

MINUTES
WV RACING COMMISSION
Wednesday, March 22, 2017
WV Lottery Conference Room

The WV Racing Commission met on March 22, 2017 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Ken Lowe, Jr. Commissioner Anthony Figaretti was present via conference call. Counsel was represented by Kelli Talbott.

Approval of the February 10 & 21 minutes

The Commissioners and legal counsel received the minutes from the February 10th and February 21st meetings prior to this meeting. Commissioner Lowe noted a change to be made to the February 21st minutes. Motion was then made by Mr. Lowe for approval, seconded by Mr. Figaretti. Motion passed.

Executive Director's Report
Joe Moore

Joe Moore stated of the 5 Bills we were approved to gain support and have introduced, the Racing Commission had an ADW Bill introduced, a Bill dealing with Race Days and a Bill for Fiscal Year Racing License introduced. The Racing Days Bill and the Fiscal Year License Bill currently sit with a Committee on Finance in the Senate and have not been taken up by the Committee yet. The ADW Bill, which is SB577, also sits with the Committee on Finance and has not been taken up by Committee. It is his understanding there is a House Bill, 2955, that was introduced on March 13th, it is not a replica of the Racing Commission Bill on the Senate side. This Bill would rather take the Source Market Fee, give 10% to the Racing Commission, 40% to the Breeders and the remainder would remain with the Racing Association.

The Bill that's getting the most attention and action right now has to do with the discontinuing of funding of greyhound purses and Development Fund monies coming out of the Lottery. That Bill has been before the Committee on Finance on two occasions, both occasions it got laid over for additional work. It will appear on their agenda again today at 3pm. Yesterday there was some clarifying language proposed dealing with the pension funds of the racetrack employees.

The NTRA will be at Charles Town today, tomorrow and Friday for their on-site visit in the accreditation process. Mr. Koch will be providing the Racing Commission with any regulatory advisements that need to be corrected on our end so we can take those up during our Rules Committee discussions. Once the report is finalized for Charles Town, both the Racing Commission and track management will receive a copy.

Regarding the Steward vacancy at Charles Town, March 17th was the last day to receive resumes. We received 11 resumes and he will be working with Commissioner Lowe and Kelli Talbott to determine the applicants for interviews, the location and dates, and ultimately a recommendation to hire that will be presented to the Commission.

Auditor's Report Becky Carnefix

Becky Carnefix stated for the Capital Improvements update, Charles Town submitted 10 projects for reimbursement and was paid \$449,383.14. The details of each of the projects paid have been provided to the Commissioners in their information. Charles Town also submitted an additional request for reimbursement, totaling \$59,229.39. Details of the payment made and project reimbursed will be provided once her review has been completed and payment has been made.

For the Supplemental Purse Awards update, fourth quarter FY'16 claims, covering race dates April-June 2016, have been reviewed and are in the process of being finalized. The 14 day letters requesting additional information for residency verification were mailed out early this month and payments for this quarter are anticipated to be paid early April.

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

Accountant's Report Joe Moore

Joe Moore stated total live handle increased 25.5% compared to January and 1.5% YTD compared to FY'16. Export handle was up nearly 27%, and 20% compared to YTD. Simulcast handles increased 3% compared to January and were down 5.5% YTD compared to last year. Total in-state handle decreased nearly 3% compared to this point last year.

Unfortunately, he was unable to prepare a Financial Summary Report for February. He will update that with the quarterly budget vs. actual presented to the Commission next month.

He provided the Commissioners with the amounts the Racetrack Employee Pension Funds will be funded at for 2016. Those funds will go out the door either later this week or first of next week.

Legal Update

Kelli Talbott stated the Rules Bill that contains the amendments to the Thoroughbred Racing Rule and the Pari-mutuel Wagering Rule is now on its second reading today in the House. It's already passed the Senate. She's assuming, if all goes to plan, the Rules Bill will pass tomorrow in the Legislature. Once it passes, the Governor has to sign that Bill and at that point it will come back to the Commission to decide the effective date of those Rules and we'll bring that back to the Commission with recommendations at that time.

As far as Rules for 2018, she has already circulated some communications to the constituent members of the Thoroughbred Racing Rule Committee. They have sent her some possible proposals to go on the agenda to discuss, and in addition they will be discussing any items that NTRA tells us we need to change in our Rules for that purpose, as well as other Model Rules we might be looking at. She has circulated some possible dates for the Committee members to meet in Morgantown, probably in early May. She will give the Commission an update once they have that scheduled.

At the last meeting, the Commission voted to send the Ingram and Dugan case to a Hearing Examiner. That hearing is now scheduled for April 28th in front of Jeff Blaydes.

She has been going with Mr. Moore up to the Legislature the past few days on the greyhound de-funding Bill and will be back up there with him today.

Charles Town Capital Improvement Request – Simulcast Broadcasting & Production Equipment, \$50,700

Charles Town Capital Improvement Request – Barn area paging system amp., \$1,920.65

Becky Carnefix stated the first request is for new servers for live simulcast broadcasting and production, in the amount of \$50,700. This will replace the existing servers that allow them to produce and store the live video storage of their races. It will also add the additional recorder required to show slow-motion replays after the race.

The second request is for an amplifier for the barn area paging system, in the amount of \$1,920.65. These amplifiers are needed to improve the ability to understand announcements over the barn area paging system.

She has reviewed the information submitted for both projects and recommends both projects for approval.

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

Charles Town Request for Export Site Approval – Newcastle Gaming Center

Charles Town Request for Export Site Approval – Mauna Loa Casino, Dominican Republic

Mountaineer Park Request for Export Site Approval – Mauna Loa Casino, Dominican Republic

Joe Moore stated Charles Town has requested to add export site approval for Newcastle Gaming Center and as required, you have the HBPA letter of approval attached to that request.

Charles Town has also requested to add export site approval for Mauna Loa Casino, Dominican Republic. The approval letter from the HBPA is included for that one as well.

Mountaineer has also requested export site approval for Mauna Loa Casino, Dominican Republic as well. The letter from the Mountaineer Park HBPA with their approval is included with the request.

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

Mountaineer Park Request to conduct Mystery Voucher Programs

Joe Moore stated Mountaineer Park has requested a series of Mystery Voucher Programs. In the past, they have come before the Commission each month requesting to be able to do a Mystery Voucher program. This is a very similar request, however, they are requesting to be able to do a program for each month of the year, through December. Much like Wheeling Island came to the Commission last month and requested multiple programs throughout the year, Mountaineer is requesting pre-approval to do those, and we will relay those dates of scheduling once they are determined.

Mr. Lowe asked who is paying for this program? Mr. Moore replied the Mystery Voucher program is funded by Mountaineer Park. Mr. Lowe then asked if the vouchers have an expiration date on the time they have to be cashed? Mr. Moore replied they will have an expiration date on the time they have to be cashed.

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

MP HBPA Request to address post-race testing

Joe Moore stated there has been some information on this item that was handed to them as late as this morning that he thinks the Mountaineer HBPA will be prepared to speak to. But as a follow-up from the last meeting, he told the Commission he would contact Industrial Laboratories over the issue of having tests returned late. They were concerned about it too because it costs them additional work as well and what was determined in the corrective action being taken is Industrial has purchased an additional machine and hired an additional chemist to aid in getting these tests conducted, which should go a long way toward alleviating the problem.

Kevin Pearl, Counsel for Mountaineer Park HBPA, stated all they are asking for the Commission to do in regards to this is interpret the Rule the Commission has in a manner that allows the condition of the horse to carry forward until such time the testing is made final. The information that was provided to the Commissioners this morning was from the ROAP Accredited Senior Stewards saying that they already are working on a Model Rule to do just exactly what they are asking. While it does vary jurisdiction to jurisdiction, our Rule really already complies with the Model Rule. If the Commission doesn't do it the way they are asking, essentially what happens is the horses that come in second are penalized for the number 1 horse's cloudy test. It should be made more clear that the grand majority of these cloudy tests come back negative down the line. We have horses taken out of competition for long periods of time until the number one horse is clean. As a matter of practice that these horses are not run out of condition, they're run in the condition they are in and to move them forward competitively before they are actually ready to do so is damaging to the horse, it's damaging to the competition, it's really damaging horse racing as a whole. You end up moving horses up a condition that don't belong up a condition. So basically all they are asking is until such time these tests are final, everybody keep their same condition moving forward. If the test turns out to be positive, then all that would happen is the number 2 horse would jump a condition at that time. We aren't asking for purses to be redistributed or anything like that, just to interpret the Rule the Commission has and the way it was written.

Mr. Lowe stated as far as the jurisdictions go, is each state going to agree to abide by this? Is that necessary? Mr. Pearl replied he doesn't think it's necessary, personally, and if the Model Rule goes into effect in the manner they are talking about it will be universal from state to state. Kelli Talbott stated that's only if the states actually adopt the Model Rule would it be universal because right now the way our system is in racing, it's up to each state whether they adopt the Model Rule. Some states may not adopt it. Mr. Lowe commented then we have another problem if that occurs? Ms. Talbott replied potentially there's always problems when states have different Rules and you're trying to apply circumstances in a particular case where you're depending on something that happened out of state. She hasn't had a chance to read the information yet that was provided to them this morning from ROAP on the Model Rule so she doesn't know how our Rule differs from it, or if it does. We've always been a proponent of adopting Model Rules and she doesn't have a problem recommending to the Commission that we do that. Chairman Rossi stated he thinks it's something we need to pursue. Ms. Talbott commented we can always put this on the Rules Committee agenda. Mr. Pearl replied he doesn't think that's necessary. The current Rule says no action shall be taken by the Stewards on the report of the primary testing laboratory unless and until the medication or drug has been properly identified, along with the identity of the horse from which the specimen was taken, nor until such time as an official report issued by the primary testing laboratory has been received by the Chief Steward at the appropriate racetrack. That's what the current Rule says. The problem is it's not being interpreted in a way that allows these conditions to remain attached to these horses until it's made final. No action shall be taken by the Stewards is being followed in regard to purses, but not in regard to conditions. He doesn't think there needs to be a new

Rule, we have the proper Rule, we just need direction from the Commission to the Stewards. Mr. Lowe commented as long as we are not breaking a Rule he's in favor of doing it. Ms. Talbott commented she wasn't aware until Mr. Pearl just said that that's what the Stewards were doing. She understood they were holding the purse pending test results. Mr. Moore commented it's his understanding that they're holding the purse and they are not allowing the second place horse to run as a non-winner based on the fact that test may come back positive and that horse should be moved up a condition. So, until such time that test comes back, either clear or positive, the first and second place horse are basically tied up to running in that next condition. Rosemary Williams commented that is correct and it is a matter of interpretation, how the Commission and the Stewards have interpreted this Rule. It's been the same for a long time the way they have interpreted it. The problem is that the tests are taking so long that it is tying that horse up longer than normal. Usually they can turn it around within a week to 10 days but the problem is with the lab and how they're turning those tests around.

Mr. Moore stated this would be his only question, if this second place horse is allowed to continue to run in its current condition and it runs a race before the tests come back and it places and purse money is distributed in that race before the tests come back, then that horse is determined to be the winner of the previous race, you have purse money to re-distribute in that second race. Ms. Williams stated he is correct and she thinks he's pretty much outlined it other than there are other jurisdictions that will look at this differently. She thinks the reason the Stewards and the Commission always looked at this and held the horse in that condition is because of going to different states and the wagering public, how they would view it. Jami Poole commented on what Mr. Moore is talking about, all the surrounding states do exactly what Mr. Moore stated. Another point is that three to five tests a week last year came back cloudy. Over a hundred horses were held up because 95% of trainers will not run a horse out of condition on a cloudy test. Chairman Rossi stated he understands what Mr. Poole is saying and the Commission is trying to alleviate this. Mr. Pearl commented no other states re-distribute that purse.

Mr. Lowe commented the finger points back to the lab. He then asked Mr. Moore if there is a drop dead date on these labs? Mr. Moore replied our agreement with the lab says 5 days from date of receipt. It's important to understand that a race may happen and we may not ship it out for 3 days because we collect a number of days to include in one shipment to the lab and its shipped overnight. So, you're basically at 10 days from the first race date before the initial testing is required to be back from the lab. If there is a trace of something and it requires additional testing, they then have an additional 5 days to get that test back to us. We received a report from Industrial that he included in the Commissioners information that detailed out the positives, the length of times that it took for them to get tests back to us and so forth.

Mr. Moore, for clarification purposes, then asked if a second place horse is allowed to run in the same condition and it wins, or it places in the money in that second race, then the tests come back as a positive, that horse technically did not qualify for that race, so are they telling him the other horses trainers and owners in that race wouldn't want a redistribution of purse money that they are rightly due? Mr. Pearl replied no other jurisdiction re-distributes the purse money, the horse just jumps a condition. Mr. Poole commented the Rule reads at time of entry the horse is eligible. Hundreds of owners, trainers and horses are being penalized and we can't afford that. We are damaging our product by doing this and we're just asking for the Rule to be done like it says. Rosemary Williams suggested Ms. Talbott go back and look at those Rules and give the Commission a legal interpretation of what she believes the Rule says because she thinks it's all a matter of interpretation. Mr. Pearl commented no action should be taken by the Stewards, it's not that hard to interpret. Ms. Williams commented it is.

Chairman Rossi stated he'd like to have someone from Charles Town give their take on this issue. Joe Funkhouser stated he thinks they have very similar concerns to Mountaineer. They would like to have consistency with their neighboring jurisdictions and he thinks if the

Rules are clear and the Stewards aren't interpreting it correctly, he thinks the Racing Commission should make the appropriate interpretation and give guidance to the Stewards under these circumstances because it does create a sense of unfairness. Chairman Rossi stated what concerns him is we have the lab, and he doesn't understand why we have 3 days before we send, and then we have 5 days. Mr. Moore stated we ship twice a week. Chairman Rossi continued he knows we ship twice a week, and he doesn't know how we can eliminate some of that time, but if we could live with it with the Commission, he would say we need to authorize the Rules Committee to go in and clarify the Rules as to what we are doing.

Jana Tetrault stated she apologizes for getting the information to the Commissioners late but it was so important that's why she wanted them to have it, but from ROAP she asked them what would their interpretation of the Rule be? ROAP's interpretation did correspond to what their position was and she thought it was important for the Commissioners to see and she also thought it was important for them to see it was important enough to consider a Model Rule. She did speak to other jurisdictions, she spoke to the Stewards in Ohio, and asked them the specific question about the second place horses finishing, would they re-distribute the purse and they said no because at the time of entry they were qualified. She provided all of the information from the other jurisdictions to the Commissioners.

Chairman Rossi stated he would like the Stewards from Mountaineer and Charles Town to speak as to where they stand on this issue. Jim O'Brien stated his concerns are what Ms. Talbott and Mr. Moore brought up and there also is a Rule in there that states a horse shall not be qualified to start in any race unless the horse has been entered and is qualified at the time of starting of the race in which it was entered. Interpretation is a problem. With the previous laboratory, every test came back, whether it was clear or cloudy, by Friday and this has gone on for 2-3 weeks, so it is a problem. How many times can you win a Maiden race? Do you have to re-distribute the money if he wins a race after the one he finished second in? Mr. Figaretti stated we need to update the test. He thinks that would solve the whole problem. He personally doesn't believe the horse that ran second should be penalized.

Jami Poole discussed how many times a horse can win different conditions. Mr. Lowe stated the Rule currently states at time of entry, what if we said at time of racing? That would make it more fair. Mr. Poole replied they are fine with if the test comes back positive to scratch the horse. Ms. Talbott commented the Rule would have to be amended and that takes 18 months. She added the English language is never perfect so often times when you write Rules or Statutes there is going to be some ambiguity. To address that, there is a Rule in the Thoroughbred Racing Rule that says the Stewards are charged with interpreting the Rules. They get to make judgment calls if there is any question about how language should be interpreted or applied and as long as their interpretation is reasonable and there's a rationale for it, then they do that every day. She's always happy to look at amending our Rules, adopting Model Rules, or even analyzing what the Stewards are doing to see if there's some different interpretation they can put on the Rule.

Danny Wright stated this has been this way long before he came on board that anytime there is a questionable race and its finish because of a positive, or a potential positive, the first and second horse are always considered winners of that particular race. Contrary to what someone said earlier and a certain percentage coming back not positive, he's not experiencing that. Lately they are getting quite a bit positives back and they are redistributing a lot of purses lately. Once you enter a horse and he's ok at time of entry, at the time of running the test comes back and it's positive, we have to scratch that horse and we are experiencing excessively small fields and sometimes that can hurt the bottom line as well.

Ms. Talbott stated Industrial is the lab the Commission currently has a contract with and that contract is a standard document. It's standard across the industry and we are not different in West Virginia than in any other jurisdiction. Industrial serves a number of state Racing Commissions, not just West Virginia. If they can speed up some of the results that would be

fine, but as far as the days you ship, the contract we have now states ship two days a week. That could always be renegotiated where you ship more often but your shipping costs will increase if you ship more often. Mr. Lowe asked if she knows how much it would up the cost? Mr. Moore replied that would probably be a question for one of the track management folks but any increase in shipping would increase that shipping cost presumably more. Rosemary Williams stated she's not sure of her shipping costs but she believes that was a concession made because they were paying more for the lab. The track took more debt on for the testing and to alleviate some of that, they were only shipping two days a week. Mr. Lowe stated they don't know the amount of money involved in going three days a week? Ms. Williams stated right off hand she does not know. Mr. Lowe added he was trying to compromise again thinking perhaps since this is primarily to benefit the horsemen, would it be possible for the HBPA to pick up the difference if you ship three days a week instead of two? Is that something the horsemen would consider doing? Jami Poole replied absolutely, but he can't speak for his Board. Joe Funkhouser replied he would have to talk to his Board and see where they would be on that. He's not sure if you ship three days a week instead of two that it's going to satisfy the problem here. Chairman Rossi stated he thinks it would aid some but he's not going to totally disagree with him but he likes Mr. Lowe's suggestion of the HBPA picking up the additional costs to ship an extra day a week, but we would need both organizations to agree to it.

Chairman Rossi stated as far as where we are, he thinks we need to reach some sort of agreement today, from the Commission standpoint, but he doesn't know that it's going to be satisfactory to everybody. He understands the plight of the horsemen and what they are saying. A lot of it was precipitated from the standpoint the lab was dragging their feet before but that's gotten resolved. Ms. Talbott added she doesn't think it was the lab intentionally dragging their feet, there's just a lot more involved in testing. Switching labs is easier said than done because our Rule requires the Commission to have an RMTC accredited lab. There have been some more labs accredited by RMTC but there are still a relatively small number that are accredited so switching labs is something theoretically that could be done, but practically speaking would require a lot of work. Chairman Rossi stated he wasn't insinuating that. He was insinuating if we can't make changes to accommodate and resolve our issues then we may have to down the road.

Mr. Lowe made the motion to allow it to occur for now, that it be understood that it's at time of race, not time of entry, and that we get in on the list for Rules in 2018, and that if there is an additional cost, with approval of both HBPA's, they pay the difference, if need be to ship more than two times a week to solve this problem. Seconded by Mr. Figaretti. Motion passed.

Mr. Lowe amended the motion to add the Stewards will still have the responsibility of determining if, in their opinion, that horse is a Maiden. Mr. Moore suggested also including the horsemen agree, in the event there is an issue with this, we will not re-distribute purse funds. Mr. Lowe added this suggestion to his amendment as well. Chairman Rossi seconded the amendment to the motion. Motion, with amendment, passed.

Danny Wright stated currently he has 8 tests pending, 4 of those pending are because of split-samples and sometimes those can take a good bit of time to come back. Are they saying that now he allows all 8 of these individuals who are finishing second in this races in question to let them run back as though they did not win the conditions of which they are waiting for second place finish? Mr. Lowe replied that's the way he interprets the motion he made.

Request for Reinstatement of Occupational Permit – Sylvester McGill

Kelli Talbott stated back in 2012 she had a case involving Sylvester McGill that came before the Commission. Mr. McGill was a trainer at Charles Town and there was a horse that he was responsible for. The owner was an out-of-state owner. The horse was at the end of its career and he took the horse and was housing it at a farm right across the border in Berry Hill, Virginia. That horse ended up being seized by local officials in Virginia because it was found standing out in the middle of the field on the farm starved to death and had significant injuries that had been untreated. Mr. McGill had to go through some proceedings in the Virginia court system related to the disposition of this horse. As a result, the Racing Commission brought its own proceeding against his racing permit because of this severe neglect and abuse of this animal. In February 2012, the Racing Commission revoked Mr. McGill's trainers permit, which means he's done and he can't train in West Virginia, nor can he get a permit in any other state. Mr. McGill is now back in front of the Racing Commission in 2017 and he wants his permit back. She is unaware of what Mr. McGill has been doing since 2012 or if he has submitted any compelling information to the Commission that would say he's rehabilitated himself. This was an extremely severe situation where this animal was on the verge of death and luckily the veterinarian was able to treat the horse, and at the time of the hearing was doing well. The decision before the Commission is whether to give him his permit back and based upon the particulars of the case, she personally doesn't think he should get a Racing permit. Mr. Moore commented based on what Ms. Talbott has provided and the information that was received, he would recommend that the Commission deny this request at this time.

Motion was made by Mr. Lowe to deny this request, seconded by Mr. Figaretti. Motion passed and the request for the occupational permit was denied.

MP HBPA Request to Reduce Live Race Days

Chairman Rossi stated someone eluded to the fact we're having trouble getting horses for races and we're having trouble having a full field. One of the things the Racing Commission did a few years ago was we brought all of the constituents together and he thought that was great they all worked together. Then we had the planning session and he thought that went pretty well. Everybody got together and came up with some ideas and submitted a report. Maybe what's happened since we did all of that is we have faltered a little bit and are going backward a little bit. He's going to request Ms. Talbott and Mr. Moore to start getting organized so we have another planning session coming up here in the summer so we can get all parties together and look for the good and promote horse racing so we can try to overcome the lack of horses and try to overcome the lack of betting. For the next meeting he would like for Ms. Talbott and Mr. Moore to come up with the people we'd like to have in the session and the tracks and horsemen can send suggestions to Mr. Moore as well for individuals they would like to have included. The Racing Commission has encountered this before and has made decisions before. We try to follow the law in making those decisions and that's what will happen today. Any decision that will come out of it, we expect others to respect it. This puts the Racing Commission in a position where as a Racing Commission we shouldn't be in. He thinks that in the future the track and the horsemen need to sit down and negotiate and work together to reach a resolution.

Joe Moore stated this request came from Mountaineer Park HBPA. This request is for a reduction of 40 live race days. Mountaineer is currently approved by the Commission for 160 days. The Statutory requirement is 185 days. We went through a process the Commission has to go through in order to lower those race days. This request would knock it down to 120 days. The request is for 4 days a week from April 16-November 14. They are not requesting a shorter

meet, they want to run the same length of time, just run less days a week. They would keep 9 races a day during those 4 days. The driving factor behind this request is said to be the purse funds and he will allow Mountaineer Park HBPA and their representatives to speak to the need of this request. It has consequences to the Racing Commission. It effects our ability to collect revenue because our revenue right now is statutorily based on the number of live race days the track will run for live racing. That aside, he can appreciate there is a need in the industry to stabilize their activity as well.

Jami Poole stated they are trying to stay among their means. Every year they are ending in the hole and they are going to continue to do this until they are doomed. They can run the 120 days and leave the purses the same. He's talked to several owners, trainers and jockeys and they can't afford to drop the purses. The foal crop and everything is down because of this. At the end of the meet they don't want to be in the hole again. They want thoroughbreds to hold their own. There are 5 tracks in the last 6 years that have gone under. We cannot keep continuing to go in the hole. They could run 130 days if they run 8 races. He's up for any option for whatever it takes to help the track and the Commission. They just want to not drop purses and they want to not be in the negative again. Mr. Figaretti stated he doesn't believe we can eliminate racing. He can understand where they are coming from but on the other hand, he personally believes we have to keep working harder. He is not for decreasing racing at Mountaineer. He thinks we need to come up with something promoting horse racing. Mr. Poole added if they drop the purses like they would have to in order to run 160 days they would be around \$5,000. The only way they can keep the purses higher, or keep them the same, is if they cut days. With other tracks having higher purses, if they averaged a 7 horse field last year and they ran for \$6,100, what kind of average are they going to have this year with a \$5,000 bottom? Chairman Rossi commented that he suggested we have another strategic planning session and parts of the strategic planning were discussed by Mr. Figaretti. We are faced with a situation right now that we can't change, but we need to change it going forward. We need to enhance the image of racing and get it out to the public more. We need to explore ways to increase revenue and help the tracks with ways to increase revenue.

Rosemary Williams stated they applied and were granted 160 days. The horsemen were on board with that. She was approached by the horsemen right before they sent the letter to the Racing Commission and she had a meeting the day before with 3 of the Board members, in which they left the meeting agreeing to cut the purses 10% on the first book, look at it and then they might go to a 20% cut. She did not know they had sent the letter to the Racing Commission. She was advised by Mr. Moore when he asked her if she was on board with the letter that was sent to the Racing Commission. She did not receive a copy of that letter, but they did finally send her a copy so she could see what was going on. She doesn't think that anybody has ran the numbers, the budgeted numbers, because their proposal of 4 days a week would put them to October 7th, which is really about 92 days before they go into a deficit. 4 days a week from a Racing Association is less revenue with fixed costs. She's bringing in less revenue and she has people on salary that are going to get paid the same. All of the Racing employees will lose benefits. They don't qualify for benefits at that point. So, she's going to experience a loss of employees and positions that will become unfilled. From the Racing Commission standpoint, those employees are on salary and there will be less tax dollars coming in. The scenario of 4 days a week does not work. If the horsemen want to look at different scenarios, her door is always open. They could look at running so many days straight through, 5 days a week, 9 races, so they don't experience the immediate loss of revenue. The option to reduce purses was to maintain the revenue. Eventually purses are going to have to be reduced if the pot of revenue keeps declining in West Virginia and if live race days continues to decline. It's something that is going to have to happen to maintain racing. She currently has a waiting list for stalls, 800 stalls allocated, horsemen on the waiting list because they have 2 barns that are going to be painted and horsemen are waiting to go into those barns, so she's going to

experience a shortage of horses with the overlap of Mahoning, as they always do the first couple of weeks. These are options that can be discussed, and need to be discussed. She's not in favor of the 4 days a week because it decreases revenue and she's already losing money, as an Association.

Chairman Rossi stated Mr. Poole said they were open to options and Ms. Williams stated her door is open for discussion so he thinks they need to get back together and have some discussions to see if they can work this out. He thinks, regardless of the action that is taken today, it has to go to a hearing. Ms. Talbott stated the Racing Commission has a Statute that requires the track to run a set amount of live race days and every year when the tracks apply for their license for the next calendar year, they tell us how many days they want to do. There's a whole Statutory procedure that kicks in if they want to go below the number the Statute requires. In the case of Mountaineer, the track went through the process. In this case, we are getting the request from the horsemen as opposed to the track. You could question does this Statute apply if the request comes from the horsemen? She doesn't think that's crystal clear but it is clear the Legislature decided there is going to be a process by which days are determined by the Racing Commission and that process is basically a 4-legged stool; it's the Commission, the track, the horsemen and the pari-mutuel clerks. Those are the 4 players with regard to days. She wouldn't advise the Commission to not follow this process just because it's the horsemen who are making the request. She would still follow this process.

Mr. Lowe asked short term, the quickest this could be done is when? Ms. Talbott replied the notice has to be sent out if that was decided on today, and you're looking at 20 days at least. Mr. Lowe commented it could be determined by next meeting then if everything went right. Ms. Talbott replied yes. Mr. Lowe added the long term could take how long? Ms. Talbott replied if they receive an objection they would have to go to Hancock County and hold a hearing and that depends on the Commissioners schedules. This is something the Commissioners would have to be present for in person, it can not be done over the phone. Rosemary Williams stated in the Code it says the Racing Association or the racetrack has to ask for the reduction. She doesn't see anywhere in the Code where it permits horsemen to ask for a reduction and then this process take place. Ms. Talbott replied she understands that the way the Code is set up that it's the racetrack that is contemplated in making the request. But does that mean that the horsemen are forbidden from asking? She doesn't think so. Then her analysis is just because it's the horsemen that asked, as opposed to the track, does that mean we completely ignore the Code and just let the Commission determine it without any notification to the pari-mutuel clerks, without any of the procedures that are set forth in the Code? Her best advice to the Commission is she would not ignore that and adhere to the Code. Ms. Williams commented she understands what Ms. Talbott is saying but her concern is they are going outside of the Code the way it is written and the business of the racetrack is to request days, with the approval of the horsemen and the pari-mutuel clerks, if they reduce below the Statutorily set amount. She doesn't read the Code to say the horsemen can request that, with the racetrack and the pari-mutuel Association.

Chairman Rossi stated regardless of what the Commission does, if the Commissioners vote to proceed with this, he is going to suggest that their motion be to the tune that we do the posting and in the meantime, he would suggest the track and the horsemen sit back down at a table and work this out.

Jami Poole commented the HBPA at Mountaineer Park advertises and promotes racing and pays for it. He also stated the field size in racing 4 days a week will go up, the export will be bigger, the people at the track will bet more because it's bigger fields. Revenue will be lost by the Association by racing 4 days a week, but every track in America is going down to 3-4 days a week. Charles Town is running 3 days a week, and it's not because they want to, it's to keep their purses the same. We are not going to get these fields if we drop the purses. He thinks they can work with Ms. Williams to work this out. Ms. Williams added there's nothing to

say that by going to 4 days a week the horsemen are going to stay there. They all anticipate Mountaineer running 5 days a week. Running 4 days a week, they run out of purse money October 8th. She doesn't think anyone has taken that into consideration. That's 92 days, not 120. Mr. Poole asked then how are they going to run 160 if they run out October 8th?

Nelson Robinson stated Mountaineer Casino & Racetrack and the HBPA has had an outstanding relationship over the years and he doesn't want anything said today to indicate it's an adversarial relationship. He doesn't agree with the interpretation of the Code by Ms. Talbott but he respects her position upon that. One of the most important things to keep in the back of your mind is that they are running a business and the Statute is pretty specific when it comes to the Racing Commission. Basically, it says the Racing Commission shall not interfere into the internal business or internal affairs of any licensee, that's all licensees. The intent is the track itself. With that being said, he would recommend both parties going back and talk about this. Give the Racing Director at Mountaineer and the HBPA the opportunity to go back and work on this. If it doesn't work out, bring it back to the Commission next month and the Commission take the appropriate action they see fit to take. Mr. Figaretti stated he agrees with that. He thinks we all need to sit down and work this out together and come to a happy medium. Ms. Williams stated she agrees that the horsemen and Mountaineer should sit down and work through this. Chairman Rossi stated the next scheduled meeting is April 25th, but he could possibly do a special meeting before that if we have to for action to be taken.

Mr. Lowe asked about the condition book. Ms. Williams stated the condition book is out and what she did is she only lowered the purses 10%. They took the claiming price down from \$5,000 to \$4,000. Mr. Lowe asked if that affects the contracts with the simulcast folks? Ms. Williams replied no, not to her knowledge.

Mr. Lowe stated in 2011 he was in Ft. Lauderdale at the winter HBPA convention. There are 3 ADWs there and they're making a presentation about how significant the ADW business is. A gentleman there told them, without knowing who they were or where they were from, how fortunate Charles Town was because Charles Town, WV had a whale. A whale in gambling is someone who bets a lot. There was a whale, that lived in Florida, who in 2010 wagered \$9,645,000 on the races at Charles Town. Mr. Lowe sought the gentleman after the presentation to meet him and thank him. He asked the gentleman why did he do that, what makes him like Charles Town? He said he wants full fields and he loves the WV races. People love full fields and want that. That is something that needs to be considered when these discussions are being had about number of race days. Mr. Lowe also suggested crossover should be considered as well in these discussions.

Chairman Rossi stated he doesn't think we are going to solve anything today. He understands Ms. Talbott's interpretation and he's not willing to not heed Counsel's advice on the process but he does think that he hears some room for some negotiation and he thinks that as a Commission we ought to say go back to the drawing board, sit down and try to work this out and if you don't have it worked out we'll make a decision.

Mr. Lowe stated time is important, it's important to everybody. Mountaineer and the HBPA need to get together ASAP. Ms. Williams stated she is out of town this week but will meet next week. Mr. Lowe made the motion that they set up a meeting and then get back to Mr. Moore and let him know what has been decided. If a special meeting is needed, it can be set up at that time. Seconded by Mr. Figaretti. Motion passed.

Promotional Advertising by Tracks to Increase Local Handle

Mr. Lowe stated he's going to request that the Commission get the opportunity to review each tracks, greyhounds too, promotional business plan and their budget for promotions. What he's trying to get at is local handle. He would like for the Commission to have a chance to see exactly what's being done locally because that's where our real money is. According to the US Census, based upon the highest median wage of a family, the wealthiest state in the country is Maryland, and the wealthiest county, based on the same criteria, is Loudon County, Virginia. If you look at your hand as the state of West Virginia, your thumb is the eastern panhandle. The V right above the thumb is the state of Maryland, the wealthiest state. Below the thumb is Loudon County, Virginia, the wealthiest county. We are sitting in the perfect place in the eastern panhandle. He's asking management at Charles Town to work with us, to spend more money on local handle, to do things they haven't done before to get people there. He believes we have everything we need at Charles Town, we just need to market it. He wants to see the local promotion being done. He wants to see the information he requested within 2 weeks. He'd like for the Commission to get a copy of each racetrack's budget for marketing and he wants to see what the numbers are and he wants to see what they are projecting for the rest of the year as to what they will spend on promotion for their respective track.

Rosemary Williams stated she does not want to share her promotional budget outline with the Commission for one reason. Once she shares that it's public knowledge, anybody can request the information from the Commission and they have to give it to them. She would caution that's very dangerous with competition, outlining her promotions. Mr. Lowe replied he did not think of that. If someone files a FOIA do you have to let them see it? Ms. Talbott replied the question would be if it's turned over to the Commission, whether or not it would be subject to a FOIA request. There is an exemption in a FOIA request for proprietary information, business information, that the State gets and we've dealt with that exemption before. She doesn't immediately know whether something like this would fall under that proprietary information exemption. It might. She's just answering the FOIA aspect. Whether or not the tracks are obligated to give that to the Commission is another legal question she's not sure of. Mr. Lowe stated he wasn't looking at it as a legal issue, we're trying to help everybody here. It's not a demand, it's a request. Chairman Rossi asked Ms. Talbott to look into this and get back to the Commission.

Jana Tetrault inquired if he was requesting the calendar or the amount they've spent? Mr. Lowe replied he's asking for the promotional plans for the rest of the year, tell us what the budget is. When he was on the Tourism Commission they came up with the matching grant money. If they know what the budget is and they get together with the Tourism Commission, and they approve it, we could get the money matched. Chairman Rossi stated we need to approach this with an open mind.

Public Comments

Brad Cummings, EquiLottery, introduced himself as the founder and CEO of EquiLottery. They do a lottery game based on results of live horse racing. They currently introduced a Bill, HB2943, and they've been working with WV Racing United on this effort and they've also announced agreements with both of the racetracks in WV. They would like to be a part of the solution, especially as he hears a lot of discussion about how we promote the sport. Getting the sport of live horse racing to the 1,500 lottery terminals in WV he thinks would be a huge step in the right direction.

Joe Funkhouser stated he wanted to commend the Commission for holding another stakeholder meeting. He certainly encourages that. The one in 2015 had some really good ideas and it will be a great first draft. Collaboration is key here. Chairman Rossi stated Ms. Talbott and Mr. Moore will work on getting that meeting set up.

Chairman Rossi stated the next regular scheduled meeting will be April 25th.

Adjournment

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