

MINUTES
WV RACING COMMISSION
Tuesday, April 20, 2021
WV Racing Commission Conference Room

The WV Racing Commission met on April 20, 2021, 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 Kelli Talbott.

Approval of the February 24th meeting minutes

Motion to approve February 24th minutes made by Commissioner JB Akers, seconded by Chairman Lowe. Motion passed.

Legal Update

Legal Counsel, Kelli Talbott, said there are a couple of legal matters separate on the agenda that will be covered later related to racing rules. So, she will pass on to the next agenda item.

Discussion regarding Oklahoma AG's lawsuit regarding the new HISA legislation

Joe Moore recommends proceeding with entering into executive session.

Motion to enter executive session made by Commissioner JB Akers, seconded by Chairman Lowe. Motion passed.

Motion to exit executive session made by Commissioner JB Akers, seconded by Chairman Lowe. Motion passed.

Executive Director, Joe Moore, stated during executive session agenda item#4 discussion regarding Oklahoma AG's lawsuit regarding the new HISA legislation he is going to ask David Tryon with the WV Attorney General's office to provide the Attorney General's opinion on this matter.

David Tryon reported the Attorney General's office has reviewed the proposed lawsuit submitted to us by the state of Oklahoma. It alleges the Horse Racing Integrity and Safety Act of 2020 is unconstitutional on various grounds one of which is based on the anti-commandeering. An example is with the delegated executive power to private entity. With this lawsuit the Attorney General agrees with the allegations in it that this act is unconstitutional on those and other grounds.

Chairman Lowe thanked David Tryon for the opinion.

Joe Moore asked if there is a motion for the WV Racing Commission to join the Oklahoma lawsuit as well as with the WV Attorney General's office.

Commissioner JB Akers wants to note Mr. Tryon did not speak to the merits but rather the unconstitutionality of the act. The opinion was given in a good faith representation by the WV Attorney General's office this act is unconstitutional based on various grounds. Based on that good faith representation from the WV Attorney General's office he is making a motion that we authorize the WV Attorney General's office to represent the WV Racing Commission in that matter.

Motion seconded by Chairman Lowe. Motion passed with Chairman Lowe and Commissioner JB Akers for passing and Commissioner Figaretti opposed.

Joe Moore asked for a motion for the executive director to carry out the action discussed during executive session.

Motion to approve executive director to carry out action discussed during executive session made by Commissioner JB Akers, seconded by Commissioner Tony Figaretti. Motion passed.

Effective Date of the Thoroughbred and Greyhound Rules passed during the 2021 Legislative Session.

Joe Moore presented the request to approve the Greyhound Racing Rules effective date that passed during the 2021 legislative session. A letter of support has been received by the Greyhound racing industry along with the Racing Commission vets supporting the change. He recommends since everyone is onboard with the Greyhound rule it become effective immediately upon final filing with the WV Secretary of State. In speaking with Kelli Talbott, they believe final filing through the required process could be done by end of week which would be approximately the coming Monday as the effective date.

The Advanced Deposit Account Wagering (ADW) rule was also passed this year. They have been operating under the emergency rule. Joe Moore recommends it also become effective immediately upon final filing with an effective date of this coming Monday.

Motion to approve both requests for Greyhound racing rule and ADW rule to become effective immediately upon filing made by Commissioner JB Akers, seconded by Commissioner Tony Figaretti. Motion passed.

Joe Moore presented the request to approve the effective date for the Thoroughbred racing rule. He provided a brief overview of the changes included in the amended rule. It is his recommendation the rule be effective for the full 90 days after final filing to allow the horsemen the time necessary to adapt to these changes.

Motion to approve request to become effective 90 days from final filing made by Commissioner JB Akers, seconded by Commissioner Tony Figaretti. Motion passed.

Consideration of letter received from the CT HBPA.

Joe Moore provided an overview regarding the matter which the Charles Town Racetrack management, Erich Zimny, emailed the Racing Commission indicating their desire not to make up the race days currently losing or have lost due to the track resurface project. The Charles Town Horsemen's Benevolent and Protective Association (HBPA) responded to the Racing Commission by letter with reasoning for why it is necessary but doable to make up the four days lost to the track resurfacing. Additionally, they believe the three days lost due to weather and one to not being able to fill race entries can also be made up.

Chairman Lowe certainly understands without going into great detail at this time about the track surface situation. We will talk about that soon. He cannot imagine not supporting having these days back. It means so much to so many people. Not just the horsemen, owners, and trainers. It is the whole community involved who needs these race days back. He totally supports these eight days coming back in cooperation with both racetrack management and the horsemen.

Joe Moore added the letter from the CT HBPA goes further than making up the eight race days. It also mentions in the letter is having 24-hour access to the stable area along with pre-Covid training hours re-established. The letter specifies the eight days be made up on September 8th, September 15th, September 22nd, September 29th, October 6th, October 13th, October 20th, and October 27th.

Chairman Lowe stated regarding the 24-hour access, if you have a horse there you have to have 24-hour access which means having a guard there to let people in. You have to have that, or you will lose more horses. To him it is a humane issue. It is not money thing. This would be like having a hospital with a chain on the door and not letting someone one in who needs to. You cannot have that. He supports the requests in the CT HBPA letter entirely. He asked if Erich Zimny with Charles Town Racetrack management would like to speak.

Erich Zimny stated if it were true, you were chaining the door to the hospital and not letting them in would be a different problem. He certainly agrees that would not be a good thing. They have not denied anyone while there has not been a guard there. It is not very a long process at all to get someone there to open the gate and get someone to enter the barn area. You are not completely precluded from the barn area. There is just not a guard there 24-hours a day. The reason is they cannot find anyone to hire to be there. It is not a cost issue. The casino is currently not open 24-hours a day. They have encouraged the HBPA if they have anybody who wants to apply for a position to send them their way. They are trying to do this the best they can. They are trying really hard to do it. It is a body issue. Not a money issue.

Chairman Lowe thanks Erich for his comments. He also asked if they have thought about hiring a private company to do it.

Erich Zimny said they have been looking at that very seriously.

Chairman Lowe asked Erich Zimny what his best way to go about this to solve the problem. What is the best way to compromise so this works for everybody?

Erich Zimny said it is not a compromise. They want to do as soon as possible. The way to possibly do it quickly is they have a contract from an outside third party they are looking at. He can find out where they are in that process. Hopefully, they could get that done in the next couple weeks. Then it takes licensing since those people probably have to get licenses.

Chairman Lowe asked if Erich Zimny if he could give a timeline as to when it would be done.

Erich Zimny said he can get him an update today on where they are at in the process. We he speaks to them they will have an idea of what the timeline looks like further. They want to do this as soon as possible and has represented this to the HBPA for a while now. It has been incredible difficult to find bodies to fill.

Commissioner JB Akers asked what the position is the track takes on the dates requested in the letter. Are they ok with them?

Erich Zimny said he needs to speak with Charlie McIntosh before answering. They have been harder than they thought as far as the number of horses that can fill the races this year. If you look at their field sizes this year it is down precipitously versus where it use to be. They had to cancel a day this year because they could not fill the races. Now they are getting to the point in the year where there is going to be more tracks running in the region more than they were in the first four months of the year. He does not know what the horse population is going to look like.

Charlie McIntosh said that is why they designed the calendar for three days a week for May through October. We just do not have the horses. March and April they averaged about six and half starters per race. That is not acceptable because they end up with a lot five and fours. He understands the horsemen like short fields. The betting public they know wants full fields. He does not think they can commit to September right now because they do not know what the horse population is going to be like. Mountaineer opens up Sunday where they had people calling to run up there, they are losing. There are just not enough horses to sustain the amount of racing the mid-Atlantic.

Chairman Lowe asked Charlie McIntosh if the purses are going to go up shortly.

Charlie McIntosh confirmed the purses go up with next condition book which goes out effective April 28th through May 29th racing raising by 10%. It takes that awhile to flow through the industry. They are still not super competitive when compared to. They have depended a lot on the WV bred product here to fill the races, but they are running out of that. You see the decline nationally and in WV. It continues to decline. Their dates are getting lesser to maintain any kind of respectable field size.

Commissioner Figaretti asked if Charles Town is the only track low on horses.

Erich Zimny reported absolutely not.

Charlie McIntosh added that it is across the whole mid-Atlantic. He said Penn National is down to two days a week. As more tracks open there is a lot of competition for the horses.

Chairman Lowe said Charlie McIntosh he is doing a good job. He asked if he is doing the inventory to know what is there.

Charlie McIntosh said they walk the barns once a month. They have never had in the last four to five years the barn area full. When he first came to Charles Town ten years ago, he was jammed up. In the last four to five years, we have always carried from 225 to 275 empty stalls. What you here are the horses are on the way. He is going to fill the stalls up now with Monmouth two-year-old fillies not ready to race yet. They do monitor the inventory. The encompass system here they can drill it down to know what they have. He is having trouble filling maiden \$5,000 races regardless of distance both open and WV races.

Commissioner Figaretti asked if there is anything that can be done to keep those horses there.

Charlie McIntosh said it so diluted in the mid-Atlantic with competition. The supply is not keeping up with the demand to fill races.

Erich Zimny said the purse increase will help with the field for sure, but they are still at level where it is going to be hard to attract people from all around.

Charlie McIntosh stated they have less than mile track. Some do not find that as attractive as a mile track. There are several factors. Lack of horses is the primary one.

Chairman Lowe asked if the dates are assigned to include these days the horsemen requested what happens if the races cannot be filled.

Joe Moore said if it is a cancelled day say October 6th you would have limited Wednesdays thereafter to get rescheduled.

Chairman Lowe asked why not approve these days, and if they do not fill, they do not fill. They could come back and decide if it is possible to make them up or not. He asked if the Commissioners agreed.

They concurred.

Joe Moore said since the letter is for consideration. They could consider approving the dates in the letter, but the other parts could be taken up as an agenda item a future meeting.

Erich Zimny asked if the days can be approved if the racetrack is not making the request.

Joe Moore reported there is precedent set about four-five years with the Mountaineer HBPA requesting a decrease in race days. The total number of race days for the year is not being requested to increase. If the

racetrack would have requested the dates it would not had to come to a commission meeting as an agenda item since approval for that type of request was approved by the Racing Commission to be delegated to him.

Erich Zimny and Charlie McIntosh would like to table the approval for the dates until the next meeting. This would allow them to work with the horsemen to look at other alternative dates to give the best chance of having the races. They do not want the optics to be bad for the program by races being cancelled.

Motion to defer approving make up dates until next Racing Commission meeting made by Commissioner Tony Figaretti, seconded by Commissioner JB Akers. Motion passed.

Approval of 2021 ADW License – Lien Games Racing, LLC

Joe Moore presented the request to approve Lien Games Racing, LLC ADW license. Joe Moore recommends approving their application.

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

Discussion regarding CT soil composition analysis received from Dr. Mick Peterson

Joe Moore provided overview for Dr. Mick Peterson to present on the analysis of the Charles Town soil compensation.

Chairman Lowe welcomed and thanked Dr. Peterson presenting today.

Dr. Peterson is the Director of Racetrack Safety Program. Their goal with the Maintenance Quality System (MQS) is to continue to learn and improve and provide a more consistent surface for the horses. He spoke about the three phases to the MQS: Flight Certification, Pre-Flight Inspection, and Black Box Data Recorder. He compares it to what is done with aircraft certification. When he looks at racing surface it is like taking off in plane. When you start in the morning even on a dark day or training and racing on a racing day, you're really talking safety critical system you put together. You are not only risking the horses but the riders also. They recently received a gift from the Jockey Club to help this Pre-Flight Inspection stage to do some variability between and within the tracks. He provided an overview of the first step in design documentation and setup. This included the differences with tracks such as the equipment and weather. This approach applies to all surfaces to determine a target composition. The next step is to do race meet or seasonal test. This is where you test twice a year for seasonal tracks to compare to the target composition initially taken in phase one. It allows them to look at all aspects of the track to isolate areas needing addressed. This allows you to build confidence and improve the surface and consistency year to year to protect the horse and rider. The hardest part is for the track to document daily maintenance and track conditions. Some tracks commit the human resources. Automation is needed to help provide real time monitoring and decision making. One of the next key steps for the MQS is to develop the "black box" airplane recorder. Dr. Peterson acknowledged their current partnerships and need for building more partnerships to improve racing surfaces.

Chairman Lowe expressed his gratitude to Dr. Peterson as well as commending his impartial professional opinion. Dr. Peterson is well respected not just nationally but all across. The biggest issue there at Charles Town appears to be too much salt...solidity. He asked if that is correct to Dr. Peterson.

Dr. Peterson confirmed that is the case. He recalled in 2018 they had the same issue with the mid-Atlantic tracks. Everybody had bad year in 2018. He believes it has to do with the same exact pattern of weather. One way this problem gets solved is getting a lot of heavy rain. It is a combination of things that just make it worse.

Chairman Lowe said it all has to do with racing over the winter months. The temperature becomes a big factor. Charles Town does not have drainage system. It is going to collect on the rail which is where the problems probably were from what we saw. Is that right Dr. Peterson?

Dr. Peterson confirmed yes there is a lot of salt in the track, but no speaking out of turn you know that resurfacing Laurel that their solidity is high too. Not as much as Charles Town. They also do not race at night.

Chairman Lowe said at one time he was told Charles Town perhaps had the most hove prints than any track in the country because of its size and horse population. This is damaging the race surface as well. Is that what you're saying Dr. Peterson?

Dr. Peterson replied it is. He would put Del Mar up against Charles Town with having the most hove prints. Those breaks are absolutely critical.

Chairman Lowe asked if it would be beneficial to air the track in the nighttime opposed to more salt in the morning.

Dr. Peterson confirmed yes. He made that suggestion also in 2018. The problem of course is that is the right solution on nights where it is cold enough where you can freeze dry it what they refer to it. You are actually creating small ice balls in it, and you have to keep running all night long. The problem is it does not work when you drop below zero and would have a wet track in the morning. This would of course impact training on the racetrack. He does not have a good answer if you are going to train on the track in the morning. He would prefer not to train on the track in some of those mornings. If you have a training surface that helps. Charles Town is fortunate to have a training track.

Chairman Lowe said it then becomes vitally important to have the training track open as often as possible to help solve that problem.

Dr. Peterson concurred. He thinks that is one way out. He understands you need to see the fitness of the horse on the racetrack before a race. There is a reason he is not a trainer because this is not easy.

Chairman Lowe hypothetically speaking it could be possible the lack of training time could contribute to the number of breakdowns we are seeing. Is that right Dr. Peterson?

Dr. Peterson replied yes, but he is not a veterinarian. Absolutely seeing a different pattern of catastrophic injuries across the country. The pandemic has made it incredibly difficult. He heard mention earlier with staffing issues. That is not just the track that is the trainers as well. This workforce issues are huge.

Chairman Lowe asked if Charles Town is going to participate in the MQS.

Dr. Peterson said Doug Bowling and he are discussing this, but he does not have the resources to do it at this time.

Chairman Lowe asked Dr. Peterson what type of surface he would want his horse to train or race on.

Dr. Peterson's point of view has changed on this. He has seen incredible success with synthetic at tracks currently using it such as Woodbine. Horsemen have identified some biomechanical issues with synthetic. He does not think synthetic surfaces are perfect right now. There are some areas for improvement.

Chairman Lowe is asking for the stakeholders to truly think about for Charles Town to go to synthetic. Why go through this every year. Doug Bowling is doing a great job, but this seems like a good solution.

By putting a synthetic surface in Charles Town, it appears it would solve most of the problems. He thinks that is the solution. He knows that is a tough solution. It would take the longest. It involves everybody has to have to two cents or so. Probably at the next meeting he is going to suggest with the Racing Commission that we come up with a date to begin the process of figuring out how to shift Charles Town to a synthetic surface and what is involved. He asked if Erich Zimny would like to say anything.

Erich Zimny thanked Dr. Peterson for his work. Doug Bowling has been in contact with Dr. Peterson. He leaves the technical stuff to Doug Bowling who knows more about this than him. He leaves that in the more capable hand than himself. He lost time a commission made a mandate for a synthetic surface in a state in this country and it went sideways as he knows Dr. Peterson knows. It is certainly something that will have to be discussed internally here. He would caution against anything rash as far as mandating anything. That would just be his recommendation.

Chairman Lowe said Erich Zimny knows him, and he does not do anything rash. He always asks for everyone's input.

Erich Zimny stated they will be prepared to provided points of contention by the next meeting.

Chairman Lowe stated if not at the next meeting he will setup a plan to setup a date when we can sit down and talk about it and start hashing things out to see if we can figure things out for the long run. If we can do it everybody could be better off especially the horses.

Chairman Lowe and Joe Moore thanked Dr. Peterson for his presentation.

Executive Director's Report

Executive Director, Joe Moore, provided a brief report. The WV Breeder's Association provided their advertising and promotion projection related to the running of the 35th WV Breeder's Classic to be held Saturday October 9th, 2021. Their advertising budget includes local regional, national print, and as well as radio and television advertising aimed at attendance and national recognition of races and the WV Thoroughbred industry. In addition to the races the classic offers a gala dinner/dance and a golf tournament. He has also provided the parimutuel comparison for March of 2021 compared to year to date. The variances you will see over the next few months will be vast in largely in part due to not running any of April and much of May of last year. You will see some drastic variances that will true up probably towards the end of the fiscal year. You also have been provided with the financial summary report of your administrative accounts and listing of the commission's current vacancies. Couple things to note is we will be conducting interviews for a Charles Town steward next week and he is working with the investigator at Charles Town to work up a schedule to conduct interviews for an investigator vacancy at Mountaineer Park. We need to setup a rules committee meeting to meet in very short order for the 2022 rules. A summary of ideas has been provided to the Department of Revenue. The rules committee will meet and decide what language we want to put forth to the commission for your consideration at probably the May commission meeting. It would go out for public comment after that.

Consideration of proposed penalty for ADW provider/providers

Public Comments

Adjournment

Motion to adjourn made by Commissioner Tony Figaretti, seconded by Commissioner JB Akers. Motion passed.