**MINUTES**

**WV RACING COMMISSION**

**Tuesday, August 15, 2017**

**WV Lottery Conference Room**

The WV Racing Commission met on August 15, 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 July 21st minutes**

The Commissioners and legal counsel received the minutes from the July 21st meeting 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 stated he has received the NTRA report for Mountaineer Park. He and Rosemary Williams are working on getting a conference call put together with members of NTRA within the next week and he will keep the Commissioners updated on the status of that, as well as a summary of those items.

Mr. Moore read a resolution honoring the career of Rosemary Williams. Motion was made by Mr. Lowe to accept the resolution, seconded by Mr. Figaretti. Motion passed.

**Accountant’s Report**

**Joe Moore**

Joe Moore stated the outside auditors, Suttle & Stalnaker, will be in the office next week to complete the fiscal FY’17 annual audit. He expects the drafts will be done by September 15th and the finals will be done by the required deadline of October 15th.

**Legal Update**

Kelli Talbott stated since the last Commission meeting she has filed the Thoroughbred Racing Rule amendments that a meeting was held on and it was voted on to do certain things as a result of comments received. All the changes were made that the Commission voted on and those Rules have now been filed with the Secretary of State, as is required, so they are ready for the Legislative Interims.

There are two cases that are in the process of being set for Hearing at Charles Town on September 28th. Both of them are cases that involve drug positives and one case was a forfeiture of a purse, the other case did not involve forfeiture of the purse.

She is also in the process of scheduling an ejection Hearing for Mr. Farrior, the person the Commission granted the permit to at the last meeting. The racetrack at Charles Town has declined to allow him entry and he has now appealed that so we are in the process of getting dates from the Hearing Examiner and other parties to get that scheduled in Charles Town. It will likely be scheduled in the next few weeks.

Mr. Lowe inquired in regards to a situation such as the Farrior situation, if the Racing Commission has authorized his permit and he makes an entry, who has the legal authority or right to say that entry cannot be accepted? Ms. Talbott replied this issue is something that is extraordinarily complicated legally. Some of this has been defined out in litigation we’ve had over these ejection Hearings and some of it hasn’t been so it remains somewhat of a grey area. West Virginia is not one of the states that says if we give you a permit you are allowed on the track. Our tracks have the right to eject and to refuse entries of folks that are “ejected.” We have a process whereby when the track does not allow you on the track and therefore you can’t make entries, people can contest that and we have a Hearing process for that and that Hearing process has to play out. If ultimately the track does not justify continuing ejection and the Hearing Examiner recommends to the Commission the person be allowed back on, then they will be allowed back on and they will be able to make entries. Mr. Lowe stated he was under the impression the initial decision about accepting an entry must be made by the State Steward, not by the Racing Office. Is that correct or incorrect? Ms. Talbott stated she doesn’t know. She does think there is something in the Thoroughbred Racing Rule that says ultimately the Stewards would have the right to order that at entry be refused but she’s not certain that they’re sitting in the Racing Secretary’s office making decisions about whether entries would be taken or not. Mr. Lowe stated they obviously wouldn’t have to be sitting there physically, a call could be made. He believes the State Steward has the ultimate say in that decision, not the Racing Office. If that’s the case and the State Steward says we’re going to accept this entry and we have to make a decision to support that, then he thinks they need to do that. Ms. Talbott replied she didn’t come prepared today to give them a legal outline of all of these extremely complex issues. We have had multiple litigations that have grown out of the ejection law. Mr. Farrior has invoked his right to contest the ejection and our process is that both sides are entitled to a Hearing. She added that typically she doesn’t think that people that are ejected are allowed to make entries while they are ejected. She doesn’t think we have ever allowed that. Mr. Lowe then asked do we know that the Stewards can or cannot say you must take that entry? Ms. Talbott replied she doesn’t know if they can, she doesn’t know off the top of her head the answer to that. Chairman Rossi asked how detailed would it be to find out? Ms. Talbott replied she would have to look through the Rules and look at the scope of authority in the Rules as well as probably talk to the Stewards to get some idea of what practical experience they’ve had with that. Mr. Lowe stated he thinks we need to get to the bottom of this and get a solution because this is becoming more and more common. Can a stay be granted? Ms. Talbott gave the legal specifications for granting a stay and stated on occasion the Racing Commission has granted stays and there have been many times they have not been granted because it’s the permit holders burden to show why they should get one. She thinks the process we have in place now takes care of this and is a fair process.

**Mountaineer Park Capital Improvement Request – Emergency Purchase Groom’s Quarters Mattresses, $1,770.20**

Joe Moore stated this is a purchase of 10 mattresses that was needed for the WV Derby and wasn’t going to make it in time for the Commission meeting so that’s why it was considered an emergency. Mountaineer has already purchased these mattresses as a result of that and is requesting reimbursement for the emergency purchase. This request has gone through the audit process with the Director of Audits, as do all requests, and he recommends for approval.

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

**Mountaineer to implement new Pick 6 “The One” Wager**

Joe Moore stated this wager resulted from the recently passed and filed Pari-Mutuel Rules that went into effect August 2nd. This is a wager very similar to the one done for Charles Town, the unique wager in last month’s meeting. It’s a rollover carryforward wager and any carryforward would be forced out on the last day of the race meet. He recommends for approval.

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

**Mountaineer Park Request to enter Marketing Agreement with Derbywars.com**

Joe Moore stated his understanding of the way this is set up in general terms, it’s set up very similar to the Draft Kings and those types of websites where you pay an entry fee to pick horses in various races. It’s a game against other players in which there is a winning prize or financial benefit for the outcome. It is an internet based game site that does charge that entry fee.

Rosemary Williams stated basically Derbywars is a handicapping contest online. They already have those in place with other vendors. This is a new company and they operated Horse Racing Nation. They have about 18 tracks currently that they offer these handicapping tournaments on. There are different handicapping tournaments available but it’s players handicapping against each other and there is a prize. Mountaineer would receive revenue from that, it would be 20% of the net contest revenue, which would be shared with horsemen. Last month their sister track, Presque Isles in Pennsylvania, just got approved by their Racing Commission to conduct this. Not only is this a handicapping contest with their races but she thinks it adds different exposure to their races and might entice other people to come in and wager on track or through an ADW. Mr. Lowe asked if you are required to have an ADW approval to participate in this game? Ms. Williams replied no because it’s considered a handicapping contest just like any other handicapping contest online. Mr. Lowe asked what is the percentage that goes to the horsemen? Ms. Williams replied 20% of the net revenue would go to Mountaineer and they would split that evenly with the horsemen. This is designed just like any other simulcast agreement. Mr. Figaretti asked if there’s any chance of getting the Racing Commission something out of that? Ms. Williams replied it’s not currently set up like that. Mr. Figaretti stated he thinks this is something the Racing Commission should look into. Mr. Moore stated he thinks what Mr. Figaretti is suggesting may take a statutory change. The way the Statute is set up the Racing Commission receives a portion of live racing and in-state simulcasting wagers made at our racetracks. This is set up to mirror an export agreement for which any revenues are split evenly between the track and the horsemen. He’s all for seeking statutory changes but on the face of how this exists today, he doesn’t think we would be able to go in and make those percentages happen. Ms. Williams clarified on the simulcasting contracts, there’s import and export. An import contract is Mountaineer bringing signals into their racetrack and the patron actually sitting there and wagering. The export is Mountaineer sending their signal out, which is completely different. They negotiate the export contracts, it’s a lower percentage, and it’s shared directly with the horsemen.

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

**2018 Legislative Agenda Proposals**

Joe Moore stated he asked Ms. Talbott to provide the Commissioners with the proposals that were put forth last year. Some we were approved by the Secretary and Governor to pursue, some we were not. Ultimately, none of the proposals went anywhere in the Legislature, other than the ADW Bill saw some ground last year. What needs to be discussed and decided today is what Agency proposals we want to push or seek approval for this year.

The first proposal is to change the reporting period of the Annual Report from a calendar year to a fiscal year basis. It’s been rejected in the past, and it’s been largely rejected based on the fact that the Legislative Auditor does their analysis on a calendar year basis, the Governor gives his State of the State on a calendar year basis and they want these reports for those purposes.

The second proposal is to change the Commission’s licensing of racetracks from a calendar year to a fiscal year basis. This is largely to benefit how the tracks plan their racing calendar based on the purse monies that are appropriated by the Legislature in April. Currently they do a calendar year and it’s a great guessing game as to what the purse money is going to look like in the last six months of the year, whereas if we had a fiscal year you would know what you had to spend for an entire 12 months.

The third proposal is changing the Statutory requirement that all fines go into a special fund for medical purposes and then flow directly into the General Revenue Fund of the State. What we’ve sought to do is deposit those fine monies into a fund that would then be used for the expense of necropsies at the track based on the requirement in the NTRA accreditation program. Any monies left over at the end of the year in that fund that weren’t spent on necropsies would be made in a donation to an aftercare facility. The dog fines would go into a greyhound adoption program.

The fourth proposal is to amend the Code to increase the daily license tax that would basically double at the thoroughbred and greyhound tracks. The thoroughbreds are currently at $250 and the greyhounds are at $150 per race day. That would double to $500 and $300.

The fifth proposal is to amend the Statute pertaining to the way the tracks apply for race days, the process the Commission has to go through in the tracks applying for race days, requesting to reduce race days. It amends that section of Code to allow for more flexibility on the Commission side. Ms. Talbott added the Bill that was drafted last year that we were authorized to pursue but didn’t get it anywhere, the problem with the Statute as it currently is is that at the end of the year the tracks will come and apply for their race days for the calendar year for 2018 and they are required to apply for a minimum number of days that at this point isn’t even a realistic number finance wise, so they have to come behind that and ask the Commission to modify that. The way we drafted the Statute, if there’s justification the tracks can apply up front for less days instead of going through the process of having them apply for the high number that they know they can’t attain and then come back and apply for a lesser number so we changed the procedure in that Statute a little bit. This was based on some information we received from the constituent committee that looked at this Statute at one point.

The next proposal would amend a revenue source to the Racing Commission based on the import side of simulcast. Currently, that is a percentage of pari-mutuel wagers made at our racetracks and what this proposal would do is it would apply a fixed fee similar to that on live racing. It would be a fixed fee of $1,000 a simulcast day at the thoroughbred tracks and $750 at the greyhound tracks. The financial impact to that for the Racing Commission is nearly $400,000 with the four tracks combined. The breakdown for each track is a little over $100,000 at Charles Town based on the calendar year 2016 numbers, about $175,000 at Mountaineer Park, $72,000 at Wheeling and $27,000 at Mardi Gras.

The seventh proposal goes back to the export wagering. Currently, the State gets zero revenue from sending our signal out of state to be wagered on. What this proposal does is it does not increase any agreements from tracks with other jurisdictions, it simply transfers 10% of the signal transmission fee already generated that the tracks split evenly with the horsemen to the Racing Commission’s general revenue fund. The impact of that change is nearly $1.4 million to the Racing Commission. Charles Town’s impact is $580,000 split evenly with the horsemen so $290,000 to the track and purse account and if they’re doing $120,000 a race day, you’re looking at just over 2 race days that the purse account would be affected by. Mountaineer Park is $520,000 split evenly with the horsemen, $260,000 and if they’re doing $82,000 a race day you’re looking at just slightly over 3 race days that would be impacted to the purse fund with this Statutory change. The dog tracks do their purse funds a little differently, they pay them out on a weekly basis and the impact at Wheeling Island was $180,000 and Mardi Gras is $80,000.

Proposal eight is account deposit wagering. In prior years, before last year, we had left this item up to the industry to seek Legislative support for and push through the Legislature. Last year our Commission decided, and was approved by the Secretary and the Governor’s office, to have an ADW Bill as an Agency Bill. Ultimately the way it played out was the Commission approved the concept, we drafted or aided in the drafting of an ADW Bill with the Charles Town horsemen and racetrack, and the horsemen’s lobbyist in large part took the Bill and gained the support of the Legislature and ultimately got it as far through the Legislature as it went. If he’s to make a recommendation this year, he would recommend allowing the industry, the horsemen from both Mountaineer and Charles Town to get together, draft up a Bill with our input in it, but not have it as an Agency Bill and allow their constituents to push it through the Legislature on a daily basis. Ms. Talbott added she believes we gained several sponsors for the Bill on both sides, House and Senate, but she doesn’t recall the Bill ever getting introduced in Committee. Mr. Lowe stated there’s no doubt ADW should have been introduced long ago but he can tell you as a fact that someone can sit on their phone or computer and they can bet “illegally” right now and we’re getting nothing. His suggestion is reading and seeing what the current Attorney General’s Office has done in recapturing funds that should have come to the State that never did. He suggests inquiring to the Attorney General’s Office that they take a look at this. Ms. Talbott added if there is an ADW company, or companies, that are taking bets on WV races illegally and gaining some profit from that, that would be a major undertaking of an investigation to find that out. There’s a grayer area though on whether WV residents can set up ADW accounts and bet on races in other states that allow ADW. Mr. Moore added he would have to think the illegal part would be a WV resident placing a wager on a WV race ultimately because we approve export agreements for both Charles Town and Mountaineer to these ADW facilities so residents in other jurisdictions would have to be legally able to wager on our races. Mr. Lowe stated he is absolutely positively guaranteeing that is occurring right now and has been for years. Ms. Talbott stated she’s not disputing that it’s happening but one of the things we are looking at is if ADW was legal in WV, what kind of revenue would be generated by WV residents betting on WV races?

Mr. Moore added to walk through the revenue of last year’s Bill, we largely based it on a Virginia model which did $80 million a year on wagering. We discounted by 25% just based on population and income to what we thought would be $20 million and then we discounted it in half again just for the first year start-up experience and so forth to a $10 million wager amount. The Bill called for a 6% fee on those wagers, ultimately giving $600,000 to the distribution of the track, the horsemen and the Racing Commission. Out of that $600,000 the Racing Commission was to receive the first $100,000, or in some combination approximately $100,000 of that, leaving $500,000 to be distributed evenly for the entire year between the horsemen and the tracks. So it was a $250,000 to the purse fund gain, but it was all of the tracks sharing in that 6%, that’s not one particular track getting $250,000, it was a shared amount amongst the 4 Associations. So the revenues they were initially talking about in this ADW Bill were low to all entities involved. He would recommend as far as this proposal goes, the Racing Commission will work with the industry on an ADW Bill but not issue it or file it as an Agency Bill or seek approval from the Secretary. Mr. Lowe added he thinks it’s fair to ask it to be done that the Attorney General look into this issue as he originally suggested. Ms. Talbott told him he may want to submit in writing exactly what the question is he’s wanting the Attorney General to look at and she’ll be happy to submit it to him. Conversation continued about the avenue to take to submit this request to the Attorney General.

The final proposal that was looked at last year dealt with administrative dollars from the WV Lottery that were derived from table games and racetrack video lottery at the four racetracks. The idea behind this was when these laws were passed, the tracks, the horsemen, the industry, the breeding industry, all were supported and received some portion of the revenues generated from table games and racetrack video lottery. The Racing Commission didn’t receive any funding from those activities being placed at the racetracks. What the Bill did was it made 10% of the administrative dollars from racetrack video lottery being deposited into the Racing Commission’s general revenue fund for the operation of our Commission, not to exceed $1.5 million from that activity. It also took 10% of the administrative dollars that Lottery receives from table games and deposited it into our general administrative fund, not to exceed $385,000. Those numbers hold true and Lottery numbers are declining so the revenue is declining and their administrative dollars are declining but still going forward it would be approximately $1.7 million that would come from the Lottery’s administrative funds that on any given year a surplus is turned back over to the Governor that the Lottery doesn’t spend. They take more administrative dollars in than they spend and turn it back over. This would take a portion of basically what is turned over as surplus and deposit it into the Racing Commission’s accounts. This in prior year’s has not gained much support as stand alone Bills from the Secretary or Governor’s office but it’s still something that the Commission should consider.

In addition to all of those proposals, two things came up recently that the Commission may want to consider Legislative approvals for. One, it’s been talked about the Racing Compact on medications. That would take a change to Statute to allow the Racing Commission to join such Compact and adopt rule changes that Compact adopts based on medications. The second is the idea of off-track betting facilities that would be placed in the already approved LVL licensees and taking simulcast wagers from their patrons. Ultimately that idea will take a large up-front investment, in his opinion, from the Racing Commission or some entity to put forth the infrastructure that would be required to audit the dollars coming in and the distributions that would be required to flow out from such activity. What that number is up-front, he’s not sure and what revenue would be generated from the ongoing wagering is unknown at this point. But, that idea has been floated as a possible Statutory change for the Commission’s consideration.

Mr. Moore has recommended the Commission pursue items 2-7 on the list, item 9, the Compact legislation and if the Commission so chooses to do so, the OTB idea. He added this is also the time for the Commissioner’s to suggest any other items for consideration if they have any. They owe the Secretary’s office ideas on the 17th, which is Thursday. Their vote today will be what is put forth for approval from the Secretary and ultimately the Governor’s office to pursue in the 2018 regular Session. Alan Prunty stated the Secretary wanted to pass along that if they need some more time to consider some items they understand that and there is a little bit of flexibility in the deadline. Ms. Talbott stated what has been done in years past and what she thinks they are to do this year is to give them an outline of the ideas we have and if we get approval to pursue any of those ideas, then we get to the point where we are drafting the Bills with Statutory language. Mr. Lowe asked if #2 on the bottom of the page (OTB idea) is not reasonable economically and it’s not likely to happen, is there any advantage to us floating something that we’re pretty sure won’t happen? Mr. Moore replied economically it’s probably not beneficial in the first number of years to the Racing Commission but going forward it may be something that will generate revenue, just as Lottery when they dove into Racetrack Video Lottery they had a large up-front expense and they make millions of dollars off of it every year now. But, with that being said, every idea of Legislative change has to start somewhere. ADW has been floating for a number of years. It gained more ground last year than he thinks it has in the past and eventually it may pass but it had to start somewhere. Even with a Racing Commission that felt like the Legislature wasn’t going to pass it, it still put the idea forth to get more people to start thinking about it. Even if the Legislature were to miraculously approve OTB’s for simulcasting, you’d still be a number of years away from actually getting the infrastructure and needed items in place to be able to audit that function. Mr. Lowe stated as long as it doesn’t hurt the industry right now because there are legislators that don’t want any new type of gaming and he doesn’t want this to be perceived as a detriment to the industry. Mr. Moore replied it could be seen as an expansion of gambling and the only caveat he would say is these are already established gambling facilities approved by the State, it’s not a new location. It's this activity being placed in an already approved, licensed by the Lottery, approved by the ABCA, approved by the State, facility. They already have regulations that the State has approved for their operation. This is very different from the idea of ADW, in his opinion. Mr. Lowe stated as long as it isn’t detrimental to horse racing and dog racing he’d consider it, but if there’s one shred of thought they’re not going to like the idea so therefore they won’t go for number 3, that’s the fear he has about it. Mr. Moore added these are just suggestions put before the Commission for consideration. It doesn’t mean they have to approve it or like it.

Motion was made by Mr. Lowe to approve items 2-7, 9, and go forward with the Compact legislation, seconded by Mr. Figaretti. Motion passed.

**Public Comments**

Steve Sarras, President WV Kennel Owners Association, stated on the agenda there was a draft that makes it a little bit easier to minimize and reduce race days which has caused them some concern. Before anyone does that he thinks they need to take a look at the economic impact of what that may cause. He broke down both greyhound racetracks and showed some figures from loss of racing days. Mr. Moore cited some projections on new revenue sources for the Racing Commission and he’s not sure if those were taking into consideration a reduction to 185 days which is a significant reduction in days which he would imagine would decrease the money that comes into State and local county areas. It’s also going to affect pensions, jobs and a variety of small businesses that are required for year-round racing that we have in WV. The fiscal impact at Mardi Gras if they went from 228 race days, which is what they ran in 2016, to a proposed reduction of 185 race days, you’re going to see State, county, city taxes that will actually decrease by $78,916.15. If Wheeling did that and they raced at the 185 race days, you’re going to go from 257 race days to 185 race days, you’ll see a decrease of $195,333. Combining just those two tracks losses of taxes and revenues is $275,000. He has also provided some figures from the thoroughbred industry and the racing industry. All in all, a reduction in racing potentially could lead to job losses, increased unemployment, loss of daily licensing fees and taxes. He doesn’t know that we want to make it easier to reduce racing. Mr. Moore stated the Bill that was proposed last year left greyhound racing at 225 days, it did not lower it down to the 185 that was addressed on the thoroughbred side. Mr. Sarras added anytime you have a reduction in race days in the industry it affects crossover play and that’s something that a lot of people don’t always realize.

Rosemary Williams stated an update on the purse status is it looks like on October 3rd they will go into the negative. She introduced Jim Colvin and his new job will be Racing Manager and he will be assuming some of her duties.

**Personnel matters – Mountaineer Park Employee Schedules, Wheeling Island Employee Schedules**

Motion was made by Mr. Lowe to go into Executive Session, seconded by Mr. Figaretti. Motion passed.

Motion was made by Mr. Figaretti to come out of Executive Session, seconded by Mr. Lowe. Motion passed.

Mr. Moore was asked to word a motion. He stated the wording of the motion: We authorize the Executive Director to carry out the directive resulting from the Executive Session. This motion was made by Mr. Figaretti and seconded by Mr. Lowe. Motion passed.

**Adjournment**

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