

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, July 16, 2019**  
**WV Racing Commission Conference Room**

The WV Racing Commission met on July 16, 2019 to conduct business and consider administrative matters. Roll call was taken, and present were Chairman Jack Rossi, and Commissioner Ken Lowe, Jr., and Commissioner Anthony Figaretti. Counsel was represented by Kelli Talbott. Chairman Rossi deferred to Commissioner Lowe to chair meeting since he was not able to attend in person.

**Consideration of Public Comments to Proposed Thoroughbred Rule Changes**

Commissioner Lowe asked if the cost for the out of competition testing will be fully funded by the race tracks. Legal Counsel Kelli Talbott confirmed the current legislative rule already in place requires the race tracks to cover the cost of all testing. The Racing Commission would confer with the race tracks to project the out of competition cost to include in the race tracks budgets. Executive Director Joe Moore reported if the model rule were to be adopted today the race tracks budget would be able to support some out of competition testing. Joe Moore anticipates the number of tests would increase over the years. Kelli Talbott informed the commission due to the legislative process it is more than likely a year away. This would allow discussion to occur between the commission and the race tracks. Commissioner Lowe asked if those discussions would be where the commission and race tracks would determine things like the minimum number of out of competition testing. Joe Moore confirmed this is correct. Commissioner Figaretti asked who pays for the testing. Joe Moore confirmed the race tracks are responsible to pay for all tests not just night testing. Commissioner Lowe inquired about what the cost impact is on the Racing Commission staff. Joe Moore informed the commission it is not anticipated there would be any additional cost for Racing Commission staff cost. This is due to the Racing Commission already has staff in place performing these tests in West Virginia (WV). For the graded stakes as we have done in the past the Racing Commission would reach out to the jurisdiction for the state where the horse is at the time to assist. The state jurisdiction has traditionally been willing to assist with these test requests.

Commissioner Lowe asked if Kelli Talbott would like to address the question around the constitutionality of the out of state competition. Kelli Talbott informed the commission she was honored the Association of Racing Commissioners International (ARCI) selected her to participate on a sub-committee responsible to help develop the model rule. Kelli Talbott reported she was not the only racing lawyer assigned to the sub-committee to provide the expertise needed. If there was an issue constitutionally, she would not have recommended for either the ARCI or the Racing Commission to adopt these rules. Kelli Talbott also wants to make sure the commission understands the importance of the fact these rules have been adopted by all other states with the mid-Atlantic racing region as well other states outside of the mid-Atlantic.

Kelli Talbott reported during the ARCI model rule development the National Horsemen's Benevolent and Protective Association (HBPA) were among the key stakeholders providing input to ensure fair consideration for things such as due process were protecting the best interest of the horseman.

Joe Moore asked if the commission should go through each proposed amendment to determine which ones would move forward. Kelli Talbott reviewed the first two amendments to adopt the most recent ARCI schedule for morphine and foreign substances. The next rule for adopting the ARCI void claim rule. The void claim rule would allow any person who claims the horse if determined by a state vet to be injured or lame the person making the claim would be notified to decide whether they want to claim the horse knowing the circumstances. The Mountaineer Horseman submitted a comment in opposition stating it doesn't protect the welfare and integrity of racing. Kelli Talbott informed the commission she believes most of the mid-Atlantic states including Maryland have adopted the rule. The purpose of the rule would put the power for decision making in the claimant's hands while also trying not to disincentivize horse claiming or running injured or lame horses in races. Commissioner Lowe stated his appreciation for the way the process currently works but does understand the big picture for the change being proposed. Commissioner Figaretti asked how it currently works in WV. Jim Miller with the Charles Town HBPA responded it works a little bit differently in each state. Jim Miller and Kelli Talbott concurred the horse would have to be deceased in order to void the claim in WV.

The next amendment reviewed was the out of competition testing rule. Kelli Talbott re-stated WV is the only state in the mid-Atlantic who has not adopted the rule. She reminded the ARCI rule development process included several stakeholders including the national HBPA, veterinarians, lawyers, and testing specialists who provided input into developing the rule. Kelli Talbott informed the commission initially the national HBPA had some objections, but the ARCI worked through those objections with the national HBPA to satisfy their concerns in order to move forward with their support behind the rule change. Joe Moore encouraged serious consideration for this rule knowing it is anticipated the National Thoroughbred Racing Association (NTRA) to be required for maintaining or obtaining accreditation. Joe Moore also re-emphasized the point WV is the only state in the mid-Atlantic who has not adopted the rule to date. Commissioner Lowe stated the need for larger fields and more money wagered. Commissioner Lowe asked for Charles Town Casino management's input if the rule were adopted would it increase out of state ship ins. Eric Zimny stated the biggest thing to increase the number of out of state ship ins is increasing the purse money. Mr. Zimny thinks the industry is in a place where a level playing field for model rules across jurisdictions should be a desirable thing for all parties. Mr. Zimney stated the idea of WV being the only one who has not adopted the rule makes him uncomfortable. He doesn't see the negative in adopting the rule or being a detriment to the number of horses coming into the state. Commissioner Lowe asked if Mountaineer Casino management would like to comment. Jim Colvin with Mountaineer Casino management concurred with Mr. Zimney while also emphasizing the importance of the purse money has proven to see an increase in more horses running. Commissioner Figaretti inquired with Mountaineer about the attraction of turf racing at Mountaineer since there seems to be more horses running turf compared to dirt track. Mr. Colvin reported he believes its due to Mountaineer is the only turf track around the vicinity. Commissioner Lowe asked Joe to advise on the timeline for the process to complete the rule making process. Joe Moore informed the commission needs to decide today on adopting any or all the proposed rule changes. This is due to the need to submit to the Department of Revenue for review on July 22<sup>nd</sup> prior to submitting back to the Secretary of State on July 26<sup>th</sup>. Once those reviews and submission have been completed then it can be reviewed by the legislature.

Motion to approve all proposed rule changes was made by Commissioner Rossi, seconded by Commissioner Figaretti. Motion was passed.

### **West Virginia Breeders Classics XXXIII Purse Request**

Joe Moore provided an overview of the WV Breeder's Classic's request to release the funding for the nightly stake races to occur on October 12<sup>th</sup>, 2019. Joe Moore reports the funding is available and recommends the commission approves the request.

Motion to approve was made by Commissioner Figaretti, seconded by Commissioner Rossi. Motion was passed.

### **Mardi Gras Requests change in Saturday & Sunday Post Time**

Joe Moore provided an overview for Mardi Gras's request to change their Saturday and Sunday post time from 5pm to 7pm post time to be consistent with their other race times during the week. Joe Moore recommends for the commission to approve.

Motion to approve was made by Commissioner Figaretti, seconded by Commissioner Rossi. Motion was passed.

### **Mountaineer Requests approval of Concussion Protocol**

Joe Moore provided an overview of Mountaineer's request to approve their concussion protocol. Mountaineer submitted to the commission prior to commission meeting to allow time to review. The Mountaineer concussion protocol is very similar to the Charles Town. Therefore, Joe Moore recommends for the commission to approve.

Motion to approve was made by Commissioner Rossi, seconded by Commissioner Figaretti. Motion was passed.

### **Wheeling Island Kubota tractor request**

Joe Moore provided an overview for the request by Wheeling Island to receive funding support to purchase a new Kubota tractor. The cost to repair their existing tractor would be approximately \$18,000. To order a new tractor would've taken longer than needed more than likely having a negative impact on track operations. Due to the need to act quickly on a tractor available at a reseller now it was imperative for the casino to move forward with the purchase much like in the past as an emergency capital reimbursement. Ben Travis with Wheeling Casino management has provided details outlining cost for new tractor along with justification for doing so. Joe Moore reports funding is available and recommends the commission approves.

Motion to approve was made by Commissioner Figaretti, seconded by Commissioner Rossi. Motion was passed.

### **Request for Approval of Occupational Permit - Shane Meyers**

Joe Moore reported Shane Meyers is seeking an occupational permit as a trainer at Mountaineer Park. He has a felony conviction. The stewards interviewed and have found Shane Meyers to be remorseful for his actions and admitting he had an inappropriate relationship situation that should not have occurred. The board of stewards at Mountaineer Park recommend approving this request.

Motion to approve was made by Commissioner Figaretti, seconded by Commissioner Rossi. Motion was passed.

### **Employment Matter - Hire Charles Town Investigator**

Joe Moore provided an overview of the request to hire Roy Cave as a full-time employee in the role of the Charles Town Investigator. Joe Moore reports all personnel steps have been completed and funding is available. Joe Moore recommends for the commission to approve.

Motion to approve was made by Commissioner Rossi, seconded by Commissioner Figaretti. Motion was passed.

### **Other Business**

Joe Moore informed the commission that Charles Town has promoted Charlie McIntosh to Director of Racing and Elizabeth Rogers as Racing Secretary. The commission offered its congratulations to the new hires.

Commissioner Lowe is encouraged by seeing a positive move with live racing. He believes through cooperation the live racing will continue to improve. Commissioner Lowe shared his concern and the need to immediately address the lack of air conditioning currently not working in the grand stand. It's unacceptable and something must be done. Commissioner Lowe wants Charlie McIntosh to submit a game plan with timeline for addressing this need.

The commission approved the funding to support updating the grand stand. Commissioner Lowe wants Charlie McIntosh to provide the game plan and timelines to get the grand stands updated.

Eric Zimney with Charles Town Casino management reports the design for the grand stand update is complete, and tentatively scheduled to start on October 14<sup>th</sup>. The challenge has been coordinating around the major stakes races and the level of work to be completed.

Commissioner Lowe would also like to encourage doing something special with the kitchen for guests at events like July 4<sup>th</sup>. There appeared to be a good presence of guests during July 4<sup>th</sup> which probably would've enjoyed the opportunity to eat something special for the event.

### **Public Comments**

There are no public comments at this time.

### **Adjournment**

Motion to adjourn was made by Commissioner Rossi, seconded by Commissioner Figaretti. Motion was passed.