

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
MONDAY, OCTOBER 22, 2001

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: Allan Shivers, Jr., Chairman; John T. Steen, Jr., Member and Gail Madden, Member. Staff present: Rolando Garza, Administrator; Randy Yarbrough, Assistant Administrator; Jeannene Fox, Director of License & Compliance; Greg Hamilton, Chief of Enforcement; Denise Hudson, Director of Resource Management and Eric Pearson, Grants Coordinator. Present to receive certificates of service: Tommy Hall, Kerrville Enforcement; Mike Rogers, Dallas Enforcement; Aida Cantu, McAllen Enforcement; Rosa Duran, El Paso Enforcement; Brian Jacks, Waco Enforcement; Don Likens, Conroe Enforcement; Don Mitchel, Victoria Enforcement; Robert Reyes, Amarillo Enforcement; Tommy Rodgers, Longview Enforcement; Bob Russell, Amarillo Enforcement and Maxine Sklar, Richmond Enforcement. Visitors included: Russell Gregorczyk, Jansen & Gregorczyk; Alan Gray, Licensed Beverage Distributors, Inc.; Robert Sparks, Licensed Beverage Distributors, Inc.; Tom Spilman, Wholesale Beer Distributors of Texas; Fred Marosko, Texas Package Stores Association; Jack Martin, TABLS; Jay Howard; DISCUS, Inc.; Dominic Giarratani, Legislative Budget Board; Glen Garey, Texas Restaurant Association; Mike McElhaney, Governor's Office and Chrystal Fox, ACC.

The agenda follows:

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

1. Consider resolution in memory of Agent Frank Pearson; discussion, comment, possible vote.
2. Recognition of agency employees with 20 or more years of service.
3. Approval of minutes of September 24, 2001 meeting; discussion, comment, possible vote.
4. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement;
 - c. discussion of management controls;
 - d. promotional policy;
 - e. ethics policy; and
 - f. statistics on highway fatalities.
5. Fiscal stewardship of agency; discussion, comment, possible vote.
6. Presentation of internal auditor's report on Internal Audit of the Tax Security Processing Section of the Licensing Division; discussion, comment, possible vote.
7. Public comment.
8. Adjourn.

The meeting was called to order at 1:45 p.m. by Chairman Shivers.

MR. SHIVERS: I'm going to call this meeting of the Texas Alcoholic Beverage

Commission to order on October 22, 2001, at one forty-five in the afternoon.

The first item of business is to consider a resolution in memory of Frank Pearson which reads as follows:

“WHEREAS, Frank Pearson, Agent of the Texas Alcoholic Beverage Commission, departed from this life on the 7th day of October 2001; 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, all his endeavors, large and small, reflected a sense of personal honor and integrity which never failed; and

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

“NOW, THEREFORE, BE IT RESOLVED by the Texas Alcoholic Beverage Commission that this salute to the memory of Frank Pearson 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 wife, Sheila, as an expression of our concern and a token of the high regard in which Frank Pearson was held by all in the Commission.”

Do I have a motion to adopt this resolution?

MS. MADDEN: So move.

MR. STEEN: Second.

MR. SHIVERS: All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed? Thank you.

We have, I think, a record number of employees who have been with this agency for 20 years or more.

Charlotte Clary, a sergeant in our Galveston office, joined the TABC on October 1, 1971, as a secretary in our Wichita Falls enforcement office. On December 1, 1980, Ms. Clary was appointed as an agent and transferred to our Baytown outpost. As noted in her previous evaluations, "Sergeant Clary is a dependable and loyal individual who consistently produces high volumes of quality work." We congratulate Sergeant Clary on her 30 years of dedicated service to the TABC and the citizens of Texas. She could not be with us today and her certificate has been forwarded to her.

Tommy Hall joined the TABC on October 1, 1971, and is currently an agent in our Kerrville outpost. During his service with the agency, Agent Hall has also worked in Del Rio and San Antonio. A native of Kerrville, Agent Hall holds a Bachelor's of Science Degree in Agricultural Economics from Texas Tech University. We congratulate Agent Hall on his 30 years of dedicated service to the TABC and the citizens of Texas.

MR. HALL: Thank you.

MR. SHIVERS: Mike Rogers, a captain in our Dallas office, joined the TABC on October 1, 1971. During his career with the agency, Captain Rogers has held positions in Lubbock, Corpus Christi, Kountz and Beaumont. A native of Vernon, Texas, Captain Rogers has long been recognized for his professionalism and dedication to the agency. We congratulate Captain Rogers on his 30 years of dedicated service to the TABC and the citizens of Texas.

MR. ROGERS: Thank you.

MR. SHIVERS: Aida Cantu joined the TABC on October 5, 1981, as an Agent I in our Houston office. Currently an Agent V in our McAllen office, Agent Cantu has successfully handled a broad range of assignments with efficiency and accuracy. Her knowledge, experience and self-motivation make her a true asset to the agency. We congratulate Agent Cantu on her 20 years of dedicated service to the TABC and the citizens of Texas.

MS. CANTU: Thank you.

MR. SHIVERS: Rosa Duran joined the TABC on October 1, 1981, as a tax collector at the El Paso port of entry. In 1988, Ms. Duran was transferred to the El Paso enforcement office as an administrative technician. Ms. Duran is a

knowledgeable, hard-working and dedicated employee who continually provides outstanding service to the agency's customers. We congratulate Ms. Duran on her 20 years of dedicated service to the TABC and the citizens of Texas.

MS. DURAN: Thank you.

MR. SHIVERS: Brian Jacks joined the TABC on October 5, 1981, as an Agent I in our Austin office and is currently stationed in Waco. As noted in his previous evaluations, "Agent Jacks is an experienced, hard-working and trustworthy employee." As a Project SAVE coordinator, Agent Jacks has been extremely effective in his Project SAVE presentations. We congratulate Agent Jacks on his 20 years of dedicated service to the TABC and the citizens of Texas.

MR. JACKS: Thank you.

MR. SHIVERS: Don Likens joined the TABC on October 5, 1981, as an agent in our McAllen office and is currently stationed in Conroe. During his career with the TABC, Agent Likens has continually been recognized as a hard-working individual and is well respected among the law enforcement community. We congratulate Agent Likens on his 20 years of dedicated service to the TABC and the citizens of Texas.

MR. LIKENS: Thank you.

MR. SHIVERS: Don Mitchel joined the TABC on October 5, 1981, as an agent in our Victoria office. Agent Mitchel has worked in a variety of locations, including Galveston, Paris and Abilene. Agent Mitchel is highly admired and respected by his peers and his supervisors. We congratulate Agent Mitchel on his 20 years of dedicated service to the TABC and the citizens of Texas.

MR. MITCHEL: Thank you.

MR. SHIVERS: Robert Reyes, a sergeant in our Amarillo office, joined the TABC on October 5, 1981, as an agent in Lubbock. As noted in previous evaluations, "Sergeant Reyes' initiative in his work inspires his fellow agents to follow suit." We congratulate Sergeant Reyes on his 20 years of dedicated service to the TABC and the citizens of Texas.

MR. REYES: Thank you.

MR. SHIVERS: Tommy Rodgers joined the TABC on October 5, 1981, as an agent in our

Longview office. As noted in his previous evaluations, "Agent Rodgers is a loyal, honest and hard-working employee. He accepts direction and change without hesitation." We congratulate Agent Rodgers on his 20 years of dedicated service to the TABC and the citizens of Texas.

MR. RODGERS: Thank you.

MR. SHIVERS: Bob Russell joined the TABC on October 5, 1981, as an agent in our Amarillo office. Agent Russell is an experienced, hard-working and trustworthy employee. He takes pride in his work and tackles all assignments with the same positive attitude. A true asset to the commission, we congratulate Agent Russell on his 20 years of dedicated service to the TABC and the citizens of Texas.

MR. RUSSELL: Thank you.

MR. SHIVERS: Maxine Sklar, a secretary in our Richmond outpost, joined the TABC on October 1, 1981, as a secretary in the Houston enforcement office. As noted in her previous evaluations, "Maxine consistently produces good quality work. She is exceptionally reliable and can always be depended on to keep things running smoothly." We congratulate Ms. Sklar on her 20 years of dedicated service to the TABC and the citizens of Texas."

MS. SKLAR: Thank you.

MR. SHIVERS: It's a wonderful thing to have so many people who joined the agency in '71 and '81 that are still with us and have put in this many years. I thank all of you for your dedication to this agency and to the state.

The minutes of September 24th have been mailed to the commission. Are there any changes to be made?

MS. MADDEN: No. I move they be approved.

MR. STEEN: Second.

MR. SHIVERS: I have a motion and a second. Any further discussion? All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. Opposed? The minutes are approved.

Administrator's report. Mr. Garza?

MR. GARZA: Mr. Chairman, Commissioner Madden, Commissioner Steen, among your materials you will find a draft of our new ethics policy which General Counsel Bright has put together. We are in the final stages of getting input from the executive team and getting that finalized. We should have a final product sent out to you prior to your next meeting in November.

Likewise, for the policy that we've been talking about for promotional opportunities within our enforcement division, Assistant Chief Smelser and Chief Hamilton have been getting input from across the field, and that will be finalized, I'm told, by your next meeting in November, so you will get that also.

Mr. Chairman, you had asked at the last meeting for some comparative data in terms of DWI fatalities, rural versus urban. The material we've received from DPS will reflect that for the reporting period of 1999 there were about 2,400 fatal DWI accidents on the rural roads here in Texas compared to about 1,400 on the urban roadways.

The last thing I will report this month is, starting Wednesday of this week, we are going to have about 125 individuals from across the state who are coming to take their tests, vying for about eight or nine TABC agent trainee positions. Those tests will be administered over at the J.J. Jake Pickle Balcones Center. It's about a three-hour exam. It will then lead to some of the top candidates coming in for interviews the early part of November, and we hope to have this new class of trainees on board by January the 1st. That's all I have this month.

MR. SHIVERS: Do you know what the J.J. Jake Pickle Balcones Center is affectionately called by the people who work there?

MR. GARZA: No, sir.

MR. SHIVERS: The Pickle Factory.

MR. GARZA: That's where we will be, at the Pickle Factory, come Wednesday. I'll make sure I'll let those 125 people know that, Mr. Shivers.

MR. SHIVERS: Any questions of the administrator?

MS. MADDEN: I think you've answered them all.

MR. SHIVERS: John?

MR. STEEN: No questions.

MR. SHIVERS: On the fatality data you have, do we have that data for other states as well?

MR. GARZA: I'm sure we can get that from DPS, Mr. Shivers.

MR. SHIVERS: It's not a high priority, but I'm rather interested in it. We see these comparisons that Texas has more fatalities due to drunk driving than any other state and that sort of thing. Perhaps a more effective measure would be fatalities per road mile driven.

MS. MADDEN: Good point.

MR. SHIVERS: I think there are statistics that USDOT keeps on the number of road miles driven in the country, and if you have fatalities by road miles driven, I think that perhaps gives you a more...and if you can further break that down by urban and rural, then we might have a better picture to compare the states and see how Texas is really doing.

MR. HAMILTON: I tried to get those numbers from TxDOT, and they haven't returned my phone calls, but I do have contacts at NHTSA where I could get that information.

MR. SHIVERS: It's always a problem we have to work on, but I want to make sure we understand the dimensions of the problem that we're tackling and be able to either understand that we have a lot of work to do or we are actually doing better than others.

Fiscal stewardship of the agency. Denise, I believe that's you.

MS. HUDSON: We've provided some information on the fourth quarter measures this time. Out of the eight key measures, we met four of them. There was one measure that we did not meet; we were slightly below the allowable range, at 90 percent, and that was on the number of inspections made.

Another measure that's related with that, with inspections being down, the average cost was up. So, we were outside the range on that one, also.

The other two measures that we exceeded, one was the number of inspections, analyses and compliance activities. We were ahead in that range. We were above the allowable range.

The other one was the number of alcoholic beverage containers and cigarette packages stamped. We greatly exceeded that one.

If there are any questions, we have Jeannene and Greg that could answer some of those for you.

MR. SHIVERS: I don't know of any reason for me to repeat my previous comment at the last meeting, but some of these measures don't seem to be particularly useful in terms of measuring how we are really doing. The number of cigarette packages we stamp is really not a measure of our effectiveness, but a market activity. Isn't it?

MS. HUDSON: And the traffic coming across.

MR. SHIVERS: It may be useful for the revenue estimators, but it is not a measure of the effectiveness of the agency.

Comments, questions on this?

MS. MADDEN: The grant program, is that...

MS. HUDSON: That was my next comment. We have Eric Pearson here who can give you some more information on the grants. We did very good on the grants this year. We got about 72 percent of the funding spent. Some of the grants will be carrying forward to 2002. The State Energy Conservation Office grant that we received, they will be rolling that forward to 2002, and we will be looking at purchasing some video equipment for televising some of the hearings across the state. Hopefully, that will help us reduce some of our travel costs.

MS. MADDEN: On the Automated Law Enforcement Underage Project (ALEUP), it seems like so much is done when reading this summary. Do you all have 20 hours in your day? How do you do that? How do you tackle the concept of policies and procedures and develop the training curriculum and then educate the retailers and go out and sting them? It seems like it's a lot. Do you bring in more people?

MR. HAMILTON: One of the things that I would like to say is that normally when our people are doing some of the grant stings, the agents will be working an extra four hours overtime. They will put in their regular 40 hours, plus they will work four hours overtime on these different operations that we are doing.

MS. MADDEN: I thought this was an interesting summary of this grant. It looks like we're doing some good work. Are we?

MR. PEARSON: Yes, we are.

MR. MADDEN: It sure looks good on paper.

MR. PEARSON: We have an agent who is assigned up here in headquarters who goes out statewide and gives training for the ALEUP Project. Of course, the chiefs are helping out tremendously on that, so the hours, as far as the stings, are basically done within the districts. The training is done from headquarters.

MS. MADDEN: That's great. Are we at full capacity for our enforcement officers?

MR. HAMILTON: No, we are not. We are down nine. We are in the process of hiring those nine, as we speak.

MS. MADDEN: Okay. After reading all these grants, I got real worried about you all. I thought, "My gosh, they must have 30-hour days. They seem to be doing everything."

MR. HAMILTON: They are doing a lot of work.

MS. MADDEN: Congratulations. Tell those nine to hurry up.

MR. SHIVERS: John, any questions?

MR. STEEN: No.

MR. SHIVERS: Internal auditor's report. Is that Mr. Gregorczyk?

MR. GREGORCZYK Good afternoon. The final audit of the last fiscal year was on the licensing department, specifically, the tax security section. I'll give you a quick overview of our findings, and we had very few recommendations, and I'll be glad to respond to questions.

The purpose of this audit was to look at the adequacy of internal controls and compliance with legal requirements for the way security documents are maintained, conduct surety and tax security documents. We basically developed four audit objectives. We looked at the processing of applications that require a tax security deposit; the maintenance of those tax security documents; the collections against those documents and bond exemptions and bond withdrawals.

In summary, we found that the internal controls in all areas were very good. The section that we were looking at was somewhat short staffed at the time we were looking at them. They had a pretty heavy workload, so

we did make a recommendation that management look at that. Management's response is that when they are fully staffed, they will have another person in there and that certainly will help the situation.

There are some pretty heavy manual edits required on some of those things, but management's aware of that and the automated system is being revised. It's a fairly complex thing to develop the automated edits that are needed but, once that is put into place, it will eliminate a lot of the manual review of those applications each year that must go on right now.

We did make a recommendation, fairly minor, that the safe be locked during the day when the letters of credit are accessed. The habit is to go in in the morning and open it and leave it open all day. We felt like, probably just as an internal control, you should lock that safe throughout the day because it does have bonds and letters of credit within it.

The third and final recommendation has to do with letters of credit, themselves. There is, on rare occasions, according to staff, a situation can arise where a letter of credit will expire before it can be collected upon. We thought, perhaps, that should be looked at from a legislative point of view and see if there is a way to do that, use bonds or some other things.

Very minor recommendations. We felt that the controls are very good in that area. We will be looking at the entire licensing department this year, and will probably begin that audit pretty quickly into this new year. Right now, we are auditing the IRM area but, with respect to tax security processing, we didn't really have a lot of issues or questions. I'll be glad to respond to questions.

MR. SHIVERS: Do you think there's any reason to have a dual lock or two person access requirement on the cabinet where you keep the CD's or letters of credit?

MR. GREGORCZYK: I don't think so. There are only three people that know the combination to the lock. I don't believe we thought that was an issue, really. They've never had a CD misplaced, stolen or otherwise, as far as I know. There's never been a problem with that.

MR. SHIVERS: It's not the usual thing one tries to steal and negotiate because they are specific CD's. They are not blank or street name are they?

MS. FOX: No, sir.

MS. MADDEN: Did this take very much manpower hours to do this audit?

MR. GREGORCZYK: No, it really was not a very in-depth audit. I don't remember the time budget, maybe 100 hours. I'm not really sure. I'll have to go back and look at my records.

MS. MADDEN: I was just curious.

MR. SHIVERS: I would expect Jeannene's department to be pretty tight.

MR. GREGORCZYK: I think the licensing audit will take considerably more hours to audit the whole licensing department. Jeannene thinks I've underestimated the time it will take, but we will see.

MS. FOX: We'll try to lock him up, otherwise.

MR. SHIVERS: Do you have anything, John?

MR. STEEN: No questions.

MR. SHIVERS: Gail?

MS. MADDEN: No.

MR. SHIVERS: Thank you very much.

MR. GREGORCZYK: Thank you.

MR. SHIVERS: Any public comment today? No one is signed up. I guess not. Do I have a motion to adjourn?

MS. MADDEN: So moved.

MR. STEEN: Second.

MR. SHIVERS: All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

MR. SHIVERS: Aye. We are adjourned at two fourteen.