

UNAPPROVED

VIRGINIA RACING COMMISSION

MINUTES

OF THE

COMMISSION MEETING

December 20, 2006

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

In Attendance

Commission Members:

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

Commission Staff:

Stanley K. Bowker, Executive Secretary
Kimberly M. Cater, Office Administrator
David Lermond, Jr., Director of Pari-mutuels
Joseph M. Roney, Director of Operations & Enforcement
Marvin A. Sniegon, Director of Financial Management & Planning
Dr. C. Richard Hardin, Commission Veterinarian

Attorney General's Office:

Amy K. Dilworth
Frank Ferguson

At 12:30 p.m., Chairman Brown called the regular monthly meeting of the Commission to order. Commissioners Burnett and Miller were absent at the start of the meeting.

The minutes of the November 15, 2006 meeting were approved.

Mr. Bowker reported he and Commissioner Burnett had attended the Symposium on Racing and Gaming, sponsored by the University of Arizona, held earlier this month in Tucson, AZ. He stated as Chairman of the Racing Officials Accreditation Program that he announced at the Symposium that four Points of Emphasis for 2007 and procedures for performance evaluations of Stewards and Judges had been completed and would be sent to all Racing Commissions later this month. He said there also had been considerable discussion about the RCI wagering security program that is scheduled to be implemented early in 2007.

Commissioner Reynolds, Chairman of the Horse Racing Task Force, said the marketing plans and budget for 2007 as proposed by CRT/tanaka have been reviewed and are ready for approval. He asked CRT/tanaka President Mike Mulvihill and Vice President Natalie Smith to provide an overview.

After the presentation by Mr. Mulvihill and Ms. Smith, a motion was made, seconded and unanimously approved to accept the proposed marketing plan and budget and for Commissioner Reynolds' Task Force to continue working with CRT/tanaka on its marketing efforts through 2007.

Commissioner Ferguson, Chairman of the Thoroughbred Breeders Fund Subcommittee, reported the committee had met in Warrenton on December 13, 2006 and are requesting two amendments to the regulations involving the Breeders' Fund.

The first amendment involves section 11 VAC 130-10 which changes the definition of a Virginia-bred Thoroughbred horse to a "registered Thoroughbred horse foaled in Virginia." The second amendment is in section 11 VAC 10-130-60 that gives the Commission the option and flexibility to adjust percentages for the distribution of funds in order to benefit as many owners and breeders as possible.

A motion to amend both sections of the regulations was made, seconded and unanimously approved.

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

Commissioners Burnett and Miller returned to the meeting.

Mr. Bowker also reported that the recommended changes to the Racing Commissioner's Governance Manual have been completed and are ready for approval. A motion to approve the Governance Manual, effective January 1, 2007, was made, seconded and unanimously approved. Mr. Bowker stated that additional work was needed on the Commission's Code of Ethics and would be taken up in a working session early in 2007.

The Commission also agreed to a suggestion from Mr. Bowker to schedule a Rules Committee meeting following each of the Commission's monthly meetings next year to address a number of regulation changes that need to be considered.

James Weinberg, counsel for Colonial Downs, said that in October Jeffrey and Richard Jacobs had requested approval for Jacobs Investments, Inc. (JII) to become the parent company for Jacobs Entertainment, Inc. He reminded the Commissioners that the proposal is a simple insertion of a new company in the structure of the Jacobs holdings and that Jacobs Entertainment shares will be exchanged for shares in Jacobs Investments and will have no affect on the day-to-day operation.

The Commission had retained Christian Barton as special counsel to review the application. R. Gaines Tavenner of Christian Barton, reported he found no legal reason to withhold approval. He also indicated the change would allow JII to invest in non-gaming assets and to diversify their beneficial holdings free of the liens and security interests granted under previously approved Credit Facilities. In response to a question from Commissioner Burnett, Mr. Weinberg said that was one of the reasons for the requested changes.

A motion was made to approve the application from Jacobs Investments Inc. to acquire interests in Colonial Downs L.P. and Stansley Racing Corp., seconded and unanimously approved

Because of a disagreement on overnight purses for the 42-day Thoroughbred race meeting approved by the Commission in November for 2007, representatives of Colonial Downs and the Virginia HBPA continued to meet to resolve their difference. As a result of those meetings Colonial Downs, supported by the VaHBPA, requested that the 2007 race days be amended to 40 days beginning Friday, June 15 and continuing through Tuesday, August 7. Thursday, June 14 and Friday, June 29 were dropped from the previously approved request.

The parties reported that to increase overnights, in addition to the two-day reduction in race dates, the Colonial Cup is being reduced to \$750,000 from \$1,000,000, and that Colonial Downs has agreed to provide up to \$2.7 million in gap funding rather than the \$1.7 million previously proposed. The parties reported the result will be a 7-12% increase in overnights.

After considerable discussion on the importance of increasing the purses for overnight races, the Commission voted 3-2 (Ferguson, Miller and Reynolds, yes; Brown and Burnett, no) to approve the amended request.

Colonial Downs, supported by the Virginia Harness Horse Association, requested approval for 32 days of harness racing for 2007, beginning Saturday, September 15 and continuing through Tuesday, November 6. Except for Breeders Cup Day (October 27), racing will be conducted on Saturdays, Mondays and Tuesdays at 5 p.m. and Sundays at 1 p.m.

A motion to approve the request for 32 live harness racing days in 2007 was made, seconded and unanimously approved.

The next meeting of the Commission was scheduled for January 17, 2007.

Commissioner Ferguson requested that Commission staff contact representatives of the Lexington Horse Park and ask them to attend the January meeting and provide an update on the use of the money it receives annually from pari-mutuel revenues.

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

Prior to the regular monthly meeting, an appeal hearing in The Matter of Trainer Julianne Bobby was scheduled. In a telephone conversation with Executive Secretary Stanley K. Bowker, Ms. Bobby asked to withdraw her request for review of Stewards' Ruling #06-150, in which she was fined \$100 for making a late driver change on November 2, 2006. After a brief discussion and pursuant to 11 VAC 10-90-40 of the Commission's Regulations, the Commissioners voted 5-0 to reject Ms. Bobby's request to withdraw and continued the matter to the January 17, 2007 Commission meeting.

Also prior to the regular monthly meeting, presentations from Colonial Downs/The Racing Channel, TVG, XpressBet and AmericaTab on their applications for the renewal of their advance deposited account wagering licenses were heard.

In The matter of Colonial Downs/The Racing Channel, the renewal application was approved unanimously with conditions listed in the Staff Report except for condition #5. In addition, staff will work with Colonial Downs to determine how to meet the bond or letter of credit requirement since Colonial Downs is not licensed in Oregon. In addition, several of The Racing Channel's principals need to complete disclosure forms.

In The Matter of TVG, the renewal application was approved unanimously with conditions outlined in the Staff Report. Pursuant to a letter from Jodi Hanson, Executive Director of the Oregon Racing Commission, TVG is licensed in Oregon and all TVG account holders are protected by a financial security account. As a result, no additional security will be required in Virginia for 2007 as long as the account is in place and TVG maintains its Oregon account wagering license.

In The Matter of XpressBet, the renewal application was approved unanimously with conditions outlined in the Staff Report. Pursuant to a letter from Jodi Hanson, Executive Director of the Oregon Racing Commission, XpressBet is licensed in Oregon and all XpressBet account holders are protected by a financial security account. As a result, no additional security will be required in Virginia for 2007 as long as the account is in place and XpressBet maintains its Oregon account wagering license.

In The Matter of AmericaTab, the renewal application was approved unanimously with conditions outlined in the Staff Report with the exception of #7. Because AmericaTab does not have an agreement with Colonial Downs and the thoroughbred horsemen in place for the entire year, #7 was amended to include the following: “failure to have an agreement in place by July 1, 2007 will result in suspension of the license granted herein effective on that date.” Also pursuant to a letter from Jodi Hanson, Executive Director of the Oregon Racing Commission, AmericaTab is licensed in Oregon and all AmericaTab account holders are protected by a financial security account. As a result, no additional security will be required in Virginia for 2007 as long as the account is in place and AmericaTab maintains its Oregon account wagering license.

Before adjourning for lunch, Chairman Brown 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 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 matters included in the Governor’s Confidential Working Papers.

The motion was seconded and was unanimously approved.

Coming out of closed meeting, Chairman Brown offered the following resolution:

“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 Reynolds and the vote was as follows: Burnett, absent; Ferguson, aye; Reynolds, aye; Miller, absent; and Chairman Brown, aye.