

**MINUTES  
WV RACING COMMISSION  
Tuesday, January 19, 2016  
WV Lottery Conference Room**

The WV Racing Commission met on January 19, 2016 to conduct business and consider administrative matters. Roll call was taken and present was Chairman Jack Rossi. Commissioner Greg McDermott was present via conference call. Counsel was represented by Kelli Talbott.

**Election of Commission Chairman for 2016**

Mr. McDermott made the motion to nominate Jack Rossi as Chairman, seconded by Mr. Rossi. Motion passed.

**Approval of the November 18, December 9, December 15, December 23 minutes**

The Commissioners and legal counsel received the minutes from the November 18<sup>th</sup>, December 9<sup>th</sup>, December 15<sup>th</sup> and December 23<sup>rd</sup> meetings prior to this meeting. Motion was made by Mr. McDermott to approve the minutes, seconded by Mr. Rossi. Motion passed.

**Executive Director's Report  
Joe Moore**

Joe Moore stated the FOIA report, which is a 3 month running report and runs through the end of December, shows a total of 9 requests. 4 FOIAs were received in November and 4 in December. 4 of those 8 were from Grey2K and the other 4 were individual requests. All of those FOIAs, as of December 31<sup>st</sup>, have been closed.

Information on the 2016 Legislative Session has been provided in the binders, along with Legislative dates and landmarks. The Racing Commission is not currently running any Legislative Bills this session. We've not yet been asked for information on any other activity, but he will keep the Commissioners updated if that occurs.

The Commissioners are aware of a surface issue that occurred at Charles Town on January 9<sup>th</sup> from a hole that developed on the outside rail of the racing surface. After the 3<sup>rd</sup> race, Danny Wright went and observed the hole. He, along with Racing Officials at Charles Town, decided it was in the best interest to cancel the remainder of the card. Mr. Moore had asked Charles Town to provide an update on that situation. Doug Bowling, Charles Town's Director of Track Maintenance, sent an email stating repairs began on Monday, January 11<sup>th</sup>. There was a 6x4 foot section of the base that had to be removed to locate the drainpipe and repairs were made to the storm drain. The hole was backfilled with 6 ½ yards of concrete, along with the base, and sand was applied on Thursday afternoon. Training and racing resumed on Friday, January 15<sup>th</sup>. They will continue cleaning and repairs on the drain, but on the Apron side it will not affect any training or racing on the track.

He has provided the Commissioners with the Thoroughbred Medication Violations for calendar year 2015. On an ongoing basis, they will receive this information monthly for their review.

On November 29, 2015 Frank Bellotte passed away after a four-year battle with cancer. Mr. Bellotte was the State Presiding Judge at Wheeling Island, hired in October 2006 and retiring March 2014. Chairman Rossi asked if we could get a Resolution recognizing Mr. Bellotte's service? Mr. Moore replied he would draft one.

**Auditor's Report  
Becky Carnefix**

Becky Carnefix stated the Capital Improvements submitted and paid during the month were the following: Charles Town submitted 3 projects for reimbursement and was paid a total of \$132,171.79 for those projects. Detail of those projects paid has been provided in the Commissioners information. Mardi Gras submitted 2 projects for reimbursement and was paid a total of \$81,400 for those projects. Detail of those projects paid has also been provided in the Commissioners information. In addition, Charles Town submitted another request for reimbursement, encompassing several projects, totaling \$78,984.50 and Mountaineer submitted 4 additional requests for reimbursement, totaling \$349,016.64. These requests will be paid, and details provided, when the reviews have been completed.

Quarterly status reports as of December 31, 2015 on the outstanding projects approved and the funding available for all 4 tracks were provided to the Commissioners.

For supplemental purse awards, the 3QFY15 claims, covering race dates January 2015-March 2015, were sent to the Auditor's Office last week for payment. For Charles Town, eligible claims were \$246,790 and Funds Available were \$102,621.59, resulting in a payout of 4.16%. For Mountaineer, total eligible claims were \$19,987.40 and Funds Available were \$13,412.50, resulting in a payout of 6.71%.

For the Thoroughbred Development Fund, a mailing was sent out January 8<sup>th</sup> to all participants at Charles Town and a mailing was sent out early December to all participants at Mountaineer for race results encompassing the entire race year for verification of information in preparedness for the annual distribution to be made on February 15<sup>th</sup>.

The audit schedule for the remainder of FY'16 was provided to the Commissioners for their review.

**Accountant's Report  
Joe Moore**

Joe Moore stated live handle decreased compared to FY15, export decreased, as well as simulcast decreased compared to FY15. Total in-state handle decreased 4.5% YTD so far.

Included in the Commissioners binders is the Account Status Report for the month of December and YTD FY16. Six months into the year, we are running a surplus in the Thoroughbred Development Fund of approximately \$60,000, a surplus in the General Admin Fund due to in large part the settlement of White vs. Racing Commission, and a deficit in the Greyhound Development Fund of approximately \$252,000. The projected year-end balances are: the Thoroughbred Development Fund \$275,000, the General Administrative Fund \$750,000, and the Greyhound Breeding Development Fund \$1.3 million.

The FY17 Budget Hearings are scheduled and he has included in the Commissioners information our presentation for House Finance Committee, which is January 20<sup>th</sup> at 9:00am. Senate Finance is scheduled for January 27<sup>th</sup> at 3:00pm.

### **IT Update Larry Carraher**

Larry Carraher stated the IT project that is currently in focus and the one he will be donating a lot of his time to is the re-write of the Auditor's system at the tracks. The current system was written in February 2000 and things are starting to fail. We cannot get it off of the current hardware because it is not compatible with current technology. It is the last of the applications to be re-written and redesigned only because it was working and didn't require any attention. However, now software and hardware are starting to fail on a more regular basis. There is one of these systems at each of the 4 tracks. It has been decided to replace the hardware as well, and hope to have that completed within the next 30 days, give or take.

### **Legal Update**

Kelli Talbott stated a couple of weeks ago she had to be in Wheeling for a Hearing involving 2 permit holders who were fined by the Wheeling Island Judges for disorderly conduct. She has been following any possible legislation, and obviously there are the 2 rule amendments to the Pari-Mutuel Wagering Rule and the Thoroughbred Racing Rule. She will be watching the Committee agendas to see when they are put on Legislative Committee agendas during the Session.

In November, the Supreme Court issued the decision in the Reynolds case that upheld the Commission's suspension and fine of the 7 jockeys in that case. Right before Christmas, the Supreme Court entered their mandate, which is the final order and what we were waiting for in order to proceed to enforce the decision. She worked with Mr. Moore and the Stewards at Charles Town to determine the amounts that each jockey owed because there was some interest attached to those fines that had to be ascertained. They also decided upon the effective date of the suspension and communicated with the jockey's counsel right after the first of the year and informed them of the deadline to repay that fine and the start of their suspension. Their suspension started last week and will run 23 days and the fine is due today.

### **Discussion of Rule Making Committee Inquiry related to statutory authority to promulgate rules pursuant to West Virginia Code § 19-23-6(3) and § 6-9A-3(d)**

Kelli Talbott stated the Legislative Rule Making Review Committee has been in the process of sending out letters to numerous State Agencies looking at rules that have been on the books that there hasn't been any activity on as far as the Commission amending the rules prior to 2000. The Racing Commission received a letter identifying 2 Procedural Rules that are on the books that have not been changed or amended since 2000 and they asked some questions about those rules. One of the rules was a Procedural Rule that deals with identifying the organization that represents the majority of the horsemen at the racetracks. The other Procedural Rule was a rule that governs how meetings are conducted. Both of these are Procedural Rules, not Legislative Rules, and that means they don't have to go through Legislative Rule Making. The Legislature has asked if we still have statutory authority to promulgate these rules, which we do. Do you still want the rules? And they've asked us to review them and determine whether we need them, want them amended, etc. These questions need to be answered for these 2 rules. She believes the Commission still needs both of them, but thinks they are a bit outdated. The reason the Commission needs the rule on recognizing the organization that represents the horsemen is because there are several things in the WV Code that requires the Commission to deal with the organization that's been elected by the

majority of the horsemen. The rule that's in place basically provides a mechanism for the election of that organization to take place, the Commission to monitor that election and to make sure that it's fair and done properly. Therefore, this rule is still needed but needs reviewed and consideration to see if any amendments need to be made.

The other rule dealing with the conducting of meetings is a bit outdated, primarily due to more technology since it was written and the Secretary of State's process of posting meetings has changed. There are things in that rule that the Commission probably would want to change to bring it up to the process currently followed.

The Legislature had a public hearing yesterday on a Bill that they are considering that would essentially make every Legislative Rule expire after 5 years automatically.

Motion was made by Chairman Rossi for Mr. Moore to work with Counsel to look at all of the Racing Commission's rules that have not been revised prior to 2000 and evaluate them, seconded by Mr. McDermott. Motion passed.

### **Approval to hire Charles Town Investigator**

Joe Moore stated the Racing Commission voted on August 4<sup>th</sup> to replace the Investigator at Charles Town and initiate the process of interviewing candidates. Chief Steward Danny Wright, Kelli Talbott and himself conducted interviews over November 19<sup>th</sup> and 20<sup>th</sup> of qualified candidates. The Racing Commission has received approval from the Secretary of Revenue to hire a selected candidate and have agreed upon a salary. The Investigator at Charles Town will serve as a Lead Investigator for the Racing Commission, and as such will coordinate the processes and procedures at each of the other 3 tracks. It is his recommendation that the Commission hire William Carter, whose resume has been provided to the Commissioners, with an effective start date of February 13, 2016. In addition, he recommends notice be served to the current Investigator that his employment with the Racing Commission will be terminated as of the end of racing February 12, 2016. Motion was made by Mr. McDermott for approval, seconded by Mr. Rossi. Motion passed.

### **Request to allocate funds for WV Bred Races**

Joe Moore stated there is a Code Section within the Thoroughbred Development Fund that requires that the Racing Commission at the conclusion of each Thoroughbred Development Fund distribution, if there is an excess of \$250,000 remaining from the distribution make a deposit into the WV Accredited Race Fund. Dating back until at least 2009, the Racing Commission has not made that deposit because on an annual basis there has not been an excess of \$250,000 from that distribution. There is, however, over a course of a number of years an accumulated balance in that fund that needs to be addressed. This has been an audit finding of the Racing Commission to take action on that accumulated balance. The total funds available are \$1,006,000. We've received requests from the Presidents of the Charles Town HBPA and Mountaineer HBPA to distribute that balance equally amongst the two tracks, either into their general purse fund or to a separate fund used for explicit purpose of paying WV Accredited Races. It is his recommendation that the Racing Commission distribute these funds in a manner consistent to how we do for the Stakes Races that are currently paid out to Charles Town out of the Thoroughbred Development Fund. The tracks would run one or more WV Restricted Races, submit to the Racing Commission an Equibase chart showing the amount of the purse and the order of finish, and request that we reimburse them the amount of that purse, not to exceed the amounts allocated to each track. It would also be his recommendation that the Racing Commission set this funding and these requests shall be made and completed and

reimbursed by June 30, 2016. Chairman Rossi asked if there was information in the Commissioners binders from the various constituents concerning the allocation? Joe Funkhouser stated they have been working and talking with Mr. Moore about this and they feel the letter they submitted jointly with the Mountaineer HBPA addresses it. Mr. Moore added he has spoken with Jana at Mountaineer, and Jami Poole's signature, along with Mr. Funkhouser's, is on the letter requesting it be distributed equally to both tracks in that fashion. Motion was made by Mr. McDermott for approval, seconded by Mr. Rossi. Motion passed.

#### **Charles Town request to change post time**

A request has been received from Charles Town to move their post time, which is currently 7:05pm, to 7:00pm for each card. Motion was made by Mr. McDermott for approval, seconded by Mr. Rossi. Motion passed.

#### **Wheeling Island request for 2PM post on Feb. 13<sup>th</sup>**

Wheeling Island is running some promotions surrounding Valentine's Day and they have requested they be allowed to change their post time from the normal post time of 12:30pm to 2:00pm so they can have a Valentine's Day Dinner Race for Feb. 13<sup>th</sup>. Motion was made by Mr. McDermott for approval, seconded by Mr. Rossi. Motion passed.

#### **Wheeling Island request to add Import/Export Sites**

Wheeling Island has submitted 3 requests. One request is to add Hinsdale and Mobile to their list of Export Sites. The other requests are to add Mobile to their Import Sites, along with Miami Valley Gaming. Motion was made by Mr. McDermott for approval, seconded by Mr. Rossi. Motion passed.

#### **Mountaineer Park Capital Improvement Request – New Trash Compactor, \$36,648.40**

Becky Carnefix stated this request is to purchase and install a new trash compactor and cart dumper. The compactor will be used for all of the trash on the trackside from patrons and employees. She has reviewed the bids received and recommends for approval. Motion was made by Mr. McDermott for approval, seconded by Mr. Rossi. Motion passed.

#### **Request to Reinstate Occupational Permit – Scooter Davis**

Kelli Talbott stated Mr. Davis' permit was initially suspended by a joint ruling of the Charles Town and Mountaineer Stewards because Mr. Davis had multiple medication violations that occurred at one time. He also had a past record of multiple medication violations. During that suspension, he was caught in a Program/Trainer scheme. He was essentially training horses for another trainer who was licensed at Charles Town. When Mr. Davis came into the Stewards office to apply for his license after the suspension for the medication violations had expired, it was denied because of the activities with the Program/Trainer scheme. A hearing was held on that denial because Mr. Davis contested the Stewards' decision. Ultimately, this Commission upheld the denial of his permit. He has now been without a permit for over 2 years

at this point. He requested several months ago to get his permit back in WV. Because the Commission was the one that ultimately denied the application in the previous proceedings, this matter had to come before the Commission as to whether Mr. Davis can get a permit or not.

Mr. McDermott stated based upon the information they have received and have reviewed, his motion is to deny the request. Seconded by Mr. Rossi. Motion passed and request is denied.

### **Expert evaluation of racing surface at Charles Town**

Chairman Rossi stated over the past year, the Racing Commission has had several calls and comments on this issue. Joe Moore stated this issue has come up to the Racing Commission on several occasions. It has been several years since the Racing Commission has conducted a surface evaluation of the track surface at Charles Town. At that point in time, a gentleman from Lexington, Kentucky came in and conducted that and issued it to Secretary Musgrave when he was at the Department of Revenue's office. Since then, this issue has come up a handful of times again. He's told by track personnel that in the agreement with the HBPA, the HBPA has a right to request an evaluation of the track surface be done. This is on the agenda for the Commission to discuss and entertain the idea of having the evaluation completed. Chairman Rossi stated because of the attention given to it, he personally feels it needs to be done. Mr. McDermott stated he agrees with Chairman Rossi. Motion was made by Mr. McDermott to direct Joe Moore to pursue finding costs, etc., and expert personnel to do this, seconded by Mr. Rossi. Motion passed.

### **Settlement in White v. Racing Commission**

Kelli Talbott stated the Racing Commission had a lawsuit that was over the disposition of \$2 million that the Commission had set aside and was holding for possible greyhound training track costs. Roger White, a greyhound breeder, brought the litigation against the Commission. There was a mediation in the case on December 4<sup>th</sup> which resulted in a written settlement agreement and ultimately an Order entered by the Circuit Court of Kanawha County setting forth the terms of that settlement. Basically, the Commission transferred \$1.3 million from the \$2 million that was being held and put that into the Greyhound Breeding Development Fund. The remainder of the \$2 million, which was \$700,000, was to be transferred to the Racing Commission's General Operations account. Out of the \$700,000 that the Commission transferred to its account, we were to pay the amount of \$50,000 attorney's fees and costs to Mr. White's attorney. Out of the \$1.3 million that was transferred to the Greyhound Breeding Development Fund, \$100,000 was to be paid to Mr. White's attorney for attorney fees and costs. The remaining \$1.2 million was distributed to qualified breeders. That distribution was done in the same manner we did in the settlement we reached in the Burdette v. Sidiropolous case, and was for calendar years 2002-2007. That distribution was to be made on or before December 31, 2015. The attorney's fees have been paid out and the deposit into the Racing Commission's account has also been made. Joe Moore added the distribution was made on December 22, 2015. There are 3 checks that are held up in a dispute between husband and wife.

### **Public Comments**

There were no public comments.

**Adjournment**

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