

TEXAS ALCOHOLIC BEVERAGE COMMISSION  
COMMISSION MEETING  
MONDAY, MARCH 24, 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 and Gail Madden, Member. Staff present: Jeannene Fox, Assistant Administrator; Lou Bright, General Counsel; Greg Hamilton, Chief of Enforcement; Denise Hudson, Director of Resource Management; Lieutenant Tina Guerra and Agent Nick Gutierrez, San Antonio; Gayle Gordon, Director of Legal and Amy Harrison, Acting Director of Licensing. Visitors included: Robert Sparks, Licensed Beverage Distributors, Inc.; Mrs. Michele Gutierrez; Penny McLeskey, MGT of America and Fred Marosko, Texas Package Stores Association.

The agenda follows:

10:00 a.m.- Call to order.

1. Approval of minutes of February 10, 2003 and February 24, 2003 meetings; discussion, comment, possible vote.
2. Administrator's report:
  - a. discussion of staff reports;
  - b. recognitions of achievement;
  - c. discussion of management controls;
  - d. racial profiling; and
  - e. EUDL grant awards.
3. Fiscal stewardship of agency; discussion, comment, possible vote.
4. Presentation of internal auditor's report on Internal Audit of Field Office License Processing; discussion, comment, possible vote.
5. Consider proposed amendment to 16 TAC §41.52 as published in 28 TexReg 817 on January 31, 2003; discussion, comment, possible vote. (Private Clubs - In General)
6. Consider award of contract for executive search services; discussion, comment, possible vote.
7. Public comment.

Announcement of executive session.

8. Executive session:
  - a. the commission may go into executive session to consult with legal counsel regarding item number 5 of the agenda pursuant to Texas Government Code, §551.071; and
  - b. the commission will convene in executive session to confer with the general counsel regarding litigation pending against the agency under the authority of Government Code, §551.071; and
  - c. the commission will convene in executive session to discuss the appointment, employment and duties of the administrator pursuant to Texas Government Code, §551.074(a)(1).

Continue open meeting.

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

The meeting was called to order by Chairman Steen at 10:03 a.m.

MR. STEEN: I want to call the meeting of the Texas Alcoholic Beverage Commission to order. There are only two of us here today, as you can see. Commissioner Seliger is dealing with some medical issues with his family and couldn't join us today.

We will begin with the approval of the minutes of the February 10, 2003 and February 24, 2003 meetings.

MS. MADDEN: I so move.

MR. STEEN: Second. All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye. The minutes are approved.

Next on the agenda is the administrator's report. Ms. Fox?

MS. FOX: We have a number of items to update you on. First of all, you will remember last year about this time we were going through our process of determining what our legislative appropriations would be. In that process we had a list of exceptional items. One of the items had to do with three investigators for the licensing department for items that we determined we needed to have additional focus on and do a more thorough review of some types of applications that we receive.

The governor's office became aware of that particular item and had a lot of interest in it and urged us to apply for a grant, to have grant funding so that we could start that process before September, even if we did get money in the appropriations process.

I am very pleased to tell you that we were awarded that grant, and it will begin April 15<sup>th</sup>. We will be hiring four new employees - three new investigators and a support staff for the licensing section, and they will be housed here in headquarters. We did that for a number of reasons, but we have already interviewed the investigators at this point and have our finalists selected, so we are moving ahead on that. We are very pleased to get that support from the governor's office.

Hopefully - keep our fingers crossed - we will be able to get funding for the three investigators through the appropriations process. If not, this grant will be for a 12-month period. There is some opportunity to apply for the grant for another 12 months but, of course, there is no guarantee we will be able to continue this grant. But, at least, for this point in time, we will be starting these four new individuals with grant money for the next 12 months.

MS. MADDEN: That's very good news.

MR. STEEN: The grant comes from where exactly?

MS. FOX: The criminal justice division of the governor's office.

MR. STEEN: In what amount?

MS. FOX: It will be 270,000 dollars each year.

MR. STEEN: We can reapply if we don't get support from the legislature?

MS. FOX: Yes, sir.

MS. MADDEN: But, we are asking for support from the legislature?

MS. FOX: Yes. So far, we do have some support in one of the houses, so I still hold out hope that we will get full funding for those positions.

MR. STEEN: Good.

MS. FOX: The other thing that has taken up a lot of our time or much of our attention in the last couple months is the legislative session. As you all know, we were directed to resubmit an appropriations request 12½ percent less of what we currently have which amounts to about 3.3 million dollars each year of the biennium. Of course, we did that as we were instructed to do.

Both houses have gone through a substantial number of meetings, public and workgroup meetings. The house is through with their markup session. The senate has not done markup yet, so there is still a good month's work on the appropriations process. I am sure that you have read the newspapers to know that they are dealing with the issues of cutting 12½ percent out of the health and human services type agencies, and they are struggling with that because that's cutting deep into a number of programs.

Frankly, we may be doing appropriations all summer which is one thing we've heard or they may be able to get that budget done before the end of the session. We really don't know, and those things do change day-to-day.

MS. MADDEN: So, they may be going into a special session?

MS. FOX: There is talk about that. I'm not telling you that's what's going to happen, but there is various talk, and I think the plans change just because as they go through this process, things get a little harder. But, I would just say, as far as appropriations is concerned, we have some limited success there. I think we will do a little bit better than the 12½ percent, but I really don't want to speculate any further, because I wouldn't want to jinx any progress that we are making.

Along with that, of course, there are a lot of bills that are filed each session. The last day of filing was March the 14<sup>th</sup>. There are 517 bills that we are tracking having to do with a wide variety of topics - human resources, police officers, the Penal Code, general government, gambling, DWI, open records, cigarettes - those are just the general categories - and the TABC.

Out of those 517, there are 80 bills that affect the Alcoholic Beverage Code. Sixty of those bills are filed in the house, and 20 of those have been filed in the senate. Local option is the broadest category, along with licensing. There are 12 local option bills filed in the house and four filed in the senate. There are five bills filed in the house that have to do with minors - something about sale to minors or minor in possession. There are 20 bills in the house that have to do with licensing, the licensing process or additional requirements that would be made of a licensee or a permittee. There are eight bills filed in the senate that have to do with licensing. There is a direct shipment bill in the house and one direct shipment bill in the senate that is filed. We have three bills in the house and one bill in the senate that have to do with reporting or taxing, something along that nature, that would fit in that category. Miscellaneous category, just because they are too broad and varied to be categorized, would be 17 miscellaneous bills in the house and six bills in the senate. We have several bills that were filed that have to do with cigarettes and one bill filed that has to do with the hours of sale of consumption. We have a pretty good variety, though much of the focus, I would say, is on local option and the direct shipment bills. Those are very time-consuming and take up a lot of interest in the industry as well as from our staff, and then the licensing bills. There are always quite a few bills that affect the licensing process which requires lots of work to be done during the summer because you have to redo applications, redo instruction books and

decide how something is going to be handled. We may have to pass rules and things of that nature. We will stay very busy for the rest of the session.

MS. MADDEN: Speaking of licensing, didn't Representative Geren introduce a bill allowing us to do e-commerce? Could you explain that?

MS. FOX: He introduced a bill that would allow us to amend expiration dates. There is a bill, and it may be his - I just don't remember off the top of my head - that talks about Texas OnLine and being able to do things through the internet portal application wise.

MS. MADDEN: I think he's behind that one. I don't know that he officially introduced it, but...

MS. FOX: I know Senator Shapleigh introduced it or filed it in the senate. I just don't remember if that was him in the house. The bill that he filed in the house had to do with a bill that was filed last session that we are very interested in allowing us to try to extend the expiration dates to two years rather than one, because it would impact the workload in licensing. That bill, if it does pass, will require us to pass rules, because we may determine what classes would be required to have a two-year expiration date.

MS. MADDEN: It would expedite the process.

MS. FOX: Certainly.

MS. MADDEN: So, we are for this.

MS. FOX: It would obviously alleviate part of the workload.

MS. MADDEN: Representative Geren is also for letting us go online and helping us with the technology that we are asking for, too. I know we've got a little bit different route with the contingency rider, but I hope we are staying in contact with Representative Geren's office, because I think he could be very helpful to us.

MS. FOX: We are.

MS. MADDEN: Okay.

MR. STEEN: Ms. Fox, who here is tracking the direct shipment bills?

MS. FOX: Lou is basically our lead person on the direct shipment bills, interacting both with Ms. Mowery's office and Senator Madla's office.

MR. STEEN: Mr. Bright, could you report to us today, or would you rather me give you a little warning and you could it at the next meeting?

MR. BRIGHT: Possibly so. The house subcommittee on alcoholic beverages, I think last week, had a hearing on Representative Mowery's bill wherein views were aired. Everybody talked about it pro and con and up and down. From a technical perspective, kind of without expressing an opinion about whether this is a good or bad idea for the State of Texas, it's a bill that works. That is, it's one that we could put into place and we could make it work. What it primarily does is it creates a new permit, and that new permit would be a direct shipper's permit, I think, is what she calls it. People out-of-state who are authorized under the law of their state to sell to consumers could come to us, get a permit and it would authorize them to sell and ship to licensed carriers a certain quantity of wine to individual households. Of course, we would have the ability to collect taxes and do all the things that we do with our licensees and permittees. It's a very controversial bill.

The subcommittee, as I understand the process, has received it. They took no action on it. At some point, and I don't know exactly when it will come up, probably before the Licensing and Administrative Procedures Committee to vote whether it should be referred to the house or not. I don't think there has been any action that I can remember right now on the senate side, but we expect that to happen soon. We've had conversations, of course, with Senator Madla's office and with Representative Mowery herself. Those conversations pretty much boil down to here we are, here's what we think in terms of the technicalities of the bill and please call us if we can help you in any way. There has not been a lot of, at least from our perspective, the kind of struggle, debate, conversation about how should we word this bill here. I think that's primarily because we've gone through that in two prior sessions with Senator Madla's previous attempts to create a direct shipper's permit. So, the language of the bill, the kind of things that we interact with, is in pretty good shape. We will see how it turns out. How it turns out will be a function of kind of the policy debate, I think, between interested people.

MS. MADDEN: You said it is controversial and this is kind of a mean question, because we don't have a crystal ball, but what would be your best guess? Do you think it will pass?

MR. BRIGHT: As to what's going to happen in the political process?

MS. MADDEN: I just had to ask.

MS. FOX: I don't think we have a guess.

MS. MADDEN: So, it's that controversial?

MR. BRIGHT: I think my own amateur guess is that it's anybody's call. As I watched, almost as an outsider there, there are a great number of people or constituencies who are intent that this is a change that's necessary to Texas law. There are a great number of constituencies who are intent that it should not be the law for all kinds of reasons, all kinds of very legitimate reasons. Meanwhile, of course, as you know, the issue sits at the 5<sup>th</sup> Circuit Court of Appeals. It is the question for liquor lawyers all over the country. In typical bureaucratic double-talking fashion, the best I can say about what's going to happen at the 5<sup>th</sup> Circuit is too close to call. The briefs that our solicitor general filed in that case - and I've done some reading of the briefs filed around the country in other cases - the briefs that our solicitor general filed are as good or better than anything I've read at articulating the state's interest in combating this challenge to our right to have the laws in the shape that they are. There is nothing left to be done at the 5<sup>th</sup> Circuit except wait for them to decide. When they decide is up to them.

MR. STEEN: Mr. Bright, what are the major differences between the house bill and the senate bill?

MR. BRIGHT: I don't know that there are major differences. I can't, at this point, replicate the kind of differences, but I believe they are essentially the same bill, and I will certainly sit down in the coming weeks and devote more specific attention to that. I will look at that and communicate to you individually to say here is where they are. My sense is, looking at it from the technical perspective, when we pick up a bill, of course, what we look at is what's going to happen to our administration, how we do our daily work if this bill becomes law. My general memory is that between the two of them, there is nothing there that has caused us to say, "We just won't be able to put in this provision," or "That would cause us another 200,000 dollars a year. We would have to hire 100 people in licensing." There's nothing like that in these bills.

MR. STEEN: I'd like to track it, so maybe at each meeting you can report to us on it.

MR. BRIGHT: I will certainly do so.

MR. STEEN: Good. Thank you.

MS. FOX: That's all I have on the legislative process so far.

MR. STEEN: All right. Any other questions?

MS. MADDEN: No.

MS. FOX: Two years ago, we began our strategic planning process, or a year ago rather, trying to focus on what we would try to look at in the next two to five years, what we've been doing well in the agency, what we could improve upon or any new initiatives that we have. As you will remember, when we adopted the strategic plan, there are nine specific goals or items that we wanted to focus on. Obviously, we want to keep up the work that we've been doing, but there are other areas that we think we need to make some adjustments in. I wanted to be able to report to you actually last month but, since I was delayed getting here, I deferred that until this month. It is a six-month update on what we've been doing on those nine goals - if we want to call them that - during the six-month process. I will tell you, as I go through this, the fact that we had to eliminate seven percent of our budget this year has some impact on some of these goals, and these goals don't necessarily have a measurement tool, except for one of them. It's not to say that we are going to do "x" amount in the next year, but we want to make specific inroads in reaching those goals or setting up the infrastructure to build on that goal at a later time. I don't basically have a lot of numbers that I'm going to be reporting to you, but I just wanted to give you an update on what we are doing and what we are trying to focus on and where we are so that we don't let any of these pass by the way, because it's worse, I think, to set out a goal and then forget about it and ignore it. We just want to make sure that you all realize that we are on track with these and we are still looking at them.

The first one had to do with the education that we provided, not only to the industry but to school-age children or college-age children or to civic groups, but we wanted to insure that we didn't lose focus of what our core mission was, and we limited the amount of time that we would spend in educational efforts to no more than 15 percent. This is one of the ones that I can give you a number on. Currently, we are doing anywhere from 12 to 14 percent of our efforts in enforcement toward education and 10 percent of our efforts in compliance in the field level in education. So, we are staying within that stated goal or stated frame that we wanted to be in...

MR. STEEN: Ms. Fox, excuse me, do we have anything to follow up here?

MS. FOX: No, sir.

MR. STEEN: Okay. You are just reading from notes?

MS. FOX: There is nothing in the book. I am just reporting the information.

MR. STEEN: Okay.

MS. FOX: The second thing was the educational time of the staff. Though it is limited, there are three areas we are going to focus on. One would be at the industry level, at the wholesale and retail levels. We are continuing our wholesale program - I think we showed you sometime last year that Sam Smelser had developed - and we are continuing with that program. Both compliance and enforcement do that program in the field, and we've had a number of those this fall and the first couple of months of this year, so we are still moving on that.

We have a program on the retail level that at this time retailers can come in and ask for any portion of *Project SAVE*, so we are continuing on that. At the same time, we have a pilot project that we developed in San Antonio and Longview to integrate our education with those permittees or licensees that we have found to violate the statute. We use that education arm in the settlement process. Not that this is a specific example but, just in general, if they were going to get a 7-day suspension, maybe they will only get a three day, plus they have to have all their employees come in for specific training, so we are using that educational tool in that way to further education.

We also have ongoing discussions about how we are going to educate the manufacturing level. We know that we haven't done a lot in the past to educate those in the manufacturing level, and sometimes we think that those violations that occur in our marketing practices area occur not out of a desire to violate the statute but just out of ignorance, basically. Because of the seven percent in the legislative session, we are still in the discussion phase on that, so we haven't made a lot of inroads in that area yet. But, again, these are goals to work on for the next two to four years.

The other category we have are school-age children. We wanted to start focusing our effort on those types of programs where we reach the largest number of children, not going into one classroom with 10 kids. Though we may do that if we are requested to. We have had 35 *Shattered Dreams* programs this year that is all the grant funding. We have 500 dollar grant funding that we can award to a high school that wants to do a *Shattered Dreams* to give them a little bit of money to get started on. We have awarded all of that money so far. That doesn't mean there won't be more *Shattered Dreams*. It just means we are out of the money, so we wouldn't

be able to help them in that way. So far, we have participated in 35 or 35 are scheduled.

Last year, we had three power camps scheduled, and we are going to continue with those power camps that we've had in the past.

The other initiative on education that we had had to do with college-age children. We've had two initiatives that we've been working toward that goal. We've had a "think tank" for university officials, separately here, hosted by TABC and another one for the judicial officers. We are hosting on May the 15<sup>th</sup> a collaboration of those two which is aimed at setting out college-based initiatives. We have invited those participants to attend. We have obtained grant funding that will pay for their attendance. In looking at the program, it should be very good and very well attended. Of course, either one of you are invited to attend and we will give you more information as that time approaches. So, we are still looking at those college initiatives. Of course, I am reporting this at a higher level, but the field continues to work with various colleges and universities around the state with any concerns they have with the college police departments or with the university officials on their own so they can develop things that are narrowly focused for whatever their need may be in that locality.

The third goal that we had was to encourage retailers to avail themselves to seller training. One of our reports to the commission of our seller training department, we talked about how we had done an analysis of our retailers and realized that our largest retail market is in Houston and that the smallest number of retailers requiring seller training was in Houston. So, for this particular initiative, we are trying to focus on Houston to increase that percentage of retailers that require seller training. We started this in two different ways. Number one, we are trying to get our seller training pamphlets and information printed in different languages. Houston is unique because it has a large amount of immigrant population. You have a large Vietnamese population. You have Spanish and those from India and other countries of the middle east, so we are finalizing our pamphlets in Vietnamese and Hindi and in Spanish. We currently already have them in English. I think the Spanish one is already finalized. Then, we are working with the beer distributors in Houston to help distribute that information and encourage those retailers to have their employees seller trained if they are not already doing that. We had hoped to kick that part of the initiative off in January but, with various things going on, unfortunately, that has kind of fallen back, and we are going to get back on track on that. Hopefully in the next six months, we will be reporting some good news from that program that we actually had some increases. That's a program that you really do have to wait a couple of years before

you see if you really made any inroads. We wanted not to focus on a whole lot of areas in the state, because Houston is such a large market and is so underutilized in that market. We are not going to look at any other areas until we see if we've made some good inroads with the plans that we have, or maybe we need to adjust those and rethink those in some manner.

MS. MADDEN: How many, approximately, retailers are there in Houston?

MS. FOX: Off the top of my head, I think a good third of the retailers are in the Houston market. We generally say 40,000, so a third of those, probably a little bit more than a third, are in the Houston market. A large amount.

MR. STEEN: Ms. Fox, you are doing these pamphlets in other languages that are directed toward the owners of these establishments?

MS. FOX: Yes, sir.

MR. STEEN: What about the employees that get the training? Is that an issue that they might have trouble with the training in English, and it would be better if we offered it in other languages?

MS. FOX: Our certified programs are done by third party providers so, unfortunately, we can't make someone do a program, but we are searching for grant funding right now to develop a program. Our intent is if we get the grant funding to develop in Vietnamese, then we will give it to those providers so that they can use it to train those people in their native language. We are working on that. There are providers that already provide programs in Spanish. I don't know about Hindi. We don't have the resources in-house to develop the program in Vietnamese, so we are searching. I don't have a recent update on that grant. We have submitted it. I just don't know when a proposal might come out on it that goes toward underage drinking.

The fourth goal we had had to do with the sale of alcoholic beverages to intoxicated persons. We know with the information from the various stats that come out from the national reporting - who reports that Greg?

MR. HAMILTON: The National Highway Traffic Safety.

MS. FOX: That Texas leads the nation in traffic fatalities having to do with alcohol. Last year, we made a concerted decision that we need to start focusing on that because we feel we strongly have a role to play in that. We are not going to be out on the highway, such as DPS, looking for violators when they are in their cars. We want to try to focus on them before they get in their vehicles. We have a couple of programs. Number one, we have told

our supervisors in the field that sale to intoxicated persons is the higher priority than it has been in the past. We have piloted task forces around the state targeting sale to intox. You also know in the appropriations process we asked for 10 additional law enforcement staff so we could focus on that. I will tell you we are not going to get those 10. That was part of this effort, so we are going to have to do it with staff that we do have. That's not to say we won't make some type of impact. So far this year, we've had citations given to 16 intoxicated permittees or their employees that were selling alcoholic beverages. We have cited 75 sale to intoxicated persons. We have 766 public intoxication citations issued, and we visited 427 licensed premises in this particular type of operation. This type of focus takes a lot more time in development of that particular operation. You want to go into that for me, Greg?

MR. HAMILTON: In order for our agents to go in and do a successful program, as far as sale to intox, you just can't walk off into an establishment. Quite often, the agents in the field are known from that particular area. One of the things that we do is we bring in...we either work with another law enforcement agency and allow that individual to work undercover or we will bring in people from other parts of the state where the permittees will not be able to identify our employees that are working in there. When we go in there, it takes time in order for us to do an undercover operation, unlike a minor sting where you can send a minor in and that minor either buys or the sale is refused. Whereas, an agent has to go in and observe the actual bartender or waitress serving the alcoholic beverages to the intoxicated person.

The Penal Code, which I have talked with Representatives Moreno out of Houston, he has introduced a bill trying to erase the "knowingly," because in the Penal Code it says the person who serves the intoxicated person has to "knowingly" serve an intoxicated person. Quite often, it's real hard for us to be able to tie that bartender or the waitress with "knowingly." One of the things that that intoxicated person has to do is be pretty loud, boisterous, falling down and things like that. Quite often, those individuals stay at their bar seat and ask for alcoholic beverages, and they don't show any signs of intoxication. But, over a period of time, if a waitress goes in and serves this guy seven or eight drinks, she should know that this individual is intoxicated. It's real hard and it's not like a sale to minor. You have to sit in there and it's time consuming. Sometimes it takes an hour to an hour and a half for us to do a good operation in order to see if these individuals are complying with the law.

MS. MADDEN: What about the consequence to the guy who is having the eight drinks?

MR. HAMILTON: We will arrest that individual for public intoxication. Oftentimes, when we first started this initiative - I can speak of a certain part of the State of Texas - we partnered with local law enforcement and we went into an establishment and one of the things that we did we made a lot of public intoxication arrests. At that time, I think that if you are going to make those public intoxication arrests, you need to also see that there is a problem with these individuals serving to the folks. That was one of the things. We made all of these public intoxication cases, but we did not get anything as far as sale to an intoxicated person. I think we need to balance those two.

MR. STEEN: Chief, what happened to the program we were doing where one of our agents was going in as an intoxicated person and trying to buy?

MS. FOX: We did that in Dallas on a very limited basis before we started down this road, just to see how often someone would sell to an intoxicated person. That was just very limited in scope. Having our agent intoxicated, we determined, was not the avenue we wanted to go. We wanted to focus on going in as Greg described.

MR. HAMILTON: I can also say that prior to us doing that operation in Dallas, we did a pilot program where we did use our agents but they did not consume alcoholic beverages. We picked four sites. At each site, we did 100 licensed establishments. I think they were all off-premise locations. Our agent poured alcohol on them. They acted intoxicated. They even said, "I've had too much to drink, but I need one more for the road." Out of those 100 places in the four different locations, the individuals sold alcoholic beverages to our pseudo drunk - is what I call them - 97 percent of the time. So, we have a problem. One of the things we are trying to do is find the best way to address that issue. In a few minutes, we will be recognizing a district office who has went above and beyond what we are doing. This is something we are going to move statewide to address the issue, even though it's after the fact, after the individual has become intoxicated as far as this program. We are going to try to be proactive. In some cases, we are going to have to be reactive. I think that whatever we do, we need to be very good at it. I think what this district office and what this agent is doing is something that will be able to assist us in sending a strong message to the people who sell alcoholic beverages that they better be responsible.

MR. STEEN: Chief, on the pilot program, was anything done to the sellers? You said you went to 100 establishments...

MR. HAMILTON: There was nothing we could do because those individuals were not

intoxicated. We did go back and let them know this individual showed all the signs of intoxication. That individual was just acting, and you can't do anything about that, but we did notify them.

MR. STEEN: That's what I was trying to clarify.

MS. FOX: We were trying to assess the severity of the problem at that time. When we do our stings, the noncompliance rate is about 30 percent right now, so we were trying to assess what the sale to intoxicated persons was at that time.

MS. MADDEN: We found out we have a big problem.

MS. FOX: We have a big problem.

Also, in that regard, compliance has developed a manager's program. We haven't implemented it yet, but we are in the final stages of development of it, but the thought is that it's a manager's program that we can put on. It's not a seller training program, and it focuses on obeying the varied statutes that we have - sale to intox, sale to minors and things of that nature - because we've found, and if you read research, you have to get the manager to buy in to these types of things to insure that their staff buys in, that they don't override. You can have a very well meaning and very appropriate seller/server of alcoholic beverages, but if he reaches a point and the manager tells him, "No, go ahead and serve them anyway," that's superceded his good intentions. So, we want to try to focus on managers, but that probably won't come online until the fall. It is almost developed and it's in that stage. I know that Debbie Dixon in seller training has put a lot of work into that particular program.

MR. STEEN: Ms. Fox, before Rolando Garza left, he and I were working on approaching the insurance commissioner about possibly giving an insurance break. Are you aware of that?

MS. FOX: Yes, we did look into that somewhat. I don't have all the details with me right now. I will tell you that there are only one or two companies in the State of Texas that writes that type of insurance and they do currently give a discount if the employees are seller trained. That already is out there. The companies, as I understand it, have the authority to give discounts for various different types of things. There's just not a lot of companies that write that type of insurance. I know there is a bill that's been introduced that does require insurance to be carried, so we might have an opportunity there if that bill passes to work with more insurance companies to encourage that.

MR. STEEN: With everything you are doing, I hesitate to ask you for one more thing, but I am interested in that. I don't want it to be dropped. If someone could give me a report on it.

MS. FOX: Okay. I think now would not be an appropriate time to try to do anything with that. If we can wait until the session is over and look at it during the summer. There is a report written. Steve Carlson looked into that two or three times. He talked to various insurance companies. I'm sure he has a copy. I will get that information to you that's already been done.

MR. STEEN: Thank you.

MS. FOX: The fifth goal we had had to do with strong enforcement efforts. That basically was put in there to make sure we didn't lose sight of what we currently do. Basically, to report on that, I will tell you that we are current on all of our performance measures, both in licensing, compliance and enforcement. By current, I mean we are at the numbers that we ought to be. We are staying on track with doing the other core mission things that we need to do as well as focusing on these particular goals. One thing that we did do in the compliance department is we are increasing the number of audits that we generally require from 100 to 110, I believe it is. So, we've made an increase in that so that we can be out there a little bit more and have a little bit more oversight.

MS. MADDEN: Audits of the establishments?

MS. FOX: There are some retail establishments that we do audits on that have a food and beverage certificate, as well as wholesalers and distributors.

MS. MADDEN: Are these CPA's? When you say, "audit," is it an overall audit?

MS. FOX: An overall audit. We currently have one compliance officer in the field obtaining her CPA certification. We don't have any other CPA's in the field other than that.

MS. MADDEN: Wouldn't it make sense, though, to have CPA's because that's where we could catch, I would think, money laundering, etcetera, etcetera?

MS. FOX: As you well know, we are trying to focus on those types of initiatives, and I certainly agree with you. The money that we are afforded to pay salaries, we probably can't compete with those companies who require CPA certificates for employment.

MS. MADDEN: If we get our technology and we can reduce our numbers in one area,

maybe we can massage it in another area.

MS. FOX:

That is correct. Right now, we require a business degree for compliance officers with a minimum of 12 hours of accounting, so we don't necessarily always require an accounting major in those areas. As we expand and work into other areas that will be very helpful.

The sixth goal is basically for us to stay challenged and continue to seek and look for new ways in exploring the operations of the manufacturing and wholesale level. This is probably one area where we are not as far along as we had hoped to be by this time, but the plan was to appoint a marketing team in each region - at least four regions of the state - with an enforcement employee and a compliance employee to learn more about the operations of that manufacturing and wholesaling level. We originally had wanted to go out and just let them go visit and work with them and learn so they could come back and we could put some training material together for our other field employees. We actually got started in this initiative by investigating a complaint that involved that level. That gave us an opportunity to go ahead and name that team and they could still be learning during their investigation about that wholesale and manufacturing level. That's something that we still need to look into.

One of the things that compliance has done separately on its own is to look into the forwarding center operations, because that is an interaction between your manufacturing and your wholesale level, and it was also with an idea to insure that they are operating as the guidelines we laid out in our rules when we passed the forwarding center certificate. That's something still relatively new to the agency and it still has some questions on how it's operating and questions for the industry that they operate correctly within those guidelines. We still have a lot of road to go in that particular goal.

Our seventh goal had to do with bringing effective and comprehensive training to the staff. We've had several training schools that are pretty large in scope. We held a licensing school that involved all the licensing technicians in the field as well as outpost agents. It's a fairly large comprehensive school. We had our new agents' academy that we just finished, and we've had a number of small training sessions that were focused on our noncommissioned officers that had to do with stress, dealing with difficult people, a writing workshop and things of that nature. Unfortunately, when you talk about having to cut your appropriations or cut your budget, training and travel are those two things that are always at the top of the list so, for the rest of this year, we've had to limit our training extensively, and that was a big portion of the 1.9 million that we

gave back out of this year's appropriation. Of the 12½ percent that we had to readjust, training was another portion, but we are going to continue. We believe training is very important for all of our employees, so we are going to continue to explore ways to use our videoconferencing, our internet streaming, and there are classes that provide online instructions over the internet, so we are going to keep our focus on it. We are just going to try to do it in a different way, so you won't always have in-class training with an instructor, but we are still going to work on it. Basically, for this year, we are pretty limited for any more additional training unless it's online over the computer.

Our eighth goal had to do with our communications, and we broke those into two parts, our external communications and internal. External communications, I think we've made some inroads in that if you look at our web page improvements. We talked about that a couple of months ago. I think Gary came in and had a presentation on our new web page. Our old web page, sometimes it was hard to find information because we were structured to what we internally think of as our structure, and the outside user doesn't understand that seller training is part of compliance, so they wouldn't know how to look it up. We have made a lot of improvements in the web page. We've gotten a lot of rave comments about it. I think the information, though always out there, is much more available and people can actually find it, so I think we are moving along.

The other thing that we do with external communication is our TABC newsletter. In 2002, we had to come up with some savings, as requested by the governor, and in order to do that, we eliminated one of our four issues a year of our newsletter. We also had to continue elimination of that particular edition through 2003. Then, when we had to come up with our seven percent reduction, we had to eliminate the other two remaining editions. It's fairly expensive to send that newsletter out to every retailer, wholesaler and manufacturer and other people who have requested that in the state, so we had to eliminate two of those editions. We are going to have one more, but we are only going to post it on our web page. We will still have the information available out there, because the whole focus of that particular newspaper was to always provide information that was helpful to the industry. Maybe if we have changed rules or something came up or we noticed a certain trend occurring that were violations, we could give them helpful information. Rather than just totally disregarding the last two editions, we will put it on the web page. We put extra effort in trying to keep our pamphlets and other information we distribute outside the agency up-to-date.

MS. MADDEN: Are we distributing, say next year, any newsletters?

MS. FOX: It depends on our appropriation. I think we will have to see how much money we get and sit down and make that decision at that time.

MS. MADDEN: Okay, guys, it's about some of these pictures.

MS. FOX: That's the internal newsletter. It is not distributed except one copy per department.

MS. MADDEN: I'm just ribbing you a little bit. Just kidding.

MS. FOX: Anyway, that's the internal newsletter.

MS. MADDEN: Okay.

MR. STEEN: Ms. Fox, what about the annual report?

MS. FOX: The annual report, as far as I know, went to the printer. Is that correct, Denise?

MS. HUDSON: Yes.

MS. FOX: It is at the printer now.

MR. STEEN: Did you all get a chance to look at it in draft form?

MS. MADDEN: Yes. That was good. It was very helpful.

MR. STEEN: Good. Thank you.

MS. FOX: Internally, besides the usual things that we are doing, we are looking at other avenues available to us through our electronic communication, using bulletin boards, the internal newsletter and other things of that nature. That is something we continually explore and look at. Hopefully, we will get some technology money so there will be some avenues there that we can build upon.

MS. MADDEN: Jeannene, I just want to say that I think our web site is really fabulous. I love to go to it. It's very instructive and informative. It's even entertaining. It's good. You all did good work.

MS. FOX: Gary Henderson, I think, is the main architect in that area. He's done a good job. He has some other staff that assisted him, but I think he's the main one that works on that. That's his primary assignment.

MS. MADDEN: I can see a real difference in the way it was in 2000 and the way it is right now.

MS. FOX: It's much more helpful. Thank you.

The last goal that we have is to try to get the biggest bang for our buck, so to speak, and get as much awareness out as possible in reference to sale to minors or sale to intoxic. We are trying to do that in partnering with different coalitions and different groups. So far, we've been at a pretty fast clip in doing that. We've partnered with various retailers to have pump toppers at the gas stations at the convenience stores. I don't know if you have seen those or not, but we did several various initiatives in the fall. We did public service announcements on the radio with the Cowboy Radio Network in a partnership with the Texas Package Stores Association. There was a "Don't Drink and Drive" campaign with state agencies which were TxDOT, TCADA, DPS, TABC, MADD and Texans Standing Tall. We had various initiatives with beer distributors in the Valley and in Houston. The Houston one is the one that we are still working towards to finalizing. We are out there trying to get public awareness out as much as possible. There is always something ongoing that we are working on. During the session, we did make a decision not to try to get out and do any of those initiatives during the session, because we needed to focus obviously on some of the other issues that were going on.

That pretty much brings you up-to-date where we are on the nine goals. I think we are making good headway on all of them, some more than others. Certainly, our funding will impact what we do. We may need to come back in September and adjust these. I hope we come back and report to you that we have our full funding and we don't need to adjust any and we just keep working on the path that we are on. That's pretty much where we are today.

Our plan originally was to report to you on these nine goals every six months to see where our progress is.

MS. MADDEN: I really appreciate it because it's very informative. Thank you and thank you for all the work you are doing over at the legislature. I know you are over there all the time.

MS. FOX: We are trying to leave no stone unturned.

MR. STEEN: Ms. Fox, what about the fetal alcohol syndrome campaign?

MS. FOX: We will probably have a wind up report about that next month. We sent everything out. Debbie Dixon has been in charge of maintaining that information of how many people have asked for additional information. I look every time I go out to see if I see that, and I am pleased that I see a lot of the stickers up, particularly in convenience stores and grocery stores. I can't say that I've been in a lot of the bars lately to see if they are in there, but at least the convenience stores and grocery stores, I have seen them. The cards that were sent back to us, and I can't tell you all the stats on it right now, most all of them were very positive and indicated they were putting the signs up. We will have a report on that next month.

MR. STEEN: As far as monitoring voluntary compliance, how are we doing that?

MS. FOX: That's the last leg of the initiative that we need to complete in that we were going to identify a time period for our field staff, when they make their regular inspections, to look for those particular signs. Hopefully that will occur in the month of April.

MR. STEEN: Thank you.

MS. FOX: The last thing that I have today, we've talked a little bit about or touched on, a pilot project that was started in Bexar County called the Enhanced Source Investigation Operation. After 18 months, we have determined this has been very effective and very helpful. I've asked Greg to give you a presentation on that today. Nick Gutierrez is our agent in San Antonio who has done this particular project and has been very successful at it. We are going to make him stand there and look nervous, but if you have questions, he is going to have to answer them.

MR. HAMILTON: He also has his wife here, Mrs. Gutierrez, and the lieutenant, Tina Guerra.

We do a lot of things. We do *Cops and Shops*. We do minor stings. We do *Project SAVE*. We do *Shattered Dreams*. One of the other things that we do is investigations. One form of these investigations is a complaint investigation which we call a source investigation, where we go out and try to find - if there is a DWI related crash where there is serious bodily injury or a fatality - we go out and try to find the source of how that individual acquired the alcoholic beverages, whether it was illegal or legal. One of the things that we do as far as the source investigation, we normally have a relationship built with the local law enforcement, where at the end of the week we go up and pick up reports. On all of the alcohol-related fatalities, we would go out and try to backtrack to find out how that minor or how that intoxicated person received the alcoholic beverage, whether it was from a licensed establishment or not.

In the fall of 2000, the Bexar County District Attorney's Office contacted the TABC, the Bexar County Sheriff's Department and also the San Antonio Police Department to sit down and talk about how they could best address the surge in alcohol-related fatalities that were occurring in the San Antonio area. At that particular time, they came up with the idea that we would have a TABC agent that would be on call 24 hours, seven days a week. If there was an accident, that agent would not wait on the report. That agent would go out to the accident scene. We didn't have to look far. Agent Nick Gutierrez was our man. He's been doing this since the fall of 2000, and over the course of his time working there - he's not doing this full time - when I say full time, this is not all that he is doing. He is also going out and doing all the rest of the duties as the other agents, but he's on call all the time. In a matter of fact, just a minute ago, I heard his pager go off two or three times. I don't know if they were calling him to an accident or not, but we are going to hurry up and get him his recognition. One of the things that he does is he goes out there and tries to backtrack these individuals on where they got the alcoholic beverages from, as I said, 24/7.

Over the course, since 2000, they have opened up 67 cases. Out of those 67 cases, they have made 11 criminal cases and seven administrative cases. This program is so successful. As Ms. Fox said, we are going to try to implement this program statewide, and we are going to do it slowly. What fits in San Antonio doesn't necessarily fit all over the state. We are going to look at the high rate of alcohol-related fatalities and, depending on whose figures you look at, it's Cameron County and also up in El Paso are the areas where we are going to focus and try to implement this program. Eventually, we are going to try to do this around the state.

Probably about six months ago, they had a special in San Antonio on this particular project that's going on. We have a video, and I would like to show a clip of what's happening in San Antonio.

At this time a KSAT 12 news clip was viewed by the commission.

MR. HAMILTON: I would also like to say that on October 30, 2002, Agent Nick Gutierrez received an award from the San Antonio Police Department. I think it's called "Service to Law Enforcement Community." He's doing an excellent job, and I am proud today to stand here to tell Nick in person that we appreciate you and this is just a token of our appreciation. We do have a certificate of merit for you.

MR. STEEN: I am going to ask Ms. Madden to read this.

MS. MADDEN: “Certificate of Merit presented to Agent Nicolas Gutierrez

“In the fall of 2000, the Alcoholic Beverage Commission joined in partnership with police and prosecutorial authorities in Bexar County to combat the growing number of traffic fatalities caused by intoxicated drivers in that county. The commission’s commitment to the partnership is to immediately and aggressively investigate and prosecute alcoholic beverage establishments that cause fatalities by over serving customers.

“Since the beginning of the partnership, Agent Nick Gutierrez has been responsible for the difficult and complex task of fulfilling the commission’s commitment. This responsibility has required Agent Gutierrez to begin his investigations at the scene of traffic facilities in any hour of any day and to pursue those investigations to a successful conclusion. Agent Gutierrez has carried out his responsibility with excellence. The quality of Agent Gutierrez’ performance has earned the respect and trust of his colleagues in other governmental organizations, thereby significantly increasing the success of the commission in accomplishing its important public mission.

“Agent Gutierrez’ outstanding commitment, skill and professionalism reflects the highest credit on himself and on the Alcoholic Beverage Commission in recognition of which he is gratefully awarded this Certificate of Merit.”

Thank you for all you do.

MR. GUTIERREZ: Thank you.

MR. STEEN: I want to say something about Mrs. Gutierrez, because I’m sure if he’s on call 24 hours a day that’s impacted your life, too, and we appreciate your help in this.

MS. GUTIERREZ: Thank you. I’m very proud that he does that.

MR. HAMILTON: Do you have any questions for Agent Gutierrez?

MS. GUERRA: Can I say something?

MR. HAMILTON: You sure can.

MS. GUERRA: I just want to say briefly that the district attorney’s chief prosecutor for the DWI unit is so overwhelmed with some of the cases she’s been able to prove that were borderline cases because of the information that Agent

Gutierrez has found, that she meets with me constantly to make sure that we are not going to do away with it. One most recently occurred two weeks ago that she was really concerned with and the defendant received 15 years, I believe. We are very pleased with the enhanced credibility that it's given us, because in the first six months of the program, we did an informal study and 90 percent were coming from bars. Not convenience stores, not residences, but bars, and that's where I felt that if we regulate these establishments, we had to show a commitment. Thank you so much for recognizing him.

MS. MADDEN: You all targeted the source. That was great.

MS. GUERRA: Exactly. We wanted to support why we were doing it.

MR. STEEN: Lieutenant, as important as the work that Agent Gutierrez is doing is the publicity because of the deterrent effect. How did we get that publicity?

MS. GUERRA: This gentleman was wonderful. Burt Lozano with KSAT 12 did a week-long expose about the fatalities, and this was a one-night segment. They had teasers going on for weeks. Any opportunity that we have, we bring it up. We see a constant message, and what has been more visible have been the warrants served on the employees that sold to the drunks that killed someone. I remember the first warrant they served, Agent Gutierrez told me she didn't get it. She couldn't figure out why she was being arrested. She just didn't make the connection. We knew we were lacking in getting that information out so, every opportunity we have, we are going to and just continue to build on it.

MR. STEEN: Thank you.

MS. FOX: One of the reasons that we started this project is because we do...the rest of the offices just don't totally ignore DWI's or fatalities, but they get the information so delayed from the time it happens until it goes through the police department and they file the reports, etcetera, that that delay of time was a real factor in us not being able to track down on all those immediate leads. The fact that Nick is there immediately at the scene, he can gather a lot more helpful information and interview witnesses. That's the main thing that's led to all the various cases that we've made. That's what makes the distinction. I don't want you to think that we've never done any of them, but we did it through a reporting mechanism through the local police departments, but this obviously works much better.

MR. STEEN: Thank you for coming up here today. We are going to continue with our meeting. Obviously, you are welcome to stay, but if you would like to

exit now, that would be fine, too.

MS. GUERRA: Thank you.

MS. FOX: During the last session, Senator West passed a bill that had to do with racial profiling. There are various requirements in that bill for various police departments that do a lot more traffic enforcement than we do. They are required to do certain reporting on racial profiling of traffic stops. Though we are not required in this program to do that reporting, we determined we should go ahead and capture the information and report on it. Today Greg is just going to give you an update. The report, I think, is due once a year at this time that they have to report in, so we thought this would be a good time just to advise the commission on what we are doing.

MR. HAMILTON: From May 2002 to December 2002, our enforcement officers stopped 949 vehicles, and they handled multiple people in those cars, so there were 1,585 persons that they made contact with. Approximately 96 percent of the stops were because of observed violations. One percent of the cases, the vehicle or passenger matched the description of vehicles or persons wanted in connection with a previous crime. In the remaining three percent of the stops made, agents didn't specify the reasons for the stop. Agents issued 1,096 criminal citations and warnings during the course of this period. Approximately 74 percent of the citations and warnings issued were for alcohol violations. Traffic violations accounted for 15 percent and another two percent were drug related. The remainder, approximately nine percent, were for a wide range of miscellaneous violations. The stops also resulted in 968 searches of persons or vehicles. Slightly less than half of these, 49.8 percent, were consensual. Of those that were not, 84 percent followed the plain view violation, where the agents came up to the car and saw contraband in plain view or some illegal weapon or drugs inside the car. Thirteen percent were incident to arrests or vehicle impoundments, where the individual was arrested and the car was impounded. This is common that we would search the vehicle to do a property inventory so they can't say anything was taken out of the car.

Even though the agency's internal affairs unit has received no complaints from the public alleging racial profiling by agency personnel, the information collected concerning vehicle stops was also examined for any patterns of discriminatory practices. Statistical analysis indicated that among those stopped, only Anglos were over represented in comparison with their share of the state's population, while African Americans and other non Hispanic minority groups were under represented in the stop totals. African Americans, as well as non-Hispanic minority groups, were

also under represented among those searched and cited and over represented to a greater degree among those who were arrested.

While the data does not suggest that the race or ethnicity of drivers and passengers is a factor in the agent's decision to stop motor vehicles, there is a question raised as to the over representation of Hispanics in our search, citation and arrest activities. In the coming weeks, we will be taking steps to determine the causes of this over representation. We do not find that there are any signs of discrimination or racial profiling, but we do have a high number as far as Hispanics, as far as when we are going to search, cite and arrest that ethnic group, and we will be looking at it. We don't know exactly the reason why, and we will look at it. When we determine why we will advise you.

MR. STEEN: Thank you. You will report at a future meeting?

MR. HAMILTON: Yes.

MR. STEEN: Thank you, Chief.

MS. FOX: We will not have a EUDL grant presentation today. We are still finalizing the awards of that particular grant. We are going to have a staff presentation from Gayle Gordon - just an update on what our legal department is doing and it's progress.

MS. GORDON: Good morning, Commissioners. What I am going to do today is tell you something about what we do and the people we serve. We are responsible for the prosecution of all administrative cases brought by our clients, the Texas Alcoholic Beverage Commission. In addition, at the request of the cities and counties of Texas, we are charged with bringing action for the cancellation of the permit or license of any holder who fails to pay an alcoholic beverage local fee or any ad valorem tax related to the premises. We perform the same function for the Texas Comptroller's Office if our licensees or permittees are indebted to the State of Texas.

Questions regarding the code and how it should be applied in particular situations come to us from the field, the general public, our permittees and licensees and the county judges who hold hearings on original beer licensing applications and renewals. We attempt to respond immediately, if possible, if not, within 24 hours. On request, we respond to legislators on the effect pending litigation will have on the code as well as address problems their constituency may have with the agency.

When an administrative case is appealed, we assist the attorney general by

preparing the record, briefing the assigned attorney on the details of the case and providing necessary information and support throughout the appellate process.

The enforcement division and the regulatory division partner with us on a daily basis in the preparation and development of cases. They patiently teach us the details of how they issue licenses and permits, how they inspect and audit premises, how they enforce the code. We, in turn, teach them the facts necessary to make a viable case and what solutions may be available short of trial that can achieve compliance with the law.

We work with the neighborhood groups and others who wish to file protests in an effort to teach them what they need to gather in the way of facts to make a case, how to present their case and, to the extent possible, the procedure that they must follow at trial.

Our office has produced a public information brochure on protests that is in the process of being expanded and rewritten, and we have produced a trial manual for the county judges that was updated last year and sent to every county judge in Texas. In addition, we maintain an instructional manual for lawyers on our staff which will be updated this year.

Now, I'd like to tell you about who we are.

At this time, Ms. Gordon gave a power point presentation on the duties of the legal department staff and presented statistical comparisons for fiscal years 2001, 2002 and 2003 for cases docketed, hearings held, cases closed, cases pending, civil penalties collected and days suspension assessed.

MR. STEEN: Where do your lawyers in the field office?

MS. GORDON: One offices in McKinney, Texas in the outpost itself. The other is in Houston, Texas in the district office.

MR. STEEN: How do you all interact with the general counsel?

MS. GORDON: Delicately. We have a tension between us. There is a reason. Mr. Bright advises you as the commission and the administrator on matters where we may have been the trial lawyers, and we cannot talk without the presence of the other attorney or party about these matters in the presence of someone who has decision making power. It is Mr. Bright that handles this as advisor to you all and to the administrator. We are pretty well separated.

MR. BRIGHT: I'm kind of like the judge's law clerk. That puts some distance between me and the legal division.

MR. STEEN: Who do you report to, Ms. Gordon?

MS. GORDON: I report to Ms. Fox.

MR. STEEN: Thanks. That's an excellent report. We appreciate it.

MS. FOX: That concludes our staff reports.

MR. STEEN: We will move to fiscal stewardship of the agency. Ms. Hudson?

MS. HUDSON: Yes, sir. We provided some information on our budget. I believe you've heard numerous times people referring to the seven percent reduction. That reduction has been made. It is going to put some additional responsibilities on Charlie Kerr the rest of the year as he monitors those budgets to make sure we don't overspend. Budgets are quite tight. We have reduced vehicles, travel, training, as Jeannene mentioned, so we will be watching that very closely as we go toward the end of the year.

We also provided some information on memberships where the agency is involved in professional organizations. You will notice that it is a pretty good variety of organizations that we belong to from fraud examiners all the way down to IT associations, the sheriffs' association, with a variety of staff representing the agency at all these organizations. It gives the staff the opportunity to meet other state employees and also at a national level to discuss various issues that come up.

MR. STEEN: Any questions?

MS. MADDEN: No.

MR. STEEN: Thank you, Ms. Hudson.

MS. HUDSON: Thank you.

MR. STEEN: Items four and five on the agenda, I believe, we are going to table?

MR. BRIGHT: That's our recommendation about the rulemaking, Mr. Chairman. The short version of that is that we haven't just been asleep at the switch on this rule, but we have productive conversations ongoing with interested parties. We expect to be able to put this to your vote in April.

MR. STEEN: On the internal auditor's report?

MS. FOX: It's not quite complete at this time.

MR. STEEN: Mr. Bright, do we need formal action or can we just defer it to the next meeting?

MR. BRIGHT: You can just not do anything.

MR. STEEN: Is that all right with you?

MS. MADDEN: Perfect.

MR. STEEN: Good.

The next item on the agenda is consider award of contract for executive search services; discussion, comment, possible vote.

MR. BRIGHT: Mr. Chairman and Ms. Madden, since we have last met, we have issued a request for proposals for executive search services that we would enter in to contracts with. You have that request in front of you, I believe. We got several replies. As we do in the normal course of events for these things, we had a panel of three TABC employees who, operating independently, gave over a number of criteria numerical assessments of the bids. We added those numerical assessments and averaged them, and the bidder that came out with the highest numerical score was the MGT of America represented by Ms. Penny McLeskey. For that reason, we recommend that you award the contract for search services to Ms. McLeskey's firm. What you may do at this point is award that contract or decline to award that contract. You are not compelled to do that. If, for whatever reasons, you don't want to award a contract at this point, then what we would do is reissue a request on new or revised or reconsidered conditions and circumstances.

MS. MADDEN: Do you need a motion?

MR. STEEN: Mr. Bright, you sent a letter to Intersource Executive Search to Ms. Patti Halladay. I'm looking for a copy of it. Is there one in this notebook?

MR. BRIGHT: Number six, behind the last blue divider.

MR. STEEN: You mentioned the outcome of the process, but you mentioned that she was more than welcome to attend the meeting and speak with the commissioners. Is she here or is somebody from that company here?

MR. BRIGHT: If she is, I don't know that. I think I know everybody in this room, and I don't know Ms. Halladay by sight.

MR. STEEN: Okay. If that firm wanted the opportunity to address us, I wanted to let them do so.

MS. MADDEN: Do we need a motion?

MR. STEEN: We do. Ms. McLeskey, can you come forward?

MS. MADDEN: Are you prepared to take us on, Ms. McLeskey?

MS. MCLESKEY: Yes, ma'am.

MR. STEEN: One of the things that I had pointed out to Ms. Fox was that we had gone through this process with Ms. McLeskey's previous firm, and there was a particular meeting we had where we addressed a lot of the issues about how we would pay, etcetera. That will all be worked out? We just need to generally award the contract today?

MS. FOX: I think Lou has that and he is working with that contract.

MR. BRIGHT: That is correct, and we will finalize that within the coming days.

MR. STEEN: Was Mr. Seliger involved in that meeting?

MS. FOX: The one two years ago?

MR. STEEN: Yes.

MS. FOX: No.

MR. STEEN: But, Ms. Madden was?

MS. FOX: Yes.

MR. STEEN: I was rereading that, and we expressed our concerns. I feel comfortable, if you all will just reread that, telling you to go forward with it, although we might want to run it by Mr. Seliger just to see if he has any input into the contract.

MS. FOX: Okay. I did pull those minutes and I went through every item that was enumerated or listed in that particular transcript, so all those issues should be addressed.

MR. STEEN: Especially, because Mr. Seliger is not here today and he wasn't at that meeting, would you make a point of reviewing all of this with him?

MS. FOX: Yes, I will.

MR. STEEN: Do you have any other questions?

MS. MADDEN: No.

MR. STEEN: Ms. McLeskey, do you have anything you would like to say?

MS. McLESKEY: I don't think so at this point. I think I have covered most of our points in our proposal.

MS. MADDEN: Are you ready for a motion?

MR. STEEN: Yes.

MS. MADDEN: I'd like to move that we award the contract for executive search services to Ms. McLeskey and her firm, MGT of America.

MR. STEEN: With the terms and conditions to be worked out by Mr. Bright and Ms. Fox.

MS. MADDEN: Yes. Thank you.

MR. STEEN: In the absence of Mr. Seliger, I second. Any further discussion?

MS. MADDEN: No.

MR. STEEN: All in favor, say aye.

MS. MADDEN: Aye.

MR. STEEN: Aye. The motion carries. Thank you, Ms. McLeskey.

We move to item seven - public comment. I have no cards up here. Does anybody wish to speak? It doesn't look like we have any.

MS. FOX: Mr. Chairman?

MR. STEEN: Yes.

MS. FOX: If I may, just one thing. I probably overlooked something in the February

meeting but, as you know, Brian Guenthner retired as director of the licensing department at the end of January. Ms. Amy Harrison has been named the acting director of that department, and I would just like to introduce her to the commission.

MR. STEEN: Can you come forward?

MS. FOX: Of course, I didn't tell her I was going to do that.

MR. STEEN: We've put on the spot. Tell us about your background and how you got to this position.

MS. HARRISON: I started at the comptroller's office in 1983, and I transferred to the Texas Alcoholic Beverage Commission in 1990 with the bingo division - which I would rather not be recognized with. I've been in licensing since 1994, and was made assistant director a couple of years ago.

MR. STEEN: Thank you very much.

MS. HARRISON: Thank you, sir. I appreciate the opportunity to be serving as acting director.

MR. BRIGHT: You should ask her a question about licensing. She knows everything.

MR. STEEN: Anything else, Ms. Fox?

MS. FOX: That's all.

MR. STEEN: The commission will now go into executive session to confer with the general counsel regarding litigation pending against the agency under the authority of Government Code, Section 551.071, and to discuss the appointment, employment and duties of the administrator pursuant to Texas Government Code, Section 551.074(a)(1).

The commission convened in executive session at 11:33 a.m. and reconvened in open meeting at 1:19 p.m.

MR. STEEN: The commission meeting of March 24, 2003, is now back in open session. During executive session, no votes were taken, no final decisions were made. There are no matters requiring commission action at this time.

Before we adjourn, I think Ms. McLeskey is interested in this, too. Do we have the dates for our April meeting and the May meeting.

MS. LYLE: The 28<sup>th</sup> of April and May 26<sup>th</sup>, which is also Memorial Day.

MS. MADDEN: Do we usually back it up?

MS. FOX: Memorial Day during the session, we usually will meet. We will be open on that day.

MS. MADDEN: Last year, we didn't have one in May. We had two in June.

MS. FOX: We can make it the third Monday in May, if you wish.

MS. MADDEN: What is that?

MS. LYLE: The 19<sup>th</sup>.

MS. FOX: We can make it on Tuesday if you want too.

MR. STEEN: I think I'd like that, moving it up. How does that work for you, Ms. McLeskey?

MS. McLESKEY: That will work fine.

MR. STEEN: Mr. Bright, do you remember last time we went through the search process, it was just standard for you to put language on the agenda so we could talk about it at every meeting?

MR. BRIGHT: Absolutely, and I believe at one point during that process, particularly as Ms. McLeskey got further into her work, we were posting a meeting every Monday. Now, you didn't have a meeting every Monday, but one of the things as you go through the process, and as you and Ms. McLeskey start working together, remember it's better to post a meeting and not have one. You may want to consider in the future, as you get down into it, just having a regular posted meeting every Monday or every Friday or something like that, just in case it turns out between one week and the other that you really do have to be together.

MS. MADDEN: That's a good point.

MR. BRIGHT: I will add that language that will allow you to discuss any aspect of this search and selection process in every meeting that you have until we are finished with this.

MR. STEEN: Thank you. Ms. McLeskey?

MS. McLESKEY: The next two meetings, what would the time be? Would it be morning or afternoon?

MS. MADDEN: Afternoon.

MR. STEEN: It's typically at one thirty, although, like today, there was a reason we held it early.

MS. MADDEN: It was because of a conference.

MS. FOX: There was a conference and it got cancelled on Thursday afternoon. Obviously, it was too late to change it.

In April, Mr. Seliger has his confirmation hearing and we believe it's going to be on the same day.

MS. MADDEN: We can't do that to him.

MS. LYLE: It's tentatively scheduled for the 28<sup>th</sup> at three o'clock in the afternoon.

MS. FOX: Is that what they gave us?

MS. LYLE: The nominations committee normally meets at three in the afternoon.

MR. STEEN: I like meeting at one thirty, because I have to drive up here in the traffic.

MS. MADDEN: I do, too.

MR. STEEN: On April 28<sup>th</sup> if we want to make another exception and do it at ten, that would be all right with me.

MS. MADDEN: When I was confirmed, we were talking about doing this same thing. You turned to me and said, "Gail, there is no reason for us to meet on the same day that you are being confirmed because it's just a little bit hairy for you." Do you think we should meet the next day, perhaps? That's kind of mean to do that to Mr. Seliger. Maybe he thinks confirming is just fabulous. I don't know. What do you all think?

MS. LYLE: I had visited with him about that and he seemed to be okay with it.

MS. MADDEN: Okay.

MR. STEEN: He may prefer that because he's here for our meeting, anyway.

MS. MADDEN: That's fine.

MR. STEEN: So, the idea would be that we would have it on the 28<sup>th</sup>, but maybe at 10 o'clock?

MS. FOX: Maybe we could move it up a little bit.

MS. MADDEN: Let's move it to eight o'clock so I can get up at two a.m.

MS. FOX: I don't want you to blame that on me again. Does 11 o'clock help you any with your flight?

MS. MADDEN: I'm sorry?

MS. FOX: Eleven o'clock? Does that help any?

MS. MADDEN: I was only kidding. I don't mind having it at ten. I was genuine when I said that about remembering when Commissioner Steen said, "You don't want to have a meeting and then go to your confirmation. That would be too hairy for you." At the time I was real glad. I didn't think too much about it until my confirmation came and then I remember thinking if we had a meeting also, it would have been tough.

MS. FOX: So we don't have it so early, we could do it at 12. I know that's an odd time, but we could do it at 12. I'm sure we would be through in time for him to get down to the capitol.

MS. MADDEN: Chair, what do you want to do?

MR. STEEN: I'm going to leave that to you all. Do we want to ask him?

MS. FOX: Let us work on it.

MS. MADDEN: Ask him. That's good.

MS. FOX: And see how he feels about it.

MR. STEEN: Ms. McLeskey, we were trying to get this resolved, but it's kind of up in the air.

MS. MADDEN: Nine thirty, ten, ten thirty, eleven...

MR. STEEN: We will say it's tentatively April 28<sup>th</sup>, at what time?

MS. FOX: Eleven?

MR. STEEN: Eleven o'clock, but we are going to talk to Mr. Seliger and we can change it based on what he says.

MS. MADDEN: Let's let him decide.

MR. STEEN: Anything else? Ms. McLeskey, did you have anything else?

MS. McLESKEY: We did say Monday, May the 19<sup>th</sup>?

MS. MADDEN: Yes.

MR. STEEN: That will be at one thirty.

Do we have anything else?

MS. MADDEN: I move we adjourn.

MR. STEEN: I second. The meeting is adjourned.

The meeting adjourned at 1:25 p.m.