

MINUTES
WV RACING COMMISSION
Tuesday, September 16, 2014
WV Lottery Conference Room

The WV Racing Commission met on September 16, 2014 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 25th, August 1st and August 15th minutes

The Commissioners and legal counsel received the minutes from the July 25th, August 1st and August 15th meetings prior to this meeting. Motion was made by Mr. Phillips to approve the minutes, seconded by Mr. McDermott with the request of one minor change to be made to correct a typo in the August 15th minutes. Motion passed.

Executive Director's Report
John Myers

John Myers stated the new sound system has been put in place and he hopes it will function much better.

There was a change in email addresses for the two chief stewards and the two head judges at the tracks. They now have wv.gov email addresses, which is more consistent with the rest of the Agency.

As part of accepting the Truesdail lab for testing, he has conducted follow-up with Racing Commission staff at the tracks as far as communication and level of service thus far. Both chief stewards at the tracks feel the level of service is good. Some changes are still being made as evaluation of the lab continues.

He has provided the Commissioner's with a letter from Randy Funkhouser, Charles Town HBPA, concerning legislative proposals for this coming year, supporting the two items that were submitted to the Secretary of Revenue's office for consideration.

Mr. Phillips thanked all parties involved for the new sound system. He also thanked Larry Carraher for his work on the RCI project and apologized for missing the rollout. He hopes to stay updated on the progress of the project and appreciates Mr. Myers for pushing the project forward. Mr. Phillips stated at a recent meeting when the issue of the labs and medication issues came up, there was obviously a lot of confusion and he felt we owed it to our constituents to have some type of educational program for them. He thinks it is very important we do that and emphasized the need for it.

Auditor's Report and FY 2015 Schedule of Audits
Becky Carnefix

Becky Carnefix stated the capital improvements submitted for reimbursement and paid in the month of August included 3 projects for Mountaineer with a total payment of \$70,298.58. The detail of the projects paid was included in the Commissioner's binders.

The second quarter FY14 claims for the supplemental purse awards are currently being reviewed. This covers race dates October 2013-December 2013. Fourteen day letters requesting additional information will be mailed out next week. Payments for that quarter are estimated to be made early October.

The audit schedule for FY 2015 was provided to the Commissioner's in their binders for their review.

Accountant's Report Joe Moore

Joe Moore stated live racing has declined 5% in July 2014 from June 2014 and has declined nearly 6% YTD compared to FY14. Simulcast decreased less than 1% YTD and overall in-state handle is down 3%. Financial summaries were included in the Commissioner's binders for July and August. The draft of the annual audit for FY14 was submitted to FARS yesterday and when he receives an electronic version, he will forward them on to the Commissioner's for their review.

Legal Update – Attorney General's Office

Kelli Talbott stated she was in front of the Legislative Rule-making Committee last week and the Thoroughbred rule amendments were before that committee. There were no public comments and no changes so the committee passed it out to the full Legislature for this session as submitted.

The Supreme Court has set oral arguments in the PNGI vs WVRC case which pertains to the rules promulgated to govern ejection appeals. That is scheduled for October 1st.

The Randy Wehrman case that the Commission voted for her to appeal to the Supreme Court has been appealed and there is a scheduling order in that case.

Appeal of Reynolds Case

Kelli Talbott stated in this case Judge Zakaib basically found there was not substantial evidence in the record. There were weight rule infractions, and he also held the Racing Commission was attaching the common ordinary meaning to the words connive and corrupt and the rule was unlawful rule-making. She believes the Commission should appeal to the Supreme Court and feels it is likely his decision will be reversed if it is appealed. She is recommending the Commission appeal this decision. Mr. McDermott stated he agrees with Ms. Talbott's thoughts and recommendations and made the motion to appeal this decision to the Supreme Court. Seconded by Mr. Phillips. Motion passed.

Capital Improvement Request – Hollywood Casino - \$166,637.00 for purchase of a 2014 Caterpillar loader to replace 1999 model loader

Capital Improvement Request – Hollywood Casino - \$258,856.00 for purchase of grandstand glass curtain wall facing barn area

Capital Improvement Request - \$74,000.00 for purchase of a replacement tractor

Capital Improvement Request – Hollywood Casino - \$54,823.00 for purchase of replacement POS terminals and TV's in Racing Skyline Terrace

Capital Improvement Request – Hollywood Casino - \$83,745.00 for purchase of spreader bodies for distribution of salt and sand

Becky Carnefix stated the first request is for a loader to be used in the loading and unloading of material in bulk form. The second request is for the grandstand glass curtain and is for an additional amount to the original request approved in May, due to steel structure issues requiring additional funding. The third request is for a tractor replacement to be used on the track. The fourth request is to replace the aging Micros point of sale terminals in the Terrace Dining Room and the Racing TV's. The last request is for spreader bodies that are used for resurfacing the track. The total of all of these projects is \$638,061.00 and she recommends all of them for approval. Mr. Phillips commented he appreciates Ms. Carnefix's efforts to have added to these requests the narrative describing how these projects support racing, which is a result of actions taken a few months ago to be sure the capital improvement money is being used to enhance racing. Motion was made by Mr. Phillips to approve the requests, seconded by Mr. McDermott. Motion passed.

Capital Improvement Request – Mountaineer Casino - \$5,640 for two rolling gates at the horse crossing in the parking lot. Includes a barricade, signs and labor for installation.

Becky Carnefix recommended this request for approval. Motion was made by Mr. Phillips to approve the request, seconded by Mr. McDermott. Motion passed.

Mountaineer Casino request to conduct a mystery voucher promotion

Rosemary Williams stated this type of promotion has been done in the past and it has proven to be very good for racing. 54,000 vouchers will be sent out and they will range from \$5-\$10,000. It will be a two day promotion, running November 1-2. Motion was made by Mr. Phillips to approve the request, seconded by Mr. McDermott. Motion passed.

Hollywood Casino – Request to not make up the 20 racing days that were canceled due to inclement weather

John Myers stated there has not been a change in the request, however, the Racing Commission has received a letter of explanation as to the effects of Charles Town having to make up these races. Erich Ziminy, Charles Town, stated they have already printed the condition books for October and they are left with these 20 make up days hanging in the balance with the races they already have scheduled for November and December. Having to make up those days would mean basically having to run every day of the week a live card, with the exception of Christmas, Christmas Eve, Thanksgiving and New Year's Eve. With the current horse population, it can barely support the race schedule they already have without making up these 20 days. The purse fund can also not handle making up of these additional races.

Mr. Phillips inquired if this request incorporates the second request also made by Charles Town? Mr. Myers replied it does not. Mr. Myers added the notices were sent out last

week in regards to the second request and there is a 10 day waiting period for responses before any additional action is taken. Mr. Rossi added the Racing Commission does have a letter from the General Counsel for the Horsemen's Association agreeing with the request to not make up the 20 race days. Mr. McDermott stated he would say they whole heartedly supported the request. Randy Funkhouser, Charles Town HBPA, stated they see no alternative than what Mr. Ziminy has explained.

Mr. McDermott made the motion to grant the request, seconded by Mr. Phillips. Motion passed.

Mr. Phillips stated it's apparent to him that it's time to consider reducing the number of days required for live racing at the racetracks. He realizes there are provisions in the statute that allows the Racing Commission to do so and provide them some relief from the 220 required days. The conditions that can be used, as he understands it, are weather and unforeseen casualty occurrences in the shortage of thoroughbred horses. He personally believes today's request comes from the lack of funds going into the purses. He feels we need to assure the horsemen and the tracks a more certain environment to plan their business affairs. He believes it should be made known that as regulators of this industry we would favor a change in the statute in one of two ways: Either revise downward the number of days to 185 or leave the number of live racing days to the discretion of the Commission so as the marketplace changes you can plan for it accordingly and not have to go back to the Legislature to make that change. Mr. Phillips made the motion for the staff to be directed to prepare a resolution to be forwarded to the appropriate Government officials outlining the reasons we believe the statute needs to be changed in regard to live racing days, seconded by Mr. McDermott. Mr. Rossi stated he would like for Kelli Talbott to prepare a narrative in regards to Mr. Phillips' resolution. Mr. McDermott agreed he would like to have more input from Counsel as well.

Kelli Talbott stated the statute requires Charles Town to do 220 days, Mountaineer to do 210 days, and the dog tracks each have to do 220 days. She inquired if the resolution would be to change all four tracks to 185 days or, in the alternative, whatever the Commission approves? Mr. Phillips replied yes.

Sam Burdette stated this would be quite a change in the Code and he would ask the Commission to solicit comments from both the horsemen and the dog folks, as well as the tracks, before making such a large change.

Kelli Talbott added a resolution is fine but there is actually a form that has to be filled out the Governor's office prescribes that answers certain questions about your legislative proposals and this form would have to be completed and submitted up the chain.

Randy Funkhouser stated another way to accomplish what is trying to be done is to give latitude to the tracks in the language for certain situations, such as weather or purse shortages. Mr. Phillips stated he feels like if we did this, we would be back in the same situation we are today.

Rosemary Williams stated she appreciates the Commission's insight into looking into this problem. She believes if you schedule 210 days and then permit 185 days, it puts the tracks back into the same circumstances they are in today. She has to give their sites that pick up their signal 30 days notice when the races are going to be reduced. Therefore, carding the 185 days and then if everything looks good to run the 210 days, they could come back to the Commission and ask for that. From a business standpoint, it makes the best sense to do it the way Mr. Phillips suggested.

Kelli Talbott added the statute, as it's currently written, is fairly inflexible with regard to the Commission's discretion. She doesn't think casualty occurrences equals cuts in the purse fund. A casualty occurrence would be a sinkhole at the finish line and you can't race.

Mr. Rossi commented since there is some discussion on this matter, he would like to add if anyone has any comments, submit them in writing to John Myers by next Tuesday,

September 23rd. In the meantime, John Myers and Kelli Talbott will be working on this and those considerations will be taken into consideration.

Mr. McDermott commented this was not an item on the agenda and the first he's heard of this was a few minutes ago. Is he correct in understanding this is a concept that will be vetted by Legal Counsel and interested parties will have the opportunity to weigh in? Mr. Phillips replied yes that was correct. The Chairman suggested the resolution would be out there and they could weigh in by next Tuesday. Mr. Phillips suggested, as a further change to what the Chairman suggested, to have the resolution drafted by Thursday and it would go up on our website and a copy of same be sent Federal Express to the appropriate interested parties for them to comment on by next Tuesday.

Phil Reale stated this issue cannot be voted on today due to it not being on the agenda and being in conflict with the Open Meetings Act. Kelli Talbott added the Open Meetings Act does require the agenda item to give the public notice this issue was going to be discussed specifically. It would probably be better to put this on another agenda specifically. Mr. Phillips agreed and said he had not thought about the Open Meetings Act.

Motion was again made by Mr. Phillips for the resolution to be prepared as discussed and be circulated appropriately and be on the agenda for the October meeting. Mr. McDermott stated he had already seconded the motion. Motion passed.

Consideration of issuing jockey permit to Daniel Feliciano

John Myers stated Mr. Feliciano's jockey permit was suspended in March for a drug positive. He has since completed his rehab program with good results and the Board of Stewards have made a recommendation to re-instate Mr. Feliciano conditionally. The conditions are that he have testing on a regular basis and if he has another positive, his permit would be revoked permanently. The recommendation today is for Mr. Feliciano to be re-instated as a jockey. Motion was made by Mr. McDermott to grant the request for re-instatement, seconded by Mr. Phillips. Motion passed.

Memorandum of Understanding with the West Virginia Office of Technology

John Myers stated this is a boiler plate contract the West Virginia Office of Technology asks all of the agencies to sign stating the rates, service times, response times they have for certain problems and things of that nature. His intent is to ask for permission to move forward with this and sign this on behalf of the agency. Mr. Phillips asked if this in any way impacts the issues the Office of Technology raised in regards to the RCI project? Larry Carraher replied yes it does and it impacts it favorably. The way the system is now designed addresses some of the major concerns that Office of Technology brought up. Mr. Phillips asked what about the four issues they raised just prior to the rollout? Mr. Carraher replied he believed all of those problems had been addressed and settled. Motion was made by Mr. Phillips to accept the request, seconded by Mr. McDermott. Motion passed.

Approval to renew agreement with Center for Tox Services test lab

John Myers stated this is an agreement that was signed by Mr. Amores last year. Both tracks have stated they are happy with the service. He has talked with the owner of this company and she has agreed to forego a planned price increase for at least another year. This

is basically an extension of our current agreement. Motion was made by Mr. Phillips to renew the agreement, seconded by Mr. McDermott. Motion passed.

Approval to hire Thoroughbred Fund Clerk at Charles Town

John Myers stated this position has been open for some time. We have explored other ways to be able to do the Thoroughbred Fund and make the payouts on a timely basis, and some significant improvements have been made in that area, however, it is necessary to replace this clerk to perform a lot of the data entry to go along with the payout. The candidate recommended for hire is Lynn Wagner. Motion was made by Mr. Phillips to hire Lynn Wagner, seconded by Mr. McDermott. Motion passed.

Public Comments

Donna Zook, Mountaineer Park, stated the Director of Racing at Mountaineer is not working with the horsemen to maximize horse racing at the track. The Commission told her they could run until they ran out of money and her agenda is to race until November 30th and that is it. The horsemen are not getting any cooperation from management whatsoever.

Rosemary Williams, Mountaineer, stated she provided the Commission with revenue numbers from last week, which reflects them racing under the Order they were given by the Commission to reduce racing to 8 races per day. The YTD from 2013 to 2014, just for one week, is down \$2.3 million in handle. She is supposed to notify the Commission of a shortage in the purse account. She has done her projections with the allocations they are receiving from Lottery and she's still projecting that near the end of November or mid-November, they will run out of purse account money. Her projections right now have it running out about November 22nd. Her problem is she has to give simulcast sites 30 days notice so she's kind of in a quandary as to what to do at this point. Mr. Phillips asked if they give their 30 day notice, can they rescind that or amend it if the picture gets brighter? Ms. Williams replied she could do that but it's most likely they wouldn't pick them up.

Nelson Robinson, Mountaineer, stated the Order given by the Commission to Mountaineer a few weeks ago took them by surprise. The request by Mountaineer racetrack, in conjunction with Mountaineer HBPA, was to reduce the racing days by 14 days, virtually eliminating racing for the month of December. The second request that was made was to prospectively give authority to Mountaineer not to make up any racing days. That was a request made before the Commission. Not only was the request to reduce racing days rejected but to order Mountaineer racetrack to take and reduce the racing card really interfered into the internal business of Mountaineer. The statute does state, in §19-23-6, the Racing Commission shall not interfere into the internal business or internal affairs of any licensee. He is suggesting any time Mountaineer or any other licensee comes to the Commission to request a racing schedule, and the Commission approves it, then without any question, any modification to that schedule should come back to the Commission and they shall either grant or deny the authority to modify that schedule. The Order specifically stated reducing those races per day and he feels that is going across the line. There is a lot of uncertainty but they do know the revenues are not going to get better or increase compared to last year. What kind of message is going to be sent that the purses at Mountaineer are depleted and racing has been canceled? That's not a good message to their customers, nor to the racing community. He believes they were to come back and give the Racing Commission 30 day notice if they believed and forecasted the purses were going to be depleted. That's what Ms. Williams just did. Mr. McDermott stated he couldn't be more sympathetic with the predicament just described and was one that concerned him. Kelli

Talbott added there's nothing in the Order that prevents the track from notifying their simulcast operators if they believe they are going to run out of money and are going to stop racing on a certain date. Mr. Rossi stated he wants to get some more facts and discuss this further.

Mindy Coleman, Jockey's Guild, stated she wants to discuss some issues that have arisen since the change in the procedures with the testing of samples. She was just notified today that the day the samples will now be sent has changed to Monday's, which may eliminate some of the issues they were having. Essentially what has been going on is there has been a 3 week delay in jockey's receiving payment. She is requesting to either send samples twice a week or once the purses have been released and there is no longer a hold, issue a separate check to the jockey's. Mountaineer is currently following the procedure of paying a separate check to the jockey's once funds are released.

Sam Burdette asked about the issue with advanced deposit wagering and instant racing, what is the Commission actually doing in regard to that right now? Mr. Phillips replied at the August 1st meeting, he made the motion to make as a legislative priority the Racing Commission's support in legalizing advance deposit wagering and authorizing instant, or historic, racing. Both could potentially be revenue generators. Mr. Burdette asked if it was a motion and if it was already approved? Mr. Phillips replied yes it was a motion and is in the process of the administration. Mr. Burdette asked if a proposed language has been submitted? Mr. Myers replied it's basically just a concept right now and is being drafted. Mr. Burdette stated it's something they can be in support of if the dogs are included in the language of the bill.

Randy Funkhouser stated he totally agrees with Mr. Phillips and his two issues for generating revenue. He would suggest the tracks, the horsemen, the breeders and perhaps the Racing Commission could dedicate a day to get together and talk about ideas to generate revenues.

Nelson Robinson stated as a follow up to his and Rosemary Williams' comments today, official documentation will be sent out and will give an appropriate time frame before they send anything out, making sure the Commission has time to digest and review their comments made today. Mr. Phillips requested their documentation to also be sent directly to the Commissioner's as well as to the state office.

Next meeting – tentatively October 14, 2014

Adjournment

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