

MINUTES

OREGON RACING COMMISSION MAY 17, 2001

The Oregon Racing Commission met on Thursday, May 17, 2001, at 1:30 p.m. for their regular meeting in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Steve Walters, Chair; Laura Fine, Vice Chair; Tom Towslee, Lisa Metcalf, DVM, and Jeff Gilmour. Chair Walters announced that this was Vice Chair Fine's last meeting as her term expires May 31, 2001. He also introduced Todd Thorne, who was in the audience, who will begin his term on the commission June 1, 2001. Agenda items were discussed in the following order with resulting actions:

1. Approval of April 19, 2001, Minutes

ACTION: MOTION(Fine) Approve minutes as submitted.
VOTE: 5 Aye, 0 Nay

2. Crooked River Roundup 2001 Race Meet Application - July 11, 12, 13 and 14

Steve Barham recommended approval.
ACTION: MOTION(Fine) Approve race meet application and delegate authority to the executive director to approve race meet officials.
VOTE: 5 Aye, 0 Nay

3. Tillamook County Fair 2001 Race Meet Application - August 9, 10 and 11

Steve Barham recommended approval.
ACTION: MOTION(Fine) Approve race meet application and delegate authority to the executive director to approve any changes in race meet officials.
VOTE: 5 Aye, 0 Nay

4. Request by Jody R. Davidson for Reinstatement of License - *tabled from 4/19/01*

As a prelude to the discussion of this item, Chair Walters stated the commission had received advice from counsel regarding their ability to even consider this request. Tom Cowan, assistant attorney general for the Racing Commission, stated OAR 462-130-0070 has a subsection (2)(b) which states "no person shall have a license reinstated if the person previously was revoked, then reinstated, then after October 1, 1997, revoked again." Mr. Cowan went on to say that with the disciplinary history of Mr. Davidson, he fits within the restrictions created in this subsection. Even though the commission can consider the request, based on the rule the commission is prohibited from reinstating the license. Given the advice from counsel, it was recommended that formal action by the commission to deny the request was in order.

ACTION: MOTION(Towslee) Deny the request form reinstatement of license by Jody Davidson based on OAR 462-130-0070(2)(b).
VOTE: 5 Aye, 0 Nay

5. Request by Robert Webb for Reinstatement of License

Bobby Webb began by stating he wished to amend his application to that of an exercise rider instead of a jockey. After talking with Mr. Webb about his reason for making the change, Chair Walters stated that he has had previous instances of being suspended and then being brought back up

and finally had his license revoked. Mr. Webb then explained why he feels he would succeed this time in staying clean and described the current status of his treatment program. Steve Barham recommended that Mr. Webb's license be reinstated. He also said if a request for reinstatement was ever made again in the future that his recommendation would not be the same. Chair Walters also stated his decision to vote for the reinstatement was a difficult one for him to make, and according to the rule which was applied in the earlier request, the commission could not reinstate his license again if Mr. Webb was revoked after this reinstatement.

ACTION: MOTION(Gilmour) Approve reinstatement request by Robert Webb for license as exercise rider.

VOTE: 5 Aye, 0 Nay

6. Request by Janis D. Schoepf for Reconsideration of Final Order of Revocation for Mark Boag

Chair Walters began by stating he had two concerns about this request: (1) From a procedural standpoint, the commission has nothing from Mr. Boag saying that he wanted to be reinstated, and (2) from a substance standpoint, Mr. Boag has had various proceedings prior to his revocation, and since the revocation requests by Mr. Boag for reinstatement were denied by the commission. Chair Walters stated that based on the merits presented by Janis Schoepf there was nothing that would cause him to reconsider his decision to deny reinstatement. Steve Barham said he would not recommend Mr. Boag for reinstatement if he did apply.

Ms. Schoepf stated that Mr. Boag was not requesting reinstatement. Instead she was asking for reconsideration of the earlier revocation order. The Montana Board of Horse Racing is willing to license him but asked her to go to Oregon to ask for a different wording of the revocation order.

In response to Ms. Schoepf, Chair Walters stated all the commission did was revoke Mr. Boag's license in Oregon, and based on consistent advise from counsel, the commission cannot change the order. The Oregon Racing Commission cannot dictate to other states what they can or cannot do. It is up to the state of Montana to apply and decide their own reciprocity rules or statutes and, therefore, make the decision on its own.

7. Americatab, Ltd. 2001-2002 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

Todd Bowker reported the application is basically unchanged since the commission approved their initial application. They have requested permission for interactive voice response wagering, however, will not open with that initially. As far as the current status is concerned, most of the equipment is in Portland and the closed-loop system will be installed next week. They are tentatively planning to go live no later than June 1st. The responsible gaming program has been introduced and reviewed with all the customer service employees in addition to reviewing how all credit card transactions are monitored. US Off-Track is going to handle all of their live telephone operator based transactions. Regarding video streaming they have a plan in place and are in the process of acquiring the necessary hardware. They will be doing streaming similar to what the Racing Network

has done in that they will be showing multiple tracks in an edited show to cover as many of the signals they are allowed to do. Chair Walters asked that the video streaming program be made a part of their operating plan. Steve Barham recommended approval and delegate to the executive director the final approval of the video streaming portion as well as the interactive voice technology.

ACTION: MOTION(Fine) Approve application submitted by Americatab, Ltd. for the fiscal year 2001-2002 to operate a multi-jurisdictional simulcasting and interactive wagering totalizator hub

VOTE: 5 Aye, 0 Nay

8. Greyhound Channel, LLC, dba US Off-Track, 2001-2002 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

Ben Hayes reported the list of tracks has increased to fifty-three. With respect to other changes the only other change is the source marketing mitigation policy of US Off-Track with respect to horse racing. Most if not all of the tracks wanted a source market fee that was based on their host track fee, which is more in line with what they have in greyhound racing. In their initial application they stated they would review annually their source market mitigation policy, and Mr. Hayes stated he believed that they have done that and they are committed to that process. They are continuing to work with the executive director to review the numbers to make sure they are moving forward in the right direction. He went on to say that they also want to be able to do something that is fair for both sides. In the case of US Off-Track wanting to take a track and, for whatever reason, the track won't let them take their signal, Chair Walters voiced his concerns about the impact on the track if US Off-Track does not pay a source market fee to that track. Mr. Hayes clarified their position by stating they had no problem is paying a source market fee to a track who did not want US Off-Track to take their signal as long as they were not sending their signal to anyone else either. It is only a problem in the case of a track having an exclusive arrangement with another hub in which it receives, as a result of the exclusive arrangement, a payment above the normal market rate and receives in addition a source market fee from other participants in that market. The Oregon source market policy will remain exactly the same as it has been in the past.

ACTION: MOTION(Towslee) Approve application submitted by Greyhound Channel, LLC, dba US Off-Track, for the fiscal year 2001-2002 to operate a multi-jurisdictional simulcasting and interactive wagering totalizator hub subject to quarterly meeting with the executive director to review concerns regarding the tracks for which US Off-Track does not want the signal and the tracks US Off-Track would like the signal but they can't get it as well as a review of how the plan is working with respect to the tracks where they are paying a combined fee or enhanced host fee.

VOTE: 5 Aye, 0 Nay

9. Youbet.com 2001-2002 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License - continued from 4/19/01

Chair Walters began by stating for the record that he had an actual conflict as his law firm does work for Youbet.com. As a result, he recused himself from further discussion and voting on this agenda item. He then turned the gavel over to Vice Chair Laura Fine. Steve Barham reported initial review

on this item took place at the last meeting and was a scheduled continuance to today's meeting for final action on the application. Chief Investigator Bob Mannix provided a memorandum in which he reported on his background investigation which was clear. Ron Luniewski, Chief Operating Officer, and Joe Hasson, Vice President of Product Management, were present to answer questions. In response to questions raised at the last meeting, Mr. Luniewski described their position and how they dealt with parental control issues, specifically Commissioner Metcalf's concerns regarding the ability to for underage youth to gain access to their parents' accounts and place wagers on racing signals. Regarding the problem gaming section, he reported they have engaged The Oregon Gaming Treatment Foundation to assist them by meeting with Youbet.com staff on a quarterly basis to review problem gaming issues such as internal training, reporting, etc. Steve Barham recommended approval of the application, and it was his understanding that the soonest they could start would be September 1, 2001. If they were able to have an earlier start date, Mr. Barham recommended the commission delegate authority to the executive director to approve the earlier start date. Commissioner Towslee raised a question regarding their source market fees and how they were calculated, to which Mr. Luniewski responded that their goal is to retain 5.5% and make sure that the remainder is given to the racing industry. Commissioner Metcalf voiced her strong concerns regarding the negative impact internet gambling has on our society and, as a result, stated she could not be a supporter of internet gambling at this time. Vice Chair Fine responded by stating that all things in moderation can be done in a way that is not detrimental to society, and the responsibility always lies with the individual. If the manner in which an individual participates in internet gambling doesn't do any worse for them than playing unending games of solitaire and at the same time is doing something to revive a seriously lagging industry, Vice Chair Fine stated she would be very supportive of internet wagering and recommended approval of the application.

ACTION: MOTION(Gilmour) Approve application submitted by Youbet.com for the fiscal year 2001-2002 to operate a multi-jurisdictional simulcasting and interactive wagering totalizator hub and delegate to the executive director the authority to approve an earlier start date if such a request is submitted.

VOTE: 3 Aye (Fine, Gilmour, Towslee); 1 Nay (Metcalf); 1 Recuse (Walters)

Following is a statement made by Chair Walters after the vote:

"I'm going to take a point of personal privilege and just... That application has now been acted on so my remarks aren't directed to that particular application. I appreciate the concerns that Dr. Metcalf expressed. I've expressed similar concerns regarding the subject of internet gambling to members of the legislature, to members of the governor's office, to a committee of the congress when I testified before them about a year ago. The point I would like to make with respect to operations such as the hubs that we have licensed here in Oregon is we are not talking about internet gambling of the sort that one thinks of when you read about the scourge of internet gambling in this country. Those are these virtual casinos that have no regulation, that have no supervision, which anyone with a credit card regardless of age, regardless of their addictive personality, regardless of their financial resources, can bring up wagering opportunities on their computer, use a credit card and lose a lot of money real fast in a very addictive form of gambling which is very high speed and fast action. That is vastly different than what our hubs engage in with respect to their close-looped systems, subscriber-based systems, where applicants are screened and there's verification of age. There are controls in our policies and operating plans regarding wagering activity, and we have insisted, and our hubs have been very forthcoming, about adopting

programs to deal with problem gambling. The term "internet gambling" is not what this is. "Internet gambling" is something different -- where you're dealing with casinos on the Isle of Man and Antigua and the Netherlands Antilles, and these sorts of things -- there's a lot of debate now about how to control it. But I, for one, feel very proud of the record we have, the policies we have developed and the responses of the hubs that we have licensed to those issues. So, Commissioner Metcalf, while I share your concerns about internet gambling, I have no reservations at all about the hubs that we have licensed."

10. Source Market Distribution for Horse Industry Interests

Commissioner Towslee reported that he and the executive director met with the horse racing interests to discuss the distribution of source market funds. They basically came up with a 50/50 split, with 50% being retained by the track and 50% going to the industry. Of the industry 50%, all of the money will go to the HBPA and will be distributed as follows: 35% would go to the HBPA, 9% to the OTBA and 6% to the OQHRA. The distribution will take place once a year at the end of each meet.

ACTION: MOTION(Gilmore) Approve the proposed distribution formula.
VOTE: 5 Aye, 0 Nay

11. Multnomah Greyhound Park Update

Carl Wilson reported they had a very nice opening and first two weeks of racing. The on-track handle is up 6.7% and attendance is up 3.5%. The off-track handle and attendance has been down due to their having two less off-track sites compared to last year and some issues trying to get the Portland Meadows OTB site operational. CJ Pepto Geno's 550 yard track record (30.17) was broken last Friday by SW Triple Bloom who won by 21 lengths in his maiden race (30.11). On May 12 they had the National Greyhound Night of Stars with 16 races from 16 different tracks on one wagering card. Proceeds from that go to national adoption programs which include some funds for grants to local adoption programs. A patron at the Rialto made a straight \$2 superfecta bet on the Kentucky Derby, the superfecta came in and paid \$63,000. When cashing the ticket the patron realized that it was a \$1 base bet, so she really had it twice and ended up collecting \$126,000. After deducting \$30,000 for the IRS she took a check for \$90,000 and cashed in \$3,000. With the \$3,000 she tipped every employee in the place.

In response to a question asked by Commission Gilmour regarding negotiations with Magna, Art McFadden stated there were three negotiations currently going on. The first is with Tom Moyer to take over the lease for Portland Meadows, the second with himself regarding MGP and the third is with the EPA. None of the negotiations are completed at this time, however, per Scott Daruty, attorney for Magna, they expect to complete all three of the negotiations within weeks regarding Tom Moyer and MGP and hopefully within months with the EPA. Mr. McFadden confirmed that the horses have been ordered off the backside of Portland Meadows by the EPA. Commissioner Towslee raised the question as to whether or not there were any issues the commission should be concerned about having somebody in control of the track. Steve Barham responded by saying there probably aren't any right now given the track is not a licensed training track and it's not a licensed race meet so the commission doesn't have any jurisdiction. It would be nice to be able to have horses

train and be stabled on the backside, however, the commission has no control over whether or not that happens.

(The commission took a five minute break)

12. Presentation by Mirko Jessic

Mr. Jessic introduced himself as a racing fan for 30 years. His purpose in coming before the commission was to express his dissatisfaction with the commission for allowing there to be a five percent surcharge on wagers placed at OTB sites. After listening to his comments Chair Walters explained to Mr. Jessic that while the commission would prefer that the surcharge be dropped, the legislature had adopted a statute allowing tracks to charge a surcharge on wagers made at OTB sites. The commission does not have the authority to change statutes. Mr. Jessic was directed to the appropriate statute and supporting administration rules, and it was suggested he talk with the people who are in the legislature and the people who run the race tracks to see about getting the surcharge dropped.

13. Proposed Final Order for Jack Libolt

There was lengthy discussion on the fact that Mr. Libolt was being fined for the non presence of bute in a horse. Tom Cowan, assistant attorney general, tried to explain that the issue was the licensee was being fined for not presenting a horse in a racing condition that the public was led to believe that horse was in at the time. Steve Barham pointed out that the commission has a rule that states if the sample does not show bute and the horse was entered to run on bute, the board of stewards shall issue a fine of \$200 without loss of purse. Also, the commission has a rule that the trainer is the absolute insurer of racing animal regardless of the acts of third parties. Mr. Cowan reiterated the issue in this case, in part, is not the horse; it's the wagering public and their reliance on the fact animals are presented to race in as close to the exact position as what they've been led to believe that they are. It wasn't that a horse wasn't drugged, it's that a horse wasn't medicated the way that the betting public believed that it had been medicated in preparation for racing.

ACTION: MOTION(Gilmour) Approve the proposed order as a final order.

VOTE: 4 Aye (Walters, Fine, Towslee, Metcalf); 1 Nay (Gilmour)

ACTION: MOTION(Towslee) Suspend the \$200 fine on the condition that there be no medication related offenses during the next five years.

VOTE: 4 Aye (Fine, Towslee, Metcalf, Gilmour); 1 Nay (Walters)

It was clarified that the suspension of the fine was specific to this case and does not apply or set a precedent for any future cases involving no-show bute.

14. Final Default Orders

a. Mark E. Payne

ACTION: MOTION(Towslee) Approve final default order.

VOTE: 5 Aye, 0 Nay

b. Brian Waincott

ACTION: MOTION(Towslee) Approve final default order.
VOTE: 5 Aye, 0 Nay

There being no further business, the meeting was adjourned.