

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, March 12, 2019**  
**WV Racing Commission Conference Room**

The WV Racing Commission met on March 12, 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.

**Executive Director's Report**  
**Joe Moore**

Joe Moore reports the commission has before them to review the West Virginia (WV) Breeders Classic projected advertising and promotional activities for the race to be ran on October 12, 2019. Joe Moore also wants to recognize through resolution the career of Dickie Moore. Dickie Moore retired as Charles Town General Manager of Racing Operations. The Racing Commission wishes to honor and thank Dickie Moore for his years of service and contributions over fifty years he made to the thoroughbred industry. Commissioner Lowe shared his respect and appreciation working with Dickie Moore. Commissioner Rossi also expressed his appreciation for Dickie Moore's service.

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

**Accountant's Report**  
**Joe Moore**

Joe Moore provided an overview of the report. The pari-mutuel wagering comparison for February of 2019 shows the live handle has increased by 27% compared to January 2019. The pari-mutuel live handle has increased by 52% compared from February 2019 to February 2018. The pari-mutuel live handle has increased by 3% from February 2019 to State Fiscal Year (SFY) 2018. The export handle has increased nearly 13% compared from February 2019 to SFY2018. The total instate handle including simulcast is down half a percent compared from February 2019 to last year.

Financial summary reports for the January and February year to date for State Fiscal Year (SFY) 2019 was provided for review. Joe Moore provided the following highlights from the financial summary reports. The racetrack employee contributions calculation has been calculated and should be dispersed later this week. The Racing Commission completed the distribution of the 2018 WV Thoroughbred Development Fund. As of February 2019, the total paid out was \$4,874,471.19 to 744 participants this year.

**Legal Update**  
**Kelli Talbott**

Kelli Talbott reports the Thoroughbred Racing Rule Amendment proposed during this year's legislative session passed. Assuming the Governor signs the bill, the Racing Commission will need to determine the effective date to file with the Secretary of State. The amendment is

related to the introduction of implementing and enforcing the jockey concussion protocol at the horse racetracks. Kelli Talbott and Joe Moore will attend the ARCI Mid-Atlantic Regional Wilmington Delaware on March 21, 2019. Kelli Talbott will attend the annual ARCI meeting in California on April 2, 2019. Kelli Talbott will attend on behalf of the racing commission two key meetings during the annual conference. They are the licensure compact and medication testing compact meetings. Although WV is not currently participating in the medication testing compact Kelli Talbot will attend to report back anything pertinent to the Racing Commission. The licensure compact meeting is focused on changing bylaws to expand participants across multi-jurisdictions. Kelli Talbott also advised on importance to begin thinking about any proposed rule changes. Any proposed rule changes will need approved by the Governor in order to have consideration for the upcoming 2020 legislature.

Commissioner Lowe asked if this means stakeholders should begin meeting to receive input for consideration to any proposed rule changes. Chairman Rossi concurred, and asked Joe Moore to get the rules committee together as soon as possible to avoid running up against deadlines. Joe Moore requested for the next meeting to be on March 31, 2019. Commissioners agreed with the next meeting date. Joe Moore also asked for all stakeholders to begin emailing Kelli Talbott and his self for anything they wish to discuss during the rules committee meeting.

### **Discussion of 2019 Legislation**

Joe Moore provided an update on outcomes from the 2019 legislative session. Senate Bill 13 passed and was signed by the Governor. The passage of this bill returns \$11 million dollars of workers compensation money back to the purse fund. This funding should be a huge boost to the racing industry. House Bill 3021 passed both chambers and is now pending Governor signature. This bill requires the payment of all civil penalties imposed against thoroughbred horse racing licensees or permit holders to be paid into a fund for expenses associated with the post-mortem examination of all thoroughbreds that suffer breakdowns and are euthanized on a racetrack or that otherwise expire on a racetrack. It would require any funds in excess of \$10,000 in such fund at the end of a fiscal year, less outstanding obligations, may be expended by the racing commission to aid in the rescue, retraining, rehabilitation and aftercare of thoroughbred racehorses that are no longer able to compete on the racetracks in this state, and may be expended to aid in the payment of hospitalization, medical care and funeral expenses occasioned by injuries or death sustained by a thoroughbred racing permit holder at a licensed thoroughbred racetrack in this state. The bill would authorize the Racing Commission to promulgate rules to govern such expenditures while requiring the payment of all civil penalties imposed against greyhound racing licensees or permit holders to be paid into a fund to be expended for greyhound adoption programs involving West Virginia whelped dogs owned by residents of this state pursuant to rules promulgated by the racing commission.

Kelli Talbott added the Governor's office has so many days to act on a bill. She also wanted to make sure the Racing Commission knows upon passage of the bill they will need to act on promulgating the rules required around how the procedures for distributing money to the after care.

Commissioner Lowe expressed gratitude to the Governor and Legislature for acting on returning the \$11 million dollars back to the purse fund. He believes it sends a message to the nation, the state, and industry that WV's racing industry is alive and well. He hopes it will be publicized as much as possible to help promote it.

Joe Moore reported there were other bills introduced but ultimately did not make it out of session. The House Bill 2837 related to the advanced deposit wagering passed the house but did not make it out of Senate Finance. House Bill 2901 relating to allowing the establishment of a secondary location for racetrack video lottery terminals and racetrack table games of licensed racetracks to an alternative location within the current county of the licensed racetrack did not make it out of Senate Finance. House Bill 3025 to allow the Racing Commission to approve number of racing days requested by racing association; eliminating racing day requirement to maintain video lottery license; eliminating prohibition of ATM's on casino floors; eliminating recall elections for video lottery and racetrack table games; and allowing video lottery licensees to serve alcoholic beverages during hours of operation was introduced, but not taken up in either chamber.

Regarding House Bill 2837, Commissioner Lowe expressed concern of the legality of any companies currently accepting wagers from WV citizen. It is Commissioner Lowe's recommendation for the Racing Commission legal counsel to research the matter and advise the commissioners.

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

Kelli Talbott requested to know if the client attorney privilege applies for this matter. Chairman Rossi confirmed client attorney privilege applies.

#### **Mountaineer requests Approval of Mystery Voucher promotion**

Joe Moore provided an overview of Mountaineer Park's request to issue 37,000 mystery vouchers on March 23, 2019. The vouchers redeemable would be anywhere from \$5 to \$10,000 for March 23, 2019. This year's request is very similar to the mystery vouchers programs ran through the commission in previous years. Joe Moore recommends the Racing Commission to approve.

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

#### **Wheeling Island request use of the term "Feature Race"**

Ben Travis with Wheeling Island management provided an overview of their request. Ben Travis believes the request will provide the greyhounds the ability to maintain a regular weekly race schedule to run by allowing the term "Feature Race" to be used.

Commissioner Figaretti asked Ben Travis for further clarification around how often a dog would race. Ben Travis responded this would allow the dogs to run four days a week.

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

Chairman Rossi pointed out the next three items are similar in nature. Therefore, he asked Joe Moore to present together for review and one vote.

#### **Wheeling Island requests Lighting Project be added to Kennel Refurbishment Project**

Joe Moore reports Wheeling Island is requesting an additional \$16,577 to complete the second phase of the kennel refurbishment project. The total to date before this request for the project is \$21,855. This additional request would bring the grand total of the project to \$38,432. Wheeling Island has provided the information to the Racing Commission to support the cost for completing the lighting portion of the project.

#### **Wheeling Island requests Approval for Capital Reinvestment - HVAC Units, \$11,120.34**

Joe Moore reports Wheeling Island is requesting \$11,120.34 for two replacement HVAC units.

#### **Wheeling Island requests Approval for Capital Reinvestment - Satellite Adoption Center**

Joe Moore reports Wheeling Island is requesting \$21,936 to support the construction of a satellite adoption center.

Commissioner Lowe asked Wheeling Island management for confirmation whether the projects were competitively bid out. Ben Travis states the Delaware North management requires to obtain three quotes. Ben Travis reports the contractor they want to move forward with is an existing contractor and is the only contractor bidding on the work being requested.

Joe Moore reports funds are available for all projects and recommends the Racing Commission to approve.

Motion to approve all three funding requests for Wheeling Island projects was made by Commissioner Lowe, seconded by Commissioner Figaretti. Motion was passed.

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

Joe Moore reports Charles Town is requesting approval for mandatory pick six payout for the Charles Town Classic on April 20, 2019 and the Breeder's Classic on October 12, 2019. Joe Moore recommends the Racing Commission to approve.

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

#### **Charles Town requests Approval for Capital Reinvestment - OTW/Simulcast Area**

Joe Moore reports Charles Town is requesting \$26,000 to update the track wagering area below the grandstand area. This area is frequented mainly by racing patrons.

Commissioner Lowe requested to know if this improvement would reduce the amount of smoking in the area. Eric Zimny with Charles Town management reports the project is focused initially on cosmetic improvements of the area. Eric Zimny stated in order to reduce smoking in the area it would more than likely require HVAC improvements in a separate request to the Racing Commission. Commissioner Figaretti asked to consider an approach that would appeal to both non-smokers and smokers. Eric Zimny stated they would consider how to make improvements that would appeal to both non-smokers and smokers. Joe Moore reports funds are available for all projects and recommends the Racing Commission to approve.

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

### **Mardi Gras requests Approval of 2019 Stakes Races**

Joe Moore reports Mardi Gras is requesting in support of the \$35,000 juvenile stakes race with finals on March 23, 2019 and the \$65,000 open stakes race with finals on May 25, 2019. This request is in line with what's been submitted and approved by the commission in the past. Joe Moore reports funding is available and recommends the Racing Commission approve.

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

### **Contract Update - MP HBPA**

Nelson Robinson representing Mountaineer Park is requesting respectfully for the Racing Commission refrain from discussing anything involving specifics of the contract negotiations between Mountaineer Park and the Mountaineer Park Horsemen's Benevolent & Protective Chartered (MP HBPA). Nelson Robinson believes the Racing Commission does not have the authority to interfere with the internal business or affairs of the licensed business. Chairman Rossi recalls the Racing Commission discussing the contract matter in the past. Its Chairman Rossi's understanding everyone is trying to work together in the best interest of all. Chairman Rossi stated the Racing Commission would like to hear both sides as well as have input from the Racing Commission legal counsel. Chairman Rossi asked if the MP HBPA would like to comment. On behalf of the MP HBPA Sherry Van Hassel stated they do not wish to discuss the terms and conditions of the contract at the commissioners meeting, but rather on getting finding a way to get to a contract. Sherry Van Hassel believes a current simulcast contract is in place that is subordinate to the basic contract. Sherry Van Hassel states the MP HBPA believes the simulcast contract in place violates the state code since there is no base contract. Sherry Van Hassel states the MP HBPA believes the Racing Commission has the authority force both parties to negotiate in good faith. Sherry Van Hassel stated by delaying negotiations any further with only 17 days left before racing starts is putting the horsemen in an inferior position to negotiate. Jami Poole with the MP HBPA stated Mountaineer Park put the horsemen in a bad position last year. Jami Poole stated they will not allow for this to happen again. Chairman Rossi asked Racing Commission legal counsel Keli Talbot to advise the Racing Commission. Kelli Talbot reported there are two legal frameworks that come into play with the matter at hand. The first, the Interstate Horse Racing Act requires the horsemen's consent is required in order to export races for simulcast. The next law being state code 19-23 12b requires the horsemen's consent to import simulcast from other racetracks. Kelli Talbot stated the Racing Commission is required to ensure those statute requirements are complying. Kelli Talbot also informed the Racing Commission has authority according to state code 19-23 6(18) to mediate on site, upon request of a party, all disputes existing between the racetrack licensees located in this state and representatives of a majority of the horse owners and trainers licensed at the track which threaten to disrupt any scheduled racing event or events. Kelli Talbot informed the Racing Commission has received from attorneys representing the MP HBPA they believe according to statute related to Lottery gambling licensing the consent of the horsemen must be received for racetracks to renew their lottery gambling notice. Kelli Talbot reports the Racing Commission could not speak on behalf of Lottery. Kelli Talbot asked if Joe Moore would like to add anything. Joe Moore reported the Racing Commission is an agency under the Secretary of Revenue therefore he has informed the Secretary of Revenue as well as the

Lottery Director and Assistant Director of the matter and potential impact. Chairman Rossi recalls the last time this matter had occurred the Racing Commission recommended both parties to meet to work things out before the Racing Commission would mediate. Chairman Rossi feels both parties should do this again. Commissioner Lowe recommends both parties meet within 10 days from now. If agreement cannot be reached, then either party could request the Racing Commission to mediate. Chairman Rossi recognized Nelson Robinson on behalf of Mountaineer Park. Nelson Robinson concurs with the Racing Commission legal counsel. Nelson Robinson stated there was an agreement reached and signed between the MP HBPA and Mountaineer Park in December for simulcast. Nelson Robinson shared part of the reason for the length of time it is taking to meet with the MP HBPA is due to a new regional director to be brought up to speed before negotiations may begin. Nelson Robinson also stated Mountaineer Park was surprised only a week before the Racing Commission meeting that the contract was going to be on the agenda. Nelson Robinson stated its Mountaineer Park's desire to continue with the existing contract in place until a new agreement could be reached. If a new agreement could not be reached, then it would be understandable why mediation would be requested. Shelly Van Hassel reiterated the simulcast agreement is subordinate to the base contract. Shelly Van Hassel stated the simulcast contract was signed in good faith that the base contract would be done already. Shelly Van Hassel stated the MP HBPA would welcome a 10-day deadline for both parties to meet to work things out before mediation would be requested of the Racing Commission. Commissioner Figaretti suggest both parties meet now. Chairman Rossi doesn't disagree but is not sure the decision makers are present at the meeting. Jami Poole stated he appreciates Jim Colvin at Mountaineer Park working with the MP HBAPA to try to get things worked out. Jami Poole would just like to meet with the decision maker at Mountaineer Park to finalize the contract. Commissioner Lowe recognizes the need for someone with Mountaineer Park to be present as a decision maker. Therefore, Commissioner Lowe states it makes sense to put forward a motion for both parties to meet by noon March 22, 2019.

Motion to approve both parties meet by noon March 22, 2019 was made by Commissioner Lowe, seconded by Commissioner Rossi. Motion was passed.

### **Personnel Matter - Approval to hire IT Manager**

Joe Moore requests the Racing Commission approve the hire of an Information Technology manager. The candidate was interviewed, and a copy of their resume has been provided to the Commissioners for review. Chairman Rossi requested to know if the Secretary of Revenue's Office is aware and approved the position since it will be an increase in staff. Joe Moore reports the Secretary of Revenue's Office is aware and will approve formally once the Racing Commissioners have formally approved.

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

### **Public Comments**

Nelson Robinson respectfully disagrees with the decision to set a deadline for the MP HBPA and Mountaineer Park. Nelson Robinson believes the Racing Commission does not have the authority to do this since it interferes with the internal business and affairs.

Phil Reale thinks it is important to make it publicly known by the Racing Commission as well as the leadership across the Secretary of Revenue's Office and Governor's Office the benefits to the state by passing the legislation for advanced deposit wagering. Joe Moore stated

each year the Racing Commission along with the Secretary of Revenue's Office and Governor's Office have worked together in support of the advanced deposit wagering bill. Joe Moore recalls in recent previous years the Racing Commission received support from the Secretary of Revenue's Office and Governor's Office to introduce the bill. Phil Reale appreciates this but believes it needs to be more apparent during legislative session by the regulatory authority.

John Cavicini with the WV Racing Association believes WV citizens are placing bets utilizing illegal out of state services resulting in a loss of revenue being collected by WV. John Cavicini believes it would make a greater impact on getting the advanced deposit wagering bill passed if the Racing Commission would take the lead. John Cavicini also believes part of the reason for delay with the MP HBPA contract negotiation is due to raising issues during preliminary discussions. John Cavicini hopes the ten-day timeline setup by the Racing Commission will help, but wants the Racing Commission to consider the timeline could be impacted by complex issues needing worked out between both parties.

Jana Tetrault on behalf of the MP HBPA believes it could be helpful to take the comments and suggestions mad in the past and to date by the industry as whole to support the Racing Commission with getting the advanced deposit wagering bill passed.

Commissioner Lowe is certain the Governor's Office is already on board with supporting the advanced deposit wagering bill. Commissioner Lowe believes we need to continue to work together to educate others on the value of passing the advanced deposit wagering bill through the best possible means and resources available.

### **Adjournment**

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