

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

General Affairs Committee
November 17, 2008

[CONFIRMATION]

The Committee on General Affairs met at 10:30 a.m. on Monday, November 17, 2008, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on gubernatorial appointments. Senators present: Vickie McDonald, Chairperson; Russ Karpisek, Vice Chairperson; Merton "Cap" Dierks; Annette Dubas; Philip Erdman; Mike Friend; Ray Janssen; and Don Preister. Senators absent: None.
[CONFIRMATION]

SENATOR McDONALD: Well, I think we're a few minutes early, but I think we're going to get started since we have to be in session at 11:00. Welcome to the General Affairs Committee. I'm Senator Vickie McDonald, Chairperson of the committee. Committee members present are Senator Friend from Omaha; Senator Erdman from Bayard; Senator Cap Dierks from Ewing; and the Vice Chair is Senator Russ Karpisek from Wilber. Laurie Lage is my committee counsel. To my far left we have Matt Rathje, my committee clerk; Annette Dubas from Fullerton; Senator Ray Janssen from Nickerson. Don Preister is not here and I'm not sure he will be here in time, so. [CONFIRMATION]

SENATOR JANSSEN: He's around. [CONFIRMATION]

SENATOR McDONALD: He is, okay. Well, since we're getting started early, maybe he will be here in a few minutes. The page today is Blair Gay from Columbus. And we're going to hear today the gubernatorial appointment for the Nebraska Liquor Control Commission. The appointee is Robert Batt. He is a new appointee. We're first going to hear from Robert Batt, then we'll have testimony in support of Robert and then testimony in opposition. If you're planning on testifying, please use the sign-up sheet and give that to Matt. And if you're going to have copies of information, please have ten copies. Speak clearly into the microphone. Spell your name, say it, and spell your first and last name. Turn off anything that makes noise, telephones, beepers, anything of that sort. And I think first we'll start with the appointment of Robert Batt. Welcome.
[CONFIRMATION]

ROBERT BATT: Good morning. Thank you for seeing me today. My name is Robert Batt. I'm from Omaha, born and raised, lived there all my life. And this summer I had a little contact with the Governor and said there was an opening, I'd like to apply for the second district commission seat on the Nebraska Liquor Control Commission. A little bit about me, I was born and raised in Omaha. My family immigrated here 90 years ago and we've had...I'm with Nebraska Furniture Mart and have been all my life and about 40 years on the job. So I have learned a lot of experiences and expertise in that time that would help me in other things. Now, as I just turned 60, I'd like to do some other things. And this opportunity came up to make a difference in some of the things that I have seen, I thought that they needed a change and that I had the right skills sets. I'm also, right now, on the board of the Salvation Army so we're dealing a lot with people

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who are extremely disadvantaged and trying to help their lives, get them fed everyday. And so we have a lot of varied interests. I'm married. I have a wonderful family. Nebraska has been very good to me and to my whole family since we came here. I think I know I have the right skill sets to perform this task. I've been on the job since July, ran into a lot of controversies, handled every one of them, and don't shy away from things that are controversial. The state has a huge interest in what happens in the liquor business for a number of reasons. One is revenue, safety, health and welfare, etcetera. My priorities are, number one, and the reason I got into this, is underage drinking-high school kids drinking, going 100 miles an hour, killing themselves and don't understand the consequences of their action. And then being promoted by their peer group that, one case they made him prom king after a fatal accident. A fair taxation, very important. It's an important revenue stream. We collect over \$28 million in taxes by \$400,000 in fines every year for the state. We need to keep that revenue stream. Some of the licenses, I think, are too cheap and need to be increased so that people have a lot of interest in their investment. And one of the ways to do that is to have higher fees for obtaining liquor licenses. Like I said, there's about 5,600 different kinds of licenses in Nebraska. But I also think that there are too many liquor licenses and we need to cut it down and get back to running on population. Uniform quality approach, show everyone is treated equally before the Liquor Commission. When people come and see us, they are either getting a license or we're fining them, closing them down, or revoking or canceling their liquor license. We need a lot of continuity. The one thing is fortunate, we have a great team over at the Liquor Control Commission, not a lot of staff, it's very dedicated, very knowledgeable, and they've taught me a lot in the first few months that I've been there. The number one thing that I also see is, taking, teaching and taking personal and parental responsibility with people who are under age on why you shouldn't drink. They've got to look in the home. Seventy-five percent of all the alcohol that is consumed by teenagers comes from the home, either from the parent or another sibling, or it's shoplifted. So government can't do everything. We've got to start it at the home. But this takes executive, the legislative and the judicial all working together to get a good approach to make a change. We're running very well right now but I know that we can even do better, and I've learned a lot and I've gotten a lot of good guidance in this. So for today, I'm asking you to confirm my appointment for the next five and a half years to the State Liquor Control Commission. It's been interesting, it's a lot of fun, it's also a lot of work, but I knew that before I signed up. Anyway, thank you.

[CONFIRMATION]

SENATOR McDONALD: Okay, thank you, Mr. Batt. Are there any questions for Robert Batt? Don has...and welcome, Senator Preister, from Omaha. [CONFIRMATION]

SENATOR PREISTER: Thank you, Senator McDonald. And I apologize to you Chairman McDonald and the committee for being late, and to you, Mr. Batt, as well.

[CONFIRMATION]

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ROBERT BATT: Thank you. [CONFIRMATION]

SENATOR PREISTER: I have a copy of the Liquor Control Commission guidelines and may be catching you a little off guard, but I want to ask you a question relating to one of the responsibilities, if I could. It states that a liquor license may be issued to any qualified applicant if the commission finds the issuance of the license is or will be required by the present or future public convenience and necessity. And my question to you is, the issue of public convenience and necessity and what that would mean to you? [CONFIRMATION]

ROBERT BATT: Well, in issuing a liquor license it would be somewhat down in the pecking order of the license. There are some communities...you remember, we deal with all, even though I'm 2nd district, we deal with all 93 counties. Some are quite remote. Some are very concentrated like the bars on O Street. We look at all of those different things. Our basic premise when approving a liquor license is one...on the character and past reputation of the people, it's not only the owner, but also the manager. In some places there are too many liquor licenses in the neighborhood. That's why, when three...under the statute, three protestants or more sign a letter of protest, then we have a formal hearing to hear their concerns on the deal. So if somebody thinks there's too many in the place, under the statute, and we always, by statute, hold a hearing. Some places have no liquor available. So it's kind of a balancing act. [CONFIRMATION]

SENATOR PREISTER: And I can appreciate the challenge. Leave me...a couple of issues come to mind. Some are licenses that neighborhoods and neighbors have opposed in Omaha because of problems of those establishments and their concern. In addition to that concern, we have a tragedy that's continuing to happen in Whiteclay. [CONFIRMATION]

ROBERT BATT: Yes. [CONFIRMATION]

SENATOR PREISTER: I've been very involved in that for years, unsuccessfully. [CONFIRMATION]

ROBERT BATT: Right. [CONFIRMATION]

SENATOR PREISTER: We have an unincorporated village of between 14 and, at most, 20 people with four off-sale liquor licenses. An equivalent of over 4,000 cans of beer are sold every single day in Whiteclay. Now 14 people are not consuming that alcohol, obviously. [CONFIRMATION]

ROBERT BATT: Right. [CONFIRMATION]

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SENATOR PREISTER: Is it public convenience that we reissue...and the Liquor Control Commission, when one of those licenses came up, reissued that fourth license, I believe. [CONFIRMATION]

ROBERT BATT: We issued it to a new party. That was early on. I was familiar with Whiteclay... [CONFIRMATION]

ROBERT PREISTER: And you weren't there, in fairness to you. [CONFIRMATION]

ROBERT BATT: No, no, I was there for the last one but, I was there. I'll give you two examples. I was familiar with Whiteclay for many years and the tragedy of Native-American alcoholism. [CONFIRMATION]

SENATOR PREISTER: The unsolved murders, the alcoholism, the destruction to families. [CONFIRMATION]

ROBERT BATT: The murders, right. It's horrible. So now when they had this liquor license came up and the people who were, absolutely had no criminal history, etcetera...this was early on, and like I say, I'm learning. There was no reason under the law that we could deny it. And it was an existing license so this was not an expansion. But on the other hand, last month, or two months ago, we had a applicant come in who had a building in a town of Crookston, Nebraska, which is even closer to the South Dakota border and the residents of the community got together, all 97 percent of them, and signed a letter of protest. We had a formal hearing and found that he was trying to do the same thing of an off-sale beer license and it was brought to our attention by the village board and all the residents that this would be...that there was no purpose in this. And he was turned down, summarily three-nothing, and in short order. If we get back into...I'd have to ask Hobie on a couple of points, but when they used to have per capita liquor licenses, if the Legislature deems and writes a law that says you can only have so many per thousand in a certain area, then it will be enforced like that, whether they grandfather in old ones or not. But if we get back into only so many, then you'll see the number of licenses go down dramatically, and we will still be able to serve the people. I have a lot of lawyers who advise me. I am not a lawyer by the way, but we have a lot of lawyers who advise us and tell us and make sure that we're absolutely within, following the statutes of the state of Nebraska, and the rules of the Liquor Control Commission and that's very...I mean, that's number one, is not to break it. But in the future, if I have the opportunity and it's deemed legitimate, not just being autocratic by me, I would deny a Whiteclay liquor license again and try to cut it down from what I have seen and heard. [CONFIRMATION]

SENATOR PREISTER: I appreciate your comments, both in the one license that wasn't actually in Whiteclay, as well as the potential for looking carefully at future licenses. And I recognize that your responsibility is to carry out the tenets, the statutes, and the

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requirements for how and what you do with issuing those liquor license. My concern is, if we just keep letting things happen, even though we may be doing our job, we may be following statute, the lives continue to be lost, the problems exist, and we don't seem any closer to a resolution of those tragedies now than we were years ago when I started working on the issue, which frustrates me. Let me pose one more question to you.
[CONFIRMATION]

ROBERT BATT: Okay. [CONFIRMATION]

SENATOR PREISTER: And my intention is not to put you on the spot. Most of these hearings are rather perfunctory... [CONFIRMATION]

ROBERT BATT: Yes. [CONFIRMATION]

SENATOR PREISTER: ... and unfortunately, not enough goes into our confirmations, in my view. So I'm just doing my part. But I'm trying to get clarity and not to make things difficult for you. [CONFIRMATION]

ROBERT BATT: I'm fine. [CONFIRMATION]

SENATOR PREISTER: One of the requirements is also that there's adequate law enforcement and in Whiteclay there is no law enforcement. There is no legal place to drink alcohol in this...because they're all off-sale licenses. So there's no place to drink, there's no law enforcement, and that would certainly be one of the requirements of statute for denying a liquor license, would you agree with that? [CONFIRMATION]

ROBERT BATT: Yes. It's very dependant and it's a transient problem because it comes from South Dakota, it comes down to Nebraska, and we don't have it. I got to tell you when we did this off-sale beer license, there was no opposition that was recorded in the deal from the town, from anybody who was there. And I was pretty new at the time and I'm always learning, like we all do. Your education never stops. I got to tell you in a collateral piece, I've also made the motion and voted to remove...it's actually determined, is cancel, and in some cases, revoke, a great number of liquor licenses since I've been there. We have absolutely zero tolerance for people who break the law. I took a lot of people's livelihoods away from them because I removed their liquor license and banned them from the business, and that's a pretty severe punishment. We had a guy over, up in Thurston County, we just fined him \$5,600 or closed 56 days for repeated violations, and told him, anymore, and you're going to lose your license. We've tried to follow the guidelines, but some of these penalties we give out are pretty severe. Especially, we come in and...we had a winery in Nebraska City, we had several bars in Omaha, we said, my fellow commissioners and I said, we don't want you to have a liquor license any more. You're not following the law, you're not capable, and we say, you're out of business. And when we say, when we say you're revoked, that means it's

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forever. Now they can always appeal to the court, but we have pretty severe and instant punishment. And it's not...it's pretty severe, and I'm proud of what we do. So we just have to get better at it and if we have the right legislation and statutes to follow, I'll follow every one of them. [CONFIRMATION]

SENATOR PREISTER: And would you be interested in proposing some of those changes to the Legislature? [CONFIRMATION]

ROBERT BATT: Yes, and I already have. I've spoken with several senators and...on increasing the minor in possession law, and we're talking about restricting the number of liquor licenses. If it was legal, I think Whiteclay could be an alcohol free zone. I don't know if that's going to make the people who buy it just go further in to buy it, but there's certain places that...we can't move a problem from one neighborhood to another, that doesn't do any good. But I'd like to say one last thing, in talking about neighborhoods, we had a very difficult case that I got the second time around, it was called the Infinite Oil case. It started before I got there and they had a rehearing, but we listened to the neighbors. We absolutely scrutinized the application and found out the application was falsified. The applicant had falsified on his cases. It was three, or actually it was four stations in Omaha, and we just said, you may have...they got grandfathered on some others but I said, you do not meet our criteria. You are not within statute and we denied him 3-0 and we absolutely justified in the ruling. I do not approve every liquor license that comes up, otherwise you could have a machine do it. We really think quite long and hard about every one of them. But some people need a chance and some people have minor problems, and do it. But if you...this can go on and on with problems, but we try to cut it off and increase the punishment. You know, we have progressive punishment in fining and so it goes on and on for...as long, and then finally they do it wrong, and it's...we just declare it's all over. But I'm a group of three, not of one. Okay. [CONFIRMATION]

SENATOR PREISTER: I appreciate that. You're one that's here before me today. [CONFIRMATION]

ROBERT BATT: Oh, absolutely, and I'm willing...I'm taking...I have no problem with that. Accepting responsibility is something I learned from my grandmother a long time ago. She...you know, she taught...if somebody said, where did you go to school, my grandmother was Mrs. Blumkin, Rose Blumkin, and people say where did you go to school and I said Mrs. B. U. (Laughter) She gave me my post-graduate education in life. But, you know, serving, just like all the senators do, and a lot of people here, it's an honor and...but I'm not passive. I'm pretty active and I think I've made a difference. Not everyone agrees with you but that's the way it goes, and we're willing, I'm willing totally to carry out the responsibilities. And I probably am much harsher than some of the others because I see some of this for the first time. And by the way, one of the things I propose legislation that I see is, there is a complete lack of training of people who

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handle alcohol. Some people are absolutely, who have liquor licenses, are ignorant of the law and especially, when you get before them, we see compliance checks. Nebraska has a great system. A vertical license for a minor, a horizontal license for an...over 21. And when that kid comes in and shows you a license that says I'm 16 years old and I'm here to buy a beer, and the clerk looks at it, sees it, and knowing it's a vertical license, and still sells that individual, God help them when they come before us because that increases the severity of the punishments. And plus, I made the motion, which my commissioners accepted, we now have mandatory training for anyone who has any violation. They have to go through the certified training courses, and I think that everybody who handles liquor in the state, whether it's in a C-Store or in a restaurant, should have training certification. You know, liquor licenses are privileges, they're not rights. [CONFIRMATION]

SENATOR PREISTER: Mr. Batt, I appreciate your comments and in some summation, I would just offer to you, you said that we don't want to move the problem from one town dealing with Whiteclay to another. [CONFIRMATION]

ROBERT BATT: Right. [CONFIRMATION]

SENATOR PREISTER: I recognize that. Frank LaMere, who has been very active in this issue for years, when that comment is brought up said, but if we have a crack house in one neighborhood, we don't let it operate and use the excuse, we don't want it to just move somewhere else. We close down that crack house and if it moves somewhere else, we deal with it there too. [CONFIRMATION]

ROBERT BATT: I agree. What I really, really wish in seeing all of the tragedy that happens with alcohol, is the root cause of this problem is not Whiteclay, I don't think. The root cause is the generations of people who are, you know, they have access to it but it's the generations of alcoholism and inherited diseases that permeate the tribe. And I think that's a horrible tragedy. [CONFIRMATION]

SENATOR PREISTER: And I would add the hopelessness, the despair, the destruction of a culture, and we can go on and on. [CONFIRMATION]

ROBERT BATT: Oh, yeah. Yes. [CONFIRMATION]

SENATOR PREISTER: I just ask you to be sensitive, particularly in Whiteclay. But to neighborhoods who have concerns and where there are bad actors, and most bar owners are very responsible and do a very good job, and some training, I would agree, could help. But in those instances I ask that you would listen to the neighborhoods and some of the communities and their requests. [CONFIRMATION]

ROBERT BATT: Oh, and I do. And we take it all into perspective. And then I just give

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my best summation of the deal, and sometimes neighborhoods have brought up very, very good points, and we have listened. And I wish our zoning laws were better to keep businesses and homes separated from each other, but that's not the way Omaha is built or Lincoln or all the other, you know. But we not only worry about Omaha because that's where I'm from, but you know, we're in Crookston or we're...I talked to Senator Harms about Gering, Nebraska, and Scottsbluff area and the Grand Island...I mean, there's every, alcohol touches every one of our 93 counties. So it's not just Omaha, it's everywhere. And I hope we can get some good change brought forth.
[CONFIRMATION]

SENATOR PREISTER: Thank you. Senator McDonald. [CONFIRMATION]

SENATOR McDONALD: Thank you, Senator Preister. Any other questions for Robert Batt? Seeing none, thank you for...oh, I'm sorry. I'm sorry, I looked over you.
[CONFIRMATION]

SENATOR DUBAS: I just have a quick clarification question and I apologize for stepping out, so hopefully you didn't already answer this. But you did reference the need for maybe not as many liquor licenses, but...and by the same token you said, as long as they meet all the criteria, you... [CONFIRMATION]

ROBERT BATT: Well, that's under current statute. They meet the criteria, there's not a cap on licenses. And if you do it and you're zoned properly, and we don't think there's a lot of alcohol problems, every case is different. There's not a pat answer to the question. But if the Legislature deems that they'll put a cap on licenses, we would carry out the statute without question. I mean, it's not for us to decide on that point if the Legislature deems it so. I think it would be right. I don't think that everybody who has a liquor license today, and we see them every month, is capable of dealing with the responsibilities, whether getting into it with the police, and I've reprimanded several bar owners for fighting with police and not respecting their authority and fine them accordingly. And, you know, there's all kinds of issues, so. We have a lot of things to do and that's why we have hearings once a month. And it's a majority rules, two of...usually it's three-0, by the way. Because it's so clear-cut. I mean, we've had where they went in and they found a gambling operation in the back of the bar and he said, oh they were just there for show, and so gambling in bars is illegal. We've had people who refill liquor bottles. We've had them where they been, failed health inspections, and we took their licenses away, etcetera. In goes on and on. And it's...we just hope that they get the...I want the liquor industry to get the message that it's going to be as tough as it is. Not just as good as, but tougher than they're used to and that we're really progressive. And that way, we'll cut down on kids killing themselves and adults killing themselves and killing innocent people. That's, of course, the worst. [CONFIRMATION]

SENATOR DUBAS: Well, I appreciate the clarification. Thank you. [CONFIRMATION]

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ROBERT BATT: Okay. Good. [CONFIRMATION]

SENATOR McDONALD: Okay, Senator Erdman. [CONFIRMATION]

SENATOR ERDMAN: More of a lighthearted comment for you. (Laughter) From what your testimony sounds today, it sounds like the licensees in the state that break the law should be as afraid of you as the casinos are because it appears that when you go there you actually win money, according to your filings here. That you actually win money when you go to casinos. And so they probably don't look forward to seeing you coming through the door and hopefully, those licensees don't look forward to seeing you when they sit before the Commission. [CONFIRMATION]

ROBERT BATT: You're right. And I've got to tell you, I was visiting my daughter in Arizona, and we had a plane delay. So I went to...there's a casino by the airport. And I'm playing the nickel slot machine, put in six nickels, I won \$6,000. (Laughter) It was not a back-alley crap game, let me tell you. (Laughter) It was strictly...and my wife was there, my daughter, and they go, lucky, lucky. So I got 120,000 nickels, didn't come out that way, but whatever it is...you know something, if it's legal, it's fun, etcetera. But I thank you for being so...looking at...you know, I divulged everything in my accountability and disclosures forms, so, that's good. Thank you. [CONFIRMATION]

SENATOR McDONALD: Any other questions, seeing none. Thank you for your testimony. [CONFIRMATION]

ROBERT BATT: All right. Thank you, senators. [CONFIRMATION]

SENATOR McDONALD: We were going to open it up for support and to opposition. In the small amount of time that we have before we need to be on the floor, I'm going to ask how many of you are in support, and I'm seeing one. Anymore in support? Any in opposition? Okay. Any neutral? Seeing none, come forward and...do I see any, okay, all right. You would be our only testifier. [CONFIRMATION]

LEE POLIKOV: Well, Bob's certainly buying lunch today. (Laughter) [CONFIRMATION]

ROBERT BATT: I'll be on my own then. (Laughter) [CONFIRMATION]

LEE POLIKOV: This is...it's a pleasure. I'm Lee Polikov, P-o-l-i-k-o-v, Senator, and I'm the Sarpy County Attorney and I'm here today to act as a proponent for the confirmation of Bob Batt. I'd like...I have a short letter I'd like to read it into the record and certainly answer any questions. Senator McDonald, members of the committee, I want to thank you for the opportunity to appear today in behalf of Bob Batt as you consider his appointment to the Nebraska Liquor Control Commission. We all know the importance

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of this select position. It is a high profile position over a highly regulated industry and is consequently complex. I have known Bob for more than 35 years and I'm here to put on the record my knowledge and assurance of his qualifications. In confirming him as a commissioner, you will be adding a strong resource to the Liquor Control Commission, who is well versed in business, finance, and management. My career in law enforcement has spanned the same 35 years and now as I begin my tenth year as Sarpy County Attorney, I can attest to the values and principles that make Bob Batt the perfect appointment to a regulatory commission. I think there is simplicity in his foundational belief that violating a rule results in meaningful consequences. Bob is always well prepared and driven by a need for a quality result. He and I have spoken at great length about what can be done to address problems arising from alcohol sales and he fuses the knowledge of what makes business work, and the insight of problems faced in enforcement at the street level. In other words, as a business executive, he can also connect with the officers of the law. Naturally, much of our discussions have centered on underage drinking and the terrible result of drinking and driving. And he has been studying alternatives and plans, many with you and your fellow senators, about driver's license revocation, mandatory training for sellers of alcohol, and expanded options for the courts. He will add a great deal to the development and further the implementation of new and meaningful ideas. By confirming the appointment of Robert Batt to the Nebraska Liquor Control Commission, you will recognize the importance of the public-private partnership. You will set the perfect example of how government can tap into the valuable resources of business and the talents of the private citizen. Thank you for your time and consideration. [CONFIRMATION]

SENATOR McDONALD: Thank you, Lee. Any questions for Lee? Seeing none, thank you for your support. [CONFIRMATION]

LEE POLIKOV: Thank you very much. Appreciate it. [CONFIRMATION]

SENATOR McDONALD: Ask again, any others in support? Any opposition? Any neutral? This will close the hearing on the gubernatorial appointment of Robert Batt. [CONFIRMATION]

Chairperson

Committee Clerk