



COMMISSION MEETING MINUTES
September 27, 2004

The Commissioners of the Texas Alcoholic Beverage Commission met in Regular Session on Monday, September 27, 2004, at the Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Suite 185, Austin, Texas.

PRESIDING: John T. Steen, Jr., Chairman

PRESENT: Gail Madden, Commissioner

STAFF PRESENT: Alan Steen, Administrator

- Glenda Baker, Assistant Chief of Enforcement
- Carolyn Beck, Public Information Officer,
Executive
- Tom Dickson, Lieutenant, Waco District Office
- Mitch Dill, Sergeant, Bryan Outpost
- Loretta Doty, Director, Human Resources
Division
- Shelby Eskew, Accountant, Business Services
Division
- David Ferrero, Captain, Austin District Office
- Jeannene Fox, Assistant Administrator
- Buck Fuller, Director, Compliance Division
- David Garza, Director, Homeland Security,
Executive
- Russell Gregorczyk, Internal Auditor
- Charles Jalufka, Lieutenant, Victoria District

Office
Renee Johnston, Executive Assistant,
Executive
Dexter Jones, Acting Director, Marketing
Practices, Executive
Charlie Kerr, Director, Business Services
Division
Wayne Murray, Compliance Officer, Austin
Compliance Office
Robert Saenz, Lieutenant, Austin District Office
Santos Saldaña, Program Administrator, Ports
of
Entry Section
James "Sam" Smelser, Chief of Enforcement
Rod Venner, Deputy Assistant Chief of
Enforcement
Gloria Villaseñor, Administrative Assistant,
Enforcement/Grants

GUESTS PRESENT:

Doug DuBois, Jr., Director of Membership and
Education, Texas Petroleum Marketers and
Convenience Store Association
Kyle Frazier
Alan Gray, Licensed Beverage Distributors, Inc
Frances Kurio, Representing Anheuser-Busch
Karen Latta, Policy Analyst, Sunset Advisory
Commission
Bill Levine, General Counsel, Gambrinus
Company
Bob Mann, Alcohol Safety Training
Fred Marosko, Texas Package Stores
Association
M. Jack Martin, Attorney at Law
Lindsay Meche, Representing Republic
Beverage
Christian Ninaud, Policy Analyst, Sunset
Advisory Commission
Jack Roberts
Robert Sparks, Executive Director, Licensed
Beverage Distributors, Inc.

Tom Spilman, Vice President, Wholesale Beer
Distributors of Texas
Frederic C. Warner, Jr., Consultant, Diageo
Randy Yarbrough, Wholesale Beer Distributors
of Texas

CALL TO ORDER

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

APPROVAL OF COMMISSION MEETING MINUTES OF AUGUST 16, 2004

Chairman Steen called for a motion to approve the TABC meeting minutes of August 16, 2004. **Commissioner Madden moved that the Commissioners approve the minutes of the August 16, 2004, meeting. Chairman Steen seconded the motion. The motion carried.**

ADMINISTRATOR'S REPORT

Chairman Steen called upon Administrator Alan Steen to provide the Administrator's Report. Administrator Steen discussed the following areas:

Fiscal Year 2004 Accomplishments

- TABC issued a total of 98,339 licenses and permits in FY 2004, which is 108.1% of TABC's goal in this area.
- TABC collected over \$208 million in fees and taxes, almost \$5 million more than last fiscal year.
- The Compliance Division conducted 86,254 inspections and other compliance activities.
- The Enforcement Division conducted 117,460 inspections.
- Statewide, TABC had a total of 101 new hires.
- TABC met or exceeded 8 of its 10 key performance measures. The two efficiency measures that were missed (Average Cost per License/Permit Processed and Average Cost per Compliance Activity) are due to the fact that TABC received supplemental Homeland Security funding as well as

received one time IT project costs that were not used in the original calculation of the efficiency measure targets.

Legislative Appropriations Request for 2006-2007

- TABC's Legislative Appropriations Request (LAR) for 2006-2007 has been completed; TABC presented the LAR at a budget hearing to the Legislative Budget Board and Governor's Office staff and to the Senate Finance Committee.

Human Resources Updates

- TABC is working with eStrategy Solutions to host an online New Employee Orientation for TABC employees.
- The Human Resources Information System (HRIS) should be implemented by the end of year.
- TABC is working with the Department of Public Safety (DPS) regarding how TABC may be able to utilize DPS' state-of-the-art training facilities around the state to facilitate training for TABC agents.

Sunset

- TABC's Sunset review is going well and is on target. Hearings will be held November 16-17 for public testimony and December 14-15 for the Sunset Advisory Commission's decisions. Commissioner Madden asked if times for these hearings have been set; **Administrator Steen stated that he would notify the Commissioners when details are known.** Administrator Steen expressed appreciation to Karen Latta and other Sunset staff for their assistance in the process.

Audits

- The Audit Committee meeting met earlier that day. The FY 2003 Internal Audit Recommendations and FY 2005 Audit Plan reports were discussed.

Other Activities

- Two press conferences were held on the Seller/Server Training Initiative in McAllen (August 18) and San Antonio (August 19).
- Staff participated in a tour of the Spoetzl Brewery in Shiner, Texas.

APPROVAL TO REQUEST ADMINISTRATOR SALARY INCREASE

Chairman Steen called upon Loretta Doty, Human Resources Director. Ms. Doty stated that Commissioner approval was necessary in order for TABC to submit documentation for the Legislative Appropriations Request to increase the Administrator's salary, should the Commissioners wish to raise the salary. Ms. Doty explained that before documentation could be submitted, the Commissioners must formally approve the request. Commissioner Madden stated that she and the Chairman strongly supported the request.

Chairman Steen called for a motion. Commissioner Madden moved that staff be instructed to draft a letter for Commissioner approval to the Governor's Office and the Legislative Budget Board requesting that the maximum salary range for the TABC Administrator be raised to \$110,000. Chairman Steen seconded the motion. The motion carried.

APPROVAL OF INTERNAL AUDIT REPORT ON ENFORCEMENT DIVISION

Assistant Administrator Jeannene Fox requested that the approval of the audit report be tabled until the October Commission meeting, as more time was needed for adequate review of the report.

Chairman Steen called for a motion. Commissioner Madden moved that the Commission table approval of the Internal Audit Report on the Enforcement Division until its next meeting. Chairman Steen seconded the motion. The motion carried.

STATUS REPORT ON FY 2003 INTERNAL AUDIT RECOMMENDATIONS

Chairman Steen called upon Russell Gregorczyk, TABC's Internal Auditor, to present the status report of the FY 2003 internal audit recommendations (Attachment 1).

Mr. Gregorczyk explained that three audit reports were issued in FY 2003, and the purpose of the status report was to evaluate the status of implementations of the recommendations made in those three reports. He stated that management had implemented most of the recommendations or was in process of implementing them, pending completion of the transformation project:

- 1) Internal Audit of Field Office License Processing. Ten recommendations have been implemented and eight recommendations are in progress, which will be fully implemented upon completion of the transformation project that is underway. The anticipated completion date of the transformation project is June of 2005.
- 2) Internal Audit of Planning and Budgeting Processes. All nine recommendations have been implemented.
- 3) Internal Audit of Compliance Department Headquarters Operations. The three recommendations made in the report have been implemented.

APPROVAL OF AUDIT PLAN FOR FY 2005

Mr. Gregorczyk reviewed the proposed audit plan for FY 2005 (Attachment 2). The following topics were recommended for auditing in FY 2005:

- Business Services Division – Accounting
- Enforcement Division – Field Operations
- Compliance Division – Field Operations
- Licensing Division – Headquarters Operations

Chairman Steen called for a motion. Commissioner Madden moved that the Commission approve the FY 2005 Audit Plan as presented. Chairman Steen seconded the motion. The motion carried.

Chairman Steen asked Mr. Gregorczyk if he could remain at the meeting until after the contract procedures presentation so that he could get Mr. Gregorczyk's feedback; Mr. Gregorczyk agreed.

FLEET MANAGEMENT, RADIO INSTALLATION, AND RENTAL CONTRACT UPDATES

Chairman Steen called upon Charlie Kerr, Director of Business Services, to provide updates on TABC's fleet management, radio installations, and leases (Attachment 3).

Fleet Management and Mobile Radio Update

Mr. Kerr reported that the Department of Public Safety (DPS) had graciously offered its radio shop staff to TABC at no labor charge to install and service TABC's law enforcement vehicle radios. TABC would still maintain one radio technician for emergency radio repairs. Mr. Kerr stated that in order to increase efficiency and timeliness, the agency intends to outsource its radio repair work, which is currently being performed in-house. Mr. Kerr clarified for Chairman Steen that the agency has one certified radio technician and another person that assists in the radio repairs; these two positions are housed at the warehouse and perform multiple warehouse duties.

Fiscal Stewardship/Lease Management

Mr. Kerr explained that TABC has the authority to enter into its own building leases, whereas most state agencies must have their building leases arranged through the Texas Building and Procurement Commission (TBPC). Mr. Kerr stated that this authority benefits TABC in several ways, such as time and monetary savings as well as the ability to locate lease space better suited to its operations. Most of the agency's office buildings have been in the same locations for a number of years. While many of the leases are renewals, Mr. Kerr explained that the agency always conducts market comparisons before renewing. TABC utilizes a state-prepared lease form provided by TBPC for most leases and utilizes a lease form from the General Services Administration for its ports of entry locations. Mr. Kerr briefly reviewed the chart (located in Attachment 3) on the agency's current lease locations.

Mr. Kerr stated that he did not consider TABC's lease management to be a high-risk area, noting that the agency possesses good controls over the area of contracts, including the recommended policy change to include the signatures of the General Counsel and Administrator for certain contracts.

APPROVAL OF TABC CONTRACT PROCEDURES

Mr. Kerr referred the Commissioners to the recommended contract administration policy statement (Attachment 4), stating that he would be writing more detailed procedures for TABC's contract process. The policy would require the addition of a signature line for the Administrator and General Counsel for contracts of \$100,000 or greater.

Chairman Steen asked Internal Auditor Russell Gregorczyk if he concurred with the \$100,000 threshold. Mr. Gregorczyk stated that the dollar threshold was not part of the recommendation; however, the recommendation was made that there be legal review of the lease contracts as well as awareness of the leases by the Administrator, including unusual circumstances in which there was a major change in the lease. Chairman Steen noted that under the recommended policy, Administrator Steen would sign for only two of the lease contracts, being that there were only two lease contracts that were \$100,000 or more. He asked Mr. Gregorczyk if he was comfortable with this. Mr. Gregorczyk replied affirmatively, stating that he had no issues with internal control. Mr. Kerr assured the Commissioners that the Administrator is made aware of any changes in lease amounts through a monthly report. In addition, the Administrator is required to electronically approve purchases over \$500, which would mean that he would be aware of almost every lease.

Chairman Steen called for a motion. Commissioner Madden moved that the Commissioners approve the proposed procedures for TABC's contract administration, Procedure Number 050580. Chairman Steen seconded the motion. The motion carried.

AUTOMATED CONFISCATED PROPERTY SYSTEM

Chairman Steen called upon Buck Fuller, Director of the Compliance Division, to discuss the new automated confiscated property system.

Mr. Fuller provided a demonstration of the automated confiscated property inventory system, which provides better tracking of alcoholic beverages and non-alcoholic beverage items that are seized or purchased as evidence by agents in the course of their duties. The system went "live" on September 1, 2004, allowing the electronic submission of the data and central management of the inventory.

TRAINEE CERTIFICATION VERIFICIATION DEMONSTRATION

Mr. Fuller provided a demonstration of the seller training certification inquiry system that is available through TABC's web page. The system allows access to an employee and employer to verify whether the employee has an active seller trainer certification. Mr. Fuller explained that staff receive a number of calls inquiring as to whether a person has an active certificate.

He noted that staff are attempting to educate retailers of the electronic option. Chairman Steen asked how this option is being communicated. Mr. Fuller replied that the communication has been made through the web page, training seminars, and agency newsletters. In fact, because of the communications, retailers provided input about the system that led to the removal of the permit number requirement, thus making the system more user-friendly. Chairman Steen asked how often the web page was utilized; Garry Sitz responded that it is TABC's most utilized web page on the website. Mr. Fuller also added that while callers are encouraged to utilize the site for the verification information, staff will accommodate the callers' needs.

TABC REGION RESTRUCTURE

Chairman Steen called upon Jeannene Fox, Assistant Administrator, to discuss the recent restructure of TABC's regions (Attachment 5).

Ms. Fox reported on TABC's realignment of its regions in the field that became effective September 1, 2004. Prior to the realignment, TABC had eight enforcement regions and four compliance regions, which overlapped in several locations. With the recent promotion of two captains and the retirement of one captain, staff took the opportunity to functionally realign the enforcement and compliance regions into five regions. Ms. Fox explained that the regions were staffed for enforcement based on population, the number of licensed premises, and square mile coverage. Compliance regions are staffed on estimated work hours per permit type. Ms. Fox stated that the realignment would result in better communication and consistency among the regions.

Commissioner Madden asked if the variance in the number of retail accounts and private clubs among the regions—noting the high number of private clubs in the Dallas region—was a result of the “wet/dry” issues; Ms. Fox stated that this was the case. Ms. Fox explained that the number of private clubs in each region was part of the determination for the number of compliance officers staffed in each region.

REGION 4 UPDATE

Chairman Steen called upon David Ferrero, Captain of Enforcement Region 4, to present the Region 4 update.

Captain Ferrero introduced Region 4 staff who were in attendance: Tom Dickson, Lieutenant, Waco office; Mitch Dill, Sergeant, Bryan Outpost office; Robert Saenz, Lieutenant, Austin office; Wayne Murray, Compliance Officer, Austin office; and Charlie Jalufka, Lieutenant, Victoria office. Captain Ferrero provided an overview on Region 4 (Attachment 6), reporting on enforcement and compliance activities for FY 2003-2004.

Chairman Steen and Commissioner Madden expressed appreciation to the Region 4 staff. **Both also expressed interest in receiving similar updates in the future from the other regions.**

ADOPTION OF AMENDMENT TO 16 TEXAS ADMINISTRATIVE CODE §45.90 GOVERNING ADVERTISING OF MALT BEVERAGES

Chairman Steen called upon Dexter Jones, Acting Director of Marketing Practices, to discuss the three rule amendments being proposed for Commission adoption.

Mr. Jones first discussed the amendment to rule 45.90(c)(2), governing the advertising of malt beverages (Attachment 7). He explained that under the prior rule, certain class designations historically associated with beer could not be used in advertising for malt liquor, and class designations commonly associated with malt liquor could not be used in advertisements for beer. Under Texas law, the distinction between beer and malt liquor is determined by alcoholic content, whereas class designations relate to the method of manufacture and are not necessarily indicative of alcoholic content.

Mr. Jones explained that the adopted amendment would allow manufacturers of malt beverages to use words like “porter,” “stout,” and “lager” to describe their product and would thus allow more accurate and complete information to be conveyed to consumers.

Mr. Jones reported that the following commented favorably on the rule as originally published: The Brewer’s Association of America, the National Association of Beverage Importers, Miller Brewing Company, and Wholesale Beer Distributors of Texas. Anheuser-Busch also commented favorably on the rule, but recommended amending the rule so that “ale” could be used as a descriptive term in advertising beer products. The

agency disagreed, however, citing that it would conflict with Texas law and could cause confusion among consumers and others as to the true nature of particular products.

Chairman Steen asked if there was anyone who wished to provide public comment on the amendment. Hearing none, **Chairman Steen entertained a motion. Commissioner Madden moved that the Texas Alcoholic Beverage Commission adopt the amendment to Section 45.90, governing advertising of malt beverages, without changes to the text as originally published in the July 23, 2004, edition of the *Texas Register*, 29 *Texas Register* 7028.**

ADOPTION OF AMENDMENTS TO 16 TEXAS ADMINISTRATIVE CODE §45.77 GOVERNING PERMISSIBLE AND PROHIBITED LANGUAGE ON MALT BEVERAGE LABELS

Mr. Jones explained that the same rationale for the amendment to §45.90 applied to the amendments to rule §45.77, governing permissible and prohibited language on malt beverage labels (Attachment 8).

Mr. Jones explained that the adopted amendment would allow manufacturers of malt beverages to use words like “porter,” “stout,” and “lager,” regardless of alcoholic content, and would thus allow more accurate and complete information to be conveyed to consumers.

Mr. Jones reported that the following commented favorably on the rule as originally published: The Brewer’s Association of America, the National Association of Beverage Importers, Miller Brewing Company, and Wholesale Beer Distributors of Texas. Anheuser-Busch also commented favorably on the rule, but recommended amending the rule so that “ale” could be used as a descriptive term on labels of beer products. Staff disagreed, however, citing that it would conflict with Texas law. After discussions with staff, Anheuser-Busch conceded.

Mr. Jones stated that the Gambrinus Company (representing the National Association of Beverage Importers) and Miller Brewing Company had also commented favorably on the rule, but were concerned that the words “easily viewed” would include a new standard and recommended replacement of the word “conspicuous”. Staff disagreed, however, noting that the words “easily viewed” meant the same as “conspicuous.” After discussions with staff, the Gambrinus Company and Miller Brewing

Company conceded, and there was no further opposition to the amendment as originally published with staff changes.

The Miller Brewing Company also suggested that the word “ale” be included in text under the amendment for rule 45.77(c). Staff disagreed as rule 45.77(a) states that the word “ale” shall be substituted for “malt liquor.” Following discussions with staff, the Miller Brewing Company conceded, and there was no further opposition to the amendment.

Chairman Steen stated that one person had registered to provide public comment on the amendment. He called upon Bill Levine, representing the National Association of Beverage Importers (NABI). Mr. Levine reiterated what Mr. Jones had presented earlier. He stated that staff confirmed with NABI that the amendment would not create a new standard for label review and that the words “conspicuous” and “easily viewed” had the same meaning. Mr. Levine stated that NABI was in favor of the amendment.

Chairman Steen called for a motion. Commissioner Madden moved that the Texas Alcoholic Beverage Commission adopt the amendments to Section 45.77, governing permissible and prohibited language on malt beverage labels, with changes to the text as originally published in the July 23, 2004, edition of the *Texas Register*, 29 *Texas Register* 7027.

ADOPTION OF AMENDMENT TO 16 TEXAS ADMINISTRATIVE CODE §45.117 GOVERNING THE PROVISION OF GOODS AND BENEFITS TO RETAILERS OF LIQUOR BY THEIR SUPPLIERS

Mr. Jones briefly discussed the amendment to rule 45.117, governing the provision of goods and benefits to retailers of liquor by their suppliers (Attachment 9). The amendment would raise the permitted level of expenditures that suppliers can make on advertising specialties from \$87 to \$101. Mr. Jones noted that this is within the limits allowed by statute and that no comments were received on the proposed amendment.

Chairman Steen asked if anyone wished to make comment on the amendment. Hearing none, he called for a motion. **Commissioner Madden moved that the Texas Alcoholic Beverage Commission adopt the amendment to Section 45.117, governing the provision of goods and benefits to retailers of liquor by their suppliers, without changes to the text as published in the August 6, 2004, edition of the *Texas Register*, 29 *Texas Register* 7615.**

PUBLIC COMMENT

Chairman Steen asked if anyone in the audience wished to make a statement at this time. No one expressed the desire to provide public comment.

NEXT MEETING

Chairman Steen announced that the next TABC meeting was scheduled for Monday, October 25, 2004.

ADJOURNMENT

Ms. Madden moved that the Texas Alcoholic Beverage Commission meeting be adjourned. Chairman Steen seconded the motion. The motion carried, and the meeting adjourned.