

**MINUTES  
WV RACING COMMISSION  
Monday, October 19, 2015  
WV Lottery Conference Room**

The WV Racing Commission met on October 19, 2015 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 September 22<sup>nd</sup> minutes**

The Commissioners and legal counsel received the minutes from the September 22<sup>nd</sup> meeting prior to this meeting. Motion was made by Mr. Phillips to approve the minutes, seconded by Mr. McDermott. Motion passed.

**Executive Director's Report  
Joe Moore**

Joe Moore stated the FOIA report, which is a 3 month running report, shows 8 requests received, 1 of which was received in September from Grey2K. All requests have been answered and closed as of September 30<sup>th</sup>.

The Joint Interim Committee on Finance will meet this afternoon at 3 pm. He previously stated the Racing Commission would not have a presentation in that meeting but has since learned the Commission has been requested to make a brief opening. Representatives from Spectrum will deliver their report and make a presentation on the Economic Impact Study of Greyhound Racing that was conducted in January. It is his understanding there are several interests from the Greyhound industry that have been invited, as well as Dr. Deskins from WVU regarding the Economic Impact Study performed by WVU.

The second posting for the Charles Town Investigator position is now closed to receive resumes. The Racing Commission received approximately 25 resumes. He is currently reviewing those and it is his intention to get the applicable resumes narrowed down and sent out for review. If it is the Commissioners' wishes, he and Kelli Talbott are planning on being in Charles Town for these interviews possibly when she goes up for a Hearing on November 19<sup>th</sup>. Mr. Phillips asked if the Chief Steward will be involved in these interviews? Mr. Moore replied it is his intention for the Chief Steward to be involved.

The 29<sup>th</sup> running of the Breeders Classics occurred on October 10<sup>th</sup>. The Charles Town HBPA had several events that were sponsored and hosted for the WV Legislature and there were a handful of Members in attendance. The Commission currently has the contract that needs to be renewed for calendar year 2016. As the contract is reviewed, if there are any recommendations they will be presented at a future Commission meeting.

**Auditor's Report**  
**Becky Carnefix**

Becky Carnefix stated there were no capital improvements submitted for reimbursement during the month. Included in the Commissioners' information is a quarterly status report as of September 30, 2015 on the outstanding projects approved and the funding available for each of the four tracks.

For supplemental purse awards, 2QFY15 claims were sent to the Auditor's Office for payment last week. For Charles Town, total eligible claims were \$454,408.20 and they were paid out at the full 10%. For Mountaineer, total eligible claims were \$47,778.10 and Funds Available were \$11,896.73, resulting in a payout of 2.49%.

She has provided the Commissioners with a copy of her audit schedule for the remainder of FY'16 for their review.

**Accountant's Report**  
**Joe Moore**

Joe Moore stated live racing declined nearly 9% YTD compared to FY'15. Simulcast handle decreased nearly 2.75% compared to FY'15. Export handle decreased 7% compared to FY'15. In-state handle is down 5.36% compared to FY'15.

The first quarter FY'16 Budget vs. Actual comparison is included in the Commissioners information. In those comparisons the Racing Commission is, budget wise, slightly below 25% through the first quarter so we are on target for the FY'16 Budget.

The final audit was due to FARS on October 15<sup>th</sup>. There was an issue on the State Agency audits for opening balance reports coming out of the State due to the changeover to the new WVOasis system. Those reports have not yet been released. We are not the only State Agency that has not met that deadline. When a final audit has been received and is ready for review and approval, he will let the Commissioners know.

**Legal Update**

Kelli Talbott stated she thought the Pari-Mutuel and Thoroughbred Rules were going to be on the October Interim schedule but she was notified it will instead be the November Interims. She will be in Charles Town on November 19<sup>th</sup> for a hearing on a case in which the Stewards fined a permit holder for an altercation on the backside and the permit holder has appealed the \$500 fine. The Reynolds case will be argued before the Supreme Court on November 3<sup>rd</sup>.

**Approve Split-Sample testing laboratories**

Joe Moore stated with the changes that were made in the primary laboratory, the Commission desired to approve a listing of split-sample laboratories in cases where the trainers want to send out splits. The Commissioners have before them 4 RMTCC accredited laboratories for their choice in the split-sample testing. One laboratory in Texas has been left off the list because he was unaware they had received preliminary accreditation and should be added to the list, bringing the total number of available labs for split-sample testing to 5. Kelli Talbott stated she and Mr. Moore have been discussing the split-sample situation because despite the fact there are a number of labs on the list that are now accredited and can theoretically do split-

samples, there are problems with getting the labs to do them. And the ones that do them, there is a substantial delay in getting them done. They have discussed ways in trying to resolve that in some way and perhaps getting a Memorandum of Understanding with one or more of these split-sample labs that would maybe resolve the issue. Chairman Rossi asked if the Commission is to approve these 5 labs and then authorize Ms. Talbott and Mr. Moore to work up a Memorandum of Understanding? Ms. Talbott replied these 5 labs are accredited by RMTTC and our Rule requires split-sample testing be done by an accredited lab. There have been issues with some labs saying they won't do the work, they don't have the capacity, and some say they will do it but it's going to be 30 days before they can do the split-sample. Mr. Moore added the MOU will be designed to have the contractual details built into it that is within a reasonable timeframe. The Commission's Rule says 7 days that a split has to be sent out and there are labs saying they cannot get to that testing work for 30 days or more. Ms. Talbott stated one of the concerns is our Rule does state we will ship the sample within 7 days of the request of the trainer for a split-sample test and if the lab cannot get to the test until 30 days and the sample would have to be re-frozen, would this compromise the integrity of the sample? We are reluctant to ship it until they are ready to test it so we don't do anything to compromise the integrity of the sample.

Mr. Phillips asked could RMTTC help us in any way to address this issue? Ms. Talbott replied that's a good question and she and Mr. Moore have discussed that. Motion was made by Mr. Phillips to approve the 5 recommended labs and to further authorize Ms. Talbott and Mr. Moore to work together and perhaps negotiate with two or more of the labs so we have some sort of Memorandum of Understanding to ensure our needs are met, seconded by Mr. McDermott. Motion passed.

### **QA Testing Program**

Joe Moore stated there are 2 draft versions of a Quality Assurance Testing Program before the Commission for their review. The first version is an audit lab only and that would be an instance where on a random basis the employees at the Test Barns would split the sample 3 ways and at the same time they send out the sample to the primary testing lab to be tested, they would send a second batch of the exact same sample out to an audit lab to be tested as well. This lab would be working under a contract with the WV Racing Commission. The Racing Commission would assume the costs of those tests and the shipping costs as well. He has spoken with the Pennsylvania Equine Toxicology Research Laboratory who have agreed to be an audit lab in a Quality Assurance testing program for the Racing Commission at a quoted cost of \$250/screening, with additional costs if quantitative data is necessary.

The second option derives from the idea of audit the tester and it involves 3 laboratories. There is the primary laboratory, the audit laboratory and a control laboratory. With so few RMTTC accredited labs out there, the idea is you need a third lab to assure that the audit lab is not spiking the sample with a substance in an effort to get the Commission to terminate its contract with its current laboratory. Ideally all 3 labs would come back with the same results but theoretically 2 of them will most definitely come back with a same conclusion if there is a variance in one of the laboratories. He's only received confirmation from Pennsylvania at this time, but is discussing with other labs as well in the instance this is the option the Commission desires. This testing would be done on a random basis. He's talked with several other Racing Commission's over the past couple of months and most of them do not currently have Quality Assurance testing programs in place or designed like the one Indiana had in place a few months back. There has been discussion among those Racing groups with the RMTTC to provide some Quality Assurance type program as well. Right now that discussion only exists in the form of sending negative tests back out to an audit lab to see if they still come back negative. In that

design, you are basically paying to have a negative test re-tested. In the design he is trying to put forth, it's truly a second blind test to come back for a Quality Assurance purpose.

Mr. Phillips asked Mr. Moore which one of the options is he recommending? Mr. Moore replied after speaking with representatives in the industry, it's been made clear to him that option 2 is truly a more conclusive Quality Assurance program because there is that third party laboratory involved. The consideration here is not only for the integrity of the sport but the Racing Commission's Administrative dollars are going to pay for this testing. He would recommend, with it being done on a random basis, that option 2 is a more conclusive and complete program style. Mr. Phillips stated the cost of option 2 is not finally determined at this point, is that correct? Mr. Moore replied it has not because he has not completed a third laboratory to be involved in that program.

Mr. Phillips made the motion to adopt option 2 for the reasons stated by Mr. Moore, but also with the continued emphasis on the whole drug business in the industry we need to be a leader and not a follower. Seconded by Mr. McDermott. Motion passed.

Mr. Phillips stated he would like to re-emphasize that hopefully we are doing some out of competition testing at both tracks. Kelli Talbott stated we have a Rule that allows it but to her knowledge we are not doing any. Mr. Phillips replied there needs to be some discussion about that with the tracks because some out of competition testing needs to be done. Chairman Rossi asked Mr. Moore to follow up on this issue.

### **Request to Reinstate Occupational Permit – Scooter Davis**

Kelli Talbott stated Mr. Davis was in front of the Commission almost two and a half years ago. Mr. Davis was suspended for six months for multiple drug positives that came back at the same time at Mountaineer and Charles Town. He had a lengthy medication violation history prior to these drug positives which factored into the penalty that was imposed upon him, which was the six month suspension. During that six month suspension he was caught handling horses across the street from Charles Town racetrack, such horses being scheduled to run under another trainer's name (Doug Shanyfelt). When Mr. Davis came in to get his license back after the six month suspension, the Stewards denied the issuance of that permit due to the program trainer situation which had arisen during his suspension. He then appealed the Stewards denial and a hearing was held in front of the Hearing Examiner. The Hearing Examiner upheld the Stewards' decision not to issue Mr. Davis a license. It's now been over two years since he's been without a license in West Virginia. He has now requested that his permit be reinstated and there's been an offer from Mr. Davis to do so effective March 2016. At that point he will have served essentially 3 years without a permit as a result of the program trainer issue.

Danny Wright, Chief Steward at Charles Town, stated they collectively talked back and forth with the Board of Stewards at Mountaineer and they took a vote on it and it was determined that 3 years for the reason Mr. Davis was taken his license away for the program trainer situation sent the right message. They also had conversations with Mr. Davis in front of both Boards of Stewards and he did express that he legitimately seemed to be remorseful and regretful for his actions of the past and they just felt 3 years was long enough. Possibly give him a restricted license for 1 year and see how he handles himself and take it from there.

Jim O'Brien, Chief Steward Mountaineer, stated they have discussed this several times and talking with Mr. Davis they feel the same as Mr. Wright stated.

Mr. Phillips stated in the documentation the Commissioners were given for this meeting, there is some paperwork that is not dated regarding the permit application. In that document, page 42 is undated so he doesn't know when it was written. It says very clearly in this document that the Stewards at Mountaineer and Charles Town recommend that Mr. Davis not be issued a

permit at this time. He was given this morning an email from the Stewards dated October 17<sup>th</sup> and in essence it says what Mr. Wright stated and that he regrets his past and the Stewards recommend that he be granted a permit conditional for one year. He doesn't know when the first document was dated but what changed? Mr. McDermott stated he was about to ask the same sort of questions.

Kelli Talbott stated when Mr. Davis first came into the Stewards office at Charles Town and submitted an application and the wheels set in motion to gather the appropriate information to come in front of the Commission, that permit applicant form was filled out and the Stewards filled out the section saying they recommended denial. Then in the last couple of weeks Mr. Davis' attorney contacted her and wanted to know if the Commission would agree to give Mr. Davis a license effective March 2016, which would put it three years. At that point she conveyed that information to the Stewards that this proposal was on the table from Mr. Davis' attorney and that she was going to have to make sure the Commission knew. She asked them to weigh in on what they thought of that offer. Then they sent the email that Mr. Phillips referenced earlier.

Chairman Rossi stated he would like for the Stewards to speak to the underlying factors that resulted in the change of their recommendation. Mr. McDermott added he would also like for them to speak in respect to the restriction that was mentioned.

Danny Wright stated initially there was a feeling in their first vote that maybe this wasn't the time to allow Mr. Davis be reinstated but then when it was proposed that he was going to apply and ask to be accepted in March it would have put him at just about 3 years, they collectively agreed that it would be a 3 year penalty that was strong enough to send the right message to Mr. Davis. They did not render that decision collectively until they had the opportunity to speak with Mr. Davis, ask him some questions and get his true feelings on how he really felt about being regretful of his past. When he said restricted, he should have said a probationary license. Give him a year to be under much scrutiny and should he go back to his old ways, or whatever the case may be, then action can be taken against his permit.

Mr. Phillips asked when this permit application was made? Chairman Rossi, in addition, inquired if Mr. Wright could give them an idea as to when they made their first decision. Mr. Wright replied he thinks it was several months ago when Mr. Davis sent someone in with his application and that's what got the ball rolling. Kelli Talbott stated the actual permit application form was probably completed a couple of weeks ago, around September 22<sup>nd</sup>.

Kelli Talbott stated she doesn't know what kind of restrictions we'd be imposing. She doesn't know what a probationary license means or what the Stewards envision that looking like. Since she's the one that usually has to draft the Order that specifies the condition and terms of probation, it would be something the Commission would have to decide on. As she understands it Mr. Davis is in Florida at this point and he cannot get a license in Florida because he doesn't have a license here. He has to get right with West Virginia before he can get a license in any other state. He may or may not run horses in West Virginia once his license is reinstated here. The most we typically do if someone is suspended in another state is we reciprocate their ruling, we don't issue our own, so she doesn't know what the terms of probation would be. Mr. McDermott stated what he's hearing is that we defer this item and gather that sort of information and perhaps more information. Chairman Rossi stated he's inclined to agree with Mr. McDermott.

Mr. Davis stated he is truly sorry. It has been almost 3 years and it's basically starting completely over. He is truly sorry for the mistakes he made in the past and he's just asking for one more chance to show everybody he's changed and he won't let them down and make the same mistake again.

Mr. McDermott made the motion to defer this item until the further information wanted is received, more explanation about the decision made by the Stewards is received and defer

Counsel the opportunity to flesh out the terms of probation that might be appropriate. Seconded by Mr. Phillips. Motion passed.

### **Request to Reinstate Occupational Permit – Mark Breeden**

Joe Moore stated Mr. Breeden is before the Commission for reinstatement of his permit due to a third time drug and alcohol offense. The Rules require the third offense to come before the Commission to ask for reinstatement. All of the background material is included in the information provided to the Commissioners. Chairman Rossi stated the Stewards recommended the permit be reinstated with conditions for testing at the discretion of the Board of Stewards. Kelli Talbott added the Stewards have the authority under the existing Rules to do random testing on anybody now.

Mr. Breeden stated he is sorry for what he did and he was wrong. He is hoping to get another chance to show the Commission he was wrong. He has stopped smoking marijuana and would just like another chance.

Motion was made by Mr. McDermott for approval of the request, seconded by Mr. Phillips. Motion passed.

### **Receive Report from Racing Committee**

Chairman Rossi stated he wanted to commend Jana Tetrault for volunteering to Chair this Committee and make the presentation. He also stated he wanted to commend the Committee members who worked hard on this report as well.

Jana Tetrault stated the Commissioners have been presented with the report on the West Virginia Racing Industry titled Reflecting, Reimagining and Restoring. The Commission gave them the task to study their industry and provide suggestions in a resolution in June. During this time, more than 20 representatives worked in sub-committees to look at strengths and weaknesses. This caused reflection on where we were as an industry, where we are now, and where we would like to be. The goal is to provide suggestions for stabilization of the industry, an industry that clearly provides jobs and economic stability to the communities where we are located. The committees looked at the economic growth and revenue enhancement, marketing, modernizing the Code, and racing calendars and schedules. The recommendations provided are the highlights from these meetings. They are just some of the many ideas the committees discussed. We hope this collaboration will be the beginning of the process for growth and stability in our industry. They want to thank the WV Racing Commission for their resolution to study the industry and she wants to thank all of the Committee members that gave their time and talent to see this reports completion.

Mr. Phillips stated he wanted to join with the comments of Chairman Rossi and also wanted to thank Chairman Rossi and Commissioner McDermott for supporting the resolution that brought about this activity. He wanted to particularly thank Jana Tetrault who has given a lot of time and the members of the Committee and also express his appreciation to them for the time they gave to this.

Mr. McDermott stated he would join with Commissioner Phillips in thanking everyone for their great efforts. Hopefully what we did will be well received and have a constructive benefit.

Randy Funkhouser stated he would like to thank the Legislature for passing the resolution to look into this industry. He would particularly like to thank the Racing Commission for all of the hard work that has went into this and the thought process. He hopes this is an exercise that will continue under their leadership to encourage them to get together and to make this industry stronger.

## **Public Comments**

Joe Funkhouser stated he would like to thank the Commission for taking the lead with this study to analyze and look to the future on where we're going based on where we've been. His comment today is on the Accountant's Report. This report analyzes the handle and looks at year over year. He would like to make a suggestion to the Racing Commission to provide a little more context to those numbers. For example, when comparing live handle this year to last year, what has changed this year from last year? There are fewer race days this year than last year, the Haircut Bill, etc.

Mr. Phillips added he had a similar discussion with Mr. Moore prior to this meeting and thinks it's vital to do that suggestion.

## **Next meeting – tentatively November 17, 2015**

The next regularly scheduled meeting is tentatively scheduled for November 17<sup>th</sup> and it will be at 10 AM.

## **Executive Session – Interview for and Discuss Executive Director Position**

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 Chairman Rossi. Motion passed.

## **Adjournment**

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