

MINUTES
WV RACING COMMISSION
Wednesday, November 18, 2015
WV Lottery Conference Room

The WV Racing Commission met on November 18, 2015 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Greg McDermott. Commissioner Bill Phillips was present via conference call. Counsel was represented by Kelli Talbott.

Approval of October 19th minutes

The Commissioners and legal counsel received the minutes from the October 19th meeting prior to this meeting. Mr. Phillips stated he thinks there needs to be an addition to the minutes that the report of the Committee be attached to it for historical purposes. Motion was then made by Mr. Phillips to approve the minutes, seconded by Mr. McDermott. Motion passed.

Executive Director's Report
Joe Moore

Joe Moore stated the FOIA report, which is a 3 month running report, shows 8 requests received and completed. There was 1 request in October, and it was from Grey2K.

There was a Joint Finance Committee meeting held on October 19th. During that meeting, a representative from Spectrum made a presentation on the report they prepared. There were also representatives from the Greyhound industry making presentations and those presenters included Jim Fealy with the Kennel Owners, Steve Sarra, Patrick McMillon, Sam Burdette and Jim Gartland, Director of Racing at Wheeling Island. There were relatively few questions coming out of that meeting. If he receives any other information he will forward it to the Commissioners attention.

Interviews are scheduled for tomorrow and Friday for the Charles Town Investigator position. There were 25 resumes received and of those 25 there are 7 confirmed interviews. Once those are completed, he will provide the Commissioners with a recap of the interviews and some information for their decisions moving forward.

Mr. Phillips stated its been a couple of months since he raised the fact he thinks they need updates similar to the FOIA update on drug matters at the tracks and he just wanted to put out a reminder about that. Additionally, its been about a year since the incident at Charles Town and he'd like to suggest that the Executive Director, during the next couple of months, work on a report for the Commission about what's involved related to getting the National Thoroughbred Racing Association's Safety Alliance integrity survey done at our tracks.

Auditor's Report
Becky Carnefix

Becky Carnefix stated the capital improvements submitted for reimbursement for the month, but not yet paid, were Charles Town submitted 3 requests for reimbursement totaling \$133,771.79. Details of the payments made and the projects reimbursed will be provided once the review has been completed and payment has been made. Mardi Gras submitted 2 requests for reimbursement totaling \$81,400. Details of the payments made and the corresponding

projects reimbursed will be provided once the review has been completed and payment has been made.

For the supplemental purse awards, 3QFY15 claims, covering race dates January 2015-March 2015, are in the process of being reviewed. The anticipated date of payment for this quarter's claims is early January 2016.

The Commissioners have been provided with her audit schedule for the remainder of FY'16 for their review.

Accountant's Report Joe Moore

Joe Moore stated live handle declined nearly 8.5% YTD compared to FY'15. Thanks to a great Breeders Cup day, simulcast handle is up over 1% compared to last year. Export handle decreased 11.3% YTD. In-state handle is down 2.9% YTD.

The Account Status Report for Funds 7304, 7305 and 7307 is included in their binders for the month of September and YTD FY'16.

He is working on a redesign of the Accountant's Report to be more of a racing performance report, including both dollars and days, as well as a financial overview of the Racing Commission for the Commissioners information going forward. If there are any items missing or ideas that the Commissioner's would like to have included in these reports, let him know.

The financial audit is nearing completion. We just recently received the Opening Balance Reports from the State Treasurer's Office and those have been forwarded to the outside auditors. He signed the Rep Letter yesterday in wrapping up the audit for FY'15.

Legal Update

Kelli Talbott stated yesterday she was in front of the Legislative Rulemaking Committee on the Thoroughbred and Pari-Mutuel Wagering Rule amendments. Both of the amendments passed out of Committee without any changes so those rules will be going forward during the 2016 Legislative Session.

She was in front of the Supreme Court arguing the Reynolds case a couple of weeks ago. She anticipates a decision in that case either today or tomorrow and she will forward that to the Commissioners as soon as it comes in.

She is going to Charles Town this week for two hearings. One is a permit holder fine against Lester Rao who was alleged to have been in an altercation on the racetrack and has appealed the Stewards fine. The other case is an ejection appeal that Mark Breeden has filed. She will also be with Joe Moore during the interviews for the Investigator position at Charles Town.

Wheeling Island request to approve 2016 Racing Calendar

Joe Moore stated Wheeling Island submitted 260 Live Race Days. The Commissioners have the calendar, as well as a breakout of those days. He also provided the Commissioners with a summary of the 2014 & 2015 requests. In 2014 the official request was 260 days and they ran 258. When he prepared this report in 2015 for 2015, the requested number of races was 260 and at that time they had completed 191 with 65 left scheduled for the end of the year. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Wheeling Island request to approve 2016 Kennel Contracts

Joe Moore stated he provided a copy of one of the contracts in their binders for their review. There is a total of 14 kennel contracts for 2016 at Wheeling Island. Mr. McDermott stated he reviewed the contract and it appeared to him it was in a form consistent with prior years, is that an accurate assessment on his part? Mr. Moore replied yes. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Charles Town request to remove December 26th from live racing calendar

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

Mountaineer Park request to approve 2016 Racing Calendar

Joe Moore stated Mountaineer has submitted 160 live racing days for approval. Those meets will begin March 24th and end towards the end of October. A breakdown of those performances, as well as post-times, has been provided to the Commissioners. Mr. Phillips stated he thinks the law requires that there be 210 days requested, and as everyone knows he's all for getting the number of days down and giving the Commission flexibility, but he thinks if we initially approve less than the required number in the Code, how are we ever going to convince the Legislature and others that we have to have flexibility? That's a concern he has with this. Mr. McDermott stated he has concerns as well and therefore he made the motion to go into Executive Session to seek legal advice from Counsel, 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 made a motion to disapprove this request based on the fact that the Code requires that we have 210 days requested from Mountaineer, seconded by Mr. McDermott.

Rosemary Williams stated when applying for the 160 days, they were applying under the Statute under 19-23-6 which is powers and authority of the Racing Commission and applying under the plenary power authority. They believe under the Code that the Commission does have that power and authority to grant the 160 days.

Nelson Robinson stated two years ago they went through the hearing process because someone objected to the number of days. The Commission then ruled to reduce the number of days. Then in 2015 they applied for the 210 days and later came back and went through the process again and later the Commission used the plenary powers to reduce it from 210 days to 160 days. It was a situation involving Charles Town originally to reduce the number of days based upon number of horses. If the Commission believes they have plenary power, the plenary power doesn't start on a particular day or at a particular time. He quite frankly doesn't believe they have the plenary power to reduce racing days. What was done last year was using the provisions of the Code 19-23-6. Under the provisions of number 16 that was used last year states to take any other action that may be reasonable or appropriate to execute the provisions in this article. The provisions of the article states that the 210 days, the only time you can reduce them is under the provisions that are spelled out. You used plenary power to reduce the number of days. If you believe you had plenary power to do that when you did it, you have plenary power today to approve the 160 days. 210 days cannot be ran, and to come before the

Commission and make application for 210 days based upon the Commission's belief it is a mandate in the Statute does not help the industry whatsoever.

Kelli Talbott stated this is obviously a fairly complex application question. At the time that the Racing Commission received the request from Charles Town last year that Mr. Robinson mentioned, the procedure was followed in the Statute. There was at no time the Commission was advised that somehow their plenary authority gave them the opportunity to completely ignore 19-23-12b. In Charles Town's circumstance, they applied for 220 days and at some point thereafter they made a request to reduce the number of days. The notice that the Statute requires was sent out to the horsemen and pari-mutuel clerks. There was no objection from any of the parties to that request. So, it came back before the Commission. The issue that was before the Commission was Charles Town's justification for the reduction in days was multi-faceted. Not only were they alleging there was a shortage of Thoroughbreds but they were also saying there was a shortage of purse funds. The Commission was struggling with whether or not there actually was a shortage of Thoroughbreds at Charles Town. That was a debate that was going on because the Statute itself doesn't explicitly say that shortage of purse funds is a ground to approve the request. The question was could the Commission, under its plenary authority, recognize that was the reason. Her advice to the Commission was recognizing that additional reason, pursuant to its plenary authority, wasn't inconsistent with the expressed language of the Statute. In no way does the Commission's plenary authority mean that they can completely ignore 19-23-12b. And 19-23-12b says the track shall apply for the specific number of days and until the Legislature changes it, the Commission's plenary authority doesn't allow them to ignore that. She did think they could consider the shortage of purse funds as an additional reason under their plenary authority. She never advised the Commission to completely ignore 19-23-12b and that any request for any amount of days could be approved without adhering to the Statute. There needs to be a Statute change.

Joe Funkhouser stated he agrees with Ms. Talbott's interpretation and respectfully disagrees with Mr. Robinson on the process here. The Legislature has given the Racing Commission plenary power and authority over 19-23, the chapter of the Code, and they have provisions there. With those guidelines, where there is ambiguity that's where the plenary power comes in. We all realize the statutory minimum number of days are unrealistic, and as a factor of the provisions stated, shortage of purses will result in shortage of horses. Kelli Talbott added that in talking with the Commission and Mr. Moore about this, the option they proposed was for the track to apply for the minimum and then simultaneously submit a request to reduce below that and once they do that, the Commission would set the process in place to consider that request to go below the minimum. Mountaineer didn't submit that.

Chairman Rossi stated he got a letter this morning that is dated November 17th from the horsemen at Mountaineer. They are actually requesting 137 days, which is less than the 160 Mountaineer submitted. His feelings are they all need to get together and reach some sort of agreement to preserve the racing in West Virginia. The Commission will work within the law as they are advised by their legal counsel.

Nelson Robinson stated the scenario that took place last year, while he was on the receiving end that was an advantage because the number of days got reduced, he honestly believes what took place was not legal because the Commission didn't have the authority to do it last year and he doesn't think they have the authority to do it this year either. He thinks the Racing Commission is the entity that should be drafting and introducing a Bill on racing days. Chairman Rossi added we have sent a proposal to Secretary Kiss' office. We just need somebody to push it through.

Mr. Robinson added before the Commission takes action on the request, if the Commission could modify their motion, they have prepared a 210 day race schedule that can be submitted at this time and if the Commission would consider taking the action on the modified request for a 210 day request similar to last year.

Mr. Phillips stated in the letter from the Mountaineer HBPA, it makes a lot of sense to him and he's all for less racing days but he thinks there has to be some discussion and he'd be willing to amend his motion to the 210, but only under the circumstances that the HBPA and Mountaineer get together and take a very hard look at what is contained in the letter the Commission received. Chairman Rossi asked Mountaineer representatives if they have seen the letter submitted by the HBPA? Rosemary Williams replied she saw the letter after she sent the submission.

Mr. Phillips stated he will amend his motion if we can get the two parties discussing the issue. The amended motion was made by Mr. Phillips to accept the substitute proposed racing schedule for 210 days for 2016 on the basis that the HBPA and Mountaineer Park negotiate something, seconded by Mr. McDermott. Motion passed.

Charles Town request to approve 2016 Stakes Program

Erich Zimny stated Charles Town respectfully requests to table this issue until the next meeting. Chairman Rossi replied the Commission will grant their request and table this item until its next meeting.

Charles Town request to approve 2016 Racing Calendar

Joe Moore stated this calendar has 220 race days. Motion was made by Mr. McDermott to approve, seconded by Mr. Phillips.

Mr. Phillips stated he did not see anything in his materials on the HBPA's position for this request. Joe Funkhouser replied the HBPA has been discussing this issue and have had meetings with management on what is the optimum number of days based on purse funds. They would like to run as many days as possible without drastically cutting the purses. They think anything between 175-190 days would be optimal.

Motion passed.

Charles Town request to reduce number of race days

Chairman Rossi stated the Commission is not going to approve or disapprove this. What they are going to do is authorize Joe Moore and Kelli Talbott to begin the process of notice.

Request to Reinstate Occupational Permit – Cedric Lewis

Joe Moore stated the Commissioners have the background information on Mr. Lewis, as well as his prior rulings. They also have recommendations from both Boards of Stewards, those at Mountaineer and Charles Town. Kelli Talbott added the Stewards have requested the Commission deny the request. Motion was made by Mr. McDermott to deny this request, seconded by Mr. Phillips. Motion passed.

Request to Reinstate Occupational Permit – Scooter Davis

Joe Moore stated this item was delayed from the last meeting to obtain additional information from the Board of Stewards and consideration for their suggestion on reinstatement. They have gotten together and feel that Mr. Davis is remorseful for his prior actions and that the 3 years, as of March, that he will have served is plenty in this case. They have put forth a conditional permit request that they have worked with Counsel on, and that condition would be that if Mr. Davis receives 2 medical violations in the state of West Virginia we would then go through with the process of revoking his permit at that point. The Stewards recommend the Commission allow Mr. Davis to apply in March. Kelli Talbott stated if the Commission approves the recommendation of the Stewards, she would prepare an order for them to sign stating Mr. Davis' license would be reinstated in March 2016 and that the condition placed on his permit would be that if he receives 2 medication violations in our state, then at that point we would bring revocation proceedings against his permit. Ms. Talbott the Commission has authority under the Thoroughbred Rule to place conditions on permits and that has been done in the past.

Motion was made by Mr. McDermott to issue the conditional occupational permit with the recommended conditions attached to the issuance of the permit. Mr. Phillips inquired if Mr. Davis should have medication problems in Florida, shouldn't that be a part of this? Ms. Talbott replied she and the Stewards went back and forth on this, and if he would have a medication violation in Florida, then the Stewards in Florida will decide what penalty he gets in Florida. We won't decide that. Whatever happens in Florida, we have provisions in our Rule that requires us to reciprocate other states penalties but she's not sure we could impose our own penalties for something he does in Florida. Motion was seconded by Mr. Phillips.

Ms. Talbott stated this recommendation is the Stewards recommendation, not hers. She was actually fine with the initial recommendation of not giving this gentleman a license.

Mr. McDermott withdrew his motion and Mr. Phillips withdrew his second. Mr. Phillips stated he's still troubled by the fact that the Stewards thought it would be detrimental for him to be given a license and then turn around and recommend he get a license.

Motion was made by Mr. McDermott to defer this until the next meeting and hopefully ascertain whether everyone is on the same page, seconded by Mr. Phillips. Motion passed.

Next meeting – tentatively January 19, 2016

The next regularly scheduled meeting is scheduled for January 19, 2016, unless there is a need to have a special meeting prior to that. And if so, we need to be notified as soon as possible so we can get that done and don't delay items.

Public Comments

Erich Zimny stated Charles Town has been in very amicable dialogue with the HBPA on the issue of race days and do believe there will be a consensus between the two parties reached fairly soon.

Executive Session – Consideration of Executive Director & Track Operations Manager

Executive Session – Determine employment status of Mountaineer Park Stewards, Veterinarians and Test-Barn Employees during dark months

Executive Session – Legal advice related to the contract for the West Virginia Breeders Classics

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

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

Motion was made by Mr. Phillips to appoint Joe Moore the Executive Director and further that we establish a position that is known as Track Operations Manager in the WV Racing Commission, seconded by Mr. McDermott. Motion passed.

Motion was made by Mr. Phillips to empower the Executive Director to address the employment situation at Mountaineer Park during the period of non-racing, seconded by Mr. McDermott. Motion passed.

Motion was made by Mr. McDermott to approve the Breeders Classics contract, seconded by Mr. Phillips, with the amendment not to extend more than one year. Motion passed.

Adjournment

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