

**MINUTES**  
**WV RACING COMMISSION**  
**Tuesday, November 10, 2020**  
**WV Racing Commission Conference Room**

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

**Approval of September 18<sup>th</sup> minutes**

Motions to approve the meeting minutes for September 18<sup>th</sup> was made by Commissioner Figaretti, seconded by Commissioner Akers. Motions were passed.

**Executive Director's Report**

Executive Director, Joe Moore, provided the following from the executive director's report. Pari-mutuel comparison report for September 2020 to September 2021 shows In-State Simulcast is down twenty-six percent. Live export is down twenty-nine percent. Charles Town has confirmed positive COVID cases. Therefore, in coordination with the local health department they will shut down for four race days. There will be a follow up meeting in the near future to take up a request from Charles Town to make up the four race days.

Commissioner Akers requested to know the compared gross export amounts for year to date (YTD).

Joe Moore reported the gross export comparison for YTD 2020 was \$177,894,717 to YTD 2021 was \$137,390,912. The simulcast handle comparison for YTD 2020 \$8,085,852 YTD 2021 \$6,148,147. The live handle YTD for 2020 5,828,367 to YTD 2021 \$4,182,881

Commissioner Akers asked for Joe Moore's opinion what he thinks the cause is for the inverse between the dollars versus the percentages.

Joe Moore believes the tracks would know better, but his guess would be due to the rescheduling of tracks reopening around the country our tracks opened sooner resulting in an increase with live export. Also, Charles town running their stake races in this quarter compared to last April would increase their export handle as well.

Erich Zimny with Charles Town racetrack management stated their live export has been on a pretty steady ascent for the last seven to nine years. As Joe Moore stated Charles Town was able to get out ahead with reopening before other tracks across the country. Erich Zimny is encouraged because the numbers to date have still kind of stabilized.

Chairman Lowe stated it should be noted the astuteness of the stewards working with the post times is a key factor as well. He asked if Jim Colvin with Mountaineer Park racetrack management would like to add anything.

Jim Colvin added much like Erich Zimny stated due to reopening sooner than others the export handle went up and they have been able to keep their customers.

Chairman Lowe added he knows Erich Zimny is looking at doing some things to try to increase the local handle. He recommends for anyone with ideas on how to accomplish this to reach out to Joe Moore.

## **Legal Update**

Legal Counsel, Kelli Talbott, provided the following legal updates to the commissioners. The hearing regarding the objection appeal by Mr. Wayne Potts was held. After the hearing, the Racing Commission and appellant, Mr. Wayne Potts, reached an agreement to where Mr. Potts is withdrawing his objection appeal for the violation that occurred at Charles Town.

There are three rules pending to be taken up in legislative session. The greyhound, thoroughbred, and Advanced Deposit Account Wagering (ADW) are the proposed rules for amendment. The legislative rules committee is planning on meeting in December interims.

The federal bill related to horse racing introduced in the United States Senate and House will have a significant impact on racing if it passes. The bill did pass the House. It is Kelli Talbott's understanding the bill would have to be reintroduced by the House if it does not pass the Senate before the year end.

Chairman Lowe shared his continuous concern he has stated at the Association of Racing Commissioners International (ARCI) the states with the larger racetracks drive where the ARCI stand. He will always do his part to stand up for West Virginia. Chairman Lowe asked if either Kelli Talbott or Joe Moore had anything they would like to add.

Kelli Talbott shared she is not aware of any official position by the ARCI yet.

Joe Moore shared feedback from the ARCI President, Ed Martin, the ARCI is gearing up for how to assist states with implementation if the bill passes.

Chairman Lowe asked Kelli Talbott about if any language made it into the proposed ADW rule for how to handle an ADW operator who previously operated in WV prior to the ADW bill passing.

Kelli Talbott reported there is no language regarding if a vendor were operating prior to the bill being passed, but the application to be a vendor in WV does require an attestation whether they have committed a crime or have any litigation issues related to ADW. The passage of the bill does give the Racing Commission the ability to file an injunction to halt an ADW vendor from operating illegally in WV. The Interstate Horse Racing Act does provide civil legal action can consider pursuing to make a claim. There is statute of limitations for how long you have to file a claim.

Joe Moore stated the Racing Commission may not have a claim since the Racing Commission receives a flat fee from the ADW operator instead a percentage of the pari-mutuel earnings.

Chairman Lowe stated if he correctly understands the racetracks or horsemen could file a claim against any ADW operator who operates illegally but the Racing Commission would more than likely not be able to.

Kelli Talbott concurred.

Mountaineer Park HBPA Executive Director, Jana Tetrault, shared Senator McConnell intends to take the bill up on the floor this week.

## **TVG Network Application for ADW License**

Joe Moore presented the request from TVG Network for application for an ADW license. They have submitted all the requirements under the application process along with the fee. Therefore, he is recommending the Racing Commission to approve.

Motion to adopt the recommended decision was made by Commissioner Figaretti, seconded by Commissioner Akers. Motion was passed.

### **AMWest Application for ADW License**

Joe Moore presented the request from AMWest for application for an ADW license. They have submitted all the requirements under the application process along with the fee. Therefore, he is recommending the Racing Commission to approve.

Motion to adopt the recommended decision was made by Commissioner Figaretti, seconded by Commissioner Akers. Motion was passed.

### **Approval of Template for ADW Renewal Application**

Joe Moore presented the request for approving the template to be used for by all ADW licensees for renewing their application. Joe Moore also recommends approving the request.

Commissioner Akers asked if the renewal application form is simply to attest whether anything has changed from the previous application.

Joe Moore reported it does require providing updated financial information as well as the annual license fee.

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

### **WI Requests 1pm Post-Time on December 31, 2020**

Joe Moore presented the request from Wheeling Island for a 1pm post-time on December 31, 2020. This is an adjustment to their previously approved live race calendar. The adjustment is due to COVID-19 resulting in cancelling their traditional post time would include a holiday dinner.

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

### **WI Requests Approval of 2021 Import/Export Sites**

Joe Moore presented the request from Wheeling Island to approve their 2021 import/export sites. The request is in line with what was submitted last year along with the ones that were approved throughout the current year. Joe Moore recommends for the Racing Commission to approve.

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

### **WI Requests Approval of 2021 Kennel Contracts**

Joe Moore presented the Wheeling Island request for their 2021 kennel contracts. All of the thirteen contracts are the same that were approved previously.

Commissioner Figaretti asked if there was any follow up to his previous question about whether there is a requirement for a kennel to house WV greyhounds.

Wheeling Island management, Kim Florence, believes the kennel contract has a limit of 85 greyhounds. She will need to follow up with the kennels to verify how many WV bred greyhounds are in the thirteen kennel contracts.

Commissioner Figaretti is concerned after hearing feedback that WV bred greyhounds are not being accepted at kennels.

Kelli Talbott reported there is no rule or law that requires WV greyhound dogs are housed at a kennel. The Racing Commission reviews the contracts to ensure they comply with WV state law to operate as a business.

Chairman Lowe asked everyone to refer to page five of the contract where there in it states a kennel can house two state greyhounds that will not count against the maximum number of greyhounds allowed in a kennel. Which to Chairman Lowe believes this is an incentive to have WV bred greyhounds. Chairman Lowe asked Commissioner Figaretti if that addresses his concern.

Commissioner Figaretti confirmed it does.

Motion to approve request was made by Commissioner Akers, seconded by Chairman Lowe. Motion passed with Chairman Lowe and Commissioner Akers voting in favor of while Commissioner Figaretti voted in opposition.

#### **MG Requests Approval of 2021 Live Race Calendar – 261 Days**

Joe Moore presented the Margi Gras request to approve their 2021 live race calendar. Joe Moore recommends for approval.

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

#### **CT Requests Approval of 2021 Live Race Calendar – 220 Days**

Joe Moore presented Charles Town's request to approve their 2021 live race calendar. The request is in line with state code for the required number of live race days. Joe Moore recommends for approval.

Commissioner Figaretti asked how many live race days did Charles Town race last year.

Joe Moore reported absent the COVID-19 closures they were around 179 live race days.

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

#### **CT Requests Approval of 2021 Live Race Calendar – Reduction of 46 Days**

Joe Moore presented Charles Town's request to approve their reduction of their 2021 live race calendar days by 46 days. The Racing Commission has received letters in support of the request from both the presidents of the Charles Town HBPA and local Pari-mutuel Teller's Union. Joe Moore recommends approving.

Chairman Lowe asked if the need would arise for increasing the number of days would occur could the Racing Commission entertain and approve a request to do so.

Joe Moore concurred the Racing Commission could.

Commissioner Figaretti is concerned with the continuing decrease in live race days. His fear is it will drastically decrease so much having major negative impact on WV. He does not want to see that happen.

Chairman Lowe understands Commissioner Figaretti's concern. He emphasized the importance of everyone working together to avoid this while moving to enhance the racing industry.

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

### **MP Requests Approval of Capital Improvement Project – 3 New Diamond Harrows**

Joe Moore presented the Mountaineer Park request to approve a capital improvement to purchase three new Diamond Harrows at a cost of \$34,980 to maintain the track. The money is available, and he recommends for approval.

Chairman Lowe asked what the intent of Mountaineer Park is with the old equipment. He would also like for racetrack management to look into how much tax they would pay for this equipment. It looks like it should be taxed at a six percent rate.

Jim Colvin informed the Racing Commission they will keep the equipment to use as spare parts for the new equipment. He will look into the tax rate.

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

### **MP Requests Approval of 2021 Live Race Calendar – 210 Days**

Joe Moore presented Mountaineer Park's request to approve their 2021 live race calendar. The request is in line with state code for the required number of live race days. Joe Moore recommends for approval.

Motion to approve request was made by Commissioner Akers, seconded by Chairman Lowe. Motion passed with Chairman Lowe and Commissioner Akers voting in favor of while Commissioner Figaretti voted in opposition.

### **MP Requests Approval of 2021 Live Race Calendar – Reduction of 80 Days**

Joe Moore presented Mountaineer Park's request to approve their reduction of their 2021 live race calendar days by 80 days. The Racing Commission has received letters in support of the request from both the presidents of the Mountaineer Park's HBPA and local Pari-mutuel Teller's Union. Joe Moore recommends approving.

### **MP Requests Approval of 2021 Stakes Schedule**

Joe Moore presented Mountaineer Park's request to approve their 2021 stakes schedule. It includes the \$500,000 grade three WV Derby along with \$200,000 grade three Governor's stakes. The total number of stakes are seven. The remaining number of stakes are \$75,000 apiece.

Chairman Lowe asked if the post time was shifted to 2pm.

Jim Colvin confirmed it is set for 2pm. The do everything possible to avoid conflicts with other stakes races going on.

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

## **MP Requests Approval of 2021 Import/Export Sites**

Joe Moore presented the request from Mountaineer Park to approve their 2021 import/export sites. The Racing Commission received a letter in support of this request from the Mountaineer Park HBPA as required by the Interstate Horse Racing Act. Joe Moore recommends for the Racing Commission to approve.

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

## **Public Comments**

## **Adjournment**

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