

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
FRIDAY, AUGUST 23, 2002

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: John T. Steen, Jr., Chairman; Gail Madden, Member and Kel Seliger, Member. Staff present: Rolando Garza, Administrator; Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License and Compliance; Greg Hamilton, Chief of Enforcement and Denise Hudson, Director of Resource Management and Steve Carlson, Compliance Department. Present and recognized for 25 years of service: Lanette Wachsmann, Compliance Department. Comment was received from Russell Gregorczyk, Internal Auditor; Jim Haire, Texas Alcohol Abuse Prevention Volunteer; Joye C. Hyman, step-parent of FASD child; Gloria Moore, The Dram Shop School and Mike Alexander.

The agenda follows:

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

1. Recognition of agency employees with 20 or more years of service.
2. Approval of minutes of July 23, 2002; discussion, comment, possible vote.
3. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement;
 - c. discussion of management controls; and
 - d. update on Fetal Alcohol Syndrome/Fetal Alcohol Effect.
4. Fiscal stewardship of agency; discussion, comment, possible vote.
5. Approval of the Internal Audit Plan and Contract for FY 2003; discussion, comment, possible vote.
6. Approval of the Internal Audit Report on the Grants Management System, discussion, comment, possible vote.
7. Consider publication of proposed amendments to 16 TAC §37.60; discussion, comment, possible vote. (Standard Penalty Chart)
8. Seller/server training update; discussion, comment, possible vote.
9. Public comment.
10. Executive session:

Announcement of executive session:

- a. the commission will meet in executive session to evaluate the performance of the administrator pursuant to Texas Government Code, §551.074(a)(1);
- b. the commission will meet in executive session to consult with legal counsel regarding pending litigation pursuant to Texas Government Code, §551.071; and
- c. the commission may go into executive session to consult with legal counsel regarding items 7 and 8 of this agenda pursuant to Texas Government Code, §551.071.

Continue open meeting.

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

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

MR. STEEN: I want to call the monthly meeting of the Texas Alcoholic Beverage Commission to order. It's about one thirty.

We want to begin with the recognition of employees with 20 or more years of service. Mr. Garza, the first is Charlie Kerr, but he is not with us.

MR. GARZA: Mr. Kerr has chosen to take flight to Mexico for a well-deserved vacation, Mr. Chairman. I'm sure that he would have loved to have been here this afternoon, but he had quite an offer at a discount rate, so he has taken a flight to Cancun, I believe.

MR. STEEN: Will you pass along our congratulations?

MR. GARZA: Yes, sir, I sure will.

MR. STEEN: Next, we have Lanette Wachsmann. Ms. Fox?

MS. FOX: Lanette joined us in the auditing division as a secretary 25 years ago, and has had various positions in what was then the auditing division and now the compliance department. She's currently an Accounts Examiner III that works in the excise tax reporting section. She's truly a Godsend to us. We are very fortunate because she has excellent work habits. She's so efficient. She's probably one of the most dependable employees we have and one of those that's always willing to do anything and everything that you ask of her. We certainly couldn't do without her. Let's congratulate her on 25 years of service.

COMMISSIONERS: Congratulations.

MS. WACHSMANN: Thank you.

MR. STEEN: Next, we have the approval of the minutes of the July 23, 2002 meeting.

MS. MADDEN: I so move.

MR. SELIGER: Second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye.

Next, we will have the administrator's report. Mr. Garza?

MR. GARZA: I have a brief report, Mr. Chairman. First of all, I'd like to report on a project that we have been fortunate enough to enter into with Valero-Shamrock statewide. They have produced what are called these pump topper signs that address a message on underage drinking. It's the same campaign and uses the same poster design that we worked with the Texas Safety Network on during a campaign earlier this year. These pump topper signs were placed across the state at different Shamrock/Valero locations - something like 485 stations with about 1,000 of these signs being placed there, and the campaign will run until mid September. We intend to invite officials with Valero from San Antonio to appear next month to accept a Bert Ford presentation from the commissioners. It's a voluntary effort. You've heard us talk a lot during the last few months about the importance of partnerships and reaching out to the community, to the industry groups, to different organizations. I think this embodies the very essence of the spirit of partnering between us and an organization on a message that is so keen and so important on underage drinking, so I just want to share this pump topper sign with you as an example.

The other thing that's come up, Mr. Chairman, you were contacted, like other agency chairs, by Secretary of State Gwyn Shea, putting out a call for election inspectors to work the November 5th election. We were fortunate enough to have 21 of our agency employees volunteer for the service. They are from Austin, Houston, San Antonio, Dallas and Fort Worth. They will be provided with necessary training here in September, and I believe there is a group that's going to go up to Dallas later that month to get some training, and these folks will volunteer their time to serve as election inspectors. They will work at the actual polling sites and also at some of the tabulation centers. I'm proud of the fact that we've had some employees that have stepped up. Thank you for bringing that to our attention.

The other item that I would bring to you this afternoon centers on our October meeting. I know we have had some discussions...

MR. STEEN: Before you go on...

MR. GARZA: Yes, sir?

MR. STEEN: Did you all see the letter?

MS. MADDEN: Yes, we all got it.

MR. STEEN: Good. Go ahead.

MR. GARZA: We've had some discussions regarding our October meeting. Ms. Madden has been very generous and hard working in starting to do the preparatory work for that meeting. We are scheduling that as an October 28th meeting. It is a Monday. We are looking right now at holding that meeting at 10 o'clock in the morning. Ms. Madden is working with some of our Dallas staff to ensure that we have a good location, a successful meeting, and we will be putting the word out to all the affected and involved groups as to the location, the times, and hope that we get a good representation from the Dallas community to show up and attend the meeting.

The last item is an item that this board has addressed, at least for the last two or three meetings, and it's an item that's an important forthcoming project for us, and it centers on the Fetal Alcohol Syndrom/Fetal Alcohol Effect project. As you will remember at last month's meeting, you directed staff to develop the plans necessary to carry out a voluntary campaign. We have had some communications with members of the industry. Ms. Fox has graciously agreed to spearhead this project for us, and I am more than certain that she will bring to this project the same quality that results in everything else that she puts her signature on. I've asked Jeannene to coordinate this for staff. She is going to be hosting a meeting with industry reps in early September. Ms. Debbie Dixon, back in the audience, is going to be working with her, and we will also be hosting a meeting with agency representatives, groups, Mr. Haire and anybody else who is interested in coming to the table and trying to target some kind of campaign that we will be looking to unveil during the month of December, which will include the printing and distribution of some decals to all licensed establishments. We have heard from the Department of Health and they are going to print up that brochure that's been shared with you. We will share in that cost and that will also be distributed. We look forward to having some kind of press conference and asking the governor's office to issue a proclamation or resolution declaring that month as fetal alcohol awareness month. We are in contact with some members from his staff right now and, if the possibility arises that we can do that campaign earlier than December, then we are certainly going to look at doing that. I have talked with one of the policy staff members in the governor's office, and he and I will be visiting early next week to see

if we could move that project earlier to September or October.

MS. FOX: One thing I might add is that we have sent out a notice to all the program schools to include FAS education components in their program, and we gave them the basic language to include. They have until October 15th to get that included in their program. After that time, they will be expected to have that information in the programs that they do.

MR. STEEN: I've spoken with Logan Spence from the governor's office, and I hope he will be included in any meetings that we have.

MR. GARZA: Yes. He and I spoke day before last and he's very interested in working through the governor's office to provide whatever assistance we might bring to this project to add some more validity and prominence and visibility statewide. I am very glad that they have shown an interest in doing that.

The last thing that I would bring to your attention, Commissioners, is that you've seen some young folks out here in our reception room today. I would just tell you that that's the future of TABC. During this week, we've been interviewing folks. Next week, all week, we will be interviewing some more. Over 100 interviews are being conducted. These are people who are vying for one of 15 to 20 agent-trainee positions. These folks are coming in here from all over the state. I'm just proud of the fact that we have that interest in this agency. It's a hard job to interview that many candidates and narrow it down to 15. There is a panel that Ms. Rowe is coordinating, and they've been working since Monday. They have conducted interviews all week, and they will be back here bright and early Monday for another week of interviews. We expect to have that concluded by December, I believe, and extend those offers to those new agent-trainees. We talked this morning at the hearing about our career ladder in enforcement. This is the next new crop of agent-trainees that will come to us.

Lastly, I would thank every member on the commission and every member on the staff for your assistance and your contribution this morning at the hearing. I think we did well. Thank you.

MR. STEEN: Any questions?

MS. MADDEN: No.

MR. SELIGER: Nothing.

MR. STEEN: We will move to fiscal stewardship of the agency; discussion, comment, possible vote. Ms. Hudson?

MS. HUDSON: Yes, sir. This month, we looked at performance measures as of the third quarter. We have five measures that are outside the allowable LBB range. The one I would bring to your attention, and it is only slightly above, is the average cost for compliance activities. The reason for it being slightly over where we thought it would be, we had a large lump sum payment that we made on the mainframe lease that put that a little bit over. Those are all looking very good.

We also looked at our Business Resumption Plan. This is not only an IT recovery plan, but also identifies resources that we would need just to resume business. The departments laid out call trees that they would call in an emergency, what types of equipment they would need to have on-site if a situation were to arise where we could not get back into this building. Sometime during the fall, we will be conducting a walk through or, if you would like, a test of that plan to see that we have everything in place.

MR. STEEN: Any questions?

MS. MADDEN: No.

MR. SELIGER: No.

MR. STEEN: Ms. Hudson, thank you.

MS. HUDSON: You're welcome.

MR. STEEN: The next item is approval of the Internal Audit Plan and contract for fiscal year 2003; discussion, comment, possible vote.

MR. GREGORCZYK: Good afternoon. I've run into three staff members who suggested that I might want to be brief this afternoon, so I will try to do so.

The Internal Auditing Act requires you, the commission, to approve a plan each year for the areas that we will audit. It's to be based on a written risk assessment. The document, I presume you have before you, provides that information. It's very similar, in fact almost identical, to the document from last year. I pretty much lay out in that document what the risk assessment is, what the risk factors are and how we weight those factors and come to our risk assessment. We've chosen to assess risk basically along organizational lines. We look at it that way and, hopefully, we will eventually cover all the organizational units at some point. All of those in

the high risk we will and certainly those that we consider average risk. It may be that some areas just never rank high enough to look at in terms of our resources.

This past year, my audit plan was changed fairly significantly by the state auditor coming in, and I did weigh that in this time in looking at the fact that they spent so much time looking at licensing and enforcement, to some degree, especially the headquarters' operations.

What I am actually recommending that we take a look at this year, I believe is on page nine of my document. I'm not sure if yours are numbered the same way. I'm suggesting that we look at the enforcement division, the field office licensing. One of the things the state auditor did find and talked to me about was perhaps a fairly high error rate on some of the licensing processing at some of the field offices. They really didn't go out to those offices, so we thought that would probably be a good area to do somewhat of a followup and for us to take a look at that.

We've not looked at the compliance department. I don't think they spent really any time looking at that during the state auditor's management audit so, again, we felt that would be a good area to look at this year.

Agency planning and budgeting is one of those areas that we would like to look at on a periodic basis. The Internal Audit Act requires your administrative systems and controls to be looked at on a periodic basis. Also, on this particular area, Rolando felt like this is an area he'd like for us to look at, so I always take that into consideration.

I've added a fourth area. I've had a couple of the division directors ask me to look at the performance measures. I will do so if I have enough time and audit resources. Those first three audits are fairly big and may consume most of our audit resources as we get into the project but, if we have time, we will certainly try to look at that as a fourth area in the audit plan. I will open it up for questions.

MS. MADDEN: Russell, you always seem so thorough. I'm glad you are going to tackle all of this.

MR. GREGORCZYK: We are going to try.

MS. MADDEN: When you were talking about that fourth area, the performance measures, do you think you will get to it or is that something you think will fall into another year?

MR. GREGORCZYK: I think we have around 600 hours or 650 hours, and I'm assuming we are going to contract for the same amount. I haven't really even talked to staff about that. I'm thinking that these audits are probably going to take a couple hundred hours, but it really depends on the scope. What I mean by the scope is when I get ready to do an audit, I will sit down with management and I will lay out these audit objectives as you see. It will really depend on how much we really try to look at in each of those audits. I suspect if we really look at everything there is to look at, that will probably consume most of my resources and we may not get to this one but, at the same time, we will if we can.

MR. STEEN: Any questions?

MR. SELIGER: None.

MS. HUDSON: Another item under this is renewal of the internal audit contract. We have the option to extend that contract for up to five years. His contract expires at the end of this month.

MS. MADDEN: What do people usually do? Do they do it annually or do they go for the long term?

MS. HUDSON: This contract was on a year-to-year basis with up to five years worth of renewals. This would be our second year to renew the contract.

MS. MADDEN: Do we need a motion?

MR. STEEN: Yes.

MR. SELIGER: Do you have a recommendation as to the period of renewal? Is year-to-year renewal working okay as far as your needs internally?

MR. GARZA: I would say that a year-to-year renewal is good for staff. I have heard no objection. I have enjoyed the working relationship with Mr. Gregorczyk. Not only is he thorough, Ms. Madden, but today he's been very brief and I appreciate that also. I would not oppose, Mr. Seliger, a yearly renewal.

MR. SELIGER: Okay. Mr. Chairman, I move to renew the internal audit contract for one year.

MS. MADDEN: I second.

MR. STEEN: Any further discussion? What do you do about the fees?

MR. GREGORCZYK: The fees will be the same. The rates will be the same, and I believe the amount will be the same.

MR. YARBROUGH: I believe those are outlined in your book, an hourly rate charged based on the experience of the auditor.

MR. STEEN: Any other discussion?

MR. SELIGER: No.

MS. MADDEN: No.

MR. STEEN: All in favor?

MR. SELIGER: Aye.

MS. MADDEN: Aye.

MR. STEEN: Aye. We've renewed the contract. Don't we also need to approve the audit plan?

MR. GREGORCZYK: Yes.

MR. SELIGER: So moved.

MS. MADDEN: I second.

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

MR. SELIGER: Aye.

MS. MADDEN: Aye.

MR. STEEN: Aye.

We now move to item six. Approval of the Internal Audit Report on the Grants Management System; discussion, comment, possible vote.

MR. GREGORCZYK: Let me give you a brief overview of this audit. Let me say, too, this was a second one we did. We have a third audit that's in progress. The works been finished. I haven't turned in the draft report. That's on the human resources. Mr. Steen, the last project we had this year is a followup on all the previous year audit recommendations. You've asked about that a couple of times. I'm actually going to work with staff some more. I have turned in a draft, but we have a couple of areas where we

are not quite in agreement and we will bring those two items to you at your next meeting to finish out the work for this year and that will close us out.

MR. STEEN: Thank you.

MR. GREGORCZYK: The grants management audit was put in our plan because we have had an increase in the grants we are administering. You are starting to receive more grants, and it's certainly anticipated there's going to be more in the future. We really wanted to look at whether we had the proper internal controls in place and effective procedures for managing the grants. That was our main purpose. At the time we began the audit, a new grants administrator had come in, and I think we wanted to make sure everything was in good shape and give that person some help in looking at the whole process.

What our findings were, basically, is the grants management system is in good shape. We audit grants at many different agencies and, considering you don't manage that many, we found everything to be in very good shape. You've effectively structured the accounting system to track all the grants. Many agencies have not been able to do that with USAS, but your staff has been successful and we were able to trace everything through the accounting system. It's not always easy in USAS to do that but, like I say, they have done that very well. All the grant expenses that we tested were accurately supported. They were accurate and supported by adequate documentation. There is a good system to make sure all your grant goals and objectives are accomplished and reported on. We found, at the time - and I think this was a transitional issue - at the time we did our work, the grants administrator really wasn't overseeing all the grants. That was already planned, but that was something that we recommend, is that person be put in charge of all the grants so that we do get some consistency amongst all the grants.

We made some minor recommendations. I call them minor. They are not certainly control issues. We did find, and I don't want to get too complex here or go into too much detail, but most grants have a match and typically you want to draw down those funds as you expend your match. You don't want to get into a situation where you are drawing down your funds and you haven't met the match. We did find, at one point in the year, that was happening. The match had not been met. As long as it's met by the end of the year, grantor agencies don't have a problem, but we do recommend that you make sure that you are drawing it down as you earn those funds. There is some possibility that at some point you will need an indirect cost rate. You don't need one right now but, as you take on more grants, you can certainly get into a situation where you've got all these things,

accounting and support costs, that you are not getting billed back for and that becomes burdensome, so we suggested that management do a short-term study to see if we really have enough cost in there that we should consider an indirect cost rate and management agreed to that.

Again, I mentioned the grants administrator we felt should be over all the grants, and I think she is or will be pretty soon. We also felt like you have enough activity, enough grants, that there ought to be a grants management reporting system where the grants manager prepares either a quarterly or monthly report to the administrator and key staff about here's where we are on grants expenditure wise, accomplishing our goals, etcetera.

In a nutshell, that's what our findings were but, overall, we felt like the grants management system was in good shape. I will be glad to respond to questions.

MR. STEEN: Mr. Garza, who's responsible for this?

MR. GARZA: Andrea Morrozoff is our grants manager/coordinator.

MR. STEEN: Is she here today?

MR. GARZA: She's on vacation.

MR. STEEN: Sounds like she's doing a good job.

MR. GARZA: You will recall that we hired Andrea from a group out of Washington, D.C. where she has had some previous experience in grants and contracts and working in the law enforcement arena. I've been very pleased with her quick study ability to gather information on our programs.

MR. HAMILTON: One of the other things that I would like to note is that she came in behind law enforcement agents who were put into that position because we began to receive grants. They had no training. Just the training from OJT plus they went to a couple of grant schools while they were in that position. She came in and made sure that everything was in place, and she's been doing a wonderful job.

MR. SELIGER: How many dollars in the last fiscal year did the agency receive in grants?

MS. HUDSON: About 400,000.

MR. STEEN: Do we need approval on this report?

MR. GREGORCZYK: I believe so.

MS. MADDEN: I move approval of the internal audit of the grants management system.

MR. SELIGER: Second.

MR. STEEN: Any discussion?

MS. MADDEN: No.

MR. STEEN: All in favor?

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Thank you for the work you are doing.

The next item is to consider publication of proposed amendments to 16 TAC §37.60; discussion, comment, possible vote. That's the standard penalty chart.

MS. FOX: Approximately two years ago, we did an extensive overhaul on the seller training rules that we currently had. We made a number of significant changes, and at that time we developed a standard penalty for various violations of those rules. It's been about two years and we have never included those recommended penalties in our standard penalty chart. What we are asking you to do today is just give us permission to publish those recommended penalties that we have been using the last two years and to include them in our actual rules. We think this is important so that everyone in that arena will know what the penalties are and what the general recommendations are. It's kind of a public awareness.

We did share our proposed chart with all the various seller training programs. We did have probably three inquires. One was just an informational inquiry. There is some concern that perhaps we should look at "Failure to timely file or properly prepare the report of seller training." We have a recommended penalty of three to five days for the first violation, and the two calls we had were to consider that just a warning. I don't know that staff at this time is ready to make that change. Again, this is just permission to publish, and we still have ample opportunity after we publish to continue looking at that item and to have further discussions with the seller training schools. We would at this time ask that you approve our request to publish the proposed chart and make it a part of our standard penalty chart.

MR. STEEN: Do we have a motion?

MS. MADDEN: I so move.

MR. SELIGER: Second.

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

MS. MADDEN: Aye.

MR. SELIGER: Aye.

MR. STEEN: Aye. Thank you, Ms. Fox.

The next item is the seller/server training update; discussion, comment, possible vote.

MS. FOX: Mr. Chairman, as you know, you requested a couple of months ago an update on where we are on seller training, what we've accomplished in the last year or two, what we are looking at in the near future. Steve Carlson is going to do that presentation for us.

The power point presentation included the number of retail licenses and permits as of June 2002; retailers requiring seller training as of June 2002; number of trainees certified; the number of on- and off-premise retailers who require seller training as of August 1998 and June 2002; the percentage of retailers requiring seller training as of June 2002; the number of active sellers; the projected increase; seller training classes scheduled; seller training phone calls/faxes; seller training sanctions from September 2000 to June 2002; seller training internet web page hits; brochures relating to seller training and a list of current and future activities to enhance the seller training program.

MR. STEEN: Mr. Carlson, what do you do with the seller/server training?

MR. CARLSON: I am a supervisor in compliance. I supervise the seller training section. Ms. Dixon is the program administrator of seller training and I am over her.

MR. STEEN: Do you have any questions?

MS. MADDEN: I think you earn your money. My hat's off to you. This power point presentation was very good, very thorough.

MR. STEEN: Of course, we've improved over a couple of years in terms of the number of retailers that are taking advantage of this, but do you have much interaction with the retailers?

MR. CARLSON: Myself?

MR. STEEN: Yes.

MR. CARLSON: No.

MR. STEEN: I just wondered if you had an idea about why we are still hovering around 50 percent? Why, with the safe harbor provisions, we don't have more retailers taking advantage of this?

MR. CARLSON: I can't guarantee that 51 percent. Again, that's based on the application itself. There is a check mark that they check off. That's all we are utilizing to be able to determine whether or not they require seller training or not. There are groups of people, small mom and pop retailers, that don't believe they need to have seller training. They are the only employees of the business. They are the sellers themselves. They feel they are conscientious enough to do that selling and they do not need to be seller/server trained. They don't get that protection themselves as they are the owners, so that may be one reason.

It's pretty significant that almost 75 percent of our on-premise are mixed beverage bars and are requiring seller training. I think that's pretty significant. The smaller ones, the BG's, the off-premise beer, that's the real low percent, and those are smaller operations usually, I believe. They may not believe that they need it.

MS. FOX: One of the things, too, about that group, and that we are going to target in the next year is because they don't generally have a trade association that they are a member of. The trade associations, as Steve said earlier, have been tremendous in getting out the information on why they should avail themselves to this program. I don't know that they have gotten as much attention. They certainly have from us, but they haven't had another overriding group providing that information, so we are going to look at ways to try to reach those groups that are in that area.

MR. STEEN: We had the Texas Restaurant Association help us with the disk and being able to do it over the internet. Of course, one of the things we heard a few years ago was that people in rural areas couldn't get to the schools, and that's why they couldn't get people seller/server trained. What about using the disk and the internet? Have we measured results?

MR. CARLSON: I've got some figures for you here. It's not a large percentage, but it's a fairly significant percentage, I guess. On the internet currently, in this last year, approximately 10 percent of the people who are seller certified have been certified over the internet. That's fairly significant. Approximately

23 percent of the people who have been seller certified are people who are certified by licensed permittees, retailers that have their own school because they are large enough to have their own school, like HEB and places like that. Approximately 23 percent of the people have been seller trained in-house. The rest have all been trained by public schools.

MR. STEEN: Any other questions?

MR. SELIGER: No, thank you.

MR. STEEN: One of the things we've talked about, Mr. Garza, is trying to provide more incentives for retailers to do this. I think we talked about going to see the insurance commissioner to see if we can talk to him about a program where people would be incentivised by maybe reduced insurance premiums to get all their people seller/server trained. Have we taken any steps on that?

MR. GARZA: I've not set up that meeting, but I can do that with Commissioner Montemayor. We have met with him on a different matter, and he has expressed an interest in working with this agency. If you would like, I can set that up for the next week.

MR. STEEN: Good. I'd like to participate.

MR. CARLSON: There is one insurance company that underwrites liquor liability, J. D. Tanner & Associates, and they underwrite for an "A" rated company called Clarendon and the discounts are based on the size of the company that they are insuring. Large accounts can receive up to a 15 percent discount and smaller accounts can receive an eight to 10 percent discount on insurance if they have their people seller trained.

MR. STEEN: Great. Can you provide me with that information?

MR. CARLSON: Sure.

MR. STEEN: Anybody else?

MR. SELIGER: No.

MR. STEEN: Thank you, Mr. Carlson.

We move to public comment. We have two people signed up to speak. The first is Jim Haire. Mr. Haire?

MR. HAIRE: I'm Jim Haire from Tyler and I want to thank Chairman Steen and

Commissioners Madden and Seliger for this opportunity.

I want to take one second to thank you for the time you spent with me and the other volunteers on the FAS issue. I know we are getting close to closing chapter one of this thing and move it on, and I just want to thank you for all the attention that you've given us and the time. I've told Rolando on more than one occasion, I'm not the best at this. I sometimes try too hard, but I'm scared to death of not trying hard enough. I appreciate you bearing with me.

I just need a few minutes today. First, I want to clarify a number we've been quoting during this process. The March of Dimes press release just prior to the July 23rd commission meeting mentioned there were around 25,000 Texans today with alcohol-related brain damage. They were given that number by the Texas Office of Developmental Disabilities. That statistic has previously been reported in the 200,000 range which is apparently the correct number since I've cross-checked the numbers using information from the FAS Community Resource Center in Arizona. They estimate the incidence rate of alcohol-related brain damage at one per 100 births. TOP was using 1.1 per 100, so you can see the affected births in Texas are roughly between 3,600 and 4,000 as we've been talking about, and the number of Texans walking around today with alcohol-related brain damage would be roughly between 208,000 and 229,000, not the roughly 25,000 previously reported. Larry Camp is in Dallas today on another mission, but I'm sure if he was here, he would be agreeing with me. Also, that puts the cost of FAS and related items to Texans back at about 600,000,000 dollars annually, not the 60,000,000 that was previously quoted around the July 23 meeting.

During the last meeting, at least two of the three commissioners indicated you were perhaps supportive of a mandatory sign program but you wanted to first explore a voluntary sign program. There are several things that concern me about the possibility of that succeeding. I just want to bring your attention to the comments by the Texas Restaurant Association, and these were taken from the meeting minutes from your July 23 meeting in which they acknowledge they oppose the signs for the following reasons.

First, they mention that restaurants cannot address every single health issue that comes along, and they referred to FAS as just another health threat.

Second, they said people should be educated about FAS in middle school and high school. The fact is that people have not been educated on this issue in high school and middle school and even if the schools started now, today, there's about 3.4 million female Texans between the ages of

18 and 38 that were not educated about the issue in school. Besides that, you've got to ask yourself as we go through this should business be allowed to transfer the burden of product warnings to the public school system? I think they ought to be part of it, but we shouldn't think about the school system being responsible for this issue.

Finally, the TRA representative indicated that he personally would be happy to support the voluntary program, but then says in part, and I quote from the minutes, "I think you will find that industry is not opposed to putting up the signs for a short period of time." When TABC staff reported that 22 other states had adopted mandatory sign programs, I don't recall them reporting any states had discontinued the signs. Arizona's have been up for 10 years and there's a reason the signs are being left up. It makes sense to warn people about alcohol-related brain damage. I don't comprehend how industry can market a product that can and does cause lifelong mental retardation in the customers' babies and then remark that they may be willing to warn families for a short period of time.

I ask the commissioners to compare the testimony of this restaurant representative to the letters you've received from the March of Dimes volunteers from all over Texas in support of the signs. That support came from the Children's Defense Fund in McAllen, from a lawyer and a medical doctor in Amarillo, from parents and grandparents in Corpus Christi, from a banker in Beeville, from the state director of the March of Dimes in Dallas, from the president of the Coastal Bend Pharmacy Association, a retired public health administrator in San Antonio. From every corner of Texas, support came to you for these signs, not to mention the seven supporters who spoke to you at the June 3 meeting in support.

We have now heard from both the Texas Restaurant Association and the Center for Science in the Public Interest that the industry is against displaying these signs. A voluntary program will surely result in an array of the following problems.

Number one. The signs will not be displayed. Number two. The signs may be displayed for a short period of time like TRA predicts. Number three. The signs will be put up in a dark corner so they can say they're displayed. Number four. The signs will be put up in a semi-conspicuous place for the same reason. Number five. The cost of the voluntary program will be the same as a mandatory sign program with only a fraction of the benefit. Number six. After TABC has gone to the expense of the voluntary program, will it be willing to spend the money and effort all over again for a mandatory program?

The group of volunteers that have supported the mandatory sign program have made their case and won what little debate there was about it.

TABC's statute says it will protect the public health. After all these years of totally preventable alcohol-related brain damage, surely it's time for the TABC to tell Texas families how to avoid the leading known cause of mental retardation. Thanks very much. Thanks again for all the time you have devoted to this issue.

MR. STEEN: Thanks, Mr. Haire. Next we have Joye Hyman.

MS. HYMAN: I'm sure everyone will be happy to hear that I haven't had time to prepare a speech for today. I just jotted down a few notes sitting in the parking lot in the car, so I don't have copies of what I am going to say today. I didn't have time to prepare a speech because I'm sick, if you can hear the sound of my voice. Getting the child that I care for settled down in school this week has been quite a struggle. I also felt when I thought about it, there really wasn't a whole lot left to say on this issue.

As Mr. Haire said in the last meeting, I'm having a hard time understanding why the point was even being argued. In this room, since this subject was brought up, we have heard from some of the leading researchers in the world on this topic. We've heard from international health organizations, from concerned citizens and from the people who care for these children that are the result of drinking alcohol while pregnant, yet I still sense among some people in this room a very strong desire to deny the obvious.

As a newcomer to your state, as a lifelong member of the hospitality industry, as someone who also holds degrees in both history and political science, I have watched these proceedings with great interest, very curious to see how the citizens of Texas govern themselves and care for their citizens. I saw this board ask for a report to be created and given to them on what other states that have these mandatory health warning signs were doing and what results came from that, if any, and what they had noticed about the effectiveness of the signs.

Mr. Garza, this is no personal disrespect to you because I sense that you are a caring person who happens to be between a great big giant rock and a hard place on this issue but, in my opinion, what I heard when that report was given was not a balanced picture of what was going on in the rest of the country, but a list of reasons that could easily be given for not taking action on the issue.

Your own PR on your website on your Project SAVE recognizes that multiple exposures to information presented in a variety of ways increases the retention of the material and changes attitudes, and yet a lot of people seem to want to deny that a point-of-sale health warning sign has a contribution to make in this effort.

One of your own enforcement agents - I can't honestly remember if it was this week or last week, but it was on the NBC affiliate here, which I think is KXAN or something of that nature - but one of your own enforcement agents, in talking about a big push that the TABC was backing, now that colleges are back in session, to go into the bars and insure that they are enforcing the laws about the minimum age for drinking and not serving while intoxicated, made a statement on that television piece that your agents need to be out in these bars constantly whispering in the ears of the bars to remind them of what the laws are. I wonder why you think that any of these bars are going to be good citizens and post these signs voluntarily if you can't even get them to be responsible servers of alcohol by not serving underage drinkers or already intoxicated drinkers? I think you heard it yourself in this room from an industry representative talking about these signs. To him, he said it was just another piece of paper that was going to be cluttering up the wall.

This morning when I headed out to come here to this meeting, I stopped by a convenience store to get some water and to get some medication so my nose wouldn't be running the whole time I was standing up here and I could breathe and talk. I looked on the shelf to see what they had. I looked specifically for cold medication. I was attracted to this box which is Motrin, which is something I always have in my house. I had never seen the cold and flu form of this medication, but I have used Motrin literally for over 10 years and always have it in my home. Because this was the cold and flu version, I looked on the back to see what the directions were and, lo and behold, I find a warning. "It is especially important not to use this product during the last three months of pregnancy because it may cause problems in the unborn child or complications during delivery." I have used this medication successfully for a number of years and yet I find that it's dangerous to take while pregnant. What we are talking about here in my mind with alcohol and these point-of-sale health warning signs is the difference between using a drug, which alcohol is, in a safe and responsible manner and using it in an unsafe manner. Since the last time this board met, there have been 328 more children born in the State of Texas with brain damage caused by alcohol. Those 328 children in their lifetime will add 1.6 billion dollars worth of tax burden to the backs of the citizens of Texas.

It was reported on the news this morning that your governor is warning the legislature that there may be a special session called this summer to work on the budget because this is going to be one of the toughest years to be able to balance that budget and make it work. When you talk about adding 1.6 billion dollars a year - excuse me - a month, spread out over the lifetime of these individuals, it would seem to me that somebody would be interested in looking at that amount of money and how we can reduce it.

Each of us someday is going to have to answer the question, "What have

you brought to this earth?" As you consider and continue to debate and work on this issue, I'd like to leave you with some words from Ralph Waldo Emerson. "To laugh often and much; To win the respect of intelligent people and the affection of children...To leave the world a bit better, whether by a healthy child, a garden patch or a redeemed social condition; To know even one life has breathed easier because you have lived. This is to have succeeded." Please help these children. Contribute to the effort to save their lives, present the damage this does to the taxpayers, to the health system, to the school system, to the teachers who have to deal with them and to their families. We are asking that you simply make a contribution by making it mandatory that these point-of-sale health warning signs be posted in your bars.

I appreciate the efforts. I was happy to hear that at least some things have been acted on since the last meeting that we had. I'm also very happy to hear that this will now be included in the server training program, but I think you should all be able to see, just looking at the numbers that were presented here to you today, server training, alone, is not enough. Health education, alone, is not enough. It's going to take everybody contributing to the effort to make it a safe place to live and work.

MR. STEEN: Thank you, Ms. Hyman.

Our third and last citizen signed up to speak is Gloria Moore. Is that The Dram Shop School?

MS. MOORE: Yes, I have The Dram Shop School, a seller training school that's been licensed since 1988. I consider myself one of the pioneers in alcohol education awareness and we all know that pioneers get arrows in their backs from time to time.

Before we get into that, I just want to say on a personal note what a pleasure it's been to work with the seller training division. It's amazing to me how much they have improved, how much the process has magnified by leaps and bounds. It's quite amazing to me that with this volume of work that they do, they provide the best customer service I've ever seen - period. Many times we will look at our records the next day and find an error and call them, and they have already sent us a letter telling us that we've messed up and this and that or the other. So, it's really quite amazing, and having access to the internet to check the status of students has just been such a time saver and life saver to people like myself that are there trying to make a living, you know, two or three dollars at a time when students come through the door or whatever.

There have been enough, in my opinion, classes available statewide. I've worn out two cars driving around the state, and I know other people that have, as well. When we go in to do a class, we always send a postcard

notifying all the licensees in the database on the internet and before that was available for five cents a name. The licensees know about seller training. Even the most remote areas have someone at some time going there once or twice a year. Most postcards that I see sent out - a lot of them were modeled after a postcard that I've done - and we always put the thing there that tells you that you are protected from violations and about the safe harbor and people just don't get or hear it or maybe the beer companies need to pay for the training. Maybe it needs to be mandatory. Who knows? I do think there's ways we could get more people coming to seller training classes.

One of the most gratifying things about seller training has been those times when we've gone out to train the volunteers and clubs and organizations because there we are reaching people that really are just consuming alcohol on a daily basis and know very very little about it. It's been very gratifying to have many of those people send back their son, daughter or husband or wife or whatever to hear the training.

Also, with this fetal alcohol issue, our program has been one that's mentioned fetal alcohol from day one. Since this discussion that's come up, and I've become familiar with Joye and Larry Camp and Jim Haire, we have been discussing it more and more in our classes, and I want to tell you a live example from a class last night. We spent about five minutes on this, and it was a class full of young girls I would say 19 to 26. At nine o'clock this morning, one of the young ladies called me because she wanted me to talk to her sister who was pregnant. So, I spent 15 minutes on the phone this morning with the sister of a woman who was in class last night. I believe that's one of the real values of seller training.

I think if you look back at the history, if I understand right, when seller training was passed by the legislature back in '86 or '87, whenever it was passed, one of the reasons was because statistics said people that work in bars and restaurants drink more than the public at large. I don't know if that still holds true or not, but at that time I remember getting information from the commission pointed that way. I would certainly say with the college age crowd, many people go work in places to have fun, then they find out all these other rules and things apply.

I wanted to say again, giving the certificates out at the class, the improvements that have been made since the certificates have been passed out and the professionalism and the customer service we are getting out of the seller training division is quite amazing, and I do hope you give them some more people because they deserve it.

Also, I wanted to say that I really hope that at some point you do make it mandatory, not just because we'd like to see more business, but because I really do believe that there is a real need all over the public for this. Some

states make you take a six-hour alcohol awareness class, like New Mexico, just to get a driver's license. I think that's something that Texas could desperately use based upon the level of information when people walk in the class. Invariably, the bar owners or the managers that have owned a place for years and years and years come in and say, "I know everything," and they are the ones who make 72 or 74 on the test. It's a great place to get information clarified.

One more recommendation. If you really want to lower the number of violations for selling to minors, I think the one thing that could really be beneficial on the driver's license, on the format when it became where the vertical license was issued with the picture at the bottom to identify minors really easily, Texas still didn't make it where those licenses expire on their 21st birthday. Many states do that, so it's still a question of when you are in a real busy place, a football game or whatever, the person still has to go read that driver's license. I would hope that from the commission you could make a recommendation to the DPS or someone that a minor license has a big red border around it and that the person has to come in within a week of their 21st birthday to get a new license. We are always going to have kids stealing licenses, using other people's license, whatever, but for those people that really have learning disabilities and the people that have a real visual perception problem and people that are getting up there in years and have trouble reading small numbers, I think something defining on that license saying this is one that is absolutely a no-no, with posters and that, would be a really great thing for the public to have.

Now I want to talk about a hole in the seller training process. Mr. Steen, I understand you are in the publishing business.

MR. STEEN: Not that I know about.

MS. MOORE: I thought that you were. Pardon me. I was given the wrong information. Maybe I just misperceived something here. I recently discovered that a former instructor of mine had taken my curriculum, rearranged the chapters, put the last chapter first, put a new cover sheet on it and submitted it to seller training and has been in business for a year operating on my curriculum. A client of mine called me from the class and read me this person's curriculum and they said, "Gloria, I think this is your curriculum. I've taken this class from you before. This other woman is using it and it says copyrighted by her on the front." I had that person bring me a copy of the curriculum. I have a copy of the curriculum and it is verbatim - okay? Now, under the open records act, I couldn't get at that curriculum because it was proprietary information, and that makes me wonder how many of the other 160 seller training schools out there are also using my information? Right now, in the seller training application, it says it is a penalty to give wrong information - you know, the same

standard language, but it's really not as clear as it might be when people apply for seller training. If they are applying for an original program, it needs to be an original program, and there should be penalties if they just lift somebody else's copy verbatim. In this particular instance, this person worked for me and I had e-mailed the entire curriculum and everything out, so the person didn't even have to retype it. The headlines, the fonts, everything was exactly the same. It was really quite a big shock to me to find this out, so my options are to go spend five to 20,000 dollars on a lawsuit, which I don't have, to get a judgment against a person who has no money. Meanwhile, you know, this is where I stand. I would hope that as you look at improving the seller training process that there be some mechanism made when we identify something like that that action can be taken and it also be clear to the person from the beginning that it's not right to go submit someone else's material as their own. Thank you for your time.

MR. STEEN: Thank you, Ms. Moore.

We had an additional person sign up. Mike Alexander?

MR. ALEXANDER: Thanks for letting me speak. I came in at the last moment. I've had a long ongoing problem with a little beer store next door to my house - Junior's Beer and Wine. It's actually not strictly alcohol-related but he's expanded his business to a big industrial ice business. He's trucking ice out all day long, 40 pound bags of ice to restaurants and clubs. I've been fighting this store for years. The city is fighting them. It's been very expensive in legal battles. The city finally ruled, "You've got to stop running a wholesale ice business from your beer store." He turned around and said, "Okay, all these truckloads of ice I'm shipping out, it's all now retail sales." The city is sitting back looking like chumps, basically. Of course, they are smarter than that. They are continuing to fight it. The lawyers are putting together appeals on that. I'm having to continue to fight this because I can't have an industrial business running next door to my house.

To top it all off, not too long ago, he got cited. It's a kegs to go. He got cited for an underage sale and the employee had drugs on him. It's a pretty serious offense, apparently. He took a real large fine in place of store closing, then promptly turned around and declared bankruptcy reorganization to push all these fines out of the way. I'm also a creditor in this issue because of the nuisance judgment I have against them. That option should not be available to a license holder. It should either be pay the fine, padlock your door. You shouldn't be able to declare bankruptcy reorganization and start all over again. It's just been one game after another with the store. I think the message to the store should be - and all stores - should be plain common sense, no games, compliance with all applicable codes, no matter what they are or no license.

This store's license comes up in a couple of weeks, and I think it's time to really consider whether this store should stay in operation at this location. It's nothing but a bunch of sheds in a paved over backyard of a house. He probably indicates on his application that he has CS-1 zoning, but really it's a grandfathered business from a long time ago. For a one year period, beer sales were allowed without CS-1 zoning and the store jumped on it and promptly that law went away for some reason. It's very suspicious in my opinion. Under today's codes, it's just laughable that a store like this could even exist at that location. With all these games we are playing, I'm going to be fighting them and the city is going to be fighting them for years. Stores like this, this particular store, can't just come into plain straightforward common sense compliance without playing games and costing everyone all these legal problems. They should have their license pulled I think. Since the license is coming up for renewal pretty soon, I think you should take a look at this particular incidence to see if it should be allowed to continue or at least order it to come into compliance with these issues. If you want information on what the city is doing, in the development office, Greg Gurnsey (sp) knows a lot about it and the city lawyer, Nancy Matrix (sp) is a contact that you can talk to on what the city is doing about this matter. That's all I had.

MR. STEEN: Thank you.

Before we move onto the executive session, Mr. Garza, do we have any kind of estimate on what a voluntary sign program on the FAS - do we have an estimate of the cost?

MR. GARZA: I think Ms. Fox may have some of those figures, Mr. Chairman. We've looked preliminarily into some of those costs.

MS. FOX: If we send out the decal, not the eight and a half by 11 sign, but the decal as a one-time event, it will cost approximately 20,000 dollars to on-premise locations. We have about 20,000 on-premise and about 19,000 off-premise. If you want to send them to both on and off, then you just need to double that figure to about 40,000.

MR. STEEN: We are looking at getting some organizations to share the expense?

MR. GARZA: It will be one of the items that we discuss when we meet with both industry groups as well with the other state agencies that we are inviting to the table.

MR. STEEN: I also want to mention, Mr. Haire, to thank you for your attachment to your comments. Those are good suggestions about good constructive things that we should consider in adopting a voluntary sign program. I hope you provided those to the staff.

MR. HAIRE: I did.

MR. STEEN: Thank you.

The commission will now go into a closed executive session to evaluate the performance of the administrator pursuant to Texas Government Code, §551.074(a)(1) and to consult with legal counsel regarding pending litigation pursuant to Texas Government Code, §551.071.

The commission convened in executive session at 2:55 p.m. and reconvened in open meeting at 4:35 p.m.

MR. STEEN: The commission meeting of August 23, 2002 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.

The meeting adjourned at 4:36 p.m.