



COMMISSION MEETING MINUTES
September 26, 2005

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, September 26, 2005, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING: John T. Steen, Jr., Chairman

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

STAFF PRESENT: Alan Steen, Administrator

Lou Bright, General Counsel, Executive
Debbie Dixon, Seller Training, Compliance
Loretta Doty, Director, Human Resources
Del Drake, Captain, Office of Professional
Responsibility, Executive
Jeannene Fox, Assistant Administrator,
Executive
Buck Fuller, Director, Compliance
David Garza, Director, Homeland Security,
Executive
Jo Ann Joseph, Assistant Director, Licensing
Gary Henderson, Enterprise Operations Team
Leader, Information Resources
Linda Jackson, Administrative Assistant,
Executive

Renee Johnston, Executive Assistant, Executive
Dexter Jones, Coordinator, Marketing Practices,
Executive

Charlie Kerr, Director of Business Services

Garry Sitz, Director, Information Resources

James "Sam" Smelser, Chief of Enforcement

GUESTS PRESENT: Dewey Brackin, Attorney, Gardere Wynne Sewell
Doug DuBois, Jr., Director of Membership and
Education, Texas Petroleum Marketers and
Convenience Store Association
Karen Latta, Analyst, Sunset Advisory
Commission
Michael Mims, Director-Licensing, H-E-B
Dustin O'Quinn, Sunset Advisory Commission
Robert Sparks, Executive Director, Licensed
Beverage Distributors, Inc.
Randy Yarbrough, Wholesale Beer Distributors of
Texas

CALL TO ORDER

Chairman John T. Steen, Jr., called the meeting of the Texas Alcoholic Beverage Commission (TABC) to order.

APPROVAL OF COMMISSION MEETING MINUTES OF AUGUST 22, 2005

Chairman Steen called for a motion to approve the TABC Commission meeting minutes of August 22, 2005. **Commissioner Madden so moved, and Commissioner Cuevas seconded. The motion carried.**

ADMINISTRATOR'S REPORT

Chairman Steen called upon Administrator Alan Steen to provide the Administrator's Report.

Hurricane Relief Assistance

Administrator Steen stated that since the last Commission meeting, much of the agency's activities have revolved around the two hurricanes. With regard to Hurricane Rita, 20 agents were deployed to Orange and Hardin Counties to assist with public order. These staff came from across the state and worked 12- to 14-hour shifts; 20 other agents will relieve them next week. He stated that TABC would continue to provide assistance in those areas until the Governor or Lieutenant Governor's offices direct the agency to do otherwise. With regard to Hurricane Katrina, 36 agents were deployed for eight days to the George Brown Convention Center. They assisted the Houston Police Department, providing security and public order as well as assisting evacuees. Staff worked 24 hours a day, with two separate shifts. TABC is requesting cost reimbursement from FEMA, as the agency had done previously during the space shuttle disaster in North Texas. Approximately \$149,000 is being requested to cover salaries, overtime, mileage, gas, meals, and hotel rooms.

Commissioner Madden commended agency staff for providing hurricane relief assistance, while at the same time the agency is undergoing multiple major activities such as reorganization, hiring staff, and technology transformation. She stated that what staff have been doing is phenomenal, and she wanted to give an extra "pat on the back" to the enforcement officers who provided assistance. **The Commissioners requested that these staff be identified and provided special recognition. Administrator Steen stated that staff who provided hurricane relief assistance would be identified and that he would provide the Commissioners with a recommended means of recognition for those staff.**

Administrator Steen discussed other ways the agency has been assisting those affected by the hurricane. The agency has worked with various groups to temporarily relax some agency regulations, such as:

- Allowing ships from New Orleans with shipments of distilled spirits and wine to enter into the Houston port for temporary storage;
- Allowing cruise lines from New Orleans temporary permits so that they could operate in Texas waters;
- Allowing wholesalers to provide trucks and equipment to the Astrodome;
- Allowing salespeople from other states to work in the Dallas and Houston markets using only their local state or home state identification through December 31, 2005; and
- Allowing distributors and manufacturers to pass out promotional clothing items to hurricane victims.

Administrator Steen also discussed the incentive program for seller training schools, by waiving the trainee's \$2 certificate fee for seller training schools donating free classes to certify evacuees. This will make it easier for the evacuees to obtain jobs in Texas businesses that require such certification. TABC has also relaxed restrictions on classroom sizes, allowing classes of more than 50, so that more people can be trained enabling them to get to work quickly.

Administrator Steen stated that the agency has authorized at least one employee to go on unpaid leave status to assist Hurricane Katrina victims. He stated he was proud to report how well the agency responded to public safety needs.

Hiring Update

Administrator Steen reported that almost 90 positions have been filled. The agency has hired 23 out of 27 compliance auditor positions. These staff have already undergone two weeks of training. Sixty-one of 64 agent positions have been accepted. The three that are remaining are undergoing background checks. He stated that 52 agents are TCLEOSE certified, and nine are non-TCLEOSE certified. The agents begin with the agency on October 3rd to receive academy training at Sam Houston State University in Huntsville. TABC has contracted with the university to provide housing and training of the agents. Administrator Steen recognized Loretta Doty, Director of Human Resources, and her staff, commending them for the tremendous job they've done with the agency's hiring. Administrator Steen also announced that Rickie Cruz has been promoted to Captain of Region 3, and Judith Kennison has been promoted from Attorney to Senior Prosecuting Attorney.

2005 Summer Conference

The 2005 Summer Conference was held August 29-31 in Austin, with a large part of the conference focused on training staff on newly passed legislation affecting the alcoholic beverage industry. Industry members were invited to hear how the agency interpreted those new laws and how the agency planned to operationalize them. Forty-two industry members attended and provided positive feedback on the meeting. They requested that the agency continue having similar type meetings with the industry. Administrator Steen stated that the meeting was part of the agency's continued efforts for open communication and consistency.

State Employee Charitable Campaign

Administrator Steen reported that the State Employee Charitable Campaign (SECC) has begun. Gloria Villasenor is the agency's SECC liaison. Just during the agency's central Texas area campaign kick-off, \$4,339 had been raised, which is twice what was raised last year. The agency's goal is to raise \$9,000 by the end of the campaign, which ends the last day of October. Employees have a large number of charities to select from and can opt to provide a one-time donation or to utilize monthly payroll deductions. Administrator Steen stated he was pleased to report this, acknowledging that in the midst of strong needs in Texas and the country, TABC employees continue to "rise to the occasion" when it comes to those in need.

Administrator Steen concluded his report. Chairman Steen asked him by what authority did the agency receive approval to relax some of its rules and regulations. Administrator Steen responded that the Governor sent out a proclamation asking agencies to relax rules and regulations where possible in order to assist hurricane victims. Chairman Steen stated that he thought that rules and regulations came under the purview of the Commission and asked General Counsel Lou Bright what his thoughts were on the matter. General Counsel Bright stated that it is within the Commission's authority to make those kinds of reasonable judgments. He noted that the Governor requested state agencies to do as much of that as could possibly be done, and he assured the Commissioners that none of the decisions threatened public welfare and none of them relaxed the agency's overall monitoring of the alcoholic beverage industry.

Chairman Steen requested a list be prepared to show what rules and regulations were relaxed. Commissioner Madden noted that a very detailed list was provided in the information sent to the Commissioners on September 19th. Chairman Steen asked if the information was a complete list of the agency's actions; Administrator Steen confirmed that it was. Commissioner Madden stated she was pleased that the agency had the flexibility to relax the rules and regulations, in response to the Governor's request for agencies to do whatever they could. She was glad the agency had the opportunity to be "good neighbors" to other states.

**APPROVAL TO RENEW CONTRACT OPTION FOR FY 2006 FOR
INTERNAL AUDIT SERVICES PERFORMED BY JANSEN AND
GREGORCZYK, CPAS**

Chairman Steen called upon Assistant Administrator Jeannene Fox. Ms. Fox explained that in December of 2000, TABC executed a contract with Jansen and Gregorczyk CPA firm to provide internal audit services for nine months through August 2001 along with five one-year renewal extensions. Ms. Fox stated that Commissioner approval was being sought for the last of the five renewal extensions.

Commissioner Madden moved to approve the renewal of the internal audit contract option for FY 2006. Commissioner Cuevas seconded the motion. In response to Chairman Steen's question concerning cost, Ms. Fox explained that the contract had the same terms and conditions as the previous years. In response to Commissioner Cuevas' question about a bid process, Ms. Foxed replied that the agency would need to go through a contract bidding process next year. Being no further discussion, **Chairman Steen called for a vote. The motion carried.**

APPROVAL OF INTERNAL AUDIT PLAN FOR FY 2006

Chairman Steen called upon Russell Gregorczyk to discuss the TABC Internal Audit Plan for FY 2006.

Mr. Gregorczyk expressed appreciation to the Commissioners for giving him the opportunity to work with TABC for another year. Mr. Gregorczyk reviewed the internal audit plan for FY 2006 (Attachment 1), recommending that the following topics be audited in FY 2006:

- Enforcement Division – Homeland Security
- Agency-wide Contract Management System
- Human Resources System and Controls
- Licensing Division

He added that if sufficient audit hours were available after completion of these four audits, an audit of the Legal Services Division would be performed. Commissioner Cuevas asked how many hours he would perform on the audits; Mr. Gregorczyk stated it would be about 540 hours.

Chairman Steen commended Mr. Gregorczyk for the outstanding work he has done for TABC. Chairman Steen noted that he had asked Mr. Gregorczyk a question some weeks ago related to approval of travel expenses. Chairman Steen asked if he could talk about this with Mr. Gregorczyk in Executive Session, if this was allowable, or following the Executive Session. Mr. Gregorczyk agreed to stay.

Commissioner Madden moved that the Commission approve the internal audit plan for FY 2006. Commissioner Cuevas seconded the motion. The motion carried.

FOLLOW-UP REPORT ON STATUS OF IMPLEMENTING FY 2004 INTERNAL AUDIT RECOMMENDATIONS

Mr. Gregorczyk briefly discussed the purpose of the status report, which is to indicate the status of implementation of recommendations made in the internal audits performed during FY 2004. In FY 2004, three audits were performed: Training and Staff Development, General Services Section, and Enforcement Division HQ Operations. Mr. Gregorczyk reviewed the status report with the Commissioners (Attachment 2) and stated that overall, TABC has done a very good job of implementing the recommendations made. Chairman Steen asked Mr. Gregorczyk if he was concerned about any of the recommendations that were not implemented. He responded that he was not concerned and that this was reviewed in the Audit Committee earlier that day and discussed in detail that those items not yet implemented dealt with the timing issue of the new system. He stated that he was satisfied that staff did a good job.

FY 2005 ACTION PLAN GOAL UPDATE

Chairman Steen called upon Chief of Enforcement Sam Smelser and Compliance Division Director Buck Fuller, to provide the FY 2005 action plan goal update. Mr. Smelser presented the action plan goals for FY 2005 for the Enforcement Division, and Mr. Fuller presented the quarterly performance and action plan results for FY 2005 for the Compliance Division (Attachment 3). Following Mr. Fuller's presentation, Ms. Fox noted that the numbers for Compliance were impacted because the goals were set over a year ago

before it was known that licensing functions would be shifted to Compliance, which has taken staff away from field work for two weeks while they were in training.

APPROVAL OF 2006 COMMISSION MEETING DATES

The Commissioners discussed the proposed meeting dates for 2006. Chairman Steen asked Renee Johnston, Executive Assistant, to explain what was proposed. Ms. Johnston stated that all of the dates except for the last proposed date were the 4th Monday of the month, as is the usual custom. Because the fourth Monday of November and December were around or on holidays, staff recommended combining the November and December meetings into one meeting, perhaps December 4 or December 11. Chairman Steen stated that because of the oversight responsibilities of the Commissioners, he felt it was important that they meet on a monthly basis. It was recommended that a November date be added. Commissioner Madden asked that staff be sensitive to the Christmas holidays, requesting that the December date be set a week following the holidays if possible. **Chairman Steen asked that this topic be placed on the November agenda and that staff recommend dates for November and December of 2006.**

PUBLIC COMMENT

Chairman Steen asked if anyone wished to provide public comment. As there were none, Chairman Steen 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 2:45 p.m. on September 26, 2005, and an executive session would be held to consult with Legal Counsel regarding pending and anticipated litigation against the agency and to discuss the duties, responsibilities, and evaluation of the Administrator, pursuant to Texas Government Code, §§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 September 26, 2005, and the time, 3:24 p.m. He stated that no final action, decision, or vote was made in the executive session.

RUSSELL GREGORCZYK (CONTINUED)

Chairman Steen asked Mr. Gregorczyk to discuss the issue of approval of travel and other expenses for the Administrator. Mr. Gregorczyk stated that after the Chairman had contacted him to find out what the norm was with other state agencies with regard to approval of travel expenses for the agency head, Mr. Gregorczyk contacted the state agencies that he has provided internal audit services. He found that none have an approval process for the agency head's travel, as it is usually not practical for a board member to approve the travel and not feasible for any staff under the agency head to approve. However, all travel is sent in to the agency's accounting department to ensure that the travel reimbursement voucher meets the State Comptroller's requirements. He mentioned that there was one agency where the chief financial officer made a report of the agency head and board members' travel expenses that was only distributed to them. As for the Commission members, there is not an approval process, but there is the verification that the travel reimbursement meets the State Comptroller's requirements. Chairman Steen thanked Mr. Gregorczyk and stated that this may be a subject that could be taken up in a future meeting.

Before adjourning, Chairman Steen requested Administrator Steen to look into the Texas Parks and Wildlife Foundation to see if TABC could also have a foundation to partner with so that the foundation could solicit contributions to fund TABC education programs. **Chairman Steen asked the Administrator to provide a report on the foundation and to report on what other state agencies may have foundations. Administrator Steen stated that he would provide a report to the Commissioners.**

ADJOURNMENT

Being no further business, **Chairman Steen** called for a motion to adjourn. **Commissioner Madden** moved that the **Texas Alcoholic Beverage Commission** meeting be adjourned. **Commissioner Cuevas** seconded. The motion carried, and **Chairman Steen** announced that the meeting was adjourned.