

MINUTES
WV RACING COMMISSION
Tuesday, May 19, 2015
WV Lottery Conference Room

The WV Racing Commission met on May 19, 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 April 21st minutes

The Commissioners and legal counsel received the minutes from the April 21st meeting prior to this meeting. Motion was made by Mr. Phillips to approve the minutes, seconded by Mr. McDermott. Motion passed.

Executive Director's Report
John Myers

John Myers stated the FOIA report, which is a 3 month running report, shows 3 requests received in April from Grey 2K and 2 requests from Charles Town HBPA. Those requests have all been answered and are closed as of this date. There was an incident at the Charles Town track back in December and at that time the Commission wanted to examine the safety protocols that were at that track. Those protocols have been modified and Kelli Talbott has reviewed them. He has included diagrams in the Commissioner's binders, as well as the procedures the Stewards follow since this incident occurred. These protocols have actually been tested a few times since the incident occurred and the response of the Stewards appeared to be appropriate based upon the protocols agreed upon. Mr. Phillips stated these protocols were a result of the incident at Charles Town in December and it was suggested they also be put in place at Mountaineer. What is the status of that? Mr. Myers replied these protocols are also in place at Mountaineer and the Stewards have adopted them. The diagrams in the Commissioner's binders include separate drawings for Charles Town and Mountaineer.

At the last Commission meeting, he gave a report on purses and reduction of race days for the Thoroughbreds, but did not for the Greyhounds because there hasn't been a request from the Greyhound tracks to reduce days. The following is a summary of how the money is disbursed from the Greyhound side: They use a point system. Each type of race, based on the grade of dog and the length of the race, has a certain amount of points assigned to that race. The points are then awarded based on place of finish in the race. The difference between dogs and horses is that each week the dog tracks are given a certain amount of purse money and they pay that entire amount out for the week based on points that are put into the pool for the week. The control of the value of the point can happen in a couple of ways. The first being sheer number of races they run and the second being the grade of races they run.

Chairman Hall and Chairman Nelson have been named to the Joint Committee. The makeup of this Committee, from his understanding, is going to be the entire Committee from both sides, so it's going to be relatively large. The only instructions he has received thus far is they are wanting a history of the Racing Commission basically from the beginning of time.

Chairman Rossi stated he thinks John Myers has been doing an excellent job as the Acting Executive Director and appreciates what he does for the Commission.

Auditor's Report Becky Carnefix

Becky Carnefix stated the capital improvements submitted for reimbursement and paid for the month was Charles Town submitted 1 project for reimbursement and the total payment made was \$27,049.94. The details of the project are included in the Commissioner's binders.

For supplemental purse awards, the first quarter FY15 claims, covering race dates July-September 2014 are in the process of being reviewed. The payout of those claims is anticipated to occur in early July.

On her audit schedule she has track visits planned to take place within the next month. She will report on the ones she has completed at the next meeting.

Accountant's Report Joe Moore

Joe Moore stated total live handle increased 15% compared to March and decreased 8.8% compared to YTD 2014. Export handle is down 17.7% compared to FY14. Simulcast handle is down nearly 7% compared to FY14. Total in-state handle has decreased 7.5% compared to FY14.

The FY16 Expenditure Schedules have been filed and submitted to the Legislative Auditor and Budget Office. A copy of those schedules are included in the Commissioner's binders for their review.

Legal Update – Attorney General's Office

Kelli Talbott stated she provided the Commissioner's with her written report and the item pending that has an upcoming deadline is the Roger White lawsuit. The Commission was re-served with a complaint in that matter because she raised the issue of the State getting 60 days to respond to any complaint filed in Circuit Court. The initial service only gave 30 days so we were re-served with a complaint and now have until June 16th to file a response. She has a motion prepared to file and she has provided that motion to Secretary Kiss' office and will get it filed in a timely fashion.

Changes to the WV Thoroughbred Rules for 2016

Kelli Talbott stated she has all of the Thoroughbred Rule changes and Pari-Mutuel Rule changes with her today. Secretary Kiss has been provided with a memo that outlined, in summary fashion, the rule changes that are being looked at. Mr. Myers added he received a phone call from Doug Buffington saying the Secretary had approved all that was sent to him and to proceed with drafting the language. Kelli added she did draft the actual rule language that is being looked at and inserted it into the Rule.

Basically the changes that are being looked at are mostly RCI model rules that we are catching up with. There are some RCI model rule language regarding the non-steroidal anti-inflammatory and the penalty for those overages that are being adopted into our Rule. We are updating RCI's Uniform Classification Guidelines for foreign substances. We are also adopting an update to the controlled therapeutic medication schedule. We are adopting RCI's environmental substances schedule. There is also a model rule we are adopting relating to compounded medications. The other two changes that are not RCI related are the Stewards

have requested an amendment that pertains to jockey physical examinations and allowing those to come from other healthcare providers instead of just doctors, and there is a change to the coupled entry rule that would remove some strictures on horses trained by the same person racing.

These changes just mentioned have all been drafted and are ready to go to Secretary Kiss and as soon as he signs off on them they will be put out for 30 day public comment. At the end of the 30 day period, the Commission will probably have to have a meeting because if any comments are received, the Commission will have to consider them.

Motion was made by Mr. Phillips to forward the draft of these rule changes to Secretary Kiss, seconded by Mr. McDermott. Motion passed.

Changes to the WV Pari-Mutuel Rule for 2016

Kelli Talbott stated there are two changes. The first change would change the minimum payout and minimum wager. The minimum payout would be changing to \$1.10 and the minimum wager to \$1.00. The second change was a change regarding the minor pool and jackpot carryover. It will allow for a single jackpot carryover. She has already drafted the specific language for these changes and is ready to go to Secretary Kiss to be filed for public comment.

Motion was made by Mr. Phillips to forward the draft of these rule changes to Secretary Kiss, seconded by Mr. McDermott. Motion passed.

Capital Improvement Request – Hollywood Casino at Charles Town Races - \$2,821.66 for additional expenses related to the HD clean feed uplink to TVG network

Capital Improvement Request – Hollywood Casino at Charles Town Races - \$10,012.94 for a refrigerator/freezer for Terrace

Capital Improvement Request – Hollywood Casino at Charles Town Races - \$59,640.00 for replacement of EPDM roofing material over the grandstand area

Capital Improvement Request – Hollywood Casino at Charles Town Races - \$13,637.40 for fabricating two vacuum heads for barn sweepers

Becky Carnefix stated Charles Town has 4 requests. The first request is for additional equipment for the HD clean feed uplink for \$2,821.66. A similar request was approved in March and this is additional equipment needed to complete that project. The second request is for a refrigerator/freezer for the Terrace for \$10,012.94. The third request is for the replacement of EPDM roofing material over the Grandstand for \$59,640. The current roofing material is past its lifetime expectancy and needs replaced. The fourth request is for 2 custom replacement vacuum heads for two bard sweepers for \$13,637.40.

The total of all 4 requests is \$86,112. She has reviewed the information submitted and recommends each for approval.

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

Discussion of press release by Indiana HRC regarding Truesdail Laboratory

John Myers stated a press release was received last week that came from the Indiana Horse Racing Commission stating that they had completed a quality assurance test on Truesdail Laboratory in which they sent samples through that they had actually spiked with a couple different corticosteroid drugs. Truesdail did not catch either of the drugs in their tests, resulting in Indiana immediately separating from them and going to Industrial Labs in Colorado for their primary testing going forward.

Truesdail said there are a couple things that could have happened. For instance, about 3 weeks ago they changed the location of the laboratory and maybe it wasn't calibrated correctly. There are also some scientific things with the drugs that can interfere with the analysis. They are committed to do whatever it takes to make sure this doesn't happen again and are committed to their accreditations.

There has been some discussion about possibly doing a quality assurance test of our own. RMTC has a goal of also providing QA testing of all the laboratories they have accredited. Mr. Phillips asked when our contract is up with Truesdail? Mr. Myers replied we are up to renew or change contracts late summer. There are additional accredited labs now that were not accredited before. Mr. Phillips stated it would seem to him in the meantime we should engage another firm and do some audits, like Indiana did, to verify these results rather than wait until August when our contract ends so possibly some judgments can be made by the next meeting in June. Mr. Myers stated he thinks we can make this happen and there are other labs willing to do this for us. Chairman Rossi stated he thinks we need to do this. Kelli Talbott stated the drugs that were missed in the tests were common drugs and are drugs we test for. If the Commission gets to the point they want to change labs, that takes time to make happen. Mr. Phillips asked if there are provisions in our contract that would allow us to immediately terminate and engage another RMTC accredited lab? Mr. Myers replied our contract does have a will and pleasure clause in it.

Mr. Phillips made the motion to engage an accredited RMTC lab over the next two weeks to do some tests for us and report back to us and based on that can convene a special meeting to deal with it and maybe in the meantime be looking at what our options are with other firms. Chairman Rossi asked if he was saying engage them in two weeks or have it completed in two weeks? Mr. Phillips replied completed. Chairman Rossi asked if that was a realistic timeline? Kelli Talbott replied if the Racing Commission is going to contract with someone to do the audit then the question will be how much and whether it is below the purchasing requirement for going out to bid. If it's under a certain amount it doesn't have to go out for bid. Joe Moore stated as a State Agency, if we are to put anything out for contractual reasons, to do it in-house it has to be below \$2500. If it's over \$2500 we have to get 3 written bids. Ms. Talbott stated there is an exception, and she's not sure it will fit here, but it's the exception we hire Hearing Examiner's under for expert services.

Mr. Phillips amended his motion to add do it in an expedited manner that does not go outside the procurement laws, seconded by Mr. McDermott. Motion passed.

Chairman Rossi asked if item 14 on the agenda could be done before item 13. Motion was made by Mr. Phillips to switch those items on the agenda, seconded by Mr. McDermott. Motion passed.

Executive Session – Discussion of reclassifying Accounting Tech II position and discussion of Acting Executive Director position

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

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

Chairman Rossi stated in the matter they discussed concerning John Myers, Mr. Myers has informed the Commissioner's that he intends to return to the Lottery, where he has been the Acting Director on loan from the Lottery.

Mr. Phillips stated he would like to express the thanks of the Commission for the service Mr. Myers has given for the period of time he has been acting. Motion was made by Mr. Phillips that Joe Moore be appointed the Acting Executive Director effective June 1, 2015 and that the Commission will immediately begin advertising for a permanent Executive Director with resumes being received not later than June 30, 2015, seconded by Mr. McDermott. Motion passed.

Motion was made by Mr. Phillips for the Commission to remove its Office Assistant vacancy from its roster and the position known as Accounting Tech II be reclassified as Administrative Services Assistant I, seconded by Mr. McDermott. Motion passed.

Mountaineer request to reduce racing days to 160 in 2016

John Myers stated the request is to reduce the racing days to 160 days. This request states they project they will be able to fund purses through October 17, 2015 at an average purse of \$90,000/day. Based on the information presented at the last meeting on projected purses for the remainder of 2015 and the number of days, this does align with those projections.

Rose Mary Williams, Mountaineer, stated they have projected their purses to last until October 17th. They have worked with the HBPA and they have had numerous meetings about this and have looked at the different scenarios and this is the best scenario, they think, for Mountaineer Park to remain competitive and viable as a racing facility in West Virginia. The company itself lost about \$1 million last year on racing. This will help alleviate some of that loss and it will also make sure they are competitive with Mahoning, which recently opened and has had a tremendous impact on Mountaineer. The request today is asking for October 17th to be the final date.

Mr. Phillips asked Ms. Williams to clarify if she said they hoped in the future they would not be running head to head with Mahoning? Ms. Williams stated yes, in 2016 it would be ideal if Mountaineer could make their meet between Mahoning's so they are not competing for the same horses and keep the purses around \$90,000. She said they would look at that next year. Mr. Phillips added that would require going under the Statute set number of races of 210 so the Statute still needs to be changed so there is flexibility rather than have to go through this every time, is that correct? Ms. Williams stated yes she agrees and they will work towards that.

Jami Poole, Mountaineer HBPA, stated they have had several meetings for the backside and at least over 90% of the horsemen do not want to drop the purses. There is a small percentage that would drop them to add more days but they can't afford to drop these purses. They can barely make it the way it is. He agrees with Ms. Williams and they are bumping heads with Mahoning.

Chairman Rossi stated there is a request before them that requires action. Mr. Myers stated in the past that has required his office to provide notice that this request has been received so if the Commissioner's want to make the motion for him to begin that procedure he will proceed with that process.

Nelson Robinson stated two sections of law are being mixed when the Commission is requiring Mountaineer to go through the hearing process. Their request is under section 12(b) and does not require a public hearing. If they were going through another section of law, 19-23-6 does not require the hearing process, under 19-23-12(b) and the conditions listed, he would agree you would have to go through the hearing process, but under the plenary powers the Commission has exercised there is no requirement of the hearing process.

Kelli Talbott stated with Charles Town's request that was received recently, the horsemen agreed with the track for the reduction in days, but despite that general consensus, the Statute still requires that you send out notice, which was done with the Charles Town request. The public hearing is then only triggered if an objection is received. So sending notice out doesn't necessarily mean there will be a public hearing, it depends on if proper objection is received or not. The plenary powers of the Commission only gets you so far. You still have to follow express statutory language, which 19-23-12(b) is the express statutory language. The way the plenary power was exercised with Charles Town's request was the procedure was followed with notice sent out and no objection was received so the public hearing was not triggered. Then the matter came before the Commission for decision, in the absence of a public hearing, and the statute sets forth some grounds for the Commission's possible approval and the question arose whether the Commission could exercise their plenary authority to recognize another reason, and that reason being the shortage of purse funds. It was not to completely ignore the Statute.

Mr. McDermott stated the term proper objection was used and if he understands what he's hearing, after the notice procedure is followed, it would then be determined whether a "proper" objection was received. Ms. Talbott stated the Statute is very specific about who the notice needs to go to but not as specific about who can object. She thinks the question will arise as to who can make an objection that will trigger the public hearing requirement and that bridge will have to be crossed when we come to it.

Nelson Robinson added in Charles Town's request, the original request was a shortage of horses. Ms. Talbott stated their request was broader than a shortage of horses but also the health of the purse fund as well. Mr. Robinson stated the history of the Commission in last year's case, the Commission took the position that if a person objected, and they went through the entire hearing process. He thinks the Statute is clear and allows the Commission to use its plenary power and to go through this process is wasting money.

Mr. McDermott stated speaking for himself, he feels like the request is very straightforward and meritorious. He's just trying to make sure that the Commission is complying with whatever legal requirements are required under this. At the same time, he's really hung up on the idea of "proper objection." He finds it hard to believe that all the resources would have to be expended with respect to a hearing and the drawn out process if just anyone objects. Chairman Rossi stated he did read the Statute and has discussed with legal counsel and he's in the same place Mr. McDermott is. The Statute basically states who you send a notice to but it doesn't specify what is a proper objection and that's where he thinks they are all hung up about that. Chairman Rossi stated he thinks the Commission needs to go ahead and post the notice.

Mr. Phillips added it seems to him that not much has really changed since the hearing last year, just maybe has gotten a bit worse. What he's heard from this dialogue is how desperately we need to have our Statute modernized.

Mr. McDermott stated he feels the request is obviously meritorious and his concern is that the longer the Commission is forced to delay the request the greater the potential for injury is. He doesn't see any upside to dragging this on. Ms. Talbott added there's only a 10 day window in which objections can be filed so it's a short period.

Rose Mary Williams commented even if there is a hearing the outcome is still going to be the same, purse money will run out on October 17th.

Randy Funkhouser stated they tried to fix that in Statute last year and they added shortage of purse funds and it was his understanding up until the last Monday of the Legislative Session that the tracks and horsemen were in agreement of that change. The change did get hung up the last few days of the Session but he thinks that would have corrected the problem that there currently is. Ms. Talbott stated he would have certainly helped.

Mr. Phillips stated he seems to him they have reached the point where the Commission needs to designate Mr. Myers to proceed and send out the notice or approve the request and take the consequences of that. Chairman Rossi stated he thinks it's very confusing but in his perspective it's inevitable because like Rose Mary Williams said they are going to run out of money on October 17th.

Rose Mary Williams stated 19-23-12(b) is for televised race days, those are race days being brought into the race track. This section is completely and thoroughly about races being brought into the race track and the history of this was if the track brought in a signal that the HBPA didn't like or were not complying with another HBPA they could object to it. That's what this section deals with. Ms. Talbott replied she understands what Ms. Williams is saying about the title of the Statute but the Statute also applies to live racing days and it specifically says that. Nelson Robinson added this section came about when they went to the Legislature to allow for live racing days through the simulcasting and the purpose was for the HBPA to ensure live racing days continued and that's why it was put into that section because they didn't want to have simulcasting every day and no live racing and those conditions were put in that section at that time for those reasons.

Mr. Phillips asked if a motion was needed to move forth with the notice? Mr. Myers replied in previous occasions we have which basically says this is where the clock starts ticking to get the notice out in 72 hours. Chairman Rossi commented you get the notice out in 72 hours and give 10 days for objections to be received, correct? Mr. Myers replied yes. Chairman Rossi then asked what is the next action after the 10 days? Ms. Talbott stated at the expiration of the 10 days, or during the 10 day period, if Mr. Myers wants to review with her what objections have been received and if they determine that there is a "proper objection" then the Commission shall, within 30 days of receipt of such objection, set a hearing on the question of reducing the racing days, which hearing shall be conducted at a convenient place in the county in which the requesting racetrack is located. If no objections are received that are proper under the Statute, then this issue will come back before the Commission at whatever meeting they have the next opportunity to make a decision on it. Chairman Rossi asked if he could call a special meeting and get it out of the way, if he had to? Ms. Talbott replied yes.

Jami Poole stated the end result is all they can run is 160 days. Say there's an objection, we can still only run 160 days. That objection is not going to make them run more days. They are going to run out of money. We would love to run 210 days but don't have the money to do it and the horsemen do not want to lower these purses. We are just prolonging something that is going to happen.

Mr. Phillips made the motion that Mr. Myers be directed to send out the appropriate notice and as soon as the timeframe has come to its end that the Commissioner's be advised immediately about what the situation is and a determination be made about whether a special meeting needs to be held to discuss whether a hearing needs to be held or not based upon what is received back from the notice, seconded by Mr. McDermott. Motion passed.

Mr. Phillips made a motion that a meeting be noticed and to convene on June 2, 2015 by telephone to take up a resolution he has regarding the Racing Commission establishing a Committee, seconded by Mr. McDermott. Motion passed.

Next meeting – tentatively June 16, 2015

The next regularly scheduled meeting is June 16, 2015 but obviously have committed to probably having 2 meetings before that.

Public Comments

Donna Zook, member of Mountaineer HBPA Board, is representing the 210 people whose signatures she gave to the Commissioner's. What happened to the proposed 185 days they were supposed to race this year that they were trying to get legislate? They are legislated to run 210 days. They have a business and are supposed to budget for those days. What's going to happen next year when they try to run? In accordance with WV Code 19-23-12(b), the undersigned horsemen are requesting a hearing to discuss Mountaineer Racetrack's request to reduce days from 210 to 160. They would like Mountaineer to consider what losing 50 days per year would do to the horsemen and the community. They would like Mountaineer to work and consider using less higher priced allowance races for an 8 races per day or possibly 4 days a week. They are trying to protect the horsemen and their livelihood. Not all horsemen on the HBPA support this action.

Jana Tetrault, Mountaineer HBPA backstretch pension plan, stated they are getting ready to do the final disbursement of the money from 2009 and prior. They have signed off on the agreement with the IRS and United Bank and are in the process of getting all the allocations done and hopefully within the next couple of weeks they will be able to get the paperwork done so they can begin to disburse those funds. She and Maria Catignani have both been working to try and get everyone signed up for 2012, 2013 and 2014 and are doing well with that.

Jami Poole, Mountaineer HBPA, stated in response to Ms. Zook's comment that if they don't have the purses and they drop the purses they can't pay their bills. They can barely survive now.

Adjournment

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