

NEW JERSEY RACING COMMISSION
WEDNESDAY, NOVEMBER 20, 2019
NEW JERSEY RACING COMMISSION OFFICE
140 E FRONT ST, 8TH FLOOR
TRENTON, NEW JERSEY

A public meeting of the New Jersey Racing Commission was held on Wednesday, November 20, 2019 in the Conference Room, located at the New Jersey Racing Commission Office, Trenton, New Jersey.

The following were present:

Pamela J. Clyne, Chairman
Francis X. Keegan, Jr., Commissioner
Michael J. Arnone, Commissioner (Telephone)
Glen Vetrano, Commissioner
Judith A. Nason, Executive Director
SDAG George Cohen
Lauren Nathan-LaRusso, Esq., Governor's Authorities Unit (Telephone)
Christina Broderick, DAG, Office of the Attorney General (Telephone)

Executive Director Nason read the following statement:

"This meeting today conforms with the Open Public Meetings Act, and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Star Ledger.

WHEREAS, in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, BE IT RESOLVED that consistent with N.J.S.A. 10:4-12(b), the Commission will now adjourn to Executive Session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice concerning the grant of 2020 standardbred permits to conduct racing at New Meadowlands Racetrack and Freehold Raceway, the grant of 2020 thoroughbred permits to conduct racing at Monmouth Park and the Meadowlands, including the special steeplechase permit for Moorland Farm, and the allocation of race dates to the permit holders;

2. Legal advice concerning the distribution of the Casino Simulcasting Special Fund money accumulated in 2018 totaling \$468,223.65;
3. Legal advice concerning the initial decision in the matter of Marten Woodhouse v. New Jersey Racing Commission, OAL Docket No. RAC-10441-18S;
4. Legal advice concerning the settlement agreement in the matter of Kelly Rubley v. New Jersey Racing Commission, OAL Docket No. RAC 17167-17; and
5. Other legal advice.

Discussion of the above matters falls within the exceptions under the law; specifically, matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise his ethical duties as a lawyer, and/or matters involving pending or anticipated litigation."

Chairman Clyne motioned to adopt the resolution to adjourn into Executive Session. Commissioner Vetrano seconded the motion. All of the Commissioners voted to affirm. The Commission then adjourned to Executive Session.

Chairman Clyne made a motion to adjourn from Executive Session into the Public Session. Commissioner Vetrano seconded the motion and the Commissioners voted to affirm. The Executive Session ended.

Chairman Clyne and Commissioners Keegan and Vetrano were present at the time the public meeting commenced.

CONSIDER APPROVAL OF THE PUBLIC AND EXECUTIVE SESSION MINUTES OF THE OCTOBER 23, 2019 COMMISSION MEETING

Chairman Clyne made a motion to approve the public and executive minutes of the October 23, 2019 Commission meeting. Commissioner Keegan seconded the motion and the three present Commissioners voted yes.

Commissioner Arnone phoned into the meeting at this time and was present for the remainder of the meeting.

CONSIDER THE GRANT OF 2020 STANDARD BRED PERMITS TO CONDUCT RACING AT NEW MEADOWLANDS RACETRACK AND FREEHOLD RACEWAY, THE GRANT OF 2020 THOROUGHBRED PERMITS TO CONDUCT RACING AT MONMOUTH PARK AND THE MEADOWLANDS, INCLUDING THE SPECIAL STEEPLECHASE PERMIT FOR MOORLAND FARM, AND THE ALLOCATION OF RACE DATES TO THE PERMIT HOLDERS

Executive Director Nason explained that the permit holders have requested to renew their respective permits for the 2020 calendar year and have filed their requests for race dates. The THA applied to race 76 thoroughbred race dates: 56 at Monmouth Park, 19 at the Meadowlands and 1 day at Far Hills. New Meadowlands Racetrack, LLC applied to race 90 standardbred race dates at New Meadowlands Racetrack. FR Park Racing, LP applied to race 85 standardbred race dates at Freehold Raceway. The Executive Director explained that there is an overlap in the dates requested by the THA and New Meadowlands Racetrack, LLC and noted that she has been in contact with the parties and they are hopeful that a resolution will be reached in the near future.

Executive Director Nason then explained the factors set forth in N.J.S.A. 5:5-44 which must be considered by the Commission when determining the allocation of requested race dates. The Executive Director informed the Commissioners that the horsemen's associations had submitted their respective consents to the race dates requested. The Executive Director then opened the floor to receive public comment from the representatives of the permit holders and the horsemen's associations.

John Heims spoke on behalf of Darby Development, LLC and stated that there was a meeting of the minds between executives of Darby Development and New Meadowlands Racetrack, LLC to hopefully work out the overlapping race date issue. Mr. Heims also said that Darby Development has yet to consider the specific purse format for the race meet.

Michael Musto spoke on behalf of the Thoroughbred Horsemen's Association and indicated that the THA is in support of any effort that gives the thoroughbred horsemen more opportunities to race.

Executive Director Nason then explained that the Racing Commission provided the required notice and neither the Borough of Far Hills nor Bedminster Township objected to the proposed special steeplechase permit for a one day meet at Moorland Farm and that the 30-day time period within which the municipalities could object had elapsed.

Jason Settlemoir spoke on behalf of New Meadowlands Racetrack, LLC and said that New Meadowlands Racetrack, LLC and the SBOA have a meeting scheduled for later in the day in which they hope to be able to work out any additional issues with New Meadowlands' race date request. Mr. Settlemoir stated that the overnight purse amount will be just over \$15 million in 2020, the stakes race purses will amount to around \$14 million and the total purses for standardbred races at New Meadowlands Racetrack in 2020 will amount to approximately \$29.5 million.

Mark Ford spoke on behalf of the SBOA. Mr. Ford said that the SBOA has some concerns about the feasibility of flipping the track surface at New Meadowlands Racetrack but believes that those concerns may be alleviated in the meeting scheduled later in the day.

Howard Bruno spoke on behalf of FR Park Racing, LP. Mr. Bruno explained that the race dates requested increased from 76 days in 2019 to 85 race dates in 2020 due primarily to the purse supplement money.

Executive Director Nason thanked the SBOA and FR Park Racing, LP for reaching an agreement regarding the 85 race dates prior to the Commission's public meeting.

Chairman Clyne moved that the Commission approve the renewal of the permits and allocate the requested race dates to the THA, New Meadowlands Racetrack and Freehold Raceway. She made the motion with the understanding that Darby Development and New Meadowlands Racetrack have agreed to work together to resolve, as soon as possible, the scheduling conflict at the Meadowlands. She moved that the Commission authorize the Executive Director to issue the race date Orders on the Commission's behalf. As a condition to those Orders, the Executive Director may require that this scheduling conflict be resolved prior to the Commission's January 22, 2020 meeting. Commissioner Vetrano seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF FREEHOLD RACEWAY'S OFFICIALS, POOLS, POST-TIME, PRICES AND WAGERING FORMAT FOR THE 2020 WINTER/SPRING MEET

Executive Director Nason explained that Freehold Raceway's 2020 winter/spring meet will begin on January 2nd and continue through May 23rd. She also explained that the department heads and wagering format will remain the same as those the Commission approved for the 2019 summer/fall meet.

Commissioner Keegan moved that the Commission approve Freehold Raceway's racing and wagering format for the 2020 winter/spring meet which is scheduled to begin on January 2, 2020. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF NEW MEADOWLANDS RACETRACK'S OFFICIALS, POST-TIME, PRICES AND WAGERING FORMAT FOR THE 2020 STANDARDBRED MEET

Executive Director Nason explained that New Meadowlands Racetrack's 2020 meet will begin on January 2nd and continue through December 31st. She also explained that the department heads and wagering format will remain the same as those the Commission approved for the 2019 meet.

Commissioner Keegan moved that the Commission approve the racing and wagering format for the New Meadowlands Racetrack's 2020 standardbred meet. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE RENEWAL OF LICENSES FOR 2020 FOR THE OFF-TRACK WAGERING FACILITIES ("OTWs") LOCATED IN TOMS RIVER, WOODBRIDGE, BAYONNE, GLOUCESTER TOWNSHIP, HILLSBOROUGH AND EGG HARBOR TOWNSHIP

Executive Director Nason explained that the Commission received timely applications for license renewals from each of the license holders. She explained that staff reviewed each

application and they have been deemed complete and in compliance with the requirements of N.J.A.C. 13:74-2.3. She stated that each licensee remains in good standing with the Commission. Executive Director Nason then stated that staff recommends renewal of the OTW licenses subject to the review and approval of the Attorney General.

Chairman Clyne moved that the Commission approve the renewal of each of the off-track wagering licenses and authorize the Executive Director to issue the Orders renewing the licenses on the Commission's behalf. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE RENEWAL OF THE ACCOUNT WAGERING LICENSE FOR 2020

Executive Director Nason explained that the New Jersey Sports and Exposition Authority filed a timely application to renew the account wagering license, staff reviewed the application and deemed the application complete and in compliance with the requirements of N.J.A.C. 13:74-3.2. She explained that Darby Development will continue to manage the account wagering system, TVG Network will continue to provide the platform services, and Sportech Racing, LLC will continue to provide the totalisator services. Executive Director Nason recommended renewal of the account wagering license subject to the review and approval of the Attorney General.

Commissioner Keegan moved that the Commission approve the renewal of the account wagering license for calendar year 2020 and to authorize the Executive Director to issue the Final Determination and Order on the Commission's behalf. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY PERMIT HOLDERS' REQUESTS TO CONDUCT SENDING AND RECEIVING INTRA AND INTERSTATE SIMULCASTING WITH RACETRACKS, OTWs AND THE ACCOUNT WAGERING SYSTEM IN 2020 AND TO CONDUCT COMMON POOL AND SEPARATE POOL PARIMUTUEL WAGERING THEREUPON

Executive Director Nason explained that the permit holders have submitted requests to participate in intrastate and interstate simulcasting and to conduct common and separate pool wagering on the simulcasts, as well as simulcasting approval for the OTWs and account wagering system in 2020. She explained that staff recommends approval subject to the conditions stated in schedules E, F and G.

Commissioner Vetrano moved that the Commission approve the requests to conduct intra and interstate simulcasting and to allow pari-mutuel wagering on the signals subject to the conditions in Schedules E, F and G. Chariman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE REQUEST OF THE BORGATA HOTEL, CASINO AND SPA (“BORGATA”) TO ACCEPT INTRA AND INTERSTATE SIMULCASTING FROM APPROVED RACETRACKS AND TO CONDUCT INTRA AND INTERSTATE COMMON POOL AND SEPARATE POOL PARIMUTUEL WAGERING IN 2020

Executive Director Nason explained that the Borgata is seeking approval to receive intrastate and interstate simulcasts and to conduct pari-mutuel wagering upon the simulcast signals in 2020. She stated that staff recommends the Commission approve the request subject to compliance with the conditions in Schedules B and C which include the requirement that the Borgata obtain all necessary approvals from the Casino Control Commission and the Division of Gaming Enforcement.

Chairman Clyne moved that the Commission approve the request of the Borgata Hotel, Casino & Spa to accept intra and interstate simulcasting from the approved New Jersey and out-of-state racetracks and to allow pari-mutuel wagering on those signals subject to the conditions in Schedule B and C. Commissioner Vetrano seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF SPORTECH RACING, INC. TO CONTINUE TO PROVIDE TOTALISATOR SERVICES AND ACT AS THE HUB FACILITY AT THE MOUNT LAUREL DATA CENTER IN 2020 FOR RACETRACKS, THE OTWs, THE BORGATA AND THE NEW JERSEY ACCOUNT WAGERING SYSTEM

Executive Director Nason explained that Sportech Racing, LLC operates the Quantum Data Center in Mount Laurel, NJ where it acts as the hub facility and provides totalisator services for the racetracks, OTWs, the Borgata and the New Jersey account wagering system. She also stated that Sportech continues to be in good standing with the Commission and that staff recommends approval subject to compliance with the conditions in Schedule D.

Commissioner Keegan moved that the Commission approve Sportech Racing, LLC to continue to act as the hub facility in 2020 subject to the conditions in Schedule D. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE RENEWAL OF THE EXCHANGE WAGERING LICENSE, THE EXCHANGE MANAGEMENT AGENT LICENSE AND THE EXCHANGE SERVICES AGENT LICENSE

Executive Director Nason explained that the New Jersey Sports and Exposition Authority submitted a timely application to renew the exchange wagering license, Darby Development, LLC filed a timely application to renew its license to act as exchange management agent and Betfair US, LLC filed a timely application to act as the exchange services agent. She also explained that staff reviewed the applications, deemed them complete and in compliance with the requirements of N.J.A.C. 13:74C-2.2, and that the entities remain in good standing with the Commission. She stated that staff recommends renewal of the exchange wagering license subject to the review and approval of the Attorney General.

Chairman Clyne moved that the Commission approve the renewal of the exchange wagering license, the exchange management agent license and the exchange services agent license for calendar year 2020 subject to the conditions set forth in the draft Final Determination and Order which we have reviewed and approve. She also stated in her motion that although the exchange wagering licensee applied for a two-year license, the Commission believes that a one-year license is warranted as we must continue to be vigilant in ensuring the integrity of the exchange. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE RACETRACK PERMIT HOLDERS, THE OTWs, THE BORGATA AND THE NEW JERSEY ACCOUNT WAGERING SYSTEM TO CONDUCT ADVANCE WAGERING (FULL OR PARTIAL CARD) ON CERTAIN DESIGNATED RACES OF NATIONAL INTEREST IN 2020

Executive Director Nason explained that the permit holders and licensees are seeking approval to conduct advance wagering on certain races of national interest in 2020. She indicated that the list of the races have been provided to the Commissioners and explained that staff recommended approval of these requests subject to two conditions:

- 1) No advance wagering shall commence until the program information has been received from the host track and is approved by the Supervisor of Mutuels; and
- 2) All wagering shall be in compliance with the common pool procedures and rules of this Commission.

Chairman Clyne moved that the Commission approve the requests to conduct advance wagering on the designated races of national interest in 2020 subject to the two conditions recommended by staff. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE RACETRACK PERMIT HOLDERS, THE OTWs, THE BORGATA AND THE NEW JERSEY ACCOUNT WAGERING SYSTEM TO OFFER CERTAIN DESIGNATED SPECIAL WAGERS OF NATIONAL INTEREST AND TO CONDUCT ADVANCE WAGERING IN 2020

Executive Director Nason explained that the permit holders and licensees are seeking approval to conduct advance wagering on special wagers of national interest in 2020. She indicated that the list of wagers was provided to the Commissioners and explained that staff recommended approval of these requests subject to the six conditions provided to the Commissioners which will, in the future, be compiled into Schedule H.

Commissioner Keegan moved that the Commission approve the requests to offer special wagers of national interest and to conduct advance wagering on those wagers subject to the six conditions recommended by staff. He also moved that the Commission authorize the Executive Director to decide, in calendar year 2020, any future requests to offer special wagers of national

interest and to conduct advance wagering subject to these same conditions. Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE DISTRIBUTION OF THE CASINO SIMULCASTING SPECIAL FUND MONIES (ACCUMULATED IN 2018) TOTALING \$468,223.65

Executive Director Nason summarized the findings of the Casino Simulcasting Special Fund ("CSSF") Committee, as follows: Each of the racetracks requested monies pursuant to N.J.S.A. 5:12-205(d)(1) and (d)(2). The Committee found that all three racetracks are negatively affected by casino simulcasting pursuant to (d)(1) and that the racetracks have all shown that they are financially distressed pursuant to (d)(2). Regarding (d)(1), each of the racetracks demonstrated that its financial well-being was negatively affected by casino simulcasting. The Committee did not agree with Monmouth Park's assertion that it was more negatively affected by casino simulcasting than the other two racetracks and the committee found that Monmouth Park submitted no data in support of that assertion. Regarding (d)(2), the Committee found that each racetrack is financially distressed based upon Freehold Raceway's reporting a net loss of \$5.3 million from track operations, New Meadowlands Racetrack reporting combined racing losses which exceeded \$14 million and Monmouth Park reporting losses in excess of \$2.7 million as well as the THA's debt obligations to the New Jersey Sports and Exposition Authority.

Executive Director Nason reported that the Committee recommends that the Commission find that each racetrack is qualified for a portion of the CSSF monies under both (d)(1) and (d)(2). The Committee recommends that 80% of the CSSF monies be distributed equally amongst the racetracks.

Executive Director Nason reported that the Committee then considered the requests of the horsemen's associations and found that all three horsemen's associations have identified projects that are beneficial to the horse racing industry and thus they are each entitled to a portion of the CSSF monies pursuant to N.J.S.A. 5:12-205(d)(3). The projects which are of benefit to the industry are as follows: The SBOA stated that it will use a portion of the funds it receives for the Health and Welfare Trust and to support the Backstretch Community Assistance Program. The SBOA also indicated it would donate monies to benefit retired standardbred racehorses. The SBOA indicated it would distribute approximately 10% of the funds it receives to the Standardbred Retirement Foundation and approximately 5% of the funds it receives to Horse Rescue United. The THA stated that it would use the funds it receives for health programs that include dental, prescription and eyeglasses as well as sponsoring a weekly health clinic. The TBA stated that it would utilize the funds it receives to go towards the 2019 New Jersey bred incentive program. The Committee recommends that the Commission allocate the remaining 20% of the CSSF monies to the horsemen's associations, divided equally by breed.

Finally, Executive Director Nason summarized that the Committee recommends the CSSF monies be distributed as follows: \$124,859.64 each to the three racetracks, \$23,411.18 to the THA for a health benefit program, \$23,411.18 to the TBA for 2019's NJ-bred incentive program, and \$46,822.37 to the SBOA, of which \$39,799.01 be allocated to the health benefit program, \$4,682.24 to the Standardbred Retirement Fund, and \$2,341.12 to Horse Rescue United. If the Commission

agrees with the Committee's recommendations, no monies would remain for distribution pursuant to N.J.S.A. 5:12-205(d)(4).

Commissioner Vetrano moved that the Commission find that each of the three racetracks qualify under N.J.S.A. 5:12-205(d)(1) and (d)(2) and that the Commission distribute 80% of the available funds equally among the three racetracks with each racetrack receiving \$124,859.64. Commissioner Vetrano also stated that he believes the three horsemen's organizations have identified programs that are beneficial to the racing industry and moved that the Commission equally allocate the remaining funds, which total \$93,644.73, by breed pursuant to N.J.S.A. 5:12-205(d)(3). Commissioner Vetrano also moved that the Commission distribute \$46,822.37 to the SBOA in accordance with the following requirements. The SBOA shall use \$39,799.01 for its health benefit program and shall pay \$4,682.24 to the Standardbred Retirement Fund and \$2,341.12 to Horse Rescue United to benefit retired standardbred race horses. He also moved that the Commission distribute \$23,411.18 to the THA which shall be used to fund the health, dental, prescription and eyeglass benefit program it provides to the backstretch community and \$23,411.18 to the TBA which shall be used for its 2019 New Jersey-bred incentive program. Finally, he moved that the Commission direct staff to prepare an Order detailing this decision and authorize the Executive Director to execute the Order on the Commission's behalf.

Chairman Clyne seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE 2020 BACKSTRETCH ADVISORY COMMITTEE BUDGET

Executive Director Nason explained that N.J.S.A. 5:5-44.8 creates a Backstretch Benevolency Programs Fund, which is used to promote the health, safety and welfare of backstretch employees and is funded by designated charity race days and monetary penalties as well as financial assistance from both the THA and SBOA. She explained that the Backstretch Advisory Committee met on November 1, 2019 by telephone and voted to approve a budget to send to the Commission. The proposed budget represents an increase of 4.77% over the approved 2019 budget, which increase is made up of an increase of \$1,225 in administrative fees and \$7,300 in consulting fees. Executive Director Nason pointed out that this is the first requested increase in consulting fees since 2015 when the Commission approved a 4% increase. She stated that the Backstretch Benevolency Program provides worthwhile programs and services and that staff recommends approval of the requested 2020 budget in two equal payments which should be made on or about January 1, 2020 and July 1, 2020.

Chairman Clyne moved that the Commission approve the 2020 Backstretch Advisory Committee budget totaling \$187,225 with equal payments of \$93,612.50 being made on or about January 1, 2020 and July 1, 2020. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER THE INITIAL DECISION IN MARTEN WOODHOUSE V. NEW JERSEY RACING COMMISSION, OAL DOCKET NO. RAC 10441-18S

Executive Director Nason recited the following facts from the record compiled at the Office of Administrative Law:

Petitioner, Marten Woodhouse, was the trainer of the horse “Kingslayer,” which won the second race at Monmouth Park on May 12, 2018. After the race, blood and urine samples were taken from the horse and sent to Truesdail Laboratories for testing. On May 30, 2018, Truesdail Laboratories notified the Commission that post-race blood sample M10853 tested positive for both Phenylbutazone and Flunixin. The Commission’s chain of custody records indicated that this blood sample was taken from the horse Kingslayer on May 12, 2018. The Board of Stewards conducted a hearing and determined that the test results constituted a stacking violation of N.J.A.C. 13:70-14A.9 and 20.7. The Stewards imposed a 15-day suspension, \$500 fine, disqualified the horse and ordered loss of purse. Petitioner appealed and the matter was transmitted to the Office of Administrative Law.

When a positive test result is appealed, Truesdail prepares a Data Packet, which documents the test results, and it did so here. At the OAL hearing, the petitioner pointed out multiple typographical errors in the Data Packet. In the Initial Decision, the ALJ determined that “the numerous typographical errors create doubt about the accuracy of the testing process” and found that the petitioner had raised enough concern “to render the contents of the drug reports less than reliable.” Finding that the “[n]umerous inaccuracies in the laboratory cast doubt on the reliability of the results and the penalties that flow from them,” the ALJ concluded that the penalties imposed by the Commission should be reversed.

The DAG who represented the Commission filed exceptions to the Initial Decision with the Commission. In the exceptions, the DAG pointed to the ALJ’s finding that the petitioner’s veterinarian had administered Phenylbutazone and Flunixin to the horse before the race. The DAG argued strenuously that the test results were accurate and the Commission should reject the Initial Decision and re-impose the penalties ordered by the Board of Stewards.

The DAG then proposed an alternate course of action. Pointing out that the OAL record established that duplicate post-race, blood samples were taken from Kingslayer, the DAG argued that the Commission should require that Truesdail test the duplicate, sealed, blood sample taken from the horse and prepare a report free of typographical errors. The DAG argued that the Commission should remand this matter back to the OAL pursuant to N.J.A.C. 1:1-18.7 to reopen the record and to accept testimony and evidence related to the testing of the duplicate blood sample. The DAG pointed out that the burden on petitioner would be minimal, as the Commission stayed the penalties imposed on him. The DAG noted that remand would provide the Commission with the best possible record to decide this matter.

No reply to the exceptions was filed and the record for doing so closed on October 7, 2019. The Commission sought and received an extension of time from the OAL in which to consider the Initial Decision. With the 45-day extension, the time to act on the Initial Decision was extended to December 4, 2019.

Executive Director Nason then explained that the Commission may accept, reject or modify the Initial Decision, or the Commission could decide to instruct Truesdail to test the duplicate blood