

MINUTES
WV RACING COMMISSION
Tuesday, June 21, 2016
WV Lottery Conference Room

The WV Racing Commission met on June 21, 2016 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 the May 11 & May 17 minutes

The Commissioners and legal counsel received the minutes from the May 11th and May 17th meetings prior to this meeting. Motion was made by Mr. Phillips to approve the minutes with a formatting issue corrected at the bottom of page 12 of the minutes provided to the Commissioners, seconded by Mr. McDermott. Motion passed.

Executive Director's Report
Joe Moore

Joe Moore stated the 3 month FOIA request ending in May was provided to the Commissioners. There were 6 requests in May: 1 from Grey2K, 3 media requests, and 2 individual requests. All of those requests have been answered and closed.

Work has been continuing on the out-of-competition testing program. Mr. Moore, Kelli Talbott and Dr. Benson met with the employees at Mountaineer Park a couple weeks ago not only discussing the out-of-competition testing but also the Test Barn procedures they wanted to go over. The desire is to have that program in place at Mountaineer in time for the WV Derby. In late July they will be going to Charles Town and meeting with employees there as well in hopes of having the procedures in place there in time for the Charles Town Oaks in September.

The Charles Town race and return policy that has been discussed in previous meetings is still being worked on. Information is still being gathered and he has received and started processing some information and putting it into a format to compare the tracks against each other and he hopes to have that ready for the Commission at the July Commission meeting.

The Commission, at its last meeting, asked Mr. Moore and Ms. Talbott to look at the Appeal filing procedures for applicants filing an appeal on the Stewards rulings. Currently the filing fee for that is \$100. It is written in Rule that would have to be changed if the Commission wanted to adjust that fee. He and Ms. Talbott discussed it and believe it's reasonable to move that fee to \$200, but would take a Rule change. He would suggest to the Commission to seek reimbursement of Hearing Costs in each Appeal Hearing the Commission prevails in. Beyond that there would need to be some discussion. The Commission has talked about Attorney's Fees Costs and the problems with trying to assess those types of costs. Mr. McDermott asked Mr. Moore to specify the individual Hearing Costs. Mr. Moore replied primarily it's going to be the Hearing Examiner costs, any costs with the room associated with the Hearing, travel costs for Commission employees or Legal Counsel to participate in the Hearing and any Court Reporter Fees. Chairman Rossi asked if the Commission puts any stipulations that they be required to post a bond for a given amount? Ms. Talbott replied the way the Statute reads that allows the Commission to assess a filing fee, or bond, you can. Right now that bond, or filing fee, is set in the Commission's Procedural Rule on Hearings and is set at \$100. The Statute says you can set a fee and if that's not sufficient you can ask the person to post an additional

amount. Mr. McDermott stated it's really not sufficient when you take into account the individual Hearing Costs that Mr. Moore just explained. Ms. Talbott agreed and stated if the Commission was going to require them to post more than \$100 or \$200 then they would have to calculate an estimation of the Hearing Costs before every Hearing. The question then becomes if the person can't post it, would you not give them the Hearing and where does that put us? She added the Commission could raise the set filing fee in the Procedural Rule and that would merely require to put a Rule out, with the new fee, for public comment for 30 days. If it was concluded after public comment it was necessary to raise it to a certain amount it could then be finalized. In addition, if the Commission were going to want to collect Attorney's Fees, the Statute needs amended.

Mr. Phillips asked is the average cost of a Hearing in the \$5,000 range? Mr. Moore replied if you were going to average it out he would say in the \$4,000-\$5,000 range. Mr. Phillips then asked what it costs to post a \$5,000 bond? Mr. McDermott replied it's a percentage of \$5,000 but he can't quote an exact figure. Mr. Phillips added it would seem to him it would not be unreasonable to raise the fee and also require a minimum \$5,000 bond be posted. He thinks the Commission should consider this as the Rule is drafted. This is more an internal problem and not necessarily a global problem and he would suggest something be drafted for the July meeting to address this issue. Chairman Rossi stated he suggests the same thing and would like to have something drafted by the August meeting since this is going to take some time.

Auditor's Report Becky Carnefix

Becky Carnefix stated for the capital improvements update, Mountaineer submitted 4 requests for reimbursement totaling \$52,715.80 and Charles Town submitted 1 request for reimbursement totaling \$67,000. Details of the payments made and projects reimbursed will be provided to the Commissioners once review has been completed and payments have been made.

For the supplemental purse awards, 14 day letters requesting additional information for residency verification were mailed out today for 1QFY16 claims, covering race dates July 2015–September 2015. Those claims are being finalized for payment and are scheduled to be paid out early July.

A few items to note for her audit schedule are she will be going to Mountaineer and Wheeling the remainder of this week for scheduled visits. The outside auditors are scheduled for fieldwork next week and work is currently being done in office to prepare for the annual audit.

Accountant's Report Joe Moore

Joe Moore stated live handle for May 2016 is down 9% YTD compared to last year. Export handle compared YTD to FY15 is down 18%. Total in-state handle has only decreased 3% YTD compared to FY15. At the July meeting he will be providing the Commissioners an annual recap of how the administrative funds performed for FY16. The FY17 Budget has been forwarded to the Secretary's office for their review prior to filing. It is largely unchanged as compared to the FY16 Budget. The outside auditors, Suttle & Stalnaker, will be in the office next week doing interim fieldwork. They are scheduled back for a week in August to do final fieldwork, with the drafts due September 15th and the final audits due October 15th. Mr. Phillips stated he is going to assume the decrease of 26% for live racing handle is possibly driven

somewhat by the track situation at Charles Town. Mr. Moore replied a large part, when you compare May 2016 to May 2015, is due to the closure of Charles Town for 6 race days.

Legal Update

Kelli Talbott stated the proposed amendments the Commission is seeking to get on the Thoroughbred and Pari-Mutuel Wagering Rules for 2017 have been submitted to Secretary Kiss' office to review. He has to sign off on those before they can be filed for public comment. The Meetings Rule that was discussed at the last special meeting is ready to go but she has to get Secretary Kiss' office to approve them online the same day she uploads them due to the new electronic filing of Rules. Once that occurs, that Rule will go into effect 30 days from filing.

She was at Mountaineer with Mr. Moore and others to review the Test Barn procedures and other related issues. She was also at Charles Town last week for a Stewards Hearing for Mr. Nunez and she anticipates the Stewards will be issuing a Ruling very shortly in that proceeding.

Budget Bill Impact to Greyhound Purse Funds

Joe Moore stated he is going to summarize how the appropriation comes about. Since the 2014 Legislature put a portion of Racetrack Video Lottery funds below the line for the Legislature to appropriate, they get an estimated appropriated dollar amount for their use each year and those estimates are generated by Lottery projections and given to them in their overall appropriation. Over the past couple of years that original number has been approximately \$14 million. Last year they appropriated \$12 million of the \$14 million. This year the talk was they were going to appropriate \$10 million. Back in regular session that is what was understood out of the House was they were going to appropriate approximately \$10 million. In June the talk shifted from going to appropriate approximately \$10 million to going to appropriate approximately \$10 million, but only appropriate it to the Thoroughbred purse funds. When the Bill came from the House and Senate it did just that. There was a line item in it that appropriated approximately \$10 million to a fund titled "the licensed racetrack Thoroughbred regular purse fund." It passed both the House and Senate and went to the Governor's desk. When the Governor signed the Bill, there was a line item veto which included a strikethrough of the word Thoroughbred. Essentially what it does is it now treats that appropriation as it has been treated in prior years and that \$10 million will be appropriated back to all 4 tracks on a pro-rata basis, based on their VLT performance.

What he has prepared of the \$10 million is comparatively speaking to FY16, if you compare to FY16 actuals. Charles Town is losing roughly \$1 million in purse funds, Mountaineer's will be down roughly \$500 thousand, Wheeling's will be down roughly \$400 thousand, and Tri-State down roughly \$200 thousand. Projections have it a little bit differently. With the anticipation of National Harbor coming on board somewhere around December or so, they have Charles Town taking a larger hit. As Charles Town's VLT's decline, on a pro-rata basis the other tracks will rebound. On projections, Mountaineer Park actually comes out pretty even to what it was in FY16. Even though there is an additional \$2 million lost in that appropriation, their performance will rebound to the point they will receive approximately the same appropriated purse dollars. That being said, projections have Charles Town down roughly \$1.2 million. The other two tracks down roughly \$450 thousand or so. This appropriation will go back based on how their slot machines perform on a pro rata basis. That FY17 appropriation is \$10.1 million out of the \$14 that was available for appropriation. Chairman Rossi stated to clarify, that is Mr. Moore's estimation based on FY16, is that correct? Mr. Moore replied yes.

These projections are based on the current Lottery projections of how Racetrack Video Lottery will perform in FY17. Mr. Phillips stated if the video lottery doesn't perform well or it improves, this could change, is that correct? Mr. Moore replied the overall number stays the same at the appropriated \$10 million, but depending on how they perform at each track, that number will fluctuate.

**Request for Reinstatement – Denise Sanderson
Request for Reinstatement – Claude Cecil**

Joe Moore stated approximately 7 months ago the permits for Ms. Sanderson and Mr. Cecil were revoked by the Stewards at Mountaineer Park. They were revoked for an issue of leaving an injured horse unattended in a stall. The horse was noticed the next day by the State Veterinarian and attended to and bandaged up for a bleeding leg. The Stewards at Mountaineer revoked their permits without putting a timeline of when they may re-apply for them so they are re-applying to the Commission at this point for those permits. It has been less than a year since they were revoked. Mr. Phillips asked if we know anything about their past record in terms of care of their equine? Mr. Moore replied the Commissioners were provided with reports from the State Veterinarian at Mountaineer Park and it details another occasion which Ms. Sanderson had not provided proper care to a horse in her control. She was notified by the State Vet at that point regarding that instance. There are several photos of the horses involved in these instances that are not included in the information provided to the Commissioners for purposes of printing photos. Mr. Phillips stated Mr. Moore had mentioned Ms. Sanderson, what about Mr. Cecil? Mr. Moore replied Mr. Cecil's permit was revoked at the same time as Ms. Sanderson's for the same reason. The horse was in their care at the time it was found to be left unattended in the stall. It is important to note the permits were revoked by the Board of Stewards and not suspended. A suspension may carry a different timeline or a different penalty for it than what a revocation does. Mr. Phillips stated revoking says to him it was pretty serious rather than suspension and asked if the State Veterinarian has made recommendations in this case? Mr. Moore replied the State Veterinarian has provided recommendations in both cases that the permits not be re-issued. Mr. McDermott stated he thought the written materials they received were rather thorough and well written.

Denise Sanderson stated the State Vet did come by the next day and looked at the horse and she was all scratched up. They did take care of her and healed her up and she's getting ready to run in Michigan shortly. The other thing the State Vet was concerned about prior to this incident was a kid she was helping out that had a horse and she offered to train it if he would take care of the horse, feed it and clean the stall. About 3 times in a row he neglected to do this and she told him to get the horse out of her barn. She didn't check on him until two days later and the horse was on the other side of the barn, neglected. That was not her. She told the State Vet the horse was not under her care anymore. She thinks the State Vet is hanging that over her to start with and then this came up with the horse getting injured on the trailer. She did everything she could to stop the bleeding on the horse. They tried to bandage her but the horse was scared and she was afraid the horse was going to have a heart attack. The Vet didn't see this but Ms. Sanderson tried to explain it to her when she came by the next morning.

Mr. Phillips asked if he heard Ms. Sanderson say she was going to race this horse in Michigan? Ms. Sanderson replied they sold her to someone who is racing her. Ms. Talbott added when these permits were revoked by the Mountaineer Stewards, they didn't appeal that Ruling to the Racing Commission so a Hearing wasn't held where evidence was taken. They let that revocation stand and now they want their license back. Ms. Sanderson stated the reason

they didn't appeal it is because they never got a certified letter or anything in the mail stating what was going on.

Motion was made by Mr. Phillips to deny the request for reinstatement and leave the licenses revoked, seconded by Mr. McDermott. Mr. McDermott commented having reviewed the materials he was moved by the report received from the State Veterinarian. Motion passed.

Charles Town Capital Improvement Request – Islands in OTW theater area

Charles Town Capital Improvement Request – Gate Controller for barn entrance access

Charles Town Capital Improvement Request – 2 Tymco sweeper trucks

Becky Carnefix stated the first request is for new island countertops in the OTW theater area in the amount of \$17,949.

The second request is for a new gate controller for barn entrance access due to the current one being inoperable. The amount of the request is \$3,525.

The third request is for 2 sweeper trucks to replace the current ones they have and that were purchased in 2010. The request is for \$204,900, but there is a trade-in allowance for the 2 older trucks of \$29,000 bringing the request to \$175,900. She recommends approval of all three requests, with the third request being approved for the amount of \$175,900.

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Mr. Phillips asked how long are these sweeper trucks expected to last? Ms. Carnefix replied she isn't sure how long they are supposed to last but the ones they are trading in were purchased in 2010 and the track has had them almost 6 years. Motion passed.

Mountaineer Park Capital Improvement Request – Hot Tub in Jockey's Room

Becky Carnefix stated this request is for a replacement hot tub in the jockey's room. The jockeys use this in between races for therapy on sore or tired muscles and it will assist with their riding performance. The request totals \$3,869.52 and she recommends it for approval. Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

Mountaineer Park request to add Export sites

Joe Moore stated the request is to add sites to Mountaineer's list of export sites. The letter received is signed by both Rosemary Williams and Jami Poole, President of Mountaineer Park HBPA, as required. He recommends this request for approval. Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

Mountaineer Park request to conduct Mystery Voucher program – WV Derby Day

Joe Moore stated this request is not much different than the previously approved Mystery Voucher Promotions at Mountaineer Park. This promotion will take place Saturday, August 6th for the WV Derby Day and he recommends it for approval. Motion was made by Mr. Phillips for approval, seconded by Mr. McDermott. Motion passed.

Public Comments

There were no public comments.

Executive Session – Charles Town & Mountaineer Steward Vacancies

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 Chairman Rossi. Motion passed.

Motion was made by Mr. Phillips to give permission to the Executive Director to hire the Steward candidates discussed, seconded by Chairman Rossi. Motion passed.

Adjournment

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