

MINUTES
WV RACING COMMISSION
Tuesday, March 18, 2014
WV Lottery Conference Room

The WV Racing Commission met on March 18, 2014 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.

Approval of February 18th minutes

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

Executive Director's Report and effective date on Thoroughbred Rules
Jon Amores

Jon Amores, Executive Director, noted the Thoroughbred Rules were passed by the Legislature and the Commission has to vote on the effective date of those rules.

The Racing Commission is continuing to get updates from Counsel, Jim Rutledge, on the drafting of the Backstretch Pension plan and he is working with Mike Lloyd, HBPA attorney, on the changes. Chairman Rossi stated he has been talking with IMB and the Treasurer's Office. There was a problem with the Treasurer's Office serving as Trustee and they have elected not to accept the monies. The Treasurer's Office will permit an RFP to go out to solicit a custodian of the funds. This is the last stumbling block left. Jon Amores stated the Third Party Administrator has already been selected as well. The RFP needs to be approved through the Treasurer's Office and by the Racing Commission so the selection process can get underway.

We are still in the public comment period for procedural rules for the Capital Improvement section of the Code. We have received at least 1 comment thus far and the rules are available for viewing on our website. The public comment period ends March 24th.

We have a proposal from Joe Strugg for a TCO2 testing device/machine. The proposal includes a testing protocol that would allow him over time to finance/purchase this machine. This request has been made to Charles Town and Mountaineer because ultimately the tracks would inherit those costs.

The Thoroughbred Rules were passed as part of the Rules bundle. The decision of the Commission is to now decide on the effective date of those rules. In the past we have had 90 days to allow interested parties to understand the new rules. Kelli Talbott stated she is fine with the 90 day period but we have to wait for the Governor to sign the Bill before they can be filed with the Secretary of State, but that should presumably be sometime soon. What the Commission will be signing is when they will be effective once they go to the Secretary of State's office. Motion was made by Mr. Phillips to place the rules in effect 90 days after they are filed with the Secretary of State's office, seconded by Mr. McDermott. Motion passed.

**Auditor's Report
Becky Carnefix**

Becky Carnefix stated the Capital Improvements submitted for reimbursement and paid were Mountaineer was reimbursed \$672,237.70 for 9 projects during the month of March and Charles Town was reimbursed \$2,430,735.23 for 5 reimbursement requests encompassing several projects during the month of March. For the supplemental purse awards, fourth quarter FY13 claims, covering race dates April 2013-June 2013, are currently being reviewed and 14 day letters requesting additional information for residency verification will be mailed out this week. The anticipated pay date for valid claims is early April. Mr. Phillips stated in the future for the capital improvements update he would like to see the titles of the projects being reimbursed and the dates they were approved by the Commission.

**Accountant's Report
Joe Moore**

Joe Moore stated in state handle was down 6% year to date as well as the revenue generated from live and simulcast racing was down about 5%. During the earlier part of this month, the Racing Commission paid out the racetrack employee pension fund monies to the four recipients. Monies paid out to Charles Town was \$3,453,501.02, Mountaineer Park was \$1,773,078.21, Wheeling Island was \$986,197.11, and Mardi Gras was \$631,838.63.

Approval of promotional costs, 2014 WV Derby

Rosemary Williams stated Mountaineer is asking for reimbursement of promotional activities for the WV Derby of \$510,000. They plan on being live on FSN, a national telecast, for an hour that day and they are going to start with pony pop ups in July, which is a favorite of the fans. They are going to have a staycation celebration and also are planning to have a strong presence in social media this year, which they feel will benefit the awareness of the Derby. Motion was made by Mr. McDermott to approve the promotional costs for the 2014 WV Derby, seconded by Mr. Phillips. Motion passed.

Approval of advertising costs for Breeders Classics XXVI

Joe Moore stated this is the advertising costs related to the previous year's Breeders Classics. When the Commission approved their race purse, they also approved for \$100,000 in advertising costs to reserve that money for this reimbursement. This reimbursement came in a little over \$87,000 so the money has been approved for this reimbursement and it is his recommendation to reimburse these funds. Mr. McDermott made the motion to approve the reimbursement of advertising costs, seconded by Mr. Phillips. Motion passed.

Legal Update, Attorney General's Office

Kelli Talbott stated Chris Groves appealed the decision from Judge King to the WV Supreme Court. This now gives the Commission 3 cases in the Supreme Court: the Schweizer case, the PNGI case, and now the Groves case. One case is pending in Kanawha County Circuit Court, the Randy Wehrman case. She received another appeal yesterday and will include that on her report for next month.

Approval of thoroughbred rule stakeholder group for 2015 Legislature

Jon Amores stated this is the authorization for the Commission to start up again the stakeholder group for the Thoroughbred Rules. Kelli Talbott stated she thinks the agenda should be limited with the focus being the piece of the Mid-Atlantic reforms relating to the point system. Mr. Phillips made the motion to authorize the establishment of this committee with the agenda to be limited, seconded by Mr. McDermott. Motion passed.

Charles Town Racetrack, request to add 14th race on Charles Town Classic Day

Jon Amores stated the request is being made out of an abundance of caution due to not being sure if more than 13 races was approved on the original request. Motion was made by Mr. McDermott to approve adding a 14th race on Charles Town Classic Day, seconded by Mr. Phillips. Motion passed.

Approval of 2014 resumed simulcast operations at The Greenbrier

Jon Amores stated this approval is to ratify a request by The Greenbrier whose schedule was originally to be dark during the first quarter of 2014 and now they want to resume simulcast operations this month and continue throughout the year. Motion to approve the resumed simulcast operations at The Greenbrier was made by Mr. McDermott, seconded by Mr. Phillips. Motion passed.

Capital Improvement request, Mardi Gras, \$36,998 for new tractor to maintain greyhound track

Capital Improvement request, Mardi Gras, \$102,878.44 for renovation of First Turn Restaurant

Capital Improvement request, Mardi Gras, \$24,341.70 for proportional share of costs of new floor covering for Bayou Buffet area

Becky Carnefix stated she has reviewed the request for the new tractor and recommends for approval. The request for the renovation of the First Turn Restaurant includes floor covering, new tables and kitchen equipment. She has reviewed the request and recommends it for approval. The third request is for the proportional share, or 50%, of the costs of the new floor covering for the Bayou Buffet area. The 50% is consistent with the reimbursement made to Mardi Gras for the construction of the Bayou Buffet area and is

recommended for approval. Motion was made by Mr. McDermott to approve all three requests, seconded by Mr. Phillips. Motion passed.

Mountaineer Racetrack, request to conduct Mystery Voucher promotion

Jon Amores stated this is similar to the Mystery Voucher promotion that was approved by the Commission in the past. The first promotion was successful. The proposal is to send approximately 55,000 vouchers to patrons in the tracks database as a promotion to encourage people to come to the track. Redemption of the vouchers will occur on May 3rd and 4th. Motion made by Mr. Phillips to approve the promotion, seconded by Mr. McDermott. Motion passed.

Approval of Wheeling Island Stakes Race calendar for 2014

Jon Amores stated there is an amendment to this request. Mike Maestle stated the request was originally to have the approval of 4 stakes races, but at this time, due to there still remaining some fiscal uncertainties concerning some funds for this year, they are respectfully requesting to amend the original submission and would like to seek the Commission's approval for the John Dallas Memorial Race and the George Kellas Memorial Race, the first two stakes for this year, and table the WVGoba Juvenile and the WVGoba Sprint Championship that are scheduled to occur later this year, until they have more clarity on the fiscal issues at the April meeting. Motion was made by Mr. McDermott to approve the amended request, seconded by Mr. Phillips. Motion passed.

Medical Relief Fund claim, Noelani Jensen

Jon Amores stated this is a claim the Commission has not had before. However, it is a statutorily authorized claim. The Statute states "all civil penalties imposed by stewards and judges of the Commission shall be put into a relief fund. This relief fund should be used for medical care and expenses occasioned by injuries while conducting activities under the jurisdiction of the Racing Commission." Any balance in this fund in excess of \$5,000 goes to the General Revenue Fund. There has not been a claim against this fund and the money has been rolling over into the General Revenue. Presently, the balance in that fund is \$60,000, and the balance typically grows from \$60,000 to \$90,000 annually. There is now a claim for Ms. Jensen against this fund. The amount of the claim not covered by insurance, per Ms. Jensen and subject to relief from this fund, is \$24,460.25. We sought the advice of Counsel as to whether to pay this claim and the amount to pay. The advice was two-fold. First, notwithstanding the fact that there is some insurance to pay her bills, the fund is available for expenses that are not covered by insurance, subject to confirmation of the amount. Secondly, Counsel has recommended that the Commission draft some Legislative Rules to provide some clarities and specificity on how claims are to be reviewed and how to implement this statute in the future. He recommends, as per the advice of Counsel, that subject to confirmation, possibly by our Investigators and Counsel, that Ms. Jensen's claim as submitted to the Racing Commission be paid from the fund and paid in full. Secondly, Counsel to be tasked to begin the process of drafting some Legislative Rules to provide more guidance in the future. Chairman Rossi stated he concurs with Mr. Amores' recommendation. Mr. McDermott stated he agrees with the recommendation as well, but has one question. Do we pay the providers directly? Kelli Talbott replied she would recommend we do that and she thinks that's the best way to insure the money goes to who it's supposed to. Chairman Rossi stated he thinks the motion needs to

be fashioned to that effect. He added after careful verification of the facts and circumstances, we pay the provider directly, if this passes. Mr. McDermott asked of the amount of medical bills that were covered, are we going to have the same agreement insurance companies have with the amount that is billed and the amount that is actually paid? He thinks we need to check into this as well. Kelli Talbott agreed that there should be limits on amounts paid for each claim. Mr. Amores amended the motion to include subject not only to the confirmation but subject to determination of a final amount due to the insurer which allows us to possibly negotiate with them, then we would ask for that amount to be approved and paid directly to the provider. Mr. McDermott made the motion to approve Mr. Amores' recommendation, seconded by Mr. Phillips. Motion passed. Mr. Phillips stated since we are in the beginning stages of trying to draft something, once the determination is made by checking with the insurance issue Mr. McDermott has raised that the Commission be notified of the outcome of it. Kelli Talbott added another issue she suggests is that there should be some sort of statute limitations after the injury for these permit holders to submit a claim. Mr. McDermott agreed.

Approval of permit reinstatement, Miguel Jimenez

Jon Amores stated Mr. Jimenez seeks approval of his exercise rider permit at Mountaineer. He previously held a permit but the new rules do not have the 10 year qualifier for felony convictions and in 1993 he had a drug conviction. He has not had any instances with the law since his 1993 conviction. The Mountaineer Board of Stewards have provided a letter of recommendation and he recommends he be approved for licensure without qualification. Mr. McDermott made the motion to approve, seconded by Mr. Phillips. Motion passed.

Public Comments

Randy Funkhouser asked if he could get an idea of the purse breakdowns for the Breeders Classics. Carole Holden stated there has not been a request for purses for the Breeders Classics yet for this year and that is not done until they know how much money is going to be available. Discussion was held between Mr. Funkhouser and Ms. Holden concerning specifics of the Breeders Classics. She added she would be happy to discuss the purse breakdowns with the Commission, although it has never been done in the past. Erich Ziminy added Charles Town would like to be included in those discussions as well. Randy Funkhouser said the same for the Horsemen. Chairman Rossi stated the three parties should discuss this issue and get back to the Commission. He then added the Executive Director will be involved in these discussions also.

Next meeting

The next meeting will be April 15, 2014.

Executive Director, staff personnel review

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.

Mr. Phillips made the motion to hire John Myers as the Interim Executive Director, with the understanding that the search for a new Executive Director begin immediately. Seconded by Mr. McDermott. Motion passed.

Adjournment

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