



COMMISSION MEETING MINUTES

August 29, 2006

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Tuesday, August 29, 2006, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING: John T. Steen, Jr., Chairman

COMMISSIONERS

PRESENT: Gail Madden
Jose Cuevas, Jr.

STAFF PRESENT:

Alan Steen, Administrator

Carolyn Beck, Public Information Officer, Executive
Steve Carlson, Manager, Compliance

Debbie Dixon, Director of Education and Prevention

Loretta Doty, Director of Human Resources

Gary Henderson, Enterprise Operations Team
Leader, Information Resources

Dan Hoover, Compliance Supervisor, San
Antonio/Region 5

Linda Jackson, Administrative Assistant, Executive

Richard Jauregui, Captain, San Antonio/Region 5

Renee Johnston, Executive Assistant, Executive

Dexter Jones, Coordinator, Marketing Practices,
Executive

Jo Ann Joseph, Assistant Director of Licensing

Charlie Kerr, Director of Business Services

Joel Moreno, Deputy Assistant Chief, Enforcement

Julie Ross, Accounts Examiner, Licensing

James "Sam" Smelser, Chief of Enforcement
Jay Webster, Plans/Programs, Information
Resources

GUESTS PRESENT: Anne Davison, RFD & Associates, Inc.
Alan Gray, Licensed Beverage Distributors, Inc.
Fred Marosko, Texas Package Stores Association
Jack Martin, Attorney at Law
Ken Martin, Sunset Advisory Commission
Chris Matthews, RFD & Associates, Inc.
Mignon McGarry, Republic Beverage
Karen Reagan, Vice President, Texas Retailers
Association
Robert Sparks, Executive Director, Licensed
Beverage Distributors, Inc.
Steve Sparks, RFD & Associates, Inc.
Tom Spilman, Vice President, Wholesale Beer
Distributors of Texas
Don Walden, Attorney, TWGGA
Randy Yarbrough, Wholesale Beer Distributors of
Texas

CALL TO ORDER

Chairman John Steen called the meeting of the Texas Alcoholic Beverage Commission (TABC) to order at 1:32 p.m.

APPROVAL OF COMMISSION MEETING MINUTES OF JULY 31, 2006

Chairman Steen called for a motion to approve the Commission meeting minutes of July 31, 2006. Commissioner Cuevas so moved. Commissioner Madden seconded. The motion carried.

ADMINISTRATOR'S REPORT

Chairman Steen called upon Administrator Alan Steen to provide the Administrator's Report. He reported the following:

- Public Inquiry System. The Public Inquiry System is now "live." Sherry Cook, the new Director of Information Resources, was unable to be in

attendance at the meeting; however, Jay Webster would be providing the demonstration of the system later in the meeting.

- SECC Award. The State Employee Charitable Campaign (SECC) awarded TABC the 2005 Rising Star Award for having the most improved campaign. Since 2002, TABC staff have raised their campaign contributions by 3,800%. Debbie Dixon, Director of the Education and Prevention Division, and her staff are heading up the agency's 2006 campaign, which begins in September.
- Safety Award. TABC received the Bronze Safety Award by the State Office of Risk Management (SORM). This award recognizes the agency's decreased injury frequency rate. TABC has received other safety awards in past years from SORM.
- Legislative Meetings. TABC's Legislative Appropriations Request (LAR) hearing with the Legislative Budget Board and the Governor's Office was held August 18, 2006. Commissioner Cuevas participated in the hearing along with staff. Administrator Steen stated that he felt the hearing went well, and good feedback was received. TABC's LAR hearing with the Senate Finance Committee is scheduled for October 2nd. He stated he would be in communication with the Commissioners about the October 2nd hearing. Commissioner Madden asked if all of the Commissioners would be attending; Administrator Steen replied that all of them could attend if they wished. Commissioner Madden asked about posting requirements in order that all three Commissioners could attend; Administrator Steen explained that TABC would not need to post as the Senate Finance Committee would post the hearing. **He stated that he would get with the Commissioners in September on the details.** Administrator Steen also reported that TABC staff provided a brief presentation at the Licensing and Administrative Procedures (LAP) Committee meeting on August 23rd regarding the interim charge on underage drinking laws.
- Other Meetings/Conferences. Administrator Steen met with Compliance Division staff in the San Antonio region. Also, TABC's Summer Conference was held in Austin, with over 100 employees attending all or part of the conference. Staff received training in various areas of policy, management, and team building, as well as received updates on action plans and TABC's LAR. A law enforcement appreciation meeting/dinner was held in Brownwood to honor Colonel Tommy Davis, the head of the Texas Department of Public Safety.

DISCUSSION AND POSSIBLE VOTE ON METHOD OF SECURING INTERNAL AUDIT SERVICES FOR FY 2007

Chairman Steen called upon Charlie Kerr, Director of Business Services. Mr. Kerr explained that TABC's contract with the internal auditor expired this month, and it was time to proceed with the procurement of TABC's internal audit function. He discussed possible variations of the bidding process for the Commissioners' consideration, such as staff soliciting companies that provide internal audit services and then selecting the most qualified bidders for the Commissioners to interview. Mr. Kerr noted that there are 23 state agencies that contract their internal audit services.

Commissioner Cuevas asked Mr. Kerr how many proposals he thought TABC might receive. Mr. Kerr estimated that TABC could receive at least ten proposals. Mr. Kerr confirmed for Commissioner Cuevas that under this proposal, staff would write the criteria for the requested proposal and would evaluate the proposals received based on the companies' qualifications, experience, and reputation. Then, the Commissioners could interview the companies, if they so desired.

Chairman Steen stated he was pleased with the work being done by Russell Gregorczyk and asked if TABC was required to go through the bidding process. Mr. Kerr stated that he was attempting to get a legal opinion on the matter because of ambiguity in the law; however, he believed that TABC could re-negotiate with Russell Gregorczyk or the agency could utilize the competitive bidding process, in which Mr. Gregorczyk could be one of the chosen to be interviewed. In response to Chairman Steen's questions, Mr. Kerr explained that Mr. Gregorczyk still had ongoing audits that would be completed within the next two weeks. The annual report that Mr. Gregorczyk prepares could be contracted separately if not completed within the next two weeks.

Commissioner Cuevas asked at what point was it determined or recommended that the agency needed to seek a new internal auditor. Administrator Steen explained that six years ago, the agency awarded a one-year contract with five renewal options. Each was renewed and is now expired, and the usual course of business would be to undergo a new bidding process. He referred to what Mr. Kerr had discussed earlier about the ambiguity in the law, and because TABC had utilized the bidding process six years ago, it was recommended that the Commission bid out the contract as was done six years ago, along with the renewal options. He added that Mr. Gregorczyk could apply as he had done six years ago. Commissioner Cuevas stated he was in favor of this

recommendation. He stated that he had no doubt that Mr. Gregorczyk would rise to the top, and he acknowledged that the agency could benefit from having “fresh eyes.”

Chairman Steen stated he felt Mr. Gregorczyk was doing a good job and his fees were reasonable. Referring to the ambiguity in the law, Chairman Steen discussed the difficulty placed on the Commissioners because staff could not tell them what they were able to do with regard to the procurement. Administrator Steen clarified that staff were requesting direction from the Commissioners—either to study the matter further to determine whether Mr. Gregorczyk’s services could be continued or to proceed with the bidding process so that other auditors could be considered.

Assistant General Counsel Joan Bates stated her belief that the agency had the option of re-procuring the internal auditor through a professional services consulting contract under the Professional Services chapter, rather than what had originally been done through an open bidding process. Ms. Bates also clarified the ambiguity Mr. Kerr was referring to. Mr. Kerr asked the State Auditor’s Office whether procuring an internal auditor would need to be under the State Auditor’s auditing contract requirements. The State Auditor’s Office stated that TABC could handle the procurement in either manner.

Commissioner Madden reminded the group that the reason for going through the bidding process six years ago was that the Commission had decided to no longer maintain an in-house internal auditor and instead, utilize a contracted internal auditor. Therefore, Mr. Gregorczyk’s firm, being chosen, had already undergone the competitive process. Chairman Steen noted that there would be some lost time if the agency chose to bid out. Mr. Kerr stated that if the Commission wished to sign on again with Mr. Gregorczyk, then it could be made effective September 1. Chairman Steen added that there would be no “learning curve” should Mr. Gregorczyk continue with the agency.

Commissioner Cuevas expressed support for the bidding process. He stated that Mr. Gregorczyk is very professional and would probably rise to a top ranking in the bidding process anyway, but Commissioner Cuevas felt it would be important to the agency to utilize a competitive bidding process. Chairman Steen did not support the bidding process, stating that being a professional services contract, the agency would not be looking for the lowest bidder. He expressed his opinion that Mr. Gregorczyk has done an outstanding job for the agency.

Mr. Kerr suggested that if the Commissioners were worried about the time factor, then a one-year contract could be put into effect with Mr. Gregorczyk, and the Commissioners could revisit the issue next year as to whether to renew or to re-bid.

Commissioner Madden moved that the Commission renew Mr. Gregorczyk's contract for a year. Commissioner Cuevas seconded. The motion passed. [Note: following the Region 5 Update, this motion was restated for clarification purposes.]

FISCAL STEWARDSHIP REPORT: THIRD QUARTER KEY PERFORMANCE MEASURES REPORT

Chairman Steen called upon Administrator Steen to provide the fiscal stewardship report on third quarter key performance measures.

Administrator Steen stated that the third quarter key performance measures report had to be postponed from the previous Commission meeting, and he would be reporting on behalf of Sam Smelser, Amy Harrison, and Buck Fuller. The third quarter covers the months of March, April, and May. Administrator Steen presented the key performance measures report for the Enforcement, Licensing, and Compliance Divisions (Attachment 1).

At Chairman Steen's request, Administrator Steen and Jay Webster provided a brief update on the Versa LicenseEase Project. There are five to ten issues pending that are part of normal business. Surety bonds is still an issue that is being worked on. Administrator Steen stated that the project is 99.2% operational.

Administrator Steen stated he was pleased with Sherry Cook, the new Information Resources Division Director, and that he would be introducing her to the Commissioners at the September meeting.

Commissioner Cuevas congratulated staff, stating that he received an email from Graham Central Station representatives expressing their appreciation for the professionalism shown to them by agency staff. **He asked Administrator Steen to share this "pat on the back" with staff.**

PUBLIC INQUIRY SYSTEM

Jay Webster provided a live demonstration of the new Public Inquiry System, which is accessible from TABC's public website. The system enables users to make inquiries and run reports regarding TABC-issued licenses and permits by three methods:

- 1) Users can verify the status of and locate additional information on licenses/permits or check the status of a pending license/permit. Users can look up a specific license/permit number or enter a trade name, street number, or street name, in addition to the city, county, or zip code and verify the status of a pending, active, or inactive license/permit.
- 2) Users can create a roster or list of licenses or permits based on four pieces of information:
 - Location
 - Type of license/permit
 - Status of license/permit
 - Original issue date
- 3) Users can find retailers on the agency's credit law delinquent list, which identifies retailers who have not made timely payments to wholesalers. Credit law information is updated hourly. License status and pending original application information is updated on a daily basis.

Mr. Webster introduced representatives from RFD & Associates, Inc., who were instrumental in the development of the system: Steve Sparks, Chris Matthews, and Anne Davison. The Commissioners commended TABC and RFD & Associates staff for their efforts on the system.

REGION 5 UPDATE

Chairman Steen called upon Richard Jauregui, Region 5 Captain, and Dan Hoover, Region 5 Compliance Supervisor. Captain Jauregui and Mr. Hoover provided the Region 5 update (Attachment 2). Following the presentation, the Commissioners expressed appreciation for the hard work done by Region 5 staff.

Before continuing on, Chairman Steen stated he received a note from Assistant General Counsel Joan Bates. He called upon Ms. Bates, who explained that the earlier motion made by Commissioner Madden concerning

procuring internal audit services may need clarification. Commissioner Madden restated her motion to ensure clarity:

Commissioner Madden moved that the agency procure the internal auditing services of Russell Gregorczyk, under the Professional and Consulting Services Procurement provisions of Chapter 2254 of the Government Code, for a period of one year. Commissioner Cuevas seconded the motion. The motion passed.

PUBLIC COMMENT

As no one registered or expressed a desire to provide public comment, Chairman Steen then began the announcement for the executive session.

EXECUTIVE SESSION

Chairman Steen announced that the regular open session of the Texas Alcoholic Beverage Commission would be recessed, the time being 2:49 p.m. on August 29, 2006, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §§551.071 and 551.074.

Chairman Steen announced that the Texas Alcoholic Beverage Commission had concluded its executive session and was in open session, the date being August 29, 2006, and the time, 3:25 p.m. No final action, decision, or vote was made in the executive session.

NEXT MEETING

Chairman Steen announced that the next meeting of the Commission is scheduled for Tuesday, September 26, 2006.

ADJOURNMENT

Chairman Steen called for a motion to adjourn. Commissioner Cuevas so moved, and Commissioner Madden seconded. The motion carried, and Chairman Steen announced that the meeting was adjourned.