

MINUTES  
WV RACING COMMISSION  
Tuesday, March 19, 2013  
WV Lottery Conference Room

The WV Racing Commission met on March 19, 2013 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Greg McDermott, with Commissioner Bill Phillips attending via conference call. Counsel was represented by Kelli Talbott.

**Approval of February 19, 2013 minutes**

Commissioner Bill Phillips would like to note that he was monitoring the February 19<sup>th</sup> meeting as he had not yet signed his oath of office and would request that the titles of individuals speaking before the Commission be stated in the minutes for public knowledge. Commissioner Phillips made a motion to amend the February 19<sup>th</sup> minutes to reflect the changes above. Commissioner McDermott seconded the motion, motion carried. Commissioner McDermott made a motion to approve the February 19<sup>th</sup> minutes subject to the changes requested by Commissioner Phillips. Commissioner Phillips seconded the motion, motion carried.

**Executive Director's Report  
Jon Amores**

Backstretch Pension Plan – Commission approved the proposed plan in a prior meeting and we are awaiting the final approval of the trust language. Actual plan document and draft trust agreement is being discussed by our counsel, Jim Sturgeon and counsel for the Treasurer's Office who has also brought in the Investment Management Board. It is our hope that the goal of the discussions is to get the trust documents in form acceptable for signature by the State Treasurer.

Legislative Items – The Thoroughbred, Greyhound and Pari-mutuel wagering rules are moving simultaneously through both houses of the Legislature. The rules have moved out of House Finance with second reference to House Judiciary Committee. The rules have moved through Senate Judiciary and are on Senate Floor. Amendment made in rule making to lower the minimum age of individuals on the track was struck in Senate Judiciary, therefore the rule is as the Commission originally approved. Nothing to report on any other legislation. We are hoping to have prepared for the Commission next month for discussion interpretive rules which would among other things move from front loading the payout of money to make equal quarterly installments. Public comments will be received during the rule making process.

Influenza vaccine – We are working with Dr. Couto of OSU to get the University established under WV Purchasing Division rules as a sole source provider. We are awaiting a standard form agreement from Dr. Couto to provide to Purchasing.

Thoroughbred Dev. Fund Inspector – The Commission last month approved the hiring of a Thoroughbred Dev. Fund inspector at Charles Town. Stephanie Simpson has been hired. She has 20 years' experience as a breeder, comes to us without any active racing occupational permit or conflicts. We welcome her onboard as our newest employee.

Commissioner Phillips questioned a document provided by Jon Amores regarding the weekly Monday morning meetings and their relation to the Commission meeting. Jon Amores stated that it was provided to the Commission to inform the Commissioners of the staff meetings and to give them the opportunity to have items included in the meetings.

**Auditor's Report  
Joe Moore**

Joe Moore, WVRC Accountant, reported that Racing Commission had a successful Thoroughbred Dev. Fund payout this year with payments being made on time with minimal response or conflict. Two checks needed to have payment stopped due to recipient changing residency and not updating records with the Racing Commission. To date, these are all the known conflicts. Chairman Rossi commended the employees for the accuracy of this year's payout.

Secondly, the fourth quarter Fiscal Year 2012 Supplemental Purse Payments are schedule to go out in early April. 14 day letters were mailed on March 12<sup>th</sup>.

Last thing to note, a number of capital improvement requests were submitted to be included on the agenda that are being questioned by Director of Audits, Becky Carnefix. She has been in contact with the tracks to determine if such items are racing related.

**Accountant's Report  
Joe Moore**

Highlight the monthly and quarterly racing revenues and expenses both for racing activity and the Racing Commission. Live Racing, Export handle and Simulcast handle for February 2013 increased over those handles for January 2013.

Racing Commission revenue generated from racing activities has decreased 9% compared to January 2013 mostly due to the timing of how Occupational Licenses are collected. Occupational Licenses are now paid in trimesters, months ending April, August and December.

The Racing Commission is actively looking at our expenses and in February we decreased our expenses 10% compared to January. Contractual and Professional expenses decreased.

While racing appears to be up in February 2013 over January 2013, note that total in-state handle and revenue generated from racing activities for meet-to-date January through March 2013 is down approx. 16% compared to the same meet 2012.

The Commission has decreased its overall general administrative expenses in the third quarter by approx. 11% compared to the third quarter 2012. Commission McDermott asked how the decrease translating in dollars and cents. Joe Moore noted that the operational expenses in February decreased 10%, or \$28,000, compared to January. The operational expenses for the current meet-to-date have decreased \$68,000 compared to the same meet 2012.

Commissioner Phillips questioned the decrease of 16%. Does the Commission look into the reason for the decrease other than the effect of neighboring competition? Joe Moore noted that the Commission has not historically looked into the decrease other than noting that \$26,000 of the decreased revenue is

in the Occupational permits and how they are collected. Commission McDermott noted that there are employees at the tracks that do conduct that type of analysis.

Chairman Rossi encouraged the enhancement of the Accountant's Report in future meetings.

#### **Personnel matter: State Investigator, Charles Town Racetrack**

Commissioner McDermott made a motion to enter Executive Session for a personnel matter that requires communication with legal counsel. Commission Phillips seconded the motion, motion carried.

Chairman Rossi asked for a motion to discontinue the executive session. Commissioner McDermott moved, Commissioner Phillips seconded, motion carried. Commissioner McDermott made a motion that action on this matter be deferred to the Commission's next meeting pending further information. Commissioner Phillips seconded, motion carried.

#### **Wheeling Island, 2013 Racing Schedule / races per card**

Chairman Rossi stated that the Commission has had a lot of discussion regarding the races per card and that all parties involved have had input and several negotiating sessions. A great deal of information has been provided to the Commission, and the Commissioners appreciate all of the parties involved in making an effort to try and resolve the situation. Commissioner Phillips made a motion to approve the racing schedule that was previously adopted of 107 races per week, for the balance of the year. Commission McDermott seconded, motion carried.

#### **Charles Town Capital Improvement Request**

##### **\$1,989,556 for clubhouse glass curtain wall**

Chairman Rossi stated the Commission did not have enough information to approve the request and requested a motion that the Commission defer the request until additional information is obtained. Commission McDermott moved, Commissioner Phillips seconded, motion carried.

#### **Mountaineer Racetrack Capital Improvement Request**

##### **\$39,000 for grandstand roof renovations**

Joe Moore, WVRC Accountant, stated that this item had been reviewed by the Racing Commissions Director of Audits, the requested improvement is directly related to racing and funding is available for the project. Commissioner McDermott made a motion to approve the capital improvement request for grandstand renovations. Commissioner Phillips seconded, motion carried. Commission Phillips commended Mountaineer for providing such a substantial package of information for the Commissioner's review.

### **Legal update, Attorney General's Office**

Kelli Talbott stated that the Commissioners have been provided a list of every case she currently had, with the exception of one addition. Ms. Talbott stated that the cases generally fall into several different categories. One of which would be appeals of rulings issued by the stewards or judges. Those appeals come to the Racing Commission and an administrative hearing is set before a hearing examiner that the Commission designates. The most significant appeal going on right now is the Chris Grove case.

The other category case is the ejection appeals. Those are the permit holders who have been ejected by the racetrack who file an appeal to the Racing Commission to have a full and fair hearing of those ejections. We have 5 ongoing right now that are set for hearing May.

There are also 3 Circuit Court cases ongoing in Kanawha County Circuit Court. Those being Sam Burdette's case, a case that PNGI filed against us contesting certain rules that the Commission promulgated to govern ejection hearings, and the Reynolds case which is still on appeal in Kanawha County Circuit Court.

Commissioner McDermott thanked Kelli for the comprehensive information provided. Commission Phillips agreed.

### **2014 Thoroughbred Racing Rule Update**

Kelli Talbott, Counsel, provided a brief follow-up to the Commissioners regarding the second meeting of the Mid Atlantic Racing Regulators to further discuss medication rule proposals that the Mid Atlantic states are working on adopting for 2014. There has been some interest in reconvening the rule committee. June 26<sup>th</sup> would be the drop dead date that we would have to file a rule for public comment. Ms. Talbot is not sure if the rule committee would have much discussion due to the rules would not be negotiable; either we adopt them or not.

### **Review of Hearing Examiner's recommended decision**

#### **Patty Burns**

The recommended decision is that Ms. Burns has been off the track long enough to pay for her wrong doing and that the Commission order her reinstatement to the track. Commissioner McDermott made a motion to adopt the hearing examiners recommendation as set forth by Mr. Blaydes. Commission McDermott offers great respect for the quality of the decision, and all decision that we receive from the hearing examiners. Commissioner Phillips seconded, motion carried.

### **Approval of Wheeling Island Stakes Race Dates for 2013**

Jane Horvath, Racing Director Wheeling Island: These are the same stakes offered last year. The first two are offered by Wheeling Island and the final two are the WV races. Commissioner McDermott made a motion to approve the 2013 Stake Race dates. Commission Phillips seconded, motion carried.

### **Discussion of Intergovernmental Agency Agreement**

Chairman Rossi stated that we did not have a revision of the agreement for discussion and called for a motion to defer the item until the next meeting. Commissioner Phillips so moved, Commissioner McDermott seconded, motion carried.

Chairman Rossi stated that the next meeting is scheduled for April 16<sup>th</sup>. Requested that a calendar be posted that meetings would be the 3<sup>rd</sup> Tuesday of the month for the rest of the year.

### **Public Comments**

Sam Burdette, President of Greyhound Breeders Association, stated that the supplemental purse checks have not arrived yet, that are due the 15<sup>th</sup>. Joe Moore, WVRC Accountant stated that checks were dated and mailed Friday March 15<sup>th</sup>. Mr. Burdette requested a meeting to discuss the budget with the Commission and address issues the Breeders had. Mr. Burdette also referred to a FOIA request dated March 8<sup>th</sup> not yet received. Director Amores and Chairman Rossi stated that in the future the Commission would put all notifications and responses regarding a FOIA delay in writing. Finally, Mr. Burdette noted concerns about the nature of the relationship between the Racing Commission and the Lottery Commission as it related to item 13 on the agenda. Mr. Burdette stated that the code says the three Racing Commissioners are to run the Racing Commission. Chairman Rossi responded that they are.

Chairman Rossi requested a motion for adjournment. Commission McDermott so moved, Commissioner Phillips seconded, motion carried.