

MINUTES
WV RACING COMMISSION
Thursday, June 9th, 2022
WV Racing Commission Conference Room

The WV Racing Commission met on June 9, 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 February 22, 2022 and March 29, 2022, meeting minutes

Motions to approve February 22nd and March 29th minutes made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motions were passed.

Agenda Item #2 – Executive Director's Report

Director Joe Moore – I provided you all with the account status report year to date of your administrative accounts for your review, as well as the parimutuel wagering comparison. You'll see our live handle for April is about 10 $\frac{3}{4}$ percent above May's handle, running nearly 15% above April of last year, and 11 $\frac{1}{4}$ percent year to date compared to FY21. Export handle is up 8% compared to March, 10 $\frac{3}{4}$ percent compared to April last year, and running about 18% ahead of FY21. Simulcast is down nearly 7 $\frac{1}{2}$ percent compared to April of 2021, making your total in-state handle relatively flat compared to last year.

Dr. Day has resigned his position of state vet at Mountaineer Park. In his absence Dr. Bohenko is doing the vet works, the prerace inspection, and live race cards. Your state auditor at Charles Town, Sheila Dupuy, retired last month. She has agreed to continue those duties under a contract with the Racing Commission until her replacement can be hired. We will have auditors in office for interim work the week of June 27th, and final field work the week of August 22nd.

Agenda Item #3 – Legal Update

Anthony Eates – The court issued its decision on Friday June 3rd dismissing the states challenge to HISA. There was an emergency Commission meeting on Tuesday the 7th because we needed a joint in the notice of appeal that had to be filed that day, to appeal the judge's ruling to the 6th Circuit, and that was done the evening of June 7th. West Virginia is now appealing, along with the other states, the Kentucky federal courts decision to the 6th Circuit. We are hoping the 6th Circuit will reverse that decision. Regardless of what happens in the 6th Circuit, I think there will be an appeal filed to the Supreme Court.

The legislature approved some modifications to the 178CSR1 thoroughbred rules and the parimutuel wagering this past session, and those needed to be filed with the Secretary of State's office. That was done last week of May, so if you were to look at the Secretary of State's website you will see the Racing Commission's final filing rules. The effective date for the horse rule is 90 days after filing and we filed it on May 27th, so August 27th is the effective date. The parimutuel wagering rule effective date had to be July 31st because it was going to sunset if we didn't make it effective the day before August 1st.

Agenda Item #4 – Charles Town Request Approval of Capital Improvement Project - Track Lighting

Director Joe Moore – Charles Town requests approval for capital improvement projects and have submitted to you for your consideration an LED Track Lighting project with a quote of \$398,940. There are funds available for the project and unless there any questions or concerns I would recommend it for approval as it is indeed racing related.

Commissioner Ken Lowe – I understand this is not to exceed the quoted price?

Jeff Burnes – Yes, this is a fixed cost firm bid and will not affect training as all the vendors have agreed to work Sunday through Wednesday (afternoons).

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

Agenda Item #5 – Mountaineer Park Request Approval of Capital Improvement Project - HVAC

Director Joe Moore – Mountaineer Park submitted to you for your consideration a capital improvement project for a mini split HVAC system for their racing offices, with a total cost of \$12,000. There is money currently available for this project, and I was recommended to you for your approval

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

Agenda Item #6 – Consideration of Residency Requirement for Supplemental Purse Awards

Director Joe Moore – This item originated from our April Commission meeting where a non-paid claim was called into question, based on the lack of submitted personal income tax returns, and I reached out to our outside auditors to see what items may satisfy the requirement under code. Additional items they said that could allow them to proceed in testing if a person is a resident of the state included: state tax returns, real or personal property tax returns, a valid driver's license, voter's registration, or a declaration of domicile or affidavit stating that the person claims residency in no other state. They go on in bold to say the tax return should always be the first choice, only moving to other items if a person did not meet the criteria for filing due to income limitations or they're behind on their filing. It is their opinion that the word "may" in that statute indicates that the Commission could require that they provide tax returns as a prerequisite for payment. It goes on to say that they would be considered a bona fide resident once two years property and income tax info was provided. Those are what they would consider as items that could satisfy their auditing purposes in relation to the payout of owner claims for the supplemental purse program.

Commissioner JB Akers – They were clear in their response to Mr. Moore that the state tax return should be the first and primary evidence of residency. Based on the outside auditor's

recommendation I don't see a reason to change the existing process. I would make a motion that we continue with the existing process based upon the outside auditor's recommendation.

Motion to continue with existing process made by Commissioner JB Akers, seconded by Commissioner Figaretti. Motion passes.

Agenda Item #7 – HISA Discussion

Director Joe Moore – We had a racing commissioners international board and executive directors conference call last week. There are nine jurisdictions who had either already signed an agreement or were making some modifications to sign a voluntary agreement with HISA. There are thirteen who are not signing a voluntary agreement, West Virginia is one of those thirteen. I assure you we're not just one of a couple, most jurisdictions across the United States are taking the same position as West Virginia. Signing any agreement with HISA could jeopardize our standing in the unconstitutionality argument that we are making in our appeal. That said, July 1st is fast approaching and there are requirements that will go into effect. We offered to accommodate the federal crop rule as we would continue to have one of our stewards monitor the video feed, and if a violation was witnessed, we would notify HISA. That offer was rejected by HISA stating that we will have to hire a steward, a reg vet, and many other positions if we do not agree to sign this voluntary agreement. We continue to stand the position and unless notified otherwise, we are not going to sign a voluntary agreement with HISA to carry out the regulations of the federal government that their board is mandating.

Commissioner Ken Lowe – I agree with parts, but this bill was written in such a way that there is no way to fund it.

Jason Pugh – I am an individual that always agrees in partnerships, and we are all in this together. We still have regulations from HISA and accommodations that we need to meet in order to keep racing. There are some additional positions from that voluntary status that the Racing Commission has on Mountaineer grounds during racing that we could utilize to cover those HISA rules. The assessment fees we haven't worked out internally, but we are not asking the state to take on those assessment fees.

Commissioner JB Akers – I'd like to see something in writing, in terms of what the Commission could or should do to help and then we could give that full consideration

Director Joe Moore – I don't think we are far off. We cannot sign a voluntary agreement with a private board to carry out the rules it established to satisfy the federal mandate.

Philip Reale – Whatever our Racing Commission would considering regard to this discussion, the solution would need to be in conformity with statute.

Commissioner JB Akers – I think this statue in a lot of ways is punitive towards the tracks that we have in West Virginia. The formula that was proposed is not equitable looking at the fact that we have a lot of starts in West Virginia compared to some other states, but our purses are lower.

Director Joe Moore – We reached out too HISA offering our licensing database reports hoping for a simple export and upload into their database to satisfy the registration process, again our offer was rejected.

Jenna Tetrault – We have been working with our trainers, our owners, and we've also reached out to the jockeys, we have times available in our office for them to come in and we can assist them in the registration process.

Commissioner JB Akers – Do we have a ballpark estimate of what these assessments are going to cost the state of West Virginia?

Director Joe Moore – The racetrack safety portion of the assessment was a little over \$800,000 and it is my understanding that the medical assessment can be three times higher than that of the racetrack safety fee. Roughly \$3 million for the medication fees

Commissioner JB Akers – This is going to be about a \$4 million unfunded federal mandate.

Commissioner Ken Lowe – If we proceed along with this what about liability issues?

Director Joe Moore – HISA has verbally said they will stand by us should we be sued or have any negative reaction to enforcing their rules, but it is not in the statute, or in their rules that they would do so. I think you do have liability should you decide to carry out their mandates.

Commissioner JB Akers – This is not just a horse racing issue it effects all the tangential industries including the casinos that these tracks are attached too.

Commissioner Ken Lowe – It affects the whole state of West Virginia.

Agenda Item #8 – Public Comments

No Public Comments

Agenda Item #9 – Adjournment

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