

**MINUTES
WV RACING COMMISSION
Tuesday, March 17, 2015
WV Lottery Conference Room**

The WV Racing Commission met on March 17, 2015 to conduct business and consider administrative matters. Roll call was taken and present was Commissioner Bill Phillips. Commissioner Greg McDermott was present via conference call. Counsel was represented by Kelli Talbott. Due to the absence of Chairman Jack Rossi, Commissioner Bill Phillips chaired the meeting.

Approval of February 17th minutes

The Commissioners and legal counsel received the minutes from the February 17th meeting prior to this meeting. Commissioner Phillips stated he had two corrections to be made to the February 17th minutes. The first correction was under the section for Charles Town to reduce racing days in 2015, the section where he was speaking doesn't really communicate what he was saying at the time. He basically said the Racing Commission should not receive requests just immediately following their approval of the calendar for the next year and a time should pass to see if the criteria in the law is being met before they talk to start reducing races. The second correction was after the Executive Session where Mr. Phillips commented the Commission has had this report, since there are two items mentioned in that section, the report regarding the incident of December 13th should be referenced. Motion was made by Mr. McDermott to approve the minutes with the comments noted by Mr. Phillips, seconded by Mr. Phillips. Motion passed.

**Executive Director's Report
John Myers**

John Myers stated he has been tracking the number of cancelled race days so far this year and there was another one on March 12th due to a light failure at the Charles Town facility and racing was cancelled after the second race.

The only thing that really came out of the Legislative Session at this point was a concurrent resolution between the House and the Senate Finance Groups to continue to study the racing industry, the Lottery industry, and the gaming industry.

The quarterly summary report of the FOIA's received shows 4 requests received for the month of March, in addition to the ones received in January and February.

A meeting was held by himself and Kelli Talbott with the Stewards to discuss the process for licensing people and how applicants are vetted, in particular if they have had a prior suspension or something of that nature, and the form that was approved at the last meeting and the adoption of that. The Stewards readily accepted that and are glad to have a little more detail in what they are looking at. They also discussed track ejections, the incident that occurred on December 13th, and the Thoroughbred Rule change that is upcoming, which also passed in this Legislative Session.

Technology needs – would like to move away from using faxes inside the organization and rather scan the document and send it by email. This is a much more reliable method.

As a follow up to selecting Truesdail Labs last year, Mr. Myers stated he would go to the Stewards and get their feedback. The Stewards provided a positive report on Truesdail Labs and the experience with them thus far.

Mr. Phillips stated in regards to the technology needs that it might be helpful if the briefing books the Commissioner's receive could be converted to a scanned document. Another suggestion was to at least get the agenda and all of the attachments to the agenda on the website so all interested parties have an opportunity to view those items.

Auditor's Report Becky Carnefix

Becky Carnefix stated the capital improvements update for the month included Charles Town submitted 1 request that encompassed 4 projects for reimbursement, and was paid a total of \$471,738.71. The detail of the projects paid and the amounts paid for each of the projects is included in the Commissioner's binders.

Supplemental purse awards claims for 4QFY14, covering race dates April 2014-June 2014, are in the process of being reviewed. 14 day letters requesting additional information for residency verification will be mailed out later this week or early next week. The projected payout date for those claims is early April.

A copy of the audit project schedule for FY'15 has been provided to the Commissioner's for their review.

Accountant's Report Joe Moore

Joe Moore stated total live racing handle decreased 22.8% compared to January, and decreased 7.3% YTD. Export handle decreased 32% compared to January and 18% YTD. Simulcast handle decreased 6% compared to January and 6% YTD. Total in-state handle has decreased 6.4% YTD.

Early in March the Racing Commission disbursed the track employee pension fund to each of the four tracks.

Legal Update, Attorney General's Office

Kelli Talbott stated the Supreme Court issued a decision in the Grove case and upheld the absolute insure rule and the punishment that was imposed on Mr. Grove for the Class 1 drug positive.

She has drafted the protocols to implement the recommendations of the Investigator. Those were given to Mr. Myers and he has conferred with the Stewards about them. Mr. Myers stated he asked the Stewards to draw out the locations of the out riders on the various lengths of the races and he has received those from Charles Town but is still waiting on Mountaineer's.

The Thoroughbred Rules did just pass the Legislature. She noted she has started looking at the RCI Model Rule to see if there are any items the Commission might want to consider for the 2016 rule making cycle. Due to having a June timetable for having to get rules out for public comment, the Commission has to think ahead and this could be put on the Commission's April agenda if it needs to be. WV is always behind because of the length of its rulemaking process. The rule that just passed the Legislature adopts version 7.0 of RCI's Uniform Classification Guidelines for Medications. RCI is now up to version 8.0. If the

Commission wants to keep its rules current, you may want to look at this item for 2016. RCI has also adopted a Model Rule regarding compounded medications and this has been a big issue and may be something the Commission wants to consider as well for 2016. The pari mutuel wagering law, that has not been gotten into for a couple of years, may have some suggested changes from Charles Town and the horsemen. She believes going to the Legislature more frequently with more incremental changes actually does better in front the Legislature versus going before them with a complete re-write.

A response has been filed in the Circuit Court in Kanawha County in the Roger White lawsuit regarding the training track funds.

Mr. Phillips commented he thinks the Commission should stay current with the RCI process and the approach towards the Legislature that Ms. Talbott suggested seems to also make sense.

Approval of effective date for modified Thoroughbred Rules

Kelli Talbott stated now that the Thoroughbred Rule amendments have passed the Legislature and the Governor signed the Bill, these rules have to be "final filed" with the Secretary of State and the Commission has to attach an effective date to the Rules. The Commission gets to choose what effective date they want. It can be up to 90 days from the date the Rules are physically filed in the Secretary of State's Office. She still needs to get Secretary Kiss' signature to file the Rules but the Commission needs to set an effective date. In the past, the Commission has chosen 90 days from filing and that has allowed for adequate preparation by all those affected by the rule changes. In this case, there are a few things folks may want to have some time to prepare for. She would recommend doing a 90 days from filing, which would put the effective date in June sometime. Mr. Myers asked what is the specific length of time the rulings from medication violations have to stay up on the website? Ms. Talbott replied the rule doesn't really say, the Commission adopted the model rule and it just says that the medication violations will be posted. Mr. Phillips stated it would seem to him that once they are up on the website they would stay up. Mr. McDermott stated the Commission has always worked with the 90 day time frame and has found that time frame to be the most efficient and thinks the 90 day time frame suggested by Ms. Talbott is appropriate. Motion was made by Mr. McDermott to set the effective date 90 days from filing, seconded by Mr. Phillips. Motion passed.

Mr. Phillips stated that Ms. Talbott outlined several items that there needs to be some education on to be sure everyone knows where we are and how the point system works, and so forth. He believes it was at the August meeting that he suggested having a seminar and he again is suggesting having an educational seminar, not only for staff but also for the people impacted by these rules so they can understand what it is they need to do.

Mountaineer request to conduct Mystery Voucher promotion

Rosemary Williams stated this is a promotion that has been conducted in the past in which they send out a number of mystery vouchers from their database and those vouchers are then brought in and redeemed in the pari mutuel machines. This request is for 47,838 vouchers to be sent, ranging in value from \$5-\$10,000, and will be conducted on May 2nd and May 3rd. Motion was made by Mr. McDermott to approve the promotion, seconded by Mr. Phillips. Motion passed.

**Capital Improvement Request – Mountaineer Casino, Racetrack and Resort - \$5,352.85
for replacement tables in the Man O War room**

Becky Carnefix stated this request is to replace twenty-five tables in the Man O War room and will complete the renovations of the lower tier of the Man O War and box seat area. She has reviewed the request and recommends it for approval. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

**Capital Improvement Request – Mountaineer Casino, Racetrack and Resort - \$6,521.32
for upgrades to the paddock viewing area**

Becky Carnefix stated this request is to upgrade the outdoor paddock viewing area and will include repairs to the fence in this area and installing a green area. She has reviewed the request and recommends it for approval. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

**Capital Improvement Request – Hollywood Casino at Charles Town Races - \$2,627.11
equipment for high definition clean feed (uplink) to TVG network**

Becky Carnefix stated this request is for the equipment for the HD clean feed (uplink) to the TVG network. She has reviewed the request and recommends it for approval. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

**Charles Town request for Commission to reconsider the tabling of their request to
reduce racing days until the May meeting and to place on the April agenda**

John Myers stated at the meeting last month, this request was presented by Charles Town and due to lack of information the Commission tabled that request back to the month of May. After the meeting, he spoke with representatives from the track that explained to him by moving it back two months it would make it even more difficult to reschedule days, if in fact there was not an approval to reduce those days. Therefore, Charles Town is asking the Commission to table this request one month until the month of April. Mr. Myers added he has received a request from the CTHBPA for the Commission to reconsider this, and in addition to moving it to April, to consider having a special meeting to give this consideration and have time to do the rescheduling, if in fact that is necessary.

Mr. Phillips stated he made the motion to table and he doesn't think it was really for the lack of information but was driven from the fact that in December the Commission had approved the calendar of 220 days, as required by law, and in January received a request to begin reducing those days. His concern then, and his concern now, is that the Code says there are certain criteria to use to reduce racing days and we just immediately start talking about reducing days. He feels this is saying to the Code and to the Legislature that we don't put a lot of credence in what it says by doing this. He has pushed for the reduction in racing days and is very much concerned about the adequacy of purses, and that's what this is all about, among other things. However, these are still the same concerns he has today in regards to tabling the issue.

Mr. McDermott stated that Mr. Phillips clearly expressed some important and valid concerns. One of his and Mr. Phillips' main concerns is if the Commission has statutory permission to do what they are being requested to do. Can the Commission consider setting

this for a special meeting to offer everybody the opportunity to express their concerns relative to the issue? Mr. Phillips replied he would have no problem with setting a special meeting but he also thinks, in addition to the information that has been received from the track and the HBPA, maybe the Commission's auditor and accountant should take a look at this in relation to purses, etc. The Commission should make certain they have done some internal analysis of this information themselves rather than just taking the request and looking at the numbers.

Erich Zimny, Charles Town, stated they have had dialogue with the Commission and had spoken with the horsemen before and came to an agreement of 193 days. They submitted a 220 day calendar and then shortly thereafter submitted a request for a reduction of days because that's what the law and Code required. They are of a very strong opinion that one of the reasons in the Code is a shortage of thoroughbred horses to fill 220 days. They believe that is present and a very real thing. They do not see any way they can fill 220 race days with the number of horses at their disposal. Purses are also an issue, however, that is not something in Code. Could it impact the number of horsemen that leave Charles Town because the purses have decreased and create an even greater shortage in the number of horses? Yes, that is very reasonable.

Phil Reale, CTHBPA, stated 193 race days is a reasonable number of days to expect as being able to accommodate this year. Currently the CTHBPA believes there is sufficient number of horses to run the number of races that have been agreed to between the track and the HBPA. There could be speculation that when summer and fall arrive if there are inadequate purse funds and competition from other tracks in the area that there could be a reduction in racing stock. Given what has happened thus far this year with cancellations, there is reason to believe they might be able to construct the justification the Commission would need for a reduction in the number of racing days.

Mr. Phillips stated he is not opposed to a special meeting for this issue to really go over this and the other concerns he has. Motion was made by Mr. McDermott to take this issue off the table and the issue be scheduled for a special meeting, seconded by Mr. Phillips. Motion passed.

Nelson Robinson, Mountaineer, stated the issue of racing days is going to be an issue at Mountaineer Racetrack as well. Mountaineer management and the HBPA had a proposal at the Legislature to reduce the days from 210 to 193 and the Charles Town management and HBPA didn't want to get involved with that statutory change. But, if you are going to hold a special meeting based upon what can and cannot be done according to the statute, Mountaineer should be included in that special meeting or discussion also.

Charles Town guaranteed \$100,000 pick four on the April 18, 2015 race card (Charles Town Classic)

John Myers stated this is a request to have a pick 4 bet on the Charles Town Classic this year. Should there not be wagers sufficient to cover the \$100,000, the track is guaranteeing the payout. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Charles Town request to modify racing calendar to make up days cancelled for inclement weather

Mr. Phillips stated it seems to him this would be a matter that would be taken up in the special meeting. Mr. McDermott agreed.

Erich Zimny stated with the special meeting being held in April, one of the days they requested to be put on the calendar was April 24th and it is already in the condition book so there is a little bit of a time constraint there if their request is not granted. Mr. Phillips stated the regular meeting will be the third Tuesday in April and he would think the special meeting would be held before then so they should be ok as far as timing. Mr. Zimny stated the April condition book has already been printed and the May one will be printed around April 15th or 16th. Mr. Zimny then inquired if it would be decided at the special meeting to make up those days? Kelli Talbott stated the Commission can take a vote at a special meeting the same as they can at a regular meeting.

Joe Funkhouser, Board member CTHBPA, stated part of this issue would be more appropriate for the special meeting, however, they have agreed with management to go to 8 races per day instead of 9 to prevent cutting purses anymore and to preserve the current purse structure. Once they added these makeup days to the calendar, Charles Town added a 9th race per day to their cards and they feel there should be as much flexibility as possible but they are very concerned with the adequacy of the purse funds.

Mr. McDermott stated the Commission has indicated they want to schedule a special meeting on the subject that encompasses this agenda item so why would this item need to be considered right now? Mr. Zimny responded the Code requires them to make these days up. Mr. McDermott asked if the special meeting was held in 10 days what kind of a problem would that present for them? Mr. Zimny replied it would present a problem for the April day but would not for the May days. Mr. McDermott asked when would the special meeting need to occur so as to not be problematic for the April 24th date? Mr. Zimny replied for the April date it's just timing because the book for April has already gone to the printer and that date is already in the condition books. Mr. McDermott again asked why this discussion can't be a part of the special meeting they are contemplating? Mr. Zimny replied it could be if that's what the Commission wants.

Public Comments

Carol Holden, WV Breeder's Classics, stated she understands all of the problems in the industry but she brought the Commission some articles with some positive things about the breeding industry and the Breeder's Classics. For example, the top 15 horses in the Mid-Atlantic area were chosen and 4 of those were WV breds and 3 of them were major Breeder's Classics winners. She just wanted to point out some positive things about the industry.

Next meeting – tentatively April 21, 2015

The Commission will come up with a date for the special meeting as soon as possible. The next regular meeting is scheduled for April 21, 2015.

Adjournment

Motion was made by Mr. McDermott to adjourn, seconded by Mr. Phillips. Meeting adjourned.