

MINUTES

OREGON RACING COMMISSION MAY 16, 2002

The Oregon Racing Commission met on Thursday, May 16, 2002, 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 Tom Towslee, Vice Chair and Chair *pro tem*; Lisa Metcalf, Jeff Gilmour and Todd Thorne. Chair Steve Walters was excused. Agenda items were discussed in the following order with resulting actions:

1. Approval of April 18, 2002, Minutes

ACTION: MOTION(Thorne) Approve minutes as submitted.
VOTE: 4 Aye, 0 Nay, 1 Excused

2. Crooked River Roundup Association 2002 Race Meet Application-July 10, 11, 12 and 13

Steve Barham recommended approval.
ACTION: MOTION(Gilmour) Approve the race meet application.
VOTE: 4 Aye, 0 Nay, 1 Excused

3. OTBA Request for Disbursement of Portland Meadows Owner Bonus and Breeder Awards

Steve Barham stated Ursula Gibbons was unable to be present for the meeting, and recommended approval of the request.
ACTION: MOTION(Metcalf) Approve disbursement of funds.
VOTE: 4 Aye, 0 Nay, 1 Excused

4. Request by Attorney for Mark Boag to Discuss Issue of Mr. Boag's Eligibility for Jockey License Reinstatement

Mark Boag and his attorney, Brian Talcott, were in attendance to present their case to the commission. Mr. Boag stated he was not asking the commission to reinstate his license in Oregon nor did he have any intention of applying for reinstatement of his license in Oregon in the future. He was, however, asking that the commission to take action which would make him eligible to apply for reinstatement which would allow him to apply for licensure in other jurisdictions. Based on the fact that at least two years have elapsed since Mr. Boag's licenses were permanently revoked under the June 1, 1995, order, the following motion was made:
ACTION: MOTION(Thorne) The terms contained in the June 1, 1995, order making Mr. Boag's license revocation permanent are hereby rescinded. Mr. Boag is eligible to apply for reinstatement of his revoked licenses. All remaining terms of the June 1, 1995, order are to remain in full force and effect. Any application for reinstatement will be conducted in accordance with the commission's statutes and rules.
VOTE: 4 Aye, 0 Nay, 1 Excused

5. Portland Meadows Update

Scott Daruty, Magna Entertainment, and Art McFadden, Portland Meadows were present. Mr. Daruty reported the storm water system has been completed, is operational and has been permitted by the city. They have done everything to comply with the Consent Decree and horses are now back on the grounds. Bub Loiselle and Joe Roberto of the EPA are scheduled to come next week to look at the system. Mr. McFadden stated

there are currently thirty-nine horses on the grounds. Some other improvements which were not part of the EPA project have been done. The training track has been enlarged and improved by adding an inside rail, replacing the outside rail and redoing the track surface. New cyclone fences on the outside of the race track are currently being installed, and extra asphalt has been added to help the drainage. The shedrows have also had some major improvements.

In response to a question by Vice Chair Towslee regarding the operation of the golf course, Mr. Daruty stated the golf course provides a community service, and as long as Magna can continue to accommodate the needs of the golf course without adversely impacting the race track, they would like to continue to maintain the relationship with Donna Jensen to operate the course. Commissioner Metcalf stated it would be very beneficial to the commission if Mr. Daruty and Mr. McFadden could include in their monthly reports updated information on developments regarding the Willamette Valley site. Mr. Daruty responded by saying that now the EPA issue has been resolved their attention will definitely be more focused on the development of a new race track and that he would be happy to give period updates on developments as they occur.

6. Multnomah Greyhound Park Race Meet Report

Carl Wilson reported they had a great opening night with a large crowd in attendance. The overall handle after two weeks is down 1.1% from last season. They feel the new advertising has been effective based on the attendance figures especially on the weekends. They have put out a new comprehensive wagering guide which can be used for horse and greyhound racing. The off-track improvement plan is just getting started and updates will be provided at future meetings. All systems have been set up to provide the Grants Pass signal to MGP and all the off-track sites.

7. Default Order for Kerrie Short

As clarification in response to a question by Vice Chair Towslee, AAG Raul Ramirez stated prior to March 16, 2001, Ms. Short was licensed as an owner and pony person. On March 16, 2001, she submitted an application for a license as a groom which was preliminarily granted. Following a subsequent investigation, all the licenses were suspended on May 17, 2001.

ACTION: MOTION(Gilmour) Approve default order revoking licenses of Kerrie Short with necessary grammatical corrections.

VOTE: 4 Aye, 0 Nay, 1 Excused

8. Confirmation of Next Commission Meeting - June 21, 2002 in Grants Pass

Meeting date is okay as scheduled for all commissioners present except for Commissioner Metcalf.

9. Change in Youbet.com Operating Plan to Allow Mutuel Tellers to be Located in California

Following is a transcript of this agenda item:

Hasson: Joe Hasson with Youbet.com. I'd like to introduce two individuals - Chuck Champion who's our president, and Rick Boonstra who's our general manager and controller for our Youbet Oregon office. Youbet is seeking the approval to allow live operators in California. We've already gone

before the board in California and got their permission. The thing that's unique in our request is that the California board agreed that the wager takes place in the State of Oregon and is under the jurisdiction of Oregon and only the operators are under the jurisdiction of the California board. So, we request that our amendment be approved.

Towslee: Any questions or comments?

Gilmour: Where do you start?

Towslee: Let me start here and see where this leads. First of all, thank you all for coming. As I understand this, there was a presentation made to the California Horse Racing Board in which, or at some point in the process of getting the hub law passed in California, there were made promises is a hard word regarding union jobs in California. Is that correct?

Hasson: That's correct.

Towslee: Okay. Youbet was one of the last hubs that we've licensed. Three hubs that were licensed prior to that - TVG, The Greyhound Channel and Americatab - as part of their operating plan located their operators here in Oregon at our request. Were you aware of that when the promises were made in California about the operators being located in that state?

Hasson: No, we were not.

Towslee: That's sort of the dilemma that we have here is that we've required the hubs to locate their operators in Oregon for regulatory reasons and because, you know, we have a pari-mutuel union in this state as well although it doesn't appear to have as much influence with this commission as it does with the one in California. That requirement was part of the three previous operating plans, yet the promises were made by your organization by somebody who apparently is not there anymore that your operators would be located in that state. If I read this request correctly you're asking us to make good on your promise, and I think the problem I'm having is that by doing that I'm concerned that we're breaking faith with the requirements that we placed on the hub operators who preceded you in this process. So, that's sort of the dilemma that I'm at here. Can you walk me out of this or through this?

Hasson: I think we can. The other three applicants, including Youbet, obtained licenses in Oregon to operate and to operate under the law and rules in Oregon. There are some other states that some other operators were in that the states didn't have law laid out and didn't allow for multi-jurisdictional hubbing. Now the landscape has changed. California now has a law in place and other states are enacting laws, and this is going to require probably for all operators that we have the flexibility to have our operations in multiple states and be able to have them work together as one. The alternative is to have different accounts and different systems for customers in different states which would be quite a burden for the operators and also not beneficial for the horse racing industry in general. So, from our perspective we see that we were able to get approval from the California regulators and allow this activity, so what we're doing is consistent with California law and what we're seeking to do is to have this approved in Oregon and then have it consistent in both jurisdictions.

Towslee: So, if other states were to pass hub laws, apparently there are only two states with hub laws - not to be confused with account wagering laws but to hub laws - that would be Oregon and California, if other states were to pass hub laws that we would, under your proposal, we would allow the operators to be located in any state that has a hub law.

Hasson: Well, it's possible; it's probably probable that this is going to occur in the future. I think what's unique in the approach that we took was we went to the State of California, to the Racing Board in California, and we said look, our license is in Oregon and we have an agreement in Oregon and we need to live up to that agreement, and we asked them to give up the jurisdictional (*sic*) where the wager takes place and allow it to be in Oregon so that there is still some regulatory oversight of the wager.

Towslee: I understand that by allowing you to have live operators, whether they're located here, California or any place, allows you to do more business, take more wagers, and ultimately those wagers come through Oregon and that money is used to support the county race meets, something that's very close to all of our hearts. So, you understand that this is somewhat of a dilemma for us because we rely heavily on these hubs, and if we're going to take the money, if we're going to get the .25% anyway does it really matter where the live operators are located. The question though becomes that we had what I thought was a very clear requirement in place prior to your application and it was more or less ignored. And I'm not ...,so, I still need to work that one out. Maybe perhaps if we heard from the other hub operators at some point it might help ease my concern about what the impact this would have on them or what promises we made them in the past. Anybody else have any comments here?

Gilmour: Yes.

Towslee: Mr. Gilmour.

Gilmour: In your licensing application, and I'm looking at the book here, I don't see where you discuss having tellers in other licensed places. In fact, I'm looking on page 22 which is specifically says "with the increased number of new accounts and increased handle, Oregon anticipates increasing the staff by 25% in the next twelve months".

Hasson: That's correct.

Towslee: But under your operations portion you do mention that live operators are under the supervision of the California board.

Hasson: Yes. So, on page 28, section 5.1, operating plan for live operator, I think that's, Commissioner Gilmour, what you're looking for.

Gilmour: Yes, "...will be managed and supervised by the management team in Los Angeles." Okay, thank you. I did not see that earlier.

Thorne: I've just got one question.

Towslee: Commissioner Thorne.

Thorne: I think, I guess I need a definition, I guess I'm just asking somebody to give it to me, on the amendment document on the second page referring to ORC(*sic*)-462-220-0060(2). "Account holders may communicate instructions concerning account wagers to the hub in person, by mail, telephone, or electronic means. Youbet's position is the operators are facilitating the transmission of instructions for the customer and that the wager only takes place where it is accepted." So, I guess my question is this: How do I come up with definition of exactly where the wager has been accepted? Your interpretation is that the wager is not accepted by an operator that is located in California, it's accepted by your headquarters in Oregon. I guess I'm uneasy without having that interpreted to me or at least I need to be convinced of that and I'm not.

Hasson: If California Racing Commission had said no, we do not approve your plan, the wager takes place in California, I would agree with you, Commissioner Thorne, there would be an issue. But, the Oregon law is pretty specific - the wager takes place in Oregon. And California has also said that under this application under Youbet's operating plan the wager takes place in Oregon. Raul, do you have any comments?

Ramirez: Well, I do have some of the similar questions regarding the rule that you cited because as I understand it what Youbet is proposing is that somebody may call by telephone from Oregon, talk to somebody that is in Los Angeles or Woodland Hills, California, to place the bet and then that person would then relay information back to the hub or what I understand to be the, I forget the specific term, the account wagering center which is in Oregon. But the rule that you cite doesn't say that there.., it says: "the account holder may communicate to the hub by telephone or other means"; it doesn't say that the account holder may communicate through a third person to the hub. So, there is

question about that as to where the wager is actually taking place. As far as the State of California saying that that the wager takes place in Oregon doesn't really answer the question for this commission as to whether the wager actually does take place here. Whatever they decide is certainly not binding on this commission or how they interpret our rules. Does that address your question?

- Thorne: It does, and I guess my comment at this point would be I would have to have some sort of a more convincing idea, I guess, from our standpoint as to how we would interpret that. I can't really approve an amendment unless I essentially know what we are able to under our rules. I don't know if anybody else has any comments on it.
- Gilmour: I'm kind of wondering how we would regulate somebody who is in California.
- Hasson: The operators would be under the jurisdiction of the California board, so they would require licensing by the California Horse Racing Board. For oversight the Oregon Racing Commission will have insight to their activity. They'll have access to the voice recording system and also all the reporting systems that are required under both the Oregon and California law. So, both regulatory bodies will have oversight and insight into our operations. If a customer has a complaint the complaint still comes to Oregon.
- Towslee: That's reassuring. What are the implications of not approving this request?
- Hasson: Well, Yobet would be put in the position of having to get a license, an instate license in California, and I'm not quite sure what the implications would be as far as its impact on Oregon law if those wagers could still be processed through the Oregon tote. Obviously the quarter percent commission would be reduced for those wagers, which we would prefer to have it come here in Oregon.
- Towslee: So, we would be giving up the revenue from Californians who wager on California races?
- Barham: No. You'd be giving up the revenue for those individuals regardless of where they reside that wager through those operators located in California.
- Hasson: And the other impact which we need to be mindful of is the impact on the consumer, on our racing fans. I think it would create more complexity for them and some confusion.
- Barham: How so?
- Hasson: Because we would have to then explain to them if you have a complaint regarding an issue on a wager placed through a live operator, contact the California Horse Racing Board. If you have an issue regarding a wager placed on line, contact the Oregon Racing Commission.
- Barham: Okay, and there, I think, that's already confused because we are not licensing those people and, therefore, have no jurisdiction over their activities. So, if in fact somebody complains to me about a wager made through one of the operators then I don't have any jurisdiction over them or this commission doesn't have any jurisdiction over them, and we really can't do anything. That's one of the main reasons everybody was told everything dealing with the wager has to be here in Oregon. Now in fairness to you guys your system prior to this didn't involve live operators. You had some customer service folks but you weren't into the telephone account wagering process, rather it was on line, though I thought we were fairly clear that the whole deal dealing with the wager, I don't care where your development office is and all that kind of stuff, needs to be here. We need to license those folks and we need to have control of that. I don't know that it's confused anymore one way or the other than if you go down and get a California instate hub license for those wagers.
- Ramirez: Mr. Chairman, may I be allowed to ask a question that I think may help clarify something for the commission? Do you consider the live operators to be a part of the account wagering center?
- Hasson: We consider them to be agents for our customers to assist in the transmission of the wagering instructions to Oregon.

Ramirez: You're aware that you're required under rule to establish an account wagering center. I think my question is are those live operators part of that account wagering center?

Hasson; That's a good question. My understanding is they would not be part of the Oregon center.

Towslee: Is that possible?

Ramirez: Well, under the rules Youbet or any other licensee of this sort is required to establish an account wagering center and provide the staff necessary for the management and the servicing of the accounts and the wagering. So it creates kind of a loophole where these live operators really form part of the account wagering center as that term is defined but they're not under the supervision of the commission...

Gilmour: Bingo.

Ramirez: ...and I don't believe that the rules provide for that kind of scenario.

Towslee: So we're prohibited by rule from granting their request.

Ramirez: Well, I'm not saying that the commission is prohibited I'm just saying that the rules don't address that specific issue. Ordinarily when you're interpreting statutes or rules you don't insert language that has been omitted, which I guess goes back to the question that perhaps the commission does not have the authority to do that.

Towslee: So their request in order to be approved we need a rule change or add a provision to the rule.

Ramirez: That would be correct. Or the other solution would be for Youbet to put the live operators in the account wagering center in Oregon.

Gilmour: Where we would have a regulatory access to those individuals through licensing.

Ramirez: Correct. That would give the commission the ability to inspect the account wagering center including the operations of the live operators.

Barham: Just to clarify so they have all of their alternatives. If in fact they went back to California and they got an instate California hub license for that portion of their operation and that's just another division that isn't in Oregon really, we don't have any regulatory control over that, then our rule wouldn't apply, we really wouldn't have an issue with it. We wouldn't get the .25% tax and that's between them and California, is that right?

Ramirez: You're talking about a completely instate account wagering center in California?

Barham: I'm talking about a telephone account wagering center in California licensed as an instate wagering center by California.

Ramirez: So you're addressing the scenario that they're proposing in that essentially you have two account wagering centers...

Barham: Yes, one California, one Oregon...

Ramirez: And it wouldn't be clear where the taxes or the money that Youbet is obligated to pay to the State of Oregon there would be kind of a very big question as to where that lies because you've got on the one hand an account wagering center with some staff in Oregon and you've got another one which really seems to be part of the same account wagering center in California.

Barham: Okay, I would be saying that the one in California would stand alone from the one in Oregon with the exception that they may be handled by the same tote but the tote can be partitioned. Race tracks do that, use common totes, all the time. I think that could work. I'm not sure it's the best solution but I

just want them to have all of the alternatives they have and some idea of what our position would be if they took any one of those so we don't get back into a problem like we're in now.

Towslee: Would you like to comment on that?

Hasson: Well, we would prefer to have the whole wager take place in Oregon. The alternative that Mr. Barham presents is workable for us, you know, we just want to have the best solution for our customers and that's what we're working to achieve. But if the law in Oregon does not allow that and we need to have a rule change, then we could work on the rule change and in the meantime work with the officials in California to get an instate license. I don't know that we'll be able to go back to them again and ask them for an amended operating plan and have them agree that the wager takes place in Oregon, though. That took some effort to get that approved.

Barham: I guess unless, and this is my recommendation to the commission, unless we can fully regulate it all the way through I'm not sure that I would recommend to you especially after listening to all this discussion that we would want that wager because I don't want somebody calling me and saying I called this operator and my wager got all messed up and me say yeah, but guess what we don't license them and we have no control over them but we're just slipping out the tax. That's even worse. And I understand that when I talked to you, Joe, I was saying how does this wager work in Oregon, but the more we talk about it the more rationale there is that everything dealing with the wager needs to be in the state that the wager starts out at and especially as new as this stuff is getting, don't start flipping little things. And I understand, I've read transcripts from California and I understand the pressure and the stuff that's going on there, but I'm not sure we ought to be dancing to their tune anyway.

Towslee: Commissioner Gilmour has phrased this is a long way around the barn to solve what is basically a political problem for you in California.

Champion: If I could address the commission. First of all, I think you've already recognized fully and maybe to a greater extent this problem. I've been the president and chief operating officer of Youbet.com now for a little over six weeks.

Barham: Congratulations.

Champion: To complicate it further I do not have a horse racing background. I've been thirty-five years in the newspaper industry. I will assure the commission though I was not allowed near words or text but I was on the business side of the operation in the marketing and circulation and sales areas of newspapers across the country. This legacy issue will not go away for us in an easy fashion as you can well understand and appreciate, and I know it is not my place to ask questions today but more to answer them but I would suggest to you that I don't think it will go away for California either. If we're not able to get the flexibility that we ask for today then possibly California and others will look at modifying their laws in order to hub in those states. I don't know how you feel about that and I recognize that it is a concern for all of us. What we are desperately trying to do, we're here out of necessity we're not here out of greed, we're here out of necessity. We're asking for what actually, interestingly I thought the individual who sat at this table before, and that is to try to find a way to operate in another state to make a livelihood. We have entered into a number of agreements that could be questioned as to their appropriateness, but as a group we all need to, I think, recognize them and see what we can do to work our way through them. Again, I am not a lawyer, I don't profess to be one and completely understand it, but it would seem to me that the State of California is relinquishing or acquiescing or recognizing your rights as the State of Oregon to when the bet is placed here and the kind of oversight and control that you have over our hub operations that don't you have the adequate jurisdiction to insure that that bettor, wagerer is protected and that we will do the appropriate and right thing and you have control enough to insure that we would. We are simply looking to add operators in California, facilitate customers and obviously to address this issue. We're looking at two operators to begin with and not even sure of how large that will grow because of demand. It could grow in our operating plan to as many as ten. We plan to have far more people in our Oregon hub here than we would have working as a live operator in California.

Towslee: I'm sorry, would you say that again, Mr. Champion?

- Champion: We plan to have more people here in Oregon than we do in California working as a live operator. We have made, and again I apologize for my naiveté and I apologize for not knowing the regulations as well as I should as I sit here today, but we truly were unaware of the requirements of the State of Oregon to insure that live operator was here in the state. While I was not there during those negotiations, discussions I know one of the individuals that would have been involved and I don't believe that he really fully appreciated the fact that that was an issue. So, again it quite frankly is obviously a tangled problem but I'm hoping that we can find a solution instead of saying no, we can't do it, that's that.
- Towslee: Commissioner Gilmour, did you have...
- Gilmour: Well, I heard you. I think we're crossing a crossroads in this hub activity and I've had an opportunity to read some transcripts from the California Horse Racing Board. And one thing for sure Oregon will not operate ever the way they operate and I'm surprised that, very frankly, in reading the transcript that somebody has not made some direct comments to their attorney general concerning the conduct of what seems to be their board. I think maybe we were lucky by having the hub established in Oregon first so that everybody who is licensed here somewhat knows the rules that we have in Oregon. Very frankly we on this side of the board like having hubs here because there are certain benefits that we're able to pass through to the industry in Oregon, and being a fourth generation Oregonian I think Oregon's a great place to live, I think it's a great place to do business, that it's not encumbered by other side activities that other places have. I think when the people in the hub business realize that Oregon is a much peacefuller (*sic*), better place to do business versus the other activities that might be taking place through licensees or are unknowledgeable about inherent taxes that will come, will wish they would have stayed in Oregon. But I think we as a commission have to somewhat follow the initial guidelines that we have concerning the regulatory necessity of the licensee and the employees of. It would have been far better I think for you, in my opinion, had you come to our board and discussed what request one has to make to operate in other states prior to cutting those agreements than after the fact. I feel for you but it's difficult for me to move because I feel as though this could be a tip-of-the-iceberg for the next thing, the next thing, the next thing, and yet I don't want to offend or lose the hubs either but it's a choice people have to make of where they want to do business and treat it fairly in the outcome. I think it'll come down to Oregon is the best place to be treated fairly. Maybe it was too much of a comment at this time without implying anything too nasty about our California neighbors. Good luck, guys.
- Towslee: One other question. Do I understand that by California's recognition that the wager is placed in Oregon do they consider that to be a concession to us in some way? Is that their olive branch so to speak?
- Champion: Oh, when two elephants dance the grass usually gets crushed. Inasmuch as I have not had those conversations with them I wouldn't want to represent the California Horse Racing Board to the Oregon Racing Commission, but I can say from some of the conversations at least in that regard, and some of the conversations that I have had, I can tell you that they have tried to find a way to work this issue out. You've read the transcripts...
- Towslee: Try to find a way short of relieving you of your problems to create union jobs in California, right?
- Champion: Yeah, but that's as much, I think again, opening the "kimono foley" here. I think it's not just the California Horse Racing Board that's at issue it's labor in California that's at issue in those discussions that took place as well, and again, I have not seen anything in their actions to indicate to me that this is any way of trying to undermine your authority or to erode the revenue base in Oregon. There is if you read the transcripts there has been a lot of discussion about the Oregon tax and basically saying that that is the AEW's responsibility to pay and that that's considered outside the caps, and so there has been some conversation on that. But what I think that they're saying is we appreciate and recognize that you are hubbed in Oregon and the bet takes place there in Oregon and we recognize that. As Joe said he did have conversations with a number of people and it did take some discussion in order for that to occur.
- Towslee: Is there anybody else here that would like to comment on this?

Bowker: I'd be more than happy to.

Towslee: Great. If you could, maybe one of you could...

Champion: I'll be more than happy to move.

Towslee: If you'll identify yourself for the record.

Bowker: Todd Bowker for Americatab. I think the commission should be aware of Americatab's position with this. I sent a letter when this item was an agenda back in March to the commission. Obviously we were licensed before Youbet and yes, you guys were very, very clear about having not only any human that touched the bet be in Oregon but also any equipment. This affected us probably a little bit more maybe than anybody else other than The Racing Channel because we actually had a working telephone room with live operators taking wagers in the State of Ohio. Obviously with that in place it would have been much, much easier for us to just continue the phone operation there, and obviously during the course of our application process that was made abundantly clear despite us asking on more than one occasion to have our live operators stay in Ohio. We've been very, very happy with our partnership with US Off-Track in providing a telephone room here. We had I believe twenty-one operators on Derby Day, so we've created a number of jobs here in the state.

Towslee: Are those union jobs?

Bowker: That I would have talk to Ben on that one.

Hayes: No, they're not.

Towslee: They're not pari-mutuel?

Bowker: However, the bigger issue I guess for me and why this hits home a little bit more for me is it's wonderful that what we've done here in creating jobs and establishing our hub here, but what really hurt the most was the fact that we laid off fifteen people in the State of Ohio. Fifteen people who, if you allow this now with Youbet, if you had done that for us those fifteen people would still be employed with me.

Towslee: And you know that that's the focus of my concern about this.

Bowker: Right. And so that's, you know, I mean obviously for us that's the main reason. We did have additional expense that we had to incur out here as far as helping US Off-Track upgrade their telephone systems and recording systems which we wouldn't have had to spend, so there was some out of pocket expenses to us. But for me personally that's not nearly as important as the fact that I had to send fifteen people out into the unemployment lines back in Ohio. We did a lot of work in terms of paying severance pay and helping people find jobs at other race tracks and even at Beulah Park where our office was at. But basically like I said that was a burden for us. I certainly can sympathize with having to deal with regulators, and I'm not trying to make that a negative statement here in this room...

Towslee: Good idea.

Bowker: ...but certainly understand that racing commissions all over can certainly wish to do their jobs and try to do what's best for their state, and obviously I think that the commission members here need to take a look and do what's best for the State of Oregon.

Towslee: Does the fact that California has a hub law and Ohio doesn't make you feel any differently or any less so about this issue?

Bowker: No because we could have continued to operate instate and certainly we made a business decision to come here. As Commissioner Gilmour said the State of Oregon has made it very, very, very easy from a business standpoint to make the decision to move here. Yes, we do have additional

expenses incurred but obviously your tax rate is something that definitely encourages businesses to come to the state, and so for us later in the day I'm going to be talking about our application and have some good handle numbers to report and also happy to report that being here has been very profitable for us so we're glad to be here. If you allowed Youbet to have operators in another state we would not, in turn, move our portion of the operator business back to Ohio. We're happy with where we are and certainly think that US Off-Track people would be glad to make a deal with Youbet to provide operator service for them if they decide that live operators are an important part of the business. We do think it's an important part of the business, and Kentucky Derby Day was a prime example. We took about 60% of our wagers over the telephone versus via our closed loop system. So, it's definitely good for business. I would encourage Youbet to have live operators but it's up to the commission to decide where those operators need to be.

Towslee: Thank you for that. Ben?

Hayes: My name is Ben Hayes, I represent US Off-Track. First of all I think the Oregon Racing Commission should be commended for providing a very favorable regulatory environment for the hubs. There have been a number of very innovative ways and means of operating a hub in Oregon that have been met with an open mind and with the blessing of the Oregon Racing Commission so long as it could oversee and regulate those activities. This issue here, I think, presents the Oregon Racing Commission with a very, very slippery slope on a number of legal issues, the first of which is a state demanding that an outside operator utilize employees from inside their state I think presents some problems with the Commerce Clause. I am sure Assistant Attorney General Ramirez could comment further on that, but I think that there are some significant problems by California demanding that an out-of-state hub utilize employees of California in order to be able to legally take wagers or refuse to allow a business to operate in California. Secondly, with regard to conflicts of law issues, where is the bet or wager made, I think that having parts or elements of the wagering system, that is the live operators, operate outside the state jurisdiction of Oregon muddies the water as to exactly where the wager is made. I understand that the California Horse Racing Board has stated that they will view the wager as being placed in Oregon, however, I believe that if a lawsuit was brought by someone it may not be in the courts of Oregon or California. In that situation that court is going to look at the conflicts of law provisions, and they will look at the various locations that have had some contact with their resident and this resident won't have any contact whatsoever with Oregon. It will be with an operator in California then that person then takes over the operations, transmits it however to the Oregon hub and so forth. But that court is not bound by the decision by the California Horse Racing Board. It may take that into consideration but I don't believe it's bound by it. Lastly, I think that it may cause some political problems as well for the Oregon Racing Commission. My understanding is that the unemployment rate in Oregon is one of the highest in the country. For the Oregon Racing Commission to approve this I think would be very, very slippery slope with regard to a political standpoint that you're exporting jobs outside of the State of Oregon in a time where employment is a very, very sensitive issue in the State of Oregon. And lastly, where do we go from here from a regulatory standpoint? One crucial element of the wagering process, that is the operators, are outside of the regulatory jurisdiction of Oregon. California is going to take it over. As you all know, labor law and unions and union management have collective bargaining agreements and other labor laws that restrict what kind of punishments and so forth employment actions that can be taken against employees. I can envision a situation where an employee in California does something incorrectly, the California Horse Racing Board looks upon it and says, well, we can't do anything in these circumstances, yet the Oregon Racing Commission wishes to take some action yet they don't have jurisdiction over that employee. I think that has some merit to it as well. So, those are my comments. Thank you.

Towslee: Very good. Thank you. At the risk of having a debate here, gentlemen, I'm going to give you just a couple of minutes to respond and then we need to figure out what we're going to do here.

Ramirez: Mr. Chairman, there's a comment I'd like to make because it seems like we've been looking at the rules of the Racing Commission to try to figure out whether what Youbet is proposing is even allowed, but I think perhaps we lost sight of the bigger picture and that is that the rules are...

Towslee: Statutes you mean?

Ramirez: ...also pursuant to the statutes, and at least when you look at the context of the statute that allows the Oregon Racing Commission to license hubs there seems from an initial reading to be almost a requirement that the employees of the hub be in Oregon and that they be licensed in Oregon: 462.725(2). I can read it; it's a fairly short section. "All employees working in Oregon and all officers of any multi-jurisdictional simulcasting and interactive wagering totalizator hubs located and operating in Oregon must obtain a license from the Oregon Racing Commission prior to the commencement of business or employment." Now that does say all employees working in Oregon, so that does qualify it somewhat but in looking at the context of the statutes that grant the commission the authority, the sense that I get is that the legislature envisioned that the Oregon Racing Commission would have direct supervision over the hubs and the employees.

Towslee: Joe.

Hasson: Youbet appreciates the commission hearing our amended application and we appreciate the consideration and time that you have put into it. Obviously there's been some serious and significant thought on this issue. I think Youbet would recommend that the board move forward. I think there's a decision in place and we move on to our license renewal, and I think that's our position.

Gilmour: Well, I'd like...

Towslee: Let me understand what you're asking for. You do not want us to act on this request?

Hasson: Yeah, I believe you should act on the request.

Gilmour: That was my question. Given the option however it plays out I think you know where we're coming. To facilitate, the ball's in your court. Do you want to withdraw this or do you want it rejected. That's the choice I think you have. I mean, how does it play for you guys? You're the guys dealing with California. Is that too blunt?

Towslee: I would also encourage you to maybe seek some other solutions here, that maybe this is not a question of either or and neither you nor us have looked for a solution that would address our concerns. As I said before, this is a long way around the barn for what I consider to be a political problem between you and the pari-mutuel union in California.

Champion: Mr. Chairman.

Towslee: Mr. Champion.

Champion: In the interest of many things let me respectfully request that we table this. We will go back and give this considerable thought, allowing you to do the same and see if we can't seek an alternative of sorts for some common ground. Another approach possibly. I think there's been some very good discussion. We appreciate your thoughts and considerations, but I think we will withdraw our request.

Towslee: I don't think we need to table the motion, we can just not take action. Is that okay?

Gilmour: That suits me just fine. I sincerely appreciate that because I hope the feeling at least from us to you is that we want to work with you. We understand the difficulty that you have.

Hasson: We really appreciate the commission and we've had nothing but a very positive working relationship with the staff and for us it has been a very successful business relationship operating in Oregon.

Gilmour: Thank you.

Towslee: Thanks.

Hasson: And we agree with the other two hub operators that Oregon is a great environment.

10. Youbet.com 2002-2003 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

Vice Chair Towslee stated the only thing in the application over which he had any serious concerns was the portion dealing with the operators located in California. Given similar concerns by other members of the commission, Mr. Hasson stated they would remove that section from their application. Steve Barham also reported the background checks had been completed on David Marshall and Charles Champion and they were approved to be licensed.

ACTION: MOTION(Thorne) Approve application submitted by Youbet.com for the fiscal year 2002-2003 to operate a multi-jurisdictional simulcasting and interactive wagering totalizator hub contingent upon removal of operators in California, as cited in the last sentence in Section 5.1.3, page 28. Steve Barham reiterated that portion was being removed per verbal agreement with Youbet.com.

VOTE: 4 Aye, 0 Nay, 1 Excused

11. Americatab, Ltd. 2002-2003 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

To start with an update, Todd Bowker reported that since arriving in Oregon they have created almost 11,000 new accounts, and have done just over \$36 million in handle since they have been in the state, \$17 million of which has been handled during the first four months of 2002. For the first quarter 2,700 new accounts were created and handled \$12.6 million. Mr. Bowker also reported they now have a good year's worth of data from people taking the Safe@Play quiz related to problem gaming and presented highlights of the results to the commission. Of the 402 respondents to the survey, it was determined 45 of them actually showed as a problem gambler or a severe problem gambler, which was about 11% of the people that took the quiz. In discussions with people that produced the quiz they were actually surprised that the numbers were not higher. Regarding the application for license itself, there were no questions from members of the commission as to its content.

ACTION: MOTION(Thorne) Approve application submitted by Americatab, Ltd. for the fiscal year 2002-2003 to operate a multi-jurisdictional simulcasting and interactive wagering totalizator hub.

VOTE: 4 Aye, 0 Nay, 1 Excused

12. Greyhound Channel, LLC, dba US Off-Track Quarterly Report

Ben Hayes handed out to the commission written 2nd and 3rd quarter reports for the 2001-2002 license period. He pointed out that the number of tracks by track type do fluctuate from quarter to quarter depending on which tracks are running during that period of time.

13. Greyhound Channel, LLC, dba US Off-Track, 2002-2003 Application for Multi-Jurisdictional Simulcasting and Interactive Wagering Totalizator Hub License

Ben Hayes stated the application was basically the same as has been presented the last two years. Regarding the source market provision for tracks they do not have under contract, they have reviewed materials for the previous license period with the executive director and they will be distributing two percent of those total wagers to The Jockeys' Guild.

ACTION: MOTION(Gilmour) Approve application submitted by Greyhound Channel, LLC, dba US Off-Track, for the fiscal year 2002-2003 to operate a multi-jurisdictional simulcasting and interactive wagering totalizator hub.

VOTE:

4 Aye, 0 Nay, 1 Excused

14. Proposed Rule on Oregon Share of Pari-Mutuel Handle from The Multi-Jurisdictional Hub Committee

Steve Barham stated the proposed rule has been filed with the Secretary of State's office. There will be a hearing on the proposed rule in Salem at the DAS Building, 155 Cottage Street NE, Room A, at 1:00 p.m. on June 17, 2002. No action needs to be taken at this time.

There being no further business, the meeting was adjourned.