

**MINUTES
WV RACING COMMISSION
Tuesday, July 21, 2015
WV Lottery Conference Room**

The WV Racing Commission met on July 21, 2015 to conduct business and consider administrative matters. Roll call was taken and present was Commissioner Bill Phillips. Commissioner Greg McDermott was present via conference call. Counsel was represented by Kelli Talbott. The meeting was chaired by Commissioner Phillips in Chairman Rossi's absence.

Approval of June 16th minutes

The Commissioners and legal counsel received the minutes from the June 16th meeting prior to this meeting. Motion was made by Mr. McDermott to approve the minutes, seconded by Mr. Phillips. Motion passed.

**Executive Director's Report
Joe Moore**

Joe Moore stated the FOIA report, which is a 3 month running report, shows 17 requests received and completed. Of that amount, 5 were received in June; one from Grey 2K, 2 from Mountaineer HBPA and 2 individual requests.

Last month there was a water main break that affected Mardi Gras, causing the track to close and cancel racing from June 24-June 26. The main broke a second time the following week and caused the track to be without water June 29-June 30, both dark days for racing. The one thing that is absent from the Greyhound Rules that the Commission may want to consider is who's responsibility it is to provide water for the kennels, located on track property, in such an event. The track provided some access to water during these two occasions and a greyhound breeder filled some large water tanks and allowed the kennels to draw from that as well. Mr. Phillips stated he thinks the Commission needs to take action to start the process to deal with that matter. He would like to ask Counsel to start the process that is required in order to get that provision added to the Rules. Mr. McDermott stated he agrees whole heartedly.

There will be a full committee meeting at the conclusion of today's Commission meeting. All 4 subcommittees that the Commission designated have met at least once and are prepared to present to the full committee the results of those meetings. Mr. Moore has listened in on and participated in some of those meetings and would report the committee members are all participating and bringing forth fresh ideas.

The posting for the Executive Director vacancy was put in several publications and/or websites. The posting went out later than originally expected, therefore, resumes were to be received no later than July 16th. Those resumes were received by John Myers and the HR Department of the WV Lottery under an existing MOU currently in place with the Lottery for HR services.

**Auditor's Report
Becky Carnefix**

Becky Carnefix stated the capital improvements submitted for reimbursement for the month, but not yet paid included: Charles Town submitted a request, encompassing several projects for reimbursement totaling \$571,303.04. Details of the payment made and the projects reimbursed will be provided once the review has been completed and payment has been made. Mountaineer submitted 7 requests for reimbursement, but not yet paid, totaling \$250,136.60. Details of the payments made and the corresponding projects reimbursed will be provided once the review has been completed and payment has been made.

Included in the Commissioner's information is a quarterly status report as of June 30, 2015 on the outstanding projects approved and the funding available for all 4 tracks.

For the supplemental purse awards, 1QFY15 claims were paid out the week of July 13th. Total claims paid for Charles Town were \$424,004.89. Total claims paid for Mountaineer were \$125,096.10.

She provided the Commissioner's with her proposed audit schedule for FY'16 for their review.

Mr. Phillips asked for a summary of the track visits made to Mountaineer and Wheeling during June. Ms. Carnefix stated while at Mountaineer she observed the Lasix procedure being administered and walked around the barn area looking at the capital improvements that have been requested and completed recently. She also met with the License clerks and Auditor and discussed procedures with them and answered any questions they had. At Wheeling, she spent two days with the License clerk/Auditor observing daily procedures and answering questions. They worked with the Accounting Department at Wheeling in an effort to start doing some extra procedures and to look more into the accounting aspect of verification of figures between the track and the Commission. Mr. Phillips asked if the licensing system with RCI is working the way it was anticipated to work? Ms. Carnefix replied yes, the process seems to be working.

**Accountant's Report
Joe Moore**

Joe Moore stated live racing handle compared to FY14 decreased 9.5%. We are through the fiscal year now so that is the status of the annual decrease compared to last year. Export handle compared to FY14 decreased 14.5%. Simulcast is down 6% compared to FY14. Total in-state handle decreased overall by 7.5% compared to last year.

The quarterly budget comparison for FY15 was included in the Commissioner's information. The FY16 administrative projections were also provided. The deficit for Fund 7304 is projected at currently \$65,000 for FY16. The deficit for Fund 7305 is currently projected at nearly \$95,000 for FY16. The deficit for Fund 7307 is currently projected at a little over \$600,000.

Mr. Phillips stated there probably should be some ideas from the staff on how to address these potential deficits. He would suggest there be some recommendations about how to address these, if at all possible. Mr. Moore stated it's important to keep in mind these are deficits based on current year revenue and it's eating away at a balance in those accounts that currently exist. His staff will come up with some recommendations for the Commission in addressing these deficits, if at all possible. Mr. McDermott stated the information that is provided to the Commissioner's before the meetings is very helpful and he agrees with the suggestions Mr. Phillips just made, but one other thing to think about, and he's not suggesting it be done every month, is periodically it might be helpful to receive 5 year comparisons too, at least on a quarterly basis. Mr. Moore stated he will get that put together and will plan on

presenting that first document to the Commission in the August Commission meeting. Mr. Phillips added that is a great idea.

Legal Update

Kelli Talbott stated to add onto the discussion about the Commission's budget issues, she has been working with the modernizing the Code committee and they have come up with some ideas that would require WV Code changes that would generate additional revenue for the Racing Commission to fund its operations. It wouldn't be an immediate fix, but it could be something that going forward could address those issues.

She attended the meeting of the Mid-Atlantic Racing Regulators States. The basic discussion of the meeting was where we are on the implementation of the Uniform Medication Rules. Almost all of the Mid-Atlantic states are substantially in compliance with those. They discussed a couple issues moving forward that the group wants to become uniform with regard to the Cobalt rule that RCI has recently promulgated. We have the Cobalt rule in process now and is in the Thoroughbred Rule for consideration in 2016. There was discussion about altering the way state Racing Commission's regulate medications in Thoroughbreds, and legislation has since been introduced. The bill would strip state Racing Commission's authority to regulate medications in Thoroughbreds and that authority would essentially be given to the anti-doping agency that now regulates other sports. A lot of states were concerned about the legislation and RCI has taken a position of opposition to the legislation.

There was also discussion about laboratories. A lot of the Mid-Atlantic states use Truesdail, which recently has had some issues with their quality control. There was discussion that there are more labs in the pipeline for accreditation but how long that process is going to take remains to be seen. There was some concern expressed about Truesdail because right now Delaware, West Virginia, New Jersey and Maryland use Truesdail and there are several other non-Mid-Atlantic states that use Truesdail as well. To date, Indiana is the only state that has switched from Truesdail to another lab.

Mr. Phillips commented in regards to the legislation discussed by Ms. Talbott, RCI has not formally taken a position on the legislation. There was a lengthy discussion about it, however.

Approval of the Thoroughbred Racing Rules

Kelli Talbott stated some proposed amendments were put in this Rule, largely dealing with adopting Model Rules relating to medication to update our rule. It was put out for a 30 day comment period and that comment period ended at 5 pm on July 13th. We did not receive any comments before the close of the comment period. A comment was received from Mr. Reale, but it was late. It came 2 days after the close of the comment period. Anything that is received late is not considered. The comment related to a proposed waiver claiming rule that the horsemen at Charles Town were particularly interested in and was discussed for the Rule Making committee that occurred over the telephone. What was discussed did not make it into the final product the Commission approved and was sent to Secretary Kiss. She cannot even file the comment with the Rule since it was late. She would recommend that going forward the Commission look at the comment, but it cannot be done this year. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Mr. Phillips added going forward in the future, put the comment from Mr. Reale on an agenda for consideration of something to be taken care of. Mr. McDermott agreed.

Approval of the Pari-Mutuel Wagering Rules

Kelli Talbott stated this was also put out for public comment with a couple of minor amendments. No public comments were received. The comment period closed at the same time as the Thoroughbred Rule did. This Rule is ready to go to Secretary Kiss for signature so that it can be filed for the 2016 Session. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

New Mid-Atlantic Advisory on Procaine Penicillin & Depo-Medrol

Kelli Talbott stated during the meeting in Delaware, it was discussed amongst the participants how certain Model Rules are being administered and whether they are being administered uniformly. The two that were discussed were the rule regarding Procaine Penicillin, which we have a threshold in our rule for a post-race testing threshold. We are pretty much following the protocol for this now that the Mid-Atlantic wants to adopt and that is if the drug is administered to the horse, the state Vet would be notified 30 days prior to entry. If the horse has been administered the drug they have to be put under surveillance 6 hours prior to race time at the owners expense. The Advisory that was drafted lays out that procedure for Procaine Penicillin and they wanted to get all of the Mid-Atlantic states following the same protocol for implementation of this particular rule. The other item is Depo-Medrol, which is a corticosteroid and is administered often times in horses joints to treat inflammation. As she understands it, a lot of times when this drug is administered it's easy to miss the joint and get into the surrounding tissue and once it gets into the tissue it stays in the horse for a long time and can show up in post-race testing. The protocol that the Mid-Atlantic wanted to adopt was a strong Advisory about the difficulties with administering this and whether or not the owners and trainers want to choose to risk a positive test by offering the option to trainers who have administered the drug have the horse tested pre-race, at their expense, to see if the horse does have the drug in its system and if it exceeds the permissible threshold and if it does, the trainer would know in advance and not enter the horse in the race and come up with a positive test. This Advisory outlines that warning and that procedure and the option for pre-race testing at the owners/trainers expense and this would be adopted by all of the Mid-Atlantic states as well. Mr. Phillips asked if this is something that would have to be put through the rule-making process? Ms. Talbott replied no. We're not really changing the rules these Advisories would just provide some procedural aspects of the implementation of those rules. Mr. Phillips commented this is an Advisory to our Stewards and Vets and he assumes the Commission itself would undertake an effort to make certain trainers and owners are also made aware of this new protocol, is that correct? Ms. Talbott replied yes that is correct.

Motion was made by Mr. Phillips to approve the publication of this protocol, seconded by Mr. McDermott. Motion passed.

Mountaineer Park Capital Improvement – Additional Track Emergency Warning System, \$15,447.65

Mountaineer Park Capital Improvement – TV's for OTB at the hotel, \$21,617.91

Becky Carnefix stated the first request is to install additional track emergency warning system in the amount of \$15,447.65. The second request is to purchase (100) 22 inch TV's and (2) 47 inch TV's for the OTB area in the hotel in the amount of \$21,617.91. She has reviewed both requests and recommends both for approval.

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

WV Breeders Classics Purse request of \$1,080,000.00

Joe Moore stated this request is for the purse amount for the WV Breeders Classic. Last year the requested purse amount was \$1,280,000. The decrease in the requested amount is due to the available amount of funding. This is the first year that the haircut bill went into effect for FY15 and the monies that go to fund the Breeders Classic, as well as the WV Derby, comes from the Racetrack Video Lottery fund and that fund was completely appropriated by the WV Legislature. Mr. Moore provided the Commissioner's with the reconciliation of the funding available for this request.

Carol Holden added the race this year will be Saturday, October 10th. It is a week earlier this year because of a conflict with the Maryland Million and New York Breeders Program. It will be the nine race program they've had in the past along with the earlier events beginning on Thursday, October 8th.

Mr. Phillips stated in the information the Commissioner's received for this request, basically there is only an invoice for the amount request and he has a problem with that. His problem is he'd like to have a plan about what is going to transpire. He realizes it's an important race and is in Code but he'd also like to inquire if there is a contract for this? How old is the contract? He's never seen one. Joe Moore replied the Racing Commission currently has a contract established with the WV Breeders Classics, LTD and it was extended last year through the State Purchasing Division from prior years and the contract is for the Breeders Classics, LTD administration and running of the WV Breeders Classics and it goes for available monies to be applied to the purses. They provide us, on an annual basis, with all of their administrative expenses of the marketing and advertising that they are reimbursed for, along with their in-house expenses for personnel and other matters of that nature. The important thing regarding the purse money is that this is a specially funded race. This money comes from the Racetrack Video Lottery fund, which is funded or appropriated by the State Legislature, and it is designated that of the total balance in that fund, the first \$800,000 goes to the WV Breeders Classics, the next \$200,000 goes to the WV Derby and then the remainder of that fund goes back to the track on a pro rata basis based on their actual performance on Racetrack Video Lottery. Of that pro rationed amount back to Charles Town, 25% of it is applied to the WV Breeders Classics. So, the amount that is available for this race does not come out of their general purse fund for which they are funding the other races throughout the year, this money is specially allocated for this specific race, in Code, through a separate source of funds.

Mr. Phillips asked how long does this contract run? Mr. Moore replied this contract is renewed annually. Mr. Phillips asked when did the Commission approve that contract? Carol Holden replied she believes it was at the December 2014 meeting. Kelli Talbott commented her recollection was that it was a sole-source contract that had a number of possible renewals. Joe Moore added it is his understanding that this contract needs to be renewed through Purchasing this year. He thinks it may have expired last year and Purchasing allowed an additional year to renew it from the sole-source, requesting that we design that contract over again in the following year.

Carol Holden stated Mr. Moore was correct and it has been an ongoing contract they request each year from the Commission for approval. The paperwork they received from Purchasing was different last year. John Myers stated last year that contract did have to be changed because there were some incorrect references to Code. Mr. Phillips stated he remembers that now. Mr. Myers added it is a one year contract with 2 one year renewals and they did grant the Commission an additional year to renew the contract.

Mr. Phillips commented that basically we are in compliance as far as the contract is concerned and we will be getting a new contract to look at as a Commission as it would relate going into 2016. Joe Moore replied that is correct. Mr. Phillips added he still thinks there needs to be a written plan as to how this is administered and marketed and where those dollars go and how it's being marketed to spread the word across the state. Carol Holden added all of the \$1,080,000 goes to purses, the nine races that are ran on that day. Mr. Phillips stated none of this goes to marketing or administration? Ms. Holden replied no, none of the \$1,080,000 requested does. They have a \$75,000 marketing budget, which includes the national television coverage also. Mr. Phillips asked if that money was available as a result of the contract? Joe Moore replied yes, as a result of the contract and as a result of the amount of funding available to them for purses and advertising. The advertising amount will be on a future agenda when they get all of their advertising wrapped up and submit it to the Racing Commission for reimbursement. Mr. Phillips asked what the \$75,000 goes for this year? Ms. Holden stated that is what they have set aside for a combination of the television coverage and advertising in publications and locally. Mr. Phillips asked how much money is spent to administer this process? Joe Moore replied the Racing Commission receives those administrative expenses in written form and he can provide him with last years. He believes it came in around \$300,000 and it detailed out all of their administrative expenses. Mr. Phillips added any concerns he has about how all of this operates can be addressed when they take a look at the 2016 contract? Mr. Moore replied he can go back and show him previous years or yes, it can be addressed with the new 2016 contract. Mr. Phillips asked if that will be coming up between now and December? Mr. Moore replied yes.

Motion was made by Mr. McDermott to approve the purse request and furtherance of the contract that was previously approved, seconded by Mr. Phillips. Motion passed.

Center for Tox Services Agreement

Joe Moore stated this is the testing laboratory for the greyhound races. The proposal and the agreement has been provided to the Commissioner's. This agreement has been approved in prior years by the Commission and the current proposal defers any increases that were agreed on in the past to occur in this year. This is a one year contract that is presented to the Commission each year for its renewal. Mr. McDermott asked Mr. Moore what is recommendation is for this item. Mr. Moore replied he would recommend it for approval. Motion was made by Mr. McDermott for approval, seconded by Mr. Phillips. Motion passed.

Permit Application – Richard Riffle

Joe Moore stated this is a license application for a kennel helper at Mardi Gras. On the application it is noted he has been convicted of a felony in the past. He has gone through the interview process with the Board of Judges at Mardi Gras and that information has been provided to the Commissioner's. The court documents provided by Counsel in regards to the matter have also been provided to the Commissioner's for their consideration. The Board of Judges at Mardi Gras does not recommend the approval of this license due to the nature, length of time and liability of his presence in the kennel. Motion was made by Mr. McDermott to presently deny the request, seconded by Mr. Phillips. Kelli Talbott added the Code requires that if an application for a license is denied there has to be an order issued and the reasons therefore and signed and issued to the applicant and then they have the right to request a hearing on that. Motion passed.

Hollywood Casino request to address Stewards positioning during live racing

Joe Moore stated this request came from Mr. Zimny at Charles Town and is in light of the accident that occurred at Charles Town in December for which the Racing Commission had a private investigator come in and do an investigation and issue a report on the matter. One of the recommendations at that time was that 1 of the 3 Racing Commission Stewards view the race from the runway outside of the box that is available for their use at Charles Town. On occasions, Mr. Zimny has noted the Stewards are not using that catwalk for viewing the races. One Steward is currently watching the race live through the glass in the Steward stand and the other 2 Stewards are reviewing the race on the television screens provided in their stand through the video feed of the race. He has spoken with the representatives and the Director of ROAP that accredits the Stewards to get their recommendations and ideas on the process and according to Kathy O'Meara at ROAP they do not require or suggest any certain positioning of the Stewards other than at least 1 Steward would be watching it live with access to binoculars if needed in the event of an accident.

Erich Zimny stated as a result of the accident that occurred on the 13th of December, the Commission adopted the recommendations that were put forth by the investigator, including one that at least someone watch the race live out on the railing. They understand this has not been done. There was a magazine article that depicted that. They understand and respect this is up to the Commission to decide what its employees do. They wanted to voice their opinion on the record should there be another accident or incident that no one was out watching it live and they don't think that's a very good idea.

Joe Moore stated he believes it was put before the Commission during Mr. Myers' tenure as Executive Director in a Commission meeting that Mr. Myers and Kelli Talbott met with all 6 of the Racing Commission's Stewards in a meeting after that incident occurred and set forth a series of protocols that the Stewards would follow and one of the protocols was that 1 of the Stewards would be watching the race live with access to binoculars and did not necessarily include that that must be performed out on the catwalk. Kelli Talbott stated she was at the meeting with the Stewards after the report by the investigator was issued and part of the discussion was the protocols the Commission instructed be drafted to implement that plan. There was a lot of discussion amongst the Stewards about that particular recommendation about them watching the races live with binoculars and she thinks some opinions from the Stewards were they'd miss a lot of the race if one of them were looking at it that way. What she recalls happening at the time was she had recommended there be some contact with ROAP to see what ROAP said about this issue. She doesn't think in the written protocols the Commission adopted there was anything about this.

Mr. Phillips commented in reviewing this matter he would have liked to have had the protocols to read and they were not there so he didn't have a chance to read them. As he understands it, our protocols do not specifically say anything about this. Ms. Talbott replied it does not specifically address it, to her recollection. Mr. Phillips asked if anyone on the Commission staff has taken a look to see if all of the other protocols that were adopted have been completed? Mr. Moore replied it is his understanding through conversations with the Board of Stewards at Charles Town and Mountaineer that the protocols the Commission set forth are being performed as written. He does not believe this particular issue is addressed in those protocols. Mr. Phillips stated were other actions supposed to have taken place and have we verified everything has been done? Mr. Moore replied only through conversation with the Board of Stewards that they are following exactly the protocol that came out of that meeting with John Myers and Kelli Talbott. Mr. Phillips stated he would like to suggest we need to look at those protocols so we can take an inventory of what has been done. Mr. Zimny stated where some of the confusion may be taking place is there were recommendations from the investigator that they thought they were supposed to comply with and then there are these subsequent

protocols that are just different. Ms. Talbott stated she would defer to ROAP's judgment on this issue. Mr. Phillips stated he would be inclined to think so as well. He thinks that after this discussion, staff should provide the Commissioner's with copies of the protocols and of the report again so it can be looked at again and include this as an agenda item for the next meeting. Mr. Zimny asked as a courtesy if the Commission would show them a copy of the protocols because they did not see the last ones. Mr. Phillips replied of course. Mr. McDermott commented to have staff clearly emphasize the differences between the recommendations of the investigation and the protocols that were ultimately established.

Consideration of new Equine Testing Lab

Mr. Phillips stated since Chairman Rossi is not present today and it was his suggestion they notice a special meeting within 5 days of this meeting to have their Executive Session, he doesn't think it would be harmful at this point in time to delay this item for 5 days and cover this item at the same meeting as the Executive Session. Mr. Moore agreed due to the absence of the Chairman, it would be in the best interest of the Commission to have its full body in tact when considering this matter. Mr. Phillips suggested staff notice the meeting for next Tuesday.

Executive Session – Discussion of Executive Director & Track Investigators

This item will be taken up in the special meeting to be noticed for next Tuesday.

Public Comments

Phil Reale stated he would like to address the issue of comments filed by CTHBPA regarding the proposed Legislative Rule draft rule. He knew the submission was late but there was a significant issue with technology at CTHBPA and he's not blaming that issue but is certain that contributed to the cause of not submitting the comment timely. However, hearing the response from the Commissioner's that the comments are received favorably in terms of something that should be done in respect of the rule going forward, he would respectfully disagree with Counsel that it has to be in the 2017 rendition of the Legislative Session. There is still plenty of time to modify this rule in order to add this non-controversial element that should be in the rule. There was a consensus reached among the stakeholders, there was approval and consensus with representatives of the Racing Commission as to the propriety of this provision being in the rule. It seems to him if agencies and stakeholders agree to modify your rule within the confines of the Legislative process, rather than wait another year it would be very appropriate to consider it going forward. Ms. Talbott said she's not saying it can't get done in 2016 and she recognizes things get amended in committee but at this point she can't have the Commission consider it as a public comment that came in timely and do something with it now. Mr. Phillips stated personally if we can find a way to move it forward as a Commission and make it begin to happen before it happens on its own through the Legislative process it would make sense to do that, if Counsel can find a way.

Mr. Phillips encouraged everyone to attend the WV Derby on August 1st.

Adjournment

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