

MINUTES
WV RACING COMMISSION
Tuesday, June 17, 2014
WV Lottery Conference Room

The WV Racing Commission met on June 17, 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 May 20th minutes

The Commissioners and legal counsel received the minutes from the May 20th meeting prior to this meeting. Mr. McDermott moved to accept the minutes, seconded by Mr. Phillips. The Commission approved the May 20th minutes.

Executive Director's Report
John Myers

John Myers stated there was an issue at Wheeling Island during the race on May 26th, where they capped out the trifecta for that day and forced payout was paid on June 7th. The cap was \$10,000.

There has been an outstanding permit action on Dean Miner and after discussion with Counsel, they have come to an agreement that this should be dismissed from the docket. Kelli Talbott added there was a ruling issued against Dean Miner some time ago related to health certificates for dogs and has been pending on the docket for a while and she spoke with Mr. Myers and the Board of Judges at Wheeling Island and at this point they were willing to resolve the issue by withdrawing the ruling if Mr. Miner would withdraw his appeal to the Commission. She has sent a proposal to Mr. Miner's attorney to do that and is waiting to hear back from his attorney.

Timeline for the RCI ruling and license database was provided to the Commissioners. Some benefits to this are not only that it allows us to share rulings and licenses issued between the tracks in West Virginia but we will also be able to work with other states. This will clear up one of the biggest issues we've had in our processes by allowing tracks to see licenses issued at other tracks. Approximately 50,000 records have been uploaded in the past week on the licensing side and we are making good progress. A report was provided to the Commissioners to show them how to access this database. Mr. Phillips asked if the September 1st deadline will be able to be met without too many complications? Mr. Myers replied yes, unless something totally out of the ordinary or unexpected would occur. Mr. Phillips added he appreciates the progress and the report and he will continue to monitor progress. Mr. McDermott added the report provided to the Commissioners was an excellent work product and he could tell a lot of work had been put into it.

The FOIA report indicating FOIA's received within the last 3 months and their status was provided to the Commissioners.

Mr. Phillips inquired as to the status of the medical claim the Commission was checking into for reimbursement. Kelli Talbott added it was a backstretch worker that was injured and the claim was to be paid from the injury fund. Several meetings ago this item was on the

Commission's agenda and was approved for payment. Chairman Rossi asked Mr. Myers to look into this issue.

Auditor's Report and FY 2015 Schedule of Audits Becky Carnefix

Becky Carnefix stated the capital improvements update was Mardi Gras submitted 2 projects for reimbursement, and was paid, during the month totaling \$139,625. The detail for those projects was provided to the Commissioners in their binders.

Supplemental purse awards update – First quarter FY14 claims, covering race dates July 2013-September 2013, are in the process of being reviewed. 14 day letters requesting additional information for residency verification will be mailed out within the next week.

The proposed audit project schedule for FY'15 was provided to the Commissioners for their review and approval.

Accountant's Report Joe Moore

The accountant's report was provided to the Commissioners in their binders.

Legal Update – Attorney General's Office

Kelli Talbott stated one item that came in since providing the Commissioners with her written report is the Mountaineer Stewards were sued in the Circuit Court of Hancock County with regard to an underlying dispute over the ownership of a horse. The Stewards made a determination of who they believed to own the horse and that resulted in this legal proceeding by Blue Spruce Farm and Joe and Kate Painter. They have filed a claim saying the Stewards were negligent in determining ownership in the manner in which they did. Kelli has sent this matter to BRIM for a coverage determination and just got notification that it is covered by the State's insurance and they have asked her to handle this.

There are currently 3 ejection appeals pending the scheduling of a hearing. The Grove case, in which the constitutionality of the absolute insure rule is contested, is still in front of the Supreme Court.

The Thoroughbred racing rules with the amendment that passed the Legislature earlier this year have now been filed and go into effect July 9th. The proposed amendments for this upcoming Legislative session have not been filed yet for public comment due to not receiving them back from Secretary Kiss' office. This puts the Commission in a tight bind time wise and may have to hold a special meeting. Chairman Rossi asked what happens if we don't have back in time to post for an emergency meeting? Kelli replied the meeting could be noticed for July 25th now, which is the date needed to proceed with the filing.

The Dibbern case is proceeding.

Capital Improvement Request – Hollywood Casino - \$27,300.91 for construction and audio visual equipment for a Mezzanine Betting Parlor

Capital Improvement Request – Hollywood Casino - \$16,533.00 for replacement of HVAC units in the Crows Nest and Mutuel Betting Operations rooms

Becky Carnefix stated the first request was to relocate the Racing VIP Betting Parlor to the Mezzanine level. The second request was to replace HVAC units in the aforementioned areas. The total of both requests is \$43,833.91 and she recommends both projects for approval. Motion was made by Mr. Phillips to approve the projects, seconded by Mr. McDermott. Motion passed.

Request by Hollywood Casino to not make up 20 racing days cancelled due to inclement weather

John Myers stated we have received a letter from Hollywood Casino stating they have 20 days they've missed, up to this point this year, due to inclement weather, that they are asking not to make up. There is a process we have to follow when they go below a certain number of racing days for the year. Currently we have to provide notification to the Mutuel clerks, to the track and also the HBPA at the track. If we get an objection we have to hold a hearing and go through the same process we did for Mountaineer. As of today, this is being introduced to the Commissioners and we have 72 hours to send out the notifications. Immediately after the meeting we will begin the process.

Mountaineer Casino, Racetrack and Resort request to conduct Mystery Voucher Promotion

Rosemary Williams stated the request is to conduct the Mystery Voucher promotion on August 2nd and 3rd. This has been a good promotion in the past and has been well attended. Motion was made by Mr. Phillips to approve the request, seconded by Mr. McDermott. Motion passed.

Presentation of Eldorado – MTR Gaming Merger

Louis Southworth, counsel for Eldorado, stated there are two companies, Eldorado and MTR Gaming, that are combining under a newly formed parent holding company which will be a public company by the name of Eldorado Resorts Inc. Mountaineer Park, as a corporation, stays in tact, MTR Gaming, as a corporation, stays in tact. The only change is a change in the ownership of MTR. This transaction requires a lot of approvals. The newly formed holding company will be a public company and has filed with the Securities Exchange Commission. They need regulatory approval in all of the states that either of the companies operate in. The Lottery Commission approved the transaction at its meeting last month. They expect the closing date to be in the third quarter of this year. The combined company is a much stronger financial company than the present companies.

In December they filed a request with the Commission, in the alternative, because Mountaineer Park stays in existence, MTR stays in existence, they do not believe the Racing laws in WV require approval, however, they requested an alternative to either approve the transaction or simply provide a letter that says approval is not necessary.

Kelli Talbott stated if she's looking at the Code that deals with Racing licenses and what information the Commission has to have to issue a license, it states if the applicant is a corporation, we have to have the full name and address of each officer, director, and director thereof. Are the officers and directors of MTR going to remain the same that we've already given the license to? Mr. Southworth replied yes. Motion was made by Mr. McDermott authorizing a letter stating no approval is necessary, seconded by Mr. Phillips. Motion passed.

Capital Improvement Request – Mardi Gras Casino - \$100,200.00 for renovation and repairs to kennel compound

Becky Carnefix stated she recommends this project for approval. Motion was made by Mr. McDermott to approve, seconded by Mr. Phillips. Motion passed.

Discuss Capital Reinvestment Procedural Rule

Chairman Rossi stated in the previous meeting, a Capital Improvement Procedural Rule was adopted. It was not the intent for that to offset any previous agreements that may have been made by a prior Commission, specifically with Wheeling Island. This needs to be re-addressed in some form by saying we exempt the Wheeling Island process. Mr. Phillips stated at the previous meeting it was obvious, and he thought understood, when the public comments were received that the one Capital Improvement matter that was outstanding would not be impacted by what was approved, however, there is now some question to that. There is a resolution that can be adopted to take care of the concerns on this matter. John Myers read the resolution. **(See attachment to minutes for resolution.)** Motion was made by Mr. Phillips to adopt the resolution, seconded by Mr. McDermott. Mr. Phillips asked counsel if this resolution addresses the issue and resolves it? Kelli Talbott responded she believes it does and the new rule goes into effect July 11th. Motion passed.

State of West Virginia Supreme Court of Appeals Memorandum Decision in the case of John Michael Schweizer

Kelli Talbott stated she sent a copy of the opinion to the Commissioners. Mr. Schweizer's permit was revoked by Wheeling Island for allegations of hitting a dog in the face with his fist. It was appealed to the Circuit Court of Ohio County, and they upheld the revocation. It was then appealed to the Supreme Court and they have now upheld the revocation in this Memorandum Decision.

Recommended decision of hearing examiner in the ejection appeal of Angelo Jackson

Kelli Talbott stated this item was on the agenda for last month and the Commission tabled the matter to review the record at their leisure. The issue was Mr. Jackson had a felony conviction and that was the basis on which the track had ejected him. Mr. Blaydes recommended the ejection be upheld with the proviso Mr. Jackson be allowed to request re-entry in 90 days.

Mr. Jackson stated Mr. McDermott was supposed to examine the transcript to see where he provided information and questioned their witness to the fact of having multiple other felons

on the grounds. Mr. McDermott stated he did review the transcript and did not really feel there was a basis for withdrawing the motion he made at the previous meeting, which was to affirm the recommended decision of Mr. Blaydes. Mr. McDermott then renewed his motion from the previous meeting, which was tabled to allow review of the transcript. Mr. Phillips first made a motion to remove the item from the table, seconded by Mr. McDermott. Motion passed. Mr. McDermott made a motion to adopt the decision of the hearing examiner, seconded by Mr. Phillips. Mr. Phillips stated what is being done here is starting what he considers to be a round robin. Mr. Jackson can come back and they can have another one of these instances in front of them again after a certain period of time and can be dealing with this for some time. Kelli Talbott replied that's possible when someone is ejected but since they've started having ejection appeals, and she estimates about 15 of them, there hasn't been one yet come back to the Commission. Mr. Phillips added Mr. Jackson was granted by the Commission a conditional permit some time ago, so it seems to him the Commission felt he was ok to give a conditional permit to, so why shouldn't they consider the possibility of overruling this recommendation and let him go back on the track? Kelli Talbott replied the Commission has the authority to overrule a hearing examiners recommendation, but you have to issue a recommendation that item by item makes the findings a fact of conclusion of law to support that action as to why the hearing examiner was in error and why you believe you want to overrule the decision. Mr. McDermott asked Kelli to briefly summarize the status of the law in relation to us permitting someone and that not meaning the track has to accept them as an employee or allow them on the grounds. Kelli stated there's a difference between the Commission's decision to give a permit to someone and the standard the track has to meet to decide whether they want someone on the premises. There's a different standard the track has to meet to eject someone than what we deal with as far as permits and taking permits away. There are some states that have statutes that say if someone has a permit in good standing they get on the track. We don't have that statute. Mr. McDermott added that ultimately the track determines who comes on the premises and who doesn't, under the current status of our law. Kelli added they do determine the status but when they eject someone their decisions are reviewable by the Commission and there may be circumstances where the recommendation would be the track has not demonstrated the person engaged in conduct to justify the ejection. Mr. Phillips stated it seems to him that once we give a permit we then become the referee and it seems like the issue should be between the permit holder and the track to resolve in the appropriate forum. Kelli stated our rule that gives permit holders the right to appeal ejections is a rule, not a statute, but our legislature, since they pass those rules, states rules have the force and effect of a statute. Mr. Phillips added maybe we should give some consideration to finding out what goes on around the country and maybe this is a rule we should re-visit. Kelli has taken a comprehensive look at what every state is doing. There are several states that look exactly like we do, there are some states that have a statute that says if you have a permit you get on the track and that's the end of it. Some states don't allow review of ejections at all and some do. It varies from state to state.

Chairman Rossi stated he does not feel we are at the point today to overrule the recommended decision of the hearing examiner. Mr. McDermott stated he made the motion to affirm the hearing examiners recommended decision and he would not have made that motion if here were not comfortable with the decision given the current status of the law. Mr. Phillips then made a motion to table this for one more month to think this through further. Mr. McDermott said he will not second that motion. Kelli stated tabling this item puts it in August and August is the date when he could come back before the Commission with another appeal, unless the Commission would choose to change the August date in the recommended decision, and they can change that date.

Mr. Jackson stated if the Commission doesn't overturn the hearing examiners decision then it's going to be the middle of next year when he'll get a hearing. Mr. Phillips asked why would it take another 90 days to get a hearing? Kelli stated it wouldn't necessarily take another

90 days. They travel to Charles Town for these hearings and Mr. Blaydes is a busy, practicing lawyer. Then you have to consider Mr. Jackson who may or may not have a lawyer, and PNGI that has counsel. An attempt is made to pick a date that works for everyone's schedules at the earliest opportunity. It may not take 90 days but it's not an immediate hearing. There are processes that take place that do consume some time. Mr. Phillips asked if there was any way we could hold the hearing in our offices, or whatever it takes, to expedite things and have a hearing in 45 days? Kelli stated they would make every effort they could to expedite it.

Mr. Phillips asked if the motion needed to be amended to make certain it reflects an expedited hearing not less than 45 days? Mr. McDermott said he's fine with that and agrees with sooner than later. Motion made by Mr. McDermott was to uphold the hearing examiners decision with the amendment to propose to expedite the process for the hearing. Mr. Phillips seconded the motion with the amendment for an expedited hearing to be completed no later than 45 days from today. Kelli added this is presuming Mr. Jackson is going to ask to be let back on the track in a timely fashion and the track says no. Motion for the amendment was passed. Motion to accept the hearing examiners decision was passed.

Recommended decision of hearing examiner in the ejection appeal of Janene Watson

Kelli Talbott stated the next two items on the agenda were separate ejection appeals received by the Commission. The hearing was consolidated with the understanding that the hearing examiner would issue separate opinions, one for Ms. Watson and one for Mr. Watson. Ms. Watson has at the time of Mr. Blaydes' recommended decision been ejected from Charles Town racetrack close to 9 years related to alleged financial irregularities at the HBPA. Mr. Blaydes recommends that Ms. Watson be put back on the property as soon as the Commission would order to do so because he believes the ejection term she served is sufficient for any misconduct she may have committed. Mr. McDermott made the motion to affirm Mr. Blaydes decision, seconded by Mr. Phillips. Motion passed.

Randy Funkhouser stated rule 39-1-h of your rules says the association's racing secretary shall not accept an entry from spouses while either is disqualified from racing. For the purpose of this rule, spouses shall be considered as one. He added if Ms. Watson is allowed back on to train horses and Mr. Watson is not allowed back on, that is a contradiction to the rule. He added from an HBPA standpoint, they were both elected as honorary members of the HBPA within 30 months of this other decision and all of the debt has been repaid.

Recommended decision of hearing examiner in the ejection appeal of Richard Watson

Kelli Talbott stated the recommendation is the ejection be upheld and that Mr. Watson be allowed to ask for re-entry in 1 year. He has also been off the track for approximately 9 years at this point. Mr. McDermott made the motion to affirm the hearing examiners decision, seconded by Mr. Phillips.

Mr. Phillips stated that the comments just made by Mr. Funkhouser certainly changes his view and he thinks our rule needs to be looked at. Kelli Talbott added that rule has been on the books probably since the 1930's and is a rule that probably most other Racing Commissions have. Chairman Rossi stated in respect to what Mr. Funkhouser said, he doesn't have a response to it. Kelli added this did not come up in the hearing in front of Mr. Blaydes. This isn't something that was considered nor evidence built on. She does not believe that Mr. Blaydes intended that Ms. Watson be precluded from entering horses if Mr. Watson still

remained ejected from the track and probably was not aware this rule would come into play because it wasn't brought up. Chairman Rossi concurred and said that is his concern in taking action on this today. He would like to look into the effect of this rule.

Mr. McDermott rescinded his motion and Mr. Phillips rescinded his second of the motion. Mr. Phillips made the motion to table this item to allow examination of the effect of this rule, seconded by Mr. McDermott. Motion passed.

Ms. Watson stated as far as this rule is concerned, it does her no good to be allowed to be back on the track if her spouse is still ejected.

Next meeting

The next meeting is tentatively scheduled for August 1st at 1:00pm at Mountaineer Park.

Public Comments

Janene Watson expressed thanks to Kelli Talbott for all the work she has done for all permit holders. Mr. McDermott added the Commission wholeheartedly agrees.

Jana Tetrault stated she has been working with Mike Lloyd and they are in the process of interviewing possible investment managers for the retirement fund. It has been quite a lengthy process but they are moving forward. They should have a recommendation by the next meeting for the Commission to look over.

Adjournment

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

RESOLUTION OF THE WEST VIRGINIA RACING COMMISSION

It is resolved that on May 20, 2014, the West Virginia Racing Commission adopted procedural rules regarding the reimbursement of Capital Reinvestment Projects;

Whereas, the West Virginia Racing Commission on January 29, 2002, previously approved a project of Wheeling Island Racetrack and Casino as eligible to be reimbursed as capital improvements, for a period of time, in accordance with Section 19, Article 23, Chapter 19 of the Code of West Virginia, as amended;

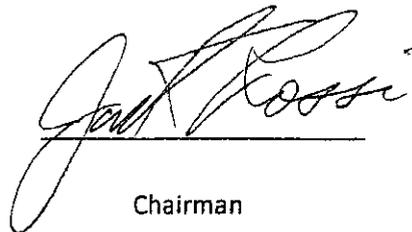
Accordingly, Wheeling Island Racetrack and Casino has requested that the West Virginia Racing Commission provide that the previous approval of such project and all future requests for reimbursements related to such project be exempted from the requirements of the procedural rule adopted on May 20, 2014; and

Further, the West Virginia Racing Commission has determined that the procedural rule adopted by this Commission on May 20, 2014, does not apply to any reimbursements requested by Wheeling Island Racetrack and Casino in relation to the project approved on January 29, 2002.

It is resolved by the West Virginia Racing Commission as follows:

1. The Procedural Rule adopted by this Commission on May 20, 2014, shall not apply to any reimbursement request of Wheeling Island Racetrack and Casino submitted in relation to the project previously approved by the West Virginia Racing Commission on January 29, 2002.
2. The West Virginia Racing Commission shall evaluate such requests in relation to this project in the same manner it treated reimbursement requests immediately following approval of such project on January 29, 2002.
3. This Resolution shall go into effect immediately upon adoption.

Whereon, The West Virginia Racing Commission, voted unanimously to adopt, this resolution, and it is therefore ordered that said Resolution, and the same is hereby adopted.



Chairman