

MINUTES
WV RACING COMMISSION
Tuesday, May 17, 2016
WV Lottery Conference Room

The WV Racing Commission met on May 17, 2016 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 the April 19 minutes

The Commissioners and legal counsel received the minutes from the April 19th 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 2016 Legislative Session is now in a Special Budget Session this week. We have not been requested to supply any Racing information at this point but if those requests come in, he will make the Commission aware of it.

Interviews will be conducted this afternoon for the Steward position at Mountaineer Park. The interviews for the Charles Town position were moved from yesterday to May 24th. There will be several interviews for that position.

Charles Town has requested, as far as the WV Bred Purse reimbursement goes, the entire amount of \$503,000 and the Commission has reimbursed them for those races. Mountaineer Park has requested the first request of their \$503,000. It was for a race run on May 11th and the purse amount was \$30,300.

He would like for the Commission to notice and congratulate DeShawn Parker on his 5000 win mark. It happened at Mountaineer Park in April. An article was written by Bill Mooney on the win for DeShawn Parker and will be posted on the Racing Commission's website for everyone's review.

Mr. Phillips asked Mr. Moore where we are on our policy relating to hearings and what it's costing. It was suggested at the last meeting that by the next meeting we have that information available so the Commission can begin to deal with it because it is costing the Commission money each time a hearing is held. Kelli Talbott replied because Mr. Moore told her this was going to be an abbreviated agenda, they did not get the materials ready for this meeting. Mr. Moore stated he and Ms. Talbott have been in discussion about various things the Commission could do and they can get that information together and email it to the Commissioners for their review very shortly and then be able to take action on it at the next meeting. Mr. McDermott stated this is something that was just contemplated two weeks ago and this is going to take some very intense and sophisticated legal analysis, in his opinion. Ms. Talbott stated the issue that was discussed last time in regards to attorney time is a complex issue about the assessment of that. The other items, the pure costs for the hearing examiner, hearing room, court reporter, etc., those are a cleaner cut issue and those costs have been imposed in the cases to date. She and Mr. Moore have discussed the issue of raising the fee, or bond, that gets posted before the hearing. Since that fee, or bond, is set within the Commission's Procedural Rule for the hearings, that is something the Commission would have

to vote to amend the Rule to do. Mr. Phillips stated he just wants to make sure the Commission keeps this issue live and it doesn't fall through the cracks.

Update on Thoroughbred Rules for 2017

Kelli Talbott stated the Rule Committee had a meeting in Morgantown in March and covered quite a bit of ground for possible Rule amendments for 2017. Of course they had to discuss the fact that the Rules they proposed for 2016 went down with the Governor's veto and will need to be re-proposed. There are a number of things they are looking at and the Committee is going to have one more conference call on May 23rd to hopefully come to some final consensus on what they are going to propose.

Basically, what they are looking at are a series of amendments that would adopt Model Rule updates. They also discussed some other Rules that she thinks would be of interest to the Commission. One of the things discussed is allowing a claiming to be voided on a horse if it's euthanized on the racetrack. They are looking at Rules that would allow trainers to keep records of corticosteroid injections to horses and for those records to be transferred with the horse when it's claimed. They are revisiting Rules that went down with the veto, like allowing a physician's assistant or licensed nurse practitioner to conduct physical exams on jockeys in addition to physicians. They are looking at the coupled entry Rule and making some changes to that Rule so they can maximize the entries in our races on our racetracks in light of the fact that everyone is competing for horses. They are looking at the out of competition testing Rule and bringing it into line with industry standards and broadening the scope of what we can test for in out of competition testing. They also discussed re-proposing two Pari-Mutuel Wagering Rule amendments that went down with the veto. Those were related to minimum wager, lowering that from \$2 to \$1, and making some changes to the jackpot carryover pick in wager that would hopefully generate some interest in and build up jackpots in those types of wagers and have people place more wagers on those.

She is required, on behalf of the Commission, to submit a Memorandum to Secretary Kiss by May 24th that generally outlines what is being looked at and subsequently there is a June deadline where we actually have to get the specific language to Secretary Kiss. The Commission will probably have to have another meeting before that June deadline so specific language can be submitted to Secretary Kiss. When the Committee meets for its final meeting on May 23rd she's hoping to have a final version of draft of language for the Commission to look at. She has circulated specific language for all of the ideas that were just outlined to the Committee. Also, as a side note, sometime ago the Commission approved amendments to a Procedural Rule on its meeting process and that was sent to Secretary Kiss. He finally approved those for filing so they are out for public comment now and the public comment period ends June 6th.

Mr. Phillips asked if we would normally get very many comments on something like what is out for public comment right now? Ms. Talbott replied she doesn't know that we've gotten any comments on the meetings rule because it's pretty straight forward. The Thoroughbred Rule we will occasionally get some. Ms. Talbott added the Secretary of State is now going to electronic rule filing so she's been trying to figure out that system and going forward all Rules will have to be filed that way.

Charles Town Capital Improvement Request – Video Graphics component of approved Graphics & Production upgrade

Becky Carnefix stated this request is an additional request to the Graphics & Production upgrade that has already been approved and is for additional costs for the making of track distance videos and enhance graphics. The cost of this request is \$3,000 and is sole-sourced due to its conformance with the existing graphics system. She recommends it for approval.

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

Charles Town Capital Improvement Request – Carpet replacement in OTW bar seating area

Becky Carnefix stated this request is to re-carpet the off track wagering bar seating area and Charles Town's Corporate Quality Inspections have called their current carpet to be a "guest dissatisfier" so this will be more satisfying to guests. The cost of this request is \$18,148 and she recommends it for approval.

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

Mountaineer Park Capital Improvement Request – Copper run to test barn for phone & fax service

Becky Carnefix stated this request is for an outdoor copper run to the test barn for telephone and fax service. It is to replace the old line which is unusable. The cost of this request is \$3,171.98 and she recommends it for approval.

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

Mountaineer Park request to add B3 Development Group to export list

Joe Moore stated this request to add B3 Development Group has been signed off on by Rosemary Williams and Jami Poole, President Mountaineer Park HBPA, as required. Mr. Phillips asked what is the B3 Development Group? Rosemary Williams replied it's an advanced deposit wagering company.

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

Mountaineer Park Request to conduct Mystery Voucher Program

Joe Moore stated Mountaineer Park is requesting a Mystery Voucher Program. Vouchers will be worth anything from \$5-\$10,000 and are redeemable on Saturday, June 11th and Sunday, June 12th. This is not unlike any other Mystery Voucher request that have been approved for them in recent months.

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

Charles Town return policy when horses are taken to run at other tracks

Joe Moore stated the request came in from the Charles Town HBPA, especially in the situation we found ourselves in the past few weeks related to there not being any racing at Charles Town for the Commission to have a look at Charles Town's house rule of their race and return policy. Basically what's in place there is the horsemen would request and receive or not receive approval from the Racing Secretary to take their horse and go race elsewhere. If a horseman took their horse off the grounds at Charles Town to go race somewhere else there's a 30 day return period that they would have to wait out and would have to stand on a farm before bringing the horse back into the stables at Charles Town. That's not to say the horse could not race at Charles Town during that 30 day period, that's just to say it couldn't be stabled there. It would have to remain off-site at a farm and be shipped in to race. Since the request came in, the Commission has received some information from Charles Town as well for its review in regards to their policies and other policies in the Thoroughbred industry that relate to the same.

Erich Zimny stated the information sent to the Commission that was referenced by Mr. Moore encapsulates the situation pretty well. Most, if not all, tracks have a similar policy and if anything theirs is more lenient than a lot. Like Ms. Talbott stated before, they are in a battle for horses at other tracks and they are doing what they can to preserve their barn area. He would never expect Mountaineer to do the same and let their horses out willingly to come to Charles Town. Charlie McIntosh added Stakes races are exempt from this policy and that is very industry standard. The stabling capacity at Charles Town is 1,292. Currently they have 426 empty stalls, 101 two year-olds which you won't get the use of until September or October, which brings it down to 765. At any time a trainer never has 100% of its stable ready to run, the rule of thumb is 20% so you're looking at 80% activity there. It's more acute there now because they haven't raced since April 23rd. Their average receiving horses per day is 12-14, down from 40 a month ago. Other nearby tracks will be opening for racing within the next week. The bottom line is if they let people run out of town, they will not be racing at Charles Town. What every successful trainer does in the business is rotate their horses from track to track, depending on what races they're going to. You wouldn't bring a turf horse to Charles Town because they don't have a turf track. You can't bring your horses to Charles Town and sit and train and run somewhere else.

Chairman Rossi asked if they have granted any exceptions to this policy during the past couple weeks where they have had excessive cancelations due to the track surface? Mr. Zimny replied yes.

Randy Funkhouser stated it has always been his understanding that if someone wanted to ship they went to Mr. McIntosh, told him the reason why, and either got his approval or denial. In the situation they have had there, in particularly the last few weeks, they are losing people that are leaving the stable area because of the difficulty of being able to ship and return. The horsemen don't feel that this is fair. They don't want to abuse this policy but want to be able to ship their horses if situations don't allow them to race at Charles Town.

Mr. Phillips stated if he understands this correctly, a horse leaves the Charles Town track and they go X place to race, but they've been stabled at the Charles Town track, and they are given permission by the Racing Secretary to leave and go to wherever to race and they've been using a stall before they left. When they come back, they have to stable at a farm someplace and they are not allowed to come back into the stable area of Charles Town, even though that stable is sitting empty. Is that correct? Mr. Zimny replied yes that is correct. Mr. Funkhouser stated that has not always been the policy and has changed with the anticipation of the shortage of horses. Mr. Zimny stated Mr. McIntosh does give permission to race and come back in certain situations. Mr. Phillips asked if a horse leaves to go take advantage of racing at a turf track and leaves today and comes back tonight, do they get permission to do that and come back in? Mr. McIntosh stated they do not give permission for running on a turf. Mr.

Phillips asked if they don't have a turf course, why would they not let that horse go and run and come back? Mr. Zimny stated that's their point. If they have a turf horse, they should be somewhere there's a turf course. Mr. Phillips stated some horses can run on both and this makes no sense to him. Mr. McIntosh stated the reason they are trying to tighten this up as much as they can is to preserve racing at Charles Town. Mr. Phillips stated we have a track in WV that has a turf course and why aren't we being more cooperative between tracks if a person has a turf horse they want to run at Mountaineer? Mr. Zimny replied that's going to be a one-way street. There are going to be exponentially more horses going from Charles Town to Mountaineer than horses coming from Mountaineer to Charles Town. Charles Town is a pretty clear loser in that deal.

Mr. McDermott stated the comment was made that Charles Town was not aware of any track that does not enforce something similar and other tracks are much more strict than ours. He asked Mr. Funkhouser if this was an accurate statement? Mr. Funkhouser replied he does not think that is accurate. Everyone is struggling for horses and there is a lot of competition in the Mid-Atlantic area for approximately 60-90 days so people often times put shipping restrictions on horses from those tracks to other tracks. However, even though they say the same thing, they let certain horses back and run at other tracks.

Chairman Rossi commented to Mr. Funkhouser that he mentioned his concern for not having enough horses to run a race, what is he going to do when Charles Town starts canceling races because there aren't enough horses? That is some of his concern. Mr. Funkhouser stated he knows sometimes in the summer for about 60 days Charles Town has a hard time filling races, so does everybody. They want to welcome horses in from outside and they have a list of horses they can call to fill spots in a short field and Charles Town is good about doing that. What he's worried about is they are losing horses now because of a shipping restriction.

Mr. Phillips asked Rosemary Williams what the policy is at Mountaineer and how is it different between what has been discussed? Ms. Williams stated they allot stalls and they look at the Starter's book. Based on the amount of stalls you are allotted, you have to run so many times from those stalls. There is no shipping requirement, it's just a start requirement per stall. That way horsemen can bring fresh stock in and rotate. Mr. Phillips stated it is different then from what was heard for Charles Town. Ms. Williams replied yes, they do not ban someone for 30 days. Mr. Phillips commented if Mountaineer has a horse there that someone believes runs better on dirt and there's a race that is more attractive to them, there is not a problem with them leaving, going to run that race and making that trip back to Mountaineer to spend the night or whatever the case may be? Ms. Williams replied no. They prefer them to run at Mountaineer, if possible, and they will talk to them if they see them abusing that but their horses have ran at both Mahoney and Charles Town.

Mr. Phillips stated we need to find a way that this is more flexible and maybe somebody needs to look at the policies everywhere and see if we can't come up with some sort of a model that fits the current environment and circumstances that we and the WV horse racing world find ourselves today. Chairman Rossi stated he was going to suggest that Joe Moore do a survey and get policies on other tracks before anything is done on this. Mr. Phillips added he would suggest leaving this item as an active item on their agenda for June so action can be taken, if needed. Chairman Rossi added in the meantime, he encourages horsemen at both tracks, and he encourages the tracks, to cooperate with one another as much as possible.

Charles Town racing surface condition

Joe Moore stated he spoke with Danny Wright this morning and it is his understanding that Charles Town purchased a new rock picker to work alongside the one they had borrowed from Penn National. They got that on the track yesterday, worked the track yesterday, opened

the track this morning for training and he believes they are scheduled to race tomorrow. Erich Zimny replied that is correct. Mr. Moore added that Mr. Wright informed him this morning that of the trainers and owners he talked to that were out there training, there were no complaints and nothing residual in the track. He mentioned it was a little deep but that's to be expected with a new track that hasn't had an opportunity to get packed down yet. Mr. Zimny added that's a pretty accurate summation.

Randy Funkhouser stated the only complaints he heard this morning, all the rocks are gone and they did a good job with that, is the concern about the safety of horses because it is dry. They did not put any water on it. The NTRA has safety protocols and he would like to see Charles Town have something that would adhere with those safety protocols so they do have a safe racetrack and it's not dangerous and is the best that it can be. Doug Bowling stated they were about 1:15 this morning pulling the rock picker off of the racetrack. They started at about 11:30 yesterday. The tractors never stopped other than to re-fuel on the racetrack. By the time they got the track leveled out, they couldn't put a water truck on it because they were out leveling the track from trying to get it as safe as they could as far as that aspect. By the time they got into the morning they absolutely did not have enough time to run 12 or 15 truckloads of water to bring it back up to the standards because they spent 2 days drying the material out and just 1 or 2 truckloads will not get it back to where it needs to be. His option this morning was keep it closed one more day or let them out on it to just jog and get around the racetrack. They did not open the racetrack and tell people they should go out and work horses, they just opened the racetrack. That is a trainer's individual call with the horse when they get up there. They apologize they ran out of time to be able to properly get water applied to the racetrack, however, they worked and did not get out of there until about 2:30-3 and with training starting at 6:30, that was a bit of an issue that they had. Another thing going forward is it's been raining all morning so the racetrack should have ample water in it at the present time. Chairman Rossi added that hopefully we look at protocols anytime we resurface and remember this one so we can hope it doesn't ever happen again. This has been an expensive endeavor for everybody.

Public Comments

There were no public comments.

Executive Session – Test Barn Procedures

Mr. Phillips made the motion 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. McDermott. Motion passed.

Adjournment

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

