

**MINUTES**  
**WV RACING COMMISSION**  
**Friday, March 10, 2020**  
**WV Racing Commission Conference Room**

The WV Racing Commission met on March 10, 2020 to conduct business and consider administrative matters. Roll call was taken, and present were Chairman Jack Rossi, Commissioner Ken Lowe Jr., and Commissioner Anthony Figaretti. Counsel was represented by Kelli Talbott.

**Approval of January 20, 2020 minutes**

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

**Executive Director's Report**

Executive Director, Joe Moore, provided the following overview from the Executive Director's Report. The 2020 Legislative Session has completed the Senate Bill that would have ended the funding for the Greyhound Breeding Development fund, as well as the Greyhound Purses. This Bill was defeated on the Senate Floor with eleven yeas and twenty-three nays. The Advance Deposit Account Wagering (ADW) Bill that passed both Houses has a few more Amendments than what was originally anticipated. The final details of the Bill consist of a source market fee of 4% assessed on all licensed providers and wagers placed by West Virginia Residents. The source market fee is allocated to each racetrack based on their total handle from the previous year. It is then distributed 10% to the Development fund, 45% to the Purse fund, and 45% to the Association. There is a 0.5% regulatory fee assessed on total ADW handle by West Virginia Residents deposited into the West Virginia Racing Commission general administrative account. There is a 1.5% fee assessed on total ADW by West Virginia Residents deposited into a special revenue account to be appropriated by the Legislature at a later date. The Bill also included annual reporting requirements for the Racing Commission to provide to the Legislature. Kelli Talbott and Joe Moore will be working on emergency rules to govern ADW. The rules will be filed with the Secretary of States Office in time for them to become effective with the affected date of the Bill being July 1, 2020.

Commissioner Lowe asks if it is fair to represent the 0.5% regulatory fee to the West Virginia Racing Commission and if it is not enough money to make it work.

Joe Moore confirms that it is a fair representation to state that the 1% that was included in the original Bill was a projective break even point for the Racing Commission and therefore, as the Bill was passed, the 0.5% will certainly cause the Racing Commission to lose money in the ADW endeavor.

Commissioner Lowe asks if that is the need for the emergency rules to govern the ADW.

Joe Moore states that the emergency rules will be developed to govern ADW and will be in place until such time that the Racing Commission can get regular legislative rules passed in the next session and effective as the Thoroughbred and Greyhound rule. Joe Moore directly confirms to Commissioner Lowe that it does not affect the 0.5%.

Joe Moore continues with his report. The West Virginia Breeder's Classic's LTD provided their projected advertising and promotional expenses for the Breeder's Classic 34. The Classic was previously approved to be held on Saturday, October 10, 2020. Joe Moore begins addressing the dirt track at Mountaineer Park. Mountaineer Park is currently doing a resurfacing project of their racetrack. It is not considered an action item, today. They have not finalized the quotes from their vendors and so forth. Due to the time concern, they are moving forward with resurfacing project. The project is 100% a racing activity. They will have a reimbursement presented in a later commission meeting as an emergency reimbursement of a project that has already been completed. The project is expected to come in at approximately \$250,000. The 2019 Russell Road Award for thoroughbred excellence will honor the horse "Runnin'toluvya", with the 2019 statistics of 6 starts, 3 wins, 1 second and earning \$621,660 in purse money. "Runnin'toluvya" is owned by Grams Racing Stable LLC, bred by Leslie Cromer, and trained by Tim Grams. The Racing Commission will have the award prepared and delivered later. Joe Moore requests that the Chairman authorize Joe Moore and Kelli Talbott to reconvene the thoroughbred rules committee for consideration of possible rule changes for 2021. Joe Moore also requests that the Chairman authorize the Executive Director to convene a committee to consider changes to West Virginia Code and Thoroughbred Rule to provide adequate funding for the Racing Commission. For regulatory duties related to thoroughbred racing, Joe Moore states that he envisions the committee will include, but may not be limited to the Executive Director, Legal Counsel, Representatives of each HBPA, Representatives of each License Thoroughbred Racetrack and a Representative of the Thoroughbred Breeders Association.

Motion to approve Joe Moore's request to reconvene the thoroughbred rules committee for consideration of possible rule changes for 2021 was made by Chairman Rossi, seconded by Commissioner Figaretti. Motion was passed.

Joe Moore, Kelli Talbott, and Dr. Chip Daniel are scheduled to attend the next meeting of Mid-Atlantic racing jurisdictions held in Delaware on March 25<sup>th</sup>. Previously Commissioner Lowe has attended the meetings with them and is welcome to attend this one coming up if he would like.

### **Accountant's Report**

Joe Moore provided an overview of the following from the Accountant's Report. The pari-mutuel wagering comparison for January of Fiscal Year (FY) 2020 shows live handle is up nearly 3.5 percent compared to December 2019 and 5.5 percent compared to January 2019. Export handle is increased over 15 percent compared to FY19. In-state handle is down 8.75 percent to FY19 year-to-date. Financial summary reports for January and year-to-date for administrative funds, the employee pension funds for calendar year 2019 will be calculated and dispersed later this month. The 2019 thoroughbred development fund payout was made on February 12, 2020. The Racing Commission distributed over \$4.6 million paid out to 745 participants in the fund.

Commissioner Lowe asked to confirm the numbers provided do not include any wagers that may have been illegally placed through an ADW firm.

Joe Moore concurred.

Commissioner Lowe states that he understands the Racing Commission was questioned about allowing an entity to illegally accept wagers in the State of West Virginia.

Kelli Talbott states that the law allows the Racing Commission to seek an injunction to stop illegal activity. The process includes filing a lawsuit in a court that states proof of illegal activities. Then, it is required to ask the Judge to issue an order stopping the illegal activity. Assuming the Bill is signed, it will be legal effective July 1, 2020. Regarding the money, the Interstate Horse Racing Act specifies the damages that can be recovered for violation of it. Regarding the state, the damages are the percentage of the takeout that the state would have received if the ADW wager had been placed lawfully. Under West Virginia state law, the Racing Commission does not get a percentage of takeout. The Racing Commission only receives a flat tax for everyday that is raced. The constituents (the tracks and Horsemen) that would receive a percentage of takeout on a lawfully placed ADW wager, may have damages that could be quantified and they are able to sue under the Interstate Horse Racing Act apart from what the Racing Commission does. Kelli Talbott states that Joe Moore explained to the Senate Finance Committee, given the Racing Commissions finances to mount a major piece of litigation against well-financed, out-of-state corporations who have more resources than we do. The West Virginia Legislature decided to not have the Racing Commission share in any of the wealth related to wagering at West Virginia racetracks. This is believed to be part of the Racing Commission's financial problem and when this was explained to the Senators, Kelli Talbott believes they fully understood.

Commissioner Lowe asks if it would take a change in code for the Racing Commission to receive a percentage of takeout.

Joe Moore states that there are several factors that will be looked at under the new finance committee, as far as changes to code. In previous years, the possibility of changing the code to do away with the flat fee that the Racing Commission receives per live race date to a percentage of handle. The ways that it affected the rest of the distributions made it a non-starter.

Commissioner Figaretti asks how long the Racing Commission is going to last.

Joe Moore states that the current projection is that the Racing Commission will run out of funds during FY22. This means that the next legislative session is the session in which something must be changed.

Chad Robinson asks if the kennel owners and dogs were represented on the new finance committee.

Joe Moore states that it is currently built for thoroughbred only because the dog industry finances its own regulations.

Chad Robinson recommends for someone to represent the kennel owners and dogs on the new finance committee because the Racing Commission regulates the dogs as well.

Chairman Rossi and Commissioner Lowe agree with Chad Robinson on this issue.

### **Legal Update**

Legal Counsel, Kelli Talbott, reported and advised on the following needs. Kelli Talbott is circling back to the ADW Bill and the emergency rules. To be clear, the bill directly authorizes the Racing Commission to promulgate emergency rule to implement it. Assuming the governor signs the Bill, it will go into effect July 1, 2020 and there is no way to have a legislative rule put in place immediately. That emergency rule will go through the process and then become a

permanent legislative rule if it is passed. Since the bill does not go into effect until July 1, 2020, the emergency rule will not be able to be filed until July 1, 2020. It is understood that it cannot be filed before it goes effective. Since the Racing Commission is statutorily authorized to do emergency rules, the Secretary of State will have to approve it immediately.

Joe Moore states that if the governor does not sign the Bill and takes no action on it, the Bill will become a law. The only concern is if the governor is planning to veto the Bill or not. With no action, the Bill will become law on July 1, 2020, the effective date of the Bill.

Kelli Talbott states that the thoroughbred rule amendments did pass the legislature and the governor did sign that bill. At this point, the next step is final filing of the rule with the Secretary of State's office. The Racing Commission has some parameters in which the effective date can be chosen for certain amendments. Kelli Talbott recommends making them effective 90 days from final filing. This gives the Racing Commission a 90-day period to make sure everything is up to date with the rule changes.

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

Commissioner Lowe asks if a racetrack has a contract with an ADW provider, including wagering, should it be disclosed to the Racing Commission.

Joe Moore states that in approval of export wagers, there are ADW platforms who have been approved to accept West Virginia signals to be bet on by individual residents of other states where ADW is legal. This is treated as an export wager. The reason an ADW statute had to be passed was to legalize West Virginia residents placing an ADW bet anywhere in the world. Wagers for live, simulcast and export is compiled and directed back to all the individual tote sites for each racetrack. He is unaware that ADW wagering flows through any hub because of the different providers for this platform. Specific measures will take place to be able to verify the activity that is taking place. One of those measures may be contracting with the entity who currently does this type of accountability research and will cost the Racing Commission nearly all its 0.5% to do so.

### **Charles Town Requests Approval for Capital Reinvestment – Flooring for Terrace**

Joe Moore presented the request to approve a Capital Reinvestment to replace the old carpet with easier to care for LVT flooring in the Terrace. The quote received was for \$20,830. Funding is available for the project. Joe Moore recommends approval.

Commissioner Lowe asks about the possibility of the request made by the HBPA for tables and chairs for the exterior yard as good weather approaches.

Erich Zimney states that the request for tables and chairs in the exterior yard at Charles Town has been an idea for years. There is not enough money in the budget because of the other projects that are taking place. When there is enough money in the budget, that purchase will be made, but most likely will not take place this season.

Commissioner Lowe asks about an agreement made by the HBPA that states they would either cover half or all the cost for the tables and chairs.

Erich Zimney states that as Charles Town management, the HBPA covering the cost would be no issue.

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

### **Charles Town Requests Approval for Mandatory Pick 6 Payout**

Joe Moore presented the request to approve the Mandatory Pick 6 Payout. It is on the April 18<sup>th</sup> card for the Charles Town Classic. Charles Town Races is offering a guaranteed \$100,000 pick 6. The pick 6 will include the Charles Town Classic race. This is similar to the mandatory payouts that the commission has approved for Charles Town in the past. Joe Moore recommends for approval.

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

### **Mardi Gras Requests Approval of 2020 Stakes Races**

Joe Moore presented the request to approve Mardi Gras \$35,000 juvenile stakes over the 550-yard course. The finals for that stakes are March 28<sup>th</sup>. The open stakes to be run over the 677-yard course with the last race. The finals for that stakes are May 3<sup>rd</sup>. Joe Moore recommends for approval.

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

### **Personnel Matter – Approval to Hire Vet at Mountaineer**

Joe Moore presented the request to approve hiring a vet at Mountaineer Park. Currently, there is no full-time vet on staff for the Racing Commission at Mountaineer Park. Recovering Mountaineer Park, currently, with contract labor. Dr. Bohenko offers to cover the night-time race carts with additional compensation to being a greyhound vet. Joe Moore is proposing that the Racing Commission hire a full-time vet to cover pre-race exams, working horses off the vets list and to be that second vet at the night-time carts to assist Dr. Bohenko. As was the best practice presented in the NTRA recommendation that came through a few years ago. Joe Moore recommends that the Racing Commission hires Dr. Jon Day in that position. Dr. Jon Day has worked for the Racing Commission for several years in the past in many different positions, as well. Dr. Jon Day is willing to take on all the full-time duties previously listed.

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

### **Public Comments**

Joe Moore states a rumor that a federal indictment in New York, yesterday, for 27 individuals including trainers, vets, and others who were alleged to be illegally administering performance enhancing drugs to high profile racehorses. This is not great publication for the racing industry. The head of the RCI, Ed Martin, came out with a statement of support for the racing industry and laboratories for catching the activity. This also includes the penalties and the processes that are currently within the racing industry. Regulations that were in place to allow for that activity to be exposed. Ed Martin provided a positive statement to what appears to be a black mark in the racing industry, currently.

Chairman Rossi states that the Racing Commission needs to be diligent in performing their duties.

Joe Funkhouser wants to congratulate the Racing Commission and thank the legislature for being a sponsor to the industry and passing the ADW Bill. It is believed to be a tremendous opportunity for the Racing Commission to practice diligence. Joe Funkhouser wrote a paper about ten years ago and the ADW was legalized at the federal level and the Interstate Horse Racing Act for 2001. There is some ambiguity on whether a West Virginia Resident placing a wager in an ADW within the state of West Virginia on a track outside of the state is currently legal or not. He believes it is a grey area. It is a clear purpose under the current law that West Virginia Residents placing a wager on a West Virginia racetrack. This is clearly prohibited under Chapter 1922, Sections 1 and 2. The Racing Commission has exclusive jurisdictions to govern these activities, not the county prosecutors. The majority of other states have passed the ADW and have ADW regulations. This Bill is modeled off Virginia, the Racing Commission is encouraged to reach out to other states that have regulated this activity. Working with the West Virginia racetracks will help to achieve diligence. The ADW is the growing area of the revenue of the sport and all the revenue grows in the pari-mutuel market.

### **Adjournment**

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