

**MINUTES
WV RACING COMMISSION
Tuesday, February 23, 2016
WV Lottery Conference Room**

The WV Racing Commission met on February 23, 2016 to conduct business and consider administrative matters. Roll call was taken and present was Chairman Jack Rossi. Commissioner Greg McDermott and Commissioner Bill Phillips were present via conference call. Counsel was represented by Kelli Talbott.

Approval of the January 12 and January 19 meeting minutes

The Commissioners and legal counsel received the minutes from the January 12th and January 19th 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 gave an update on the 2016 Legislative Session. The Commission has been made aware of several Bills that have been introduced. Senate Bill 562 and Senate Bill 568 that were introduced by Senator Snyder for ADW and out of state simulcasting facilities and being able to license those has been referenced to the Senate Finance Committee but has not appeared on an agenda. Senate Bill 598 was the Bill introduced relating to greyhound racing. It has been tabled to Senate Bill 641 that was introduced by Senator Hall. It addresses the same issues related to greyhound racing and the development fund, as well as redirecting the \$11 million of Workers Comp money. That Bill has been put forth to Senate Finance, but has not been on an agenda so far. A fiscal note is being prepared for it, and once it is finalized, he will submit it to the Commissioners for their review.

Some information has been gathered concerning the Charles Town racing surface that was requested at last month's meeting. No suitable bids have yet been received for that project.

The medical violations for January were forwarded to the Commissioners prior to this meeting.

A resolution to honor Frank Bellotte was read and presented to the Commission. (See Attachment). Motion was made by Mr. McDermott for approval of the resolution, seconded by Mr. Phillips. Motion passed.

**Auditor's Report
Becky Carnefix**

Becky Carnefix stated the capital improvements submitted for reimbursement and paid for the month were: Mountaineer submitted 3 projects for reimbursement and was paid \$292,769.02. The details of the projects paid have been provided to the Commissioners in their binders. Charles Town and Mountaineer have also submitted additional requests for reimbursement but have not yet been paid for those projects. Details will be provided on those projects once the review has been completed and payment made.

For the supplemental purse awards, 4QFY15 claims, covering race dates April 2015-June 2015, are in the process of being reviewed. The anticipated date of payment for that quarter's claims is early April 2016.

For the Thoroughbred Development Fund, January and February were spent reviewing the information received back from the final mailings sent out to the participants and making the applicable changes in the system. Audits were conducted on the race data included in the system to ensure applicable changes had been made, as well as total earnings in the system were verified against Equibase to ensure all earnings were included in the system. The distribution was finalized and checks were mailed out Thursday, February 11th.

Lastly, 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 he provided the Commissioner's with the pari-mutuel wagering comparison for January 2016, as well as the financial summary with the Account Status Report for January and YTD FY16.

During January and February the staff has been busy with several projects, the first being the employee pension funds at each of the tracks. Those payments are in the process of being made or have been made already, depending on the track. Charles Town's contribution was \$2,898,528.13, Mountaineer was \$1,373,039.52, Wheeling was \$940,519.62, and Mardi Gras was \$587,352.52.

The annual Thoroughbred Development Fund distribution was made in February and the records of that information were provided to the Commissioner's for their review. In addition to that, the 2015 Annual Report has been completed.

Legal Update

Kelli Talbott stated the Thoroughbred Rules and the Pari-Mutuel Wagering Rules have gotten through the Senate and are in the House. They were passed out of both the House Finance and House Judiciary Committees and we are waiting for those to come out on the House Floor for a vote. They made it through the Committee process without any amendments.

The Mid-Atlantic Racing Regulators group, of which the Racing Commission is a part and have participated in their meetings periodically, are scheduled to have a meeting on March 17th. Her intention is to attend on behalf of the Commission.

Hearing Examiner's Recommended Decision – Mark Breeden Ejection Appeal

Kelli Talbott stated she sent the entire record of the case, in addition to the Hearing Examiner's recommendation, to the Commissioner's. Mr. Breeden applied for a permit and he had a felony record. The Racing Commission determined they would give him a chance and issue him a permit. The racetrack, however, ejected him and would not allow him on the premises. He filed an ejection appeal. A full and complete hearing was held in front of Mr. Blaydes, the Hearing Examiner. Mr. Blaydes heard the evidence and he basically recommended that yes the track had cause to eject but nonetheless Mr. Breeden's been off long enough at this point. He recommended Mr. Breeden be allowed to return to racetrack property. Mr. McDermott stated the Commission has great respect for the Hearing Examiner,

Mr. Blaydes. Mr. Blaydes wrote a very detailed, conscientious opinion in this regard. It was very obvious Mr. Blaydes was favorably impressed by Mr. Breeden's honesty and forthrightness. Motion was made by Mr. McDermott to approve the recommended decision, seconded by Mr. Phillips. Motion passed.

Hearing Examiner's Recommended Decision – Lester Rao Ejection Appeal

Kelli Talbott stated Mr. Rao was ejected by the racetrack after having gotten into an incident with another permit holder on the backside of the racetrack. Mr. Rao appealed that ejection to the Racing Commission. A hearing was held before Mr. Blaydes, the Hearing Examiner. Mr. Blaydes found that the racetrack had met its burden of proving that Mr. Rao engaged in the conduct that was alleged. Mr. Rao was ejected in August 2015 and Mr. Blaydes recommended that at this point having been off the property for approximately 6 months that Mr. Rao be permitted to return to the property.

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

Hearing Examiner's Recommended Decision – Lester Rao Steward's Ruling Appeal

Kelli Talbott stated this case arose out of the same incident Mr. Rao was ejected over. The Stewards fined Mr. Rao \$500 for his part in the altercation in the incident on the racetrack with the other permit holder. Mr. Rao appealed the Stewards ruling to the Commission. A hearing was held on this incident. The Hearing Examiner recommends the Commission uphold the \$500 fine and recommended that the Commission assess the cost of the hearing against Mr. Rao, which was requested by Counsel in her proposal to the Hearing Examiner. Due to not having all of the completed costs for the Hearing Examiner to review, the only way they could do that was to bring them before the Commission. The Commissioners have been provided with an itemization of the cost of the Hearing Examiner's services, the cost of the room the hearing was conducted in, Counsel's travel expenses and legal services, and the costs that were incurred for the court reporter and the transcripts. Mr. Rao did make a \$100 deposit for the hearing which would be deducted from those costs, if they are awarded. The total was a little over \$15,000, even with the \$100 deducted. Costs have been awarded in other cases, specifically a case at Mountaineer, and it has been allowed for payments to be made in installments on the costs. Ms. Talbott would recommend the Commission allow the Executive Director to make that arrangement with Mr. Rao. If costs are awarded, allow Mr. Rao to be able to pay it off in reasonable installments over a period of time. It is recommended Mr. Rao pay the \$500 fine within 7 calendar days of the receipt of the Order. Mr. Moore can communicate with Mr. Rao about whatever schedule is reasonable that they come up with to require payment of the costs over a period of time, with the understanding that if at some point he defaults on that arrangement, the Commission may be in a position to suspend his permit or demand full payment of the amount or whatever is justified in Mr. Moore's discretion.

Motion was made by Mr. McDermott to adopt Mr. Blaydes' recommendation, seconded by Mr. Phillips. Motion passed.

Mountaineer Park request to add Timonium OTB to Simulcast List

Joe Moore stated this request was received from Mountaineer to add Timonium to their secondary simulcast sites within their Maryland Jockey Club simulcast agreements. Motion was made by Mr. Phillips to approve, seconded by Mr. McDermott. Motion passed.

Mountaineer Park Request - \$750,000 West Virginia Derby Purse

Joe Moore stated Mountaineer Park has submitted a request for their 2016 West Virginia Derby. They requested a purse amount of \$750,000. They've received approval from the Mountaineer HBPA that in the event there is not \$750,000 available to allocate to the West Virginia Derby out of the fund that the remaining portion of that purse money will be taken out of their General Purse Fund at Mountaineer Park. The request is signed by both Rose Mary Williams, Mountaineer Park, and Jami Poole, President Mountaineer Park HBPA. Motion was made by Mr. Phillips for adoption, seconded by Mr. McDermott. Motion passed.

**Mountaineer Park Capital Improvement Request – 43 Trackside Picnic Tables,
\$14,814.56**

**Mountaineer Park Capital Improvement Request – 2 Rheem water heaters for
grandstand, \$7,973.97**

**Mountaineer Park Capital Improvement Request – new pressure pump in barn
area, \$5,335.19**

Becky Carnefix stated the first request is to purchase 43 picnic tables to be used on the deck trackside to replace the current ones that are worn out. The cost for this request is \$14,814.56

The second request is to purchase 2 Rheem water heaters for the grandstand. The cost for this request is \$7,973.97.

The third request is to purchase and install a new pressure pump in the barn area and is needed due to the upper barns not receiving enough water pressure. The cost for this request is \$5,335.19.

She has reviewed all 3 of these requests and recommends them for approval.

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

**Charles Town Capital Improvement Request – Graphics & Production Upgrade,
\$26,836.00**

Becky Carnefix stated this request is for a graphics and production upgrade due to the current system being outdated and needing a new system. This request also includes a fixed point of view camera package for the announcer's booth. The cost for this request is \$26,836. She has reviewed the request and recommends it for approval.

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Mardi Gras request to run \$65K WVGoba Open Distance Stakes & \$35K WVGoba Juvenile

Joe Moore stated Mardi Gras has requested permission to conduct their WV Greyhound Owners and Breeders Association Open Distance Stakes and Juvenile Stakes. The Open Distance Stakes has a purse of \$65,000 and will begin on May 14th with the finals on May 28th. The Juvenile Stakes has a purse of \$35,000. First round will begin on March 12th with the finals on March 26th. The rules and background on both of these Stakes races and the qualifications have been provided to the Commissioners for their review.

Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Consideration to re-establish Thoroughbred Rule Committee

Kelli Talbott stated she and Mr. Moore discussed recently that it's that time of year to start thinking about having the Thoroughbred Rule Committee members back together for some meetings to discuss possible changes for the 2017 rule making cycle. They have the list of the individuals that have been on the Committee in the past. She and Mr. Moore can begin that process if the Commission so desires. Mr. Phillips commented he thinks it's an excellent idea and thinks the Commission ought to keep things moving forward. Mr. McDermott stated he agrees. Motion was made by Mr. Phillips to approve, seconded by Mr. McDermott. Motion passed.

Consideration of Procedural Rule related to Commission Meetings

Kelli Talbott stated the Legislature directed the Commission to take a look at 2 different Procedural Rules that had not been amended in some time, this being one of them. The other Rule deals with determining organization that represents the horsemen, which is still being worked on. She took the existing Rule the Commission had that governed the meeting procedures and worked on updating it to reflect current law on Open Meetings and current Ethics Commission opinions on Open Meetings and tried to adopt some of the practices that she thinks the Commission has been doing that aren't reflected in the current Rule. She gave the Commissioners those updates to review.

There is one particular amendment that she and Mr. Moore discussed and put in there but thought it might bear some discussion. At some point Commissioner Phillips had requested that meeting materials be posted online to the public prior to the meetings so she added some language in the Rule to that effect for the Commission's discussion. One of the pitfalls of that is that there are sometimes there are items in the meeting materials that are confidential and exempt from disclosure to the public so they would not be able to go up on the website in advance and it would require she and Mr. Moore going through the meeting materials every month and either redacting or taking those items out that wouldn't be put up on the website and that's an added layer of work. Mr. McDermott stated he is very concerned about the confidentiality and privacy issue Ms. Talbott identified. He thinks the degree of oversight that would require could be very significant. Mr. Phillips stated he would agree with that, however, he would like for the Commission to think about going ahead and proceed because he thinks it needs to be done. He agrees the confidentiality issue needs to be taken under consideration but the other material that could be shared, he wants to keep that as an active item for conversation. Mr. McDermott added he thinks it's a great idea and we want to be as transparent as possible, but with the privacy and confidentiality issue it is quite cumbersome.

Mr. Phillips stated he agrees and thinks they should move forward and as they go down the road come up with some way to share the materials in some manner.

Motion was made by Mr. Phillips to begin the process for eventual adoption of a Procedural Rule relating to Commission meetings, seconded by Mr. McDermott.

Ms. Talbott asked if they want her to leave that provision in there that talks about posting materials online or take it out before it is put out for public comment?

Mr. Moore commented along with the confidentiality issue, if the timeframe that's going to be required to conduct this part of this Rule maintains the way it is, it's going to back up the deadline for submission from the tracks to be on the agenda by a significant amount of time. They are going to have to be mindful that these projects that may get submitted a week prior to the meeting would be delayed in excess of a month for the following monthly meeting. Mr. Phillips replied he agrees with everything that has been said and it should be taken out now, proceed with moving forward with the process to get this Rule adopted and as that is being done, maybe there could be some conversation about how the Commission could do something further to open up the transparency.

Motion passed.

Executive Session – Process to rehire temporarily laid-off employees at MP

Chairman Rossi stated he would like to ask the Commissioners to delay this to a later date. Mr. Moore needs to get some more information together. Motion was made by Mr. McDermott to delay this issue until a later date, seconded by Mr. Phillips. Motion passed.

Public Comments

Mark Breeden stated he just wanted to thank each and every one for helping him through his Hearing.

Lester Rao stated he's really disappointed to be coming here today and not being able to be heard but just for a short time. While he applauds West Virginia's progress forward into getting a Rule and Procedure where a permit holder at the racetrack has a right to due process, he believes it has become a double edged sword. At this time the racetracks are using it as a tool to rule somebody off and prohibit them from returning to work for a period of six months. From the initial investigation into this whole matter he has been denied due process at every turn in the road. From having a Steward that would not allow him to cross examine witnesses properly at the initial Steward's Hearing to a Hearing in front of a Hearing Examiner who's not only hired by the Commission but paid by the Commission and whose contract is renewed by the Commission to rule on a matter that would be against a branch of the Commission, the Stewards. He thinks the whole process needs to be re-addressed. He thinks the time factor in this matter is a disgrace to the Procedural Rule as it was written. If you talked about shutting down Mountaineer or Charles Town racetracks, you would be having emergency meetings and getting back to work as soon as possible, but an individual horsemen that is denied to make a living for six months it seems to be of no consequence. While he was in touch with the Commission and asked for information to provide him with some material to defend his position, he finds it appalling that Joe Moore, the Executive Director, was reporting to Kelli Talbott at every single instance as to what he was asking and what information he was asking for. He believes this whole Hearing and the Hearing Examiner's decision are a disgrace to due process.

Adjournment

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