

# **Virginia Racing Commission**

## **MINUTES**

### **OF THE**

#### **COMMISSION MEETING**

**December 19, 2007**

**HORSEMEN'S BUILDING  
COLONIAL DOWNS  
10700 HORSEMEN'S ROAD  
NEW KENT, VA**

#### In Attendance

##### Commission Members

Peter C. Burnett, Chairman  
Mark Brown, Vice Chairman  
William H. (Trip) Ferguson  
I. Clinton Miller  
David C. Reynolds

##### Commission Staff:

Stanley K. Bowker, Executive Secretary  
Kimberly M. Carter, Office Administrator  
C. Richard Harden, DVM, Commission Veterinarian  
David Lermond, Jr., Director of Pari-mutuels  
Peggy E. Mason, Permitting Manager  
Marvin A. Sniegon, Director of Financial Management & Planning  
Dennis E. West, Director of Operations

##### Attorney General's Office:

Amy K. Dilworth

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Following lunch Chairman Burnett called the regular monthly meeting of the Commission to order.

The minutes of the November 14, 2007 meeting were approved.

Chairman Burnett reported that he had attended the University of Arizona Symposium in Tucson where considerable discussion had taken place on the issues of the day. Mr. Bowker reported that Chairman Burnett was elected Chairman of the National Racing Compact.

Acting on the recommendation from Mr. Bowker, the Commission approved Colonial Downs' January simulcasting schedule.

The Commission conducted a four-hour hearing involving live racing dates for 2008. Following the Standardbred portion, it was moved, seconded and unanimously approved that the Commission award 34 live Standardbred racing days for 2008—Friday, September 12 through Wednesday, November 5. It also was noted that opening weekend the New Kent County Fair would commence on Friday, a day earlier than in 2007.

James Weinberg, counsel for Colonial Downs, asked that since the Commission was going into closed session that it also consider the Commission's position with YouBet. He added he was disappointed that when YouBet stated in documents filed in U.S. District Court in Richmond that the Commission does not regulate YouBet that the Commission did not come forward and say to the Court that the Commission does regulate YouBet.

Following that discussion, Chairman Burnett made the following motion:

“In accordance with the provisions of Section 2.2-3711 (A)(7) of the Code of Virginia, I move that the Commission go into closed meeting for the purpose of:

1. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by the public body regarding specific legal matters requiring the provision of legal advice by such counsel which may include Youbet issues and the race day issue.

The motion was seconded and was unanimously approved.

Coming out of closed meeting, Chairman Burnett made the following motion:

“Whereas, the Virginia Racing Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote in accordance with the provisions of The Virginia Freedom of Information Act; and

“Whereas, Section 2.2-3712 of the Code of Virginia requires a certification by this Commission that such closed meeting was conducted in conformity with Virginia law;

“Now, therefore, be it resolved, that the Virginia Racing Commission certifies that, to the best of each member’s knowledge, (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Commission in the closed meeting.”

The motion was seconded by Commissioner Ferguson and the vote was as follows: Brown, aye; Ferguson, aye; Reynolds, aye; Miller, aye; and Chairman Burnett, aye.

After considerable discussion the Commission went on record that it will take several positive steps to fulfill its public responsibility to bring to the attention of the proper authorities, including the possibility of filing an amicus brief in the pending U.S. District Court case, what it perceives to be a possible and likely violation of Virginia law by YouBet and it will take additional positive steps shortly to make that known to the proper authorities and in the proper forum.

During the discussion on live Thoroughbred race days, it had been brought to the attention of the Commission that the Agreement between Colonial Downs and the Virginia Horsemen’s Benevolent & Protective Association (VAHBPA), the official representative of the Thoroughbred horsemen running at Colonial Downs, would expire on December 31, 2007. Pursuant to §59.1-369.14 of the Code of Virginia: “The Commission shall require the existence of a contract between the licensee (Colonial Downs) and the recognized majority horsemen’s group (VAHBPA) providing for purses and prizes.”

After considerable discussion it was decided that if the contract issue remained unresolved as of December 31, 2007, the Commission would schedule a special meeting.

As to the issue of live Thoroughbred racing days, Commissioner Miller said both Colonial Downs, in support of its 40-day request, and the horsemen, who proposed 45 days, had presented their arguments very well. He added that the Commission had to balance the interests of the citizens of Virginia, the interests of Colonial Downs and the interests of the horsemen.

Following a motion made, seconded and unanimously approved, the request from Colonial Downs for 40 live racing days was modified to 45 days—nine weeks within the 10-week period of Friday, June 3 through Tuesday, August 12. All parties were asked to communicate with their counterparts in Maryland in an effort to avoid any problems in continuing the very positive relationship between Virginia and Maryland.

The Commission set the next meeting for January 16, 2008 at 9:30 a.m. in the Horsemen’s Building at Colonial Downs.

There being no further business, the monthly meeting of the Commission was adjourned at 5:10 p.m.

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Prior to the regular monthly meeting, presentations were made by representatives of Colonial Downs/The Racing Channel, ODS Technologies, L.P., d/b/a TVG, XpressBet, Inc. and Churchill Downs Technology Initiatives Company, d/b/a TwinSpires, Inc. on their applications for the renewal of their advance deposit account wagering licenses for 2008 were heard.

In the matter of Colonial Downs/The Racing Channel, the renewal application was approved unanimously with seven conditions outlined in the Staff Report plus an additional condition was added involving security reviews to be conducted by Colonial Downs on the owners of all locations where Infotext equipment is to be installed as well as Commission review of contracts. In addition, a contract between Colonial Downs and Infotext Sales, Inc. was approved.

In The Matter of TVG, the renewal application was approved unanimously with seven conditions outlined in the Staff Report.

In The Matter of XpressBet, the renewal application was approved unanimously with seven conditions outlined in the Staff Report.

In The Matter of TwinSpires, the renewal application was approved unanimously with six conditions outlined in the Staff Report plus the new Agreement among TwinSpires, Colonial Downs and the horsemen needs to be completed before January 1, 2008.