

MINUTES
WV RACING COMMISSION
Wednesday, April 1, 2015
WV Lottery Conference Room

The WV Racing Commission met on April 1, 2015 to conduct business and consider administrative matters. Roll call was taken and present was Chairman Jack Rossi. Commissioner Bill Phillips and Commissioner Greg McDermott were present via conference call. Counsel was represented by Kelli Talbott.

Charles Town request to reduce required racing days for 2015

John Myers stated the original request was made to reduce down to 193 days and that was made at the February 17th meeting. At that time, the request was tabled and was put on the agenda again last month at the request of Charles Town to move it forward and not table it as long. At that time, the Commission was asked by Charles Town and the horsemen to take another look at it and see if they would consider approval of that request at a special meeting and that is why this meeting was scheduled today. There is also an additional discussion about the rescheduling of some days that were missed due to inclement weather and it is his understanding that the track does not want to schedule at their originally requested days if this request is approved.

Chairman Rossi asked for Counsel to give a brief discussion concerning the proposed actions on the agenda. Kelli Talbott stated this is an issue the Commission has struggled with in the recent past, particularly in light of the statute and working under that. These requests to go below the statutory minimum number of days triggers a procedure that has to be followed, as well as certain criteria that have to be considered, and one of the things that has been struggled with the most, at least in the past, is the criteria in the statute are fairly limited as to the basis for a reduction in days. It says shortage of eligible thoroughbreds, casualty occurrences and inclement weather. What has happened in the past is as a result of the Legislature cutting purse funds seems to be what has largely driven the requests in reduction of days. The Legislature did not anticipate a shortage of purse funds and did not specifically put that criteria in the statute so that is something the Commission has struggled with in the past. The debate about the shortage of horses, both from Mountaineer and Charles Town, is also something the Commission has struggled with. One of the things she has considered in thinking about this issue is that the Legislature has granted the Commission plenary authority to regulate racing. The question arises as to what that plenary authority involves and entails and allows the Commission to do. She does not know every boundary that the plenary authority has, but the question posed here is whether the Commission could, under its plenary authority, approve a request to reduce days on the basis of shortage of purse funds. Her basic conclusion is that she does think the Commission has that authority.

Mr. McDermott made the motion to approve the request pursuant to the plenary authority that Counsel just described, seconded by Chairman Rossi.

Mr. Phillips stated this obviously caught him off guard because this isn't what the discussion had been previously. His first question is there is obviously a process that had to have been gone through to get to this point, and that process being sending out a notice looking for objections to determine whether a public hearing must be held. He doesn't know that he ever saw the official notice. And did the official notice reference this matter being decided based on purse funds vs. shortage of horses? He's not sure the Commission doesn't need to go back and re-notify everyone and then see what the consequences of that would be because of a different reason now being discussed. In addition, he thinks the Commission should have

an analysis of what the purse fund situation looks like and is projected to look like. At the last meeting he suggested staff, through the Acting Executive Director, do an analysis of the data that had been given to us by both groups up to that point in time and there has been no staff analysis done on the original issue of shortage of horses nor has there been one done on where the purse situation stands as of now and try to project one out into the future. All he has seen is what Mr. Myers has had given to him and that is certainly not an analysis. These are the concerns he has.

Vote was taken on the motion made. Mr. McDermott and Chairman Rossi voted for, Mr. Phillips voted against. Motion passed.

Mr. Phillips stated the Commission is going to live by the State Code or they are going to need to change it. On November 18th the Commission approved the calendar for 2015 and on November 25th a request is received asking to reduce the days of racing. If the Commission keeps doing business the way they are doing it right now this mess will never be straightened out. The Commission is on record of favoring 185 days and he thinks the way they are operating in disregard of the State law, regardless of the plenary authority they have, is just plain wrong.

Mr. McDermott stated at the beginning of this meeting the Commission's legal counsel explained that the Commission had legal authority to do what they just did so he takes extreme exception with any assertion that they acted outside of the scope of their legislative, statutory purview. Mr. Phillips commented he didn't think they acted outside of it he just thinks it's a wrong course of action. Chairman Rossi stated he shares Mr. Phillips' thoughts on the part of legislation and thinks there needs to be a concerted effort by Mountaineer and Charles Town to join in and try and get legislation passed. He thinks all of the constituencies out there need to be concerned about the study that is going to be conducted and discussed during Interims. They need to work together and get legislation passed.

Mr. Phillips stated he would like to request, again, that Commission staff do a very in-depth analysis and projections of what the purse situation is going to look like through the end of this year based on current authorized live racing days for Mountaineer and for the decreased number of days for Charles Town so that as regulators there is an opportunity to see where we think it is. Mr. Myers replied staff has been working on the analysis and the information received raised about as many questions as it did answers. He followed up with the folks that we get the revenue projections from at the Lottery and he has another meeting with those folks tomorrow to make sure they agree on his projected numbers. Mr. Phillips asked how the purse funds are monitored at the tracks, on a daily, weekly, or monthly basis? Erich Zimny stated they get reports weekly and they have budget figures in there and are able to track it pretty well. Mr. Phillips asked if the Commission follows this up? Rosemary Williams stated the Commission has auditor's at each of the tracks that get this information daily. Mr. Phillips asked if this is sent to us on a weekly basis or how is it done? Mr. Myers replied we do receive it on a weekly basis and some of the information is received daily.

Public Comments

Erich Zimny stated now that Charles Town has a lot more flexibility with make-up days they would like to withdraw the request for the four Tuesday's in May that was previously requested as being approved as additions to the calendar.

Adjournment

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