

MINUTES
WV RACING COMMISSION
Tuesday, July 19th, 2022
WV Racing Commission Conference Room

The WV Racing Commission met on July 19, 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 April 26, 2022

Approval of April 26th minutes delayed until next meeting

Agenda Item #2 – Executive Director's Report

Director Joe Moore – We are in the middle of our annual financial audit; interims have already taken place. They will be in for final field work in late August. Live handle for May compared to April of this year is up nearly 9½%, up just over 9% year to date compared to last year. Export handle is up 12% compared to April, up 14½% compared to the same time last year. Your total instate handle is running flat compared to FY21, and your total simulcast handle is down just under 6%. We still have a vacancy in our auditor position at Charles Town. We are currently accepting resumes for that position and those resumes will be accepted through the end of the week. We will then identify appropriate qualifying candidates and conduct interviews to fulfill that position on a full-time basis.

Agenda Item #3 – Legal Update

Anthony Eates – An update on our appeal against HISA in the 6th Circuit, I was told by Michael Williams that our brief is being filed today. Also from Michael, about the Louisiana suit that we joined recently, the judge in that case did deny the plaintiffs request for a temporary restraining order but we are still filing a brief to potentially seek preliminary injunction. The TRO was denied which was to be expected.

Agenda Item #4 – Hearing Examiner's Recommended Decision - Georgina Baxter

Anthony Eates – Georgina Baxter was imposed a \$1000 fine, 1/2 medication violation point, and then disqualified the horse from the race following the Charles Town Oaks race back in August last year. Mrs. Baxter appealed that, and we had a hearing on March 21st in Charles Town in front of Jeff Blades your designated hearing examiner. What's on the table for you today is voting to issue a final order with adopting, rejecting, or modifying that recommendation decision.

Commissioner Ken Lowe – Commissioners do you have any questions?

Commissioner JB Akers – I have read the submissions and the recommendation. I would go with the recommendation of Anthony based upon the manner in which he prosecuted the case.

Motion to adopt the hearing examiners recommendation made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.

Director Joe Moore – In any situation in which a party did not prevail in their hearing, the Commission has accepted the cost of the hearing, less our attorney fees in that matter. In addition to adopting the hearing examiners recommendation, we will need a vote of the Commission to approve the cost.

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

Agenda Item #5 – Request to Approve Occupational Permit - Ajay Kumar Bhan

Director Joe Moore – The request before you today are due to our procedure of requiring felony applicants to come before the Commission when requesting a permit or having a permit reinstated. Mr. Bahn's felony was possession with intent to distribute. He has been interviewed by the Stewarts at Mountaineer Park as well as the investigator. They have sent you a recommendation to grant the permit as an owner permit in West Virginia.

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

Agenda Item #6 – Mardi Gras Request Approval of Capital Improvement Project - Racetrack Lighting

Director Joe Moore – Delaware North on behalf of Mardi Gras Hotel Casino and Racetrack has sent for your consideration, the capital improvement project to replace 90 LED light fixtures on the racetrack at a total cost of \$127,770. The money is available for this project, which is related directly with racing, and unless there are any questions, I would recommend it for approval.

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

Agenda Item #7 – HISA Discussion

Director Joe Moore – This is an open discussion to allow anyone from the racing industry who wanted to approach the Commission with any negative or positive aspects that we witnessed in our regulation of the HISA rules this week.

Jami Poole – We still do not have a vet here in the morning time. We talked to HISA about this. The way I read it, if we can't find a vet for morning time then they must provide one. We are paying for a vet here in the morning time and we still don't have a ved here in the morning time.

Director Joe Moore – My understanding of our call with HISA back before we wrote the letter of agreement, was that the morning vet is in the racetrack safety rule as part of the racetrack accreditation, and I recall the representative of HISA saying they would work with the racetrack

to achieve that full accreditation process over the next year. It is between HISA and the racetrack to supply a vet during training hours, the Racing Commission is not providing that.

Jim Colvin – HISA has never contacted me for any morning vet work.

Director Joe Moore – Coming up on the horizon regarding the necropsy rule under HISA. The Commission has by practice sent horses who are either euthanized during live racing or training to have a necropsy performed and have been paid out of your fine money that is collected from permit holders. The issue that's going to arrive is when the medication program, the anti-doping program, and the necropsy rule goes into effect January 1st. It dictates that all fine money collected for post-race testing goes directly to HISA and not the Commission. That combined with the HISA rule, the Racing Commission will not be able to pay for necropsy as of January 1st. It will be up on your two racetracks to pay for transportation and necropsy at the facilities where they are performed.

Agenda Item #8 – Executive Session - Legislative Claims Commission, Helms

Director Joe Moore – At this point it's appropriate to take a motion to go into executive session for legal advice regarding this matter.

Jami Poole – I would like to say that Michelle Helms has lived in West Virginia her whole life, she's never lived anywhere else, she's never lived anywhere but here. Thank you for letting me talk.

Commissioner Ken Lowe – Thank you very much Mr. Poole.

Motion to enter Executive Session made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.

[Executive Session]

Commissioner JB Akers – I'll make a motion that we proceed as we discussed in executive session based on the unanimous agreement of the Commissioners to empower Mr. Eates to handle the Helms legal matter.

Motion to empower Mr. Eates made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.

Agenda Item #9 – Public Comments

Karen Murphy – I've been doing this for 25 years and I really care about the game, the horses, and I care about getting it right. You're now confronting what happens when you don't get it right and you don't care enough, and you don't understand that they are shared responsibility and that's why the federal intervention. Nobody doped this horse. This is an accidental administration and how do you protect against that from happening and harming you as a Commission. The RMTTC recommended a receiving barn, you know that you begged the track to do it they didn't do it. If you don't have a receiving barn everybody is on their own all over the place. Receiving barn provides the environment in which this accident would never have happened.

Agenda Item #10 – Adjournment

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