



NORTH DAKOTA RACING COMMISSION

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Gunner laCour

Director

NORTH DAKOTA RACING COMMISSION

NDRC Meeting

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

Tuesday, September 16, 2014 – 10:30 a.m. (Central Time)

Minutes

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

Others Present: Doug DeMontigny, Mike Schmitz, Blaine DeCoteau, Ron Klein, John Bubel, Ben Kenney, Ralph Bucholz, Brian Slater, Lars Mathiason, Kelly Peach, Steve Keplin Sr., Steve Keplin Jr., Bubby Haar, L.J. Harsche, Wayne Slater, and Scott Horst

Call to Order: Chairman Jim Ozbun called the meeting to order at 10:35 a.m.

Chairman Ozbun introduced the new Commissioner, Mary Ann Durick.

Chairman Ozbun asked if there were any additions or corrections to the agenda. Director LaCour asked to add 6d. Letters of Credit under Proposed Legislation and to switch items 10 and 11 around. Chairman Ozbun asked for a motion to accept the agenda as amended.

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

AGENDA- Modified

1. **Approval of Minutes – April 25, July 1 and July 8 Meetings**
2. **Fiscal Year End and 2015-2017 Budget Submission**
 - a. Fiscal Year End Status
 - b. 2015-2017 Budget
3. **Annual State Government Salary Review**
4. **Proposed Administrative Rule Changes – Medication, et al**
5. **Proposed Rule Changes – ADW and Flat Racing**

6. **Proposed Legislation**
 - a. Breed Fund
 - b. Commissioner Pay
 - c. Tax Reduction for Track Operators
 - d. Letters of Credit
7. **ADW Operational Changes – Watchandwager.com LLC**
8. **Site Operator Application – ND Quarter Horse Racing Association**
9. **Race Meet Reports**
 - a. Chippewa Downs General Manager Report
 - b. North Dakota Horse Park General Manager Report
 - c. Director's Report
10. **Outstanding Drug Violations from 2014 Meets for Commission Disposition**
 - a. Peach/Slater Case
 - b. Mathaison/Keplin Case
 - c. Keplin Case
11. **Breed Fund**
 - a. Double Breed Points
 - b. Reduction in Breed Fund Rate
 - c. 2013 Breed Fund Audit
12. **Advisory Committee Recommendations**
13. **Other Matters for Commission Consideration**
 - a. Richard Nivens' Stewards License
 - b. Commission Vets & Independent Work
14. **Any other business which may properly come before the Commission**
15. **Adjournment**

1. **Approval of Minutes – April 25, July 1 and July 8 Meetings**

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

A motion was made by Commissioner Trottier and seconded by Commissioner Hartman to approve the minutes of April 25, July 1, and July 8, 2014, as presented. All Commissioners voted aye and hearing no negative vote the motion passed.

2. **Fiscal Year End and 2015-2017 Budget Submission**

- a. Fiscal Year End Status

Director laCour reported at the end of fiscal year 2013-2014 total handle by all Account Deposit and Simulcast Wagering companies (ADWs) was approximately \$323 million, an increase of approximately \$127 million over the prior fiscal year and \$73 million over his projections.

Balances of the various continuing appropriation funds as of July 1:

- Promotion Fund: \$165,468
- Purse Fund: \$76,688
- Breeders Fund: \$863,148

b. 2015-2017 Budget

Director laCour distributed a copy of the proposed budget to the Commissioners. It is a hold even budget as requested by the Governor.

A motion was made by Commissioner Senftner and seconded by Commissioner Trottier to accept the year end status and the 2015-2017 proposed budget. Senftner – Y, Trottier –Y, Ozbun –Y, Durick –Y, Hartman -Y. Motion passed.

3. Annual State Government Salary Review

Chairman Ozbun reported that the State has authorized up to 2% increase for cost of living and up to 4% increase for performance for employees for the current fiscal year. He recommended both of those for Director laCour: 2% for cost of living and 4% for performance for a total of 6% increase in salary.

A motion was made by Chairman Ozbun and seconded by Commissioner Hartman to approve a 2% cost of living increase and 4% performance increase for the current fiscal year for a total of 6% increase in salary. Ozbun –Y, Hartman –Y, Durick –Y, Senftner –Y, Trottier -Y. Motion passed.

4. Proposed Administrative Rule Changes – Medication, et al

Director laCour reported that a public hearing was held on the proposed changes to the following Administrative Rules revising the requirements for the licensing of multiple horse owners, adopting several sections of the Racing Commissioners International model medication rules, and revising the process of registering broodmares:

- N.D.C.C. Article 69.5-01-05 Licensees
- N.D.C.C. Article 69.5-01-07 Conduct of Races
- N.D.C.C. Article 69.5-01-09 North Dakota Breeders' Fund

No one from the public attended the hearing and there were not any written comments received.

Director laCour recommended that the Commission remove the proposed language of Administrative Rule 69.5-01-05-16, paragraph 7. The rule was intended to reduce fees when multiple owners wanted to run a single or very few horses. However, after having been implemented this through a variance for the 2014 season, the process proved to be cumbersome and was not applied frequently. He recommended using only the Association of Racing Commissioners International (ARCI) Model Rules language and discarding this attempt at reducing fees due to its implementation being overly complicated.

A motion was made by Commissioner Hartman and seconded by Commissioner Trottier to submit the proposed rule changes including the removal of paragraph 7 of Administrative Rule 69.5-01-05-16 to the Administrative Rules Committee. Hartman – Y, Trottier –Y, Ozbun –Y, Durick –Y, Senftner -Y. Motion passed.

5. Proposed Rule Changes – ADW and Flat Racing

Director laCour stated that while the Commission has discussed the need to revise the ADW rules on several occasions, approval has never been formally provided to move forward with implementing the ARCI Rules. Some draft work has already been accomplished on this; however, he recommended that formal permission from the Commission to move forward with the rule change process before proceeding any further. Director laCour recommended moving forward with the less extensive revision to the rules.

Director laCour recommended adopting substantially all of the ARCI Model Flat Racing Rules with some limited exceptions based on funding availability and the size of our meets. He asked the Commission for authority to move forward with an overhaul of the flat racing rules.

A motion was made by Commissioner Senftner and seconded by Commissioner Hartman to authorize Director laCour to move forward with the proposed rule changes for ADWs and flat racing. Senftner –Y, Hartman –Y, Ozbun -Y, Trottier –Y, Durick -Y. Motion passed.

6. Proposed Legislation

- a. Breed Fund
- b. Commissioner Pay

- c. Tax Reduction for Track Operators
- d. Letters of Credit
- a. Breed Fund

Director laCour recommended proceeding with legislation as presented to the Commissioners allowing the Commission to have the option to administer the Breed Fund. With the Commission's assent he will proceed to submit this for the next legislative session.

A motion was made by Commissioner Trottier and seconded by Commissioner Hartman to authorize Director laCour to proceed with legislation to remove the requirement to contract out the administration of the Breed Fund and to have the option to administer the Breed Fund in house. Trottier -Y, Hartman -Y, Ozburn -Y, Durick -Y, Senftner -Y. Motion passed.

- b. Commissioner Pay

Director laCour asked for approval of the draft legislation presented to the Commissioners increasing Commissioner pay and to submit it for the next legislative session. This was accomplished by tying the pay of the Commissioners to that of the legislature, allowing the Commissioners to benefit from any increases in the future without the burden of additional legislation. It was noted however that if there were any objections by the Legislature, the Director could work to revise this legislation to simply provide the same total dollar amount the Legislators currently receive. Legislator pay is approximately \$167/day at this time while the Commissioners currently receive \$75/day. This increase is intended to better compensate the Commissioners for their time as they often put in significant time and effort to Commission activities.

A motion was made by Commissioner Senftner and seconded by Commissioner Hartman to authorize Director laCour to proceed with legislation to increase the pay of the Commissioners. Senftner -Y, Hartman -Y, Ozburn -Y, Trottier -Y, Durick -Y. Motion passed.

- c. Tax Reduction for Track Operators

Director laCour stated the reduction in the tax rate for ADWs has spurred significant growth in the State while we have not seen a similar increase in investment in our race tracks. The need to develop this additional investment and increased number of available race days motivated him to consider proposing legislation which would further reduce the tax cap for those with ADW and simulcast operations if they operated a race track in the state for a minimum number of days. Director laCour recommended reducing the tax cap for ADWs, based on qualifications as set out in the proposed legislation provided to the Commissioners.

A motion was made by Commissioner Hartman and seconded by Commissioner Senftner to authorize Director laCour to proceed with legislation to reduce the tax cap for ADWs. Hartman -Y, Senftner -Y, Ozburn -Y, Trottier -Y, Durick -Y. Motion passed.

- d. Letters of Credit

Director laCour asked that the Commission propose legislation that would clarify statute to provide for accepting letters of credit as well as bonds.

A motion was made by Commissioner Trottier and seconded by Commissioner Hartman to authorize Director laCour to allow the acceptance of letters of credit. Trottier -Y, Hartman -Y, Ozburn -Y, Senftner -Y, Durick -Y. Motion passed.

7. ADW Operational Changes – Watchandwager.com LLC

Director laCour introduced Ben Kenney from WatchandWager.com who addressed its new operational changes regarding international wagering for Commission review. After the presentation, questions were asked by the Commissioners and answered by Mr. Kenney.

8. Site Operator Application – ND Quarter Horse Racing Association

Director laCour presented the site operator application from the ND Quarter Horse Racing Association. President Leon Glasser was not present to answer any questions from the Commissioners. The Commissioners recommended that the application be approved.

The Commissioners also stated that they expect Leon Glasser to be present at the next Commission meeting to address the allegations contained in his letter to the Governor.

A motion was made by Commissioner Durick and seconded by Commissioner Hartman to approve the site operator license from the North Dakota Quarter Horse Racing Association. Durick –Y, Hartman –Y, Ozbun -Y, Senfner –Y, Trottier -Y. Motion passed.

9. Race Meet Reports

- a. Chippewa Downs General Manager Report
- b. North Dakota Horse Park General Manager Report
- c. Director's Report

- a. Chippewa Downs General Manager Report

Doug DeMontigny of ORDA gave a report on the results of the race meet at Chippewa Downs. Questions were asked by the Commissioners and answered by Mr. DeMontigny.

- b. North Dakota Horse Park General Manager Report

Mike Schmitz of Horse Race North Dakota gave a report on the results of the race meet at the North Dakota Horse Park. Questions were asked by the Commissioners and answered by Mr. Schmitz.

- c. Director's Report

Director laCour gave a report on Chippewa Downs and the North Dakota Horse Park noting improvements, concerns and making suggestions for areas that need some additional work. Questions were asked by the Commissioners and answered by Director laCour.

Change in Agenda:

Chairman Ozbun stated that he had to leave shortly so agenda item 12 was moved up to 10 so he could be present for the discussion.

10. Outstanding Drug Violations from 2014 Meets for Commission Disposition

- a. Peach/Slater Case
- b. Mathaison/Keplin Case
- c. Keplin Case

- a. Peach/Slater Case

Director laCour stated the results from Industrial Laboratories of which the serum (blood) sample number E169609 taken from the horse Recklessly Knud after winning the first race on July 4 at Chippewa Downs. Testing revealed the presence of Mephentermine, an ARCI Class 1A drug. This drug has no legitimate therapeutic use and is used as a stimulant. Notice of a stewards' hearing was given to Mr. Kelley Peach, the owner, and Mr. Brian Slater, the trainer. A continuance of the stewards hearing was granted pending the results of a requested split sample test. A split sample was sent to the Racing Laboratory at the University of Florida who subsequently confirmed the presence of Mephentermine.

The ARCI Recommended Penalties v. 6.00, adopted by the Commission by variance for the 2014 season, provides the following penalties:

- Trainer:
 - minimum 1 year suspension absent mitigating circumstances; and

- Minimum fine of \$10,000 absent mitigating circumstances.
- Owner:
 - Disqualification and loss of purse.

Director laCour stated that he believed the best course of action was to impose at least the minimums as there are no aggravating circumstances but nothing that he can classify as truly mitigating either.

Mr. Kelley Peach and Mr. Brian Slater were both present to answer questions from the Commissioners.

A motion was made by Commissioner Hartman and seconded by Commissioner Trottier to impose a loss of purse to the owner, Kelly Peach and a \$1,000 fine for both Kelly Peach and Brian Slater. In addition both individuals would get a one year probation. If there would be another positive test during the probationary period they would pay a \$10,000 fine. Hartman -Y, Trottier -Y, Ozbun -N, Senftner -N, Durick -N. Motion failed.

A motion was made by Commissioner Senftner and seconded by Commissioner Durick to impose a fine of \$5,000 and a two year probation for trainer, Brian Slater. In addition, if there is another Class 1 violation during the probationary period the additional \$5,000 fine would have to be paid plus the new fine. If the violation is less than a Class 1 it would be addressed separately. Senftner -Y, Durick -Y, Hartman -Y, Ozbun -Y, Trottier -Y. Motion passed.

Chairman Ozbun left the meeting.

A motion was made by Commissioner Hartman and seconded by Commissioner Durick to disqualify the horse of the owner, Kelly Peach and a loss of the purse. Hartman -Y, Durick -Y, Senftner -Y, Trottier -Y. Motion passed.

b. Mathaison/Keplin Case

Director laCour stated the results from Industrial Laboratories of which the serum (blood) sample number E169705 taken from the horse Stratos after winning the fourth race on August 3 at the North Dakota Horse Park. Testing revealed the presence of Mepivacaine, an ARCI Class 2B drug. This drug, commonly called Carbocaine, is a therapeutic medication used as a nerve blocker in instances such as sore feet. However, no detectable level is permitted on race day. Notice of this hearing was sent to both Mr. Keplin and Mr. Mathaison.

The recommended minimum penalty for a Class 2B medication violation is a \$500 fine and 15 day suspension for the trainer as well as loss of purse and disqualification of the horse.

Mr. Keplin and Mr. Mathiason were present to answer questions from the Commissioners.

A motion was made by Commissioner Hartman and seconded by Commissioner Durick to impose a fine of \$1,000 for trainer, Mr. Keplin. The horse of owner, Lars Mathiason, is to be disqualified and loss of purse. Hartman -Y, Durick -Y, Senftner -Y, Trottier -Y. Motion passed.

c. Keplin Case

Director laCour stated that Mr. Keplin was not licensed in any capacity for the 2014 season. The reason this was not caught previously is that the licensing staff reviewing the programs likely believed that the Steve Keplin listed as trainer was Steve Keplin, Jr. Therefore, the horses were not scratched in accordance with Commission rules.

Pursuant to Rule 69.5-01-05-01 licenses are required for all participants in racing. Further, any horse under the management, care or control of an unlicensed individual is ineligible to race per Rule 69.5-01-07-01(8). Mr. Keplin clearly violated both of these rules by not obtaining a license and providing training services.

Director laCour recommended a suspension of future privileges, a fine, or both.

Mr. Keplin was present to answer questions from the Commissioners.

A motion was made by Commissioner Hartman and seconded by Commissioner Senftner to impose a fine of \$500 to trainer, Mr. Keplin. Hartman –Y, Senftner –Y, Trottier -Y, Durick -Y. Motion passed.

11. Breed Fund

- a. Double Breed Points
- b. Reduction in Breed Fund Rate
- c. 2013 Breed Fund Audit

- a. Double Breed Points

Director laCour stated that based on the races identified herein having purses valued at \$10,000 (including estimated), the following races qualify for double Breed Fund points:

- North Dakota Horse Park
 - July 19, race 3
 - August 2, race 6 (estimated)
 - August 2, race 9
 - August 3, race 6
 - August 3, race 7 (estimated)

A motion was made by Commissioner Durick and seconded by Commissioner Trottier recommends that the races qualify for double Breed Fund points. Durick –Y, Trottier –Y, Hartman -Y, Senftner -Y. Motion passed.

- c. 2013 Breed Fund Audit

Director laCour reported that during an audit of the 2013 Breed Fund by Debbie Eisenhauer an error was discovered. When breed fund points were assessed, the owner Karen Glasser and stallion owner Debra Quarne were awarded first place points rather than third. That resulted in an overpayment to the tow of \$740.02 and \$63.87 respectively.

In order to remedy this error Director laCour recommended that the overpayments be deducted from this year's breed fund payments to Karen Glasser and Debra Quarne. Regarding the underpayments, Director laCour recommended that all accounts are credited and these payouts be added to the 2014 checks that go out at the end of the year.

A motion was made by Commissioner Hartman and seconded by Commissioner Durrick that overpayments be deducted from this year's breed fund payments and that the underpayments be added to the 2014 payments. Hartman –Y, Durick –Y, Senftner -Y, Trottier -Y. Motion passed.

- b. Reduction in Breed Fund Rate

Director laCour reported that he met the Breed Fund Administrator, Gail Hrdlicka, regarding the hourly rate for her services. She offered to reduce her rate to \$50/hour down from \$65/hour due to the fact that it was a hardship on the Breed Fund. She will now be billing at the lower rate.

12. Advisory Committee Recommendations – Document attached as Exhibit A

Director laCour started by making sure everyone was aware that the current debt problems are not the fault of those currently working to save the Horse Park. The agreements resulting in this debt were put in place long before these individuals were involved. However, Director laCour noted that while it may not be their fault, by becoming involved with the Horse Park these individuals signed up to use their best efforts to save the Horse Park; efforts the Commission will fully support.

Director laCour then outlined the very serious problems the Commission and the Horse Park would be facing if the Horse Park cannot find a way to deal with its currently outstanding debts. Director laCour noted that pursuant to NDCC 53-06.2-14 the Commission may not license an entity who has not met their financial obligations. A Site Operator application may also not be approved if the entity is not financially stable. Further, there may be legal prohibitions on the Commission providing any funding to private entities to pay of such debts. Additional inquiry is needed in this area.

Even if direct Commission support were possible, Director laCour indicated there would be serious concerns about the benefit such funding would have for the horsemen. The Commission could find itself in a situation where it could help address the debt, but not afford to provide money for actual racing. Additionally, Director laCour indicated there is no way to ensure the

Commission will always have sufficient funding to meet these payments over the payoff period. Therefore, the Commission could find a few years down the road that despite a significant prior investment the Horse Park was in default.

Director laCour presented the recommendations of the Advisory Committee to the North Dakota Horse Park which proposed a plan to assess the financial viability of the Horse Park operations and address outstanding debts.

In order to facilitate the Horse Park's implementation of the first part of the plan and recognizing that the Horse Park organizations do not have sufficient funding, Director laCour recommended that the Commission hire a consultant to help assess the financial viability of the Horse Park and to put together a business plan outlining the conditions under which Horse Park operations could continue. This business plan could then facilitate the Horse Park's negotiations with stakeholders in an attempt to continue operations.

Director laCour recommended appointing Mr. Jim McKinney as the consultant. Director laCour stated that after speaking with several individuals, he felt that Mr. McKinney's 10+ years as CFO of both Beulah Park and an ADW company makes him the ideal candidate for this work. Further, with the purchase of Beulah Park by Penn National Gaming, Mr. McKinney has availability throughout the month of October to complete this task. Director laCour presented is rate as \$150/hour with an estimated 50 to 100 hours to complete the project. Director laCour stated the allocation of funding from the Promotion Fund not to exceed \$20,000 should cover all work and onetime travel expenses.

A motion was made by Commissioner Durick and seconded by Commissioner Hartman that the Commission would appoint Mr. Jim McKinney to complete the financial review and business plan as outlined in the Advisory Committee recommendations and allocate no more than \$20,000 from the Promotion Fund for such services. Durick -Y, Hartman -Y, Senftner -Y, Trottier -Y. Motion passed.

13. Other Matters for Commission Consideration

- a. Richard Nivens' Stewards License
- b. Commission Vets & Independent Work

- a. Richard Nivens' Stewards License

Director laCour stated that the situation had changed regarding Richard Nivens and he will speak to him offline.

- b. Commission Vets & Independent Work

Director laCour wanted to clarify one issue associated with the Commission Veterinarians at the race meets. Specifically, horsemen should be aware that any services beyond the administration of Lasix by a Commission Veterinarian are not Commission sanctioned and we are not responsible for their services in any way. Each horseman (particularly trainers) is responsible for selecting the veterinarian of their choice.

14. Any other business which may properly come before the Commission

No other business.

15. Adjournment

A motion was made by Commissioner Trottier and seconded by Commissioner Durick to adjourn the meeting. Trottier -Y, Durick -Y, Hartman -Y, Senftner -Y. Motion passed.

Meeting was adjourned at 2:40 p.m.