

Virginia Racing Commission

MINUTES

OF THE

COMMISSION MEETING

February 17, 2010

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

In Attendance

Commission Members:

Peter C. Burnett, Chairman
Clinton Miller, Vice Chairman
David C. Reynolds
Stuart Siegel

Commission Staff:

Victor I. Harrison, Executive Secretary
David S. Lermond, Jr., Deputy Executive Secretary
Kimberly M. Carter, Office Administrator
C. Richard Harden, DVM, Commission Veterinarian
Joseph M. Roney, Director of Security & Enforcement
Dennis E. West, Director of Operations

Attorney General's Office:

Amy K. Dilworth

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

Commissioner Siegel moved to approve the minutes of January 20, 2010 as amended. Seconded by Vice Chairman Miller. The motion carried; four for, none opposed.

During Commissioners' Comments, Chairman Burnett inquired about the Historical Racing (Instant Racing) Bill. Frank Petramalo informed Chairman Burnett that Senate Bill 513 as amended was reported favorably out of the Senate Finance Committee. The bill that will go to the floor is a compromise bipartisan package between a bill

submitted by Senator Herring and one submitted by Senator Norment and also includes a small percentage for the VRC.

The 10% ADW source market fee and the 1% Breeders Fund fee from ADW wagering were discussed – the 1% could yield more than \$400K for the Breeders Fund this year. Various iterations of the thoroughbred 100% bonus were discussed. Chairman Burnett observed that, “charity starts at home.”

Executive Secretary Harrison presented a draft of the hours of operation form. When a change is proposed to the SWF operating schedule the agreed upon form will be completed by Colonial Downs and sent to the Racing Commission for approval. Chairman Burnett moved that we approve the change requested by Mr. Wingrove in his January 25th letter with respect to changes in the February operation of SWFs. Seconded by Commissioner Reynolds. The motion carried four for, none opposed.

Mr. Harrison said that Strawberry Hill (State Fair) Races had applied for a limited license, which allows for pari-mutuel wagering at the track on the live races.

Mr. Harrison informed the Commission that, in regard to the 10 percent source market fee, four out of the five ADW providers are in compliance with the provision of the July 2009 legislation. XpressBet paid the one percent due the Breeders’ Fund as well as the half percent to the VRC, but then paid Colonial Downs and the horsemen under the provisions of the current XpressBet contract, and deducted the one percent Breeders’ Fund from that payment. Greg Scoggins, of XpressBet, so confirmed and said that the parties may reach an agreement by the time of the March VRC meeting. Deputy Secretary Lermond added that the ADW providers will be reminded to comply with the payment notification process relative to the March 10 payments.

The Commission entertained each of the twenty-one items identified by the staff report in the 2010 Thoroughbred Horsemen’s Agreement. A discussion ensued regarding the Thoroughbred Horsemen’s Agreement and the Advance Deposit Account Wagering (EZ Horseplay) Agreement; the Commission reviewed the issues that required addressing prior to seeking advice from legal counsel. The point was made that, just prior to the 9:30 start of the VRC meeting, the track and the thoroughbred horsemen presented a fresh black-lined version of the EZ Horseplay Agreement that deleted references to cost-sharing on the part of the harness horsemen.

Chairman Burnett said there appears to be a difference in approach between the harness horsemen and the thoroughbred horsemen - the harness horsemen are saying, “That’s a risk we’re not interested in participating in so we’ll take our “X”. The harness horsemen will get what is already agreed upon. What will the thoroughbred horsemen get assuming it’s widely successful?”

James Weinberg, counsel for Colonial Downs stated, “The current deal is the same, except that we’re asking is ‘will you participate in the cost of equipment. In rolling out this equipment, will you consider it an operating cost?’ The thoroughbred horsemen

have said yes; the harness horsemen have said no. The new equipment aside, the arrangement is the same as I described it.”

Mr. Weinberg added, “In an ideal world, we would not have this issue of distinguishing between the breeds, and this is a new wrinkle that we’ve only had to deal with in the last four or five days. We’re still working out how do you reward the thoroughbred and not the harness that may get a free ride, so to speak, on the bump in handle.”

With respect to the trade-offs in the Horsemen’s Agreement, Mr. Petramalo made it clear that there was value to be attached to the track’s three-year commitment to annually request 40 days of live racing. There followed a lengthy discussion that touched on:

- EBITDA calculations;
- GAAP;
- Trade-offs between the parties in the Thoroughbred Horsemen’s Agreement;
- Ramifications of potential overnight purse drops over the course of the 3 years;
- Ramifications of a 3-year contract term and potential anti-trust concerns;
- The pace, quantity and cost of ADW cash-accepting kiosk roll-outs and their ROI;
- EZ Horseplay’s loss, over the first 9 months of 2009 of \$125K which is lumped together with the source-markets-fees from the other 4 ADW providers when determining the amount distributed to the Horsemen;
- The track’s satisfaction with the Kiosk performance to date;
- Gap Purse Funding and guarantors of same;
- VA bred stake purse amounts;
- Benevolence Fund distributions.

Mr. Weinberg stated that Colonial Downs would be comfortable making available the same information to the VRC as has been requested in the contract by the VHBPA if he were to receive FOIA assurances.

Charlie Dunavant explained the VHHA’s reasoning in not agreeing to participate in the cost-sharing of the ADW cash-accepting kiosks. He made presentation and revenue comparisons between thoroughbred and standardbred ADW wagering and stated that the VHHA will propose a 28-day fall racing schedule.

Chairman Burnett read the following motion. “Pursuant to Virginia Code 2.2-3711(A)(7), I move the Commission convene a closed meeting for the following purpose: Consultation of legal counsel employed or retained by the Commission regarding specific legal matters requiring the provision of legal advice by such counsel.” Seconded by Commissioner Siegel. All were in favor by saying aye.

Returning from closed meeting, Chairman Burnett resumed as follows: "I hereby certify that in accordance with Virginia Code Section 2.2-3712 that to the best of each member's knowledge, one, only public business matters lawfully exempted from open meeting requirements under this chapter and, two, only such business matters as were identified in the motion by which the closed meeting was convened were heard, discussed, or considered in this meeting." All were in favor by saying aye.

Chairman Burnett stated that there are four issues that concern the Commission. One is the "business plan that we can look at and understand what the hopes and expectations of the parties are recognizing and that no one has an absolutely accurate crystal ball." Secondly, staff has been asked "to provide the parties with their views of issues of supervision of the activity that may be occasioned by a broad base use of these cash in/cash out machines." Thirdly, "the agreement should contemplate existing regulations of ADW activity and such regulations as maybe passed." Lastly, "the cost of all of this supervision and the cost to racing generally from what is surely to be some level of cannibalization of conventional wagering."

The track (Mr. Weinberg) and the VHBPA (Mr. Petramalo) agreed to extend the 2009 Thoroughbred Horsemen's Agreement to the date of the March VRC meeting, March 17th, 2010.

Chairman Burnett asked the attendees to consider changing the day of the monthly meeting to something other than the third Wednesday of every month.

"There being no further business," Wednesday, March 17th was set as the date of the next meeting to be held at the Horsemen's Building, Colonial Downs, 10700 Horsemen's Road, New Kent, VA. It was moved, seconded, and carried to adjourn this February, 2010 monthly meeting of the Commission.