

MINUTES
WV RACING COMMISSION
Tuesday, April 16, 2013
WV Lottery Conference Room

The WV Racing Commission met on April 16, 2013 to conduct business and consider administrative matters. Roll call was taken and present were Chairman Jack Rossi, and Commissioner Bill Phillips, with Commissioner Greg McDermott via conference call. Counsel was represented by Kelli Talbott.

Approval of February 26th and March 19th minutes

The Commissioners and legal counsel received the minutes from the February 26th and March 19th meetings prior to this meeting. Mr. McDermott moved to accept the minutes, seconded by Mr. Phillips. The Commission approved the February 26th and March 19th minutes.

Executive Director's Report
Jon Amores

Jon Amores, Executive Director, gave an update. The first item was the continued work with the Office of Technology and the two step process that is taking place. The first step is the documentation of agency operations, and the second step is to have someone from OT work with Larry Carraher to be trained in operating the systems. This is has been an internal control issue for several years in the annual audit, and this effort will help in strengthening internal controls.

The second item was that the Rules for the Commission (Wagering, Greyhound and Thoroughbred) were all passed, with minor changes. After they are signed by the Governor, they will be filed with the Secretary of State.

The third item was the Court of Claims bill has passed (SB496). Old purse supplement claims and 10-10-10 claims were not paid because the Commission ran out of funding for those claims and payment for those claims was sought through the Court of Claims. Those claims were paid under SB496 and should be funded by July 2013.

The fourth item was the receipt of a service contract from Dr. Couto from Ohio State University for the testing and lab services that will be provided in the influenza vaccine study. Purchasing still has to make the determination if Ohio State University qualifies as a sole source provider for these services.

The fifth item was the passage of SB542 which allows for second and even third restricted races at Charles Town, if there are enough entries.

The last item was the 2012 Annual Report is now available and will be distributed to the Commissioners after the meeting.

Auditor's Report
Becky Carnefix

Becky Carnefix, Director of Audits, stated it is license renewal time for permits that expire on April 30, 2013. License clerks at all four tracks are working to get permits renewed by the expiration date.

Thoroughbred Development Fund clerks are continuing to register WV Thoroughbreds for inclusion in the WVTDF, and are entering race results daily for the February 15, 2014 distribution.

Auditors at all four tracks are up to date with submitting the pari-mutual tax information to Racing Commission Headquarters for sweeps of revenues from the tracks.

Capital Improvements – Mountaineer has submitted for reimbursement 4 projects totaling \$243,019.75, and was paid \$232,089.75 for these projects, making them currently paid in full for all submissions. The difference of \$10,930 was a discrepancy found in the review process and has been discussed with track personnel.

Capital Improvements – Charles Town has submitted for reimbursement 9 submissions encompassing a number of projects totaling \$2,470,890.48, and have been paid \$485,739.41 for 3 of those submissions. She stated she is working with the track on additional information still needed on the remaining submissions.

A revised Capital Improvement Policy is currently being drafted for approval by the Commission at a later date.

Accountant's Report
Joe Moore

Joe Moore, Accountant, stated the handle for live racing, simulcasting and export increased for the month of March over the month of February. Most of that is attributed to March being the first month back of live racing at Mountaineer; however, the handle increased at all four tracks. March revenues are up from February approximately 3%, due mostly to Mountaineer Park's live racing; however, revenues are down from last year approximately 6.3%. In response, the Racing Commission is continuing to explore options to decrease operating expenses.

Supplemental purse payments for fourth quarter fiscal year 2012 were sent to the Auditor's office for payment on April 5th. Charles Town's total claims for that period was \$340,706 and they were paid \$81,205. Mountaineer's total claims for that period was \$50,929 and they were paid the full amount.

Chairman Rossi noted that over the past few meetings Executive Director, Auditor and Accountant reports have been presented as the Racing Commission is making an effort to become more transparent and the reports will become more robust to give additional information. It was also noted that in response to its budget situation, the Racing Commission is looking for more ways to cut costs and to become more efficient.

Personnel matter: State Investigator, Charles Town Racetrack

Upon motion by Mr. Phillips, seconded by Mr. McDermott, the Commission went into Executive Session to discuss the issue.

Upon motion by Mr. McDermott, seconded by Mr. Phillips, the Commission came out of Executive Session.

Motion was made by Mr. Phillips to table this matter, seconded by Mr. McDermott, and approved unanimously by the Commission.

Greyhound Development Fund Report Jamie Divers

Jamie Divers, Greyhound Development Fund Clerk, stated some of the forms for determining eligibility in the WVGDF have changed. All interested parties in an LLC must be WV residents and must have on file the required documentation. Space has been included on the forms to provide this information. Ten (10) day letters will now be mailed out each month to those participants who do not have the required tax documentation on file, and the first set of letters will be mailed out the end of this month.

Also, a scanning project is underway which allows for all documentation received from participants to be scanned into the computer and linked to a specific litter of dogs so that the paperwork will no longer have to be retained in the office.

Approval of policy, Greyhound Development Fund

Jon Amores stated this policy is based on audit findings the Commission is required to address. This policy is similar to the policy that was established for the purse supplement funds, and until we can adopt an Interpretive Rule on the policy, the policy provides that the Racing Commission will notify participants with a 10-day letter of the residency requirements required and any related documentation not currently on file. This includes payment of real or personal property taxes and an Authorization to Release Information form that allows the agency to verify with the Tax Department state taxes have been filed. Motion was made by Mr. Phillips to approve the policy, seconded by Mr. McDermott, and approved by the Commission.

Interpretive Rules, WV Code §19-23-13 and §19-23-10

Jon Amores stated it is the Commission's desire to have Interpretive Rules for policies that would provide a benefit to regulated persons, or practices that have been a normal practice for Commission operations. There will be a comment period for the Rules once they have been filed.

The first Interpretive Rule discusses Excess Lottery deposits for payment of purse supplement awards. Currently the deposit is made at the beginning of the year and payments are made out at full value until funding is not available, resulting in maximum payouts in the first quarter, but monies rapidly dwindling for the remaining quarters. The Interpretive Rule asks that

purse supplemental awards be allocated into four (4) equal quarterly payments to each horse racetrack's special account resulting in a more equitable distribution amount throughout the year.

The other two Interpretive Rules relate to residency requirements per WV State Code. Greyhound Development Fund participants and Thoroughbred Purse Supplement participants will be asked to provide proof of residency and a waiver acknowledging payment of state taxes. Purse supplement award participants have already been providing this information.

Motion was made by Mr. Phillips to approve the Interpretive Rules. Discussion took place concerning the timing of filing of the Rules and a comment period. Chairman Rossi suggested that a public hearing take place on these Rules instead of a 30 day comment period, if it can be done within the appropriate time frame. Randy Funkhouser commented that the CTHBPA is supportive of the Excess Lottery Deposits Interpretive Rule. He also stated his concern with the Racing Commission not only looking to cut expenses but to also explore ways to get additional funding. Chairman Rossi noted he would like to have an open forum where ideas are shared for/with the Racing Commission. Motion was amended by Mr. Phillips to have a public hearing on the rules, seconded by Mr. McDermott, passed by the Commission.

Wheeling Island Racetrack update, Track Maintenance Manager

Jane Horvath, Wheeling Island, stated this position is being recruited through their home office in New York and they have been interviewing for the position, however, a decision has not been made yet. Jane hopes to have the decision made soon and will update the Commission then.

Legal update, Attorney General's office

Kelli Talbott stated she has a hearing in Charles Town on April 18th and another hearing at Charles Town on April 19th. She also stated the Sam Burdette case has been set for trial in October. The written summary provided to the Commissioners explains any updates on pending cases since the last meeting.

Approval of Thoroughbred, Greyhound, and Wagering Rules

Kelli Talbott stated the Wagering, Greyhound and Thoroughbred rules passed the Legislature. The Wagering and Greyhound rules passed without amendment and the Thoroughbred rules had one amendment relating to age of permitting. All three sets of rules, once signed by the Governor, have to be filed with the Secretary of State's office. The amendment to the Thoroughbred rules states that the age of permitting stands at 18 BUT children and grandchildren of licensed permit holders can obtain an occupational permit at the age of 16. Kelli Talbott's recommendation on effective dates for each of the rules is a 90 day effective date from the date filed. Motion was made by Mr. Phillips to have an effective date of 90 days from the date of filing for each of the three (3) sets of rules, seconded by Mr. McDermott, and approved unanimously by the Commission.

Charles Town Capital Improvement Request, \$1,989,556 for curtain glass wall system

Becky Carnefix stated this request was for the replacement of the existing Clubhouse glass curtain wall system with an energy efficient system. \$1 million of this request was previously submitted and approved on 1/24/12 and is now being amended and removed from that request and added to this request. She stated the request had been reviewed and funding was available and it was recommended for approval. Mr. Phillips asked if the other bids were looked at during the review to make sure the track and the Racing Commission are getting the best deal. Becky Carnefix replied yes the other bids were reviewed as well as the one that was being submitted for the project. Chairman Rossi asked what happened with the old glass that is being removed. Erich Ziminy, Charles Town, replied the removal cost is included in the amount requested for the project. Chairman Rossi inquired about salvage value of the glass being removed. Mr. Ziminy stated he would find out and send the information to the Commission. Upon motion made by Mr. Phillips, seconded by Mr. McDermott, the Commission approved the request.

Mountaineer Racetrack Capital Improvement Request, \$1,163.88 for two (2) TVs to be used at the trackside OTB

Becky Carnefix stated this request had been reviewed, funding was available, and it was recommended for approval. Upon motion made by Mr. Phillips, seconded by Mr. McDermott, the Commission approved the request.

Replacement of Charles Town HBPA representative, Administrative Committee for backstretch retirement plan

Jon Amores stated a few months back the Commission appointed the 2 representatives for the backstretch retirement plan, and the representative for CTHBPA is being replaced. The new representative for CTHBPA is Maria Catignani. Upon motion by Mr. McDermott, seconded by Mr. Phillips, the Commission approved the change in appointment.

Occupational Permit reinstatement request, Angelo Jackson

Jon Amores stated the applications are generally handled by the Stewards, however, when there is a felon on the application it comes before the Commission. Mr. Jackson has two felons and is currently on probation until 2018. The Board of Stewards has provided a background check and correspondence containing more information, both for and against, Mr. Jackson's reinstatement. Mr. McDermott mentioned that the Commission recently received additional information concerning the use of firearms and resisting arrest. Mr. Jackson disagreed with this characterization. Mr. McDermott expressed his preference to table the application since the Commission has received additional information. Motion was made by Mr. McDermott to defer this issue until the next Commission meeting so that the Commission could review the complete file, seconded by Mr. Phillips. Commission voted to defer the request.

Approval of Marketing Proposal, 2013 West Virginia Derby

Rosemary Williams, Mountaineer, stated they are asking for \$750,320 to be approved in conjunction with the marketing for the West Virginia Derby. Joe Moore stated there is sufficient funding available for this request. Upon motion by Mr. McDermott, seconded by Mr. Phillips, the Commission approved the request.

Thoroughbred Rules Committee, 2014

Kelli Talbott stated the Commission hasn't recommended a Committee yet but she will do so. The Racing Commission will have to have a rule put together by June for public comment and public hearing so there will be limited time and a limited scope for the rule. Upon motion by Mr. Phillips, seconded by Mr. McDermott, the Commission approved the request of Ms. Talbott to proceed with the meetings and move forward.

Interagency Agreement with WV Lottery Commission

Chairman Rossi stated the Racing Commission is looking for ways the agency can be more efficient as it moves forward. In the salary function, the Racing Commission must deal with a budget shortfall so an effort must be made to cover some of the administrative salaries without compromising service. A document has been structured with these concepts in mind. The Lottery has approved the document but the Commission has not provided its revisions to the document. Mr. McDermott reiterated the Commission wants to provide the best service it can while maintaining the independence the agency is legally charged with. Mr. Phillips stated the Racing Commission is being cooperative and trying to find cost effective ways of operating. Chairman Rossi added that the WVRC is a small entity and has a very limited number of personnel performing functions and lacks internal controls. It can't have strong internal controls with one person performing various functions. The Racing Commission is looking to make the organization more efficient and effective. The document has not been shared with the public because the document was being worked on independently and was not ready to be released. The Interagency Agreement is for the internal workings of the Racing Commission and has nothing to do with the regulation functions that the Commission is also charged with.

Sam Burdette, WVGOBA, expressed his concerns over the Interagency Agreement. Chairman Rossi stated that the Racing Commission is dealing with a \$1 million budget shortfall and is looking for ways to continue racing rather than to shut it down. Sam Burdette commented it is the perception the Lottery is taking over the Racing Commission and the Racing Commission is letting the Lottery Commission perform Racing Commission job duties.

Troy Hendricks requested the Racing Commission defer this item until the next meeting so the public can provide input. Chairman Rossi commented that the public is entitled to a final document of what the agency decides upon. Until then, the Commissioners will strive to maintain the independence and integrity of the Racing Commission.

Randy Funkhouser stated that he represents people in the racing industry and they have fought this issue before. They need a chance to review the agreement before it is passed.

Dan Greer, Attorney General's office, stated they have not reviewed the document presented but will be happy to work with the Racing Commission on this.

Dave Hammer, counsel HBPA, requested that this process be done in compliance with the Open Government Meetings Act.

Motion was made by Mr. Phillips to table this item, seconded by Mr. McDermott, approved by the Commission.

Chairman Rossi added the only item in the document that should be the subject of any continued discussion is legal services. The agreement primarily has to do with accounting and auditing services and will be on an as needed basis. The Racing Commission doesn't have the resources to put full time employees in functions that the agency needs to maintain the level of operations needed.

Public Comments

Sam Burdette asked with the new Greyhound Development Fund policy regarding tax information be submitted to our office, since he filed an extension does that mean he's disqualified. Joe Moore replied as long as an extension was filed the agency will accept that, but only up to the time the extension expires.

Randy Funkhouser asked if the different entities will receive a copy of the Interagency Agreement when it becomes final. Chairman Rossi replied that it will be posted.

Next Meeting

The next Racing Commission meeting will be May 21, 2013.