

# MINUTES

## OREGON RACING COMMISSION JULY 17, 2003

The Oregon Racing Commission met on Thursday, July 17, 2003, at 1:30 p.m. in Room 140 of the Portland State Office Building located at 800 NE Oregon Street, Portland, OR. Commissioners in attendance were Steve Walters, Chair, and Todd Thorne. In order to have a quorum on matters requiring commission action, Commissioner Jeff Gilmour was present via telephone during the discussion and action on those specific agenda items. Commissioner Lisa Metcalf was excused, and the governor has not yet appointed an individual for the remaining commissioner position. Agenda items were discussed in the following order with resulting actions:

### **1. Josephine County Fair Hub Funds Request**

On behalf of Grants Pass Downs, Al Westhoff submitted a written request for hub funds to resurface the track with some donated soil. Original cost estimates for completion of the project were not to exceed \$30,000, and included expenses for moving the soil to the fairgrounds, rototilling the soil and then applying it to the track. Commissioner Thorne stated his understanding of Commissioner Gilmour's motion was to approve the cost of moving of the dirt which was \$12,000 and rototilling the soil at a cost of \$1,500. Commissioner Thorne said he did not have a problem with approving the amounts as stated in the motion, however, he did have an issue with respect to the cost share. According to the information provided by Mr. Westhoff the dirt that was donated was valued at \$45,000 and essentially it appeared Mr. Westhoff's thought was that should represent the cost share or the match provided by Josephine County for the project. Commissioner Thorne stated he had an issue with that matching formula. In his view the total project cost is \$30,000, the commission is looking for a 50% cost share, which would mean JCF would be providing \$15,000 toward the total cost of the project. Commissioner Thorne said he did not feel the \$48,000 value attributed to the dirt should be looked upon as a cost share. In looking at it a different way, the total project cost if you added in the dirt would be \$75,000. The commission would then be looking for a 50% cost share from JCF in the amount of \$37,500. The mere fact that the soil was donated essentially promulgated this whole discussion in the first place and was the manner by which JCF came up with an emergency fund request. The commission has not done emergency fund requests in the past, and if they are going to start doing that they need to have a procedure in place to handle those types of issues. Right now a regular process is in place that starts after the first of each year, so the commission would be going out on a limb to handle an emergency request at this point. Commissioner Thorne did not have a problem acting on the motion as stated by Commissioner Gilmour because it is under the \$15,000 that the commission would attribute anyway given the total cost of the project as submitted was \$30,000. Mr. Westhoff stated he felt the fact that the dirt was donated made a decent match in his opinion. Commissioner Thorne agreed that it was donated but it was donated to the total cost of the project and not just to Josephine County Fair's 50% share of the project cost.

ACTION: MOTION(Gilmour) Approve \$13,500 of hub funds to cover moving the dirt to the fairgrounds and rototilling it, which is 45% of the total project cost to resurface the track at Grants Pass Downs.

VOTE: 3 Aye, 0 Nay, 1 Excused

**2. Proposed Order for Stephen C. Fisher**

Gina Johnnie, attorney for Mr. Fisher, presented oral arguments on behalf of her client. Raul Ramirez stated all of the comments made by Ms. Johnnie were consistent with what was contained in the record.

**3. Proposed Order for Larry J. Farrell**

Charlie Williamson, attorney for Mr. Farrell, was present. Chair Walters directed some questions to Mr. Williamson with respect to the issue of undisclosed source of information as presented in the testimony of Investigator Carl Swanlund. In the assessment of the penalty, the hearing officer relied on two orders which she stated were similar to Mr. Farrell's case. Chair Walters asked for clarification of evidence that was in the record with respect to those orders and whether or not they were substantially similar to Mr. Farrell's incident.

**4. Proposed Order for Jody R. Davidson**

Charlie Williamson, attorney for Mr. Davidson, was present. There were no questions about the record in this case.

Chair Walters then announced the commission would recess to go into executive session to deliberate on the proposed orders for Stephen C. Fisher, Larry J. Farrell and Jody R. Davidson. Upon concluding their deliberation, Chair Walters reconvened the public meeting in order to take action on each of the proposed orders.

ACTION: MOTION(Thorne) Adopt the proposed order for Stephen C. Fisher as a final order.

VOTE: 3 Aye, 0 Nay, 1 Excused

ACTION: MOTION(Thorne) Vacate the proposed order for Larry J. Farrell and remand the matter back to the hearing officer for consideration of Washington information, mainly a revocation in Washington.

Prior to voting on the motion, Chair Walters stated the hearing officer said there wasn't evidence regarding Mr. Farrell's current status in Washington. The commission's understanding is that there was at least one exhibit in the record as well as subsequent information regarding his status. The vacation allows the hearing officer to consider this information. Chair Walters also stated there were serious concerns regarding the proposed order. First, there was the discussion of the reliability of testimony based on confidential sources by commission investigators. It is sensitive and difficult issue, however, it was felt the hearing officer did not demonstrate what the commission believes is the proper sensitivity to the necessity for commission investigators to rely on confidential sources of information. In response to a statement by the hearing officer regarding bias and back biting on the backside of the racetrack, Chair Walters stated if there is such a bias and back biting on the backside it just reinforces the need to keep sources confidential because there can be retribution. Unlike a situation with an informant giving information to a police officer that is false or wrong, there is no penalty to that informant. In the racing community, however, if an informant provides a material false statement to an investigator that results

in action being taken that is incorrect, the license of the informant is in jeopardy; that's a violation of the statutes and rules of racing. The other great concern on the proposed order related to the orders the hearing officer cited as similar and were the basis for her recommendation of a penalty. Just on their face the cases were not similar at all in that they did not involve a willful act by a person who is revoked to enter into a restricted area after one fair warning by an investigator. This was a very serious violation of the rules of racing. A concern was voiced with the practice in our hearings of allowing counsel for the defendant to go through commission files and pulling previous orders and making determinations as to their similarity to the case on which they are working. The hearing officers, if they are going to rely on orders, have to take evidence to make a determination of substantial similarity rather than just stating that here are cases of licensees disobeying orders. In this case it appears the hearing officer made a very serious error in comparing this situation to the situations in the cases on which she was relying.

VOTE: 3 Aye, 0 Nay, 1 Excused

ACTION: MOTION(Thorne) Adopt an amended proposed order to deny application for and exercise rider license for Jody R. Davidson.

In terms of where we are going with this order I would observe the hearing officer, as my grandson would say, "air balled" on her discussion of the ADA. It is a bad piece of legal reasoning and would play terrible mischief with the rules of racing. It's almost like saying that someone's license can't be revoked for a DUI if you are an alcoholic but it can be revoked for a DUI if you're not an alcoholic. That would just play havoc with violations of the human drug rules and any violations of specific rules that could be attributed to problems with alcohol. With respect to the application of this applicant and his prior history, it is for the commission to make the ultimate determination of what's in the best interest of racing and what constitutes a serious failure to comply with the rules of racing. The proposal for the amended order is to reflect those determinations.

VOTE: 3 Aye, 0 Nay, 1 Excused

#### **5. Approval of June 20, 2003, Minutes**

ACTION: MOTION(Thorne) Approve minutes as submitted.

VOTE: 3 Aye, 0 Nay, 1 Excused

#### **6. Confirmation of Next Commission Meeting – August 21, 2003**

Due to conflicting schedules for Commissioner Thorne on the 21<sup>st</sup> and the 28<sup>th</sup> possibly for Commissioner Gilmour, and not knowing the availability of Commissioner Metcalf, it was decided to contact all commissioners by telephone to determine the date of the August commission meeting.

At this point in the meeting, Chair Walters remained to conduct the rest of the meeting while Commissioner Thorne left to catch a return flight to Pendleton and Commissioner Gilmour left to resume his legislative duties.

#### **7. Multnomah Greyhound Park Race Meet Report**

Jeff Grady reported they had a very successful weekend with the Wiener Dog Championship with close to 5000 people in attendance on Saturday. A new air conditioned bar was opened on the third floor and is called "Mike's

Finish Line Bar". The handle overall is down 9%. They hope to be introducing two new OTBs soon. The Instant Racing is doing well and they will begin to start advertising them soon. In response to a question from Chair Walters regarding a breakdown of the handle, Mr. Grady stated the live was down a lot more than the simulcast which he felt had a lot to do with the economy. The exports are starting to increase. In response to a question from Jodi Hanson on the Saturday matinees, Mr. Grady said the first one was on a holiday weekend which made them feel the turnout was not as good as it might have been if it had not been a holiday weekend. They are hopeful that the attendance and wagering will improve in the weeks ahead.

#### **8. Grants Pass End of Meet Report**

Al Westhoff reported the race meet ended with the handle being down 6.5%, stating they raced one less day and had seven less races than last year. The on-track average per day was down 4.4%, the off-track simulcasting was down 13.9%. The biggest difference was horse population. Last year there were 1141 starts compared to 973 this year. They averaged 6.41 horses per race last year and this year it was 5.69. There were only eight 8 horse fields, forty-nine 5 horse fields, nine 4 horse fields and one 2 horse field. Mr. Westhoff thanked the commission and staff for their good work during the meet as well as the OHBPA and the OTBA with their bonus programs. He felt the horsemen enjoyed being there and participating in the race meet. In response to a question from Jodi Hanson regarding the impact of the jockey incentive program to their meet Mr. Westhoff stated there were 14 jockeys present during the meet which he felt was primarily the result of having the bonus program in place. He suggested it might not be a bad idea to have some sort of a bonus program for the owners and trainers for the summer race meets.

#### **9. Crooked River Race Meet Report**

Presiding Steward Bob Blair reported the weather was ideal, the crowds were great, the handle was up and there were no injuries to riders or horses. There were a lot of horses at the meet thanks to the Blue Mountain circuit and also as a result of the problems they've been having at Les Bois.

#### **10. Legislative Update**

Jodi Hanson reported that at the July meeting she had reported on SB 790. That committee closed so SB 790 was introduced by the committee on Rules and Public Affairs as HB 3646 which is exactly the same as SB 790. HB 3646 has passed through the House and will be going on to the Senate. Our budget bill was passed which means we are more fortunate than many other agencies whose budgets have not been passed.

There being no further business, the meeting was adjourned.