

**MINUTES**  
**WV RACING COMMISSION**  
**Wednesday, August 26, 2015**  
**WV Lottery Conference Room**

The WV Racing Commission met on August 26, 2015 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Bill Phillips. Commissioner Greg McDermott was present via conference call. Counsel was represented by Kelli Talbott.

**Approval of July 21<sup>st</sup>, July 28<sup>th</sup> and August 4<sup>th</sup> minutes**

The Commissioners and legal counsel received the minutes from the July 21<sup>st</sup>, July 28<sup>th</sup> and August 4<sup>th</sup> meetings prior to this meeting. Motion was made by Mr. McDermott to approve the minutes, seconded by Mr. Phillips. Motion passed.

**Executive Director's Report**  
**Joe Moore**

Joe Moore stated the FOIA report, which is a 3 month running report, shows 14 reports received and completed. 2 of those requests were received in July; 1 from Grey2K and 1 individual request.

All 4 sub-committee reports have been received from the Racing Committee. The draft report is still being worked on. Once the draft is issued, processes will be put in place for the Racing Committee to either amend or approve the draft.

The ad for the hiring of the Lasix employee at Mountaineer was placed in the local paper in Hancock County and distributed to Mountaineer Park HBPA, Rose Mary Williams and the State Stewards at Mountaineer. As of August 21<sup>st</sup>, the deadline for submission of resumes, 9 had been received. Those individuals will be contacted and interviews will be scheduled to take place at Mountaineer Park.

The Charles Town Investigator ad was placed in the local paper in Charles Town and also sent to RCI and ROAP. In addition, it was posted on the Racing Commission's website, sent to Erich Zimny, Danny Wright and Charles Town HBPA, along with Rose Mary Williams, Mountaineer HBPA and Jim O'Brien to be posted in the appropriate areas at their facilities. The submission deadline of that ad is September 4<sup>th</sup>.

There are several IT projects Larry Carraher is currently working on. Those projects include system upgrades, equipment needs, track visitations and archive information.

Mr. Phillips commented that this medication issue is continuing to be a large one in the racing industry press and with the discussion ongoing regarding the potential of the federal government entering into the whole area of medication, it seems it would be appropriate to periodically receive a report showing the drug positives we have at tracks, the kinds of drugs involved, any horse breakdowns, etc. He thinks some greater focus needs to be given to that issue. Another suggestion is that we need to be doing more competition testing and that should be included in the information they receive on a periodic basis. Lastly, he wants to be sure with the change in vendors that there is a program in place related to quality assurance as it relates to this medication issue.

### **Auditor's Report Becky Carnefix**

Becky Carnefix stated the capital improvements submitted for reimbursement and paid for the month were the following: Charles Town submitted 3 projects for reimbursement and was paid a total of \$594,953.34. Details of each project paid were provided in the Commissioner's information. Mountaineer submitted 6 projects for reimbursement and was paid a total of \$174,987.12. The details of each of those projects paid were also provided in the Commissioner's information.

For the supplemental purse awards, 2QFY15 claims, covering race dates October-December 2014, are in the process of being reviewed and those claims have an anticipated pay date of early October.

A mailing was sent out in early August to all participants of the Thoroughbred Development Fund at Mountaineer and at Charles Town for verification of race information for race dates January-June 2015. Any changes received have been made accordingly.

She provided the Commissioner's with her audit schedule for FY'16 for their review.

### **Accountant's Report Joe Moore**

Joe Moore stated live racing handle increased nearly 9% compared to June and nearly 14% YTD compared to FY'15. Export handle decreased 7% compared to June and 12.5% compared to July of last year. Simulcast handle decreased a little over 12% compared to June and nearly 8% compared to July of last year. Total In-State handle is down 10.35% YTD compared to FY'15.

The five year comparison requested at the last meeting shows the total live handle decrease over the 5 year period is \$11.5 million or 30.5%. The simulcast handle decrease over the 5 year period \$9.35 million or 18%. The total export handle decrease over the 5 year period is \$104 million or nearly 20%. The taxable handle decrease, which are those wagers made in the state, for the 5 year period is nearly \$21 million or 23.25%. The state share decreased \$291,316 or nearly 14% over the 5 year period.

Mr. McDermott asked if the 5 year comparison figures were through July 2015? Mr. Moore replied they are through June 2015.

### **Legal Update**

Kelli Talbott stated the Commission was served with a complaint in the Dean Miner lawsuit. Mr. Miner is suing the Commission and the Wheeling Board of Judges over a Ruling that was issued against him a couple of years ago. That case was referred to the Board of Risk and Insurance Management. She spoke with an attorney that previously represented the Commission in another lawsuit Mr. Miner filed that has been resolved and she believes he and his law firm will be handling this lawsuit. There will be an answer due in this lawsuit sometime early September.

An ejection appeal was received from a permit holder at Charles Town and the hearing has been scheduled on that appeal for September 23<sup>rd</sup> in Charles Town.

She received communication from Counsel for Legislative Rule Making regarding the Thoroughbred and Pari-Mutuel Wagering Rules and it appears it will be October Interims before these rules are addressed by that Committee. With regard to the Thoroughbred Rule, most of



the updates proposed are medication rule related and updates to keep our rules current with Model Rules.

#### **Approval of the Wheeling Island Capital Reimbursement Request, \$284,676.79**

Becky Carnefix stated this is a request from Wheeling Island for the June 30, 2015 balance of their capital reimbursement account. This is for a portion of the Phase II expansion project that has a carry forward balance and reimbursement has been made on for the previous 5 years. The balance available is \$284,676.79. The required information for payment has been reviewed and she recommends for approval. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

#### **Approval of Charles Town Capital Improvement Request, 2016 Ford F250 4x4 Supercab - \$39,100**

Becky Carnefix stated this is a request from Charles Town to replace a service vehicle to make service calls around the property and track. She has reviewed the request and recommends for approval. Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

#### **Consideration of the Hearing Examiner's Recommended Decision for Eric Levensgood**

Kelli Talbott stated this is an ejection appeal filed by a permit holder that the Racing Commission granted a permit to and subsequently the track indicated it would not allow him on Association grounds. The main reason for his ejection was his most recent criminal history. The recommended decision is to uphold the ejection issued by the racetrack. Mr. McDermott made the motion to approve the hearing examiner's recommended decision, seconded by Mr. Phillips. Motion passed.

#### **Approval to post part-time License Clerk position at MP**

Joe Moore stated resignation was received from a long time license clerk at Mountaineer Park effective September 2<sup>nd</sup>. In light of the track closing down live racing in October, he would like to defer this matter to a future date and in the meantime use the fill-ins that are available to cover those hours in the license clerk's office. When the track goes back to live racing in March, we will be more prepared to put a second part-time clerk in that position. Motion to defer this item was made by Mr. McDermott, seconded by Mr. Phillips. Motion passed and item was deferred.

#### **Approval of Mountaineer Park Mystery Voucher promotion**

Rose Mary Williams stated this promotion would be held October 17-18. They will send out over 45,000 vouchers with the dollar amount ranging between \$5-\$10,000. They have conducted this promotion in the past and it has been a very good promotion for racing and for the casino. Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

**Approval of Charles Town request to grant special event status to \$30,000 Roger Ramey Handicap, \$30,000 Harry Buch Handicap, \$30,000 Ann Hilton Handicap and \$30,000 Dr. Ernest Benner Handicap**

Joe Moore stated a request was received from Charles Town for the 4 Handicapped races. The special event status will allow them to uncouple horses that may be where an owner or trainer may have two or more horses in the same race. These are going to be run as prep races, or feature races, on September 19<sup>th</sup> in relation to the Breeders Classics event to run on October 10<sup>th</sup>. The \$30,000 purses per race will come out of Charles Town's regular purse fund. Mr. Phillips asked if the HBPA is in agreement on this? Erich Zimny replied he is not aware of any objection. Randy Funkhouser stated they have no objections. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

**Tentative Legislative Agenda**

Joe Moore stated there are 3 Legislative Agenda items for their consideration and if there are additional ones brought up today, those can be forwarded as well. The first item is in relation to the Table Games Fund and the distribution of monies related to revenues made on Table Games at the tracks. It adds into Code that of the monies the Lottery is distributed in their administrative fees, which has not been fully used in prior years for administrative purposes at the WV Lottery and passed along to the General Revenue Fund for appropriation by the Governor, that of those administrative fees 10% not to exceed \$385,000 be forwarded to the General Administrative account of the WV Racing Commission.

In similar fashion, the administrative fees taken in by the Lottery for Racetrack Video Lottery play in revenue has similar language added to it that shall transfer 10% not to exceed \$1.5 million to the General Administrative account of the WV Racing Commission.

The third item is related to the race day issue and the Commission's desire to have more flexibility in setting those race days. Out of the Committee meetings, it reduces the required amount of race days to be requested by Charles Town for a given year to not less than 200 race days and Mountaineer Park not less than 175 race days. It also has language that requires the Commission to notify the majority of the representatives if the tracks submit race days equal to that minimum number and that will give the constituents the opportunity to object to those number of requested race days and allow the Commission to increase those if they see fit. The greyhound tracks are included at not less than 220 race days per track with similar language that allows the Commission to adjust those days as needed. Kelli Talbott added the draft that Mr. Moore just presented came out of the Modernizing the Code sub-committee and it sets different days for Charles Town and Mountaineer and for the greyhound tracks. In addition, some of the language was clarified as to who has standing to file an objection to the number of days that are requested by the track. Language was added that indicated it had to be a representative of the majority organization. Mr. Phillips pointed out to her that the resolution that the Commission passed some time ago may have had 185 days for everybody but there was much discussion in the Modernizing the Code Committee about how one size didn't fit all.

Mr. Phillips stated the Commission is on record supporting 185 days and personally he thinks with the market changing that probably makes sense. Secondly, he asked if there is language in this that provides more flexibility for the Commission to react to the marketplace? There is certain criteria to lower the days but he's not sure there is enough flexibility for them to react and the Commission can't just continue going to the Legislature to lower these number of days so he wants to be sure they start out with a reasonable number and there is a lot of flexibility in the proposal and language that is sent forward. Ms. Talbott commented some language was added to the Statute that would allow the Commission to reduce the number of



days, not only because of shortage of Thoroughbreds, casualty occurrence, weather related, but added shortage of purse funds and other just cause. This would expand the grounds on which the Commission could look at those requests and grant them.

Mr. McDermott asked what was the rationale behind the variation in the Charles Town and Mountaineer numbers? Ms. Talbott replied it was largely the availability of purse funds. Mr. Moore added in the presentation that was made on purse funds vs. race days, there were projected number of purse funds available in a given year and the horsemen's desire to keep the nightly purse level at a certain amount drove a lot of what the required race days came out to be.

Mr. Phillips asked what is the number Charles Town finally ended up with for this year? Ms. Talbott replied 193. Mr. Phillips added that's already below 200 and that's before facing potential weather issues and other factors. To him, a reasonable number is 185 in general and probably for Mountaineer as well, and then use the flexibility that's in this proposal to make adjustments that might be requested by either track.

Rose Mary Williams stated Mountaineer is currently at 160 and in the Racing Calendars sub-committee they did come up with a draft on the race days and it was much lower for Charles Town and Mountaineer both. She doesn't understand the thought process in going to the Commission to ask for 185 or 200 days when they know they can't accomplish that. The sub-committee suggested 160 for both tracks and she thinks that's reasonable, and then giving the Commission the flexibility to go up or down as purse funds dictate. She thinks the number the Commission is talking about is a little bit too high for both properties and is not realistic to come in and ask for more race days than they can accomplish.

Mr. Phillips stated as long as the flexibility is there he would personally have no trouble with having the number at 160 because the Commission, with the appropriate documentation and request, could raise that. Chairman Rossi asked under what circumstances would the days be raised? Ms. Talbott replied as the Statute is currently written, she's not sure it contemplates the Commission raising the number of days. Therefore, the sub-committee added language to the draft that if the track requests the minimum number in the Statute, there would be a mechanism by which the horsemen could object to running the minimum number and the Commission would have to do an evaluation and decision about whether there was justification to run more than the minimum and what that would be. Mr. Phillips stated the request for number of days, in his opinion, has to be a joint request between both parties. He does not want to support anything that is not a joint request between both parties. Ms. Talbott added the way the Statute is currently written, the track is the one that requests the racing calendar. That does not prevent them from working with the horsemen prior to requesting days but the track is the initiator of the request.

Randy Funkhouser stated the current Statute is 220 and 200 per application for Charles Town and Mountaineer so a difference is recognized at this point between the racetracks as far as number of days. The horsemen at Charles Town are willing to go down to an application of 200 days with the idea they can come down to 175 days for all of the inclement weather and different things that are currently in Code and also suggested adding the shortage of purse funds and by mutual consent. They have worked with the track and have tried to get the number of days they can race without destroying the purse structure. It's easier to come back by mutual consent to the Commission and come down than it is to run the minimum number of days and get a mutual consent to go upwards.

Erich Zimny stated Charles Town has applied for more than the statutory minimum number of days several times in the last decade. They have not always just applied for the minimum. As long as the horses and the money are there to run 200 days they would do it but when you start talking about 185 days, he's not sure what the future holds and that very well may not be possible and as long as there is something in the Statute that gives them the leeway



to go with that and not hurt the purse structure if they have to run 160 days that they can do that.

Troy Hendricks stated he thinks the Commission should set the number of days at a reasonable amount but there has to be flexibility to change them. He thinks 160 is a little low but at least put in a number that is reasonable and with the right language that says you can raise or lower days at each track. Each entity is completely different. The language needs to be very explicit because the Legislature is depending on the Commission.

Jami Poole stated the HBPA at Mountaineer supports Rose Mary Williams' suggestion and they support the 160 days. They are going to run out of money this year at 160 days. Next year they say 175 days but they cannot reach that number of days. They are going to come back to the Commission and have more trouble over this than they need when they know for sure they cannot meet 175 days. 160 days is reasonable to them and they would rather apply for that instead of the 175 days.

Chairman Rossi stated they see that Charles Town is seeking higher race days and they understand that Mountaineer has pretty much agreed on lower race days and there has been a difference over the years in the number of days at each track. If the Commission builds in the leeway for the Commission to act on it, he could see the Commission submitting something that has two different required minimum days.

Randy Funkhouser commented the horsemen at Charles Town don't want to get down to a bare minimum number of racing days, nor does the community there.

Mr. McDermott stated what makes him concerned is when he hears we are currently running fewer days than the minimum days requested in the current proposal. It makes him wonder are these numbers indicated in the current proposal too high? Mr. Phillips stated he agrees with Mr. McDermott about that. His thought on that is that the Commission is already on record for 185 days and he's sure that is too high for Mountaineer based on the last two years, so we either have to go 185 or compromise at some other number. The key thing, regardless of the number, if the Commission has the flexibility they need then the number can be worked with. Chairman Rossi and Mr. McDermott both agreed. Mr. Phillips added he feels the Commission has been very accommodating in adjusting the number of race days for both Mountaineer and Charles Town so it has already been established that they can be flexible so if given this flexibility in the proposal, they can work with it. Joe Moore stated he would add to the Commission's consideration of race days, particularly at Mountaineer, that the current Statute states if they drop below 185 and it's set in this proposal at 165, the numbers would have to be adjusted accordingly, depending on what the minimum numbers are to trigger the process.

Rose Mary Williams stated the only comment she would make is the flexibility in applying for the dates, not only the flexibility after you apply. She thinks the Commission needs the flexibility that if they apply for 160 days the Commission can grant it at that time and not have to come back and re-apply with a lower number knowing they can not realistically meet the number of days applied for originally. She thinks the way the current language is written, the Commission does not have the flexibility when they apply. Kelli Talbott replied other states do not have a minimum number of days that tracks have to apply for, they just apply for what they apply for and the Commission approves it. She's not sure how a number of constituents would feel if we tried to do this because the traditional model in WV has been a minimum number of days to keep the casino licenses. Rose Mary Williams added the Commission has worked with the tracks but she would just like to be able to apply for the number of days they can realistically run. Chairman Rossi stated his whole process has been to give the Commission flexibility. Set a number of days and then have the flexibility to adjust accordingly. Joe Moore stated there is time to come up with the final framework and structure of how it's going to be written, but what needs to be done today is come up with the idea of the number of days so it can be submitted to the Secretary's office and forwarded to the Governor's office.

Mr. Phillips stated the Commission is already on record for 185 days and already on record for wanting flexibility and if they can accommodate the approach Rose Mary Williams just outlined in a draft to go forward, then he thinks the Commission is reasonably set in what they ought to embrace.

Motion was made by Mr. Phillips to send forth a legislative proposal that would accomplish 3 objectives: 1. Have 185 day number that everyone would work with. 2. Provide the Commission with the flexibility to either increase or decrease that number based on information received from interested parties. 3. Find a way to initially apply for the number of days realistically able to meet and the Commission approve at the time the request is made. Motion was seconded by Mr. McDermott. Motion passed.

Troy Hendricks stated he is pursuing the Workers Compensation issue in the Legislature and early next year it could be paid off. That could bring more revenue and he wants to make sure the Commission has the flexibility to increase the number of days.

Mr. Phillips stated he wants to remind the Commission that they are on record as of August 2014 of supporting Advance Deposit Wagering and he made a motion to send that forward as a legislative proposal as well. Motion was seconded by Mr. McDermott. Motion passed.

Mr. Phillips made a motion that items number 1 and 2 as outlined by Mr. Moore also be sent forward in the legislative proposal, seconded by Mr. McDermott. Motion passed.

### **Public Comments**

Motion was made by Mr. Phillips to move public comments before the Executive Session on the agenda, seconded by Mr. McDermott. Motion passed.

Randy Funkhouser stated he would like to compliment the Commission on the thought process that was put in the motion for the legislative proposal and understanding the spirit of where we are. In addition, he complimented the hard work and input from all of the sub-committees and the roundtable experience of getting racing's problems out in front and on the table.

The next meeting is tentatively scheduled for September 22, 2015.

### **Executive Session – Interview candidates for Executive Director position**

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

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

### **Adjournment**

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