

MINUTES
WV RACING COMMISSION
Tuesday, April 26th, 2022
WV Racing Commission Conference Room

The WV Racing Commission met on April 26, 2022, to conduct business and consider administrative matters. Roll call was taken, and present were Chairman Ken Lowe Jr., Commissioner Figaretti, and Commissioner JB Akers. Counsel was represented by Anthony Eates.

Agenda Item #1 – Approval of December 14, 2021, and January 25, 2022, meeting minutes

Motions to approve December 14th and January 25th minutes made by Commissioner JB Akers, seconded by Commissioner Ken Lowe. Motions were passed.

Agenda Item #2 – Executive Director's Report

Director Joe Moore – Live handle for March 2022 was 19% above that from February, and nearly 11% above the same time last year. Export handle is up nearly 19% compared to the first nine months of last year. Simulcast is down nearly 8%, resulting in an instate handle being roughly a half a percent down compared to the first nine months of last year.

Agenda Item #3 – Legal Update

Anthony Eates – No new appeals since our last meeting. The only pending appeal we have is Georgina Baxter's from Charlestown, which is in the hands of your hearing examiner. Nothing new to report on the HISA lawsuit that's in Kentucky.

Agenda Item #4 – Request to Amend Retirement Plan for Backstretch Personnel

Director Joe Moore – We asked that Mike Lloyd go back and prepare for us, in more detail, what the changes are and how they affect the plan. Mr. Lloyd has done so, and I forwarded you all that for your review.

Commissioner JB Akers – The empowered team proposed some documents that had language you weren't personally happy with. Are you satisfied with the language changes I made?

Mike Lloyd – Yes.

Commissioner Ken Lowe – Mike, in your words, what's your suggestion on the request?

Mike Lloyd – I believe that the purpose of the plan really wasn't to benefit health provider vendors, like the veterinarians, the farriers and other similar third-party vendors. And for that reason, we should include some clarity in the amendment that those workers are not entitled to benefits under the plan. Jana and Maria can you also provide comment to that.

Jana Tetrault – Yes, the plan originally was targeted towards those who day in, and day out work with the horses (owners, trainers, etc.), not people who are vendors that come in and they may work outside of the property. It's targeted to people who make their living on the backside of the track, and that was the original intent as I understand it. We did bring it to our board and the HBPA felt that they should not be included in the plan.

Maria Catignani – The board voted and after thoughtful consideration they believed that people who provided outside services should not be included in the program.

Commissioner JB Akers – Last, I'd like to ask if anyone who opposes this proposed adoption of the plan wants to speak?

None opposed

Motion to approve request made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.

Agenda Item #5 – Mountaineer Park Requests Approval of 2022 Stakes Schedule

Director Joe Moore – Mountaineer Park has submitted their request for the grade three West Virginia Derby at a \$500,000 purse, and the grade three West Virginia Governor stakes at a \$200,000 purse, to be run on Saturday, August the 6th of 2022. These stakes races are the same as they were approved in 2021. Funding for these stakes races is a statutory distribution from the racetrack video lottery fund. It is distributed to them in an amount up to what they requested, or whatever is available for that fiscal year from the racetrack video lottery machines. Unless you would have any questions about this request, I would recommend it for approval.

Motion to approve request made by Commissioner Figaretti, seconded by Commissioner JB Akers. Motion passes.

Agenda Item #6 – Charles Town Request Approval of Capital Improvement Project

Director Joe Moore – This has been an ongoing project and will continue to be an ongoing project. What they submitted to you today is a portion of the project previously approved for a little over 1.8 million. It is going to increase to 2.1 million. The increase in this portion of the project will allow a future phase to be reduced by \$1,000,000.

Motion to approve request made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.

Agenda Item #7 – Wheeling Island Requests Approval of 2022 Stakes Schedule

Director Joe Moore – Each year there are two stakes run at Mardi Gras and two stakes run at Wheeling. The purse for these stakes is statutorily set to come out of the Greyhound Breeding Development Fund. Wheeling is requesting approval of their \$35,000 juvenile stakes, with a championship round to be ran on Friday, September 23rd, and the \$65,000 championship round to be run on Friday, October 21st. This is an annual request. There haven't been any changes

in the design or layout of the races in this request. Unless you would have any questions about this request, I would recommend it for approval.

Motion to approve request made by Commissioner Figaretti, seconded by Commissioner JB Akers. Motion passes.

Agenda Item #8 – Consideration of MP HBPA Letter regarding the Supplemental Purse Payouts

Director Joe Moore – On April 4th, 2022, the Commissioners received a letter from the Mountaineer Park HBPA, regarding some owner payouts of the supplemental purse fund that were denied by the Racing Commission. I have forwarded you all the materials related to this agenda item, as well as my recap of the circumstances resulting in their letter to you. In short, to qualify for owner payments under West Virginia code for the supplemental purse program, the individual is considered a bona fide resident of the state of West Virginia if they can submit the previous two years West Virginia State income tax returns, and the previous two years real or personal property tax receipts. Those four pieces automatically qualify them as a bona fide resident in the state. When we first got the new supplemental purse program up and running from the old system, we agreed to send out notifications to claimants who had submitted claims on the program instructing them of exactly what it was they needed to submit to us for payment. We furthermore put in a procedural rule that we specifically address each claimant if they have any need in proving bona fide residency. We also recognize that there would be occasions where an individual who has an owner claim cannot supply real or personal property tax receipts. We recognize that potential and agreed there would be other pieces of information that we would accept and review to justify their owner payment. We've made these accommodations on numerous occasions when individuals couldn't supply real or personal property tax receipts. The new program has been in effect for 10 to 11 years, in that time it has always been the requirement that the income tax piece was filed, and we would make exceptions for the real or personal property tax piece if needed. Since this is a statutory payout, the Racing Commission has an annual audit done, and I must justify these payouts as being appropriate to our outside auditors, who then report any audit findings to the Secretary of Revenue and Governor's office.

In Ms. Ramjit's case, she was able to supply the requested personal income tax returns for West Virginia but was unable to supply the real or personal property tax receipts. We move on to justify the payment under other means. We had multiple conversations with Ms. Ramjit requesting additional pieces of information to be submitted, so that we could justify the payment to our outside auditors as appropriate under state code. In this case, Ms. Ramjit supplied us with information that we were able to use in lieu of having those real or personal property tax receipts, and because of our questioning and asking her for additional information she received payment on those claims.

The other individual in question, Ms. Helms, was not able to supply the requested West Virginia personal income tax return. A few years back, the horsemen were concerned about the Racing Commission having their income tax information on file, so we agreed that they could send us a form ARI instead, which will allow us to communicate with the state tax department to confirm with us whether the requested tax return had been filed. An individual can say I want to allow the Racing Commission to communicate with state tax department up until this certain date, or

the date is left blank, allowing the Racing Commission to use that copy of their ARI to request information regarding the tax return on an ongoing basis, quarter by quarter when it's needed.

That is the case for Ms. Helms, we have an ARI on file for her that is undated, so the letter that she received requesting the specific information needed for the Racing Commission to approve payment only addressed the real or personal property tax portion, because we did not need an ARI. Ms. Helms supplied us with the real or personal property tax information we requested. We sent her ARI to the state tax department, and they confirmed that the return in question had not been filed. Up until the date that we paid the claim, we requested to the state tax department and again they confirmed it had not been filed. So, Ms. Helms was denied on the basis that she had not filed the income tax return in question. I supplied you with a timeline because this was ongoing for multiple quarters, it started in the third quarter of the previous fiscal year she was denied, and the fourth quarter she was denied. It wasn't questioned until the first quarter of the following fiscal year when the payments are much larger, and the tax return still had not been filed. Before the following second quarter was ready to be paid out, they got that tax return filed, as you can see on the timeline that I provided. That's the basis on which Ms. Helms was denied her owner claim from the purse fund for that quarter.

Michelle Helms – I'm a lifelong resident of West Virginia, I was born here, I have never lived anywhere else. I have been racing here since 2006, I have more than 4770 starts in the state of West Virginia, with my trainer Eddie Claston, our commitment to racing in West Virginia is substantial. We own a farm and have close to 60 horses. I have been leading owner in the country by wins for several years and have repeatedly been in the top 20 owners in the country by wins. Since beginning to race here, we have participated in the supplemental purse fund program. We sent our federal and state taxes together, my federal was received, but we did not find out until September of 2021 that my state was not received. We had no idea that our taxes were not received by the state until the Commission denied our supplemental purse fund for the second and third quarter of 2020. We then resent our taxes to the state immediately. I think we all need to remember that this was also during COVID, when there were all kinds of issues with the mail. I have participated in this program since 2006 with established residency. I did not receive a letter or even a phone call that requested additional information, however every other year I receive a certified letter if additional information was needed. As possibly the largest participator in this program in the state, wouldn't it be a red flag and require a phone call? This has resulted in a substantial loss for our projected operational budget for this past winter. We rely on the promise of this money based on the performance of the horses, to maintain our stable during months when there is no racing at Mountaineer Park. The supplemental purse fund and the breeders rewards are programs that encourage participation in the racing program in West Virginia. I am a lifelong resident of the state, and a participator in this program for more than 15 years. Thank you for your time and consideration of the request to pay my supplemental purse claim.

Director Joe Moore – Ms. Helms is correct in stating that in the first quarter, she did not receive a letter requesting information, because in December, which would have paid out the second quarter in the previous year, she did receive a certified letter that requested the personal property taxes that were needed. We did not request an ARI or tax return, because we had a blank ARI on file for her. It's not about the name on the claim to me, we pay the claims out as appropriate as statutorily set, whether it's Michelle Helms or the smallest participant. The Racing Commission voted practice in place several years ago to submit these certified letters, in

place of making personalized phone calls. In the past we've had individuals seek payment for denied claims after they were able to prove residency in subsequent quarters, and we have directed them to enter a claim in the state court of claims. They will review it, submit to us information that they need, and it would be their process determining whether that claim would be appropriate to be paid out under the statute.

If this current Commission wants to consider any other appropriate documentation that would verify citizenship status, or any other procedure, that will need to be an item on a future agenda where we've had time to consider these items.

Agenda Item #9 – Recap of the RCI Conference

Director Joe Moore – Commissioner Ken Lowe represented the commission at the RCI conference in Lexington two weeks ago, and at this point I would like for him to discuss the conference and any input he'd like to share.

Commissioner Ken Lowe – Racing is a lot more involved than what happens in three states. We all need to work together. I can tell you during my course of four and a half days there, I heard that consistently from most of the other jurisdictions. Consistent with this whole thing about HISA. I estimate that there are more people involved in racing, in all the other tracks in the country, than those three states combined.

I asked the vet from the state of California can you tell us that Lasix is bad for horse racing? She couldn't answer. I find no medical evidence that Lasix is bad for horses. Your futures are at stake, so I'm going to urge you to consider listening to your leadership, and support what they're saying if you agree with it. I'm optimistic leadership of this state will step up.

Agenda Item #10 – Consideration of Voluntary Agreement regarding HISA Racetrack Safety Program

Director Joe Moore – Back in early April, we received an email from HISA requesting that we conduct certain duties under their racetrack safety program for them using our staff. The conversation goes, you already have stewards so they can be used to regulate the federal whip rule. You're going to need a medical director implement a jockey concussion program, but don't worry about it we're going to provide you with that. I'm told this has nothing to do with the payment of the assessment, which would be separate from employing these people to do the federal duties for HISA. When the medication piece of it comes down the road in October, for implementation in January, you will be asked to enter into a larger voluntary agreement, including your test barn and veterinarians carrying out the federal mandate for HISA. I would advise that the Commission not agree to pay the assessment for several reasons. If you were to agree to pay the assessment for the racetrack safety program, you are tied to paying any assessment HISA may hand down for the next 12 months. Including the assessment on the testing piece, which is going to be exponentially larger, and we don't pay for testing on the state level in West Virginia currently. If we were to decline to pay the assessment, the code allows HISA to assess that assessment on any covered individuals, which includes everybody that the Racing Commission permits on property. But they made the decision too invoice that assessment directly to the two racetracks, and they've broken down what that assessment for

each racetrack would be, and it would be up to the racetrack to figure out how to equitably disburse that assessment among the participants at their track. New Jersey has declined to sign the assessment already and provided notice of such. I'm certain California has agreed to the assessment. Of the Mid Atlantic jurisdictions, the last conversation that I had, there was no jurisdiction that was standing up and saying they're going to sign it. It's my understanding that for the matters including what I've stated today, as far as using state personnel to carry out federal mandates and others, that there's not a whole lot of agreement in voluntarily doing HISA's work for them. If you were to decide today to not sign this voluntary agreement, HISA and your racetracks would then have to determine how to carry out the mandate that a steward would do in regulating their whip rule, as well as implementing the jockey concussion protocol with a director, presumably provided by HISA.

We have until May 1st to notify HISA whether we are signing their voluntary agreement or not. Not signing the agreement before May 1st is effectively your denial to sign, and they'll carry on with the racetracks to get the processes implemented for the July 1st deadline.

Commissioner Ken Lowe – Is the Commission in agreement that we will do nothing?

Commissioner JB Akers – Agreed.

Commissioner Figaretti – Agreed.

Agenda Item #11 – Public Comments

No Public Comments

Agenda Item #12 – Adjournment

*Motion to adjourn made by Commissioner JB Akers, seconded by Commissioner Figaretti.
Motion passes.*