

**MINUTES  
WV RACING COMMISSION  
Tuesday, May 20, 2014  
WV Lottery Conference Room**

The WV Racing Commission met on May 20, 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 April 15<sup>th</sup> and May 2<sup>nd</sup> minutes**

The Commissioners and legal counsel received the minutes from the April 15<sup>th</sup> and May 2<sup>nd</sup> meetings prior to this meeting. Mr. McDermott moved to accept the minutes, seconded by Mr. Phillips. The Commission approved the April 15<sup>th</sup> and May 2<sup>nd</sup> minutes.

**Executive Director's Report  
John Myers**

John Myers stated there were some changes to note in races at Wheeling Island. Two races were added to the card for the evening of May 2<sup>nd</sup> and they are asking to add two more races on Memorial Day to make it a double header on that day, due to the cancellation of races from track conditions a few weeks ago. A summary has been provided detailing the computers the Racing Commission has at headquarters and at all the tracks. The upgrade from the XP operating system will result in 17 computers needing to be replaced and an estimated cost of \$65,000-\$70,000. All employees have been notified of the upcoming change in how pay checks will be issued. All employees will now be paid in arrears instead of those employees with a start date prior to July 1, 2002 being paid current. This will basically only be a change on paper or coding, and not a change for when an employee receives their check. However, the State is also going to change to a bi-weekly pay schedule instead of the semi-monthly pay schedule currently used, resulting in 26 pays vs. the current 24. The FOIA report for the month shows 6 requests for the month of April and all have been answered. Mr. Phillips inquired about the plan for the RCI implementation. John Myers replied he has a timeline he can share with him after the meeting. Mr. Phillips also inquired about the meeting held relating to the rule-making where an issue came up concerning barn cameras at Mountaineer and has this been given any attention? John Myers replied it has been given some attention and Mountaineer is getting bids to install cameras in the test barn. Mr. Phillips asked about the highway issue at Charles Town. Have we given any thought if we should be in touch with the Highway Department? John Myers replied one of his initial concerns was the request that it be limited to 80 decibels and what requirements that would make for controlling that sound. At some point we need to come to an agreement as to what is an acceptable decibel level and how can that be achieved? Mr. Phillips commented that as a Commission, this is an issue that we should be sensitive to and work with the Highway Department to determine what the standard should be. Mr. Phillips then made the suggestion that the Executive Director meet quarterly with all interested representatives from the Racing community to discuss and go over issues, similar to how the Rules meetings have been held.

**Auditor's Report  
Becky Carnefix**

Becky Carnefix stated there were no capital improvements submitted for payment during the month of May. The supplemental purse awards update, 4QFY13 claims were processed and sent to the Auditor's office for payment on April 21<sup>st</sup>. The breakdown of payments was the following: Charles Town had total eligible claims of \$444,361, funding available was \$64,968.62, resulting in an award percentage paid of 1.462%. Mountaineer had total eligible claims of \$54,969.60, funding available was \$84,551.55, resulting in an award percentage paid of 10%. The additional funding available of \$29,581.95 for Mountaineer will be a carryover into the funding available for FY14 eligible claims.

**Accountant's Report  
Joe Moore**

Joe Moore stated the financial summary report shows revenue generated from live and simulcast racing is down 4% YTD, however, the Commission has ran a positive change in cash for the month of April in its general operating fund, 7305, of nearly \$25,000. The FY15 Budget Appropriations and Expenditure Schedules were filed with the State Department of Revenue and State Budget Office. The \$500,000 contribution to the backstretch pension plan has been made by each of the Thoroughbred tracks. The updated FY14 projections for funds 7304, 7305, and 7307 are also included in the binders.

**Legal Update – Attorney General's Office**

Kelli Talbott stated she's been working on Rules, not only for 2015 but she also anticipates filing of the amendments for the 2014 Rules in early June. She has been to Mountaineer for a couple of hearings during the past month. There are 2 ejection appeals scheduled at Charles Town for next week. She has filed a brief in the WV Supreme Court in the PNGI case and in the coming weeks she will be filing another brief in the Supreme Court for the Groves case.

**Capital Improvement Request – Hollywood Casino - \$8,262.00 for 6 closed-door,  
half-height rolling carts for the Terrace Dining Room**

**Capital Improvement Request – Hollywood Casino - \$359,578.00 for replacement  
of grandstand glass curtain wall**

**Capital Improvement Request - \$3,798.28 for Pipe and Drape for banquet functions  
in the Terrace Ballroom**

**Capital Improvement Request – Hollywood Casino - \$ 17,216.00 for 4 pass-through  
heated cabinets for the Terrace Dining Room**

Becky Carnefix stated the total for all 4 items requested is \$388,854.28 and she has reviewed these requests and the bids submitted and recommends all of them for approval. Mr. McDermott made the motion to approve the requests, seconded by Mr. Phillips. Motion passed.



**Capital Improvement Request – Mountaineer Casino - \$21,740.00 for painting of barns V, T, T extension, JJ, and JJ extension along with fascia boards on all barns**

**Capital Improvement Request – Mountaineer Casino - \$4,547 for 14 chairs to be used by the racing office, mutual office, and bookkeeper's office**

**Capital Improvement Request – Mountaineer Casino - \$11,914.40 for a walk behind floor scrubber**

Becky Carnefix stated the total for all 3 items requested is \$38,201.40. She has reviewed all of the requests and the bids submitted and recommends all of them for approval. Mr. Phillips commented on his last trip to Mountaineer, some of the barns appeared to be in pretty bad condition and possibly unsafe and he wanted to bring this to the attention of the Commission and is something they should be cognizant of and maybe work with the representatives at Mountaineer to correct this problem as funds become available. John Myers stated having been there a few weeks ago, some of the issues Mr. Phillips mentioned have been corrected, some have not. He is monitoring the conditions. Motion was made by Mr. Phillips to approve the requests, seconded by Mr. McDermott. Motion passed.

**Mountaineer Casino request to reduce the number of race days and modify the number of daily races in October and November**

John Myers stated we received the request to change the number of racing days and it basically requests to eliminate 14 race days in December and also reduce by 1 race per day in the months of October and November. The Commission, in considering this, does have a standard it has to follow to approve or disapprove this request. First thing is we have to give notice to the representative of the pari-mutuel clerks, the track, and HBPA that this request has been made. At that time, there is a 10 day period that allows for any type of objection to be received. If an objection is received, then it is required within the next 30 days to hold a hearing to hear the reasons, benefits, evidence, as to why this should be reduced, and it is to be held in Hancock County, where the track is located. He believes today's exercise should set in motion that process and begin the process of the notification, collection of any objections, and then the hearing, if necessary. If no objections are received, he assumes we can move on at the next meeting with the approval of this request. Kelli Talbott stated one thing she found unusual with their request was not only to reduce the days but to also pre-approve if they cancel any days between now and when they quit racing they don't have to make any of those up. She's not sure you can actually pre-approve that. She has drafted a notice that can be sent out to the track and the representative of the majority of the Horsemen. The Commission really doesn't have a mechanism to recognize who the representative of the mutuel clerks are and statute requires notice to go to that entity. They are unionized and probably have a shop steward or something similar but there are only approximately 20-30 licensed mutuel clerks so we can send notice to all of them to be on the safe side. Mr. Phillips made the motion to start the process to submit the notice to the various constituents, seconded by Mr. McDermott. Mr. Phillips commented if he recalls correctly, back in early March he contacted Jon Amores, the previous Executive Director, because he noticed a lot of racing was being canceled at Charles Town, and asked him if there was a plan for making up those races. Mr. Amores informed him at the time there was a plan, and Mr. Phillips asked him for the plan and never received it. He thinks we may have this same issue come up at Charles Town and it may be in a more severe way with all the cancellations that took place. John Myers responded that was a very good observation and we have received a request from Charles Town to not make up those race days and we



received it after the agenda deadline for this meeting so it will be on the agenda for the following meeting. Motion passed.

Mr. Phillips requested microphones be provided for the next meeting.

**Capital Improvement Request – Mardi Gras Casino and Resort - \$35,850.00 for repair or access roads in the kennel compound**

**Capital Improvement Request – Mardi Gras Casino and Resort - \$46,500.00 for purchase or a boom lift**

**Capital Improvement Request – Mardi Gras Casino and Resort - \$104,125.00 for expansion of the outside concession area on the racing apron**

Becky Carnefix stated the total for all 3 items requested is \$186,475.00. She has reviewed all of the requests and recommends all of them for approval. Mr. Phillips made the motion to approve the requests, seconded by Mr. McDermott. Motion passed.

### **Approval of Wheeling Island Stakes Race Proposals**

Chris Yahn, Wheeling Island, stated they are requesting approval of the following WV races: \$35,000 WV Juvenile on September 27<sup>th</sup>, \$65,000 Sprint Championship on November 8<sup>th</sup>. Mr. McDermott made the motion to approve the Stakes Races, seconded by Mr. Phillips. Motion passed.

### **Review of public comments and action to finalize the Capital Improvement Procedural Rule**

Kelli Talbott stated she and the staff drafted this procedural rule that deals with the reimbursement of capital improvement projects at the racetracks. There was one public comment received from Wheeling Island during the public comment period for this rule. The comment raised two issues: The first issue being we add language to the rule that it not apply to projects that would have been approved prior to this going into effect. After discussing this with staff, we are only aware of one project this applies to, which is a Wheeling Island project that was approved by another Commission and that project is the reimbursement payments for the improvements at Wheeling Island. The second issue was that we have a rule that says if the Commission approves a capital improvement project that exceeds the balance of the racetracks account, that we essentially have installment payments for however many years that would be to pay that off. The Commission has to decide if they want to make any changes as a result of those comments or not. Once that is decided and it is put in final form, we will take it to Secretary Kiss for his signature, file it, and then it would go into effect 30 days after filing with the Secretary of State. She and the staff don't have any issues with saying it is not going to apply to a project that pre-dated the rule but the issue of having the Commission approve a project that is bigger than the account, that's more substantive than it is procedural, and this is a procedural rule, not a legislative rule. There are some issues you have to consider with approving a project that exceeds its current balance and binds future Commissions. John Myers added the intent of the capital improvement rule is to keep the facilities attractive and to have people want to come to that facility. If we approve all the money in one basket and it goes



on for years and years, there is no money to keep that facility in good condition. Kelli Talbott added from legal standpoint, her concern is that the rule is more substantive than it is procedural. Mr. Phillips commented he read the briefing provided and he thinks it's good people noted we had this rule and made comments but in terms of the previous approved, he thinks that's pretty much understood and particularly when he learned there was only one project it applied to. As far as the second part of the comment received, he cannot be supportive of that. Mr. Phillips made the motion to proceed to approve the rule as drafted with appreciation to those people that made comments, seconded by Mr. McDermott. Motion passed.

### **Recommended Hearing Examiner decision in the ejection appeal of Angelo Jackson**

Kelli Talbott stated this is an ejection appeal in which she has provided the Commission with the entire record of the case as well as the Hearing Examiners recommended decision. Mr. Jackson came before the Commission some time ago requesting reinstatement of his owner/trainer permit. He had a felony record and the Commission granted that permit with certain conditions. In the interim, Mr. Jackson had requested to enter the racetrack and was denied so that set into motion the ejection appeal. Mr. Blaydes has heard this case and has recommended to uphold the ejection, and there are certain timeframes when Mr. Jackson can re-visit that issue with the track and re-request re-entry after a period of time. The ejection was largely based on the felony record Mr. Jackson had. Mr. McDermott made the motion to approve the recommended decision of the Hearing Examiner, seconded by Mr. Phillips. Mr. Phillips asked if PNGI was present at the hearing? Kelli Talbott replied yes they were there and were represented by counsel. Angelo Jackson stated his issue with this decision is that PNGI has multiple felons that are on the track and the date he was given his license reinstatement by the Racing Commission there was another person on the track that had gotten their license reinstated and had multiple felons and he was on the grounds. This is why he feels the track is biased and discriminating towards him. He was told he could re-appeal in 90 days which he believes is August 14<sup>th</sup>. PNGI isn't giving in and if the Racing Commission doesn't step in then what can he do? That's why he's asking the Racing Commission to overturn this decision. If this is the decision now, what is 90 days going to do? He has done nothing to the company other than having a criminal record, as do many others on the grounds. What is the difference between him and those people reinstated and now allowed back on the grounds? He's had one fine since he's been licensed in the state of WV. Mr. Phillips asked how long ago was that fine? Mr. Jackson replied the fine was every bit of 5 or 6 years ago and was a \$200 fine. Mr. Rossi added in 2010 Mr. Jackson had a violation and Mr. Jackson replied in 2010 that may have been the Stewards ruling because that's when he pled guilty. Mr. Phillips inquired of counsel should we approve the recommendation of the Hearing Examiner and Mr. Jackson on the appropriate date appealed this decision, how long does that clock run before we might be back here again considering this situation? Kelli Talbott replied if he would appeal again she would assume we would be back in front of the Hearing Examiner for a hearing with a discussion about why it's not appropriate or is appropriate for Mr. Jackson to come on the grounds and another Hearing Examiner's decision would come to you in several months. Possibly in the fall would be the earliest. Mr. Phillips stated he is troubled by the comment made by Mr. Jackson that there are other felons currently on the grounds. Mr. McDermott stated there was ample opportunity to make that contention before Mr. Blaydes. The record he reviewed does not develop in any way, shape or form the contention that there are multiple felons working at the track, does not develop any comparison or contrast to their record compared to Mr. Jackson's, and does not develop any contention of discriminatory treatment in any meaningful fashion. The first paragraph of the recommended decision illuminates this and reads as such: Appellate Angelo

Jackson appeared in person, pro se. This means Mr. Jackson did not retain an attorney to represent him in this matter. There was no development of these issues that we are now hearing for the first time. Kelli Talbott stated notices of hearings are issued for these ejection appeals telling everyone they have the right to appear with counsel, and it was Mr. Jackson's choice whether he had counsel or not. But it was up to him whether he has counsel or not to develop the record in front of the Hearing Examiner. Mr. Jackson replied if they get the transcripts from the hearing, you will see where he presented this to the Hearing Examiner about all of the multiple felons they do have on the grounds at PNGI. Kelli Talbott stated she was not personally present at the hearing but the transcript has been provided to the Commissioners. Mr. Blaydes bends over backwards to let everyone present their evidence. Mr. Rossi stated Mr. McDermott has pointed out some very highly legal issues as has Ms. Talbott. The Commission has had this Hearing Examiner do a lot of work for them over time and they find him to be fair. Mr. Phillips stated he respects very much the points Mr. McDermott has made and it also seems appropriate to him if one is not in the position to be represented by an attorney at a hearing that they are able to communicate their point of view. He still has some questions in his mind on this issue and made the motion to table this issue until the June meeting and give this some additional thought. Mr. McDermott stated he is in agreement with Mr. Phillips' recommendation and motion with the caveat that in the interim, between now and the June meeting, he will go back through the transcript and determine himself whether there was any presentation of the issues that Mr. Jackson presented today. If there was not any earlier presentation, he's going to come forward with the same motion he made earlier, which was to approve Mr. Blaydes recommended decision. Mr. Phillips added he will support that motion after his review of the transcript and he will also give it more careful attention during his work between now and June. Kelli Talbott added the way the rules are written and the way these recommended decisions come to the Commission, there are basically a few options. You can reject the recommended decision and write your own findings, you can't just reject it outright and say you don't like it, you have to do an order that contains your own findings and conclusions. You can adopt the recommended decision. You can modify a recommended decision but you have to articulate why you're doing that on what basis and that has to be in writing. Or, if you believe further proceedings need to be had on the matter, you can send it back to the Hearing Examiner with instructions that further evidence be taken on a specific issue or issues. Mr. McDermott stated if he is understanding counsel correctly, it would be within the Commission's purview to send back this matter to the Hearing Examiner for development of the issues Mr. Jackson raised today. Kelli replied yes you could do that. Mr. Phillips withdrew his motion to table and made a motion that this issue be returned to the Hearing Examiner as described by Kelli Talbott and have this back before the Commission by the June meeting. Kelli Talbott asked if they wanted to do that before they even looked at the transcript? Mr. Rossi replied he would like for Mr. McDermott to study this as he implicated he would, and perhaps they table and give Mr. McDermott time to look at this closely. Mr. McDermott replied that would be his preference and they want to be fair to all interested parties. Mr. Phillips agreed and put his motion to table this item back on and withdrew the motion he just attempted to make regarding the option counsel gave. Motion passed to table this item until the June meeting.

### **Approval of permit reinstatement of Ms. Jamie Collyer**

John Myers stated Ms. Collyer is a third offense drug offender and has successfully completed 2 certified alcohol and drug addiction programs since this occurred in June 2013. We have a letter from the Board of Stewards recommending she be returned to good status for her occupational permit since she has completed her suspension, which will end in June 2014. The recommendation also comes with a caveat that she have one additional clean test prior to

reinstatement. He recommends her permit be reinstated, with the caveat she obtain 1 more clean test prior to reinstatement. Mr. McDermott made the motion to approve the request with the condition that was just articulated, seconded by Mr. Phillips. Motion passed.

### **Proposed amendments to Thoroughbred Racing Rule**

Kelli Talbott stated there was a Rule Committee meeting in early May. Several items were on the agenda for discussion. The three items that were basically discussed that are in furtherance of the Mid Atlantic Racing Reforms were: Firstly, adoption of an RCI model rule that establishes a point system for medication rule violations. This point system attaches different numbers of points depending on the severity of the medication rule violation. When a permit holder gets so many points, it triggers an enhanced penalty. They are proposing to adopt, verbatim, that rule. Secondly, the rule pending right now, and anticipate filing in early June, has a controlled therapeutic substances list that RCI has promulgated that sets forth thresholds for certain therapeutic drugs that can be found in the horse in post-race testing. RCI has since updated that therapeutic substances list with a few changes. The Committee discussed the changes RCI has made to that list and want to incorporate those changes into the Rule for 2015. Lastly, RCI publishes periodically updates to the Uniform Classification Guidelines for Foreign Substances. This is a comprehensive list of every drug or substance that might be found in a horse in post-race testing. The substances are classified as to whether they are therapeutic or not therapeutic or some other gray area. RCI has recently added 2 new substances to that listing that the Committee wants to get into our Rule. Those items discussed are in draft form and prepared to go to Secretary Kiss today, if the Commission chooses, so they can go out for public comment for a 30 day period. Mr. Phillips made the motion to approve the proposed amendments to the rules as described by Kelli and start the process to get them implemented, seconded by Mr. McDermott. Motion passed.

Mr. Phillips commented there was some communications that took place regarding our lab and the fact that RCI's new proposals require you to have certified labs. He did not hear the outcome of that and would like to get it back on the table with the staff because it is a concern. One of the things he heard when he was at the RCI meeting was the importance of investigations. He would like to get informed as to our investigators, when they were last educated and what kind of educational training we are doing, not only for them but for all of our staff.

### **Public Comments**

Troy Hendicks stated he would like for money to be put into a sound system for the meetings. John Myers replied the estimates have already been received to make some changes to the audio system.

Ryan White, Wheeling Island, stated he was a little surprised the Commission did not follow through with their public comments made in reference to the capital improvement procedural rule. Nothing was relayed to him that there was any issue with them. He asks that the Commission reconsider their motion on that, at least with respect to the first. He understands counsel believes it is substantive, he would disagree, but the first one was the one they cared about the most. If it truly is understood then they believe that change should be made, and it would relieve a lot of heartburn for his client if the Commission would make that change in the first comment.

Roger White stated first of all he wanted to address the funding for the stakes races. Presently they are given \$100,000 to each track for the funding of the stakes races out of the

Greyhound Breeder Development Fund. Today he is requesting that the funding for the 4 stakes races in the future come from the Administrative account, which is the monthly 10% of the Greyhound Breeder Development Fund. The purpose of the Fund itself is to promote better breeding, training facilities and racing of greyhounds in the State. The 10% is an extension of the Greyhound Breeder Development Fund. The purpose is to administer and promote the greyhound development program. Secondly, he would like to ask that the funding for the stakes races be reduced as a result of the lacking of economics at this time. Thirdly, he feels like the requests for funding of stakes races should come from Breeders who participate in the Development Fund and the WV Greyhound Breeders Association and not from the tracks. He would like to see a process set up where the approval will come from the Breeders Association or those people that participate in the Breeder Development Fund. Mr. Rossi inquired of Roger White that he said it used to be otherwise from the way it is now, what changed? Roger White replied the administration changed. When he was President of the Greyhound Breeders Association, Ms. Lacy used to forward copies of the stakes proposals to Breeders Association for approval prior to the Racing Commission approving those, therefore, any comments or recommendations were sent back to the Commission at that time. Mr. Rossi asked John Myers to look at this issue. The other issue concerning taking the money from the Administrative Fund needs to be looked at and will try to get a definitive answer by the June meeting.

Wyatt Hanna stated he wanted to address the \$2 million set aside by the Racing Commission for the construction and maintenance of training track facilities. This was not raised in the Burdette litigation for a couple of reasons. When the Burdette litigation was initially instituted this bill had not passed the Legislature. The first time it was enacted was 2007 and at that time they allocated up to \$1 million. The law was subsequently amended in 2008 to include the \$2 million. As of June 30, 2009, there have been no expenditures made for the construction and maintenance of training tracks. Rules were promulgated in 2010. Here it is 2014, a decision needs to be made by this Commission as to whether or not they are going to proceed with construction of the tracks. If they decide not to, it's our position that money needs to be put back in the Breeding Development Fund and re-distributed as supplemental purses. The monies were apparently taken out of the account and put into a special account. It's his legal position the Racing Commission did not have the legal authority to do that, unless they had first approved the construction of the training track facilities. It's their position if the Racing Commission's not going to use the money it needs to be put back into the Greyhound Breeding Development Fund and re-distributed in accordance with the statute. He's requesting today that some action be taken by this Commission.

Nelson Robinson stated the Hancock County Board of Health is under consideration of a smoking ban. They've had a couple hearings and are going to meet again in July, but it will seriously impact the revenue picture at Mountaineer Racetrack. The Derby is August 2<sup>nd</sup> and they would like to invite the Commission to consider having their August meeting on that Friday prior to the Derby at Mountaineer.

Sam Burdette stated in response to a couple of Roger White's comments, the Association did request the \$200,000, he's not sure what year but knows it was after 2006. They even submitted a pay schedule and it has never changed since then. The tracks are using that same schedule and have been for years. If this needs to be revised, let him know.

Mr. Rossi asked when Hancock County is voting on the smoking ban? Nelson Robinson replied the next meeting of the Hancock County Board of Health is early July. Mr. McDermott asked how does the proposed Hancock County ban compare to the ban that was effectuated by the Ohio County Board that effected Wheeling Island? Nelson Robinson replied he doesn't think the Ohio County ban was a total ban, he thinks there were some provisions where they had some exemptions. The recommendation for Hancock County is a total ban. In 2008 when the ban in Kanawha County was implemented, the revenues at Tri-State decreased \$16 million and has remained that over the past 5 years.



### **Next meeting**

The next meeting is tentatively scheduled for June 17<sup>th</sup>.

### **Executive Session – Personnel issues – Hiring of replacement judge for Wheeling Island and discussion of permanent Executive Director**

Motion was made by Mr. Phillips to go into Executive Session, seconded by Mr. McDermott. Motion passed.

Motion was made by Mr. Phillips to come out of Executive Session, seconded by Mr. Rossi. Motion passed.

Motion was made by Mr. Phillips to accept the hiring of the recommended replacement judge at Wheeling Island, seconded by Mr. Rossi. Motion passed.

### **Adjournment**

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