

MINUTES
WV RACING COMMISSION
Tuesday, February 21, 2017
WV Lottery Conference Room

The WV Racing Commission met on February 21, 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 January 10 & 24 minutes

The Commissioners and legal counsel received the minutes from the January 10th and January 24th meetings prior to this meeting. Motion was made by Mr. Figaretti for approval, seconded by Mr. Lowe. Motion passed.

Executive Director's Report
Joe Moore

Joe Moore stated on February 15th the Racing Commission paid out the annual Thoroughbred Development Fund awards for calendar year 2016. The total payout was \$5,208,673.79. Charles Town participants received \$4,284,326.13 and Mountaineer participants received \$924,357.66.

Certificates of Appreciation were prepared for Greg McDermott and Bill Phillips. The Certificate of Appreciation stated: For your efforts and contributions made to ensure the integrity of the racing industry in West Virginia by enforcing the laws and rules of thoroughbred and greyhound racing through regulation and supervision. Thanks to the vision, dedication and leadership of individuals like Mr. McDermott and Mr. Phillips, the West Virginia Racing Commission has made great advances and continue to look forward to the challenges ahead. Mr. Moore stated he would like to issue one of these certificates to each Mr. McDermott and Mr. Phillips. Motion was made by Mr. Lowe to approve the request, seconded by Mr. Figaretti. Motion passed.

Auditor's Report
Becky Carnefix

Becky Carnefix stated for the Capital Improvements update for the month Charles Town submitted a request for reimbursement encompassing several projects, totaling \$458,274.23. Details of the payment made and projects reimbursed will be provided once the review has been completed and payment has been made.

As Mr. Moore stated, for the Thoroughbred Development Fund, that is where most of her time has been spent over the past month and a half, verifying earnings and all of the changes that needed to be made.

Lastly, she provided the Commissioners with her audit schedule for the remainder of FY'17 for their review.

Accountant's Report Joe Moore

Joe Moore stated the live handle is consistent with that of the fiscal year 2016. Export handle has increased 20% compared to FY'16, in large part due to the meet ending at a later date at Mountaineer Park this year as compared to last year. In-state handle is down slightly under 3% compared to last year. He has also included the Account Status Report for the month of December and YTD in the Commissioners information.

The FY'18 budget has been submitted to the Legislature and the Secretary of Revenue's office with Budget Hearings coming up in March. It's identical to our FY'17 budget and he has included for the Commissioners the FY'17 Expenditure Schedules and our final FY'16 Actual Expense Reports for their review.

Legal Update

Kelli Talbott gave a brief overview to the new Commissioners of her role as Legal Counsel for the Commission. She then stated one of the major things she wanted to bring up today is related to the Thoroughbred Rules and Wagering Rules. We have proposed amendments to those two Rules pending in front of the Legislature. There are certain Rules that State Agencies promulgate that have to go through the WV Legislature to become effective and these two Rules fall into that category. The proposed amendments passed the Senate last Friday and are now in the House and were taken up yesterday in House Finance and passed out of there. There are some differences though between what the Senate passed and what the House has right now which are going to have to be sorted out. In December RCI amended a Model Rule related to the multiple medication violation system, the point system that is used and attaches points to a trainer's license depending on the nature of the medication violation. The horsemen and the constituents wanted the Racing Commission to try and get those changes in our Rule as soon as possible. Senate Judiciary put the new Model Rule amendments into our Rule, on top of the amendments on many other topics we had already proposed. The House version doesn't have those amendments in it yet, but we'll have to work to try and get the House and Senate Bills to match. The Wagering Rule has 2 proposed amendments, one is to lower the minimum wager and the other relates to the Pick In Rule, the progressive wager, the jackpot wager that the constituents wanted the Racing Commission to pursue. Those have passed the Senate and out of House Finance yesterday.

One of the most significant cases she has right now for the Racing Commission is a trainer at Charles Town who had two Class I drug positives in two different horses. That case has been continued several times at the request of the trainer. It has now been re-scheduled for April 28th in Charles Town in front of the Hearing Examiner.

The Racing Commission over the past several years has participated in a group of Mid-Atlantic states to try to get the constituencies of the Racing Commission's in those states together periodically to try and get uniformity in our medication rules in the mid-Atlantic region since many horsemen are mobile between those states and it makes sense for the mid-Atlantic states to be on the same page. The next scheduled meeting for the mid-Atlantic is March 28th and they have broadened the scope of that meeting and have asked to include constituents from our area in the industry to attend as well. Commissioner Lowe has agreed to attend that meeting.

Transfer of Ingram/Dugan matter from CT Stewards to Racing Commission for hearing and disposition

Joe Moore stated this is a Hearing on a rule infraction at Charles Town involving a trainer, Adam Ingram, and a vet, Dr. Dugan. This matter has been heard by the Stewards at Charles Town and after much discussion he is requesting to transfer the matter to be heard by the Commissioners, either in a Hearing setting with the 3 Commissioners or you can request we send the matter to a third party Hearing Examiner to make a recommendation to the Commission as we do in our Hearing Appeals. Chairman Rossi stated he has discussed this item with Mr. Moore and Ms. Talbott and his recommendation is to appoint a Hearing Examiner to handle the matter.

Mr. Lowe inquired if the Commission pays for a Hearing Examiner? Chairman Rossi replied yes. Mr. Lowe asked how expensive is something like that? Ms. Talbott replied sometime after Commissioner Rossi was first appointed to the Commission, we got the Racing Commission's statute amended by the Legislature to allow it to appoint a Hearing Examiner to hear your cases because that is the industry standard. Part of the issue is, if the 3 Commissioners convene a Hearing there is expense associated with that, you have to travel to Charles Town that's where all of the witnesses are because it's very difficult to hold the Hearings in Charleston and drag all of the witnesses down here. The other issue is that these are legal proceedings and the Hearing Examiner has to be an attorney at law under the statute. Mr. Blaydes, who has done a lot of the Commission's Hearings, rate is \$100/hour.

Motion was made by Mr. Lowe to move this issue from the Stewards to the Racing Commission, seconded by Mr. Figaretti. Motion passed.

Motion was made by Mr. Lowe to use the Hearing Examiner for this issue, seconded by Mr. Figaretti. Motion passed.

Mr. Lowe stated to Ms. Talbott he assumes a Commissioner should not go to those Hearings? Ms. Talbott replied it's probably better not to. He will receive a transcript of the Hearing and anything that was filed in the case once the recommended decision has been filed in writing.

Charles Town Capital Improvement Request – Barn area recording equipment upgrade, \$113,378.65 – carryover from January

Joe Moore stated the Commissioners at the time of the January meeting asked the Racing Commission to get more information concerning exactly what the upgrade was going to deal with and the benefits it would provide the Racing Commission in utilizing those cameras and those recordings. He asked the Chief Investigator at Charles Town, Bill Carper, to do some work on it and request information of their Security Officer, Brian Ward. Mr. Carper has provided the Commission with a report and his recommendation is that this upgrade be approved. For Commissioner Lowe's question, he will divert to Brian Ward as to whether this upgrade covers all of the barns in the barn area or if this is a process in staging certain barns.

Mr. Ward stated this actually effects all of the cameras in the barn area. Currently their recordings on the older servers are on a 2x2 format and moving forward with the recording upgrade, it's going to allow a 1 camera to 1 recording on live and recorded view. It's really going to enhance the review capabilities and/or they have situations where they have to conduct live surveillance. Also, with the updated servers they may actually extend their video retention time. As for Mr. Lowe's question concerning the old equipment, typically what happens is it's just like old IT equipment and it has an end of life so the current recording servers really don't carry any value for trade-in.

Mr. Lowe asked if the cameras are going to be in all of the barns? Mr. Ward replied they already have the cameras, this is just the recording servers upgrade so cameras are in all the barns, stable gate area, receiving barn, test barn. Mr. Lowe added it's his understanding Barn 6 is unoccupied, but what he's hearing is what they are doing won't effect the number of barns that are covered because they are already covered. Mr. Ward replied that is correct and there are cameras in Barn 6 and they are going to record that area whether it is occupied or not.

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

Mountaineer Park HBPA Request to address post race drug testing issues

Joe Moore stated this is another carryover from the January meeting. The Mountaineer Park HBPA approached the Commission regarding the length of time it was taking to receive test results back from Industrial Laboratories, who is our equine drug testing lab currently. They presented some information to the Commissioners regarding statistics that they had. He has requested some more information out of the Mountaineer Park HBPA and has also been in contact with Industrial Laboratories and they are working on a report for the Commission that will cover the past 6 months and it will detail when the shipments were received, the testing that was completed and when the results were returned to the Commission from their side for us to compare with Mountaineer Park. They also have a vested interest in this turnaround time. They are looking at some areas of why these trace tests, or these cloudy samples, are being returned within that first 5 days in the first place because the additional testing costs them more money and more to complete as well. If there is something in the testing that is producing these, they are working to try and determine that and alleviate that issue as well. He has also had discussions with Mountaineer Park even further regarding the situation and it's his understanding that they are prepared to bring to the March meeting a more visual presentation and some ideas on ways to address this issue moving forward. It's intention to not only have that presentation from Mountaineer Park's HBPA for the Commission in March but to have the report from Industrial for their review to wrap all of this up before we begin our next race meet in April at Mountaineer. Chairman Rossi stated he and the former Commissioners directed Mr. Moore to go back and get the information from the Mountaineer HBPA and they are trying to resolve this issue. He encouraged Mr. Moore to have his study to the Commissioners a week ahead of time so the new Commissioners can decipher some of it. Chairman Rossi added he would like the report from Mountaineer's HBPA in advance also.

Wheeling Island request to amend 2017 Live Race Calendar

Joe Moore stated historically the Racing Commission has approved racing calendars in the fall for the next calendar year. We approved this year at Wheeling Island's in the fall and they are coming to the Commission requesting they be allowed to amend that live race calendar, as well as some of their wagering options. Wheeling Island currently is running a schedule that is problematic in completing any capital improvements to the racetrack because they are not dark for any consecutive days. The new racing schedule will have Wheeling Island dark on Mondays and Tuesdays to allow time for track maintenance and capital improvements to be done to the racing surface while there's not racing the following day, or schooling taking place or anything of that nature. They will run Wednesday-Sunday and they are proposing 15-20 races on each of those days. They have provided the Commission with their detailed information and their holiday performance schedule. He spoke with Mr. Travis, Director of Racing Operations, and upon approval by the Racing Commission all of this information will be

posted to Wheeling Island's website to update the public on what their new racing calendar will be.

Mr. Figaretti commented does the 20 races include matinee and night racing, is it 20 races for the whole day? Mr. Travis replied they've been running 20 races every performance during the matinees they are running now with no night racing, which is the winter schedule, January and February and that started last year. He looked at the numbers from what they've been doing on the matinees and the last three Saturday matinees they've done over \$300,000 in handle. He looked at the numbers last year and they did \$300,000 maybe 3 times. The extra races they've added to the matinees, they were running 15 when they had the night races, so now that they have 20, and Saturday afternoon is their best day, they are offering people the opportunity to wager on 20 races rather than 15 and they've seen enormous growth. He looked at the March numbers from last year because that's when they started running the regular schedule again with the evenings and he found that their live handle, if it continues where it's at right now, they could see improvements of 25-50% if they can focus their attention on the matinee crowds because that's where their business will be. Their export on Sunday is up 35% because there's not much competition for export signal on Sunday. The numbers are encouraging but the active list is really what's going to dictate their schedule and that's why he's asked for 15-20 races so they can be flexible. They are down to 12 kennels, they lost 2 kennels from last year. They have 630 active dogs and he has another kennel he's really concerned is not going to make it. If they go back to that evening schedule what they are going to do is they are going to take away those 20 race cards in the afternoon and now they're going to have 15. Then they are going to put 13 races in the evening and that's going to drop their matinee numbers and the evening numbers won't compensate for them. When you look at the numbers, it makes absolute sense to focus on where their people are and they are matinees. They've been advertising this, pending Commission approval, because he didn't want to wait just one week out and throw it at everybody so everyone is in anticipation of it. There was a subsequent request from their Mutuels Manager that annually they do an event with the United Way and it's called the United Way Night of the Stars so they are requesting to run an evening on that day just to do that event.

Mr. Figaretti asked if there is a reason for losing kennels? Mr. Travis replied they can't make any money anymore. The competition is too tough for the kennels they have and the purse money has dropped. Kennel owners are wanting out of their contracts. He's not even sure they can fill the schedule he's proposing on those weekends so that's why he's asking for flexibility to go 15-20 if there are not enough active greyhounds to fill that schedule. Mr. Figaretti asked if we are still breeding dogs like we were a few years back? Mr. Travis replied he doesn't know the actual numbers for that but he does know that breeding has gone down. Mr. Lowe added if he's hearing him correctly the base of all this and the bottom line is there's not enough purse money. Mr. Travis replied yes. Mr. Lowe commented this is the same thing they are seeing happen with the thoroughbreds as well. Mr. Travis added it's time to try something new on the racing side.

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

Approval of 2016 Annual Report

Chairman Rossi started by asking when the due date of the annual report is? Mr. Moore replied it is supposed to be to the Governor's office before the State of the State. In several prior years we have missed that deadline by a number of months but in the past few years we've gotten much better with being on time. This year we are a little bit behind with it. The technical data in the report is correct, the accounting year-end report is correct, all of the informational items in the report are correct, we are still just wrapping up some minor wording

issues. What he is asking for today, if it's appropriate, is to give him the authority that after these few issues are wrapped up, to have this report approved and be able to distribute it electronically, and in hard copy, to the Commissioners as well as the Governor's office, the Secretary's office and Legislative Auditor.

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

Thoroughbred Rule Committee – Meet to discuss 2018 rule changes

Kelli Talbott stated for the past several years the Commission decided to form a constituent committee to look at rule changes for the Thoroughbred Rule and the Wagering Rule. We did it with the Greyhound Racing Rule. The reason we need to consider reconvening the Thoroughbred Rule Committee is because last year the Commission voted to require Mountaineer and Charles Town to become accredited with the NTRA. We started looking at some of NTRA's standards and some of NTRA's standards are tied to RCI Model Rules that have to be adopted in your state in order for your tracks to get accredited. We started looking at some of the differences between our current rule and the Model Rule requirements that NTRA imposes and there are some differences so we need to start looking at those differences and propose some changes to our Rules in order to help our tracks get NTRA accredited. She prepared a summary at some point that identified the areas where we would need to get amendments to our Rule to assist the NTRA accreditation process. This is on the agenda so we can start looking at this for 2018. The rule making process would require us to have proposals for 2018 out for public comment this summer. There would have to be a 30-day public comment period so that we meet the statutory deadlines that are imposed for rule making. In the past the folks that have been on the Thoroughbred Rule Committee have been a representative from both HBPA's, a representative from both thoroughbred racetracks, the Jockey's Guild has been represented, we have had veterinarians, the Stewards, the State Investigator at Charles Town and we've gotten all of those folks together and given them the opportunity to look at proposals we see that needs to be made for this NTRA issue, along with any other issues they just want to bring up to the Commission that they would like to be considered. We are looking to try to get that group back together to start looking at this. Chairman Rossi stated we need approval from the Commission to direct Mr. Moore and Ms. Talbott to proceed with the committee for rule making.

Motion was made by Mr. Lowe to approve Mr. Moore and Ms. Talbott to proceed forward with this process, seconded by Mr. Figaretti. Motion passed.

Approval to advertise Vacant Position – CT Steward

Joe Moore stated on February 4th we received a resignation from Steward Mike Pearson. He has allowed Mr. Pearson to not continue through a notice period due to health concerns so we are currently filling his position right now with fill in substitutes. He requests permission from the Commission to advertise and begin the interview process to hire a full-time Steward at Charles Town. Mr. Figaretti asked how do we go about interviewing? Who interviews? Mr. Moore replied they conducted interviews for a Steward position about a year ago and at that point in time Ms. Talbott, himself and Commissioner Phillips interviewed all of the Steward candidates, both for Mountaineer Park's position and the position at Charles Town that was open at that time. If a Commissioner desires to be in the interview process, certainly that is appropriate. He and Ms. Talbott are prepared to interview the Stewards yet again. Mr. Figaretti asked when they are interviewing if there are any qualifications they have to have? Mr. Moore replied our Rules require that the Stewards be up-to-date on their certifications and they have to

do the continuing education so there are qualifications in the interview process prior to them being before himself and Ms. Talbott. Chairman Rossi stated in addition to Mr. Moore's recommendation he would like to recommend for Mr. Lowe to participate in the interview process.

Motion was made by Mr. Figaretti for approval and for Mr. Lowe to also participate in the interview process, seconded by Mr. Lowe. Motion passed.

Mr. Lowe asked if exit interviews are ever conducted? Mr. Moore replied he did one with Mr. Pearson over the phone and the result of that exit interview was not anything directly effecting the Racing Commission. There were several things Mr. Pearson was concerned nationally about, and primarily it was health concerns that caused him to come to this decision. Mr. Lowe stated he says that because in some of his business entities they have gotten some of their best suggestions from people that were moving on.

Occupational Permit Request – Marcus Vitali

Joe Moore stated it's been a few months since the occupational permit request came into Charles Town for Mr. Vitali. Along with the permit came an entry for a horse that Mr. Vitali had supposedly been training. After making some phone calls and some discussion, it was determined that horse was actually under the current care and control of a trainer in Pennsylvania. Mr. Vitali was currently in Florida at that point in time so he could not have the care of that horse when the entry was made so the entry was denied. Mr. Moore then requested that they take this request and put it before the Commission for their vote. Mr. Vitali has, as of November when they ran the report, 55 Rulings against him nationally, accumulating 32 multiple medication violation points on his record. It would be his recommendation to the Commission to deny this request for an occupational permit in West Virginia.

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

Public Comments

Nelson Robinson stated the adoption of the proposals at the last meeting, on the tax proposal to the tracks on the export signals, that is a concern with them. Rose Mary Williams stated the concern they have is their handles are currently down and they don't make money on live racing currently and to take even more money from that would only be detrimental to their business. Nelson Robinson added he just didn't want it to be a surprise if we heard they were in opposition to that proposal. Jana Tetrault stated she thinks the same thing would go with purses because it does take a significant amount out of their purses as well.

Mr. Lowe stated in his view of racing, he describes it at Charles Town as if it were between his two hands, one being racing the other being breeding. In between all of that is all the jobs, all the tourism, all the things we want. What's happening to us is the purse monies have been reduced, because of that the number of racing days have been reduced. What's happening now is people are getting out of West Virginia and going to other states. When the owners of the horses leave, then the breeding stops or cuts in half. This system collapses on its own. It's self-destructing in front of your very eyes right now in Charles Town. Here are the thousands of jobs and here are the thousands of people and here are the farms that are going to be lost. Think about when the farms are lost. Jefferson County has 55% of the land estimated to be agricultural. Ken Lowe estimates 85% of that, maybe 80%, is tied to horse racing, or breeding, or raising crops or turning horses out to pasture. All of that ecosystem is going to die. When the farming industry dies in West Virginia what's going to happen? That's

happening now. He sees a destruction in Jefferson County. When that occurs, what happens to things like 4-H, the County fair, the FFA? This whole thing is shrinking. Charles Town West Virginia without almost, or close to, year-round racing and breeding, with a full-fledged casino, becomes Atlantic City with no ocean. What's happening is the value of farms is decreasing per acre. Why is that so devastating? When farms are gone, people move and you don't have the horse industry or the green space and then developers move in. We need to get together and we need to work with the casino and make this thing work, otherwise we are devastated. Mr. Travis stated he worked in Kansas for 20 years in the greyhound industry and he watched it collapse around him and once you get into that you can hardly get out of it. He doesn't want to see that happen again.

Chairman Rossi stated the thrust of the Racing Commission is to basically regulate. The constituents, whether it's the tracks, the horsemen, the breeders, they need to work together. The Racing Commission has been encouraging that over the years. We, as regulators, have been charged with regulating and since he's been on the Commission we've rewritten the greyhound rules and the thoroughbred rules. We've actually gotten positive compliments from national associations for West Virginia on what we are doing. A couple of years ago we got a group of constituents together and the constituents had their own meetings and decided what they were going to do to try to promote racing, to enhance racing, both greyhound and thoroughbred. He would encourage that happening again.

Executive Session – To discuss possible litigation against the Commission by trainer Eddie Clouston

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

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

Adjournment

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