

MINUTES

OREGON RACING COMMISSION DECEMBER 16, 1999

The Oregon Racing Commission met on Thursday, December 16, 1999, 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; Laura Fine, Vice Chair; Tom Towslee, and Richard Reid. David Price was excused. Agenda items were discussed in the following order with resulting actions:

1. Approval of November 19, 1999, Minutes

ACTION: MOTION(Towslee) Approve minutes as amended.

VOTE: 4 Aye, 0 Nay, 1 Excused

2. Application of Greyhound Channel, Inc. for Multi-Jurisdictional Hub License

Chair Walters began by asking the representatives from Greyhound Channel, Inc., Tony Fasulo, Vice President, and Ben Hayes, Attorney, to give a description of their organization and how it is expected to operate.

Mr. Fasulo stated Greyhound Channel, Inc. is a wholly-owned subsidiary of St. Petersburg Kennel Club, a greyhound track in St. Petersburg, FL which does business as Derby Lane. It was incorporated in 1998, and started to run on a full-time basis on 5/1/99. The studio is located at Derby Lane where they produce, schedule and broadcast races from at least 17 greyhound tracks. Races go on to a network referred to as The Racing Network (TRN) which is conducted by a group of people out of Philadelphia Park. They are not however, involved in the wagering aspect of it and are just acting as a conduit for the viewing of greyhound races. There is only one phone wagering system in the US that carries greyhound racing and that is in Connecticut. At present there are at least 23 greyhound tracks broadcasting their races on a simulcast basis for inter-track wagering on and interstate or intrastate happening. What the industry is facing in Connecticut is a limitation imposed by legislation. Whenever greyhound tracks in Connecticut are up and running and have a live card, the state OTB system, which can legally take telephone wagers, cannot wager on imports from out-of-state. There is a tremendous need in the greyhound industry to support the owners, breeders, national issues related to adoption, welfare issues, AGTOA. Greyhound Channel, Inc. came up with this approach to get involved in the hub for the betterment of the greyhound industry.

Steve Barham then reported background investigations have been done on the principals and have come back clear. The wagering and production aspects of this potential hub have not been seen or inspected yet, though discussions have taken place with representatives of Greyhound Channel, Inc. that this needs to be done. The process of approving facilities, tote, and wagering method for placing wagers will be similar to those approved for TVG. Hopefully it can be a prototype or a system that is in existence

someplace else that we can see first, then set up that system in Oregon before it actually comes up live. The verification system was demonstrated to him today, and he was satisfied with that. A letter was handed out today clarifying what would happen if there was no record in the verification system or if some of the data was not there. Mr. Barham reiterated that Oregon account residents will have a minimum amount of \$250 rather than \$50 as stated in the original application.

Another issue to be discussed is source market fee. The commission received a letter from the AGTOA, an organization for greyhound tracks, in support of this application. The original application had a distinction between someone residing in Oregon vs. someone residing out-of-state. Mr. Barham stated he called them and told them we wanted them both handled the same, and that change is reflected in the letter. With only 49 greyhound tracks in the US and Mexico, 48 and 1, the environment is probably different than that in the horse racing industry. So, the same model of source market may not need to be applied. AGTOA also represents all 49 greyhound tracks. Mr. Barham's recommendation on source market would be for the commission to listen to some of the rationale and goals Greyhound Channel, Inc. is presenting regarding source market, express their views, and then either delegate that final approval to him or, more appropriately, come back in January to fine tune that portion of the application because it is a policy issue the commission needs to address. He recommended approval of the technical aspects be delegated to him.

Chair Walters stated source market fees are something we require operating plans to address; we talk about mitigating the impacts on jurisdictions in which the wagers are made. The first hub licensed, TVG/NTRA, returns source market fees, rather substantial amounts, to the states in which particular wagers are placed. At the time the commission adopted the hub rules they were clear that they were concerned about the issue, but they weren't imbedding in the rules a particular model of addressing the issue. They were willing to acknowledge there may be other ways to address it. That's why the commission left it somewhat flexible in the operating plan requirement. He noticed in the AGTOA letter that they take the position the greyhound industry is different than the thoroughbred industry, and suggested a different approach to that issue was appropriate for the greyhound industry. Chair Walters asked Mr. Hayes to address that issue, i.e., how do you see this hub affecting wagering in states where there are greyhound tracks; are you poaching bettors from greyhound tracks.

Mr. Hayes responded by saying they support the concept of source marketing. They don't know yet whether or not the acceptance of wagers from those states will actually be poaching or possibly building the pie bigger, but are hoping the latter is actually true. Initially they are giving a host track fee that is 2-1/2 to 3-1/2 times larger than what is out there. At the current time there are 12 states in which the greyhound tracks reside, of which 10 of them have tracks that actually broadcast their signals which will allow Greyhound Channel, Inc. to monitor the races, be able to take in

the data from the race, and actually be able to connect with their tote. Of the 49 tracks, there are 23 that are actually included in that group. What Greyhound Channel, Inc. would do is limit the acceptance of wagers to those jurisdictions in which racetracks, first of all, do not prohibit telephone or interactive wagering, and secondly, transmit their broadcast and data to them and are connected to a tote. If there are a couple of states that are not included, they would not accept those. The high percentage of the host track fee is to encourage them to become connected so that Greyhound Channel, Inc. can accept wagers on them. Mr. Hayes went on to say that what they would like to do once data is brought back to them they would like to adjust their source marketing model to adjust to those types of market fluctuations. There is a percentage that is also going to the AGTOA and the American Greyhound Council (AGC). The greyhound industry was hit very, very hard this year with health problems. What Greyhound Channel, Inc. is suggesting is to help the industry as a whole, including those tracks that are in states that are not broadcasting their signal. This will help all tracks, all 49 of them, by having a percentage go to health issues, adoption issues, those types of initiatives. Contributions to the AGTOA will also help the industry as a whole. It will help alleviate reduced contributions to the AGTOA by its members as well as allow the AGTOA to take part of that money and use it for other types of programs that will help the industry as a whole. That is the model at this time. Greyhound Channel, Inc. would like to go forward with this model and then after the data comes back, say next year or the next time their application comes up for renewal, gather the data as to whether or not they are actually poaching or whether, in fact, the pie is getting bigger, and then make adjustments at that time.

Chair Walters said he would like to have some testimony at some point from representatives of MGP on this issue if they have any thoughts. For instance, if MGP says they are going to stay out and not send their signal to the greyhound channel, would that mean Greyhound Channel, Inc. wouldn't take wagers from Oregon? Mr. Fasulo responded by saying they would not take wagers on that particular track unless it decided to have a broadcast. Chair Walters went on to say you could have a situation where someone who, for the last 50 years has gone out to MGP to wager on the races there and wager on simulcast races from other greyhound tracks, now could say I can stay home and I can watch and wager on a lot of quality greyhound racing. And that's again the poaching term. Mr. Fasulo again responded by saying they're following the model of TVG, and are hoping that this exposure on a broadcast basis will attract new clients to the industry. That's one goal at hand. The other goal would be they realize they hold 10 to 12% when a person comes to their facility and makes a live wager. On a simulcast basis they may only hold 2 to 3%. With this Greyhound Channel, Inc. is offering 3-1/2 times that amount. They are not exactly to that 11 or 12% held on track, but the percentage they are offering each host track for wagers made on a telephone basis is a very exciting one. For clarification Chair Walters asked Mr. Hayes if they were only accepting wagers in states that have greyhound tracks running, to which he responded in the affirmative. Mr. Hayes went on to say MGP broadcasts its signal, and while they are not currently doing so, they are in

the broadcast business and they are totally welcome to participate. Chair Walters then stated their proposal would be if MGP has a concern about this issue, one of the ways they can meliorate it would be to sign up with Greyhound Channel, Inc. and get the 7-1/2% host track fee. He also asked if their contracts with the greyhound tracks that are going to be carried on the greyhound channel required exclusivity, to which the response was they have never involved themselves in an exclusivity.

Commissioner Fine stated the commission has a real strong commitment to the live product, but they also have a strong commitment to the survival of the industry, and was interested in hearing from members of the greyhound industry on this issue. She stated she respects members of our own racing community and wants to give them the opportunity to fully explore this and raise any issues before the commission takes any action on the application.

Commissioner Towslee stated the only question he had was regarding the responsible wagering program. Mr. Hayes responded by saying Derby Lane was one of the founding members of the Florida Council on Compulsive Gambling which was created in 1988 and is affiliated with the National Council on Compulsive Gambling. Derby Lane is the single largest contributor to the Florida Council other than the state lottery, which is mandated by state law. The initiatives Greyhound Channel, Inc. has put into place, the 24-hour cooling off period from the time the money actually clears with them before they will actually allow those monies to be used in a wager, no credit cards, have actually been formulated through their involvement with the Florida Council on Compulsive Gambling. They also train every employee at Derby Lane and the greyhound channel with respect to being able to identify compulsive gamblers and have resources available to those people that are identified. The telephone and interactive wagering will make it easier to identify persons with compulsive gambling problems through the historical data that we will have on their gambling patterns. All the materials being sent to our account holders will have telephone numbers and resources available to them. They will also be including educational pieces along with that as well.

Chair Walters suggested they flesh out the things they do, the programs regarding compulsive gambling, etc., and include them in the operating plan. The commission is interested in the training they give to their employees to help recognize compulsive gambling and would like to know more about that training, the sort of things that they look for and how they react when they see something that might be a problem. He also mentioned they emphasized in their operating plan that they have the ability not to accept a wager, and assumed that one of the activities they would follow is that if they saw something in a wagering pattern or in contact that suggested there may be a compulsive gambling problem by an individual, they might put a hold on that account and not going to take more wagers from that account until it is determined what is going on. Chair Walters applauded them for their efforts and is positively inclined toward the application, however, he would like to see more detail in the operating plan.

Greyhound Channel, Inc. is an affiliate of Derby Lane, and they have consolidated financial statements. Mr. Hayes has given the commission a letter demonstrating the commitment of Derby Lane to support Greyhound Channel, Inc. in terms of its financial obligations..

A question was asked by Commissioner Towslee regarding time frame. Mr. Hayes stated if approval was granted today, they would put together the technological aspects Mr. Barham needs to review and inspect so they could go forward and enter into contracts and get equipment into place. They're probably looking at somewhere around 60 days. While they would like to begin to be operational by February 1st, it is more likely it would be between March 1st and April 1st. They would have approximately 14 employees at the beginning.

Comments were received from the following individuals:

(1) Art McFadden, MGP - They were asked by AGTOA to support the application, however, he said they could not because they didn't know enough about it, particularly the source market, and don't know the details of the deal. They also don't want to do anything that would disrupt the TVG relationship. They, therefore, were not ready to comment on it until they see the package.

(2) Dave Nelson, NPM - Voiced concern regarding compensation to host tracks.

(3) Vince Bruno, OGBA; George McKallip, attorney for OGBA - They are in same position as Art McFadden and have same concerns regarding keeping the live industry intact, healthy and being promoted. Basically they are waiting until MGP gives its support before OGBA will give its support.

Following the comments, Chair Walters stated the only issue the commission should seriously consider delegating to the executive director is the review of the technical issues. On the responsible wagering issues, he would like to see that fleshed out in an amendment to the operating plan. Regarding the issue of source marketing fees, the commission needs to determine how best to resolve the issue. He suggested the commission delegate to Mr. Barham the review of technological issues and facilities, then set over to the next meeting the consideration of the application for further consideration of amendments to the operating plan on responsible wagering and mitigation/source market fee issues.

ACTION: MOTION(Fine)

Delegate the investigation of the technical aspects of the application to the executive director.

Vote:

4 Aye, 0 Nay, 1 Excused.

Mr. Hayes asked if it would be possible to discuss the source marketing concept that they originally submitted and then amended, stating the original concept might solve some of the problems. The original proposal for Oregonians making wagers would have included an additional split between Greyhound Channel, Inc. and the Oregon tracks whereby an additional 6.875% of the total wager would go to the two tracks which would split the tracks in accordance with the amount of time they were in operation during the year. Should they choose to split that money some other way they would be receptive to that. That was their original proposal

to include that in addition to the 1% that was going to AGTOA and the AGC.

In response to Mr. Hayes' comments, Chair Walters stated given the unique situation in Oregon in the way we split up simulcasting between the thoroughbred/quarter horse track and the greyhound track that that might be appropriate because of our unique situation. The concern expressed by the executive director was to not have one system for Oregon and another for the rest of the country; but it is unique, and so that may be an appropriate resolution for this unique situation as opposed to other approaches.

It was decided to take a recess to allow folks to talk over the issues of concern, the result of which might affect the action the commission could take today. When the commission came back in session, they took action on the proposed orders since industry folks were still discussing issues related to the Greyhound Channel, Inc. application. *(Minutes on commission action on the orders follows the balance of minutes on the Greyhound Channel, Inc. application.)*

Mr. Hayes stated he believes the original plan for distribution takes care of the concerns of the Oregon tracks for wagers being made by Oregonians. They also believe this is a very important item to make sure that the source of the marketing of the hub is being mitigated for no other purpose. He then asked the commission to consider approving the application today.

Dave Nelson, NPM, came forward and said he felt they have opportunity to reach resolution, however, he did not feel they were there yet. Given the proposal that the commission approve the original proposal which NPM has not had an opportunity to review, NPM would oppose that recommendation.

Chair Walters had two observations: (1) He was not sure a disagreement between NPM and MGP on how to divide up the money Greyhound Channel, Inc. is giving you ought to slow down their application. (2) Under TVG's proposal, whichever track is running gets the source market fee, but NPM doesn't share its host track fee with MGP. He went on to say he was prepared to approve the license application subject to three things:

1. Delegate to the executive director authority to approve the technological issues.
2. Submitting an amendment to the application which provides a satisfactory fleshing out of the responsible wagering program.
3. Not only going back to the original proposal on mitigation, but also fleshing that out to include the testimony given regarding evaluating the data, looking to see what the effect was in other markets and a commitment to considering adjustments based on what that data would show.

Additional comments received from the following individuals:
(1) Brad Higbee, TVG - His only thought had to do exclusively with the idea of the source market fee. He felt the commission could be setting a

precedent by approving 1% going to AGTOA, 1% to AGC, and only in Oregon 6.875% of all wagers made by Oregonians would be left behind in Oregon to be divided however people duke it out among the Oregon racing interests. What happens in other states?

(2) Woody Mitchell, NPM; Dick Cartney, HBPA - They do have a problem with the greyhound channel. They want a similar split, 10-1/2%, somewhere in that neighborhood, to be split along the same lines and windows as the TVG model.

In reaction to the comments, Chair Walters stated, first of all, that he sees this situation as different from the TVG model in lots of ways. Because the commission wasn't sure "one size fits all" and that having the same type of approach as TVG is the only way to deal with this issue, they intentionally left some flexibility in our rules on this issue. Secondly, the AGTOA is the most interested entity in the concerns about bettor-poaching for other jurisdictions. In general, it is the greyhound tracks and the greyhound bettor that would be affected by this, and the AGTOA which represents those tracks is 100% behind this application and behind this approach. Also, the tracks have other methods to generate their revenue and are not just hitched to the greyhound channel's wagon on this. He went on to say he didn't see these numbers changing very much, and the way they have put this proposal together it struck him as an attempt to make a fair accommodation of these various interests. The issue Commissioner Fine was discussing with Mr. Hayes is critical to this. If, in fact, there was a detrimental effect on live handle, they have stated they are committed to looking at the data and making adjustments to deal with that issue.

ACTION: MOTION(Fine)

Approve the application of the Greyhound Channel Inc. subject to: (1) the previously delegated authority of Mr. Barham to look into the issues of the technical aspects; (2) a satisfactory fleshing out of the responsible wagering program; and (3) having in place some language regarding the commitment of Greyhound Channel, Inc. to monitor the effect of this program on the local handle and be prepared to adjust source marketing funds if it is necessary.

VOTE:

4 Aye, 0 Nay, 1 Excused

3. Proposed Default Order for Jerry Nonamaker

ACTION: MOTION(Fine)

Adopt proposed order as final order.

VOTE:

4 Aye, 0 Nay, 1 Excused

4. Proposed Final Order by Default for John E. Craddick

ACTION: MOTION(Price)

Adopt proposed order as final order.

VOTE:

4 Aye, 0 Nay, 1 Excused

5. Proposed Final Order for William S. Harris

Chair Walters stated Harris was asked to pitch hit as an assistant starter at Salem even though he was a trainer and had horses running on the days he was asked to work. He, in fact, wagered on a couple of his horses he was heading which was observed by the board of stewards. Conclusion: Given the circumstances of this case, really the fault was on the part of the race meet licensee not advising Harris of the conflict of his duties as a

trainer and as an assistant starter. Therefore, the charges should be dismissed.

Request by Chair Walters: He would like a recommendation from the board of stewards. There is a discrepancy between the practices at the summer race meets, apparently where trainers are permitted to head their horses assumably having to do with difficulty in getting a gate crew for those meets, and what is done at meets such as NPM where trainers aren't allowed to head their horses. There is a potential conflict between the rules on the one hand to allow a trainer to wager on a horse he/she has trained but on the other hand the rules prohibit an assistant starter from wagering on horses while performing duties as an assistant starter. He stated he would like the stewards to review the situation and propose or advise the commission whether or not some rule changes are needed, whether to simply ban the practice altogether or whether it should be allowed under certain circumstances and with certain protection.

ACTION: MOTION(Reid) Adopt proposed order as final order dismissing charges against Mr. Harris. Additionally, the board of stewards are to advise the commission if there is a need for a rule change.

VOTE: 4 Aye, 0 Nay, 1 Excused

6. Proposed Final Order for Mark S. Jennings

Chair Walters and Commissioner Price acted as hearing officers on this case. Chair Walters stated there was very impressive character testimony from leaders in the racing industry on behalf of Mr. Jennings, and all things considered, he and Commissioner Price recommended Mr. Jennings be permitted to re apply after one year rather than the normal two.

ACTION: MOTION(Towslee) Adopt proposed order as final order.

VOTE: 4 Aye, 0 Nay, 1 Excused

7. Gary Baze, The Jockeys' Guild

Gary Baze stated this would be the last meeting he would be attending as the Jockeys' Guild representative. He is resigning and Darrell Haire, who was present for the meeting, will be filling the job as western regional manager. Chair Walters thanked Gary for his 3-1/2 years of service and excellent work, and wished him well in his future endeavors. He welcomed Mr. Haire and told him the commission looked forward to working with him.

8. Board of Judges Ruling on Ronald M. Floyd

Chair Walters reported the board of judges had issued an order in the matter of Ronald M. Floyd.

ACTION: MOTION(Fine) After having reviewed the findings of fact in the order, move to bring the matter up on the commission's own motion the matter of Ronald M. Floyd before the commission on their own request and direct staff to serve notice of a hearing to take place in January.

Before taking a vote, Chair Walters stated the allegations and findings in this order were of a very serious nature that deserve the attention of this commission.

VOTE: 4 Aye, 0 Nay, 1 Excused

9. New Portland Meadows Update

Mike Dorough reported they are nine weeks into the season. Their total handle is up 7.6% overall, the live instate is down 2% and the export of their signal is up 21%. They are pending a number of additional sites that they are hoping to have ready by the start-up again in January. Regretfully the size of the fields are decreasing. They did have, however, a good Oregon-bred day.

There being no further business, the meeting was adjourned.