**MINUTES**

**WV RACING COMMISSION**

**Tuesday, August 22, 2017**

**WV Lottery Conference Room**

The WV Racing Commission met on August 22, 2017 to conduct business and consider administrative matters. Roll call was taken and Chairman Jack Rossi was present. Commissioner Ken Lowe, Jr. and Commissioner Anthony Figaretti were present via conference call. Counsel was represented by Kelli Talbott.

**Hearing Examiner’s Recommended Decision – Ingram/Dugan**

 Several meetings back this issue was before the Commission to refer from the Stewards to the Hearing Examiner for a decision. At this point, the Hearing Examiner has issued a recommended decision. This case involves a situation where a trainer, Mr. Ingram, asked a practicing veterinarian on the racetrack, Dr. Dugan, to look at a horse that was scheduled to race on that particular day that she was asked to look at it. Under the Commission’s Rules, veterinarians aren’t allowed to have contact with entered horses on race day unless they get permission from the State Vet, which did not happen here. The recommended decision was a warning be issued to Dr. Dugan and if Dr. Dugan did not commit the Rule violation again within a period of one year, the Racing Commission could remove that Ruling from her file. He also recommended that Mr. Ingram be assessed a $500 fine. Ms. Talbott added Commissioner Lowe stated he would have to recuse himself from the vote on this because he had a prior business relationship with Mr. Ingram at one point.

 Motion to approve the Hearing Examiner’s recommended decision was made by Mr. Figaretti, seconded by Mr. Rossi. Motion passed.

**Amend recent changes to proposed Horse Slaughter rule**

 Joe Moore stated a couple meetings ago the Commission had before them the Proposed Rule changes for the 2018 Session. One of the Rule changes that was being discussed was a Model Rule change to the horse slaughter Rule which the Commission didn’t ultimately adopt the Model Rule, but it did make a change to that Rule and the change that was proposed and approved was to remove the word “indirectly” from the language of that Rule. This is on today’s agenda to recommend that the Commission authorize Ms. Talbott and himself to approach Legislative Rulemaking Committee at the appropriate time and request an amendment be made as that Rule was filed with the word “indirectly” removed. Request an amendment to that Rule to reinsert “indirectly” in the language. What that does is it provides the Commission with the discretion over how to apply that Rule in a circumstance where a horse would be sold multiple times before it arrived at a kill pen. The Commission would have the discretion over whether the permit holder who originally sold the horse did due diligence, had any reason to believe the horse was going to take that path and ultimately end up in that situation. Currently, as it is filed with the Secretary of State, the discretion of the Commission has been removed in that situation and unless the permit holder directly sells the horse to a kill pen or slaughter house, the Commission has no discretion to use in that matter.

Kelli Talbott added the Rule the Commission has is not a Model Rule. To the best of her knowledge, ARCI has not promulgated a Model Rule that has anything to do with this issue. This Rule was put in the Commission’s Rules several years ago when we had a Constituent Committee together and had a discussion about putting this in our Rule. This is something that was initiated here at our state level, it wasn’t an ARCI Model Rule that we were looking at. The reason the Rule was worded as it was, directly or indirectly, is because most of the time in fact she doesn’t know of a time when anyone has gone to the border where these slaughter houses are located and actually sold a horse directly to a slaughter house. Typically, what happens is that there are persons out there who are not hard to identify, what are called kill-buyers, they are intermediaries or middlemen, and they buy these horses from owners and trainers and takes them directly to the slaughter house. So, we’re almost never going to have a circumstance where we have an owner or trainer sell a horse directly to slaughter, it’s most likely going to be indirectly because they sell it to a kill-buyer or someone known to be a middleman who sells these horses to slaughter. That doesn’t mean that if a horse passes hands two or three times after an owner or trainer sells a horse to a reputable person that they know that we’re going to hold someone responsible if two or three transactions later the horse ends up in the hands of a kill-buyer. But if you remove the word “indirectly” then you’re effectively gutting the Rule. There’s no intent for this to be some sort of gotcha game for trainers or owners, it just requires owners and trainers to do some due diligence when they sell a horse and make sure they know who they are selling it to and not some sort of person that’s known to be a kill-buyer that takes these horses to slaughter and that’s the inquiry we would have in these proceedings. Our Racing Commission, to date, has never enforced this Rule as it currently is. There have been some circumstances, some facts that have arisen, that perhaps we could have applied it to, but the Stewards chose not to so we’ve never enforced this Rule against someone where we’re holding someone responsible for a horse that’s been sold and who’s going through multiple hands but you would like to have a Rule on the books that would have some meaning and that’s why this is on the agenda today.

Mr. Lowe commented the word “indirectly”, to him, is so broad and so vague. Is it possible they could choose some other language? Does the word purposely take care of the matter but yet not make it so vague? Ms. Talbott replied the word indirectly is modified and informed in the Rule by saying you’re required to do due diligence and that due diligence means the conduct that a reasonable person would undertake to make sure that they don’t sell their horse to someone that is going to take it to the slaughter house. That word alone is not the entirety of the Rule. She understands what he is saying but she believes the way the Rule in its entirety reads takes care of it. She’s open to suggestions but she’s not sure that we had something that was broke that needed fixed. We don’t have any circumstances where someone could show her it was broke. Mr. Lowe asked what about the word knowingly or intentionally? Can you make it more definitive so that in his opinion it’s going to be fair for everybody and not so vague? He doesn’t trust everybody. Ms. Talbott replied the track has its own Rule about selling horses to slaughter and they apply that Rule and they investigate people who complain that people have violated this Rule, much the same as we would if someone complained to us. We would investigate that the trainer had done due diligence or not in selling the horse. The Commission doesn’t control the track’s investigations of its own Rule so they may turn them into the track and the track may decide whether or not they are going to eject that person for violation of the track’s Rule and if they do eject them and the permit holder appeals that ejection, then we hear them. We have our own Rule so we can’t control completely how the track conducts its own investigations of its own Rules and what it does in response to whatever information is gathered. Our Stewards have never taken action against anyone, either at Mountaineer or at Charles Town, under our Racing Rule, which is what we are concerned with. The tracks Rule, if she remembers correctly, reads directly or indirectly, which is very similar to our Rule. What we are doing today isn’t going to change people complaining to track management and the tracks enforcing their own Rules against people. What she and Mr. Moore both thought was that the Commission needed to be clear that by taking the word indirectly out of there, you are essentially gutting the Rule. Mr. Figaretti commented track management has their Rules and what they are doing and the Commission has no say about that at all, is that correct? Ms. Talbott replied under the way that our law and our Rules are currently, the only thing that our Rules prohibit is for the track to have some sort of House Rule that directly conflicts the Rule of Racing. Otherwise they are free to have House Rules/track Rules. To the best of her knowledge, every racetrack in the country has some sort of House Rules they adopt and apply. Unless it directly conflicts with the Rule of Racing, we don’t have any say over what internal Rules they want to apply. Mr. Lowe stated a House Rule is their interpretation, their enforcement, their accusations, are out of our hands. Ms. Talbott replied the only time it would come in front of the Commission is if they applied a House Rule to cause someone to be ejected and if that permit holder chooses, and it’s their choice, to appeal that ejection and it comes in front of the Commission, then we would do our Hearing Examiner and through recommended decisions and an entire Hearing proceeding that comes in front of the Commission, would decide whether or not the track had the justification to eject that person and their basis upon which they can eject someone is fairly broad under the law as it exists currently. That would be the way that it would conceivably come in front of the Commission. If a person isn’t ejected, then it would not come in front of the Commission, nor would it come before the Commission if the person is ejected and they don’t appeal.

Mr. Lowe stated he could consider making a motion to approve this, but with the suggestion that the word indirectly is replaced with knowingly and intentionally. He made the motion, with that change.

Mr. Figaretti stated he agrees with Mr. Lowe. Chairman Rossi asked if by saying knowingly and intentionally, does that put the burden of proof on the Racing Commission? Ms. Talbott replied the Racing Commission always has the burden of showing that someone violated one of our Rules when we are going after someone. Chairman Rossi stated he agrees with Mr. Lowe and indirectly is extremely vague and extremely broad but he’s not so sure knowingly and intentionally is not as broad. Mr. Lowe added when it comes to House Rules the burden of proof, in his opinion, is not on the Racing Commission it’s on the racetrack. Ms. Talbott replied if it is an ejection appeal, then the racetrack has the burden of proving that person engaged in conduct that would be objectionable and in violation of that House Rule.

Motion was seconded by Mr. Figaretti. Motion passed.

Mr. Moore stated they will attempt to have that amendment made during Legislative Rulemaking Committee. There’s a chance they may not allow that amendment and we’ll be with the Rule as it was originally approved. Chairman Rossi stated they understand that and that was made clear.

**Wheeling Island Facilities & Equipment Upgrades**

Joe Moore stated last month Commissioner Figaretti had requested that the Commission have an action item on a future agenda to address some facilities issues at Wheeling Island.

The first item is to request that the facility re-open the first floor to racing spectators. Mr. Figaretti stated this has been a request for quite a while from a lot of people. They have a first floor and it’s a great thing for a lot of the senior citizens. They still have the picnic tables out on the track’s first floor. They said the first floor amenities were shut down because of the floods. He doesn’t accept that reasoning. He thinks it will make a lot of people happy and will get people back at Wheeling Downs if the first floor is re-opened. Mr. Lowe stated racing needs promotion and it needs ideas. Racing needs the local handle and he would say anything that’s reasonable that can be done at any track in WV should be done to promote live handle. Chairman Rossi stated he doesn’t know if they have any authority to direct them to do that and that’s his hang up. Mr. Figaretti stated they do not have the authority to direct them to do certain things but they do have the authority to recommend to the track to implement some changes. Chairman Rossi stated they could direct Joe Moore to write a letter recommending these changes that are being discussed.

Mr. Moore stated the next 3 items could be lumped together and are: an escalator leading from the 2nd floor to the 3rd floor has been down for some time; carpet on the 2nd and 3rd floors is in poor condition; and needs to update the refreshment stand on the 2nd floor. He thinks all 4 of those items could be included in such a request in a recommendation from the Commission to the track. Mr. Figaretti stated that’s what he wants.

Mr. Moore stated there are 2 more issues and these issues stand out separate of the others. The next issue is the starting gate needs to be checked. There apparently are dogs being hurt coming out of the gate and maybe there are necessary repairs that need to be made. Mr. Figaretti stated that should come under the Commission directive for safety, is that correct? Mr. Moore replied yes, that is a safety issue.

Mr. Figaretti stated the last issue is the rabbit constantly breaks down. The dogs are basically running into it and it’s a hazard to the dogs. He spoke to Mr. Travis about this issue and was told it’s an electrical issue and they were working on it.

Chairman Rossi stated he thinks Mr. Figaretti has described a couple safety issues and he thinks they need to ask that Mr. Moore pursue those and then we issue them a directive on correcting the safety issues.

**Public Comments**

There were no public comments.

**Adjournment**

Motion was made by Mr. Figaretti to adjourn, seconded by Mr. Lowe. Meeting adjourned.