

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, November 18, 2014**  
**WV Lottery Conference Room**

The WV Racing Commission met on November 18, 2014 to conduct business and consider administrative matters. Roll call was taken and present was Chairman Jack Rossi, Commissioner Bill Phillips and Commissioner Greg McDermott were present via conference call. Counsel was represented by Kelli Talbott.

**Approval of October 15<sup>th</sup> minutes**

The Commissioners and legal counsel received the minutes from the October 15<sup>th</sup> meeting prior to this meeting. Motion was made by Mr. McDermott to approve the minutes, seconded by Mr. Phillips. Motion passed.

**Executive Director's Report**  
**John Myers**

John Myers stated included in the Commissioner's binders is the 3 month FOIA report, with a total of 19 FOIA's submitted during the months of August, September and October.

A total of 2,458 licenses have been issued through the new RCI system since its rollout in August. A significant thing about this new licensing system is that the tracks can now see licenses that have been issued at the other tracks, expediting the ability to race.

Mr. Phillips stated he would like an overview of how the RCI program is working. Mr. Myers replied RCI is very good to work with and things are going well.

Mr. Phillips stated at the last meeting, a resolution was approved to put the Commission on record to pursue legislation that changes the number of live racing days. After that meeting, Chairman Rossi requested Counsel to convene a meeting of the organizations to discuss, and hopefully reach a consensus, on possible legislation. It appears this meeting was called off and he would like to know the reasons and circumstances as to why it was called off and have a greater explanation. Mr. Myers replied he supports the fact this group was going to be together, however, what was not known was that at the same time the Commission was passing its resolution to pursue possible legislation, there was activity on requesting the study of the industry. Not knowing the results of those studies at this time, they felt it was best to postpone, not cancel, the meeting and wait for the results of that study before going forward and making decisions. Mr. Phillips stated he disagrees with that and thinks the expertise of those stakeholders could be invaluable and he would like to know more about who is conducting the study, what study is being done and who requested the study to occur, etc. Chairman Rossi stated the resolution the Commission passed was to support the legislation to reduce the required number of live racing days. The Commission never voted on the additional items Mr. Phillips noted after the resolution, and still have not voted on them. It is Chairman Rossi's understanding that maybe the Senate President and the Speaker of the House directed the study and is a legislative issue so for the Commission to go forward would be a waste of time at this point. Therefore, the meeting has been postponed, not canceled, until it is seen what happens out of this study. Mr. Phillips feels the Commission should be at least be provided with a copy of the request that came from the Legislature for this study and have more information.

Chairman Rossi asked to observe a moment of silence in honor of Freda Tomblin who recently passed away.

Chairman Rossi asked to observe a moment of silence in honor of Nelson Robinson's father who recently passed away.

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

Becky Carnefix stated the Thoroughbred Development Fund Clerk at Charles Town began working on October 16<sup>th</sup>.

During the month of October, Wheeling Island submitted a request for their capital improvement balance as of June 30, 2014 for the Phase II Expansion carryover project previously approved by the Commission. This request for approval is covered in more detail as agenda item #15.

For the supplemental purse awards, the second quarter FY14 claims, covering race dates October 2013-December 2013, were processed and paid during the month of October. The third quarter FY14 claims, covering race dates January 2014-March 2014, are currently being reviewed.

Applicable changes received from the mailing for the Thoroughbred Development Fund for both tracks have been made in the Development Fund system. Both of the Thoroughbred Development Fund clerks are continuing to enter race data for the February 15<sup>th</sup> distribution.

The audit schedule for FY'15 has been provided to the Commissioners for their review and approval.

Motion was made by Mr. McDermott to approve the audit schedule, seconded by Mr. Phillips. Motion passed.

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

Joe Moore stated live racing handle for October 2014 decreased 28% compared to September and 6.6% YTD compared to FY14. Export handle decreased 10% compared to September and 13% YTD compared to FY14. Simulcast handle decreased 18% compared to September and 1% YTD.

The audit services with Suttle & Stalnaker have expired with the issuance of the FY14 audit. He will be preparing a draft RFQ with a (2) 1 year extension attached to it and will submit to the Commissioner's for their review once it is completed. Joe Moore stated he would like to have the RFQ out as close to the first of the year as possible in case there are any issues.

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

Kelli Talbott stated she provided the Commissioner's with a written report of all the pending cases and the status of those. The major legal development since the last meeting was a decision from the WV Supreme Court in the PNGI vs. WVRC case. It was a favorable decision in the Racing Commission's favor. It upheld the procedural rules promulgated by the Racing Commission to govern the ejection hearings.

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Mr. Phillips stated he would like to share some thoughts on the calendars and schedules they are about to start taking action on. Last year being his first year as a Commissioner, it seemed like these calendars were a routine matter. However, having looked at the industry this year and learned more, he has concluded these are far from routine. He suggested at an earlier meeting that the parties, as they worked on their 2015 requests, do some creative thinking, particularly as there are fewer horses today and declining purse funds. It has become more apparent to him they have to find a way to reduce the number of live racing days. We are still driven by the 220 race days/year, and as a result of that, Charles Town and Mountaineer are running head to head on many days. It seems to him the Commission should have, and does have, the authority to work with these tracks in some way to avoid the overlaps. Have the tracks thought of ways of creating a circuit as a first step to changing this? There is a reference in Code made when considering dates they should be calculated to increase tax revenues. Should we ask those that work on these calendars to go back to the drawing board and look at such things as a circuit and how they can maximize various opportunities and look at what's going on in other states and at other tracks?

Erich Zimny, Charles Town, stated he agrees with Mr. Phillips in coordination is necessary. The issue that makes it difficult is the coordinating with other states. There would have to be more stakeholders to sit down than just Mountaineer and Charles Town.

Joe Funkhouser stated he agrees with Mr. Phillips and they should be looking at new ways to collaborate with the other stakeholders in the state and he also agrees with Mr. Zimny with losing more horses to competition in other states. He doesn't see why they shouldn't collaborate instead of competing head to head with Mountaineer. Some suggestions are collaborating with their signal, dates, or even post times. He fully encourages and supports efforts to talk to the industry stakeholders and try and find solutions where revenue can be maximized and the racing industry in this state. Chairman Rossi asked if they were making initiatives to do this with Mountaineer? Mr. Funkhouser replied they have been talking to the Mountaineer HBPA but have not really talked directly with Mountaineer management. They have talked with their management at Charles Town about ways to increase wagering, but they have not had the type of forum that was suggested at the last meeting.

Erich Zimny added Charles Town has moved their post time from 7:15 pm to 7:00pm in the last year and that was done in a concerted effort with other racetracks to coordinate post times. This, however, is not only a concern for coordinating with Mountaineer but with other tracks in other states as well.

Chairman Rossi stated he thinks the initiatives should come from the stakeholders and the tracks, and not the Racing Commission because the Racing Commission is the regulator and the initiatives have to come from them.

Rosemary Williams, Mountaineer, stated what is being discussed has been done with Mountaineer. They looked at where they could make the most money when sending out their signal and have the most races shown and this is why they chose a 7:00 pm post time. Their challenges are going to be in other states as well. With Mountaineer having a mandatory 210 race days and Charles Town a mandatory 220 race days, there's going to be overlap. Until that piece is solved, she's not really sure what can be accomplished.

Mr. Phillips stated he agrees with Ms. Williams and they have to start thinking outside of the box. He realizes the first step is the live racing issue.

Phil Reale, WV Kennel Owners Association, stated in 2013 they had the opportunity to research this situation with respect to greyhounds in terms of racing dates and what he learned was the actual racing schedule has a lot to do with the safety of the dogs in terms of their ability to be schooled and exercised and be ready to compete. These are considerations that have to be taken into account. He also thinks there is a real opportunity here for the Racing

Commission to make recommendations for changes in legislation and he thinks there is an obligation to take a close look and come up with the optimum set of circumstances for all of the stakeholders involved. A lot of the racing schedule has to do with the simulcast schedules, the pari-mutuel betting, and even the ability to attract a larger crowd at a licensee facility for purposes of other gaming opportunities they have other than just racing. He thinks they should take a look at what days and times generate the most revenues, both for the state and for the stakeholder.

Chairman Rossi stated the Racing Commission will look at this and come back at the next meeting with some type of proposal, either for or against, and will determine that over the next 30 days. He would like for John Myers to work on this.

Chairman Rossi asked Counsel when you approve the schedule, within the law, can the Racing Commission go back and change the schedule within the statute? Ms. Talbott replied she thinks the Commission has a lot more authority than they actually exercise with racing dates. Recognizing that yes there's a certain statutory minimum of race dates that has to be run, and at this point they have no control over that, the Code does say in issuing the licenses and fixing dates for the horse and dog racing, the Commission is to consider the circuits within both in state and out of state tracks compete and to hopefully to the best of your ability pick dates that are calculated to increase the tax revenues occurring for the state. The Commission does have an interest because part of the reason we allow horse and dog racing is for the revenues to the state. So to the extent the Commission can select dates and help the tracks come to dates that are going to do that is part of the Commission's job. If the schedules are approved today the way they are, that does not preclude the Commission from revisiting them at some point.

Mr. Phillips stated he thinks the Commission really does need to engage its staff, themselves, and their constituents in looking for new ways and he thinks the Chairman's approach to it makes a lot of sense and certainly not to disrupt the business activities of the tracks or the horsemen as it pertains to 2015.

#### **Mardi Gras Casino – approval of racing and simulcast calendar for 2015**

John Myers stated they are asking for approval of 245 racing days. There is a small change in the months of January, February, and the first week of March. They will be racing 4 days instead of 5 during that time. Also, there are two weeks in November and the month of December they will be racing 4 days instead of 5 as well. Mr. Phillips stated he noticed in the information received from Mardi Gras that there were no changes to the kennel contract, however, he did not see where the kennel owners had approved the kennel contract and he was curious as to the story on that. Mike Staats, Mardi Gras, replied they have not submitted the kennel contract itself to any of the kennel operators for approval. Nothing was changed from 2014. Mr. Phillips asked if the kennel owners should not send a letter in agreement, even if no changes were made? Mr. Staats replied that's not something they've done in the past. Phil Reale stated in respect to Wheeling Island, they actually entered into a contract and submitted it to the Commission for approval. It would seem to him there is no contract until the contracting parties have reached an agreement and executed it. Therefore, the Commission really isn't approving anything at this point.

Motion was made by Mr. McDermott to approve the racing and simulcast calendar for 2015, seconded by Mr. Phillips. Motion passed.

## **Mardi Gras Casino – approval of import and export sites for 2015**

John Myers stated these are the existing import and export sites they are currently using and there are no changes to be approved for the beginning of next year. Motion was made by Mr. Phillips to approve the import and export sites for 2015, seconded by Mr. McDermott. Motion passed.

## **Mardi Gras Casino – approval of 2015 kennel contract**

Chairman Rossi stated he's been informed he doesn't have any kind of a kennel contract and agrees with Mr. Reale if he doesn't have a contract there's nothing to approve. Kelli Talbott stated there has to be a bargained for document in front of you that both sides have agreed to, otherwise you're just approving what Mardi Gras has put in front of you. She added that she does recall in regards to Wheeling Island's contract it had already been agreed to by both sides before it came before the Commission, and that is the appropriate way for it to come before the Commission.

Phil Reale stated in order to have the simulcast program operate, there has to be a contract entered into, an agreement between the licensee and a representative of a majority of the owners of either the horses or dogs, and he doesn't believe the Commission has that before them today. Ms. Talbott stated the Interstate Horseracing Act, a Federal law, is what requires, on the horse side, a bargained for contract to allow simulcasting. There isn't a Federal law that applies to the dogs but the state has a statute that speaks to this and appears to apply to both horse and dogs and requires there to be an agreement before the signal can be simulcast.

Bob Lagg, Mardi Gras, stated he's not sure they are really under an obligation to submit the contract, other than to the kennel owners as the landlord to a tenant. They have never been held to that standard before and he's not sure why things would change now. In light of the fact there are no changes to last year's contract, the presumption is the majority of those kennel owners will sign on and continue their relationship for another year. Ms. Talbott stated the reason it comes to the Commission is because there is a rule that requires the Commission to approve the kennel contract. The Commission reviews the contract to make sure there is nothing in it that would conflict with state law or be contrary to the rules of racing. Mr. Lagg replied it is his understanding they have submitted that contract. In the past, the standard has been to return a copy of the contract back to the Commission after it's signed, but they submit the contract to be approved by the kennel owners to the Racing Commission for approval. John Myers stated in reviewing last year's contract submitted in the binders, Mr. Lagg is correct and that is how it was done.

Mr. McDermott stated during his time on the Commission, he doesn't believe there has ever been an issue with respect to the kennel contract at Mardi Gras. Chairman Rossi stated he agrees.

Lester Raines, representing the Kennel Association, stated what they are presenting today is that they have been entitled to an observation of what the changes are they want for the coming year but they have not sat down and talked about it, they have not worked together, they have not coordinated anything, they haven't listened to each other, etc. How can you successfully approve a contract when there are that many people that don't think it's exactly amicable to both sides? They have a perception that part of this contract may be detrimental to the greyhound industry in the entire United States. There is some discussion that needs to be done. Chairman Rossi asked Mr. Raines if he has anything set up to meet with people? Mr. Raines replied no because in the past it's just been presented to them and they must sign it. In Wheeling, they worked together and came up with a contract that everyone was fine with.

There are concerns in this contract with reduced racing cards that might be detrimental to the industry.

John Cavacini, President WV Racing Association, stated the issues just mentioned are issues that pertain to the industry itself. It pertains to what happens as they go forward on a lot of fronts. The issue of the kennel contract was negotiated with Wheeling Island. What the Commission has before them today is a contract for the kennel operators to house their dogs in the kennel compound at Mardi Gras. That's what a kennel contract is and has nothing to do with the issues that need to be discussed for the furtherance of the industry. Several issues have been combined as a part of negotiation as it relates to a kennel contract. The kennel contract involves cost for the owners and breeders to house their dogs at the kennel at Mardi Gras and that's what the kennel contract is about. If there are other issues that need to be discussed by the groups, that's fine, but the one issue before the Commission today is the approval of the kennel contract.

Phil Reale stated the contract provides for a lot more than just domiciling a dog at a track. It provides for revenue purse distribution, it provides for liability considerations, it provides for how simulcast revenues are going to be treated and it engages a code of conduct on the part of a lot of people who work and operate at the track.

Chairman Rossi stated he recalls Wheeling Island negotiating with the kennel operators but the Racing Commission was not involved in those negotiations and should not be involved. It is not for the Commission to decide whether they have a contract or not.

Chairman Rossi inquired when the simulcast calendar and all other items have to be approved? What is the drop dead date? Mike Staats replied they are at that time right now when they mail out their contracts to all the sites that take their signal and it gives them a few weeks to get those back in a timely manner because that has to be in place by the end of the year. They prefer to get those contracts out by the first week of December. Chairman Rossi stated he would like to sit down and discuss this issue with Counsel and is thinking about delaying action on this item until December 4<sup>th</sup> so they can look at it as a Commission, unless the other Commissioner's object. Mr. McDermott stated he doesn't know what other alternative they have under these circumstances. He added this is why an agenda is formulated before the meeting so the Commissioners can look at the issues and have some understanding of the issue prior to the meeting. He did not know there were complications relative to the kennel contract, nor did Chairman Rossi or Mr. Phillips. Mr. Phillips added it is mandatory of staff to take a look at these items and do some staff work rather than just putting together a briefing book with an agenda item so they are aware there is something going on they need to be prepared for so action is not delayed.

Chairman Rossi suggested on December 4<sup>th</sup>, at 1:00pm, the Commission have a special meeting on this one item. Mr. McDermott stated he thought he heard Counsel say they cannot approve matters they have already approved, items 6 & 7, without a kennel contract. Is that accurate? Ms. Talbott replied there would be a contract in relation to simulcasting, but she has not looked at this contract and maybe that is in the kennel contract? It's possible they are intertwined. Mr. McDermott stated those issues will then have to be revisited also on December 4<sup>th</sup> potentially. Mike Staats stated in the kennel contract there are sections in there that deal with the percentage of simulcast handle that goes into the purse fund. The live racing calendar will not be affected but it will pertain to the simulcast racing calendar. John Myers added there was no communication to his office that there was an issue with this prior to the meeting.

Mr. McDermott stated there is no other alternative other than to defer these issues until December 4<sup>th</sup> so they can allow opportunity for these matters to be considered and perhaps resolved before December 4<sup>th</sup>. Mike Staats asked if this is only for the kennel contract? Mr. McDermott replied he doesn't think they can limit it to the kennel contract given what Counsel has indicated. Mr. Staats added there are other contracts they send out that relate to their

signal. The other question would be for the live racing calendar because under their current contract, they have to give 30 days notice of any changes to their calendar for the upcoming year. Ms. Talbott replied it's their live races that are simulcast so that's why it occurs to her all of these issues would be related. Mr. Staats said it's related from the percentage of that handle that goes to purses.

Chairman Rossi stated they have approved the racing and simulcast calendars and the import and export sites for 2015 prior to knowing there was controversy on the kennel contract. Mr. McDermott stated he did not want to rescind those approvals, but made the motion to just defer the approval of the 2015 kennel contract for further consideration until December 4<sup>th</sup>, with the understanding that depending on what happens, the approvals of the racing and simulcast calendars and the import and export sites for 2015 may have to be revisited. Seconded by Mr. Phillips. Motion passed.

#### **Mountaineer Racetrack Casino and Resort – approval of racing and simulcast calendar for 2015**

John Myers stated the request is for 210 performances and is very similar to the current year. January and February are dark months with racing to begin March 1<sup>st</sup>. Motion was made by Mr. Phillips to approve the racing and simulcast calendars for 2015, seconded by Mr. McDermott. Motion passed.

#### **Mountaineer Racetrack Casino and Resort – approval of import and export sites for 2015**

Motion was made by Mr. McDermott to approve the import and export sites for 2015, seconded by Mr. Phillips. Motion passed.

#### **Mountaineer Racetrack Casino and Resort – approval of 9 race pools for 2015**

John Myers stated these are specific bet combinations. Mr. Phillips asked if this is something new or something to be approved each year? Rosemary Williams added this is something the Commission requested last year as well. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

#### **Mountaineer Racetrack Casino and Resort – approval of preference system for 2015**

John Myers stated this is the same preference system as it is currently. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

#### **Hollywood Casino – approval of live racing calendar for 2015**

John Myers stated the request is for 220 race days. A few specific requests are 13 races to be ran on April 18, 2015 and 12 races to be ran on September 19, 2015, same as was done this year. Motion was made by Mr. Phillips to approve the live racing calendar for 2015, seconded by Mr. McDermott. Motion passed.

### **Hollywood Casino – approval of simulcast import and export sites**

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Mr. Phillips commented in the briefing material it stated CT HBPA approval will be provided to the Commission when it is received. Does the Commission have to have that before they can act on this request? Randy Funkhouser stated how the Interstate Horseracing Act works in regards with the approval of simulcasting is normally the approval comes from the racetrack, they submit it to the horsemen, the horsemen look at it and approve it and the final goes to the Racing Commission for their final approval. All 3 of those are necessary. He specifically asks Penn National to provide this to him by December 10<sup>th</sup> or earlier. He hasn't gotten all of those yet, but they very rarely turn down a simulcast request and he doesn't anticipate them doing so. He has not received a list of the simulcasts as of today, but is sure they will provide him with one. He does like to look over those first before getting final approval on the simulcast. Mr. McDermott asked if he understood Mr. Funkhouser correctly in saying the Commission is legally impeded from approving this request at this time without the HBPA approval? Mr. Funkhouser replied under the Interstate Horseracing Act it does require a signature on simulcast from the HBPA. Mr. McDermott asked what he would request the Commission to do at this time? Mr. Funkhouser replied he would just like to see the list and check it first. If they have the list prior to the December 4<sup>th</sup> meeting they will review and provide it to the Commission then. Mr. McDermott asked if it was his request to defer this item until the December 4<sup>th</sup> meeting? Mr. Funkhouser replied he thinks that would be the proper way to do it.

Ms. Talbott stated there is a state statute that deals with this, 19-23-12a, that says not withstanding any other provision of this Code, a racing association licensed in the state to conduct racing meetings may, with a consent of the Racing Commission and the written approval of the authorized representative of a majority of the owners and trainers who hold the permit required by section 2 of this article at the horse racetrack, contract with any legal wagering entity in this state, or any other state, to accept wagers on any race or races conducted by such legal wagering. The Code section goes on to say all of the provisions of the Federal Interstate Horseracing Act of 1978 shall be instructive as to the intent of this section. Therefore, the written approval of the horsemen and the Racing Commission is required.

Mr. McDermott made the motion to approve the simulcast and export sites, contingent upon receipt of the written letter from the HBPA, seconded by Mr. Phillips. Motion passed.

### **Capital Improvement Request – Wheeling Island – balance available for reimbursement is \$340,371.15 and is to be applied towards previously approved capital project**

Motion was made by Mr. McDermott to approve, seconded by Mr. Phillips. Motion passed.

### **Hearing examiners recommended decision in the appeal hearing of Anne Graff**

Kelli Talbott stated this is a case that involved a drug positive for a horse at Mountaineer that was trained by Ms. Graff. After the positive was confirmed by the lab and then subsequently through split sample testing, the Mountaineer stewards applied the penalty guidelines in the Thoroughbred Racing Rule and imposed a 30 day suspension and a \$1,000 fine against Ms. Graff because this was actually her second drug positive of this drug. She appealed to the Racing Commission. A hearing was held at Mountaineer. The main issue was the chain of custody for the samples. The trainer contested certain aspects of the chain of



custody and as to if the test results were valid. The recommended decision resolves the case in favor of upholding the penalties against Ms. Graff. Motion was made by Mr. McDermott to approve the recommended decision of the hearing examiner, seconded by Mr. Phillips. Motion passed.

#### **Next meeting – tentatively December 16, 2014**

There will be a special meeting on December 4<sup>th</sup>. The next regularly scheduled meeting is December 16<sup>th</sup>.

#### **Public Comments**

Carol Holden stated they had a very successful Breeders Classics and are preparing for next year. They would like to have the date of October 10<sup>th</sup> for next year's Breeders Classics.

#### **Adjournment**

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