Miller or Anheuser-Busch are going to come here, too, and say that it's good, it's a question of when. I think it's something, again, that we recommend the state of Texas to be ahead of the curve on and take a look at. We are willing to do anything we can.

We all flew down this morning, Joe from Deluth, I think, Phil's another person from Illinois and myself from Milwaukee to come down and make a

presentation. We were up early this morning to get down here to have the opportunity and we appreciate the opportunity.

I also want to compliment you on the professionalism of your organization, the way these proceedings have gone forward. I'm very impressed with your facility and the quality of all your people here. As I said, I talked with Mr. Bright earlier when I sent my letter to him and was very impressed with the feedback and the very respectful reception that I got. We don't always get that, unfortunately, from our state governments. Even the state of Wisconsin, we don't always get as friendly of a response as we would like and I, we, have been very appreciative.

Do you have any questions?

MR. STEEN: Well, we appreciate your coming all the way down from Wisconsin. I think it was interesting to learn about the technology. I guess, and I don't know if Mr. Bright has a response, but I was just looking at this. We can only deal with the statutes. We have to abide by the statutes the legislature has passed. We've got a Section 102.14 of the code that says very clearly "No manufacturer, distributor directly or indirectly or through a subsidiary, affiliate, agent, employee, officer, director or firm member may furnish, give, rent, lend or sell any equipment, fixtures, supplies to a person engaged in selling brewery products for on-premises consumption." The words are there. It's not just selling, it's furnishing or lending.

MR. MOLINARI: Right. What we say...

MR. STEEN: I don't know how to get around that statute. I know that you avoided saying you said it's not a piece of equipment, but I don't know how else you would describe it. At one point you said it was a device.

MR. MOLINARI: When the line cleaner comes in, he comes in with a piece of equipment. He comes in with a pump; he comes in with various assorted pieces of equipment that helps him do his job to clean the lines. This is another thing that they have in their toolbox. The only difference between the pumps and all the other means of equipment that he brings to do his service is this one, he doesn't give to the retailer, he leaves it behind. So, when this person comes in to do his cleaning, he can do the cleaning and then the day he leaves his cleaning continues – not the cleaning, but his job is maintained. By leaving this part of something, which is in his toolbox, he is giving the restaurant the benefit of continued clean lines, even after he leaves. The other thing you have, let's say in the state of Texas, even the best wholesalers with the best intentions are supposed to get in every two weeks to clean the lines. In the summertime when they've got festivals and all

kinds of things going on, the people that do this cleaning don't necessarily get in and they might go two, three, four, five, six weeks before they get back to that establishment. If he does a good job of cleaning and puts this device on, which is, again, another piece of equipment in their toolbox to keep that line clean, the customer is going to have a good tasting beer even six, eight, nine, ten weeks later. It will continue to be good.

So the statute, with all due respect, I think if we get off of the equipment and back to the cleaning, in the other part of the statute it talks about "as an improved activity – cleaning." So if we're going to offer the wholesaler the right to do cleaning, then we should allow that person all the technological tools possible so that he can do a proper job cleaning. Otherwise, you are keeping him from doing what the latest technology allows him to do in the way of cleaning. I don't look at that as equipment in the least. We sell equipment. Equipment is your direct line dispenser; we'll sell a power pack to chill the lines; we'll sell tubing; that's all equipment. That's equipment you need to dispense beer. This has nothing to do with dispensing beer. The only thing that it is related to is cleaning. So, therefore, I wouldn't even consider equipment. It is part of what's in the line cleaner's toolbox that enables him to maintain the system after he's cleaned it. It's nothing more than sending out a radio signal. It's not something that pumps; it's not something tangible that's associated with the beer system. We don't even sell this as a part of our beer system. We don't look at this as equipment. We look at this as a device which we provide people to enable them to do a better job cleaning the system rather than looking at it as a piece of equipment. With the subtle changes in the verbiage of cleaning as has been suggested, I think it falls right into that category or into that cleaning category. In the spirit of what that code was written for – equipment – that is not what equipment was.

Of course, we used to work directly with wholesalers. We don't as a company deal with wholesalers with equipment because of the laws. So we don't sell equipment to wholesalers, but we sell to dealers nationwide. This would be purchased by a wholesaler or would be purchased by a line cleaning company who was trained to use it as a tool in the toolbox to keep beer lines clean, not as a piece of equipment. So, I think just changing the terminology in your rules as it relates to cleaning and broadening it; that's what Joe said has occurred in other areas and other states. Not only have we got approvals, but they have broadened their ideas. All these laws were written 34 years ago. That's a long time ago. These haven't been revised. The terminology in your laws is not correct; they don't refer to the right items. I remember in the state of Pennsylvania they talked about steaming cleaning which went out 40, 50 years ago. They never had a reason to come back to what clean was until we had this device because now this is

different. So they altered their verbiage of their cleaning to bring it up to date. I think that's what we're requesting, that you look at the verbiage in your cleaning with the idea of bringing it up to date to current technology.

MR. STEEN: Thank you.

MS. MADDEN: Mr. Bright, before we vote on this would it be possible if we went into executive session to clarify some things?

MR. BRIGHT: Sure, it would be possible. We have posted your executive session with discussion of this rule proposal as one of the potential topics, and I would be eager to do so.

MR. MOLINARI: Thank you very much.

MS. MADDEN: Thank you.

MR. MOLINARI: Any more questions?

MR. SELIGER: I have none.

MR. STEEN: No.

MS. MADDEN: No.

MR. STEEN: Mr. Yarbrough?

MR. YARBROUGH: If I could just point out very briefly that it's not our position here today to try to measure the effectiveness of the machine or anything of that nature. Our opposition is not based on the evaluation of how it would perform or anything but really it is a looking at the law. As we have stated, in 102.14 we see something that you leave on a licensed premises, permanently there, as long as you've got the account it's permanently there. If a distributor is giving that he is giving some sort of equipment, lending it, providing it for a retailer and we believe that under the current statute a distributor is prohibited from doing that. So, in that light is why we oppose a rule trying to broaden that because we don't believe the statutory authority under 102.14 gives you that authority to broaden the rules to cover something that we think, in our minds, would clearly be equipment.

Thank you.

MR. STEEN: Do we have any other public comment?

The commission will now convene in executive session to consult with legal counsel regarding item 6 of the agenda pursuant to Texas Government Code Section 551.071 and also to consult with legal counsel pursuant to the same section regarding *Dickerson v. Bailey* and anticipated and pending legal claims against the commission. The date is July 28, 2003, and the time is 3:10.

The commission convened in executive session at 3:10 p.m. and reconvened in open meeting at 3:56 p.m.

MR. STEEN: The time is 3:56 p.m. The commission meeting of July 28, 2003, is now back in open session. During executive session no votes were taken, no final decisions were made. We will now take up those matters deliberated for final consideration.

MR. SELIGER: Mr. Chairman, as regards proposed amendment to rule 45.113 of the Texas Alcoholic Beverage Code, I move that no publication be made in the *Texas Register* and that the proposal to do so be rejected.

MS. MADDEN: I second.

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

MR. SELIGER: Aye.

MS. MADDEN: Aye.

MR. STEEN: Aye. The motion carries.

I think that concludes the deliberations on that item 6.

We also discussed the *Dickerson* case in executive session. Mr. Bright, I was going to ask you if you would go ahead on the record, speak to what's going to happen on July Thirty-first.

MR. BRIGHT: Strange you should mention that, Mr. Chairman. What's going to happen, I'm informed, on July 31<sup>st</sup> is that the Fifth Circuit will issue its mandate in this case. As we all know, their opinion says that that body of our statutes that characterize direct shipments from out-of-state suppliers to Texas consumers as illegal, that body of statutes is unlawful. The effect of that mandate will be to enjoin us from enforcing those statutes. Therefore, when an out-of-state supplier ships wine, not malt beverages or distilled spirits directly to a Texas consumer, we are enjoined from interdicting that, using our laws to interdict that shipment with three conditions. First, the wine has to travel by licensed carrier, and we have a carrier's permit that

we issue to the FedEx and UPSs of the world. Secondly, the wine cannot be transported into a dry area, and thirdly, the wine can't be delivered, quite obviously, to a minor. If those three conditions, which remain enforceable, are violated they subject the people who are violating them to criminal sanction, and they subject the wine to seizure by us under our forfeiture and seizure provisions. So, out-of-state suppliers may ship into Texas consumers subject to those three conditions.

MR. STEEN: Just to be clear, it's only to consumers.

MR. BRIGHT: It is only to consumers. Yes, sir. It remains a violation, certainly; for example, a package store could not use this channel to circumvent the taxing or the distribution system. A package store would be in violation of a number of laws if they did that. And we still have those laws and the ability to detect that violation if that happens. Secondly, it is to consumers for personal consumption. It remains a violation for the consumer to have wine shipped to himself or herself and then turn around and sell it to others. That would be called "bootlegging" and we make bootlegging cases all the time. So, we have the ability to detect those kinds of violations and we have the legal authority to act against them.

MR. STEEN: Ms. Fox mentioned disseminating this very information on our website.

MR. BRIGHT: Yes, and we have not yet, and we should within the coming days develop some clear and concise statement, perhaps a list of frequently asked questions. The staff just needs to get together and work out the details of what we are going to say on our website, but we do in fact need to say something.

MR. STEEN: Thank you. Any other questions?

MS. MADDEN: I move that we adjourn.

MR. SELIGER: Second.

MR. STEEN: The meeting is adjourned.

The meeting adjourned at 4:10 p.m.