

MINUTES
WV RACING COMMISSION
Tuesday, July 21, 2020
WV Racing Commission Conference Room

The WV Racing Commission met on April 21, 2020 to conduct business and consider administrative matters. Roll call was taken, and present were Commissioner Ken Lowe Jr., Commissioner Anthony Figaretti, and Commissioner JB Akers. Counsel was represented by Kelli Talbott.

Election of Chairman

Motion to elect Commissioner Ken Lowe, Jr. as chairman made by Commissioner Figaretti, seconded by Commissioner JB Akers.

Commissioner Lowe thanked everyone for their confidence, and he looks forward to working with everyone. He commended Jack Rossi for his years of service and his fairness in while serving the commission.

Approval of March 10th, March 20th, and March 24th minutes

Motion to accept executive director's report made by Commissioner Figaretti, seconded by Chairman Lowe.

Executive Director's Report

Executive Director, Joe Moore, welcomed to the Racing Commission the newly appointed Commissioner JB Akers. Commissioner Akers appointment was effective as of July 14.

Commissioner Lowe and Commissioner Figaretti both welcomed Commissioner Akers to the commission.

With the permission of the commissioners Joe Moore would like to prepare a resolution by next commission meeting to honor and commend Jack Rossi for his distinguished service to the commission.

Commissioners concurred with Joe Moore.

Motion to accept executive director's report made by Commissioner Figaretti, seconded by Chairman Lowe.

Accountant's Report

Joe Moore presented an overview of the following from the accountant's report. The pari-mutuel wagering comparison for March through June of 2020 was provided for review. It should be noted in February 2020 pre-pandemic closures the live state handle was down five-point three percent. At that point in time export was up nearly sixteen percent and simulcast

handle was down nearly ten percent. At the conclusion of Fiscal Year (FY) 20 live handle is now down thirty three percent compared to the previous year due to the closures. Export handle fell to being up only one-point five percent and simulcast is down thirty-eight three quarter percent compared to FY19. The financial summary report provided to date for FY20 shows due to the closures from the pandemic resulted in the Racing Commission losing over five hundred thousand dollars in revenue in the months March through June compared to those same months last year. As of June 30, 2019, the Racing Commission had a reserve balance in its general administrative funds in its account of approximately one-point four seven five million dollars. As of June 30, 2020, the fund is depleted to five hundred seventy-five thousand dollars. That represents a change in cash of nine hundred thousand dollars due to the closures as result of the pandemic. The FY20 Single Agency Audit is currently ongoing with final field work scheduled for the week of August 17, 2020 in preparation of draft due September 15, 2020. He will continue to keep the commissioners updated if there are any issues that arise from the audit. With the loss of revenue and depletion of the general administrative fund it is necessary for the Racing Commission to seek legislative changes to seek new appropriations and/or revenues to ensure the Racing Commission facilitate its statutory responsibilities not just for the foreseeable future years but as well as for the current fiscal year.

Chairman Lowe believes the Racing Commission along with the Greyhound and Thoroughbred industries are trusting the legislature to do the right thing. He understands it is in the hands of the Senate Finance Committee and believes they will do what is best to protect and fulfill the needs of the industries and the Racing Commission. He also asked on any idea how much monies the Advance Deposit Account Wagering (ADW) activities will generate.

Joe Moore reported based on financial fiscal notes provided before was basically a wash to the Racing Commission as an expense to govern the ADW. The Racing Commission is currently looking at a projection of fifty thousand dollars in revenue generated from the ADW activity to the Racing Commission after the legislature changed the bill last year reducing the Racing Commission's percentage of take. The revenue will be offset by the expected expenses to govern and audit the ADW activities.

Motion to accept accountant's report made by Chairman Lowe, seconded by Commissioner Akers.

Legal Update

General Counsel, Kelli Talbott, provided the following summary legal update for the commission. The Greyhound rules of racing and Thoroughbred rules of racing public comment period ending yesterday at 5pm. Those comments will be prepared for the commission to review. The ADW is out for public comment now until 5pm July 31, 2020. A person who was previously permitted conditionally allowed a license as an exercise rider. Since filing his petition, he was arrested. He has filed legal action against the commission.

Commissioner Akers asked for clarification on how the cost for legal fees and any settlement would be covered by West Virginia Board of Risk and Insurance Management (BRIM) or the commissions administrative fund.

Kelli Talbott believes the cost for any settlement is covered through premium paid to BRIM. Legal cost would be covered through the commission administrative fund.

Commissioner Akers asked if the WV Secretary of State has already approved the ADW emergency rule.

Kelli Talbott reported the commission coordinate with the WV Secretary of State since the ADW bill passed with an effective date of July 1, 2020 to approve the ADW rule was approved by the WV Secretary of State as of July 1, 2020.

Motion to approve legal update made by Chairman Lowe, seconded by Commissioner Akers.

Mountaineer Park to Cancel 2020 WV Derby

Joe Moore presented the request from Mountaineer Park to cancel the 2020 WV Derby. He received from the Mountaineer Horsemen's Benevolent and Protective Association (HBPA) and Mountaineer Park racetrack an agreement to cancel the entire race card due to concerns of COVID-19 restrictions. They could not see how to adhere to the Governor's restrictions with the number of attendees even by not allowing public participation.

Chairman Lowe asked if there were any alternative race dates being proposed.

Joe Moore reported the request is to cancel all together for the year. The monies for the race will stay in the account for Mountaineer Park to accumulate for next year's race.

Commissioner Figaretti asked if there is any chance of getting another date this year.

Jim Colvin representing Mountaineer Park said they had considered other dates but would not be able to field the number of horses needed due to commitments already made with other racetrack events being held before the end of the year.

Joe Moore informed the commissioners money cannot be used for any other races at Mountaineer Park other than for the Derby due to being set in statute.

Motion to approve request made by Chairman Lowe, seconded by Commissioner Figaretti.

Request for Occupational Permit – Walter Woolfolk

Joe Moore presented the request for occupational permit for Walter Woolfolk. Mr. Woolfolk appears before the Racing Commission with felony convictions. He is asking for a permit to work at Mountaineer Park. MP Stewards recommend approving request.

Chairman Lowe asked if Walter Woolfolk has any comments.

William Woolfolk would just like the opportunity to bring his horse to the track to run him. He is not asking for a stall or anything much.

Commissioner Akers asked for clarification whether all convictions were for the same offenses and the time of the convictions as well if any of the convictions were at the tracks he worked at before.

William Woolfolk confirmed all offenses were separate convictions for the same offenses. He said he has been clean and straight since. He owns his own towing business in Lexington and is just a guy try to make a living. He has couple of horses he believes Mountaineer Park appears to be only place he will be able to make any money. The only charges he has are against himself at his place of residence and were not for anything violent or for theft. His last conviction was in 2013. He has been clean since then. He is willing to take a drug test if necessary, to run his horse and would even pay for it.

Motion to approve permit made by Chairman Lowe, seconded by Chairman Figaretti.

West Virginia Breeders Classics, LTD Requests WVBC XXXIV Purse

Joe Moore presented the request to approve the WV Breeders Classic XXXIV purse. He recommends the Racing Commission to approve.

Motion to approve made by Chairman Lowe, seconded by Commissioner Figaretti.

Wheeling Island Requests Approval of 2020 Stakes Races

Joe Moore presented the request from Wheeling Island to approve the 2020 stakes races. The Juvenile stake race would be held on September 26, 2020. The Open stake race would be on November 28, 2020. The championship would be offered on October 24, 2020. Joe Moore recommends approval

Commissioner Figaretti does not understand why during these races when it is a full house the windows are not fully opened. He would like for track management to speak to this.

Kim Florence representing Delaware North understands the concerns and will look into how they can do a better job.

Chairman Lowe asked how many tellers they have.

Kim Florence said they try to operate as efficient as possible especially considering the circumstances with COVID-19.

Chairman Lowe asked what the hourly wage is for a teller.

Kim Florence reported it ranges from \$11-15.

Chairman Lowe asked if it is a union organization.

Kim Florence confirmed that it is.

Motion to approve the Wheeling Island stakes races made Chairman Lowe, seconded by Commissioner Figaretti.

Delaware North Request Permission to Combine Dir. of Racing & Racing Secretary Positions

Joe Moore presented Delaware North's request to combine the Director of Racing and Racing Secretary positions. The request is due to COVID-19 and in compliance with greyhound racing rule they are requesting this approval.

Chairman Lowe asked Dr. Bohenko for comment.

Dr. Bohenko stated it is possible with the right person they can do the job as long as they have the appropriate backup to make decisions in their place.

Chairman Lowe expressed concern for how to maintain continuity with the lack of depth due to consolidating position. He would like Delaware North management to try to propose any alternative

Kim Florence said they look continuously at how to improve their operations while not sacrificing the quality of racing. The director of racing position was one determined by management to be exempt from being onsite for at least twelve months due to COVID-19. The position could be back after the twelve months. Support would be provided to track from offsite management sister locations.

Chairman Lowe asked if this is an economic decision or for something else.

Kim Florence reported unfortunately due to COVID-19 it is an economic decision.

Commissioner Akers shared same concern of fellow commissioners. He asked if it would it be possible to approve based on six months?

Chairman Lowe appreciates the idea, and asked Kim Florence what she thinks.

Kim Florence thinks it is a reasonable request and is open to talking through the request to find a solution.

Commissioner Figaretti thinks highly of Kim Florence and trusts in her ability to do what is best for the racetrack operations.

Motion to approve request for six months made by Commissioner Akers, seconded by Chairman Lowe.

Public Comments

No public comments at this time.

Motion to enter into executive session to discuss ADW license applications made by Chairman Lowe, seconded by Commissioner Figaretti.

Motion to exit executive session made by Chairman Lowe, seconded by Commissioner Figaretti.

Penn ADW Requests License to conduct ADW Activity in WV

Joe Moore presented request for approving Penn ADW license to conduct ADW activity in WV.

Motion to approve license request made by Chairman Lowe, seconded by Commissioner Figaretti.

CDTIC Requests License to conduct ADW Activity in WV

Joe Moore presented request for approving CDTIC license to conduct ADW activity in WV.

Motion to approve license request made by Chairman Lowe, seconded by Commissioner Figaretti.

Xpressbet Requests License to conduct ADW Activity in WV

JM presented request for approving Xpressbet license to conduct ADW activity in WV. Joe Moore recommended the Racing Commission approve license with the condition that Xpressbet cannot accept wagering until it has obtained their certificate of authority from WV Sectary of State.

Motion to approve license request made by Chairman Lowe, seconded by Commissioner Figaretti.

Adjournment

Motion to adjourn was made by Chairman Lowe, seconded by Commissioner Figarett. Motion was passed.