

**MINUTES**  
**WV RACING COMMISSION**  
**Wednesday, October 15, 2014**  
**WV Lottery Conference Room**

The WV Racing Commission met on October 15, 2014 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 September 9<sup>th</sup> and September 16<sup>th</sup> minutes**

The Commissioners and legal counsel received the minutes from the September 9<sup>th</sup> and September 16<sup>th</sup> meetings 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 parts of the building will be undergoing renovations starting in January. There will be minor disruptions during that time. He thanked Ann Hilton who sent some good information on the Charles Town track and he included that information in the Commissioner's binders for their review. Also included in their binders was the FOIA report for the last three months. Lastly, Wheeling Island did not pay out their Twin Trifecta and that was forced to happen on September 20<sup>th</sup>. The Racing Commission was notified in advance of this, as is required.

Mr. Phillips commented there was a tragic accident yesterday in Indiana with a seventeen year old apprentice jockey that passed away and he asked for a moment of silence in his memory.

**Auditor's Report and FY 2015 Schedule of Audits**  
**Becky Carnefix**

Becky Carnefix stated the capital improvements submitted for reimbursement and paid for the month of September included Charles Town submitted 5 projects for reimbursement totaling a payment of \$72,147.59. The detail of the projects submitted and paid is included in the binders. Mardi Gras submitted 2 projects for reimbursement totaling a payment of \$127,220.14. The detail of those projects submitted and paid is also included in the binders.

A quarterly status report for each of the four tracks detailing the outstanding capital improvement projects approved and the funding available is also included in the binders. This information will be forwarded on to each of the four tracks as well.

For supplemental purse awards, 2QFY14 claims, covering race dates October 2013 – December 2013, were processed October 14<sup>th</sup> for Mountaineer and due to a delay in editing, Charles Town will be processed early next week.

A Thoroughbred Development Fund mailing was sent out late September to all participants at Mountaineer, for race results January-August 2014, for verification of information. Any necessary changes resulting from that mailing are being made as the letters are received

back notifying us of such. That mailing was sent out last week to all participants at Charles Town for the same racing period for verification of information. Any necessary changes will be made accordingly as those letters are received back as well.

The Commissioners were provided with her audit schedule for FY'15 for their review and approval.

### **Accountant's Report Joe Moore**

#### **Approval of FY 2014 annual financial audit**

Joe Moore stated in the comparison report for September 2014, live racing for Charles Town and Mountaineer declined approximately 9% and 17 ¾% YTD. Live racing handle at Wheeling Island increased nearly 1% compared to YTD last year. Live racing at Mardi Gras decreased 15% compared to August 2014 and nearly 3% compared to the same period last year and is also down 8% YTD. The account status reports for September and for the first quarter are included in the binders.

The electronic version of the financial audit was sent out to the Commissioners yesterday for their review. Chairman Rossi stated he has read through the audit and continues to see improvement in the results of the audit. He thinks the external auditors are doing an excellent job and he personally feels the Racing Commission's staff has worked hard to get to that point and have come a long way. Motion was made by Mr. McDermott to approve the FY 2014 financial audit, seconded by Mr. Phillips. Motion passed.

#### **Legal Update – Attorney General's Office**

Kelli Talbott stated on October 1<sup>st</sup> she represented the Racing Commission at the State Supreme Court in the PNGI vs. Racing Commission case. The court will traditionally issue a decision before they adjourn around Thanksgiving so she expects a decision by late November.

Since the last meeting when it was discussed to appeal the Reynolds decision, she has filed the Notice of Appeal with the Supreme Court in that case. The Racing Commission's Brief for that case will be due in early January.

There has been one additional ejection appeal received since she prepared her written report to the Commissioners. Angelo Jackson, a permit holder, has requested re-entry from the racetrack and they have refused re-entry. He just filed an ejection appeal this past week and they are in the process of getting a hearing scheduled in Charles Town.

All other cases have been updated to the Commissioners in the report she provided them last week.

#### **Consideration of proposal to resolve Wehrman v. WV Racing Commission**

Kelli Talbott stated in this case, the Commission revoked the permit of the former Racing Secretary at Charles Town after he accepted a loan from two horsemen at the racetrack. Mr. Wehrman appealed that revocation to the Circuit Court of Kanawha County and Judge Carrie Webster reversed the Commission's decision in that case. Ms. Talbott recommended the Commission appeal that to the Supreme Court, and she has filed the Notice of Appeal in the Supreme Court and they have issued a scheduling order for Briefs to be filed in that case. In the meantime, Mr. Wehrman's counsel tendered a settlement proposal to her to convey to the

Commission to consider. Ms. Talbott stated she feels that proposal is more appropriate to discuss in Executive Session. Motion was made by Mr. Phillips to enter Executive Session, seconded by Mr. McDermott. Motion passed.

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

Mr. McDermott made the motion to authorize counsel to move forward with settlement discussions and further to authorize counsel to affect a compromise that would be in the best interest of the Racing Commission. Mr. Phillips seconded the motion so the process can be started. Mr. Rossi and Mr. McDermott voted for the motion and Mr. Phillips opposed the motion.

**Capital Improvement Cancellation Request – Hollywood Casino - \$25,840 previously approved 11/1/2012 as wall covering in OTW area. The area was redesigned and it is not needed.**

**Capital Improvement Cancellation Request – Hollywood Casino - \$26,000 previously approved 12/10/2012 for a 60 gallon kettle in Terrace Kitchen. Cancelled plan for purchase.**

**Capital Improvement Cancellation Request – Hollywood Casino - \$268,300 previously approved 10/22/2013 for repairs to storm drain pond. Replaced by new CAFO project.**

John Myers stated the total of these cancellation requests is \$320,140 for three different projects. Motion was made by Mr. Phillips to approve the cancellation of these requests, seconded by Mr. McDermott. Motion passed.

**Capital Improvement Request – Mountaineer Casino - \$14,373 to demolish the TV bulkhead and add a drop ceiling to tie into the clubhouse**

**Capital Improvement Request – Mountaineer Casino - \$67,015 to upgrade clubhouse and grandstand lighting**

**Capital Improvement Request – Mountaineer Casino - \$49,525 for replacing the track side power poles**

**Capital Improvement Request – Mountaineer Casino - \$70,936.97 to replace table, chairs and carpeting in Man O War area**

**Capital Improvement Request – Mountaineer Casino - \$54,445 to replace underground electrical feeds in the barn area**

John Myers stated there was a correction to the agenda and item #12 should be \$67,015 and not \$5,937 as was listed on the agenda, bringing the total for the five requests to \$256,294.97. Becky Carnefix stated she has provided each of the Commissioners with the documentation for each of the projects and she has reviewed each project and recommends them for approval. Motion was made by Mr. Phillips to approve the five projects, seconded by Mr. McDermott. Motion passed.

### **Wheeling Island – approval of racing and simulcast calendar for 2015**

John Myers stated he provided the calendar in the Commissioners binders. In summary, Wheeling is asking for 260 race days and 362 performances. Motion was made by Mr. McDermott to approve the calendar, seconded by Mr. Phillips. Motion passed.

### **Wheeling Island – approval of wagering format for 2015**

John Myers stated this is very similar to the request received and approved approximately two months ago for the wagering format. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **Wheeling Island – approval of import and export sites for 2015**

John Myers stated these are the current tracks that have been approved up to date for importing and exporting simulcasting. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

### **Wheeling Island – approval of 2015 kennel contract**

John Myers stated the contract was included in the Commissioners binders and he didn't see anything significant that he would have to have counsel review. Ms. Talbott stated she did not see the contract but is happy to review it. Typically counsel reviews the contract to make sure it doesn't conflict with racing rules and statute. Patty Hertig, Wheeling Island, stated the only changes on the contract from last year are lowering the rent from \$525 to \$425 and also increasing the simulcast import for contributions to purses from 5% to 10%. Mr. Phillips made the motion to approve the contract and next year have counsel review the contract prior to approval, seconded by Mr. McDermott. Motion passed.

### **Hollywood Casino – Request to cancel seven racing days in November and December**

John Myers stated his office has sent out the necessary notifications of this request with the opportunity for responses or objections. As of the date to receive objections, none were received. Motion for approval was made by Mr. Phillips, seconded by Mr. McDermott. Motion passed.

### **Hearing examiner's recommended decision regarding Richard Watson**

Kelli Talbott stated there were originally two recommended decisions that are before the Commission. At an earlier meeting, the Racing Commission adopted the hearing examiner's recommended decision with regard to Janene Watson, which basically allowed her re-entry into Charles Town racetrack. Action was deferred on Richard Watson's recommended decision and that recommended decision basically said Mr. Watson's ejection be upheld and that he be able to request re-entry, and to appeal any denial, within a year of his appeal in this case. At a subsequent meeting, the Commission remanded Mr. Watson's case back to the hearing examiner to look at a racing rule that called into question whether or not Mrs. Watson would be

precluded from making entries on the racetrack, having now been granted the authority to go back on the racetrack, if her spouse continued to be ejected. The second recommended decision, after being remanded back to the hearing examiner, determined ejection does not equal disqualified from racing under that rule. If the recommended decision is adopted that would uphold Mr. Watson's ejection, that would not preclude his spouse from making entries.

Action needs to be taken on the first recommended decision from the hearing examiner which recommended upholding Mr. Watson's ejection and the second recommended decision, that folds into that and clarifies, since Mr. Watson continues to be ejected does not preclude his spouse from making entries on the racetrack.

Motion was made by Mr. McDermott to adopt the hearing examiner's recommended decisions, seconded by Mr. Phillips.

### **Mountaineer Casino's notification of intent to cancel racing in December**

John Myers stated in a previous discussion it was determined if Mountaineer got to the point their purse fund would be depleted, they would not be obligated to race at that point. Mountaineer provided the Racing Commission with a letter, dated September 23<sup>rd</sup>, stating they anticipate they will not have purse funds available to race for the month of December, therefore, notifying the Commission of their intent to not race in December. Chairman Rossi stated he feels the Commission inherently approved this process the last time it was discussed but will entertain a motion for approval of the letter as notification. Mr. McDermott made the motion for approval, seconded by Mr. Phillips. Motion passed.

### **Resolution regarding approval of racing days**

John Myers stated the resolution was posted on the Racing Commission's website for people to give their opinions and public comments. The comments were provided to all of the Commissioners for their review. Some comments were in favor of the resolution and some were asking for changes.

Mr. Phillips stated he would like to thank everyone that commented on the document. He read every comment and there were many valid ideas and thoughts offered. His objective is to take steps that would assist all facets of the racing industry. This industry today is in transition and adjustments are necessary. After reading the comments, he has concluded that the operative word is flexibility. Everyone needs and wants flexibility and we should all work together toward that goal. We need to work together in the coming weeks in a number of areas, guided by the various comments that were received. First, we must define flexibility. He believes it means: 1. To give the Racing Commission authority to determine annual number of racing days, and 2. There needs to be objective criteria and standards set forth in Code to guide the Commission and which would assist the kennel owners, tracks, horsemen and breeders as they establish their business plans each year. We need input from these groups and others on the objective criteria and standards so legislation can be drafted for the January session. He suggests the Commission convene a session with these groups to work on these items.

These same parties need to discuss and be educated about revenue raising ideas previously endorsed by the Commission. Those being advanced deposit wagering, historic racing, and he would add Equilottery, which seems to be gaining momentum. We need to look for new sources of revenue and must not miss the opportunity of the 2015 Legislative Session.

A suggestion was made in one of the comments he believes could help in building a case for many of our concerns, particularly the financial area. The suggestion was for the Commission to conduct a historical analysis of historical revenues generated by live racing. The

recommendation clearly defined the race study elements and he believes the study could be done in-house at no additional cost and urges it to start immediately and be completed by Christmas. Information gained here could be valuable in the quest for new revenue sources.

Another worthy idea in the comments had to do with marketing and promotion of live racing at various events. The suggestion was for the Commission to conduct an objective study and he would be pleased to work with Mr. Myers on how to proceed with this suggestion.

In summary, there are approximately six steps, as he sees it. 1. The resolution. 2. Convene a session to discuss the objectives and criteria. 3. Education and discussion session regarding revenue raising ideas. 4. Historical analysis of historical revenue. 5. Appropriate parties to draft legislation. 6. Marketing study.

Mr. Phillips made the motion to adopt the proposed resolution, seconded by Mr. McDermott. Motion passed.

### **Public Comments**

Donna Zook, Mountaineer, asked when Mountaineer proposes to be running out of money for racing? Chairman Rossi replied around the end of November.

Nelson Robinson, Mountaineer, stated he wants to make sure they are perfectly clear on their communications. Rosemary Williams has run a lot of projected figures for racing purse revenue for October and November. They are making projections based on unknown revenues and they anticipate they are going to nearly deplete the fund at the end of November. If there are any funds left over at that time, those funds can be carried over to the 2015 meet. Notification has to be given 30 days in advance for simulcasting purposes and that's what this notification is for.

Mr. Robinson also requested on the racing day situation with Charles Town's request to cancel race days, he would like for the Commission to take a review of the statutory provision that states the Commission upon request to modify those dates make notification to the representative majority of the mutuels clerks and the representative majority of the horsemen. He thinks the interpretation means anybody can make an objection and is opening up to all across America and he thinks the intent of that statute was to notify those representatives and if those representatives had an objection then you would have to go through the process of a hearing. He thinks that's an unnecessary process and expense and asked the Commission to look into that part of the statute.

Mr. Phillips suggested, in response to Mr. Robinson's comments, this might also be an appropriate item for the delegated representatives, if a meeting can be called of all parties to look at the live racing issue and the other matters he discussed, to look at if we are going to go down the road of opening the statute we better try to look to the future best we can so we take all the necessary steps because this industry is in serious transition.

Kelli Talbott stated since they passed the resolution and it basically states they are going to pursue legislation, do they want her to draft legislation? Mr. Phillips replied if we're going to be successful in this, he doesn't think it's something that we can do without input from all interested parties.

### **Next meeting – tentatively November 18, 2014**

John Myers stated he will be traveling the week prior to the meeting and would like for any agenda items people submit for that meeting be submitted by Thursday, November 6th.

## **Adjournment**

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