

MINUTES
WV RACING COMMISSION
Friday, November 1st, 2024
WV Racing Commission Conference Room

The WV Racing Commission met on November 1st, 2024, to conduct business and consider administrative matters. Roll call was taken, and Commissioner Espinosa and Commissioner Urling were present.

Agenda Item #1 – Consider public comment regarding financial impact of proposed HISA assessment allocation

Mr. Moore has given the draft of the public comments to consider a public comment on the newly proposed HISA assessment allocation. Mr. Moore asks if the commission chooses to make comments, the deadline for it is November 6th. This will not affect the continuing litigation, and the Director would like to open up to comments from the commissioners now. Commissioner Espinosa wants to offer a motion to direct our executive director and our council to forward the draft comment to the FTC.

Commissioner Urling would like to second this motion. Mr. Moore asks with the second, "is there any discussion? Commissioner Espinosa commented, in reviewing the proposed FTC rule, I think it's fairly apparent that if the FTC rule is actually implemented, I think it would have a very detrimental impact on thoroughbred racing here in West Virginia. I think any fair assessment of the proposed rule would suggest that those tracks such as Charles Town and Mountaineer that are racing a significant number of racing days would really see their potential assessments of the tracks and potentially the horsemen increase significantly. And as the proposed comment indicates, it really puts a tremendous burden on folks that arguably are in the least, strongest position to incur that additional expense. And so, in light of the fact that our council has advised that we believe this comment can be made without adversely impacting our legal position in this matter, I think it's important for the commission to make it clear to the FTC that in light of the fact that we are, there is currently litigation ongoing and just not appropriate to change the rule. So, I would urge support of the motion. Commissioner Espinosa asked if the those folks on the call have they been provided with the comment, or would it be appropriate to read the comment just so they know exactly what we're preparing to say? Mr. Moore stated I don't, and they have not been provided with the draft. I'll let Anthony chime in on as far as making the draft public in today's meeting.

Mr. Eates responded, I don't know if there's a way to make the draft public in a remote meeting like this, but for those folks on the line who aren't commissioners or Joe or me, I mean, the comment is four paragraphs long and does a very good and thorough job of describing why the FTC should think long and hard before it implements cost allocation in the way it has. Like I said, we were careful in my office that we have in both of our pending cases challenging HISA. But the long and short of it is the comment makes it abundantly clear that basing the would have a very negative impact on racetracks who might have smaller purses, but, you know, a bunch of stars like ours do. I don't want to read that. The comment is a full page. So I mean, I'll leave it to the commissioners. Generally, we don't, we wouldn't put out a proposed public comment

that we're going to make, because the comment is on the commission's behalf. So if there are other people on the line from other organizations, the tracks, the HBPA, whoever, who want to make a similar comment of their own, are certainly free to do so. I wouldn't want to put our draft out there as if it's somehow subject to approval by any folks other than the three commissioners who are deciding to make the comment. That and the fact that it is a full page, it would be a lot to get through. But it does make it abundantly clear to the FPC that this way of allocating the cost of regulation is not good for West Virginia. And that's what our interest is. Director Moore added, that typically anything that the Commission considers that we've drafted for you all deliberately, there isn't a public record until such time that we would actually post this to the FTC. And then it's a public record from any state agency, it'd be subject to FOIA and anything like that. But in its current version, I don't know that it's subject to even a FOIA request.

*Motion made by Commissioner Espinosa.
Seconded by Commissioner Urling
Motion passed.*

Agenda Item #2 – Adjournment

Motion to adjourn