

MINUTES
WV RACING COMMISSION
Tuesday, February 17, 2015
WV Lottery Conference Room

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

Approval of January 13th minutes

The Commissioners and legal counsel received the minutes from the January 13th meeting prior to this meeting. Motion was made by Mr. McDermott to approve the minutes, seconded by Mr. Phillips. Motion passed.

Executive Director's Report
John Myers

John Myers stated there have been five weather related race cancellations at Charles Town and six if you count the one where the lights and UPS system did not work correctly. Wheeling cancelled a day and a half of racing last week but they are going to reschedule and try to make those up over the next week.

He has been trying to schedule the meeting the Commissioner's asked him to schedule at January's meeting. There have been issues with getting it scheduled prior to the March Commission meeting. He would like some input from the Commissioner's on the scheduling of that meeting.

A budget has been submitted and presented to the two Finance Committees. The budget submitted this year is basically the same as the previous year. There were no questions from either of the Finance Committees about the budget. Motion was made by Mr. McDermott to approve the budget, seconded by Mr. Phillips. Motion passed.

A summary of the outstanding bills that are currently at the Legislature that would affect the Racing Commission is as follows: HB 2575 is to reduce the number of racing days and is being sponsored by the folks at Mountaineer and the HBPA at Mountaineer. Most of this is clarification and puts numbers that are spelled out into words into dollar format but the key part is allowing race days be decreased to 185 days. HB 2650 is a bill sponsored by folks like Sam Burdette and is a buyout for dog owners to stop dog racing in the State of West Virginia. SB 434 is the mate to the HB reducing the number of race days. SB 265 is changing how money flows from the State Excess Lottery Fund to the WV Infrastructure Fund. HB 2190 allows an increase in the number of slot machines that can be in the "mom and pop" taverns from 5 to 7. HB 2208 allows the local County Commissions some authority in setting smoking inside facilities.

Auditor's Report & Accountant's Report

John Myers stated both reports are included in the Commissioner's binders. He added that last week the Development Fund payouts on both the dogs and the horses were completed.

The Auditor has approved reimbursement to Charles Town for one request that was for eight different projects totaling \$389,815.98. These were previously approved projects by the Commission. Detail of the projects reimbursed is included in the Commissioner's binders.

Total payout for the Thoroughbred Development Fund was \$6,607,016.63. \$5,299,988.75 was paid to Charles Town and \$1,307,027.88 was paid to Mountaineer. Breeders at Charles Town received 21.98%, owners at Charles Town received 8.81%, and sire owners at Charles Town received 8.64%. Breeders at Mountaineer received 53.68%, owners at Mountaineer received 22.08%, and sire owners at Mountaineer received the capped amount of 35%.

Legal Update – Attorney General's Office

Kelli Talbott stated the Thoroughbred Rule is pending in the Legislature. The amendments that would adopt the multiple point violators system is the major amendment. The bill containing that Rule was introduced on the Senate side first and got through that side several weeks ago. The House side had a minor amendment in House Finance to basically correct an omission in the wording that was copied from the RCI model rule. It is making progress in the House, however.

There is an ejection hearing scheduled for Eric Levengood on March 5th. He is the gentleman the Commission gave a permit to several months ago that had a felony record but has been ejected from Charles Town racetrack.

Form for structured review of request for occupational permit

Kelli Talbott stated she provided the Commissioner's with a memo that outlined some of the history on this. Basically it was centered around some work that she and the Commission's former Chief Investigator did to try and come up with more structure for the process and the information that comes in front of the Commission when permit holders have to come directly in front of the Commission and the Commission has to consider whether they are issued a permit or not. Largely it centers around the background checks that are conducted and the records that are gathered in connection with that, making sure the Commission has all of that information and a summary of it. They developed a form that follows certain aspects of the Thoroughbred Rule with regard to the factors the Commission has to consider in whether someone who has a criminal record receives a permit. She is proposing the Commission adopt the form that she and the former Chief Investigator worked on some time ago and enhance the process the Commission goes through to approve these individuals. John Myers stated that maybe he and Ms. Talbott should work together on a process to bring back to the Commissioner's on this. He fully supports Ms. Talbott and this form, but thinks they need to work on the details of the process first. Mr. McDermott stated he wholeheartedly favors every recommendation Ms. Talbott made in her memo and he thinks some of her recommendations would go a long way in making the Commission feel better about this process. Mr. Phillips stated he agrees with that and then asked what happens now since there currently is not a process with the background checks Mr. Myers receives in his office? Mr. Myers replied in the past the review has been done in office and those are then brought before the Commission in

the form of a recommendation written by the Stewards explaining what steps the potential permit holder has taken to remedy the issue at hand. Mr. Phillips stated he agrees with Mr. McDermott and this is an excellent recommendation and does not see any reason in delaying taking action on it. Motion was made by Mr. Phillips to adopt the procedures outlined in the informational memorandum and continue to move forward, seconded by Mr. McDermott. Motion passed.

Capital Improvement Request – Mountaineer Casino, Racetrack and Resort - \$1,706.60 for new mattresses and box springs in the groom's quarters

Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

Mountaineer Casino, Racetrack and Resort request for approval of 2015 Stakes Race Schedule

Motion was made by Mr. McDermott to approve the request, seconded by Mr. Phillips. Motion passed.

Charles Town request to allow mobile wagering within the tracks confined network

John Myers stated this is an app that allows patrons to use their cell phones sitting at a seat inside Charles Town's restaurants or grandstands and will allow them to place a wager using their Player Card. It's similar to what they have at Mountaineer but thinks using the cell phone is a little bit different than what is there. There have been some concerns about this only being used inside the Charles Town facility. We have been guaranteed by Charles Town that it will be used inside their facility only. Mr. Myers stated he would recommend approving this on a 30 or 60 day test and if it works like it's expected, then the Commission can go back and make it a permanent change. Mr. Phillips asked if this is only limited to placing a bet at the Charles Town track or would it be available at any track across the country like the advanced deposit wagering does? Mr. Myers replied the way he understands it is that it will only work inside the Charles Town facility. Mr. Phillips asked if only for the Charles Town track? Mr. Myers replied yes. Erich Zimny, Charles Town, stated it would essentially be turning your cell phone into a san automatic teller wagering machine that you would be able to bet on any track around the country, including Charles Town. However, you will not be able to place a wager outside of the Charles Town building. The IT folks at Charles Town are aware of the limitations and have assured Charles Town they are pretty confident the wagering will be able to be limited to within the building and to the apron of the racetrack. Chairman Rossi asked Mr. Zimny if they could do this on a 60 day trial basis and if there are no instances then the Commission will approve it? Mr. Zimny replied yes, they would be fine with that. Mr. Phillips stated he thinks this makes a significant point, and that is the Commission needs to be actively pursuing advanced deposit wagering since it is going on all over the country and the people of West Virginia should be benefitting from it. Chairman Rossi stated he thinks this is a good first step. Mr. Phillips stated we just need to be more actively pursuing all revenue opportunities. Motion was made by Mr. Phillips to approve this request but he doesn't think you could do it on a trial basis due to not being able to figure out if there were instances or not. Chairman Rossi replied he thinks it could be figured out and he believes Mountaineer could tell you they could figure it out and he feels

we should do this for 60 or 90 days and see what happens. Motion was re-made by Mr. Phillips to approve this request for a 60 day period, seconded by Mr. McDermott. Motion passed.

Capital Improvement Request – Hollywood Casino at Charles Town Races - \$27,049.94 for UPS Battery System for Track Lights

John Myers stated this is similar to a server room in a business that takes a battery backup system that provides power to that server room until a generator actually kicks in. The UPS battery system makes sure there isn't a delay in the power going off and the generator starting. Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

Approval of 2015 Annual Report

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Charles Town request to reduce racing days in 2015

John Myers stated this request was received in December, however, there were some issues with the notice that went out and a few other things. A response from the HBPA has been received and has been provided to the Commissioner's for their review. A letter was received from Mr. Funkhouser stating he doesn't object to the reduction but he doesn't agree this is a result from the lack of Thoroughbred horses. Randy Funkhouser stated there is not a lack of Thoroughbred horses and it is rare to find a race with only 7 or 8 horses. Lack of purse monies or shortage of purse monies, however, they do agree with. Erich Zimny stated the number of horses was around 8 last year and that was the lowest number of horses they've had in years and the reason it was still 8 horses per race is because they ran a limited number of days vs. the 220 or 230 races they've run in the past. Mr. Phillips stated he favors reducing racing days, particularly because the market is changing and he wants to protect the purses for all concerned. He doesn't think requests to reduce days should be sent until the Code criteria are met. He is bothered that we approve a racing calendar for the coming year and almost immediately are asked to reduce the days. He thinks it might be appropriate to table this request until the May meeting, rather than just start reducing races. Mr. Phillips made the motion to table this issue until the May meeting, seconded by Mr. McDermott. Motion passed.

Executive session – Discussion of report regarding incident on 12/13/14 at Charles Town. Also, discussion with attorney regarding lawsuit, Roger White vs. WVRC

Motion was made by Mr. McDermott to go into Executive Session, seconded by Mr. Phillips. Motion passed.

Motion was made by Mr. McDermott to come out of Executive Session, seconded by Mr. Phillips. Motion passed.

Mr. Phillips commented the Commission has had this report regarding the incident on 12/13/14 at Charles Town since January 16th and after lengthy discussion today amongst the

Commissioner's in Executive Session, he made the motion to adopt the recommendations of the Investigator, secondly expedite the drafting of protocols based upon the recommendations of the Investigator and any others that would appropriately be suggested by staff or the Commissioner's and that a special meeting be convened as soon as possible once those protocols are ready for review, and the protocols for adoption be put in place not only at Charles Town but also at Mountaineer as well. Motion was seconded by Mr. McDermott. Motion passed.

Mr. Phillips stated he believes these recommendations should be posted on the WVRC website not later than close of business today.

Public Comments

Mike Vales, Horseman Mountaineer Park, stated he would like to talk about the 2015 schedule at Mountaineer Park coming up. He gave a proposal to Mountaineer management, the HBPA and to the WVRC. They had a subsequent meeting last Friday and in that meeting he was told they were only running 185 days and it could be less. What bothered him the most is that it "could be less." At the same time, they are going back to 9 races and the Stakes program is too high. Why can't they reduce the Stakes program? The proposal he has given is based on the Order from the Commission last August. He has not received one proposal to run 210 days. He is here today to ask Mountaineer for their 210 day proposal. Mr. Phillips asked if the Commission did not already approve the statutorily required calendar for 2015 for Mountaineer a couple of meetings ago? Chairman Rossi replied yes they did. Mr. Phillips added the Commission has had no request from Mountaineer to reduce from the statutorily required number of days at this point, is that correct? Chairman Rossi replied the Commission does not have any requests at this time. Mike Vales stated they may be going down the same path as last year and may not even run into November with what is being proposed with 9 races and the purses not being readjusted and a cap of \$80,000. There's no way there is going to be enough funds available in the purse fund to race 210 days with this proposal. Chairman Rossi stated the Commission has approved the statutory set amount and there are no other requests at this time so there's really nothing else they can do about it at this time. Mr. Phillips stated he agrees and added he would encourage the HBPA and Mountaineer to find a way to work this out as soon as possible.

Next meeting – tentatively March 17, 2015

Adjournment

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