

Minutes of the Meeting Held on Monday, Nov. 21, 2011

1. The meeting was called to order by Chairman Robert K. Schmitz at 10:00 am in Conference Room South B & C, 31st Floor, 77 South High St., Columbus, Ohio, pursuant to due notice.
2. Roll call. The following Commissioners were determined to be present: William Koester and B.J. Roach.
3. Approval of the minutes from the meeting held on October 20, 2011. Upon motion by Commissioner Koester, second by Commissioner Roach, unanimously approved.
4. Public Hearing on proposed rules: 3769-20-01. General definitions; 3769-20-02. Permit holders eligible to conduct video lottery sales; 3769-20-03. Application to relocate a race track facility; and 3769-20-04. Facility requirements. Two speakers testified, Steve McCoy, representing the Ohio Harness Horsemen's Association, and Luther Heckman, representing Northfield Park. Their testimony appears in Appendix A of this document. Those in attendance were informed they may also provide written testimony to Executive Director Bill Crawford by December 3, 2011.
5. Move to adopt no-change rules. Twenty per cent of all administrative rules enforced by the commission were examined in 2011 to determine whether any specific rules should be amended or rescinded consistent with the applicable statute authorizing the adoption of the rule. The 122 rules listed below were addressed by the commission staff in 2011.

The following administrative rules in Chapter 3769-7: 3769-7-01, 3769-7-02, 3769-7-03, 3769-7-04, 3769-7-05, 3769-7-06, 3769-7-09, 3769-7-10, 3769-7-11, 3769-7-12, 3769-7-13, 3769-7-14, 3769-7-15, 3769-7-16, 3769-7-17, 3769-7-18, 3769-7-19, 3769-7-20, 3769-7-21, 3769-7-22, 3769-7-23, 3769-7-24, 3769-7-25, 3769-7-26, 3769-7-27, 3769-7-28, 3769-7-29, 3769-7-30, 3769-7-31, 3769-7-32, 3769-7-33, 3769-7-34, 3769-7-35, 3769-7-36, 3769-7-37, 3769-7-38, 3769-7-39, 3769-7-40, 3769-7-3769-7-41, 3769-7-42, 3769-7-43, 3769-7-44, 3769-7-45, 3769-7-46, and 3769-7-99.

The following administrative rules in Chapter 3769-8: 3769-8-01, 3769-8-02, 3769-8-03, 3769-8-04, 3769-8-06, 3769-8-07, 3769-8-09, 3769-8-10, 3769-8-11, 3769-8-12, and 3769-8-99.

The following administrative rules in Chapter 3769-9: 3769-9-01, 3769-9-02, 3769-9-03, 3769-9-04, 3769-9-05, 3769-9-06, 3769-9-07, 3769-9-08, 3769-9-09, and 3769-9-99.

The following administrative rules in Chapter 3769-17: 3769-17-01, 3769-17-02, 3769-17-03, 3769-17-04, 3769-17-05, 3769-17-06, 3769-17-07, 3769-17-08, 3769-17-09, 3769-17-09.1, 3769-17-10, 3769-17-11, 3769-17-12, 3769-17-13, 3769-17-14, 3769-17-15, 3769-17-16, 3769-17-17, 3769-17-18, 3769-17-19, 3769-17-20, 3769-17-21, 3769-17-22, 3769-17-23, 3769-17-24, 3769-17-25, 3769-17-26, 3769-17-27, 3769-17-28, 3769-17-29, 3769-17-30, 3769-17-31, 3769-17-32, 3769-17-33, 3769-17-34, 3769-17-35, 3769-17-36, 3769-17-37, 3769-17-38, 3769-17-39, 3769-17-40, 3769-17-41, 3769-17-42, 3769-17-43, and 3769-17-99.

The following administrative rules in Chapter 3769-18: 3769-18-01, 3769-18-02, 3769-18-03, 3769-18-04, 3769-18-06, 3769-18-07, 3769-18-09, 3769-18-10, 3769-18-11, 3769-18-12, and 3769-18-99. A motion by Commissioner Roach retain all rules in Chapters 7, 8, 9, 17 and 18 of Ohio's administrative code. Second by Commissioner Koester, unanimously approved.

6. Executive Director's Report:

A. Beulah Park

1. In a letter dated November, 11, 2011, Beulah Park requested approval of the following: A waiver of surety bond for the HJC/PDC Holdings, LLC Thoroughbred #2 Meeting, accompanied by a Guaranty of Performance.
2. List of Officials. All have been certified as competent for their positions by General Manager Jim McKinney.
3. Number of Races and Wagering Format. Live racing programs will feature either eight or nine races.
4. A post time at 1:15 p.m. is requested for all 55 live racing days.
5. A copy of the letter to the state fire marshal requesting an inspection of the facility in 2012 was submitted. Motion by Commissioner Roach to approve items one through five. Second by Commissioner Koester, unanimously approved.

6. In the same letter, a request to open wagering prior to noon for the Dubai World Cup races on March 31, 2012. Motion by Commissioner Roach, second by Commissioner Koester, unanimously approved.
7. In a communication dated October 25, 2011, a request to treat the Breeders Cup programs at Churchill Downs on Friday, November 4, 2011, and Saturday, November 5, 2011, as special events. This request has the support of the Ohio HBPA. This request was approved subject to ratification by the commission. Motion by Commissioner Koester, second by Commissioner Roach, unanimously approved.

B. River Downs

1. In a communication dated November 8, 2011, a request to treat the six Claiming Crown races (Fair Grounds) scheduled on Saturday, December 3, 2011, as special events. The request has the support of the Ohio HBPA. Motion by Commissioner Roach, second by Commissioner Koester, unanimously approved.
2. In a communication dated November 17, 2011, a request to open for simulcasting on all Tuesdays during the remainder of 2011 beginning on December 6, and during all of 2012. Motion by Commissioner Roach, second by Commissioner Koester, unanimously approved.

C. Thistledown

1. In a communication dated October 26, 2011, a request to treat October 27, 2011 as a live racing day. Live racing was cancelled due to a lack of entries. The request has the support of the Ohio HBPA. This request was approved subject to ratification by the commission. Motion by Commissioner Roach, second by Commissioner Koester, unanimously approved.
2. In a communication dated November 3, 2011, a request to treat July 22, 2011 as a live racing day. The request has the support of the Ohio HBPA. Live racing was cancelled due to extreme heat. Motion by Commissioner Roach, second by Commissioner Koester, unanimously approved.

D. Lebanon Raceway

1. In a communication dated November 17, 2011, a request to allow Paul Combs to fill in for Associate Judge Ken Burns on Saturday, November 19, 2011. This request was approved subject to ratification by the commission. Motion by Commissioner Roach, second by Commissioner Koester, unanimously approved.
7. Approval of the host, guest and additional simulcast product for December. Motion by Commissioner Koester to approve the submissions by Beulah Park, River Downs, Thistledown, Lebanon Raceway, Northfield Park, Northfield Park on behalf of Cedar Downs, and Raceway Park. Second by Commissioner Roach, unanimously approved.
 8. Request for the expenditure of fine money:
 - a. **Beulah Park:** In a communication dated October 25, 2011, a request for the expenditure of \$2,150 for a Thanksgiving Dinner for horsemen and their families at the racetrack on November 17; a request for the expenditure of \$600 for a Christmas Banquet for horsemen at the Golden Corral on December 15; and a request for the expenditure of \$2,000 for a Christmas Dinner for horsemen and their families at the racetrack on December 18. All requests were approved subject to ratification by the commission. Motion by Commissioner Koester, second by Commissioner Roach, unanimously approved.
 - b. **Beulah Park:** In a communication dated November 8, 2011, a request for the expenditure of \$150 for food at a Christmas party for children at the racetrack on December 21, 2011. Motion by Commissioner Roach, second by Commissioner Koester, unanimously approved.
 - c. **Northfield Park:** In a communication dated November 4, 2011, a request for the expenditure of \$1,000 for a Thanksgiving Dinner for horsemen and their families at the racetrack; and a request for the expenditure of \$1,400 for a Christmas Dinner for horsemen and their families at the racetrack. Motion by Commissioner Koester, second by Commissioner Roach, unanimously approved.
 9. In the matter of Hearing Officer's Report and Recommendation:
 - a. **Lamar Moody:** Mr. Moody was present. The case is an appeal from Rulings Numbered 41-11 and 42-11 issued by the judges at Lebanon Raceway on May 9, 2011 and May 21, 2011 after samples taken from a horse trained by Mr. Moody were found to contain Boldenone, a prohibited anabolic

steroid. Commission Roach moved to accept some of the recommendations presented by the hearing officer and to reject others: Mr. Moody will not be required to pay a fine or have any racing license issued to him suspended. Purse money won in each of the races shall be returned. The cost of the hearing, as yet undetermined, shall be paid by Mr. Moody. Second by Commissioner Koester, unanimously approved.

10. In the matter of license application:

- a. **Harland J. Hanshaw.** Mr. Hanshaw, who was present, made application to be licensed as a thoroughbred owner and a thoroughbred groom. A motion by Commissioner Koester to issue Mr. Hanshaw indefinite probationary licenses that will result Mr. Hanshaw being ruled off for life if he is found in violation of any Ohio State Racing Commission administrative rule. Second by Commissioner Roach, unanimously approved.
- b. **Thomas Yaegel Jr.** Mr. Yaegel, who was present, made application to be licensed as an exercise rider and a thoroughbred groom. A motion by Commissioner Roach to issue Mr. Yaegel probationary licenses that will result Mr. Yaegel being ruled off for life if he is found in violation of any Ohio State Racing Commission administrative rule. Second by Commissioner Koester, unanimously approved.

11. Monthly Financial Report: This report was presented by Fiscal Officer Sherry White.

12. Compliance Report: This report was presented by Chief Investigator Steve Zaper.

13. Committee Reports: None.

14. Chairman's Comments: None.

15. Public Comments: None.

Old Business: None

New Business

- a. A resolution was read into the record by Mr. Crawford related to the retirement of Steve Zaper. Motion by Commissioner Roach, second by Commissioner Koester, unanimously approved.
 - b. Any action related to the issuance of Ohio State Racing Commission admission passes in 2012 was tabled until the December meeting.
- 16.** A motion for the Commission to enter into executive session was made by Commissioner Roach, seconded by Commissioner Koester. Chairman Schmitz voted aye. Commissioner Roach voted aye. Commissioner Koester voted aye. Chairman Schmitz announced that when commission members returned from executive session no business would be conducted and the meeting would be adjourned. Upon returning from executive session a motion to adjourn by Commissioner Koester, second by Commissioner Roach, unanimously approved.

Date, Time & Place of Next Meeting:
December 15, 2011 at 10:00 a.m.
77 South High St., Columbus, Ohio
31st Floor, Room South B & C

Appendix A

OHIO STATE RACING COMMISSION
MONTHLY MEETING
MONDAY, NOVEMBER, 21, 2011

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PROCEEDINGS

before the Ohio State Racing Commission held at 77 South High Street, 31st Floor, Rooms B & C South, Columbus, Ohio, at 10 a.m.

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MEMBERS PRESENT

Robert K. Schmitz, Chairman
B.J. Roach
William Koester

ALSO PRESENT

William Crawford, Director
Vivian Tate, Assistant Attorney General

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Monday Morning Session
November 21, 2011

EXCERPT OF PROCEEDINGS

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CHAIR SCHMITZ: We will now proceed to the public hearing on – on the rules. Give folks a chance to sign up if they choose.

MS. TATE: Good morning. And for those who did not hear, my name is Vivian Tate, Assistant Attorney General, serving as your Hearing Officer for the purpose of this hearing.

The ground rules that the Commissioner – that the Chairman just gave you are appropriate. This is a 119 hearing. The date that the rules were filed was October 20. They have been filed with the Director of the Legislative Services Commission. They are available online.

Prior to this hearing the Commission has received no written testimony. Those of you today who wish to submit written testimony can sign in there and there’s a place on the sign-in sheet to indicate that you are giving written testimony as opposed to oral testimony.

We will also allow a time period following today’s hearing. You will have until December 3, to submit written testimony if there are – there is information that you want to share about the rules.

Specifically the rules that are proposed are 3769-20-01, 3769-20-02, 3769-20-03, 3769-20-04. These rules are promulgated pursuant to House Bill 277 related to video lottery sales at Ohio race tracks.

For people who are interested in testifying, if you would stand. At the time that you stand and I recognize you, you have a microphone here. We would like for you to come up and use the microphone for ease and convenience of others. You will be – we ask that you state your name, and also if you are representing a group or organization, please give us the name of the group or organization that you represent.

Do we have someone who is interested in starting, our first person to testify?

CHAIR SCHMITZ: Let's get the sign-up sheet.

MS. TATE: First sign in Steven McCoy.

MR. McCOY: Good morning, Mr. Chairman, Members of the Commission, my name is Steven McCoy. I am president of the Ohio Harness Horsemen's Association. And I appreciate the opportunity to give you very brief comments on the proposed rules. I think probably for my purposes the easiest way is to go through the rules sequentially and tell what comments I do have.

The first rule, 3769-20-01, general definitions, the very first definition on capital investment attempts to outline the various costs that will be included and recognized as part of the capital investment by each of the permit holders in their new or improved facilities.

Our belief is that that definition probably needs to be flushed out a little more and clarified somewhat. As an example, I would point to the reference at the end of line 3 to capitalized interest and other financing costs. It is certainly not inappropriate for interest to be capitalized during a construction period of a loan. We would not believe that permanent – the interest on permanent financing should be included even if it's called capitalized interest as part of the capital investment for the facility, so I would suggest some clarifying language in that respect.

Also, it just generally refers to "costs." It's not clear to us whether that's intended to include a portion of the company's corporate overhead or the allocation of the salary of existing employees who have other responsibilities. We think that's probably inappropriate, and so we would ask for clarification on that subject as well.

Turning then to Rule 3769-20-04 relating to facility requirements, item C speaks of reporting and requires the video or lottery sales agent to provide status reports and also to maintain supporting records and detailing actual expenditures made again for the purposes of establishing the extent of their capital investment. Because of, again, the importance of those figures to the industry we would also suggest that as they submit their reports, that there be a requirement that those reports be certified by a corporate officer or some other representative of the permit holder certified under oath basically and under penalties of perjury so we have some assurance that the information we are getting is correct and that they vouch for it in a responsible way.

Then in subsection D of that rule, proposed rule, facility requirements, it reads "a permit holder who has been licensed as a video lottery sales agent shall submit a master plan -- I'm sorry, master facility plan which may meet the following requirements." The use of the verb "may" there makes it sound as if it's optional, and I think the intention of that rule was that all those requirements should be met as part of the plan that is submitted, so I would suggest that the word "may" be changed to the word "shall."

Similarly in subsection 2A, "the facility plan shall identify proposed improvements in the following areas, if applicable," it says "track length, width, design, or materials." Use of the preposition "or" there suggests that if you provide one of those bits of information, you may have satisfied that requirement. Again, I think that the intention is that you as a Commission and the Lottery Director receive information on all those subjects, not just on track length or track width, so I would suggest changing the word "or" to "and" in that rule.

That's all the specific comments I had on the proposed rules. I thank you for the opportunity.

MS. TATE: And thank you, Mr. McCoy. Our next person will be Luther Heckman.

MR. HECKMAN: Mr. Chairman, members of the Commission, I think I can even be briefer than your last witness.

We are concerned – I guess maybe not concerned, wondering in the proposed Rule 3769-20-03 where it says a requirement is that there shall be a disclosure of "the incremental economic benefits to the State in a certificate of compliance that shall be a part of the application." We are

wondering, and if it isn't the case, then we would like to be, we would like to make sure that that's the net incremental economic benefit and that any calculation that the Commission considers would consider what the current projections would be at existing locations as compared to movement to new locations.

The other phrase that we are concerned about in the incremental economic benefit to the state is we trust there would also be an ability by us or others, if they wish, to discuss at application time when it is considered the horse racing implications of the application.

With that, Mr. Chairman, I would conclude my testimony.

MS. TATE: Mr. Heckman, thank you for your testimony. You used the word "we" a couple of times. Could you identify who you represent?

MR. HECKMAN: Yes, Northfield Park.

MS. TATE: Thank you, sir. Do we have any other individuals who would like to give testimony with respect to the rules?

We will close the public hearing on the rules. You have until December 3 if you choose to submit written comments to the Commission. Those comments shall be addressed to Mr. Bill Crawford at this building, 77 South High Street, 18th Floor, Ohio State Racing Commission. And thank you all.

If anyone is interested in receiving proof of hearing or proof of filing, please let me know. We will make those available to you.

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct excerpt of the proceedings taken by me in this matter on Monday, November 21, 2011, and carefully compared with my original stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5444r)

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