

# Virginia Racing Commission

## MINUTES

### OF THE

### COMMISSION MEETING

January 6, 2016

**Patrick Henry Building  
West Reading Room  
1111 East Broad Street  
Richmond, VA 23219**

#### In Attendance

##### Commission Members:

D.G. Van Clief, Jr., Chairman  
Carol G. Dawson, Vice Chairman  
I. Clinton Miller  
Charles Steger, PhD  
J. Sargeant Reynolds, Jr.

##### Commission Staff:

Bernard J. Hettel, Executive Secretary  
C. Richard Harden, DVM, Equine Medical Director  
David S. Lermond, Jr., Deputy Executive Secretary  
Kimberly C. Mackey, Office Administrator

##### Office of Agriculture and Forestry

Sam Towell, Deputy Secretary of Agriculture and Forestry

##### Attorney General's Office:

J. Duncan Pitchford, Esquire

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At 10:02 a.m., the regular monthly meeting of the Virginia Racing Commission (VRC) was called to order by Mr. Hettel.

Commissioner Reynolds nominated Commissioner Van Clief as the 2016 Chairman. The motion was seconded by Commissioner Steger. All were in favor. The motion carried unanimously.

Commissioner Miller nominated Commissioner Dawson as the 2016 Vice Chairman. The motion was seconded by Commission Steger. All were in favor. The motion carried unanimously.

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A discussion ensued regarding the administrative process hearing regarding Churchill Downs. Harry Johnson, Esquire, was present as legal counsel on behalf of Churchill Downs. Commissioner Miller requested that the minutes reflect that, “according to records of the Virginia Racing Commission, the applicant by whatever name is in non-compliance as of this date for 2016 and that non-compliance began at the least at 12:01 January 1<sup>st</sup> of 2016, and that they continue in noncompliance until this day. The Commission thus far, has heard nothing from the applicant relating to its 2015 activities, and that apparently as of this time; and that from our last meeting of this Commission until now, that from December 18<sup>th</sup> of 2015 through midnight of December 31<sup>st</sup> of 2015, that the applicant was also in non-compliance according to our records, and that at the next meeting of this Commission, if action has not been initiated by the next meeting of this Commission, it’s my intent to make a motion on that date that we go forward with whatever enforcement provisions we can to impose whatever penalty the Commission feels necessary for the non-compliance for 2015 and for the non-compliance of 2016, and whatever other action the Commission may deem appropriate toward this applicant”.

Commissioner Miller moved that we issue a new notice for a new hearing date on the applicant under its appropriate name, which will be given to our Executive Secretary today in the exact form that the company requests, and that the secretary then give notice to that company in the exact form as given to our Executive Secretary today and at the address that is given to our Executive Secretary today and all necessary parties that the applicant feels is necessary to get the notice under the Administrative Process Act, and that that notice go forward and that we set a date in the future at whatever date is convenient to hear the applicant’s position on this 2016 license. The motion was seconded by Commissioner Reynolds. All were in favor. The motion carried unanimously.

Commissioner Steger stated, “Before we go into closed session, I may offer just a couple observations. One is I think we all want to see a constructive result from all of this. We want to see TwinSpires operating in Virginia. Secondly, I share the Chairman’s disappointment that the representative did not notice that the name of the company was not proper at the last meeting. That could have been handled and resolved some of this. But third and this is the most important thing. I would urge that the parties retain a professional mediator. Regrettably, I’ve been involved in more litigation than I’d like to admit. Often, these are individuals who are former judges. They are very fair and constructive and it helps to avoid the enormous expense of litigation which is incurred by both parties in this thing. I don’t see the differences of view as irreconcilable here, and I think if people can sit down in a closed environment that it can be resolved. So I would strongly urge everyone involved to retain a professional mediator to help bring this to a closure. We want to have a win-win for both parties. We want you all to do business in Virginia. We don’t want protracted litigation for several years. Its extensive, time consuming and it damages everybody involved. So I hope that you can do that, and if you can’t do that, I’d like to know why at the next meeting”.

Following the discussion, at 10:55 a.m., the Commission went into closed session with counsel reading the following motion at the request of the Chairman. “In accordance

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with the provisions of §2.2-3711(a)(7) of the code of Virginia, I move that the Commission go into closed meeting for the purposes of consultation with legal counsel and briefing by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating of litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel concerning agenda item number four, the application, the APA hearing for TwinSpires. The commissioners will only ask counsel questions and will not engage in deliberations or any other activity”. The motion for approval was made by Commissioner Miller and seconded by Commissioner Steger. All were in favor. The motion carried unanimously.

Returning from closed session, at 11:28 a.m., counsel read the following motion, “Section 2.2-3712 of the code of Virginia requires a certification by this Commission that the 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 for approval was made by Commissioner Reynolds and seconded by Vice Chairman Dawson. All were in favor. The motion carried unanimously.

Commissioner Miller moved to withdraw his previous motion that the Executive Secretary be directed to issue a notice for a hearing on non-compliance. The motion was seconded by Vice Chairman Dawson. All were in favor. The motion carried unanimously.

Minutes of the regular meeting held on December 16, 2015 were approved. The motion for approval was made by Commissioner Steger and seconded by Chairman Van Clief. All were in favor. The motion carried unanimously.

Mr. Hettel recommended approval of the 2016 Gold Cup Contract. The motion for approval was made by Commissioner Miller and seconded by Vice Chairman Dawson. All were in favor. The motion carried unanimously.

Mr. Hettel recommended approval of the 2016-18 Xpressbet/VEA/VGA/VHBPA/VHHA Rebate Contract. The motion for approval was made by Commissioner Miller and seconded by Commissioner Reynolds. All were in favor. The motion carried unanimously.

During the public comment period, Jeb Hannum and Debbie Easter of the VEA, shared their vision for the coming year and beyond.

Mr. Tom Eshelman, manager of the Shenandoah County Fair, stated, “The investment in the track at Woodstock is going to equal two years’ worth of temporary investment at

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Oak Ridge. We're looking for a long-term home for harness racing, Virginia harness racing at Woodstock. My board is behind it unanimously".

During Commissioners' comments, Commissioner Reynolds stated, "...I love what I heard today, and hopefully, we'll get TwinSpires back in the tent and we look forward to getting that resolved as well".

Commissioner Steger stated, "I first of all want to thank former Chairman Sarge Reynolds for his dedication and the new chairman and vice chairman for their willingness to take on this task. I have to say I have been riding horses since I was five years old almost every day of my life, and this is very exciting. I'm looking forward to seeing great success".

Vice Chairman Dawson stated, "...thank Sarge Reynolds for having led the Commission through some difficult times, and I'm sure that we all appreciate that. I really am thrilled to hear about what Debbie and Jeb and Dr. Woogen and Tom Eshelman have told us today. It's very exciting because we only dreamed about it about a year ago that this would happen and here it is. So we congratulate you and pledge that our support will be there. I'm especially thrilled to hear that there will be good news for the harness horsemen. I'm really anxious to see that new track come about and will be anxious to go and be there. So good job and keep working and we'll be there to support you. And again, with our friends from TwinSpires, I again do hope that some resolution can be worked out before our next meeting".

Commissioner Miller stated, "I do want to make a special thank you to the horsemen, harness horsemen, Thoroughbred, the VEA, everyone, Gold Cup, Dr. Allison, everyone that has worked so hard to keep things here in Virginia after some very trying circumstances. I do think the future looks good for racing in Virginia and I'm looking forward to working with Commissioner Van Clief and Commissioner Dawson as we go forward".

Chairman Van Clief stated, "I think it's a great point. I think we enjoy a relationship with not only the secretary but the administration as a whole that not many industries in many states enjoy. So the stars are certainly aligned. I hope it's gonna be a productive and know it's gonna be an exciting year.

With no further business set forth on the agenda, the meeting was adjourned at 11:58 a.m.