

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, AUGUST 25, 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: Alan Steen, Administrator, Jeannene Fox, Assistant Administrator; Lou Bright, General Counsel; Denise Hudson, Director of Resource Management; Greg Hamilton, Chief of Enforcement; Buck Fuller, Director of Compliance; Amy Harrison, Director of Licensing; and Captain Richard Jauregui, San Antonio Enforcement. Present to receive certificates of service: Cassandra Higdon, 20 years, Austin Headquarters; Tina Guerra, 25 years, San Antonio. Visitors included: Russell Gregorczyk, Jansen & Gregorczyk; Robert Sparks and Alan Gray, Licensed Beverage Distributors; Randy Yarbrough, Mike McKinney and Stuart Coleman, Wholesale Beer Distributors of Texas; Fred Marosko, Texas Package Stores Association; Rick Donley, Beer Alliance of Texas; Jay Howard, DISCUS; Glen Garey, Texas Restaurant Association; Jack Martin and Amy Inman, Law Office of Jack Martin; Renee Johnston, Texas Youth Commission; Valerie Onyett, Legislative Budget Board; and Dave Bynum, Save Our Children From Alcohol.

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 July 28, 2003, meeting; discussion, comment, possible vote.
3. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement; and
 - c. discussion of management controls.
4. Fiscal stewardship of agency; discussion, comment, possible vote.
5. Consider approval of Internal Audit of the Compliance Department Headquarters Operations; discussion, comment, possible vote.
6. Consider approval of Report on the Status of FY 2002 Internal Audit Recommendations; discussion, comment, possible vote.
7. Consider approval of Proposed FY 2004 Internal Audit Plan and Contract; discussion, comment, possible vote.
8. Consider participation by commissioners in the grant process; discussion, comment, possible vote.
9. Consider approval of publication of the proposed repeal of 16 TAC §45.100 relating to advertising and promotion in public entertainment facilities; discussion, comment, possible vote. (Advertising and Promotion in Public Entertainment Facilities)
10. Consider publication of proposed amendment to 16 TAC §33.1 relating to the effect of a prior criminal conviction on license/permit applications; discussion, comment, possible vote. (Final Conviction or Deferred Adjudication)
11. Consider publication of proposed amendment to 16 TAC §41.49 relating to fee requirements of private clubs for issuance of temporary membership cards by the commission. (Private Clubs-Temporary Memberships)

12. Consider publication of proposed amendment to 16 TAC §33.6 relating to the number of calendar days allowed for submittal of renewal fees. (Renewal of Licenses and Permits After Expiration)
13. Consider publication of proposed amendment to 16 TAC §33.11 relating to changes in procedure for processing and issuance of temporary licenses and temporary wine and beer retail permits. (Application and Issuance)
14. Consider publication of proposed new 16 TAC §41.55 allowing Texas distributors to store products not intended for sale in Texas. (Malt Beverages for Export)
15. Public comment.

Announcement of executive session.

16. Executive session:
 - a. the commission may convene in executive session to consult with legal counsel regarding items 9 through 14 of this agenda pursuant to Texas Government Code, §551.071; and
 - b. the commission may 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; and
 - c. the commission may meet in executive session to discuss the duties of the administrator under the authority of §551.074 of the Government Code.

Continue open meeting.

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

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

MR. STEEN: I want to call to order the August 25, 2003, meeting of the Texas Alcoholic Beverage Commission. It's about one-thirty.

We begin with a recognition of agency employees with 20 or more years of service. We've got a group – Francisco Cortez, Cassandra Higdon, Rafael Portillo, Tina Guerra, and Donald Hons. I know that Mr. Cortez, Mr. Portillo, and Mr. Hons are not here. Mr. Fuller, do you want to handle the people from Compliance?

MR. FULLER: Yes, sir. Thank you, Mr. Chairman.

Francisco Cortez, we would like to recognize him for his 20-year tenure with the agency. He was employed by the agency on July 15, 1983, and was assigned to the El Paso port of entry. He was later transferred to the Hidalgo port of entry and he has remained in Laredo from 1987. Mr. Cortez is very active in rodeoing and he has a comment for the TABC – he rides for the brand. So Laredo is one of our very busy ports and we would like to wish him the best and we appreciate his 20 years of service to the agency. Unforeseen circumstances prevented him from being with us.

MR. STEEN: Would you please congratulate him for us?

MR. FULLER: I'll do it and we will get his certificate to him.

Rafael Portillo joined the TABC in August of 1978 as a Taxpayer Compliance Officer I, and he has spent his entire 25 years in El Paso, working at the PDN, Bridge of the Americas, Ysleta and Fabens. Rafael is a model employee and a good role model. He has a really good relationship with the federal employees in the El Paso ports of entry and we appreciate his dedication.

Donald R. Hons was employed with us in 1973 in the auditing department and he had a brief stay in headquarters, followed by a transfer to Dallas, where he is a section leader and continues to work in the Dallas office. Don couldn't be here today because his daughter was having a medical procedure, but he had fully intended to be here. Donald is a great role model. I don't know if you remember when we showed you the confiscated property rooms, but Don maintains and organizes them and keeps that confiscated property room in Dallas in wonderful shape. We congratulate Donald for his 30 years of service with us.

MR. STEEN: Thank you, Mr. Fuller. To each of those would you convey our thanks and congratulations?

MR. FULLER: Yes, sir, I will.

MR. STEEN: Thank you. Is Amy Harrison here?

MS. HARRISON: Yes, sir.

MR. STEEN: Thank you, Ms. Harrison.

MS. HARRISON: Cassandra Higdon, better known to all of us as Sandy, recently completed 20 years of service at the TABC. She began her career as a Clerk II in the Licenses and Permits Department and has risen through the ranks to her current position as an Accounts Examiner IV. Some of her job duties include preparing legal certifications, handling open records requests and management holds. Five years ago, she was named "Employee of the Year" for her outstanding contributions. Sandy is known for displaying a strong power of observation and excelling in creative thinking and problem solving. We are honored to have an employee who sets high standards of personal performance and always displays a positive attitude toward her job and others.

MS. HIGDON: Thank you.

COMMISSIONERS: Congratulations.

MS. HIGDON: Thank you.

MR. STEEN: Chief Hamilton?

MR. HAMILTON: Mr. Steen, the one from Enforcement Division is Lieutenant Christina Guerra. Also, we have her Captain, Richard Jauregui in the back.

MR. STEEN: Come forward, Captain Jauregui.

MR. HAMILTON: Lieutenant Guerra is located in our San Antonio district office and she has been with the commission for 25 years. I'm proud to let you know that she is the first female officer with the TABC to obtain this tenure with the Enforcement Division. She has served in numerous capacities, such as inspector, agent, sergeant and lieutenant in the McAllen, Corpus Christi and San Antonio district offices as she developed her career.

Lieutenant Guerra also serves on the Bexar County DWI Task Force Advisory Board on Underage Drinking, which partners with the University of Texas Health System and the South Texas Injury Prevention and Research Center. This particular organization is the one that implemented our first inaugural of Shattered Dreams. One of the things that Ms. Guerra has done is to be on our Project SAVE development committee. She took on the program as chairman and led us into the Project SAVE program as you know it today. During the course of developing this program, I bought a program called "Every Fifteen Minutes" out of California. I told the agents who were part of that committee it would be a good idea if we could have something else we could implement with this program, not just have the Shattered Dreams in the lower grade levels. One of the things I can say about Lieutenant Guerra, she took this program back to San Antonio, Texas, and our first program of Shattered Dreams was implemented at McCollum High School. Right now this program is currently being replicated from Hawaii to New York and also in Guam. This is a program that has been nationally recognized and I think we owe a lot of this to the drive and aggressiveness of Lieutenant Guerra. One of the things I'd like to say about her, you can give her an assignment and rest assured that it's going to be completed, and it's going to be very professionally done. I'm glad to be a colleague of Lieutenant Tina Guerra.

MS. GUERRA: Thank you.

MR. STEEN: Would you like to say anything?

MS. GUERRA: The last time I came my family took up all the seats. They figured after 20 years it was okay, so they are representing my family.

COMMISSIONERS: Congratulations.

MS. GUERRA: Thank you very much.

MR. STEEN: I also want to say Lieutenant Guerra is from my hometown and just does a great job. I'm just so proud of her and Captain Jauregui and the whole office down there. You all do a fantastic job, and thank you.

MS. GUERRA: Thank you, sir.

MR. STEEN: Next we have approval of minutes of the July 28, 2003, meeting; discussion, comment, possible vote.

MS. MADDEN: I move that we adopt.

MR. SELIGER: Second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Minutes are approved.

Administrator's report, Mr. Steen?

MR. A. STEEN: Mr. Chairman, Commissioners, good afternoon.

First thing I'd like to do for my administrator's report for today is to introduce one of our new and up and coming stars and a young man who promoted with us from our Denton office down to be the new compliance regional supervisor in San Antonio. Dexter Jones is in the audience.

MR. STEEN: Dexter, come forward.

MR. A. STEEN: Dexter has Bachelor of Business Administration in Finance from the University of North Texas. He also worked as an auditor there for the University of North Texas. He was a Marine for us and served in the Persian Gulf and has been married for 10 years to his wife, Stephanie. Dexter is transferring with us to San Antonio, effective September first. An up and coming star, a soldier for our country and a soldier for this agency and we are real proud of him. We look forward to good things from Dexter.

MR. STEEN: Don't feel like you have to, but would you like to say anything?

MR. JONES: Well, I'm just excited and ready to get my feet wet in the San Antonio area, and I'm looking forward to the challenge.

MR. STEEN: Good, we are glad to have you.

MR. JONES: Thank you, sir.

MR. A. STEEN: Thank you, Dexter.

The next thing of significance that I'd like to discuss here for just a minute is that I made it through my first three weeks unscathed, unscarred at this point. During that time I've visited sites all over the state. I've been to Nacogdoches, Amarillo, and Lubbock. Prior to the first, I visited Dallas and Fort Worth and, then, I'll also be in Brownsville this next week, visiting with all the supervisors for the ports of entry.

During this time we have retired 20 of our employees all over the state, including our headquarters. Those 20 full time employees represent 496.9 years in total service and an average of 24.8 years per full time employee. That's unprecedented, I think, almost anywhere in state government. The people I have met across the state are unbelievably committed and driven by what they do and I'm real proud to be a part of it.

The rest of the administrator's report is what we sent you ahead of time, our standard reports. At this point that's my report. Any questions?

MR. SELIGER: Just one, Mr. Chairman. Last year one of the real challenges for the agency was the number of inspections, and the number of licensed establishments in the state of Texas continues to increase. Significantly, this last year the department in the area of inspections has been short 24 officers, and it's been a real challenge to do the things that Chief Hamilton and members of the administrative team

want to do in terms of keeping up those inspections and enforcing the issues of compliance that are integral to those inspections. We are about at the end of a fiscal year and Chief Hamilton and I started talking about it, but I would like for him to report on the progress of this one particularly important mission of the department.

MR. HAMILTON: I would like to say I've got the numbers to date and as of today at ten o'clock we have reached our goal. We are at 108 thousand inspections and, again, I'd note that we were down 24 agents for half the year. I commend those agents that went out there, put their noses to the ground and helped us accomplish this. That's as of today, and I'm pretty sure there are more inspections that will be coming in and that is a commitment by the supervisors and the agents that serve the state of Texas.

MS. MADDEN: Wonderful.

MR. SELIGER: It's extraordinary.

MR. STEEN: Any other questions or comments?

MR. SELIGER: That's all.

MR. STEEN: Fiscal stewardship of the agency; discussion, comment, possible vote. Ms. Hudson.

MS. HUDSON: This time we have provided you with some information on our Business Resumption Plan. We had the good fortune this last week with some of the staff members to be able to walk through that plan. It did come to our attention that there were some things that we needed to change or update and we will get those done. We plan to try to do that again in the next six months, just kind of a walk-through. During the last month, also, we had a fire drill in this building and it went really well. We all got out.

The other thing that we have provided you some information on is a new report that you are going to see in the Monthly Report that has to do with budget changes by strategies. This comes from a recommendation from the internal auditors, so you will be able to see the changes that are being made to the budget.

MS. MADDEN: It kind of leaps out at you. The graphics are very impressive.

MS. HUDSON: Were there any questions on that report or any changes that you wanted us to make to that?

MS. MADDEN: I think it kind of catches your eye and I think it is very easy to read. Thank you for that.

MS. HUDSON: That's my report on fiscal stewardship.

MR. STEEN: Thank you. Any questions or comments?

MR. SELIGER: None what so ever.

MS. MADDEN: No.

MR. STEEN: Thank you, Ms. Hudson.

Consider approval of Internal Audit of the Compliance Department Headquarters Operation; discussion, comment, possible vote.

MR. GREGORCZYK: For the record, I'm Russell Gregorczyk of the firm Jansen & Gregorczyk. We have completed all of our work for the fiscal year. This was our last internal audit, the Compliance Department. The Compliance Department does a myriad of things and they do them all very well in our opinion based on this audit. We had several observations. Overall we were looking for compliance, also effectiveness and efficiency. Since they are so well documented the audit went really well. We had what I consider no significant recommendations. We have several very, very minor recommendations with respect to the Compliance Department. So I would probably just leave it at that and say that we feel like that department in particular has probably some of the better documentation we've seen in the audits we've done for you so far and had no real recommendations of any kind.

MS. MADDEN: Let me ask something, because this was such a positive report and it goes back to last year. Jeannene, is this something we would include in our Sunset report? Would we take the sum of these different departments' reports and somehow include them in the Sunset Review?

MS. FOX: We didn't this time. I think the thinking was that at a time when we had a formal presentation that we would speak to them then.

MS. MADDEN: Okay.

MR. GREGORCZYK: Next one? The follow-up report?

MR. STEEN: Yes. Consider approval of the Report on the Status of Fiscal Year

2002 Internal Audit Recommendations; discussion, comment, possible vote.

MR. GREGORCZYK: This follow-up covers two of the audits we issued. We only issued two audits last year. The third one was in the Human Resources area. We really didn't issue that until this year, so I'll be reporting on that in the next year. With respect to these two audits – Information Resources audit and the audit of Grants Management System – management has done an excellent job of implementing the recommendations. I think that there were three that weren't implemented, two of those management did not agree with, so there was no intention to implement those. The only one we didn't feel was implemented was one that Denise just spoke of and that was with respect to the Disaster Recovery Plan. We didn't think all of those tasks had been completed. Perhaps if we would come in now we would say yes, since they have gone through a walk-through of the Business Continuity Plan. All the recommendations have been implemented and we are very pleased about that.

MR. STEEN: Questions or comments?

MS. MADDEN: What about on page three? We talk about the disagreement about who should...management should determine whether the IRD director should report directly to the administrator or the assistant administrator. Any comment on that?

MR. GREGORCZYK: At the time when we did the report, when we issued the report and you accepted the report, management said, "We don't agree with that. We feel like he reports properly." So that's about all we can do.

MS. MADDEN: Okay, but do you feel good about that? Not really?

MR. GREGORCZYK: Not really, the Information Resource Management Act states that your top IR person is to report to the head. It is kind of strange they would make a law that says how you will structure your organization, but that's what it does. At the time, Mr. Garza felt like the reporting lines were set so that they were meeting the spirit of the law. That was the response, so that's all we could do.

MR. STEEN: Is that something we should have Alan Steen look into further?

MS. MADDEN: Refresh my memory, who does he report to?

MR. A. STEEN: He reports to Ms. Hudson. That is part of the Director of Resource Management at this point. We can look into it, we can survey other

agencies if you would like and come back to the next board meeting with our findings.

MS. MADDEN: I didn't mean to make a major case of it. I was just kind of curious when I was reading the material. How do you feel about it, Ms. Hudson?

MS. HUDSON: However you would like him to report.

MR. GREGORCZYK: I don't think TABC is the only agency that has that reporting line. Even though the Information Resource Management Act does make that specification.

MS. MADDEN: Okay.

MR. STEEN: So there is a statutory requirement that we are not following?

MR. GREGORCZYK: It is a statutory requirement of the Information Resources Management Act.

MR. STEEN: Mr. Steen, I would like for you to look into that.

MR. SELIGER: When it says that the Director of Information Resources is part of the agency's executive management team, does that not imply interaction both with the executive director/administrator and the assistant administrator, and certainly in spirit, if not in letter, comply with the law?

MR. GREGORCZYK: That was the management's response. "We feel like because they are members of the executive team and sit in on meetings that we are complying with the spirit of the law." Mr. Steen can go back and look, but I think the law is fairly explicit the way it says "must report to the top..." I'm not exactly sure what the wording is. I would have to go back and look myself, but I think it is pretty clear that the top IR manager is to report to the executive management.

MR. SELIGER: So, really the recommendation here is that the agency formalize, in fact, what it is doing in practice anyway?

MR. GREGORCZYK: That's correct.

MR. SELIGER: Okay.

MR. STEEN: I feel like if it is a statutory requirement and our internal auditors pointed it out to us that we need to take a serious look at it. So, I would like you to take a fresh look at it.

MR. A. STEEN: Okay.

MR. STEEN: When you dealt with this before you were dealing with Mr. Garza, right?

MR. GREGORCZYK: That's correct.

MR. STEEN: Ready for the next one? Consider approval of proposed Fiscal Year 2004 Internal Audit Plan and Contract; discussion, comment, possible vote.

MR. GREGORCZYK: We did update the Risk Assessment, page 17 in my document, I'm not sure how yours is paginated. Seventeen is correct on my Risk Assessment. I'm referring to our Risk Assessment first. I did the Risk Assessment along organizational lines. I think that has proved pretty effective for TABC. It allows us to really get in and look at each department, division and do a fairly comprehensive audit. Some of the things did change if you compare this one to last year. Things like turnover, we've got a lot of retirements, but overall this is how we assess the risk. We like to, at least, focus on the high risk areas if we can, but there are some other things that are required in the Internal Audit Act that we have to focus on also. What I'm proposing this year – and I think it is on page nine of the audit plan – have three audits. We propose auditing the Enforcement Division, specifically the headquarters operations. In the three years that I have been here, we really haven't done any work in Chief Hamilton's area. We did the field office licensing audit, as you recall, and we did some audits of the grants they were administering, but we really haven't taken a look at that area, so we feel that is an area we should look at this time. The General Services Department has a number of administrative functions that are required to be audited by the Internal Auditing Act, like purchasing. So we're thinking that even though that is not what I consider a high risk area, we feel like it is an area that needs to be audited. Finally, we thought we would take a look at agency-wide training and staff development. Again, we don't see it as a high audit risk but we do think it is an area we would like to look at. I've talked to Mr. Steen about that. He pretty much concurs with the plan we propose to you. That is what we are proposing for this next year.

I'd be glad to answer any questions or if there is anything that the commissioners would like us to focus on, let me know.

MR. STEEN: We just covered agenda items five, six, and now seven. Do we take

formal action on any of those or all of those?

MR. BRIGHT: Yes, sir. I think certainly there is not necessarily any action for you to take on five or six, if I understand that correctly, but you probably should take formal action, at least, to approve the proposed audit plan with or without the changes that you suggest.

MR. SELIGER: Mr. Steen, do you have any reflections on the proposed audit plan for next year?

MR. A. STEEN: I think that the plan is something that we ought to adopt. I agree with the plan. I've had my input on the plan, and I think we ought to move forward.

MR. SELIGER: I move that we accept the proposed audit plan as presented.

MS. MADDEN: I second it.

MR. STEEN: Any discussion?

MR. SELIGER: No.

MS. MADDEN: No.

MR. STEEN: All in favor, say aye.

MR. SELIGER: Aye.

MS. MADDEN: Aye.

MR. STEEN: Aye. It's approved.

Thank you, sir.

MR. GREGORCZYK: Thank you very much. I look forward to working with you another year.

MR. STEEN: Consider participation by commissioners in the grant process; discussion, comment, possible vote.

MR. A. STEEN: Mr. Chairman, before we get started on this particular item, this was something that the commission had expressed some interest in. I have asked Denise to describe a little bit of the process and how the grants work and where the decision processes are for your review and input on that.

MS. HUDSON: We've provided a short, one-page handout in your notebook under tab eight that talks about the grant process. For us at TABC it's really kind of two different tracks that we do. One is where TABC is the grantee of the grant. That is where we are going out and applying for grants. The other is where we act as the grantor to other agencies. That is where we are passing through grants. For us, when we are the grantee and out seeking funds, the most important part of that process is when we are in the planning stages of it. That's when we are looking at all the proposals that are out there and trying to decide which ones to apply for. We believe that this is probably the most important and where we could get your direction on what types of grants you would like to see us apply for.

After we receive those awards here at the agency and we've told whoever the grantor is how we are going to use them, there is very little leeway for us to change those or amend them. So what we would recommend on that side of the process would be to get your direction on the things that you feel are important and that we should be out seeking funding for.

Then the other side of that coin would be where we are the sub-grantee, where we are looking at passing funds through to others. There we would ask for your input on who you believe is a priority for granting funds. We could give you a history of what we have funded in the past, what has worked in the past and you could provide us some direction or set priorities over who you would like to see funded in those areas. These are the two separate tracks that we would recommend that you could give us input on.

MS. MADDEN: On the first one, don't you all have a lot of resources that you go to? It's a matter of going to the library and looking up in the grants resource book on what you target, what you want your monies for, and I certainly think we would love to give you some input, but certainly you all will do the research, correct?

MS. HUDSON: Right. What we had envisioned was Andrea, the lady in charge of the grants, would put together a possible list of all funding sources and let you give us direction such as, is it more important to put more of our energies into applying for education type funding...

MS. MADDEN: So yours is more broad.

MS. HUDSON: Right, or should we put more of our attention or put more effort into applying for law enforcement type funding? You could provide us with direction that way. Is public information more important to you or is research more important?

MS. MADDEN: I kind of feel badly. I feel like you all are trying to be nice to us like, “Oh, poor things, they want some input, so we’ll help them out.” When to me you all should have the greatest amount of input into this because you all know where your pitfalls are. Chief Hamilton, you’re so great about getting grants. I’d feel a little like a neophyte if I told you where you ought to be applying for your grants.

MR. HAMILTON: I can say that with our past grants we have been focusing with the Criminal Justice Division at the Governor’s Office and TxDOT have been the main grants that we have received. As far as research grants, we have worked with PIRE, which is Pacific Institute Research and Evaluation, who goes out and gets federal grants for them to come in and do research. The two places where we are constantly receiving grant funding is the Criminal Justice Division. There are certain criteria you can use, so I am kind of in agreement with you, they will tell you what you can use this funding for and quite often the monies can’t be used for equipment. It can only be used for projects such as minor stings, education type grants, also.

MR. A. STEEN: Ms. Madden, if I could add to that. What we are trying to do is to just get you involved in the process a little bit earlier rather than after the fact, so that you know where the money is potentially going to be spent rather than us coming to you later on.

MS. MADDEN: I think it is a great idea. I just wouldn’t want to see the commission be heavy-handed, not that any of us would, but where we would hamper anyone. I would see this as a partnership with input from the commission and certainly with input from the division heads.

MR. A. STEEN: By starting early on you’re not going to hamper us. We’re starting early on so that we can get your input early and get it included into the process and the rules we have in place would still be intact and we would follow those rules and go right on.

MR. STEEN: What would be the process? Would you be coming to us in a meeting or would you send us material and we would send something back to you?

MS. HUDSON: I had kind of envisioned it like the fiscal stewardship. We could provide you with some written materials on what’s out there and state, “This is what we are recommending; this is what we are looking at.”

MR. STEEN: But we would discuss it in a meeting?

MS. HUDSON: Yes, sir.

MR. STEEN: It would be on the agenda?

MS. HUDSON: Right.

MR. A. STEEN: There is no vote here. It is an information item only.

MR. STEEN: So you covered that side – TABC as grantee? Now, TABC as grantor?

MS. HUDSON: In “grantor” that comes a little bit later in the process and that only has to deal with the EUDL grant money. That’s only one that we are passing through to someone. What we would propose there is before we put out the RFP is to provide you with some information on what we funded in the past, what seems to be working, where there seem to be some areas that are lacking and places that we could focus on and let you help us set the priorities, take your recommendations – is it a priority to fund colleges over local communities – that sort of priority setting, because at that point we won’t know who has applied for the grant, who has sent us an application.

MR. STEEN: Any questions?

MR. SELIGER: I don’t.

MR. STEEN: I think it’s a good plan.

MS. MADDEN: I think it will be fine.

MR. STEEN: Any comments?

MR. SELIGER: No, none.

MR. STEEN: Thank you.

Consider approval of publication of the proposed repeal of 16 TAC Section 45.100, relating to advertising and promotion in public entertainment facilities; discussion, comment, possible vote.

MR. BRIGHT: Mr. Chairman and Members, we are asking you to do just what you said, publish the proposed repeal of this rule. The reasons for that is that by the adoption of Senate Bill 1380, the terms of this rule

have been incorporated into statute with some embellishments, probably because they thought it was such a good idea they wanted to take credit for it, and our rule will become inoperable as of September the first.

MR. SELIGER: Mr. Chairman, without an endorsement of Mr. Bright's cynicism, I move that we accept the proposed repeal of this item.

MS. MADDEN: I second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. And what we just voted on was to...

MR. BRIGHT: To publish it as a proposal. We will come back, I believe in October, to ask you to take final action on this.

MR. STEEN: Thank you.

Consider publication of proposed amendment to 16 TAC Section 33.1, relating to the effect of a prior criminal conviction on license/permit applications; discussion, comment, possible vote.

MR. BRIGHT: Again, Mr. Chairman and Members, this is a request for your approval to publish a proposed amendment to our rule. The reason for that is that throughout our code there are various provisions about the effect that prior criminal convictions ought to have on the ability to get and hold an alcoholic beverage permit. The House Bill 2005 came in and harmonized all of those provisions of the code so that they all read the same thing, that is, that there is a five-year waiting period, I suppose. The adoption of House Bill 2005 means that the terms of this rule after September first will no longer be enforceable. This simply harmonizes our rule with the law.

MS. MADDEN: Well, I move that we publish the proposed amendment to rule 16 TAC Section 33.1, relating to the effect of a prior criminal conviction on license/permit applications.

MR. SELIGER: Second it.

MR. STEEN: Any discussion?

MS. MADDEN: No.
MR. STEEN: All in favor, say aye.
MS. MADDEN: Aye.
MR. SELIGER: Aye.
MR. STEEN: Aye. It passes.

Consider publication of proposed amendment to 16 TAC Section 41.49, relating to fee requirements of private clubs for issuance of temporary membership cards by the commission.

MR. BRIGHT: Mr. Chairman and Members, this harmonizes our rule with the terms of our statute. Section 32.09 of our code says that for each temporary member a private club shall charge and pay to the state a three-dollar fee. We are proposing to amend our rule to simply incorporate whatever the statute says. Again, this is a proposed publication.

MR. SELIGER: Mr. Chairman, I move that the commission approve publication of proposed amendment to 16 TAC Section 41.49.

MS. MADDEN: Second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. It passes.

Consider publication of proposed amendment to 16 TAC Section 33.6, relating to the number of calendar days allowed for submittal of renewal fees.

MR. BRIGHT: Mr. Chairman and Members, Section 6.04 of our code, as you may know, gives licensees and permittees 30 days after the expiration of their permit to file an application for renewal. That used to say 10 days, and our rule that we are amending here, says 10 days. We are proposing a publication to amend that rule, again, to harmonize our rule with the terms of the statute, so that our rule says 30 days.

MS. MADDEN: I move for publication of proposed amendment to 16 TAC Section

33.6, relating to the number of calendar days allowed for submittal of renewal fees.

MR. SELIGER: Second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Motion passes.

Consider publication of proposed amendment to 16 TAC Section 33.11, relating to changes in procedure for processing and issuance of temporary licenses and temporary wine and beer retail permits.

MR. BRIGHT: Mr. Chairman and Members, House Bill 1625 amended Chapter 27 of our code to allow temporary wine and beer retailers to obtain temporary permits and sell beer out in a different county from the county of their primary place of business, something that has never been allowed before. That presents this agency with the standard reporting requirements to make sure that we know what was sold, where and when, and these proposed amendments do that, so we ask that you authorize us to publish these proposed amendments in the *Texas Register*.

MR. SELIGER: I move for the approval of publication of proposed amendment to 16 TAC Section 33.11.

MS. MADDEN: I second.

MR. STEEN: Is there any discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Motion carries.

Consider publication of proposed new 16 TAC Section 41.55, allowing Texas distributors to store products not intended for sale in Texas.

MR. BRIGHT: Mr. Chairman and Members, we are down in the short rows now. House Bill 941 allows for the first time, members of the wholesale

tier to store in Texas, product that is otherwise illegal for sale in Texas. By illegal I don't mean anything surreptitious; I mean it doesn't have a label approval or whatever. That would be because they are legitimately selling that product in other bordering states. That presents the agency with the challenge to make sure that we have appropriate reporting and storage of that, so that product does not get intermingled into Texas product. Our proposed new rule, 41.55, we think does just that, so we ask that you authorize us to publish it as a proposal in the *Texas Register*.

MS. MADDEN: I move that the commission approves the publication of proposed new 16 TAC Section 41.55, allowing Texas distributors to store products not intended for sale in Texas.

MR. SELIGER: Second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Motion carries.

Mr. Bright, thank you very much for all your work in this area. It is very detailed work, and we appreciate it.

MR. BRIGHT: I must confess, Mr. Chairman, I didn't draft all those rules. Some of them I don't even really understand, but other people do.

MS. MADDEN: You could have fooled us.

MR. STEEN: We now move to public comment. I have just one person signed up to speak and that's Mr. Dave Bynum for an organization called Save Our Children From Alcohol. Mr. Bynum?

MR. BYNUM: I guess I'm supposed to be up here?

MR. STEEN: Yes, sir. And we had talked earlier and you said your remarks would be about five minutes?

MR. BYNUM: Maybe less. Let me introduce myself first. I'm Dave Bynum. I'm the director of SOCFA. I live in Wimberley, Texas. And by the grace of God, I have never drank, I have never smoked, and I have never drugged. At 74 I can still play an active game of basketball and I'm healthy. Here's what I'd like to say. I want to thank Alan

Steen for inviting me to the meeting and the opportunity to speak before the TABC board.

SOCFA's aim and immediate goal is to garner support in its efforts to save our children from alcohol.

I brought two beer bottles and they are both empty, and I picked them up on my street in Wimberley. So I left one empty and put water in the other and a lid on it. An empty bottle causes no harm, no deaths, no injuries, no broken homes, no intoxicated drivers on Texas roads. The bottle that is full, or that had the beer in it, when it's consumed, then it becomes a lethal weapon. I've been doing this for six months and I'll tell you, I've never seen such a mess as we have in the state of Texas as far as the alcohol abuse issue exists. They are catastrophic, they are serious. I go down the street asking kids if they drink and they are very open and honest. "Yeah, we drink." Wimberley, for example, has a severe alcohol problem amongst the kids that go to the WISD.

The one thing that shocks me most of all is we have one of the largest universities in the state of Texas – I don't know if the University of Texas is the largest university in the state – but of the 80 thousand kids, and also include Southwest Texas State, you've got 30 thousand more students, maybe, and if you take the statistics the state of Texas has sent me that says that 40 percent of those children – just because they are 21 or older, they are still children until they graduate or till they are gone from home – but when you have 40 percent of those kids "bingeing," drinking, and 700 thousand of the children of the state of Texas - this comes from the state of Texas - drinking and driving on Texas roads and "bingeing," and killing and injuring, you've got a problem. I don't know who is supposed to address that problem, whether it is the governor of the state of Texas, whether it is the TABC, or who.

I didn't become interested in this issue till about six months ago. I just happened to be on the internet and what you pick up, whether it is true or not, I don't know. All I know is when the state of Texas says it's true, I'm going to believe them. We've got to do something about the issue. We've got to take some action; we've got to make some changes. It's about saving our children from alcohol.

I had a son that didn't die from alcohol, but he was a drinker and he was pretty heavy sometimes. For me to see the overall spectrum of what is happening in our state, amongst our children, amongst all that goes on, I can't understand how our churches stand silent. Our

leaders stand silent. I'm not saying that you don't do anything, but I'm saying that as a body as a whole, we are letting this alcohol issue basically take us down the drain.

I would like to know, SOCFA would like to know, Dave Bynum would like to know as a citizen, just as a human being. What's the TABC doing to save our children from alcohol? They are the future of our state. Some of these kids that could be saved might turn out to be the governor of the state of Texas some day, I don't know, but that could happen.

I've got a proposal. I don't know if it's to you all or who it's to, but it's to anyone that's listening. We must put our children first. We must start teaching our children on a daily basis in our Texas school system about the dangers of the consumption of alcohol and drugs in the second grade curriculum, for every child as long as he is going to school, even up to the twelfth grade. Awareness should be our number one priority to save our children from alcohol.

And this is for Governor Perry. Governor Perry, could you think of anything that would be more important, for a child saved today could be the future governor of the state of Texas? We lose 18 hundred people a year in the state of Texas to alcohol, whether it is at night, in the middle of the day, early in the morning, and some of them are your own kin, some your own friends, some your own colleagues that have died maybe at the hands of an intoxicated driver. I have a lot more, but you'll have some of the materials that you can keep.

I had a friend that moved from Oklahoma to Wimberley and I was talking to her about the alcohol issues and she said, "Let me tell you a story." This happened in Oklahoma. This story goes like this. A grandmother, a daughter, an aunt, a niece, a three-year old baby, a young lady 29 years old, expecting her first child got in a van, headed to Tulsa for a shopping spree and they never made it. Do you know why? They were killed by an intoxicated, drunken driver. All died, except the mother who was expecting the baby at nine months, lost the baby and she was left a paraplegic all because of the consumption of alcohol. Now if this entity is not responsible for the mess we are in and for the problems, heartaches we have and for all that is taking place, then who is? Maybe you could tell me. I would like to know. When our children are being turned over to the wolves, as you might say, the alcohol industry. The alcohol industry dominates the state of Texas; it dominates the United States and we are letting alcohol completely destroy us.

That's all I've got to say. Thank you and God bless you.

MR. STEEN: Thank you, Mr. Bynum. Thank you, sir. We appreciate it.

The commission will now convene in executive session to consult with legal counsel regarding items 9 through 14 of this agenda pursuant to Texas Government Code, Section 551.071; to consult with legal counsel pursuant to Texas Government Code, Section 551.071, regarding *Dickerson v. Bailey* and anticipated and pending legal claims against the commission; and will convene in executive session, also, to discuss the duties of the administrator under the authority of Section 551.074 of the Government Code. The date is August 25, 2003, and the time is 2:20 in the afternoon.

The commission convened in executive session at 2:20 p.m. and reconvened in open session at 3:35 p.m.

MR. STEEN: The commission meeting of August 25, 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 consideration.

Mr. Bright, your thoughts on *Dickerson v. Bailey*.

MR. BRIGHT: They are many and complex, but before we do that, let me remind you, or at least mention to you, that because I was asleep at the switch when you were considering agenda item number seven, before you leave today, let me suggest that you vote on approving the renewal of Mr. Gregorczyk's contract for the Internal Auditing Plan. Essentially, you have voted for our next year's auditing plan, but you've not voted to approve the contract by which he will get paid for doing that. Please do that before you leave.

My thoughts on *Dickerson*. As you know, Mr. Chairman and Members, the decision that is before the state of Texas is whether or not to appeal that case to the U. S. Supreme Court. That appeal is due September 24, 2003. You will meet one time between now and then, but by then it will be too late to make a decision one way or the other, so to the extent that we speak to that issue, now is the time for us to do so. As you also know, I've spent some period of my life considering that. I'm engaged in fairly extensive consultation with the Texas Attorney General's Office. It is my judgment that pursuing this appeal would not be wise, and that is primarily because of this. It is a close case. It is hotly litigated around the country. The legal environment at best is uncertain and balanced against that would be that the pursuit of an appeal would

be a substantial investment of state's resources, both for us and the Texas Attorney General's Office.

If there is, in deed, a legitimate state's rights issue here, as there is, we think currently that that issue may well be vindicated by other states that have this issue in front of them now; other states with more attractive or appealing fact patterns to the cases to present to the Supreme Court. Pursuing an appeal would, at least to some degree, continue that period of uncertainty and ambiguity about our law that we suffer today. Perhaps balanced into that is that the staff has begun and intends to continue some discussions and research with regard as to whether or not we may address the situation created by the imposition created by the *Dickerson* injunction by rulemaking. We have an unknown quantity of alcoholic beverages coming into this state from unknown suppliers to unknown recipients. There may well be something that we can do through the passage of a rule. In the coming weeks we will be talking to our friends in the industry and anybody who will listen to us about what, if anything, we can do about that. While we don't know anything, we have some hopes that we will be able to put some certainty and some regulatory control on this channel of commerce.

In light of that, it's at least my judgment and the judgment in consultation with our trial counsel, that we probably should not pursue this matter. One of the ways to perhaps say this is that even if the Justices of the Supreme Court want a date to the dance, they don't necessarily want that date from us.

MR. SELIGER: If that's the case, if we can get where we want to get in terms of rulemaking and in your determination and the attorney general doesn't feel the most prudent thing to do is to pursue the appeal, I don't think we should go forward, except to energetically go forward to see if there is some way through rulemaking.

MS. MADDEN: I agree.

MR. STEEN: Mr. Marosko, do you have any thoughts on this?

MR. MAROSKO: Obviously, in the beginning we advocated an appeal. However, having had some conversations with Mr. Bright and others, we certainly advocate a rule on the subject and look forward to working very closely with the commission to help them write the best rule that we possibly can. We would be happy with that.

MR. STEEN: Thank you.

MR. SELIGER: That's good. I think that helps a lot.

MS. MADDEN: Thank you.

MR. STEEN: So the thought is we need no formal action today, Mr. Bright, is that correct?

MR. BRIGHT: I think you do not.

MR. STEEN: Are we going back to the auditor issue now?

MR. BRIGHT: Back to agenda item number seven.

MS. MADDEN: Okay, I move that we extend the contract for internal auditing services between the commission and the firm of Jansen and Gregorczyk for a period of one year, beginning September 1, 2003, and ending August 31, 2004, to be performed under the terms and conditions of our current contract with Jansen and Gregorczyk.

MR. SELIGER: Second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Motion carries.
What else do we have?

MR. SELIGER: I move to adjourn.

MS. MADDEN: Second.

MR. STEEN: The meeting is adjourned. Thank you.

The meeting adjourned at 3:44 p.m.