

UNAPPROVED

VIRGINIA RACING COMMISSION

MINUTES

OF

COMMISSION MEETING

MARCH 16, 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
Dr. George W. Rimler

Commission Staff:

Stanley K. Bowker, Executive Secretary
Kimberly M. Carter, Office Administrator
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

At 9:50 a.m., Chairman Poulson called the meeting to order.

The minutes of the February 16, 2005 meeting were approved.

In her Chairman's Report, Chairman Poulson thanked Sen. Tom Norment and Sen. Ken Stolle for their continued support of the racing industry in the General Assembly.

Mr. Bowker reported for committee Chairman Mark Brown that the Standardbred Blue Ribbon Committee has scheduled its next meeting for April 5, 2005 at 6:30 p.m. It will be held at the law offices of Hancock, Daniel, Johnson and Nagle.

Commissioner Rimler reported the Marketing and Economic Development Committee had met on March 8 and heard a report from representatives of the Leffler Agency on plans for marketing the 2005 race meets at Colonial Downs. He then introduced James Gagliano, Executive Vice President of Maryland Jockey Club, and Bob Leffler, president, owner and founder of the Leffler Agency, a Baltimore-based advertising agency, who presented strategies that his agency is planning to use in 2005.

During the Racing Safety and Medication Committee report, Commissioner Burnett asked Mr. Bowker and Dr. Harden to review the proposed changes in the Commission's medication rules (Chapter 180). The Commissioners unanimously approved two amendments to the proposed rules:

1. In section 11 VAC 10-180-20.L, the requirement that a horse must be in its assigned stall at the track three hours before post for its race was changed to four hours; and,
2. In section 11 VAC 10-180-30.B.2, the penalty for a positive for a Category 2 substance was changed to a fine of not less than 6% of the purse not to exceed the maximum permitted by law.

The proposed changes in Chapter 180 of the Commission's Regulations as amended were unanimously approved. The new regulations will be in affect prior to the opening of Colonial Downs' 2005 thoroughbred meet.

Dr. Harden said the medication rules would be printed in a booklet and made available to all trainers and veterinarians. Commissioner Burnett thanked Dr. Harden for his efforts in putting the rules in a user-friendly format.

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

Mr. Bowker provided a recap on racing-related legislation passed by the General Assembly. An effort to amend the agency's budget was deleted from the final budget.

Mr. Bowker informed the Commission that staff would be visiting out-of-state satellite wagering facilities in Maryland and Pennsylvania within the next 30 days. He added two facilities in Illinois might be added later if necessary.

James Weinberg, counsel for Colonial Downs, stated that business at the new Vinton facility has been improving and that after the Triple Crown races, business should be back up to the levels Colonial Downs had anticipated.

Mr. Weinberg also reported that within the next 10-14 days Colonial Downs would be filing an application for a new satellite facility in Chesapeake. Negotiations also are underway for a site in Scott County and an application for that site should be filed within two weeks as well. Both should be ready for site visits and hearings in April. He added that a number of options still are being considered for Westmoreland County.

Prior to the meeting, Mr. Bowker was given a copy of an amended agreement between Colonial Downs and AmTote for totalizator services. Mr. Weinberg said the agreement has been signed by Colonial President Ian Stewart and was sent to AmTote for signature.

Colonial Downs provided a revised request for 2005 live thoroughbred race dates. The new dates include the \$500,000 Colonial Cup and the \$750,000 Virginia Derby. Both will be part of the Grand Slam of Turf that will include the Secretariat Stakes at Arlington Park and the John Deere Breeders Cup Turf.

In responding to a question from Commissioner Burnett, Mr. Weinberg said Jeff Jacobs would provide funding for the gap when purses are earned and when purse money is actually generated.

Commissioner Burnett questioned the increase to \$213,000 per day for purses and there was considerable discussion about what the purses for the overnight races would be in light of the large increase in stakes purses. Since there was no agreement on the overnight purses number, Commissioner Burnett asked that the projections be reviewed again.

The Commission unanimously approved the revised request for forty (40) days commencing June 17 and concluding August 9, to be run Friday through Tuesday of each week.

David Gruenwald of Jacobs Entertainment reviewed drawings of plans to increase seating capacity for the two major stakes days at Colonial Downs. He said the proposed plan would add approximately 4,900 seats to be located under tent on the stretch side of the grandstand. He said Mr. Jacobs had authorized a capital budget of \$1,00,000 for the project that is expected to take 6-8 weeks to complete. He said he would be meeting with Mr. Bowker the next day to review the plans.

Chairman Poulson announced that because of several industry meetings in April, the next meeting of the Commission is being moved one week to April 27, 2005.

Chairman Poulson 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 Colonial Downs and Phone Bet's application for renewal of their advance deposit account wagering licenses."

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, Commissioner Rimler and Chairman Poulson voting in favor of the motion.

Following the regular monthly meeting, the Commission held an information 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 3951 Greensboro Road, Henry County, Virginia.

James L. Weinberg, counsel for Colonial Downs, stated that there were five issues to discuss in relation to the Henry County Satellite Wagering Facility:

- Site
- Operations
- Projections/Financing
- Satisfaction of legal requirements
- Construction schedule

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.

He further stated the floor plan is similar to the plan at the Hampton facility and will utilize approximately 12,500 square feet.

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. Two security officers will be on duty at all times the facility is open including at least one off-duty law enforcement officer.

As to the projections for the facility, Colonial Downs President Ian Stewart said while it is difficult to project the amount of pari-mutuel handle and attendance for a new satellite facility, he is the most confident in his \$50 million handle forecast than any of the projections he has done for other satellite facilities. He said the primary market will come from Greensboro, NC and there are 1.3 million people within the market area.

Chairman Poulson stressed the importance of accurate forecasts to maintain credibility with the citizens that have approved locating a facility within their communities.

Mr. Weinberg reviewed the legal requirements for licensure and stated Colonial Downs has met all of the following:

1. Local referendum—Passed November 2004.
2. Majority ownership by unlimited racetrack licenses. While Colonial Downs will start out as a tenant, it has an option to purchase in five (5) years, and owns the racetrack in New Kent County.
3. Agreement with horsemen. Contracts with Virginia Horsemen's Benevolent & Protective Association and the Virginia Harness Horse Association are in place and have been approved by the Commission.
4. Colonial Downs is committed to abiding by all of the Commission's regulations.
5. Colonial Downs will submit all construction and operating contracts to the Commission as they are signed.

A motion was made by Commissioner Burnett and seconded by Commissioner Rimler to approve the application from Colonial Downs L.P. and Stansley Racing Corp. to own and operate a satellite wagering facility in Henry County, that a Final Order be prepared including conditions recommended in the Staff Report and discussed with Colonial Downs and that Mr. Bowker sign the order on behalf of the Commission. The motion was unanimously approved.

The informal fact-finding conference was adjourned.

Chairman Poulson convened an 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, provided an overview of TVG and its operation. He stated its account wagering model is supported by a national television network that TVG believes is very important to the success of its operation. Included in the agreement between TVG and Colonial Downs is a commitment to providing television coverage of the major races at Colonial Downs as well as daily advertising spots during the live race meet.

Mr. Hindman said, once approved TVG will undertake a major marketing initiation to sign up customers. He added that while TVG has not been operating in Virginia, it looks forward to competing, that it is not afraid of competition.

Chairman Poulson said that the Commission did not receive until the previous day (Tuesday, March 15) an unredacted copy of a side letter that is part of the agreement between TVG and Colonial Downs. She said because of some of the language in the letter, the Commission needed additional legal advice before it could act on the TVG application.

She said she would continue the informal fact-finding conference until the Commission receives the requested legal advice.

As to the decision on renewal of the application from Colonial Downs PhoneBet to renew its account wagering license for 2005, Chairman Poulson was asked if Colonial Downs was willing to waive its right to a decision from the Commission within 60 days of the original informal fact-finding conference. Mr. Weinberg, on behalf of Colonial Downs, said it would waive its right provided its current license was extended through the next Commission meeting.

To date, YouBet and AmericaTab have not reached agreement with Colonial Downs on their applications for advance deposit account wagering licenses. Chairman Poulson asked representatives if they were willing to go to mediation to try to resolve the differences. Mr. Weinberg on behalf of Colonial Downs, Lonny Powell on behalf of YouBet and Todd Bowker on behalf of AmericaTab all indicated they were willing to pursue that alternative.

Chairman Poulson said a list of possible mediators would be prepared and sent to the parties next week. She asked that the medication sessions be scheduled quickly in the hopes that the issues could be resolved by the April 27 Commission meeting.

Finally, Chairman Poulson said the Attorney General's Office is preparing cease and desist letters to go out to all account wagering companies that may be operating in Virginia without a license.

There being no further business before the Commission, the meeting adjourned at 3:45 p.m.