

MINUTES
WV RACING COMMISSION
Tuesday, April 15, 2014
WV Lottery Conference Room

The WV Racing Commission met on April 15, 2014 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi and Commissioner Bill Phillips. Commissioner Greg McDermott was present via conference call. Counsel was represented by Kelli Talbott.

Approval of March 18th minutes

The Commissioners and legal counsel received the minutes from the March 18th meeting prior to this meeting. Mr. Phillips moved to accept the minutes, seconded by Mr. McDermott. The Commission approved the March 18th minutes.

Auditor's Report
Becky Carnefix

Becky Carnefix stated the capital improvements update for the month was: Charles Town submitted and was paid for 1 project for reimbursement for \$1,949,556 and the detail of the project and reimbursement was provided to the Commissioners in their binders. Supplemental Purse Awards update: The review of the fourth quarter FY13 claims has been completed, residency information has been received for applicable claims and the claims are ready for processing of payment this week. John Myers stated he and Becky Carnefix are working on a new format to provide to the Commissioners in the future of a schedule of the audits she will perform over the year and the status of each will be given accordingly.

Accountant's Report
Joe Moore

Joe Moore stated in-state handle is down 7 ½% compared to FY13. Revenue generated from live and simulcast racing is down 5 ½% compared to FY13. The financial projections for Admin funds 7304, 7305 and 7307 are in the binders, and included with that is a year to date, quarter to date expense detail for those funds. This year's contributions for the backstretch pension fund have been received from Charles Town and should be received from Mountaineer in early May. The Expenditure Schedules for FY15 are due May 1st and will be included in the May Commission meeting binders.

Executive Director's Report
John Myers

John Myers stated Senate Bill 1003 passed and all disbursements from that settlement have been made and \$2,008,911.50 has been transferred to the Budget Office. We received a request from the Secretary's office to upgrade any computer the Racing Commission has from the Windows XP operating system due to Microsoft no longer supporting XP. Larry Carraher

has put together a step by step process with field personnel to assist us with what type of operating system they have and to aid in estimating the cost for this. A listing of all the FOIA's received for the year has been provided in the binders. The Secretary's office has also asked the Racing Commission to begin holding a monthly meeting with a liaison from his office, and the liaison from his office is John Doyle. Included in the binders is a schedule of the timetable for filing Legislative Rules, and everything needs to be completed by August 1st. He does not have an update on the backstretch pension plan to give at this time. Chairman Rossi asked Jana Tetrault from Mountaineer HBPA if any progress has been made with the RFP? She stated the RFP is completed and has been sent out to several banks and the date to get those back is May 9th. Commissioner Phillips thanked Mr. Myers for the information in his report and stated he has been one of the pushers for the initiative to get the Rulings and Licensing into the RCI database and on many occasions he has asked for a timeline and a plan to track the progress. He has had no updates since the February meeting but would like to get a plan and timeline they can follow so he can be personally knowledgeable as to if progress is being made.

Legal Update, Attorney General's Office

Kelli Talbott stated she has provided the Commissioner's with an update on the cases she's working on prior to the meeting and there's nothing significant to report on those cases other than what she's already provided them. There are 3 cases in the WV Supreme Court right now: The Schweizer case, the PNGI vs. WVRC case, and the Grove's case. She is currently focusing on the 2015 Rules. The committee is scheduled to have a conference call on May 6th for possible amendments. Today is the deadline for committee members to submit proposals to her to put on the committee agenda and so far she doesn't have any. The item she's planning to put on the agenda for discussion is the multiple violator point system that RCI has adopted. She has already circulated the model rule language to the committee members to review. The RCI model rule will not only require that all Rulings and the points assigned to those violations be reported to RCI for tracking purposes, but will also require, if adopted, that all Stewards Rulings and Commission's decisions be put on the Commission's website. The Rule committee will also be talking about the recent modifications RCI made to the therapeutic controlled substances schedule. The Mid-Atlantic Regulators Group is going to recommend that all Mid-Atlantic states adopt these changes RCI just made. It is likely there will be changes to the therapeutic drug schedule every year. After the committee has its conference call on May 6th and it's finalized what proposals are to be put before the Commission, the Commissioners will be provided a copy of those to be taken up and voted on at the May meeting. All proposals have to be sent to Secretary Kiss no later than May 30th. Commissioner Phillips stated he made copies of the press release from RCI for anyone that would like to see the changes that were adopted. He stated there will likely be ongoing changes to these rules relating to the drug issue. Kelli Talbott added the national HBPA endorsed the recent changes made by RCI to the medication rules.

Capital Improvement Request – Hollywood Casino - \$290,465 for Modernization of Elevators 8, 9, and 10

Capital Improvement Request – Hollywood Casino - \$5,712 for Oil Filter System in Terrace Kitchen

Capital Improvement Request – Hollywood Casino - \$7,837 for stainless tables in Terrace Kitchen

Capital Improvement Request – Hollywood Casino - \$4,734 for stainless worktables in Terrace Kitchen

Capital Improvement Request – Hollywood Casino - \$15,915 for induction action station for racing apron

Becky Carnefix stated the first item was a request for the modernization of elevators 8,9, and 10 with access to the Terrace Dining Room and Terrace Kitchen. The second item was a request for an oil filter system in the Terrace Kitchen. The third and fourth items were requests for center stainless steel tables and worktables for the Terrace Kitchen. The final item was a request for an induction action station for the Racing Apron and includes a portable fryer, hand sink with water system and an outdoor grill and griddle. She has reviewed all of the bids submitted with each request and recommends all five items be approved. Motion was made by Mr. McDermott to approve all five requests, seconded by Mr. Phillips. Motion passed.

Capital Improvement Request – Mountaineer Casino - \$89,040 for a man lift (2003 Ultra Boom 4WD with a telescopic jig)

Capital Improvement Request – Mountaineer Casino - \$62,540 for a Case 580 SMII Backhoe

Capital Improvement Request – Mountaineer Casino - \$53,837.40 for a Case Bobcat with broom, hammer, and trenching attachments.

Becky Carnefix stated the first request was a request for a 2003 Ultra Boom 4WD with a telescopic jig that will be used on the racetrack for replacing lights and working on light poles. The second request was for a 2006 Case 580 SMII Backhoe that will be used in the barn area, paddock and track. The third request was for a 2012 Case SR 220 Bobcat and attachments and will also be used in the barn area, paddock and track. She has reviewed all of the bids submitted with each request and recommends all three items be approved. Motion was made by Mr. Phillips to approve all three requests, seconded by Mr. McDermott. Motion passed.

Approval of Mardi Gras Casino and Resort WVGoba Juvenile Stakes Race Proposal

John Myers stated Mardi Gras provided the Racing Commission with the dates to conduct the Juvenile Stakes Race. The entry deadline, as proposed, is May 11th, with the first round being ran May 17th, second round on May 21st, quarterfinals on May 24th, semifinals on May 28th, and the finals on May 31st. This race was scheduled two months ago, however, there was a kennel cough outbreak at Mardi Gras. Our veterinarian recommended the races be postponed for a month. The issue at hand with delaying this race is that some of the then

eligible dogs will now be 26 months at the time of the race. A juvenile greyhound is defined as 15-24 months of age. If the proposal is approved as is, it will be approved with 26 month old dogs. Chairman Rossi stated this is a very technical instance and asked for input from the Greyhound Breeders. Sam Burdette stated all dogs should have the right to run in a juvenile stakes race. If you hold strictly to the 24 months there are some dogs that will slide through the cracks that are 2 months too old that should have been able to run when the race was originally scheduled in March. Roger White stated the Code requires each track to have 1 juvenile stakes race. There was a problem several years ago, so the Rule Making Committee all agreed that the definition of a juvenile would be a greyhound 15 months of age through 24 months of age. There was an unusual circumstance with the kennel cough, however, the law is the law and he feels the law should be complied with. Commissioner McDermott asked for counsel's input. Kelli Talbott stated the definition of a juvenile is in the Rule but she doesn't feel that makes it any less valid being in a Rule vs. the Statute. Commissioner Phillips asked how many greyhounds would be impacted by not being permitted if we stick to the 24 months? Roger White stated they would not know that information until the entries for the race. Chairman Rossi stated he is inclined to ask for a delay on this action until they can get some facts together and they can have a special meeting to approve this item. He then asked Mardi Gras how soon they would have to have the special meeting to allow Mardi Gras time for everything they need to do. Mike Staats stated May 11th is the deadline for entries so a week prior to that. Motion was made by Mr. Phillips to delay action to gather more information and have a special meeting to act on this item, seconded by Mr. McDermott. Motion passed.

Approval of Wheeling Island Stakes Proposal

John Myers stated he had a discussion with Mike Maestle from Wheeling Island and he requested that this item again be tabled due to lack of information about the purse funding for this item. Motion was made by Mr. Phillips to table this item, seconded by Mr. McDermott. Motion passed.

Request of Mr. John Kirby for the Commission to obtain a formal opinion from the Attorney General regarding the ability of the Commission to regulate fees charged by the West Virginia Thoroughbred Breeders Association

Kelli Talbott stated when Jon Amores was the Executive Director of the Racing Commission, he had a conversation with Mr. Kirby concerning a complaint he had about the fees the Breeders Association charges. The Breeders Association registers WV Bred horses. She told Mr. Amores at the time that the Breeders Association is a private association. We have a racing rule that requires all Thoroughbreds running at our tracks to be registered with the Jockey Club, but we don't regulate what the Jockey Club does, nor do we regulate what the WV Breeders Association does with regard to their activities. Kelli advised Mr. Amores that citizens off the street cannot get an Attorney General's opinion, they are only issued to state agencies and elected officials. The Commission can request an opinion, however, she does not feel it is worthwhile. Commissioner McDermott inquired why does it have to be an Attorney General's opinion? In WV there is a statute called the Uniform Declaratory Judgments Act which gives us the right as citizens to seek a legal opinion in a circuit court, for instance, if we need guidance with respect to something that affects our business. Why does it fall upon us to get the opinion? Kelli Talbott stated she doesn't think it does. Commissioner Phillips stated they are an independent, private organization and they should proceed to their interests. Motion was made

by Mr. McDermott to direct Mr. Myers to send communication to Mr. Kirby informing him of what was concluded by the Commission, seconded by Mr. Phillips. Motion passed.

Recommended Hearing Examiner decision in the Ejection Appeal of Jacob Hess who was ejected by PNGI for operation of a vehicle in the barn area

Kelli Talbott stated Mr. Hess is a permit holder who apparently broke a track rule about operating vehicles in the barn area. He was ejected indefinitely and appealed the ejection. Mr. Blaydes, Hearing Examiner, concluded yes Mr. Hess violated the track rule, however, he recommends the ejection cease on April 19th and Mr. Hess be allowed to return to the racetrack on that day. Motion was made by Mr. McDermott to adopt the Hearing Examiner's recommended decision, seconded by Mr. Phillips. Motion passed.

Status of Thoroughbred Rule and possible modification of previous Commission decision of effective date

Kelli Talbott stated at the last Commission meeting, the Commission was informed that the Rules Bill that contained the Thoroughbred Rule passed the Legislature on March 8th and the face of the Bill indicated it was effective on passage. We were awaiting Governor Tomblin's signature on that bill and Kelli had informed the Commission that they had a choice as to when to make the Rule effective. It was estimated that by the time the Governor signed the Bill, it would be early April that the Rule would be sent to Secretary Kiss for his review and signature and the Rule would have been filed by now, and it would be effective 90 days from the date it was filed, which would put it into July, and that would allow time for whatever activities needed to take place to get ready for the Rules to occur. In the meantime, however, there was an error on the face of the Bill passed by Legislature. The Bill is not effective immediately upon passage, it's actually effective June 6th. The Secretary of State's office has informed us we cannot file our Rule until that date. She recommends making the Rule effective 30 days from the date it is filed, which will put it the end of July, which was the initial plan. Change the effective date from 90 days after filing to 30 days from filing. Mr. Phillips made the motion to rescind the prior action made on this item and amend the effective date from 90 to 30 days from filing, seconded by Mr. McDermott. Motion passed.

Next meeting – Tentatively May 20, 2014

The next Commission meeting is tentatively set for May 20th, but there will be a special meeting to act upon the Stakes Races.

Public Comments

Roger White stated he would like for the Racing Commission to consider the funding of the Stakes Races for the WV Greyhound Owner and Breeder annual stakes races, a total of 4, 2 at each track. Currently those are funded out of the Greyhound Breeders Development Fund. Nothing is mandated saying to use \$200,000. He would like for the Racing Commission to explore reducing those Stakes Race amounts and the funding to come from the Administration fund. Chairman Rossi asked Mr. White to submit his request in writing to the Commission.

Troy Hendicks asked the Commission to look very hard at any type of costs they put on them. They took a hard 15% from the Legislature, so any fees or anything else the Commission may be looking at, keep in consideration the financial aspect of those affected. Commissioner Phillips added if Troy has any ideas on what should be done to hold down costs, the Commission would like to see them.

Adjournment

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