

Virginia Racing Commission

MINUTES

OF THE

COMMISSION MEETING

April 15, 2009

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

In Attendance

Commission Members

Peter C. Burnett, Chairman
I. Clinton Miller, Vice-Chairman
William H. (Trip) Ferguson

Commission Staff:

Victor I. Harrison, Executive Secretary
David S. Lermond, Jr., Deputy Executive Secretary
C. Richard Harden, DVM, Commission Veterinarian
Dennis E. West, Director of Operations

Attorney General's Office:

Amy K. Dilworth

At 9:36 a.m., the regular monthly meeting of the Commission was called to order by Chairman Burnett.

Chairman Burnett then commented that, with only three Commissioners present, any motions, in order to be valid, would have to be voted on unanimously. The minutes of the February 18, 2009 meeting were approved (as amended with respect to moving live racing during the Harness Meet to mostly Sundays instead of Fridays.)

The report from the Thoroughbred Breeders Fund Committee was deferred to later in the day.

Acting on the recommendation of Mr. Harrison, the Commission approved the list of racing officials for Colonial Downs for the 2009 Thoroughbred race meet.

Acting on the recommendation of Mr. Harrison and after a discussion of the qualifications of Steward Lermond, the Commission approved the Stewards/Judges for the 2009 Thoroughbred Meet. Jean Chalk will be the Chief Steward and will be joined in the stand by Phil Grove and Dave Lermond. Adam Campola will be the first alternate.

During the discussion of 'Gray' Slot Machines, Mr. Harrison informed the Commission that he and VRC staff members had visited a truck stop (Bracey's) down at the Virginia border with North Carolina. Inside the truck stop, there were over 20 prepaid phone card machines. The machines accept cash and credits appear on-screen. At the bottom of the machine, there is an opening into which the prepaid phone cards empty out. The players pay no mind to the prepaid phone cards; they are only interested in the betting credits on the machines. The company providing the betting terminals is Travel Center Entertainment. In order to cash out, a receipt must be signed but there is no required ID check. Glenn Petty commented that, "these machines are all over VA". Mr. Harrison said he will write a memo on the matter and forward it along through the AG's office.

Frank Petramalo, Executive Director of the Virginia HBPA, requested approval of the benevolence fund budget including some new projects for 2009. A pointed discussion ensued relating to the VHBPA Benevolence Fund Budget approval being intertwined with the horsemen's agreement – any VRC mandated change to the benevolence fund budget makes the horsemen's agreement null and void. Mr. Petramalo added that the benevolence budget still needs the approval of the harness horsemen. Chairman Burnett questioned the following items being included for the first time within 'benevolence':

- the \$21,600 cost of the ambulance;
- the \$50,000 cost of jockey's insurance;
- the \$40,000 for landscaping including fertilizer, turf maintenance and racing surface inspection, and;
- \$0 for clothing versus last year's \$4,000.

Chairman Burnett stated he 'was unclear whether we're having a benevolence fund drift over into management obligations.' He emphasized the fact that the VRC has bent over backwards to accommodate the execution of the Horsemen's agreement and that it is the middle of April and due to factors including the as-yet-to-be-agreed-upon Benevolence Fund Budget we do not have a Horsemen's agreement. He added that in the future a penalty may have to be put in place to hold the parties to an earlier deadline.

Chairman Burnett said that the groom cash awards were, "reduced by \$2,000 in the hardest economy that we've seen in most of our lifetimes" and that the allocations for air-conditioners were reduced by \$1,000, mattresses by \$2,000, intern program down \$2,000 and scholarships reduced by \$3,000. Mr. Petramalo stated that 'this is the best run

backside in the entire country' and that there is plenty of room within the budget to do good things. Speaking for the Harness Horsemen, Jerry Canaan said that the budget looks 'a little thoroughbred-heavy' but that Dr. Dunavant will review it.

Vice-Chairman Miller, with respect to the 30% of the breakage going to the Benevolence Fund, asked if we had a generic definition of the word 'benevolence'. Mr. Petramalo said it was not defined in the statute. Discussion followed on the 40 live thoroughbred race days and the cost of \$115,000 that the Horsemen agreed to pay Colonial Downs for five of those days. Chairman Burnett posed the question, "why don't we just take the \$115,000 out of the purse account as was originally intended and not be taking it from the Benevolence fund?"

Jim Weinberg, counsel for Colonial Downs, objected to the use of the word 'procrastination' in the execution of the Horsemen's agreement. He also said that, that one way or another, at the end of the day, the track is bearing the cost and cautioned against confusing 'obligation versus payment source'.

Chairman Burnett suggested a vote be taken. Vice-Chairman Miller opined that a vote right now would be fruitless and that it may be prudent to wait till all five Commissioners are present.

After a short recess, Mr. Weinberg itemized the changes in the '09 contract (a one-year term) from the '08 contract:

- Signal sales increased from 15% to 21%
- Stakes purses reduced by \$200,000
- VHBPA input on the condition book
- New scratch-from-program rule (Racing Secretary to report on the efficacy of this rule)
- Purse gap-funding, May 1 deadline
- Payment of the \$115,000
- \$25,000 rebate from Colonial to Horsemen to bridge the \$50,000 gap in purses
- May 17th opening of the backstretch
- Harrowing of the track surface during the training period
- Suite/Table for the Thoroughbred Horsemen
- 'Quiet' 4th of July fireworks
- Arbitration relative to the interstate horse racing act
- Backstretch improvement (New sprinkler system)

Mr. Weinberg, after consultation with his management and the horsemen offered to delete all the language in Section 28-A of the Horsemen's Agreement. Section 28 held, as mentioned above, that any VRC mandated change to the benevolence fund budget makes the horsemen's agreement null and void. Duke Dale stated that the full amount of the premium for the jockey's insurance has already been paid.

Vice-Chairman Miller made a motion to approve the Thoroughbred Horsemen's Agreement as amended in our discussion in accordance with the recommendations of the staff. This was seconded by Commissioner Ferguson and carried unanimously.

The motion to approve 40-day 2009 thoroughbred race meet beginning June 5th and ending July 28th was made by Vice-Chairman Miller and seconded by Commissioner Ferguson. The motion carried unanimously.

The motion to approve the harness racing days beginning Tuesday, September 8, 2009 (rather than 09/12) through Saturday, November 7, 2009 was made by Commissioner Miller and seconded by commissioner Ferguson. The motion carried unanimously.

Frank Petramalo confirmed with Chairman Burnett that the Commission will vote on the approval of the Benevolence Fund at the May meeting and after input is received and approval granted from and by the Standardbred horsemen.

Darryl Wood described the new Inside Track promotion that the track will offer this year on Saturdays and Sundays: For \$300 a group of 15 patrons will receive an escorted, hands-on, behind-the-scenes look at the racing over the course of 4 or 5 races.

Mr. Weinberg and Mr. Scoggins spoke to the group about an amendment to the existing contract between Colonial Downs and XpressBet – they have added a sentence at the end of the termination provision that, in Mr. Weinberg's words, "allows either party to terminate the agreement if a court or other tribunal, in a final judgment, determine that the law that goes into effect July 1 would supersede the provisions of the current agreement relating to the calculation of the source market fee. That is cross-defaulted to the TrackNet content license agreement for the MEC content, but if the XpressBet contract is terminated under this provision, the content license agreement is automatically terminated as well." Mr. Scoggins added that XpressBet will be submitting the same notice to the Commission.

The matter of a VA Racing Summit was raised and Mr. Weinberg began the discussion by noting a lack of shared vision among the stakeholders. He suggested the Commission consider something affordable given the current budgetary status. Vice-Chairman Miller opined that, considering the downturn in the economy, it's more important than ever that we hold a Summit and he urged exploring the possibility using whatever funds are available. Commissioner Ferguson added his support as well and said that we all should be open to considering a structurally different relationship – one that works for all the parties. Chairman Burnett espoused the idea of holding one or two pre-summit meetings among 'the talent in the room with a few local additions' to really narrow the issues. Glenn Petty, Executive Director for the Virginia Thoroughbred Association, described two versions of the old Virginia Racing Task Force model - the Racing Commission's formal version and the informal version. The groups met at different times in the history of the project and they performed essentially the same function. The groups met monthly and brought together VA stakeholders plus interested

parties from MD. They met once a month and spent a couple of hours brainstorming the issues. Mr. Petty suggested that a national figure be invited to each of the meetings in an effort to get their input. Chairman Burnett, in an effort to perhaps hold the Racing Summit sometime during this coming thoroughbred meet, assigned Mr. Harrison the duty of getting the ball moving forward as well as getting ideas collected and circulated among people, starting to put some structure on what we're trying to accomplish. Mr. Petramalo reminded us that the Summit should be inclusive of the breeding aspect and not just the racing (aspect).

Reconvening after a short recess, Mr. Petty discussed the 100% Bonus and stated that it was difficult to reach consensus during the VTA's joint-meeting with the Thoroughbred Breeders' Fund Committee. During that meeting and with respect to paying a 100% bonus to the winners only, and no bonus to those horses finishing 2nd through 6th, Mr. Petty said that a lot of people in the industry told him that horse racing is about winning, and it's the winners that need be compensated. There was also much discussion during the joint-meeting of having some additional races in the condition book for Virginia-breds. The truncating of the stakes schedule was also discussed – It was suggested that the \$50,000 Jamestown stakes be eliminated in order to save \$25,000 since the Jamestown was the newest of the stakes races. After consideration of all the received comments, Mr. Petty laid out the following parameters for this year's 100% bonus:

- To the connections of the winning horse only;
- A cap on the bonus per-race of \$10,000, and;
- A racing-seasonal cap on the bonus of \$500,000 – when the entire \$500,000 has been awarded towards the end of the race meet, the bonus goes away until next year. Hopefully, we can return to the 100% bonus to places first through sixth in 2010.

The parties also agreed not to discontinue the running of the Jamestown Stakes.

There was a discussion on more timely payments this year from the Breeders Fund to the horsemen's bookkeepers. Mr. Lermond added that this year the breeder's fund money will be segregated as it is earned to each breed, Thoroughbred and Standardbred. Commissioner Ferguson and Chairman Burnett engaged in a discussion of the profitability of live racing versus wagering done at the OTBs (SWFs).

Ian Stewart spoke to the issue of the negotiations with the Horsemen, especially with respect to the purses for the stakes races versus the purses for the overnights. He said Colonial Downs had suggested eliminating one of the smaller stakes, a suggestion that was resisted by the Horsemen. He was distressed to find that the Horsemen agreed to that (with respect to the Jamestown) one day after Mr. Stewart signed the Horsemen's Agreement. He added that during the negotiations he hadn't heard mention of the Breeders Fund. Mr. Petty responded with his historical assessment of the Breeder's \$7MM contribution to purses (without reimbursement) from the inception of live racing at Colonial Downs. Mr. Petramalo clarified that, in 2007, the Fund accumulated a little more than a million dollars and paid out \$240,000 to purses as part of the 50% bonus plan

in place at the time. In 2008, after the bonus was hiked to 100%, the \$240,000 jumped to \$1.1 MM which, in effect, zeroed out the Breeders Fund. He went on to state that he had written a memo 'clearly laying out that \$200,000 was going to be contributed by the HBPA from the purse money to the Breeders Fund' and that this is 'our business and not Colonial's business.' Mr. Dale objected and said that the \$200,000 is being counted twice to which Mr. Petramalo answered that, 'we're obviously not going to count the \$200,000 (as purses) if we've given it to the Breeders' Fund.'

At this point, Vice-Chairman Miller made a motion to adopt the 100% bonus with the caps and two open VA-bred races per week, seconded by Commissioner Ferguson. The motion carried unanimously.

There then was a discussion of changes to the "coupling" rule, as proposed by Racing Secretary Tyler Picklesimer. Our rule will be similar to that which is in place in KY, CA, FL and NY – two horses trained by the same trainer may raced uncoupled for the purposes of wagering. Also proposed was a modification in stakes races: the Racing Secretary may insist that, in addition to trainer running two horses uncoupled, that an owner run two horses uncoupled. The changes were supported by Mr. Petramalo. The motion to approve the amendment to the "coupling" rule was made by Commissioner Miller with the qualifier that 'if it doesn't work out we can re-visit it' and seconded by Commissioner Ferguson. The motion carried unanimously.

During the discussion of Advanced Deposit Account Wagering, Brad Blackwell of TwinSpires wished to address:

1. Updating where we are in the licensing process.
2. Providing an overview and summary of account wagering and how it works
3. Ensuring that the Commission is respectfully aware of its current obligation under the temporary license statute.

Mr. Blackwell went on to explain that TwinSpires requested a temporary license at the December, 2008 Commission meeting and said that, "VA is the only state ... that requires a licensee to have an agreement with a competitor." He added that, "Account wagering is a convenience factor to people who want to wager on horses." He made the point that ADW offers an innovative product which appeals to a younger customer base and is the only growth segment of the pari-mutuel industry. TwinSpires is currently operating under a temporary license and ordered by the Commission to reach a January 1, 2009 agreement with the Colonial Downs. Failing that, the parties went through the negotiation process - also unsuccessful. He added that new legislation which goes into effect July 1, 2009 dictating a 10% source market fee with an additional 1% to the Breeders Fund and the half a percent to the VRC makes VA the least profitable account wagering jurisdiction in the country. He thinks it will stymie the ADW growth and is bad for the entire industry, especially VA. He went on to say that the current statute states that if the parties are unable to reach an agreement through mediation, the Commission shall specify the percentage ... to be paid by the applicant to an unlimited

licensee (and horsemen's group). Mr. Blackwell believes it is the Commission's obligation to set the rate. He claimed that he has tried to keep separate the issues of:

- ADW licensing, and
- Racing content associated with Churchill Downs.

There was some discussion on the host market fees charged to Colonial Downs by race tracks versus the fees paid by others for the same signals. Discussion ensued concerning the date that the Commission set the 8.3% source market fee for TwinSpires. Vice-Chairman Miller asked if TwinSpires is locked in to the 8.3% for an additional year. Mr. Lermond responded affirmatively. Mr. Weinberg disagreed vehemently asserting that the temporary license ends June 30, 2009. He also added that he disagrees with 85% of Mr. Blackwell's contention and suggested an informal fact-finding conference be held. Mr. Blackwell raised the issue of unconstitutionality with respect to the new ADW law and stated that Colonial Downs has shown, 'a desire to basically push TwinSpires out of the market.' Vice-Chair Miller asked Mr. Blackwell if TwinSpires was asking the Commission to set a hub (source market fee) rate. Mr. Blackwell said, "Correct." Chairman Burnett said about the language in the statute, "It just invites multiple interpretations." Mr. Petramalo suggested that the Commission 'take no action today' but ask for formal written position papers to be discussed at the next Commission meeting. Mr. Petty expressed concern that other ADW companies may attempt similar strategies in an effort to avoid paying the 1% to the Breeders. Vice-Chair Miller said to include this matter on the agenda of our May meeting and that we request legal briefs from all interested and affected parties. AG's representative Ms. Amy Dilworth agreed to organize and handle such requests. Vice-Chair Miller reiterated the need to set a hearing for the May meeting (on the matter of the TwinSpires request). Mr. Petramalo commented that while the ADW companies may be paying 11.5% source market fees in VA, they pay substantially less, between zero and 5%, in the other jurisdictions. Chairman Burnett laid out schedules for requesting and receiving responses.

There being no further business, May 20th was set as the date of the next meeting to be held at Horsemen's Building, Colonial Downs, 10700 Horsemen's Road, New Kent, VA. It was moved, seconded, and carried to adjourn this April, 2009 monthly meeting of the Commission.