

UNAPPROVED

VIRGINIA RACING COMMISSION

MINUTES

OF

COMMISSION MEETING

April 27, 2005

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
David C. Reynolds
Dr. George W. Rimler

Commission Staff:

Stanley K. Bowker, Executive Secretary
Kimberly M. Carter, Office Administrator
Dr. C. Richard Harden, Commission Veterinarian
David S. Lermond, Jr., Director of Pari-Mutuels
Lauren Messmer, Marketing
Joseph M. Roney, Director of Operations and Enforcement
Marvin A. Sniegon, Director of Financial Management and Planning

Attorney General's Office:

Teresa Griggs

Special Counsel:

John Shenefield

At 9:45 a.m., Chairman Poulson called the meeting to order.

Chairman Poulson introduced new Commissioner David C. Reynolds who is replacing James Davis who has resigned due to business commitments. She thanked Mr. Davis for his valuable service to the Commission and also asked Commissioner Reynolds to be Chairman of the Budget Committee.

The minutes of the March 16, 2005 meeting were approved with corrections.

In her Chairman's Report, Chairman Poulson reported that Commissioners Burnett and Rimler attended the NAPRA annual meeting in Perdido Beach, AL. Commissioner Burnett was elected Second Vice President of the NAPRA board. Chairman Poulson and Mr. Bowker attended the RCI spring conference in Lexington, KY where she was elected to the board.

Chairman Poulson stated that the RCI meeting focused on integrity issues including wagering security, medication, steward's accreditation and account wagering. She added it is becoming more apparent that it is important that the two regulatory organizations get back together and she hopes that her involvement in RCI and that of Commissioner Burnett in NAPRA will help facilitate that discussion.

Commissioner Rimler said he was impressed with the manner in which NAPRA is revitalizing its organization. Commissioner Burnett added NAPRA is looking at new opportunities to expand membership and that the importance of integrity and public trust were at the forefront of much of the discussions.

Chairman Mark Brown stated that the Standardbred Blue Ribbon Committee is planning two more meetings before it will be ready to provide a final report.

Acting on the recommendation of Mr. Bowker, the Commission approved Colonial Downs' May simulcasting schedule for the satellite wagering facilities.

Mr. Bowker informed the Commission that staff had visited the out-of-state satellite wagering facility in Cambridge, MD. He added that it was a very comfortable facility with large video walls, televisions on most tables and an adjacent restaurant that provides excellent full-service food service.

After considerable discussion, the Commission approved 2005 contracts for administration of the Breeders Funds with the Virginia Thoroughbred Association (thoroughbred) for \$160,000 and Virginia Harness Horse Association (standardbred) for \$50,000. In an effort to impose a higher level of accountability, the Commissioners asked that VTA report back to the Commission at the May meeting on how it is administering the thoroughbred breeders program.

Acting on the recommendation of Mr. Bowker, the Commission approved a new seven-year contract between Colonial Downs and AmTote for totalisator services at the racetrack and satellite wagering facilities with the condition that a SAS 70 Type II report be provided to the Commission annually.

Mr. Bowker said the Commission staff is ready to help facilitate meetings in regard to possible workers compensation insurance for jockeys. Work needs to begin now so that any necessary legislation can be developed by this fall. However, additional insurance may be needed for 2005. James Weinberg, counsel for Colonial Downs, said discussions are underway on insurance for 2005 and Colonial is ready to participate in workers compensation discussions whenever a meeting can be set up.

Finally, Mr. Bowker said the medication rules approved by the Commission are continuing through the administrative process and should be effect in May.

John Hanna, Treasurer of the Virginia Horsemen's Benevolent & Protective Association, provided a request from VaHBPA for funds from the Benevolence Fund. The request was unanimously approved by the Commission.

Commissioner Rimler, chairman of the Marketing & Economic Development Committee, reported the committee is developing policy guidelines for Commission approval that will serve as a basis for deciding marketing projects to fund. Lauren Messmer discussed the proposed policy guidelines and outlined the current priorities for improving the Commission's website and development of a PBS program. Chris Bridge discussed a number of opportunities that could be explored within the industry.

In the Colonial Downs Report, Mr. Weinberg stated that construction is under way in Henry County on the new satellite wagering facility and a conference call with Commission staff is scheduled for May 11 to discuss the progress of the construction.

Mr. Weinberg also reported that within the next couple of days Colonial Downs would be filing an application for a new satellite facility in Scott County. There should be a site visit and hearing in May. He added that a number of options still are being considered for Westmoreland County.

Mr. Weinberg reported that an effort to reach agreement with AmericaTab on advance deposit account wagering had been unsuccessful and both parties are ready to move forward on mediation. He added Scott Solomon, counsel for YouBet, was not satisfied with the original list of possible mediators and that the parties are working to come up with another list.

At the March 16 meeting, staff had been asked to determine whether the proposed facility changes at Colonial Downs needed Commission approval. Mr. Bowker reported that because the proposed changes are temporary and for the purpose of handling larger crowds on major stakes days and not permanent improvements, no approval was necessary.

Mr. Weinberg discussed the Fourth Amendment to the Management Agreement between Maryland-Virginia Racing Circuit and Colonial Downs. The main changes involve a clarification of the management fees in several areas as well as a nearly 10-year reduction in the length of the agreement. The Commission approved the amendment.

There being no further business, the regular monthly meeting of the Commission was adjourned.

Following the regular monthly meeting, Chairman Poulson convened a continuation from March 16, 2005 of the informal fact-finding conference on an application from ODS Technologies, L.P. d/b/a as TVG (TVG) for an advance deposit account wagering license.

John Hindman, Vice President and General Counsel for TVG, said the issue the Commission had raised regarding a clause in the agreement had been addressed and he had nothing further to add.

Chairman Poulson said the Commission would be seeking legal advice before rendering a decision.

Chairman Poulson reconvened the informal fact-finding conference involving the applications from Colonial Downs PhoneBet and The Racing Channel to review their advance deposit account wagering license for 2005.

Ian Stewart, President of Colonial Downs, and James Weinberg, legal counsel, represented the applicants.

At the March 16, 2005 meeting, Commissioner Rimler had asked Colonial Downs to provide an explanation of how Colonial Downs arrived at its projections for total handle from advance deposit account wagering. Mr. Stewart, via letter dated April 22, 2005, responded to the request.

Commissioner Rimler said he did not believe that Colonial had responded to the question. He reiterated the question was how did Colonial arrive at the \$25 million, \$50 million and \$75 million projections for total handle, not what were the percentages of expenses.

Mr. Stewart said making forecasts for account wagering is very difficult and lacks certainty. He added the fact that other account wagering companies are operating illegally in Virginia and the Maryland Jockey Club not allowing access to its signals have further complicated the situation.

When asked about the low volume of marketing, Mr. Stewart replied that because the Commission had not approved Colonial Downs PhoneBet's 2005 license renewal, Colonial did not want to spend a lot of money marketing with the licensure issue undecided.

Chairman Poulson said the Commission would be seeking legal advice before rendering a decision.

Chairman Poulson convened an informal fact-finding conference on an application from Colonial Downs L.P. and Stansley Racing Corp. for a license for a satellite wagering facility to be located at 4301 Indian River Road, Chesapeake, Virginia.

James L. Weinberg, counsel for Colonial Downs, stated that the site visit and public meeting in Chesapeake had been completed and today he would review a number of issues in the application and Mr. Stewart would review the financial forecasts.

As to the location of the site, Mr. Weinberg stated reasons for choosing the site include accessibility, parking, visibility and it is consistent with other uses in the surrounding area. It will serve the Hampton Roads area including Virginia Beach, Norfolk and Chesapeake that he said Colonial Downs believes has been under served.

He further stated the floor plan is similar to the plan at the new Richmond facility and will utilize approximately 10,000 square feet. Colonial has an option for an additional nearly 7,000 square feet for expansion. The option expires in a little over one year. Mr. Weinberg said the facility is expected to generate approximately \$20 million in new handle in the area and fulfills the commitment Colonial had made to the horsemen to open the second Chesapeake facility by the end of 2005.

Mr. Weinberg added, for security purposes, closed-circuit video cameras will be located throughout the facility including on the outside of the building to scan the parking lot. At least one of-duty law enforcement officer will be on duty at all times the facility is open.

Mr. Stewart explained the rationale behind the financial forecast for the facility. He said the anticipated annual pari-mutuel handle is \$36 million. He said he expected the existing Chesapeake handle to drop to \$18 million and the handle at Hampton to drop \$1 million leaving \$20 million in new handle for the area.

After considerable discussion, a motion was made, seconded and passed unanimously approving the application from Colonial Downs L.P. and Stansley Racing Corp. to own and operate a satellite wagering facility in Chesapeake, that a Final Order be prepared including conditions recommended in the Staff Report and discussed with Colonial Downs and that Mr. Bowker be authorized to execute the appropriate Final Order on behalf of the Commission.

The informal fact-finding conference was adjourned.

Chairman Poulson convened an informal fact-finding conference on an application from XpressBet, Inc. for an advance deposit account wagering license.

XpressBet was represented by Ron Luniewski, President of XpressBet, and Gregg A. Scoggins, National Director of Regulatory Affairs for Magna Entertainment Corp, parent company of XpressBet.

Mr. Luniewski explained the operation of XpressBet and the support it receives from HRTV, another Magna subsidiary. He added just over one year ago, HRTV was in 1 ½ million homes and now that has grown to 12 ½ million homes. He said most of that growth has been on DISH Network but that HRTV also is available in a number of areas on Comcast and Cox cable networks.

Part of the agreement with Colonial Downs, Mr. Luniewski reported, makes Colonial Downs one of the featured tracks during its live race meet.

Mr. Scoggins said that staff had requested that since XpressBet would be the licensee a change be made in the agreement with Colonial Downs in order to make XpressBet responsible for paying the advance deposited account wagering fees to the Commission. Mr. Scoggins said that change had been made. He also said several changes in the Board of XpressBet had been made since the original application had been filed and the new Board members were in the process of completing the required information for their background reviews.

Chairman Poulson stated that the Commission would be receiving legal advice on the XpressBet application before rendering a decision.

Following the informal fact-finding conferences, Chairman Poulson offered the following motion:

“In accordance with the provisions of Section 2.2-3711 (A)(1) and (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 application of ODS Technologies L.P. d/b/a TVG for an advance deposit account wagering license, Colonial Downs and Phone Bet’s application for renewal of their advance deposit account wagering licenses, and XpressBet, Inc application for advance deposit account wagering license.”

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 Chairman Poulson, Vice Chairman Burnett, Commissioners Brown, Reynolds and Rimler voting in favor of the motion.

In the matter of the application of ODS Technologies, L.P. d/b/a TVG for an advance deposit account wagering license, Chairman Poulson asked if there is any discussion.

It was moved, seconded and unanimously approved to award an advance deposit account wagering license to TVG with the conditions outlined in the Staff Report of March 11, 2005 plus if paragraph 1 of the letter from Colonial Downs President Ian Stewart to TVG President Ryan O'Hara dated January 26, 2005 as submitted to the Commission on April 27, 2005 is invoked, the Commission's Executive Secretary must be notified before the change is finalized and such change is subject to approval by the Commission. The Executive Secretary was authorized to execute the appropriate Final Order on behalf of the Commission .

In the matter of the renewal applications of Colonial Downs PhoneBet and The Racing Channel to renew their advance deposit account wagering licenses for 2005, Chairman Poulson asked if there were any discussion.

It was moved, seconded and approved on a 4-1 vote (Poulson, Burnett, Brown and Reynolds, aye; Rimler, no) that an advance deposit account wagering licenses be renewed for Colonial Downs PhoneBet.

In the matter of the application of XpressBet for an advance deposit account wagering license, it was moved, seconded and unanimously approved to issue a license to XpressBet with the conditions outlined in the Staff Report of April 15, 2005. In addition, XpressBet had agreed to delete paragraph 1.5 on page 2 in its agreement with Colonial Downs and the revised agreement must be approved by the Executive Secretary before

XpressBet can begin operating under its license. The Executive Secretary was further authorized to execute the appropriate Final Order on behalf of the Commission.

Chairman Poulson announced that the next monthly meeting of the Commission is being moved to Wednesday, May 25. Staff was advised to make arrangements for a Scott County site visit prior to the meeting. Mr. Weinberg stated that he would be out of the country and not available on May 24, the day before the meeting, but that Colonial would work with staff to find another suitable date prior to the meeting.

Chairman Poulson stated, "In accordance with the provisions of Section 2.2-3711 (A)(1) of the Code of Virginia, I move that the Commission go into closed meeting for the purpose of discussion or consideration of the assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of the Commission."

The motion was 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

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The motion was approved with Chairman Poulson, Vice Chairman Burnett, Commissioners Brown, Reynolds and Rimler voting in favor of the motion.

There being no further business, the meeting was adjourned.