

MINUTES
WV RACING COMMISSION
Tuesday, July 23, 2013
WV Lottery Conference Room

The WV Racing Commission met on July 23, 2013 to conduct business and consider administrative matters. Roll call was taken and present were Commissioner Bill Phillips and Commissioner Greg McDermott with Chairman Jack Rossi via conference call. Counsel was represented by Kelli Talbott. In the absence of Chairman Rossi being available live, Commissioner Greg McDermott chaired the meeting.

Approval of June 18th minutes

The Commissioners and legal counsel received the minutes from the June 18th meeting prior to this meeting. Mr. Phillips moved to accept the minutes, seconded by Mr. Rossi. The Commission approved the June 18th minutes.

Executive Director's Report
Jon Amores

Jon Amores, Executive Director, gave an update on what is being done in the office. The first item related to a notification from Mountaineer informing that they are changing hardware to improve their ability to conduct operations (Sportech Racing is the vendor). The second item was a letter for the Commissioners from the HBPA's at Charles Town and Mountaineer, as well as the WV Greyhound Owners and Breeders Association, seeking financial support from the Commission for an economic study to be conducted by WVU Bureau of Economic Services. There still needs to be some additional clarification from the State Purchasing Office as to the guidelines to follow if the Racing Commission were to help with funding this project, but the project would have to follow State Purchasing rules. The third item was to notify the Commissioners we are in the process of asking the Greyhound judges to provide more detail in their rulings. The fourth item was letters from the Attorney General's Office relating to the request for legal counsel for the suit filed by the Charles Town HBPA. The final item noted the 44th running of the WV Derby on August 3rd at Mountaineer.

Auditor's Report
Becky Carnefix

Becky Carnefix gave an update on capital improvements. She stated this month Mountaineer submitted 1 project for reimbursement in June totaling \$1,087.37 and was paid the full amount in July. Additionally, they were reimbursed \$817.23 for a prior project submitted for reimbursement during the month of June. Charles Town submitted no new projects for reimbursement in June, however, they were reimbursed for 4 prior submissions totaling \$776,790.11. Mardi Gras submitted 3 projects for reimbursement in May totaling \$590,112.34.

1st Quarter FY13 supplemental purse award claims were sent to the State Auditor's office for payment on July 19th. Claims paid for Charles Town totaled \$388,843.88 and claims paid for Mountaineer totaled \$61,466.90.

She noted to the Commissioners that a schedule of track visits she will be making over the next month has been provided to them in their binder.

**Accountant's Report
Joe Moore**

Joe Moore stated revenues were down 23% in June vs. May of this year and down 5% when compared to June of last year. The projected financial position at the end of the fiscal year is a deficit of slightly over \$900,000. He also noted Suttle & Stalnaker has completed their initial fieldwork and will return to complete the audit the week of August 26th.

**Legal Update
Attorney General's Office**

Kelli Talbott stated she provided the Commissioners with an update on the status of matters they are handling. There are no real significant changes. They did receive an appeal from Charles Town relating to a stewards ruling and will have to be set for a hearing. She will be in court in Ohio County in August to argue the Schweitzer case. There is additional work to be done in preparation for the Sam Burdette case which is set for trial in October.

Approval for filing of 2014 Legislative Rules

Kelli Talbott stated amendments to the Thoroughbred Rules were put out for public comment and the comment period ended July 19th. 3 public comments were received. One comment from the Jockey Club was in support of all the medication rule changes. Another comment was received concerning the prohibition for spouses of jockey's agents owning horses. This was not an amendment but rather a rule already in place that was commented on and she recommended the Commission look at this more closely. The last comment related to allowing the Stewards and Commission to make sanctions against complaints towards owners, permit holders and racing officials. She stated sanctions will not be taken against every complaint made but only those that have meritorious value. She said the rule is in a posture for the Commission to vote to final file it with Legislative Rule Making and the Secretary of State. She recommends filing the rule as is with no changes and go forward with the rule making process. Mr. Phillips moved to make the appropriate filing, seconded by Mr. Rossi. The Commission unanimously approved the filing of the rules.

David Hammer, Esq., Charles Town HBPA, PNGI Real Estate Investment Trust

David Hammer stated that Chairman Mr. Rossi should be disqualified from any consideration of PNGI's application for approval of a racing license. Mr. Hammer believed that the communications between the Chairman and PNGI's counsel outside of the public process violated the Open Public Meetings Act. The communications were received by him through a FOIA request to the Racing Commission. The first communication was an email from Amy Tawney, attorney with Bowles Rice representing PNGI, to Jon Amores. Mr. Amores recommended she contact Jack Rossi first since he is the Chairman.

*****Commission recessed for ten minutes due to technical difficulties*****

*****Commissioner McDermott called the meeting back to order*****

The next communication was an email from Erich Ziminy to Kelli Talbott, copied to Jon Amores and Al Britton, subject Penn Gaming transaction. The email contained attachments of several documents, one is the press release detailing the scope of the transactions, and the second a presentation that was made to the WV Lottery Commission and provided to the WV Racing Commission. The third and fourth documents are the letters previously submitted to the WV Racing Commission requesting issuance of a WV Racing License to PNGI Charles Town Gaming, LLC, the new WV subsidiary being formed in the REIT transaction. The fifth document is the proposed master lease. Another communication is an email from Amy Tawney to Jack Rossi and Jon Amores, subject FAQs, confidential attorney client privilege. Mr. Hammer stated that these communications violate the Open Public Meetings Act and he asked that Mr. Rossi disqualify or recuse himself from further deliberation on this matter.

Mr. Hammer stated his second point goes to the substance of the application. CRC Holdings, Inc. is not an individual, a background check cannot be done on this entity, all ties between this entity and others cannot be checked. Further, as of this morning, the entity seeking the license doesn't exist. There are still some unanswered questions such as the issue of capital improvements and those capital improvements always being made on the property of the licensee itself and here the Racing Commission would be approving improvements to be made to an entity that is not under their jurisdiction but improving the property of a REIT that is not a licensee. Lastly, the REIT is a passive entity and will have no operational control at the facility which is of considerable concern to the HBPA. The REIT is truly not passive and its rent is based on "the performance of the facility." Mr. Hammer stated that in sum he thinks the Racing Commission should reject the application for a REIT at this time. Insufficient information is provided, the identity of CRC is not known, and the REIT is not truly a passive entity. He asked that Mr. Rossi disqualify himself, and that the issue not be taken up at this time.

Application of PNGI Charles Town Gaming, LLC for a West Virginia Racing License

Amy Tawney, attorney with Bowles Rice representing PNGI, introduced Brandon Moore, legal counsel PNGI. Ms. Tawney stated she wanted to address some of the issues with regard to her communications with Jon Amores and Jack Rossi. Penn National is a very transparent company and this REIT transaction is a very complicated transaction. The reason she reached out to the Commissioner is because she has been provided some information over the last several months and they wanted to find out what additional information the Commission would need to be able to act upon the application. They were trying to provide some FAQ's so they could provide some information about the transaction to the Commission so they would be fully informed and could act upon the application.

Mr. Moore stated they handed out copies of their presentation which is basically just a brief overview of the transaction. The Master Lease was also provided, however, a lot of people, including Mr. Hammer, have not had the opportunity to see it because it is confidential but will eventually be filed with their public filings and will address many, if not all, of the issues Mr. Hammer raised. Mr. Moore then proceeded in going over the presentation that was provided to the Commissioners. He gave a general overview of PNGI and their operations in WV. He then provided an overview of a REIT. What this transaction is proposing to do is to separate the land and building from the properties. The REIT will then lease the land and buildings back to the property owners. The REIT is passive and will not have any control in operating the properties. There are some benefits to this transaction, such as bringing a wider

range of investors into the racing and gaming market, creating some opportunities in the market, and having access to the capital markets that racing industry doesn't have access to today. The REIT will have no impact on the state of West Virginia. The customers that come to the properties will not know from one day to another the company is now leased, nor will the Horsemen know. Personnel of PNGI are staying the same. CRC Holdings is a sister company and is a key component in their IRS restructuring. The merger documents to be filed have been provided and show that once the merger takes place, the name will then change back to PNGI Charles Town immediately. They are asking for approval of the transfer of the license or the re-issuance of the license to the new LLC.

Commissioner Phillips asked for Mr. Moore to address the issue Mr. Hammer raised regarding the capital improvement matter. Mr. Moore stated if the concern is that the REIT won't permit capital improvements or the capital improvements will benefit the landlord, it's true that at the end of the lease term, which is 35 years, if the lease is not re-negotiated the building will revert back to its owner, which is the REIT, and the REIT is not licensed to operate racing there. However, the Master Lease provides that if tenant no longer chooses to rent at the end of the lease, the landlord will select operators in an "auction process" to run the gaming and racing at the property and the selected operator will obtain the required licenses to continue these operations. The track continues to have the responsibility to maintain improvements at the track as they do today. Commissioner Phillips then stated that we have an obligation to use funds that are generated at the facility to reinvest in something that will advance racing. Mr. Moore responded that the ownership of the improvements is not the REIT but the property itself.

Commissioner Phillips moved to approve the request to issue a license according to the parameters which have been put into the various documents and we've had a chance to review and in the presentations this morning. Commissioner McDermott seconded the motion and was voted in favor of by Commissioner McDermott and Commissioner Phillips.

Chairman Rossi asked to comment on the vote. He stated he did not move and he did not second, but he does not agree with Mr. Hammer that there was a violation of the Open Meetings Law. His feelings were that when he saw something coming onto the agenda that he did not understand, he was doing his due diligence in trying to understand a transaction, and yes he did get the information and he tried to understand the transaction, which everybody can see is a very complicated transaction. Commissioner Phillips added that he thinks the folks from Penn National did an excellent job in making certain that we understood what was going on and from his perspective and viewpoint they were very cautious. He participated in a telephone presentation that he was the only Commissioner on the line so that we didn't take steps that were inappropriate or that might raise questions. They are to be commended for the volume of paperwork that's come across and he thinks they've all given it a lot of attention and he's comfortable with what they've done today and he's comfortable that Mr. Rossi was trying to do his due diligence so that he could answer our questions and help guide the Commissioners through this process which is long and complicated. But, he thinks it has been brought to a positive conclusion for the industry and for the taxpayers, and for those who care about what goes on at the various tracks.

Agency adoption of proposed interpretive rules regarding bona fide residency requirements to qualify for Supplemental Purse Awards or participate in the WV Greyhound Development Fund

Jon Amores stated they have before them the language for the interpretive rule and it was subject to a public hearing open to submission of comments over the last month. The one being referenced is the residency requirements and stems from the statute requiring bona fide residency before being able to obtain a purse supplement award or to participate in the Greyhound Development Fund. This refers mainly to internal time deadlines for submission of information. There was another interpretive rule that referred to the pro rata or equal distribution of Excess Lottery Revenues. This item is being held so that it can be reconciled with the statute. Pursuant to the public comment, some changes were made relating to the Greyhound Development Fund that anyone qualifying for eligibility in the program will not only remain eligible for the month we receive the documents but remain eligible until those documents need to be updated. Commissioner Phillips moved to approve the interpretive rules for filing with the Secretary of State, seconded by Chairman Rossi. Commission approved the interpretive rules.

Agency approval of interpretive rule for Capital Improvement Requests

Jon Amores stated this interpretive rule is to be approved for filing with the Secretary of State for a public comment period. This rule is basically a clarification of what we have been doing to date on how we approve capital reinvestment projects. Kelli Talbott stated this rule isn't in the appropriate format for filing with the Secretary of State for public comment. Jon Amores stated it will be put in the proper format before filed. Kelli Talbott added it looks to her to be more a procedural rule than an interpretive rule. Jon Amores commented that may be the case and if it needs to be converted it will be and we will get instruction from the Secretary of State as to the proper filing. Motion was made by Commissioner Phillips to put it in the appropriate form and get it filed with the Secretary of State. Chairman Rossi inquired if time was an issue in getting this filed. Jon Amores replied there is no time frame. Chairman Rossi seconded the motion. Commission approved the filing of the rule in its proper format.

Capital Improvement Request, Charles Town Races, \$3,516 for speed racks to be used in Terrace Dining Room

Capital Improvement Request, Charles Town Races, \$13,211.10 for power washer to be used for the Terrace Restaurant

Capital Improvement Request, Charles Town Races, \$50,000 for 4x4 track ambulance

These three requests were handled collectively. Motion was made by Commissioner Phillips to approve the requests, seconded by Chairman Rossi. All three requests were approved.

Breeders Classics purse request, \$1,155,000 for Classics XXVII to be held Saturday October 19, 2013

Carol Holden, Breeders Classics, stated the request was pretty straight forward. Chairman Rossi inquired of Joe Moore where we stand financially on this? Joe Moore stated with deducting the 2012 Breeders Classics advertising expense and budgeting for \$100,000 in advertising expenses related to the 2013 race, there is sufficient funding available for this request with little carry forward into the following year. Chairman Rossi moved to approve the

request of \$1,155,000, seconded by Commissioner Phillips. Commission approved the request.

Adoption of Commission Cruelty Policy

Jon Amores stated this was a policy clarifying our existing authority as a Commission. The Commission through its stewards and judges, have authority to take action against a permit holder who engages in any form of cruelty or mistreatment of an animal, whether it be a thoroughbred or greyhound. The policy will also state that all reported acts of alleged animal cruelty will be investigated by a Racing Commission Investigator and consultation with our State Vets. The policy would expressly state that in addition to our administrative remedies, it will be our official policy to consult with our State Vet and to decide which cases to refer to law enforcement. Commissioner Phillips move to adopt the policy. Chairman Rossi inquired if there were any comments. Kelli Talbott replied we have rules now that allow us to take action against permit holders who neglect a horse and to the best of her knowledge the stewards and judges do that fairly regularly. The question really is when should these cases be referred to the local law enforcement authorities for possible criminal prosecution? This will be a case by case determination. Sam Burdette asked if this is a written policy, and if so, can they see it and comment on it. Commissioner Phillips withdrew his previous motion so that the policy which is in writing can be posted on our website so that everyone has an opportunity to review it. He would also like to re-emphasize his instruction from his first meeting as a Commissioner that all items up for comment be posted on our website. Chairman Rossi moved to defer the item until a subsequent meeting, seconded by Commissioner Phillips. Item is deferred until a later meeting.

Referral of James Grace, James Bloom, and Christopher Bever to Ohio County Prosecuting Attorney

Jon Amores stated the Commissioners have in their binders a brief summation of the circumstances behind each of the three individuals and the disciplinary action taken by the Board of Judges. Legal counsel has advised should the Commission decide to take action, there should be no problem in referring these individuals to the Ohio County Prosecuting Attorney. Mr. Bloom was suspended for six months and Mr. Grace had his permit revoked for the injury and delayed treatment of a greyhound. Mr. Bever's case would be less deserving of the Prosecuting Attorney's attention. His permit was revoked and it indicates he struck a dog, but his permit was revoked mostly for the cumulative effect of his being disruptive and unstable on track grounds. Motion was made by Chairman Rossi to refer these individuals to the Ohio County Prosecuting Attorney. Mr. Grace stated he has been a dog trainer for 25 years, he is solely responsible for the trouble of the dog and it was never neglected or abused and James Bloom had no fault in this matter. Sam Burdette's concern is that any party that has a hearing before the Board of Judges be advised that this process does not relieve them from the criminal process and he really feels it should not be referred to the Prosecuting Attorney until the Racing Commissioners themselves have a hearing on the subject. Jon Amores indicated that in this particular matter, it was brought initially to the attention of the State Vet, and there have been reports, pictures, and statements that have been taken. Kelli Talbott stated there was a hearing before the Board of Judges for these two individuals and that hearing would have been recorded and neither of the trainers appealed their rulings to the Racing Commission. No second to the motion was made, therefore, motion fails.

Presentation, Christine Dorchak, President and General Counsel, Grey2K USA

Christine Dorchak asked that the Commission reconsider the previous motion. Commissioner McDermott asked her to not revisit the prior motion but to continue with her presentation. She stated Grey2K fully supports the laws to make greyhound racing better while it continues and in that point they share a common goal with this Commission and applaud them for talking about cruelty issues and looking seriously into these matters. She stated they have been conferring with Jon Amores over the past few weeks and there are three specific issues she would like to deal with: Judges rulings do not provide clear information in cases of greyhound cruelty, which the Commission dealt with today; the Commission lacked a policy for referring greyhound cruelty cases for prosecution; and they ask that the cases of James Bloom, James Grace and Christopher Bever be referred for prosecution. She also requested that the Commission refer for prosecution the case of Robert A. Mackey. Commissioner Phillips asked Commission staff to put together a briefing paper on this whole matter so they can have a better understanding on the issue and what should or should not have been done. Commissioner McDermott commented that he had a concern with Ms. Dorchak mentioning Mr. Mackey. His name is not on the agenda and the Commission is getting off track in allowing her to accuse people of acts without putting them on notice to attend the meeting and give them the opportunity to rebut those allegations. He agrees with Commissioner Phillips on gathering a briefing paper and getting input from those concerned with the subject. Chairman Rossi stated he agrees and appreciates what Ms. Dorchak presented today and we need to be more thorough before we make decisions and need to defer this issue until we get further information before taking any action whatsoever.

Interagency Agreement

Jon Amores stated the Commissioners have the original interagency agreement that was adopted last month between the Lottery Commission and the Racing Commission, a letter from Secretary Kiss indicating the provisions of the interagency agreement as they relate to counsel and providing legal services shall be rendered ineffective or inoperable to the agency, and an amendment to the interagency agreement which is to be acted upon today and specifically states "the Lottery Director, after consultation with the Chairman or Executive Director of the Racing Commission, shall select qualified Lottery representatives to provide the services requested, each area of service shall include but not be limited to the enumerated activities as requested by the Chairman or Executive Director of the Racing Commission but may not include legal advice, counseling or representation." Chairman Rossi moved to adopt the proposed amendment from Secretary Kiss, seconded by Commissioner Phillips. Amendment was approved.

Public Comments

Randy Funkhouser, asked Jon Amores what the state requirements are and what does he need from the HBPA's and Greyhound Owners and Breeders for the Economic Impact Study?

David Hammer requested a copy of the modified agreement or amendment page to the interagency agreement.

Sam Burdette asked about the year-end Greyhound Development Fund distribution and if it was going to be made within the approximate 30 days that he understands to be the timeline in the mediation agreement and made by July 30th? Joe Moore commented the payments are in calculation mode and will be made at the latest the first week of August.

Commissioner Phillips stated he would like to re-emphasize the staff to work on finding a way to not have the telephone disruption that happened today.

Executive Session, agency personnel matters

Commissioner Phillips moved to go into executive session, seconded by Chairman Rossi. Upon return from executive session, Commissioner Phillips moved to return to the open session, Commissioner McDermott seconded, motion was passed.

Adjournment

Commissioner Phillips moved to adjourn, Commissioner McDermott seconded. Motion adopted and meeting adjourned.