



QUARTERLY MEETING OF THE
MICHIGAN LIQUOR CONTROL COMMISSION

Held: Wednesday, December 7, 2011
Lansing District Office

Present: Andrew J. Deloney, Chairman
Teri L. Quimby, Commissioner
Donald B. Weatherspoon, Commissioner
Edward J. Gaffney, Commissioner
Colleen A. Pobur, Commissioner
Steve Robinson, Director of Finance Division
Sharon Martin, Director of Licensing Division
Julie Wendt, Director of Executive Services Division
Tom Hagan, Director of Enforcement Division
Andy Neumann, Director of Administrative Services Division
Tim Kovacik, Deputy Director of Executive Services Division
Barb Subastian, Regional Supervisor of Enforcement Division
Gerald Whalen, 1st Assistant Attorney General
Jean Allison, Administrative Services Division
Andrea Miller, Executive Services Division
Anita Fawcett, Public Information Officer

The meeting was called to order by Chairman Deloney at 10:33 a.m., noting that a quorum was present.

Moved by Commissioner Pobur, supported by Commissioner Gaffney, and unanimously carried, that the minutes of the Commission Meeting of September 21, 2011, be approved as written and presented.

The Commission considered the proposed Schedule of Commission Meetings for 2012, a copy of which will be posted in compliance with the Open Meetings Act, Act 257, PA 1976, as amended. Motion made by Chairman Deloney, supported by Commissioner Gaffney, to accept the Schedule of Commission Meetings for 2012 as written and presented, motion carried by unanimous vote.

Ms. Wendt reported on the Legislative activity between September, 2011 and November 18, 2011. Ms. Wendt stated that Senate Bill 331 repeals the 1.85% retail tax on spirits for off premises consumption and deletes Section 1205 of the Liquor Control Code which requires the Commission to collect the tax. She stated this bill was approved by the Governor, filed with the Secretary of State on October 11, 2011 and assigned Public Act 166 with an effective date of October 1, 2012.

Ms. Wendt advised that Senate Bill 502 creates a license for the on premises consumption of alcoholic liquor that the Commission may issue to the Governing Board of a Community College or University that operates an accredited culinary or hospitality program for activities that would further the college's or university's academic mission. This bill also allows the Commission to issue a license to a private entity that leases an outdoor stadium from Lake Michigan College. This bill has passed the House and the Senate and was presented to the Governor on December 6, 2011.

Ms. Wendt reported that Senate Bill 594 was introduced by Senators Walker, Booher, and Proos, and provides that a Small Wine Maker may have a leasehold interest in a retailer. She stated this bill has been referred to the Committee on Regulatory Reform.

Ms. Wendt advised that Senate Bill 856 was introduced by Senator Young on November 30, 2011 and amends Section 1114 and creates new Section 1116 which provides that an on-premises licensee located in a development district in a city with a population of 600,000 or more may sell alcoholic liquor between the hours of 2:00 A.M. and 4:00 A.M. if the licensee has obtained an extended hours permit from the Commission. There is a yearly permit fee of \$10,000 which is to be deposited in an extended hours permit fund created within the state treasury. The state treasury will expend money from this fund, upon appropriation, with 5% to the cities where the extended hours permits are located for administration costs; 85% to the police departments of cities where the extended hours permits are located for the purpose of enforcement of this section; and 10% to the Commission for the licensing and enforcement of this section. She stated that under this bill the applicant will also have to demonstrate that the licensee will have 1 security person for every 50 customers on the licensed premises; that the licensee will have security personnel at the licensed premises from 11:00 P.M. until 4:00 A.M.; and that the licensee will have 360-video surveillance on the licensed premises. This bill has been referred to the Committee on Regulatory Reform.

Ms. Wendt reported on House Bill 4061 which allows the sampling and consumption of beer, honey-based beer, cider, wine, or mead produced by home brewers on the licensed premises of micro brewers, brew pubs, or on-premises licensees. She stated that this bill was approved by the Governor, filed with the Secretary of State on November 10, 2011 and assigned Public Act 219 with immediate effect.

Ms. Wendt advised that House Bill 4926 was introduced by Representatives Pscholka, Tyler, and Nesbitt on September 8, 2011 and allows the Commission to issue a license to a private entity that leases an outdoor stadium from Lake Michigan College. She stated that the provisions of this bill were included in Senate Bill 502 which was presented to the Governor on December 6, 2011.

Ms. Wendt advised that House Bill 5010 was introduced by Representative Lund and provides that the Commission shall not require a proposed licensed establishment for a new SDD license to be a certain distance from an existing SDD licensed establishment. She stated this bill has been referred to the Regulatory Reform Committee.

Ms. Wendt advised that House Bill 5034 was introduced by Representatives Irwin, Geiss, Kandrevas, and Barnett on October 4, 2011 and prohibits an on-premises licensee from advertising or selling a glass of beer as a pint that is not at least 16 ounces of beer. She stated this bill has been referred to the Regulatory Reform Committee.

Ms. Wendt advised that House Bill 5084 was introduced by Representatives Horn, Foster, Bumstead, MacMaster, Jacobsen, Kowall, and Hughes on October 18, 2011 and provides that the Commission may issue an SDM license to a hotel for the sale of beer and wine for consumption off the premises. She stated this bill was referred to the Regulatory Reform Committee.

Ms. Wendt advised that House Bill 5087 was introduced by Representative O'Brien on October 11, 2011 and removes the barrel production limit for a brewer to sell its beer for on premises consumption at one brewery licensed location. She stated that this bill is scheduled to be taken up by the Regulatory Reform Committee meeting today.

Chairman Deloney asked Mr. Robinson what has been done in preparation for the 1.85% tax repeal contained in Public Act 166 effective October 1, 2012. Mr. Robinson advised that the price book calendar will be changed to adjust for this and that bulletins will be sent to the vendors and notices added to the next two price books sent to the retailers.

Mr. Kovacik reported on Hearings and Appeals Activity for September 2011 through November 2011. He advised that violations received are down slightly by 3%, or 77 violations, though violations submitted by MLCC enforcement are up by nearly 200 with year to date total violations of 2,237. Mr. Kovacik advised violation hearings held are essentially static, with a difference of only 3 hearings between 2010 and 2011; and Acknowledgments are up slightly by 4% or 53 orders. Mr. Kovacik advised total fines are down by 10%, or \$80,316.00; licensed establishments suspended are also static with a difference of 2 more licensed establishments suspended in the previous year; and revocation/terminations unless transferred are considerably down by 59% or 73 revocations. He reported that the average number of days from receipt of the violation report to Hearings & Appeals review and entry of the report, to the Attorney General's office for review and issuance of the complaint, to Hearings & Appeals scheduling of a hearing is 62.9 days, well below the section's 90 day target.

Mr. Neumann reported on Server Training for the year to date period ending in October 2011, advising there were 678 new files received, 308 extensions granted, 667 reminder letters sent, 174 files forwarded to hearings and appeals, and 36 hearings held for Server Training violations.

Mr. Neumann reported that several new printers were ordered, received and installed and that two classes were held on Microsoft Office Excel for twenty staff members. He advised that the proper software for the Licensing personnel to work with the new forms was installed and that over 24,000 files from Executive Services Division have been transferred from 3x5

diskettes to the hard drive. Mr. Neumann reported that there were 108 staff problems with computers or printers requiring assistance that were resolved.

Mr. Robinson reported on the October 2011 comparative schedule of distilled spirit sales. He advised this report shows an increase of 9,472 cases (or 1.5%) and \$2.7 million (or 3.3%) when comparing the sales that occurred in October 2011 with October 2010, and the year to date picture is exactly the same, since October is the first month of the new fiscal year. Mr. Robinson reported on preliminary spirit sales information for the year that ended September 30, 2011. He advised our preliminary information shows sales dollars of \$978.5 million and cases sold of 7.1 million for the period of October 1, 2010 through September 30, 2011. Mr. Robinson advised that this is an increase of \$38 million and over 230,000 cases (or the dollars are up 4% and the cases are up almost 3.5%). Mr. Robinson noted that these are preliminary numbers that may change as we balance out the year.

Mr. Robinson reported on unpaid returned checks through October 2011. He advised the first chart shows end of the month dollar balance for unpaid returned checks and the balance of returned checks at the end of October 2011 is \$82,706, which is lowest balance at the end of a month since November 2010. Mr. Robinson reported the second chart shows the dollar amounts of returned checks received and processed through our account each month. He advised the October 2011 amount of returned checks received was \$62,278 and this amount is the lowest monthly dollar amount of returned checks since October of 2010.

Mr. Robinson reported that to provide more insight into returned checks, he performed a detailed analysis of all of the checks that were returned during the months of August and September of 2011. He advised that during these two months a total of 137 checks were returned to the Commission with 68 checks in August and 69 checks in September. Mr. Robinson reported that of these 137 checks, 59 were written for more than one thousand dollars, with 57 of that number already being collected. He advised the average amount of time needed to collect these 57 checks was 10.9 days and that we have already collected 97% of the total dollar amount due to the Commission for the August and September returned checks. Mr. Robinson reported the dollar amount total was \$214,644 and that during August and September, one licensee had 5 returned checks, one licensee had 4 returned checks, and seven licensees had 3 checks.

Mr. Hagan reported on the Enforcement Division activity for October 2011. He advised the Enforcement Division completed 158 violations in August, up slightly from this time last year, however, year to date totals compared to the same time last year have increased by approximately 9.4% and joint violations submitted with other law enforcement agencies have been relatively low for 2011 as there are several ongoing investigations with local police departments at the present time that may result in future violations. Mr. Hagan reported complaints investigated year to date are up significantly from this time last year, but are down slightly when comparing October 2011 with October 2010. The increase in year to date figures continues to be a result of a focus by the investigators on complaint closure by working both independently and cooperatively to complete and close outstanding complaints. Mr.

Hagan advised that as a result of decoy operation stops at retail accounts, 8% of those licensed establishments contacted were cited as a result of the October controlled buy operations, and as can be seen from an examination of historical information, licensees are exhibiting a 92% compliance rate at the present time and a year to date total compliance rate of 87%. Mr. Hagan stated that nevertheless, a key issue is that 89% of the violations that did occur as a result of the controlled buy operations did so after the licensees or their representatives checked the decoy's identification. He stated that the high incident rate of selling to the under aged individual after a check of the identification highlights the continued need for oversight and continuous education. Mr. Hagan advised the Commission continues to provide that educational guidance to applicants and licensees through multiple resources to assist them with operational and compliance issues.

Mr. Hagan reported the Enforcement Division's license application investigations totaled 1,854 and the local agency contacts totaled 151 for year-to-date, and that total licensing and enforcement contacts by enforcement officer's year-to-date are 18,042 compared to 17,167 at this time last year.

Mr. Hagan reported the Enforcement Division's cooperative effort with multiple agencies to complete a series of public service announcements culminating in a video warning of the dangers of under-aged drinking and what we, as an agency, parents, teachers, licensees, schools and universities can do to prevent under-aged drinking is nearing completion. Additionally, he advised that training is nearing completion on the use of the standardized report writing template to meet the January 1, 2012 deadline for full implementation. This completes a major project to increase efficiency in the report writing process.

Mr. Hagan reported that presently, the Enforcement Division has been gathering information and planning strategies regarding a new type of gambling activity. Cyber cafes were first prevalent in unlicensed locations, but are now moving into licensed locations. Cyber cafes allow an individual to rent internet time to participate in online gambling and receive winnings at the establishment. Enforcement will be working closely with the assistant attorneys general staff on this new type of operation.

Finally, Mr. Hagan recounted a story of persistence and cooperative effort involving the Michigan Liquor Control Commission (MLCC), MLCC enforcement staff, numerous police agencies and the Attorney General's office. This has been a very long and drawn out enforcement operation highlighting the need for persistence. MLCC enforcement personnel received allegations of violations occurring at Pleasant Lake Resort in southwestern Lower Michigan in 2008. He advised with the support of my predecessor, an investigation began and with continued vigilance and attention by all parties to the process, culminated in a successful cooperative effort that served to protect the public.

In November 2008 the MLCC Enforcement Division, in conjunction with Cass County Sheriffs Department, Cass County Drug Enforcement Team, Cass County Prosecutors Office and Edwardsburg – Ontwa Township Police Dept. initiated an investigation into alleged illegal

activity including drug trafficking, prostitution, transfer ownership without Commission approval and numerous other MLCC violations at Pleasant Lake Resort in Edwardsburg. During the investigation, numerous enforcement personnel worked as part of the investigative team on behalf of the MLCC.

On April 22, 2009, MLCC enforcement investigators in conjunction with state, county and local law enforcement made contact at Pleasant Lake Resort. During that contact, evidence was collected and a six (6) month investigation was concluded. The investigation resulted in the submission of a violation report by a commission investigator documenting evidence of all of the allegations.

The Cass County Prosecutors Office requested a show cause hearing and obtained an emergency suspension of the liquor license at Pleasant Lake Resort based on the investigation and MLCC documentation that the licensee was a threat to the health, safety and welfare of the community.

The business was subsequently closed and MLCC enforcement continued to work with the Assistant Attorneys General and local authorities to secure additional evidence needed to complete the initial violation.

In October 2009, MLCC enforcement submitted a second violation and evidence of two alleged transfers of ownership without Commission approval. On December 28, 2009, the Hearing Commissioner issued an order revoking the liquor license in the event the business was not transferred within 180 days.

During the 180-day time period, an application was submitted to MLCC to transfer the licenses. The application was submitted by one of the previously discovered "hidden owners" who had been operating the licensed business during the initial investigation. The same investigator involved in investigating the alleged violations was assigned to conduct the preliminary investigation. His investigation documented the fact that the applicant was, in part, responsible for the activity at Pleasant Lake Resort and the request could not be recommended. Later, the applicant chose to request cancellation of that application. Ultimately, all requests for extension of the original revocation order were exhausted and on July 1, 2011, the revocation of the license was enforced.

Though this was a lengthy process, the operation was a success. It highlights the need for continued cooperation with county, state and local law enforcement and continued persistence. Additionally, it highlights the need for MLCC enforcement to monitor the process through to conclusion. It also highlights the importance of investigating hidden ownership violations. Quite often, once a licensee walks away and allows another individual to operate their establishment without oversight that is exactly when many of the illegal activities begin to occur.

Subsequently, MLCC Grand Rapids District Office has been contacted by various members of the Cass County community. Those individuals provided testimonials as to the negative impact the licensed business was having on their community and how happy they were that something was being done to stop the activities. Residents living near the establishment recounted that on the evening law enforcement officials made contact; they stood outside and applauded as they were hopeful the illegal activities were finally coming to an end.

Commissioner Pobur added to Mr. Hagan's story that this was her case and was a good learning experience for working with all the different entities. She noted that this case is a great example of the collaboration that took place to get this investigation completed. Commissioner Pobur stated that some licensees are being misled as to what is legal in their establishments, especially involving medical marijuana. She advised that if a licensee is confused over any issues involving the Liquor Control Code or administrative rules, please call the MLCC Enforcement Division or their local law enforcement agency for clarification.

Mrs. Martin reported on the month of October 2011 for Licensing Activity and stated in looking at yearly comparisons, transfer and other applications received are up 45% from 3067 to 5611. She advised that new retail licenses requested are down 22% from 660 to 539; applications authorized for investigation are down 13%; applications on the Administrative Licensing Dockets are up 23%; licensing application denials are down from 135 to 89; and licensing appeals requested are down from 108 to 26; licensing transactions processed are up 48% totaling 12,248; retail/non-retail new licenses issued are up 40% totaling 2139; requests for licenses to be placed in escrow are holding steady in the 500's and escrow extensions requests in the 300's; product registration approvals are down from 7345 to 5716; Emergency Suspension Orders for failure to provide proof of financial responsibility are up from 5267 to 5579; and Special Licenses issued to non-profit corporations are down slightly from 6485 to 6382.

Mrs. Martin reported on the October 2011 Licensing Unit totals - 797 pieces of mail were received; 14 files were reauthorized or sent for supplemental investigation; 285 files were submitted to the Commission for review; 208 files were determined incomplete for various reasons; 110 contract for license packages were mailed; 56 final inspections were processed; 264 licensing transactions were completed; 65 in-office waitings were completed; 15 files were sent back for additional information; 128 files were cancelled. She advised status calls received in the Licensing Units totaled 2039. Mrs. Martin stressed the importance of customers and the public utilizing the on-line status application tracking and advised that it is easy to use and available 24 hours a day on our website at www.michigan.gov/lcc.

Mrs. Martin also provided an update on the progress of the Licensing Division in issuing the various new permits available: AM Sunday Sales – 6018 issued, Beer and Wine Consumer Sampling – 533 issued, and Catering Permits – 116 issued.

Mrs. Martin wanted to stress how proud she was of the Licensing Division staff in meeting the on-going demands of changing licensing processes and procedures. She advised they are

working on a daily basis to change the structure of our process to simplify it in order to ensure that the Commission is providing a more clear and concise licensing process for our customers. Mrs. Martin advised the daily consent agenda process announced by Chairman Deloney at the September Quarterly meeting has been a huge success and has shortened the length of time for our licensee's to receive various permits and permissions. She noted there are several more changes on the horizon and she is confident that they will rise to the many new challenges ahead.

Commissioner Pobur wanted to thank the staff of the Commission and the Attorney General's office on a job well done. She advised she was very appreciative of their hard work.

Commissioner Quimby advised the last few months have been very busy looking at procedure and policy changes. She noted there has been a positive attitude towards the improvements.

Chairman Deloney advised changes are being made and more are coming, seemingly on a daily basis. He stated the Commission is approaching the changes with the idea that we have to adhere to the rules, but can simplify the process and have a predictable outcome. Chairman Deloney advised we have more complete minutes for our meetings, better relationships with the legislature, and open communications with the Department of Licensing and Regulatory Affairs. He noted the Licensing Improvement team has made great strides in changing the licensing process such as trying to put some of the responsibility for the process in the hands of the applicant. Chairman Deloney advised that some of the changes will not be popular and some people will not be happy with Commission's interpretation of the statutes. He noted that the way to change the statutes is through legislation.

Chairman Deloney announced the Commission will be filling the position of Business Manager. He advised this position will report directly to the Chairman and will make for a more effective and successful agency.

Moved by Chairman Deloney, supported by Commissioner Quimby, that the Quarterly meeting be adjourned at 11:28 a.m., motion carried by unanimous vote.

Andrew J. Deloney
Chairman

Anita Fawcett
Executive Services Division