

APPROVED

VIRGINIA RACING COMMISSION

MINUTES

OF

COMMISSION MEETING

SEPTEMBER 22, 2004

STATE CORPORATION COMMISSION
TYLER BUILDING
COURTROOM B
1300 EAST MAIN STREET
RICHMOND, VIRGINIA

In Attendance

Commission Members:

Anne D.W. Poulson, Chairman
Peter C. Burnett, Vice Chairman
Mark T. Brown
James G. Davis
Dr. George W. Rimler

Commission Staff:

Stanley K. Bowker, Executive Secretary
Kimberly M. Carter, Office Administrator
R. C. Harden, DVM, Commission Veterinarian
Marvin A. Sniegon, Director of Financial Management and Planning

Attorney General's Office:

Teresa C. Griggs
Sara Allen

Counsel:

James R. Kibler, Jr.

At 9:57 a.m., Chairman Poulson called the meeting to order.

The minutes of the July 20, 2004 meeting were approved.

The minutes of the August 8, 2004 working session were approved.

During the Chairman's report, Chairman Poulson reported on the Board meeting of the Association of Racing Commissioners International held at Monmouth Park. She also advised that Lauren Messmer would continue to work for the Commission on marketing matters through the harness meet.

Commissioner Brown reported that the Standardbred Blue Ribbon Committee had met on September 14, 2004 and three new members had joined the committee. An interim report on marketing ideas for the 2004 harness meet is nearing completion. The Committee will be exploring longer-term ideas to improve the harness racing and breeding industry in Virginia at the next meeting will be held on October 5, 2004.

Commissioner Burnett reported that the Security and Enforcement Committee will be meeting again on October 13 in Fredricksburg at the offices of Hirschler Fleischer. He said proposed regulatory changes will be discussed.

Commissioner Rimler reported that the Marketing Committee will be holding its first meeting at Colonial Downs at noon on October 5, 2004. A second meeting has been scheduled for October 26.

Acting on the recommendation of Mr. Bowker, the Commission ratified Mr. Bowker's approval of the September simulcast schedule.

Acting on the recommendation of Mr. Bowker, the Commission approved Colonial Downs' October simulcasting schedule.

Acting on the recommendation of Mr. Bowker, the Commission approved the Outlets for Sale of Live Signal for the 2004 harness meet. Commissioner Burnett asked if the Colonial Downs simulcast agreements contained a clause prohibiting the re-dissemination of the simulcast signal. John Mooney, President of the Maryland-Virginia Racing Circuit, confirmed that they did.

The Commission approved the appointment of Jean Chalk, George Hickman and Philip Wentworth as Stewards for the Standardbred race meeting for all matters relating to Standardbred racing and activities at the satellite wagering facilities and that Howard McCullough and Stanley Bowker be designated as Alternate Stewards.

Acting on the recommendation of Mr. Bowker, the Commission approved the Colonial Downs Racing Officials and the wagering pools as submitted by Mr. Mooney for the Harness meet.

Mr. Bowker reported that the Commission would be hosting the fall meeting of the Eastern States Racing Commissioners and Executive Directors. He stated the dates are November 12-13, 2004.

The meeting on November 12 will be held at Colonial Downs beginning at 3 p.m. to be followed by dinner and the night's harness races. On November 13, the meeting would be held at the Wingate Hotel beginning at 8:30 a.m. and will conclude with lunch at noon. Commissioner Rimler indicated it was important for as many Commissioners as possible attend at least part of the meetings.

Mr. Bowker advised that Commissioners Burnett and Rimler would be attending the fall conference of the North American Pari-mutuel Regulators Association, October 1-4, 2004. Chairman Poulson, Commissioner Rimler and Mr. Bowker will be attending the annual symposium on racing at the University of Arizona in Tucson, December 7-10.

Mr. Bowker also advised that all Commissioners and senior staff members are required to attend a session on ethics and conflict of interest before the end of the year. It was decided that Ms. Griggs would provide the required training following the November Commission meeting.

Chairman Poulson then offered 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 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 Commission, and consultation with legal counsel employed or retained by the Commission regarding specific legal matters requiring the provision of legal advice by such counsel regarding the Commission's proposed regulations regarding advance deposit account wagering.”

The motion was unanimously approved.

Returning from closed meeting, Chairman Poulson stated, “I move the adoption of the following resolution:

“Whereas, the Virginia Racing Commission has convened a closed meeting on this date pursuant to an affirmative recorded vote and 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 by Virginia law were discussed in the closed meeting to which this certification resolution applies, 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.”

The motion was approved with Vice Chairman Burnett, Mr. Brown, Mr. Davis, Dr. Rimler, and Chairman Poulson voting in favor of the motion.

The Commissioners reviewed the current statute and regulations involving account wagering. All expressed serious concerns about the lack of movement in reaching the necessary agreement among, the account wagering license applicants, Colonial Downs and the horsemen.

After considerable discussion on how to move the process forward, no action was taken on the set of fast track regulations that will become effective on September 27, 2004. However, Chairman Poulson said that while it is not a perfect solution, it allows the Commission to have active supervision over account wagering. She added she will reconvene the Code Revision Committee to review the statute and determine, among other things, any changes that may be needed to give the Commission authority to resolve stalemates. She said all potential account wagering licensees would be invited to the meetings.

Gerald Canaan, counsel for The Virginia Harness Horse Association (“VHHA”), requested that \$100,000 be allocated from the harness purse account for marketing the 2004 harness meet. He said Colonial Downs agreed to match the \$150,000 VHHA has proposed to add to the marketing budget. The request was approved.

During the Colonial Downs’ report, James Weinberg, counsel for Colonial Downs, said discussions are ongoing in the account wagering effort but there was nothing new to report.

Mr. Weinberg said construction on the new Vinton satellite facility is nearing completion and he provided pictures of the construction. He said that a private party will be held on October 9, 2004 and opening day will be October 11, 2004. The Commission authorized Mr. Bowker to give the final approval to open. Mr. Weinberg said he would notify the Commission whether or not wagering would be conducted at the October 9 private party.

Mr. Weinberg reported that five referenda would be conducted in November seeking approval for a satellite wagering facility in each community. He said Colonial Downs obtained twice as many signatures as required in each community.

The Commission has before it a application seeking approval from the Commission of the transfer of indirect ownership interests to trusts being established by Jeffrey Jacobs and Richard Jacobs. Three new trusts will be created that will hold non-voting stock and a limited number of voting shares. Control of Colonial Downs will remain unchanged from its current structure. Stanley R. Gorom III, a Cleveland, OH attorney, will serve as trustee of Jeff Jacobs’ trust.

The Commissioners requested that the Attorney General's Office retain special counsel with expertise in trusts to review the proposed structure.

The next meeting was scheduled for October 20, 2004.

There being no further business before the Commission, the meeting adjourned at 3:02 p.m.