



NORTH DAKOTA RACING COMMISSION

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Gunner laCour

Director

NORTH DAKOTA RACING COMMISSION

Live and Telephone Meeting

Peace Garden Room, 600 E. Boulevard Avenue, State Capitol, Bismarck, ND

Monday, September 30, 2013 – 10:30 a.m. Central Time

Minutes

Present: Chairman Jim Ozbun, Commissioner Andy Maragos, Commissioner Tom Senftner, Commissioner Ray Trottier, Commissioner Steve Hartman, Director Gunner laCour, Legal Counsel Edward Erickson and Administrative Assistant Gail Allensworth.

Others Present: Doug DeMontigny, Helen Tessmann, John Bubel, Ron Klein, Janelle Mitzel, L.J. Harsche, Ronald Clarke, Scott Horst, Devron Leingang, Mike Cichy, Kenneth McPeck, Chris Carper, Mark Thurman, Lacey Goff, John Bracaglia, Gail Hrdlicka, Blaine DeCoteau, Ken Olson, Avery Erfle, Mike Schmitz, Arlie Roller, Joe Schaefer, Wayne Slater, Judy Thomas, David Bensen, and Leon Glasser.

Call to Order: Chairman Jim Ozbun called the meeting to order at 10:30 a.m. Director Gunner laCour presented Helen Tessmann with her retirement plaque and gift.

Chairman Ozbun asked if there were any additions or corrections to the agenda. Director LaCour asked to move up agenda items 5 and 6 so that the presenters would not have to stay for the entire meeting. Chairman Ozbun asked for a motion to approve the agenda.

A motion was made by Commissioner Maragos and seconded by Commissioner Trottier to accept the agenda with changes requested by Director laCour. All Commissioners voted aye and hearing no negative vote the motion passed.

AGENDA

1. **Approval of Minutes – July 11 and August 12, 2013 Meetings**
2. **2013 Live Race Meets**
 - a. ***Outdoor Recreation Development Association - Chippewa Downs, Belcourt***
 - (1) Report by ORDA Representative
 - (2) Thompson's Financial Audit of Race Meet
 - (3) NDRC Director's Report
 - b. ***Horse Race North Dakota - ND Horse Park, Fargo***
 - (1) Report by HRND Representative
 - (2) NDRC Director's Report

- c. **Chippewa Downs Protests**
 - (1) Protest of the 7th Race on June 16
 - (2) Protest of the 7th Race on June 29
 - (3) Protest of the 6th Race on June 16
- d. **Other Live Meet Issues**
 - (1) Distribution of Purses to Associations
 - (2) Starting Gates
 - (3) Bill Butcher and Associates Services
 - (4) Funding for Racing Secretary and State Steward

- 3. **Wayne Epsteen Investigation**
- 4. **Breeders' Fund Administrative Services**
- 5. **Social Gaming Kiosk Update**
- 6. **Service Provider License Application – Horse Races Now**
- 7. **Any Other Issues Which May Properly Come Before the Commission**
- 8. **Executive Session – Attorney Consultation regarding reasonably anticipated adversarial administrative proceedings pursuant to NDCC 44-04-19.1**
- 9. **Adjournment**

1. **Approval of Minutes – July 11 and August 12, 2013 Meetings**

Previously, all Commissioners had received a copy of the minutes to review.

A motion was made by Commissioner Senftner and seconded by Commissioner Trottier to accept the minutes of July 11, 2013, and August 12, 2013, as presented. All Commissioners voted aye and hearing no negative vote the motion passed.

5. **SocialGaming Kiosk Update**

Mr. John Bracaglia of SocialGaming Technologies provided the Commission with a report on their services offered in North Dakota. After the presentation, questions were asked by the Commissioners and answered by Mr. Bracaglia.

A motion was made by Commissioner Maragos and seconded by Commissioner Senftner to approve the report. Maragos –Y, Senftner –Y, Ozbun -Y, Hartman –Y, Trottier –Y. Motion passed.

6. **Service Provider License Application – Horse Races Now**

Mr. Kenny McPeek, Co-Founder/CEO, of Horse Races Now presented their Service Provider & Account Deposit Wagering license application. Mr. McPeek introduced Chris Carper who is software developer for Horse Races Now who also made a presentation. After the presentation, questions were asked by the Director and Commissioners and answered by Mr. McPeek and Mr. Carper.

A motion was made by Commissioner Hartman and seconded by Commissioner Trottier to approve the Service Provider & Account Deposit Wagering licensing for Horse Races Now. Hartman –Y, Trottier –Y, Ozbun -Y, Maragos –Y, Senftner –Y. Motion passed.

2. 2013 Live Race Meets

a. Outdoor Recreation Development Association - Chippewa Downs, Belcourt

(1) Report by ORDA Representative

Doug DeMontigny, Chairman of ORDA, presented ORDA's 2013 race meet report to the Commission and responded to questions after the presentation.

(2) Thompson's Financial Audit of Race Meet

Doug DeMontigny responded to questions from the Commission concerning a significant cash shortage identified on one day of racing. Mr. DeMontigny stated, and Director laCour confirmed, that they had accounted for the shortfall and that there was no shortage for that day, but that a single teller's drawer had accidentally not been included in the daily receipts sent to the auditor.

(3) NDRC Director's Report

Director laCour presented his report on the 2013 Chippewa Downs meet.

Director laCour asked for authorization to move forward on the project to remove the rock from the racetrack at Belcourt. The cost should not exceed \$10,000, and should be taken out of the Promotion Fund. Director laCour answered questions from the Commissioners after his report.

A motion was made by Commissioner Maragos and seconded by Commissioner Trottier to authorize Director laCour to move forward on the project to remove rock from the Belcourt racetrack. The cost is not to exceed \$10,000 and to be taken out of the Promotion Fund. Maragos -Y, Trottier -Y, Ozbun -Y, Hartman -Y, Senftner -Y. Motion passed.

1) Mr. Doug DeMontigny with ORDA provided the Commission with a report for the 2013 live race meet at Chippewa Downs. After the presentation, questions were asked by the Commissioners and answered by Mr. DeMontigny.

A motion was made by Commissioner Senftner and seconded by Commissioner Hartman to accept the ORDA report. Senftner -Y, Hartman -Y, Ozbun -Y, Maragos -Y, Trottier -Y. Motion passed.

b. Horse Race North Dakota - ND Horse Park, Fargo

(1) Report by HRND Representative

Mr. Mike Schmitz with Horse Race North Dakota provided the Commission with a report for the 2013 live race meet at HRND. After the presentation, questions were asked by the Commissioners and answered by Mr. Schmitz. The Commissioners specifically requested more thorough reports be presented in the future.

(2) NDRC Director's Report

Director laCour presented his report on the 2013 Fargo meet. Director laCour specifically extended the Commissions gratitude to Trish Soulsby, Ryan Roshau, and Bubby Harr for their excellent contributions this year. A special thanks went to Trish Soulsby who volunteered her time in a number of capacities, going over and beyond the efforts expected of a volunteer.

A motion was made by Commissioner Maragos and seconded by Commissioner Hartman to accept the HRND report. Maragos -Y, Hartman -Y, Ozbun -Y, Senftner -Y, Trottier -Y. Motion passed.

c. Chippewa Downs Protests

(1) Protest of the 7th Race on June 16

(2) Protest of the 7th Race on June 29

Director laCour presented his report on both the June 16 race 7 and June 29 race 7 protests. Based on a review of the applicable rules by both Director laCour and Assistant AG Edward Erickson, it was determined that these protests could not be entertained by the Commission. Under the Racing Commission's administrative rules, the Stewards' determination on any foul is final and cannot be protested or appealed to the Commission.

(3) Protest of the 6th Race on June 16

Director laCour presented his report on the protest of the June 16 race 6. Due to emergency circumstances, the track had to change the conditions of the race. As a result the track properly announced the change in the conditions as well as offering a refund to anyone who had wagered on the race. The individual filed a protest because he had wagered on the race prior to the change in the conditions. However, the individual was afforded proper opportunity prior to the race to redeem his ticket if he so chose and either chose not to do so or was not in attendance at the time. Further, he did not file his protest until after the race was declared official, making the protest improper. Therefore, the Commission did not act on the protest.

d. Other Live Meet Issues

(1) Distribution of Purses to Associations

At this year's Fargo meet TOBA received \$13,000 and the NDQHRA received \$5,200 in North Dakota Purse Funds, but no funding was provided to the NDTA. Further, TOBA received \$4,600 in ND Purse Funds at the Chippewa Downs meet for a total of \$17,600 over the two meets.

Director laCour recommended that as a condition of any future Purse Fund award to the tracks, it be made a condition of such award that no purse funding be provided to the horsemen's associations. In this manner the Commission can insure that their determinations as to the award of funding to the associations from the Purse Fund cannot be circumvented by the tracks.

Commissioner Maragos requested that prior to imposing any condition specific language be drafted for review by the Commission. Director laCour confirmed he would draft such language in advance of any Purse Fund awards.

(2) Starting Gates

Director laCour presented a report on the starting gates, specifically that following the meet representatives of ORDA and Fargo had disagreed as to where the gates were to be stored. An agreement was reached that they would be stored in Fargo to allow for repairs and be returned to Chippewa Downs in the spring. Director laCour stated that he had spoken with Doug DeMontigny, ORDA Chairman, and Wes Heinert, VP of HRND, and both had agreed to the following: gates to be delivered to Chippewa Downs on or before April 15, 2014 (weather permitting) at HRND expense and gates to be delivered to Fargo within one week of the end of the Chippewa Downs meet at ORDA's expense.

Director laCour expressed the Commission's concern with the condition of the starting gates. HRND had stated to Director laCour that they were currently doing repairs on the gates. Director laCour stated that he had requested and HRND had agreed that once repairs were completed, HRND would contact Glen Thompson from the Horse Park Foundation and work with him (as well as provide labor) to put the starting gates in the Don Hart Barn for the winter along with the water truck.

Director laCour also extended the Commissions thanks to Kenny Olson and Jerry Duncan for their volunteer repair work on the gates prior to the Fargo meet.

(3) Bill Butcher and Associates Services

Director laCour asked to pay Bill Butcher & Associates an additional \$183.63 as the investigation was exceeded by that amount. He also asked that it be paid from the Promotion Fund. Director laCour answered questions from the Commissioners after his report.

A motion was made by Commissioner Maragos and seconded by Commissioner Hartman to approve the additional \$183.63 and to pay it from the Promotion Fund. Maragos -Y, Hartman -Y, Ozbun -Y, Senftner -Y, and Trottier -Y. Motion passed.

(4) Funding for Racing Secretary and State Steward

Director laCour asked for an allocation from the Promotion Fund to pay Carol Sivak, the Racing Secretary at HRND, \$750.00 to supplement was provided by HRND in appreciation for her excellent work this year. Director laCour answered questions from the Commissioners after his report.

A motion was made by Commissioner Senftner and seconded by Commissioner Trottier to approve the allocation from the Promotion Fund to pay Carol Sivak \$750.00. Senftner -Y, Trottier -Y, Ozbun-Y, Hartman-Y, and Maragos -Y. Motion passed.

Director laCour asked for an allocation from the Promotion Fund to pay Tuck Miller, the Racing Steward at HRND, \$750.00 to supplement was provided by the Racing Commission in appreciation for his excellent work this year. Director laCour answered questions from the Commissioners after his report.

A motion was made by Commissioner Trottier and seconded by Commissioner Maragos to approve the allocation from the Promotion Fund to pay Tuck Miller \$750.00. Trottier -Y, Maragos -Y, Ozbun-Y, Hartman-Y, and Senftner -Y. Motion passed.

3. Wayne Epsteen Investigation

Director laCour presented his report on the Wayne Epsteen investigation. Specifically, Director laCour had determined that, in addition to those actions described at the July 11 Commission meeting, Mr. Epsteen had failed to enter race results into Equibase leading to problems with the breeders fund, had lost horse papers belonging to Scott Horst which were ultimately found at Chippewa Downs the next season and had lost six sets of horse papers belonging to Ms. Betty Uphaus which were never recovered. The cost to replace Ms. Uphaus' papers was \$220. Director laCour answered questions from the Commissioners after his report.

A motion was made by Commissioner Hartman and seconded by Commissioner Maragos to find probable cause for disciplinary hearing against Wayne Epsteen and to offer a settlement. The offer of settlement would be drafted by Assistant AG Edward Erickson. Hartman -Y, Maragos -Y, Ozbun -Y, Senftner -Y, and Trottier -Y. Motion passed.

4. Breeders' Fund Administrative Services

Director laCour informed the Commissioners that he was required by statute to offer the contract for the Breeders' Fund Registry administrative services to Gail Hrdlicka of Management, Clerical & Consulting Services, LLC, as that was the lowest (and only) bid. However, due to the rate charged by MCCS, there is the possibility that the cost could exceed the 5% cap on Breed Fund administrative services in the Commission's administrative rules. Director laCour asked for a variance of more than 5% so there would be no violation of the Breeders Fund. Director laCour answered questions from the Commissioners after his report.

A motion was made by Commissioner Hartman and seconded by Commissioner Trottier to have an option for Director laCour to have a variance of more than 5% but to not exceed 8% for payment to MCCS. Hartman -Y, Trottier -Y, Ozbun -Y, Maragos -Y, and Senftner -Y. Motion passed.

7. Any Other Issues Which May Properly Come Before the Commission

Director laCour asked for a variance to the Commission's administrative rules regarding the licensing of employees of Service Providers and Site Operators. Specifically, Director laCour requested that the variance require only principals and supervisory personnel of Service Providers be licensed. Further, would require that the only employees of Site Operators which must be licensed are those engaged in activities related to pari-mutuel wagering or live racing. Director laCour answered questions from the Commissioners after his report.

A motion was made by Commissioner Senftner and seconded by Commissioner Maragos to issue the variance as described. Senftner -Y, Maragos -Y, Ozbun -Y, Hartman -Y, and Trottier -Y. Motion passed.

8. Executive Session – Attorney Consultation regarding reasonably anticipated adversarial administrative proceedings pursuant to NDCC 44-04-19.1

Chairman Ozbun indicated that it was now time to go to Executive Session and asked the members of the public who were attending the meeting to leave the room. They were invited to return after the adjournment of the Executive Session.

A motion was made by Commissioner Maragos and seconded by Commissioner Hartman to go to Executive Session. Maragos -Y, Hartman -Y, Ozbun -Y, Senftner -Y, and Trottier -Y. Motion passed.

The Executive Session began at 2:05 p.m. and was attended by Chairman Ozbun, Commissioner Maragos, Commissioner Senftner, Commissioner Trottier, Commissioner Hartman, Director laCour, Legal Counsel Edward Erickson and Administrative Assistant Gail Allensworth.

A motion was made by Commissioner Maragos and seconded by Commissioner Hartman to go back to regular session. Maragos -Y, Hartman -Y, Ozbun -Y, Senftner -Y, and Trottier -Y. Motion passed.

The Executive Session was adjourned at 2:12 p.m.

9. **Adjournment**

The meeting was returned to regular session and Chairman Ozbun requested that the meeting be adjourned if there was no further comment from members of the public.

A motion was made by Commissioner Hartman and seconded by Commissioner Senftner to adjourn the meeting. All Commissioners voted aye and hearing no negative vote the motion passed.

Meeting was adjourned at 2:15 p.m.