MINUTES
WV RACING COMMISSION
Friday, August 1, 2014
Mountaineer Casino Racetrack & Resort

The WV Racing Commission met on August 1, 2014 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi, Commissioner Greg McDermott and Commissioner Bill Phillips. Counsel was represented by Kelli Talbott.

Approval of June 17th minutes

The Commissioners and legal counsel received the minutes from the June 17th meeting prior to this meeting. Mr. Phillips moved to accept the minutes, seconded by Mr. McDermott. The Commission approved the June 17th minutes.

Executive Director's Report
John Myers

John Myers stated he has started holding weekly staff meetings and the Stewards are also included in these weekly meetings. Over the past few weeks he has started asking the Investigators to submit their weekly reports to him as well to increase communication in the field.

The State has recently implemented a new financial accounting system, OASIS, to replace WV FIMS. There have been some delays with people receiving their checks out in the field because of this new software, but progress is being made.

It was discussed at a previous meeting to write a letter stating it was appropriate for the merger of MTR Gaming and El Doraldo Holding Company. A copy of that letter is included in the Commissioner's binders.

Mr. Phillips asked what the current status is of the RCI effort? Mr. Myers replied currently there are various tracks accessing the database to look at both rulings and licenses and he feels we are on track to meet the September 1st deadline.

Mr. Phillips inquired on the status of the medical claim issue? Mr. Myers replied we are still waiting on paperwork back from the individual detailing the percentage of payment to be made.

Mr. Phillips thanked Mr. Myers for including the reports from the Investigators as a form of communication and stated he still would like to encourage some type of education/training for the Investigators.

Auditors Report and FY 2015 Schedule of Audits

John Myers stated the Auditors Report was included in the Commissioner's binders for their review. Motion was made by Mr. McDermott to approve the report, seconded by Mr. Phillips. Motion passed.

Accountants Report

The Accountants report was included in the Commissioner's binders for their review. Motion was made by Mr. Phillips to approve the report, seconded by Mr. McDermott. Motion passed.

Legal Update - Attorney General's Office

Kelli Talbott stated there were no comments on the Thoroughbred Rules for the Legislative Session 2015. Secretary Kiss has signed off on those rules and they have been filed.

The Racing Commission has received one lawsuit, or pre-suit notice, from Roger White regarding the funds for the training tracks. The pre-suit notice is now expired so she is expecting notification about the lawsuit and will notify the Commission if/when the notification is served.

Mr. McDermott asked what is the process involved with the pre-suit notice? She replied there is a statute the Legislature passed several years ago that requires individuals who intend to sue a State agency to give them 30 days notice prior to suit. Mr. White's counsel sent a letter advising the Racing Commission that he intended to sue the Commission regarding the continued holding of the $2 million dollars that the Commission has set aside for construction of greyhound training tracks. The letter also indicated the lawsuit would pertain to the manner in which the Commission has expended certain monies in its administration promotion account related to the Greyhound Breeding Development Fund. They have to wait the 30 day notice period out before they can file the lawsuit.

Capital Improvement Request – Hollywood Casino - $500,000 for Concentrated Animal Feeding Operation

Becky Carnefix stated this request is for Phase 1 of the project, which includes the design and initial construction, and is an estimate of the cost. This project is similar in nature to a project done at Mountaineer in 2010 and reimbursed by the Commission and she recommends for approval. Mr. Rossi asked if this was an estimate of the first phase and how many phases are there? Jeff Burnes, Charles Town, replied this project is so Charles Town will be in full compliance with the Division of Environmental Protection by January 1, 2017 and is a very long term process. It is a 3 phase project, with phase 1 being the design phase. The next phase will be for construction and then he will receive estimates for full cost. The estimate of $500,000 is for full cost. Motion was made by Mr. McDermott to approve the request, seconded by Mr. Phillips. Motion passed.

Hollywood Casino – Request to alter the previously approved Stakes Race Schedule by cancelling the $100,000 Researcher Stakes and reduce the number of races from 13 to 12 that night

Erich Ziminy, Charles Town, stated the rationale behind the request was an effort to conserve a little bit of purse money. Motion was made by Mr. Phillips to approve the request, seconded by Mr. McDermott. Motion passed.

Capital Improvement Request – Mountaineer Casino - $9,217.91 for a Surveillance Video System in the test barn

Motion was made by Mr. Phillips to approve the request, seconded by Mr. McDermott. Motion passed.

Wheeling Island request to modify wagering menu

Jim Gartland, Wheeling Island, stated they reviewed their menu for wagering and conducted customer surveys and decided to make a few changes to their wagering a little bit to try and improve. The only caveat is they are in discussions with the Tote company now about the Quinella Double and issues they are having with configuring it to their system. If the Tote company cannot get this issue resolved, they will simply withdraw the Quinella Double and put the Quinella back in that race. Mr. Myers added we would request if the Tote company is not able to configure the Quinella Double to their system, to make that request formally at the next meeting. Motion was made by Mr. McDermott to approve the request, subject to the uncertainty of the Quinella Double, seconded by Mr. Phillips. Motion passed.

West Virginia Breeder's Classics request for purse of $1,280,000.00

John Myers stated attached behind the request is our projection of the amount of money available to them, which is $1,284,022.00. Motion was made by Mr. Phillips to approve the request, seconded by Mr. McDermott. Motion passed.

Pension plan – review of recommendations and consideration for approval

Jana Tetrault, Mountaineer HBPA, stated the Commission was sent a letter that outlined the recommendations that have been made and submitted for Commission approval. An overview of the recommendations for the vendors selected are: Third Party Administrator – Employee Benefits Group of Jackson & Kelly. Investment Manager – Wesbanco Trust & Investment Services. They are also asking the Commission to approve the first amendment to the plan. The final version of the amended and restated plan has been reviewed and approved by Jim Rutledge. They believe the changes are necessary to conform the plan to its statutory purpose and to provide fair and efficient operation and administration of the plan terms.

Some of the changes made were the definition of eligible trainer. When a person starts at a racetrack outside of their racetrack and they are dark, that does not count against them. They eliminated the clause for another retirement plan. They felt a person shouldn't be restricted if they had another plan or worked in the past. The vesting schedule was changed from a five year class vesting schedule to a seven year cliff vesting. For the purpose of years of service, they shall be counted beginning with January 1, 2010. The pre-2012 amounts shall be subject to the same five year cliff schedule as they were under the prior plan. Employees will be permitted to rejoin the plan after satisfying the eligibility requirements. The break in service rule says the employee could not have more than 2 consecutive breaks in service.

Motion was made by Mr. McDermott to approve the recommendations and approve the plan, seconded by Mr. Phillips. Motion passed.

Legislative proposals for 2015 session

Mr. Phillips stated he personally, as a Commissioner, believes it's time to step forward as advocates for the Racing Commission and offer serious legislative proposals for consideration by the administration and others. The racing industry is facing some unexpected issues, caused by tight state revenue collections and projections, as well as casino competition. Just one month ago, a 10% cut from the video lottery table game proceeds became effective. In addition, the industry is going to share part of an over $1 million cut that was appropriated from the purse account in the special session of the Legislature this year. This is on top of the $11 million contribution this industry is spending to help pay off the State's Workers Compensation debt. Opportunities need to be created to increase revenue to assist our horsemen, our tracks and related personnel, and community businesses associated with racing.

The first proposal is to authorize instant racing. Instant racing in other jurisdictions has increased revenues (handles) and boosted purses.

The second proposal is to legalize advanced deposit wagering. Legalization would address several issues. First, it's going on anyway with horsemen and tracks receiving zero in revenue on wagers made by WV residents with advanced deposit wagering companies. Secondly, anyone who wants to wager on the dogs or horses in our state must drive to one of four locations. Advanced deposit wagering would address this issue and provide revenue to help stabilize racing in West Virginia. Since advanced deposit wagering is not authorized or prohibited in West Virginia, there is no revenue sharing model. Advanced deposit wagering companies keep all the revenue. Furthermore, 34 or 37 states already have advanced deposit wagering.

Motion was made by Mr. Phillips for the WV Racing Commission endorse and offer the administration these two concepts as their 2015 legislative proposals, seconded by Mr. McDermott.

Randy Funkhouser stated he hardly supports the motion made on these proposals. He has been in conversation with a lady that is doing research on racing issues and she can be helpful in the respect of discussing issues with the Commission. CTHBPA has been active in trying to propose different pieces of the advanced deposit wagering at Hollywood Casino. There are two other things that are currently being looked at as pari mutuel wagers to help raise revenues. There is a new proposal called Equilottery which has surfaced in the last 30 days. The representative for this is willing to make a presentation to the Commission.

Discussions have also been had with Hollywood Casino about a Pick 6 wager, which has a carryover pool. Current pari mutuel rules don't allow for a carryover. The CTHBPA will work with the Commission in any way to pursue these items.

Mr. Phillips added the Equilottery has been covered in Bloodhorse magazine and also this week in the Thoroughbred Daily News. The article is an excellent explanation of this new concept.

Rosemary Williams stated on the matter of the Equilottery, she has been in discussions with the representative herself, and he is actually preparing a report for the State of WV that should be done in about a week and a half that will talk specifically to revenue based in WV. She would like to share that report with the Commission once it is completed and possibly discuss further at that time.

Chairman Rossi stated he does agree the Commission needs to listen to the presentation made by Equilottery. As for Mr. Funkhouser's other idea, that may be a rule change and before action is taken on that, more information is needed.

Motion made by Mr. Phillips was passed.

Approval of test lab

John Myers made a presentation to the Commission on the proposed test lab. The Racing Commission has used Dalare Labs since 2006. The new rules put in place require an accredited test lab be used. Dalare had applied for accreditation by RMTC but could not meet the requirements by July 9th when the new rule went into effect. Therefore, the Racing Commission needed to look for an accredited test lab. There are currently 5 labs in the US that are accredited. In an effort to meet the July 9th deadline, Mr. Myers started contacting labs.

The representative from the Ohio lab said they could not handle the additional testing and provide results in a timely manner.

The Kentucky lab does have a modern facility and they provided a proposal to do testing at $120 per sample. This level of testing is considered graded stakes testing which is the same process you would see in a graded stakes test. An option offered to manage cost was to try and take some of the tests, mark some that had to be tested and then another half of them only test half of that group. Meaning at least 25% of the samples would not be tested in that process. Kentucky has actually used that process in order to help manage the costs there.

Truesdail Labs also has a modern facility. A formal proposal was received from them with two options. One is a routine level testing and the second is a graded stakes testing. Blood tests on a routine and graded stakes test are the same. This blood test will identify 22 of the 24 therapeutics listed in the new rules. Graded stakes has additional requirements than the routine tests.

One thing to consider is the Kentucky lab has a little longer turnaround time than the Dalare labs, currently 2 days longer, but they are working to reduce that. Another thing to consider is how do we best manage costs and the level of testing we feel is adequate? We just put new rules in place and want to make sure we are living up to those and treating everybody the way they need to be treated.

Current costs, on a daily basis, under Dalare was $960 per day and that's from testing the 9 winners and 3 specials each day, which is $80 per test. Under the Truesdail proposal, they offered a routine level of testing at $648 per day for the same 12 tests, which is $54 per test. The graded stakes level of testing would cost $1440 per day through the Kentucky lab and $1392 through Truesdail.

His recommendation is to do a compromise position and a blend of things. Do some of the testing at the routine level testing and do some at the graded stakes level. Costs are managed and also raise the level of testing above where its been in the past. Issue the contract initially on an at will basis where it can be cancelled at any time if we feel we are not getting the level of service we need. If we use 9 routine tests and 3 graded stakes tests daily, the cost would be $834 per day. We also have the ability through the new labs to add a TCO2 test, at a cost of $13. Going forward we need to establish a 30 day, 90 day and 180 day review of the service level we are receiving and then establish an annual review and approval of the test lab by the Commission.

Motion was made by Mr. McDermott to adopt Mr. Myers' recommendation, seconded by Mr. Phillips.

Mr. Phillips stated his concern a week ago was we haven't really reached out to the horsemen and to the tracks and specifically to our state Vets to get input on the one proposal that was on the table then. There were issues raised about adequate due diligence with the RMTC and questions to be answered by Dr. Benson before we proceeded. What has been done to communicate with these individuals for the recommendation before us?

Mr. Myers responded he sent this proposal to Dr. Benson, to the HBPA's at both tracks and to the Vets at both tracks. The response he received from Dr. Benson said to consider the graded stakes proposal if you want to catch most things. The response from Charles Town was submitted to the Commissioners. He has spoken with Mountaineer and both HBPA's and at the

time of the meeting, he felt he had the support from those organizations as well. He also received one response from one of the Vets at Charles Town whom also seemed to think it was an acceptable proposal.

Mr. Phillips added he would still like to have some substantive intellectual response from Dr. Benson. Mr. McDermott stated we are in an emergency situation as he understands it and a decision needs to be made today.

Maria Catignani stated the horsemen would like a little more information on a few items. Firstly, what is a routine test and what is a graded stakes test? The horsemen need to understand what the specific requirements are for a graded stakes test. Secondly, the horsemen need some assurance they will not be targeted with the 3 special tests that are done daily and that there is some randomness in the selection process. The main understanding needed is what is a mandatory test vs. an optional test and who decides what optional substances are tested for.

John Baird stated from his understanding there will be 12 tests per day, the 9 winners and 3 specials. the problem he sees with this is the 3 people that get graded stakes testing could have a positive that they otherwise may not have had if there were tested under the different rules. A problem is being created using 3 special tests. Rosemary Williams added the proposal says they would test the winners and then randomly select the other 3 horses to test so every horsemen has to abide by the graded stakes level testing. Mr. McDermott added the idea is to hold everybody to the same standard with the understanding that you could be randomly selected to be tested by the graded stakes testing. Maria Catignani stated there needs to be clarification because when you say 9 winners and 3 specials people automatically think the 9 winners will never have the graded stakes test and that's not necessarily the case because they could be selected at random.

Mr. Phillips stated if we go forward with this, regardless of the period of time, the Commission needs to actively educate the horsemen and all concerned parties.

Kelli Talbott added there may be circumstances when the Stewards or State Vet thinks there's a reason for cause to conduct the special test on someone and she doesn't think their hands should be tied to prevent them from doing this, which means special tests may not always be selected on a random basis. Chairman Rossi stated there need to be some policies and procedures for people to refer to. Mr. Myers stated he agrees.

Vote was taken on motion made by Mr. McDermott. Motion passed.

Test results for therapeutic drugs and enforcement options

John Myers stated we have had positives, or "cloudys", come back since July 9th. The Racing Commission has used the same test lab since 2006 and we were thinking they were going to reach the accredited status, but that did not happen. A second lab was contacted, that is accredited, and they said they would test anything that came back positive from the first test. This arrangement was set up. However, it was later discovered that the lab used initially did not give a quantitative number as to the amount of drug that was found in the first sample. The agreement made with the second lab to give a confirmation of that number was a confirmation of a cloudy, basically. We have held purses based on the initial report from Dalare labs. This is brought before the Commission as to what our options might be.

The first option is do we give some kind of forgiveness to the first positives and say we don't have solid evidence? Mr. McDermott stated he quarrels with the term forgiveness because it's not forgiveness. It's a candid, tacit, acknowledgement of an inability to enforce.

Mr. McDermott stated the issue being contemplated is these positives were not quantified. John Baird stated to provide them with some guidelines and they will follow them. Troy Hendrick suggested the Commission go forward with a 90 day period with the new lab and

see what they are doing until there is a program in place. Chairman Rossi stated by hiring the lab they feel they have done this, however, the 30 days that have passed is the issue.

Dr. Berkley stated they were all excited to accept the rules of racing and did so. They understand the Commission may have failed in not having the lab set up as well as they may have and the lab may have failed the Commission also. We are well past the term "cloudy" in today's time. You must test these samples and get a quantitative level, irrespective of the cost. Mr. Phillips inquired if anyone has estimated the cost of that so that we have solved this problem and enforced our own rules? Mr. Myers replied $900 per sample. So if we have on average 40+ samples we're looking at over $40,000.

Mr. Myers added another issue is if there is any possibility the sample itself is still sufficient after having been done twice. Maria Catignani said her concern is if the sample is a viable sample anymore based on the time that has lapsed since it was taken. Additionally, the Commission can try and negotiate the price for testing if they are not comfortable with that price.

Mr. Phillips stated the solution is to find $40,000 and get everybody whole. Mr. McDermott stated there are consequences associated with that too and those need to be discussed as well. Chairman Rossi added you may spend the $40,000 and still not get everybody whole.

Chairman Rossi stated the Commission just passed they are going to hire Truesdail and they are going to sign the contract and suggested they see what Truesdail can do with the Racing Commission on the deal of testing all of the cloudy samples and then come back with a decision. Mr. McDermott agreed you have to ask the experts can they quantify these samples.

Mr. Phillips stated it makes sense to him as a result of this discussion the Executive Director work with Counsel and draft a one paragraph statement that everyone would have access to on the website Monday morning so everyone will know exactly about the past.

Mr. Phillips made the motion that today the Racing Commission engaged the services of Truesdail to be its accredited lab. However, there are some questions, since the rules went into effect July 9th, and some undetermined samples. The Racing Commission is going to contact Truesdail and ask them to quantify these samples with the least amount of time possible being consumed, and verify they are still legitimate samples to be quantified. At the same time, the Racing Commission is going to ask Truesdail to give us a substantial reduction in price for this request being made for this set of samples. Purses will still be held until a decision is made otherwise. An emergency meeting will be called by the Commission once the information is available. Motion was seconded by Mr. McDermott. Motion passed.

Public Comments

Nelson Robinson stated the issue of the smoking ban in Hancock County is a very serious issue. The Hancock County Board of Health has under its consideration a smoking ban that will prohibit smoking in basically everywhere at the facilities. The management at Mountaineer Racetrack has said it will be a substantial reduction in revenue, and a competitive element is coming on board as well, also expecting to reduce revenues. This will effect revenues for all of Hancock County. Mr. McDermott asked if this was a more restrictive ban than was seen in Ohio County and affected Wheeling Island. Mr. Robinson replied yes, it's a total smoking ban.

Next meeting – tentatively September 16, 2014

The next regularly scheduled meeting is September 16, 2014, but there will be an emergency meeting and the public will be notified of that meeting when it is set.

Adjournment

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