

OREGON RACING COMMISSION

800 NE Oregon Street, Suite 310
Portland, OR 97232
971-673-0207

Special Teleconference Commission Meeting
June 21, 2007

Individuals below are listed in order of speaking:

Jeff Gilmour, Chair, Oregon Racing Commission
Stephen Walters, Representative, MEC Oregon Racing, Inc.
Julianne Davis, Commissioner, Oregon Racing Commission
Todd Thorne, Vice Chair, Oregon Racing Commission
Gordon Tallman, Interim Executive Director, Oregon Racing Commission
Kelly Gabliks, Assistant Attorney General, Oregon Department of Justice

Following is a transcript of the meeting:

Gilmour: The Oregon Racing Commission will come to order. Today is the first day of summer, may be the last. We're here to go into executive session to consider information on records that are exempt by law from the public inspection pursuant to ORS 192.660(2)(f). Now that everybody's in the room we'd like you all to be excused, please.

Walters: Mr. Chair, I am Steve Walters representing MEC Oregon. Would it be possible for me to make a quick statement to the commission before you go into executive session?

Gilmour: Absolutely. I haven't taken a motion from anybody on what we're going to do. So, before we go into executive session the Chair would like to invite Mr. Walters to make an opening statement surrounding this special Racing Commission meeting.

Walters: Thank you, Mr. Chair, members of the commission. Again for the record I am Steve Walters representing MEC Oregon, and obviously from the items on your agenda of this special meeting you're here to consider the first issues relating to the existing rules under which Instant Racing was approved in the past, and then this afternoon to consider the pending race meet application for Portland Meadows, of which Instant Racing is a critical and integral part. We at MEC Oregon understand that are some issues that have been raised regarding Instant Racing and that need to be resolved under normal processes in the next few months, it would be our hope, and we understand that there is a good faith difference of opinion regarding the law. We have our very firm opinion that Instant Racing is legal in Oregon and that certainly violates none of the statutes relating to gambling devices or gray machines or whatever, but that is an issue that will be resolved again in due course in the next few months. On behalf of MEC Oregon what we would like to request the commission

to do in the meantime is basically the first principle of the Hippocratic Oath which is do no harm. We have concerns that I think have been expressed to some members of the commission, I have expressed them to your counsel, regarding consequences of suspension or repeal of the existing rule, and then we can discuss the issues related to the race meet application later on this afternoon. But what we would hope the commission could do is not take action to either suspend or repeal the existing rule. That certainly Portland Meadows, MEC Oregon, would assure the commission that whether or not the rule is on the books we would not engage in Instant Racing, we would take no further actions to implement Instant Racing even though the project is a lot of money and time has been put into installing the Instant Racing. All that would cease, nothing further would happen unless and until there were a favorable outcome of the processes that will need to happen going forward to resolve the legal issue on which there may be different views at that time. So, that is our request is that the commission do no harm, and we believe very firmly that harm could come if took actions to suspend or repeal the rule and then again, we could talk further about the race meet application this afternoon. If there are any questions the commission has I'd be glad to respond to them on behalf of MEC Oregon, otherwise we'll get out of here and let you do your executive session.

Gilmour: I've got a question, and I suppose our counsel will kill me for asking a question. Do you have any particular citing that you could find that would help me fully understand your request for continuation under the existing license but not executing to the full extent of the existing license for us to continue the license until it is resolved?

Walters: I think what we are giving the commission is MEC Oregon's oral assurance, and we can put that in writing if it would help the commission, that unless and until there were a favorable outcome of the processes down road on Instant Racing there will be no implementation, no further implementation of Instant Racing, that Instant Racing will not occur in Oregon from MEC Oregon. I think it is certainly within the licensee's ability and with the consent of the commission to waive an authorization that has been given in the license. So, that would be in the nature of a contractual agreement between MEC Oregon and the commission.

Davis: I also have another question. Mr. Walters, you mentioned that there are some good faith differences of opinion with respect to legal issues that need to be resolved in due course and through the proper channels. Could you outline for me how MEC Oregon will be proceeding to resolve those issues?

Walters: Well, the first step is as we have discussed I got a letter earlier this week from Dale Penn the director of the Lottery Commission. I wrote back and asked him for a meeting between him and his counsel. As I think you know the Lottery Commission is responsible for enforcing prohibitions on gray machines in Oregon, and that is the area of very clear disagreement that we have. I've proposed a meeting with Mr. Penn and his counsel next week. I have received some information, or within the next 10 days, have received some information that that meeting will happen and that

there is general agreement on all sides that an expeditious resolution of this through whatever administrative or judicial process will be sought and that the parties will cooperate to make it happen as soon as possible. I think there is good faith on all sides here in terms of the interpretation and a willingness and a strong desire to resolve them in a very prompt manner in appropriate processes.

Davis: Thank you.

Gilmour: Any other questions?

Thorne: This is Todd. I've got one quick question. In the process by which these issues become resolved, is it our anticipation or, I don't know if this is the right question, but do we envision that the rule as it stands and it's a question we're going to have in executive session, but do we envision that that rule have to be, if we don't repeal it, would it have to be, would different language need to be crafted into that rule? I'm just questioning whether we have to go into rulemaking regardless.

Walters: Is that a question directed to me, Mr. Chair?

Thorne: Yes, it is.

Gilmour: Yes. Let's direct that question to Mr. Walters because part of the reason for executive session is to listen to our counsel with their advice. We're giving you latitude, Mr. Walters.

Walters: I understand that and I appreciate that, Mr. Chair.

Gilmour: I want to be fair about this.

Walters: And I appreciate that, Mr. Chair. Commissioner Thorne, I am not aware of any language in the existing rule that would need to be changed assuming that the legal issue of whether or not Instant Racing terminals, which as you know our position is that they are operationally identical to self-service totalizator machines, but you know again putting that aside, I don't see any language in that rule that would need to be changed if that issue were resolved favorably to MEC Oregon's position. What our request would be is that the commission simply leave the rule alone and with our assurance that would do nothing to implement Instant Racing. Frankly, that assurance is also based on the fact that the letter from the director of the Lottery pointed out, which is something we already knew, that operation of a gray machine as a Class E felony in Oregon. MEC Oregon is very motivated not to run afoul of those prohibitions. To answer your question, I'm not aware of any language change that would be necessary assuming that the gray machine issue is resolved favorably to us.

Thorne: Appreciate it. Thanks.

Gilmour: One last comment I'd like to make. I appreciate, Mr. Walters, your willingness to do a letter to the commission or whoever is interested, I appreciate that very much. It would help me at least make some final judgments on what we're going to do or not going to do if I had some legal precedent of an issue similar to a licensee that the rules changed, that there was some determination made. I'm not trying to lead the witness but, you know, if you would at least make some effort to try to help me with that it would help me.

Walters: Mr. Chair, thank you. Again, I'm not aware of a case that says that, but I do believe that the law regarding the nature of licenses and that there is a contractual aspect to them is pretty clear that a licensee can waive a privilege granted by a license and certainly would be prepared to do that for whatever time was necessary to resolve the underlying legal issue.

Gilmour: Well, thank you very much. I appreciate your quick-on-the-draw on that last deal.

Tallman: One question for Steve Walters.

Gilmour: You are who.

Tallman: Gordon Tallman, interim executive director. Would MEC Oregon be willing to submit an operating plan amendment removing Instant Racing from the current application, the existing application?

Walters: Mr. Chair, Interim Executive Director Tallman, I have not talked the client about that but I would urge them very strongly to do that.

Tallman: Because as you know we do accept operating plan amendments as a matter of normal business and that would at least clarify and follow traditional procedures with regard to current application.

Walters: And Mr. Tallman, I think that that's a constructive suggestion. I think the notion would be that as long as MEC Oregon is operating under the existing license there will be no Instant Racing, and then again that would get into the issue that you have this afternoon about what about the next application.

Tallman: Thank you.

Gilmour: Okaydokey. Thank you.

Walters: Thank you very much.

Gilmour: We're going to go into executive session.

Gilmour: The Oregon Racing Commission at 1:25 p.m. by my phone is coming out of executive session. There was no conclusion reached on any matter in a pro or con fashion. We're back in public meeting. I'd like to announce during this public meeting that the commission has decided to defer the rulemaking. I'd like also to announce that at this time we are also deferring the 07-08 application for Portland Meadows. Anything further?

Gabliks: Mr. Chair, when do you anticipate...

Gilmour: Who is speaking?

Gabliks: Oh, this is Kelly Gabliks, counsel for ORC. Mr. Chair, when will you then anticipate the need for another commission meeting in the near future?

Gilmour: Yes, I am. I am anticipating that we will be back in this same facility on the 28th of June at 11:00 a.m. with primarily the same agenda or additions to. That agenda will be made public at a time certain prior to that meeting. Is there anything else by any commissioners? Gordon?

Tallman: Nothing further for me.

Gilmour: Then we stand adjourned.

Gabliks: Time?

Gilmour: Time, we're still on the tape and I've got five missed calls, is 1:27 p.m.