

MINUTES
WV RACING COMMISSION
Tuesday, June 27, 2017
EuroSuites Conference Room, Morgantown, WV

The WV Racing Commission met on June 27, 2017 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi, Commissioner Ken Lowe, Jr., and Commissioner Anthony Figaretti. Counsel was represented by Kelli Talbott.

Approval of the April 17th, April 25th and June 1st minutes

The Commissioners and legal counsel received the minutes from the April 17th, April 25th and June 1st meetings prior to this meeting. Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

Executive Director's Report
Joe Moore

Joe Moore introduced Denver Beckner, the Steward at Charles Town the Commission voted to hire at its April meeting. On June 22nd a resignation was received from the license clerk at Mountaineer Park, Deborah Marks. She worked a part-time position and her last day will be July 12th. He is evaluating the options as to filling that position and covering the office hours in the meantime until someone can be hired for that position.

On June 13th, he and Ms. Talbott attended a meeting of the Mid-Atlantic Regulators. The purpose of the meeting was primarily to discuss the idea of forming a National Compact over medications that ARCI adopts and we are, in most cases, behind the curve ball in getting adopted in West Virginia. It's his understanding that the Compact would be restricted only to those regulated medications. It would involve a member of each of the Racing jurisdictions in the Mid-Atlantic and possibly other states. The next agenda item is a resolution that Ms. Talbott will go over to show West Virginia's interest in pursuing this avenue. Once we get some legal information on the Compacts and how to go about approaching our own Legislature for that authority, we will go over that information in the future.

Mr. Lowe asked with the Compact, is it perfectly clear that the utilization of bute is not effected? Ms. Talbott replied right now bute is regulated with a threshold and we have the Model Rule threshold for that drug along with many other controlled therapeutic medications. From time to time through the Model Rule making process that threshold has been lowered because of studies or science that happens and it's conceivable that whether we are a member of the Compact or not that eventually that threshold could be changed but we follow the national level on that. Can she guarantee the threshold will never change on that, no. But its consistently been allowed in post-race tests at various thresholds over the years and she doesn't personally see that principle changing.

Adopt Resolution to Pursue National Racing Compact

Kelli Talbott stated the mid-Atlantic states (Delaware, Maryland, Virginia, West Virginia, New Jersey and New York) all got together on June 13th to discuss the idea of this Racing Compact for medications. It's her understanding that how it would work is that each

state would have to have their Legislature adopt legislation that would allow the individual Racing Commission to be part of this Compact with regard to medications. The Compact would have a process by which it would come to consensus on what those medication rules would be. As it's envisioned presently, it would largely rely on ARCI who is now the party that puts forth Model Rules on medications that all the mid-Atlantic states currently have or are in the process of getting. So, it would still rely heavily on ARCI and the Racing Medication Testing Consortium and that Model Rule making process which involves all of the constituents at the national level. So ARCI would come forward with the Rule, the Compact would take that Rule up and each state would have to send a representative from its Commission to the Compact meetings that would occur. If the Compact decided they liked ARCI's Model Rule that they proposed then each state would go back and through their own process put that Rule out for public comment to its constituents. Every state would follow whatever procedure they have for putting something out for a 30-day public comment period. Once those comments came back, then the Compact representatives would reconvene, review the public comments made in each state, and they would decide if they wanted to change anything as a result of the public comment or not, and then ultimately if the Compact decided to adopt whatever Rule, there would be a decision made to do that and the Rule would become effective in each state at the same time. It would envision that at least with regard to that limited area of medication Rules in West Virginia and the other states, that piece of our rulemaking process wouldn't go through the Legislative rulemaking process, it would be subject to the Compact process. As she's been told, this Compact process would have an out in it that would conceivably allow a state to opt out of a Rule. A lot of people say what's the point of having a Compact if one of the states can opt out but she thinks that the thinking behind having that opt out provision is that even though it may be used relatively seldom, they wanted to have that provision in there so if there's ever a situation where it's called for, your state could conceivably opt out.

The Legislature will have to give us, and the other Compact states, authority to essentially exempt us from Legislative rulemaking on this narrow area of rules so that we can adopt these medication rules at the same time as everyone in the Compact. Over the past several years as we have gotten into the Thoroughbred Rule and we have updated it every year in front of our Legislature and the Model Rules on medication is what we've been adopting into our Rule with the support of our constituents and have never been questioned by the Legislature. This Compact would allow West Virginia to adopt medication rules more quickly and at the same time as all the surrounding jurisdictions. We were told that some of the Compact states were going to work on some Model legislation for us to look at that would be the foundation for what we would ask our Legislature to adopt to allow us to do that. We don't have that back yet. At this point the group is looking for a commitment from each state to pursue the process that is going to have to take place to eventually get to where we can do this Compact and that's the Resolution she has drafted for the Commission to adopt saying we can do that.

Mr. Lowe stated he just wanted to make certain that the horsemen, the local vets, the racing officials, etc. have the opportunity to examine what the Compact is about. Maria Catignani stated she can't speak fully for the Charles Town HBPA because they haven't had a Board Meeting to discuss this but she will say they have had a recent rash of incidents at the racetrack and what they see as the problem is that there is a lack of uniformity between what happens in other states and what happens in West Virginia. Because they have so many people shipping in, it causes a problem. The horsemen, in general, want to see uniformity and a Compact would allow that. Jami Poole, Mountaineer Park HBPA, stated he agrees with Maria and uniformity would be a good thing. Maria Catignani added Mountaineer is probably a little bit more susceptible because Ohio has a very liberal medication policy so the horses that are going to be running at Ohio and then coming over here, it's going to be a potential problem and could potentially stop horses from coming into West Virginia to run. Ms. Talbott stated Ohio is not part of the mid-Atlantic group but that doesn't mean that if the mid-Atlantic group gets this off the

ground there won't be other states that will join the Compact. Even if there was a Compact, you can't force other states to join the Compact and we could still have the same situation if Ohio wasn't a part of it. Ms. Talbott also added one of the other things they talked about at this meeting was laboratory screening levels and it's conceived that this Compact would address that, if not addressed sooner.

Motion was made by Mr. Lowe to support the resolution, seconded by Mr. Figaretti. Motion passed.

Auditor's Report Becky Carnefix

Becky Carnefix stated for the Capital Improvements update, at the time her Auditor's report was prepared there had not been any capital improvements submitted for reimbursement. Since that time, however, Mountaineer has submitted a request for reimbursement of, and has been paid, the \$10,000 NTRA accreditation fee that the Commission approved as a reimbursable expense at its September 21, 2016 meeting.

For the supplemental purse awards, 14 day letters requesting additional information for residency verification were mailed out yesterday. This covers 1QFY17 claims, which included raced dates of July 2016-September 2016. Payment of those claims is expected to be made mid-July.

The outside auditors from Suttle & Stalnaker were on-site the week of June 12th performing fieldwork and will be back the week of August 21st to complete their fieldwork. A good bit of time was spent in early June preparing items for their arrival and the annual audit.

Accountant's Report Joe Moore

Joe Moore stated live racing decreased 2.5% compared to last May yet is pretty flat compared to last fiscal year. Export increased 17% compared to FY'16 and total in-state handle decreased 3.3% compared to FY'16.

He provided the Commissioners with an early handle impact of the reduced racing at Mountaineer Park. In May 2017, we ran 19 live race days, compared to 23 in 2016. The average daily live handle in May 2017 was \$9,600, which is compared to \$13,400 in May 2016 and \$10,600 compared to April. These numbers will adjust some moving forward. The field size for May 2017 was 6.6 compared to 6.9 in May 2016 but with the new decoupling Rule, we expect the field size in future months will increase and rebound a bit.

He provided the Commissioners with a financial summary for the account status reports for April, May and YTD FY'17 for the administrative funds. An important thing to note is that by the end of next fiscal year, the Racing Commission will have depleted the Greyhound Breeding Development Fund Administrative account. Once that happens, the General Fund of the Commission will have to bear that cost and when we have to shift that cost over to the General Fund of the Commission, you basically have two years before the General Revenue Fund will be depleted. That is taking into consideration some anticipated increased expenses due to the NTRA accreditation recommendations. Unless changes are made to the revenue structure of the Racing Commission, we will be in front of the Legislature in the next 3 years saying we can't open our doors at the end of this fiscal year. If we don't restructure our revenue and how the Racing Commission makes its dollars, you're either looking at some form of a combined Gaming situation in the State of West Virginia or it's going to be used as a tool for a complete cessation.

Legal Update

Kelli Talbott stated the amendments to the Thoroughbred Rule were filed for public comment on June 19th so they are now out for public comment until July 19th. One of the items we are proposing is doubling the permit fees for our Thoroughbred permit holders, which if it ultimately succeeds in the Legislature will bring us in a little bit of money. As a result of the Rules being out for public comment, the Commission will have to have a meeting after July 19th, which is the end of the public comments period because the Rules have to be finally filed with the Secretary of State by July 28th. The Commission will have to consider any public comments we receive and decide if we want to make any changes or not as a result of those comments all between July 20-July 28.

There are two cases that need to be scheduled for Hearing at Charles Town. One is a case in which there was a horse that tested positive for a metabolite of cocaine and we required forfeiture of the purse and the owner has filed an appeal. The second case is one of the naproxen positives we had. After looking at those we rescinded the Rulings on the naproxen positives and let those go, therefore the winner of those races that tested positive there was no forfeiture of the purse and there is a trainer that is contesting that and saying there should have been forfeiture of purse and he was the second place finisher and he wants the money.

Request for Permit Reinstatement – Colton Pitman

Joe Moore stated Mr. Pitman was on the agenda for this request in April. At that point the Commission decided to defer the matter to the following Commission meeting. The Commissioners have been provided with the investigation that State Investigator Bill Carper prepared. At this point Mr. Pitman has basically removed himself from any communication with the Racing Commission. He has discontinued returning our calls for an additional interview regarding his application and based on that and the investigative report the Commissioners have before them, he would recommend the Commission deny this request.

Motion was made by Mr. Lowe to deny the request, seconded by Mr. Figaretti. Motion passed.

Amendments to the Backstretch Pension Fund

Mike Lloyd, representative for the HBPA, stated there are certain changes to the plan that would enable the plan to continue to provide the benefits to the people it is intended to benefit. There are 3 different parts to this amendment. The first one relates to the eligibility of backstretch workers. For them to receive a contribution for a year they have a compensation requirement as listed in the plan as originally drafted. That compensation requirement is \$10,000. Due to the reduction in race days, we have found it has become more difficult for people who would normally be eligible for the plan to meet that requirement. We are proposing an amendment to reduce that compensation from \$10,000 to \$7,500.

The second one relates to the eligibility of trainers. Trainers have a different eligibility and currently that eligibility includes a requirement that they have at least 75% of their starts at an eligible track in West Virginia and a minimum of 18 starts. That 75% requirement has made it so that many of our most dedicated trainers may not be eligible so we are proposing an alternative test for trainers who make at least 100 starts at an eligible track and more than 50% of their starts at an eligible track.

The last one relates to a requirement to ensure the continued loyalty of these participants to our tracks that they sign a form that mandates they are a participant in our horsemen plan only and not another horsemen's retirement plan.

Mr. Lowe asked when is the decision made for the requirement about what plan they are a participant of? Mr. Lloyd replied it is made at the time of their eligibility for a contribution for the year. Mr. Lowe asked if the other retirement plans will be notified they have made the declaration to be a part of this plan? How is the participation verified? Mr. Lloyd replied they recognize this is a difficult process to monitor and they see it as more of they are taking their claim and commitment of their loyalty to this plan and this track and we recognize the HBPA's ability to police it is going to be difficult. Mr. Lowe asked if someone is in violation, what happens to them? Mr. Lloyd replied they would not be entitled to the contribution. Chairman Rossi asked if a person has to be there a whole year before they are eligible? Mr. Lloyd replied no. A person that is eligible to participate in two separate plans for the year will have to make a decision as to which plan he wants to participate in for that year.

Maria Catignani stated from an administrative perspective, most of the trainers fall into that 90-100% of their starts are at Charles Town. She can't speak for Mountaineer but she thinks it's probably about the same. There are only a handful of people that question would arise with. By far the number of trainers in the program outweigh the number of backstretch personnel who qualify with a 1099 or W-2. So, if they have a question in their mind about someone attesting to something, for instance they thought somebody was participating in the retirement plan in Maryland, they can certainly pick up the phone and verify with the THA there.

Chairman Rossi stated Ms. Catignani just stated it is highly weighted more towards the trainers more so than the backstretch employees and that's due to a lot of turnover, etc., he just thinks if you look at A and B it may be weighting it more toward the trainers even more so than it is backstretch employees. He just thinks the plan needs to be fair to everybody and he doesn't know that this doesn't extract more out of it and not make it fair to everybody. Mr. Lloyd replied they had the Administrators take a look as to what that part of the amendment would likely do and everyone is concerned about dilution. Jana Tetrault and Maria Catignani both considered how many people would be effected in terms of being brought in and it was a very small number.

Rosemary Williams stated it seems like when you lower the percentage of starts from 75% to 50%, the horsemen are going to run other places and maybe have 50% of their starts in another area so to her it seems like the provision for number 3 is kind of conflicting with that where you want them to mandate they are just part of this plan, but you're lowering their starts to 50. That seems like they would be eligible for another plan somewhere else. Maria Catignani stated the requirements for the trainers are looked at separately, you can qualify 1 of 2 ways as a trainer. A minimum of 18 starts in WV, and if you have more than 18 starts then 75% of your total starts have to be in WV. Or, you can qualify by having a minimum of 100 starts in WV and more than 50% of your total starts have to be in WV. A lot of the larger trainers are being excluded from participating in this plan without the amendment. Ms. Williams stated she thinks these two items seem to conflict. Mr. Lloyd stated her point is well taken. They considered many different options to address this concern and putting these 3 items together in one amendment is because they have conflicting objectives, if you will. This was the approach that was considered by both Boards and the Administrators.

Chairman Rossi asked when this would be effective? Mr. Lloyd replied if the amendment can be considered, it could be made effective with respect to the 2016 eligibility, which is in the process of being determined presently. Chairman Rossi asked how many new people would they pick up if it was made effective for 2016? Maria Catignani stated she estimates there would be 4 at Charles Town. Jami Poole stated for Mountaineer it would be very few.

Motion was made by Mr. Lowe to accept the amendments, seconded by Mr. Figaretti. Motion passed.

Mountaineer Park Capital Improvement Request – Emergency Grandstand Roof repair, \$27,189

Becky Carnefix stated this request is from Mountaineer and it is for the emergency Grandstand roof repairs. This work was performed in order to prevent water damage to the grandstand and to permit racing to continue after the roof was blown off. The initial work to secure the roof was performed by Facility Products and Services in the amount of \$15,868.20 and the repair work was performed by Mark N Sons for \$11,320.80, coming to a grand total for the entire project of \$27,189. She has reviewed the information submitted and due to the emergency nature of the project, she recommends it for approval.

Mr. Lowe asked Ms. Williams if she had contacted the insurance company first to see if there was any coverage? Ms. Williams replied yes and the deductible was too high.

Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

Approval of Mountaineer Stakes Schedule

Joe Moore stated the Commissioners have the 2017 Stakes schedule for Mountaineer Park surrounding Saturday, August 5th, which is WV Derby Day. They have eliminated a couple of the Stakes races due to reduced purse funds. They have a \$750,000 WV Derby, a \$200,000 WV Governor's Cup, and the remaining 5 races have all been set at \$75,000 purses. He recommends approval.

Motion was made by Mr. Figaretti for approval, seconded by Mr. Lowe. Mr. Figaretti asked how many races they would have on Derby Day? Ms. Williams replied they will have 9 races. Motion passed.

Mountaineer Park request to add Export sites

Joe Moore stated there are 4 Export sites that Mountaineer is requesting approval for: Harvey's BR Management Company, X the Spot, Global Wagering Group and Integrated Betting Network. The Commissioners have the requests from Mountaineer Park as well as the approval letters that are mandatory from the Mountaineer Park HBPA. He recommends approval.

Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

Charles Town request to add Export sites

Joe Moore stated Charles Town has 6 requests for Export sites. The Commissioners have the requests from Charles Town as well as the approval letters from the Charles Town HBPA and he recommends for approval.

Motion was made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

Authorize Executive Director to approve future export site requests

Joe Moore stated this is a request that he received from both Rosemary Williams and Erich Zimny on a number of occasions and the Commission has yet to take it up. It is especially an issue now where we require the tracks to submit their requests by the end of the previous month for the Commission meetings and then you have a month like May where the Commission didn't meet. Mountaineer has a request to add and Export site that dates back to April for which they have not been able to Export their signal to because the 3 Commissioners haven't met to approve it. So, he is asking the Commissioners to delegate that authority to the Executive Director based on a signed request from the racetrack and a signed approval from the particular HBPA, which is required by Statute.

Motion was made by Mr. Lowe for approval of the request, seconded by Mr. Figaretti. Motion passed.

Wheeling Island Request to add Blanchard Kennel

Joe Moore stated Wheeling Island is requesting to add Blanchard Kennel. The request comes after Wheeling Island having lost a couple of kennels in the recent months. Blanchard Kennel is coming out of Florida to Wheeling Island. The contract that is before the Commission is a standard contract that the Commission has approved for the other kennels located at Wheeling Island. He recommends approval.

Motion was made by Mr. Figaretti for approval, seconded by Mr. Lowe. Motion passed.

Public Comments

Chairman Rossi asked Mr. Moore if the date of the next meeting had been decided yet? Mr. Moore replied we are currently discussing two options, both will be the afternoons of Friday, July 21st, or Thursday, July 27th. The pressing issue is going to be the consideration of any public comments. If we have to delay the meeting until the afternoon of Thursday, the 27th, that basically gives us less than 24 hours to get them filed in final form with the Secretary of State's office by the 28th. That meeting will be held in Charleston.

Chairman Rossi stated he would like, if at all possible, for the Commissioner's to be present at all meetings. The Commission is going to go back on record and let the public call into the meetings. We will start that back up with the next meeting and see how it goes.

Rosemary Williams stated she wanted to update the Commission on where the purse fund is at Mountaineer. By their estimates, the purse fund will probably run out of money around October 9th or 10th, given the same allocation as previous that's where they are estimating. Mr. Figaretti asked if the dates for Mountaineer go into November? Ms. Williams replied yes. She believes their last day was November 26th. Mr. Figaretti then asked how much short, day wise, are they going to be? Ms. Williams replied probably about 27-28 days, that's if nothing changes. Mr. Figaretti asked if she could estimate a figure of what it would cost for that shortage of days? Ms. Williams replied probably \$1.1 million.

Maria Catignani stated she would like to say thank you to the Commission for approving the amendments to the Retirement Plan.

Mr. Lowe stated the WV Racing Commission is charged with "promoting and regulating" live racing at all 4 tracks. The value of the live handle, that volume is very important. Decrease in that amount wagered affects the entire spectrum, from the purses to the taxes to tourism to racing and breeding. Thus, as live racing goes so also goes the local economies. Live racing

and breeding translates into jobs and it's vital for the future of this industry. Were it not for the live racing and breeding, there would be no casinos. No one at the time of this referendum would have supported it if it didn't support live racing and breeding. We have got to be able to continue the racing and he thinks the best way to do that is a multi-step process. At the next meeting he is going to ask for each racing entity to provide to the Commission their marketing plan to increase the live racing. Just let us look at it and if we can come up with an idea we will. If we think there's more that can be done, then we'll say that. We have to know what is going on so we have a chance to continue this industry. When he asks for this, he's going to ask for it in a specific timeframe. What can we do to make this thing work?

Chairman Rossi added before Mr. Lowe and Mr. Figaretti came onto the Commission, we had a planning session 2 years ago with the various constituents. He asked Mr. Moore to try and set one up for this summer with the different groups. There were some good issues in that report and he thinks we need to go back and revisit that.

Ms. Talbott reiterated to Mr. Lowe that the State of West Virginia cannot sign confidentiality agreements so if we get information from a track and there's no exemption in the Freedom of Information Act for whatever that information is, then it's public information and we can't hold it confidential. Mr. Lowe stated we know that, the tracks know that, so the tracks need to give us information that can be given to someone else if requested.

Adjournment

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