

MEETING MINUTES

OREGON RACING COMMISSION

April 17, 2008

The Oregon Racing Commission met on Thursday, April 17, 2008 at 1:30 p.m. in Room 1A of the Portland State Office Building located at 800 NE Oregon Street, Portland, Oregon. Commissioners in attendance were Chair Kerry Johnson; Michael Huber, DVM; Charles Williamson; and, via telephone, Chris Dudley. Vice Chair Stan Robson was excused.

Agenda items were discussed in the following order with resulting actions:

1. Approval of Agenda

Chair Johnson removed item number three, The Racing Channel, Inc, Hub Application, from the agenda; moved item number eight, Hub Advisory Subcommittee Report, to Old Business; and moved item number nine, Action on Final Order by Default for Nathan J. Chaves, to Contested Cases.

2. March 20, 2008 Meeting Minutes

ACTION: MOTION (Williamson) Approve minutes as submitted.

VOTE: 4 Aye, 0 Nay, 1 Excused

3. Hub Advisory Subcommittee Report

Commissioner Williamson explained that the committee held their first meeting and was working on drafting some rules. He stated that there were concerns about computer robotic wagering and the idea that even after a person left their computer for the day, the computer would continue to make wagers. Also, there were concerns about rebates and its potential to have an adverse effect on racing overall. He added that both of those issues were continuing to be researched and that the committee would meet again next month.

⇒ Executive Director Randy Evers explained that he planned to work with Gordon Tallman, Supervisor of Account Wagering Hubs, to set up a subcommittee meeting that would include representation from the ADW's. He added that there were very differing opinions on these topics and that once they were flushed out, they would bring something to the commission in the form of administrative rules. He estimated that the public hearing would be held in August and that the rules would be adopted before the next Portland Meadows race meet which would, hopefully, begin in mid-October.

4. Proposed Order for MEC Oregon Racing, Inc. dba Portland Meadows

The following is a transcript of this agenda item:

Walters: Good afternoon, Chair Johnson, members of the commission, my name is Steve Walters and I'm counsel for MEC Oregon Racing, Inc. I don't

Walters: know if you need to check your watches because I don't plan to take the whole

ten minutes. I appreciate the opportunity to address you and I was also very grateful for the opportunity last week to meet with Commissioner Williamson and Vice Chair Robson, who was on the phone, accompanied by their lawyer to discuss some questions and issues they had about the contested case proceeding. The ground rules we were operating under were that we were not going to discuss the merits of the issue because that would be an ex parley contact. That was a good and helpful meeting I think for all of us. It certainly was made clear to me, and I have communicated again to my client, that the commissioners are fully supportive of Instant Racing provided the legal issues are resolved in a way that shows that is it consistent with Oregon law, which is exactly what Administrative Law Judge Teppola ruled.

As I'm sure you have been advised and that you know that you have, basically, two options with respect to her order. One is to adopt it which we obviously think is the proper course. The other is to consider reversing it in whole and in part. In order to do that, you have to adopt an amended proposed order, give us the ability to comment on the amended proposed order and then take action. As I have said when I've appeared before the commission before, we do believe very strongly that Judge Teppola's order is correct both on the facts that she found, based on the hearing that she held, and her analysis of the law. I will repeat myself one more time and observe that Judge Teppola's order is the first time that a neutral decision maker, a decision maker required by law to be impartial and fair to both sides, has heard the evidence and heard the legal arguments that have been bouncing around for some time now. And, that she emphatically concluded, just as this commission concluded in 2003 and 2006, that Instant Racing is a form of pari-mutuel wagering and that it is legal under current Oregon law and under the constitution as well. We believe that her findings and her conclusions of law should bear great weight with the commission.

Whatever the commission does with respect to this proposed order, I also need to emphasize, as I did last week, I need to emphasize again, prompt action is critical. We had hoped to have this process farther along than it is by this time for a variety of reasons that I won't rehash. We are here today with a proposed order by the ALJ, but no action. As you know, the current license for Portland Meadows expires at the end of September. If we're going to the Court of Appeals, I think it is unlikely, no matter how fast that process moves along, we're not likely to have a decision out of the Court of Appeals by then. So, that fate brings up tremendous issues about what happens with the future race meet: Can Magna, as an operator, commit to going ahead with more live racing in the absence of Instant Racing? Whatever you do, we respectfully request that you do it promptly and that we move this process forward. Of course, once again, the result that we think is fair and just and a correct interpretation of what Instant Racing is and what the law says is reflected in the order you have before you. Thank you.

Johnson: Thank you.

Walters: Any questions?

Williamson: Question for you to think about maybe. I don't believe the commission's going to adopt Judge Teppola's order because of the legal concerns and because we want to get a decision from the Court of Appeals saying that it's legal. I think the commission wants a decision from the Court of Appeals saying it's legal, but to get that, we have to say that it's not legal. The only concern I have about that is: Are we going to then be entitled to some sort of deference from the court as to

Williamson: our interpretation of this as being not legal? And, is there something we can put into the order - that you would suggest that we put into the order, so that the commission's decision isn't deferred to by the Court of Appeals? Say well, if that's the way the Racing Commission feels about it then that's what it is.

Walters: Chair Johnson, Commissioner Williamson, you're last suggestion is one that I will have to think about. I certainly have thought long and hard about the issue of what sort of deference would be due to a racing commission interpretation of statutes and laws. That was one of the concerns we had, quite frankly, with a declaratory ruling procedure. We think that the standard of review is better for us if you were on a contested case proceeding for a variety of reasons that we don't need to discuss now.

I would, however, go back to your first observation about: you have to hold it's illegal before you can get a determination as to which it is legal. As you know, Commissioner Williamson, as well or better than I do, in this contested case proceeding, the members of this commission are sitting as judges, not as policy makers, not as trying to decide what's the sort of procedure we would like to happen. I would urge you in your capacity as judges not to let extraneous considerations about what's the ultimate effect of all this to enter into your decision. Again, I respectfully suggest that your decision is: Did Judge Teppola get it right on the facts? And, we think that if you study her factual findings, the only conclusion you can come to is that yes, she got it right, certainly on the facts as to what Instant Racing is and what it does and that it is indistinguishable from other forms of pari-mutuel wagering. And, second, did she get it right on the law? Again, she had 100 pages of briefing on these legal issues. She considered those issues very carefully. Both sides had the chance to argue those issues to her and, again, she rejected the interpretation that I expect you've been getting from the Attorney General's office for some time. We would ask that you perform your role as judges, look at the facts and look at the law and let the chips fall where they may.

Johnson: Okay.

Williamson: Thank you.

Johson: Thank you very much, Mr. Walters

Walters: Thank you very much.

End Transcript.

5. Proposed Order for Roger M. Stevenson

Dick Cartney, Executive Director, OHBPA, and Roger Stevenson were present to provide additional information regarding this case, as follows:

The proposed order subjects Mr. Stevenson to disciplinary action for something that he didn't do. The evidence showed that Mr. Stevenson had no motive to give his horse, Mystic Wood, any type of illegal medication; especially a medication that didn't benefit the horse. The most plausible explanation was that someone else administered the drug to the horse, but because that person was not found, Mr. Stevenson was held responsible as the trainer, pursuant to the administrative rules, and subject to disciplinary action.

Because Mr. Stevenson already lost the \$3,600 winning share of the purse that his horse had earned in the race, they respectfully requested that the commission reduce or waive the \$500.00 fine and the 30 day suspension proposed in the order.

At this time, the commission entered into executive session and upon their return stated that they took no action in executive session.

4. Action on Proposed Order for MEC Oregon Racing, Inc. dba Portland Meadows

The following is a transcript of the action taken on this agenda item:

Williamson: Madam Chair, I have two motions. First, we just need to correct some minor things in the amended proposed order. I'd like to move to amend the amended proposed order by moving footnote four from page four to, excuse me, from page five to page seven; on page 10, inserting "18" instead of "17" after "Finding of Fact No. 17" on the second line of paragraph 13. And then, on page 12, inserting the word, on the third full paragraph on that page, inserting the word "to" in the first line of that before the word "maintain": "to assist a well-regulated racing industry to maintain its economic viability." And then, in the second to last line of that paragraph, inserting a period after the word "Licensee" and before the word, "As this order." I believe that's all the corrections we need to make.

Huber: Second.

Johnson: Thank you. All in favor? Aye.

Williamson: Aye.

Huber: Aye.

Dudley: Aye.

Johnson: All opposed? Thank you. Commissioner-

Williamson: Madam Chair?

Johnson: Yes.

Williamson: We've had some serious problems with this issue in that the State of Oregon really cannot have different legal advice and rules and rulings and binding different agencies so that the Attorney General can't be advising the State Police, the State Lottery, or our commission in having us adopt different interpretations of the law where something we do would be in violation of what the Lottery allows or what the State Police would allow. So, I believe we need to deny or not adopt Judge Teppola's order and adopt the amended proposed order with the understanding that we're not trying to get the Court of Appeals to give us any deference with respect to our interpretation of the law on this area. We just want a straight ruling on whether it's legal to have these Thoroughbred Mania Instant Racing machines. So, with that I would move that we adopt the amended proposed order as we just amended it.

Johnson: So, your motion is, Commissioner Williamson, to adopt the final amended proposed order.

Williamson: As amended, yes.

Huber: I'll second that motion.

Johnson: Thank you, Commissioner Huber. We'll do a roll call vote. Commissioner Williamson?

Williamson: Aye.

Johnson: Commissioner Huber?

Huber: Aye.

Johnson: Commissioner Dudley?

Dudley: Aye.

Johnson: Chair votes aye. Motion carries. Thank you.

End Transcript.

ACTION: MOTION (Williamson) Adopt the amended proposed order with the stated corrections.
VOTE: 4 Aye, 0 Nay, 1 Excused

5. Action on Proposed Order for Roger M. Stevenson

ACTION: MOTION (Williamson) Amend the Proposed Order by Deleting the 30 Day Suspension and Adopt the Amended Proposed Order as the Final Order.
VOTE: 4 Aye, 0 Nay, 1 Excused

6. Action on Final Order by Default for Nathan J. Chavez

ACTION: MOTION (Huber) Adopt the Final Order by Default.
VOTE: 3 Aye, 0 Nay, 1 Excused, 1 Recused

7. Confirmation of Next Commission Meeting – May 15, 2008

All commissioners present indicated that they would be present at the next meeting.

8. Direct Staff to Review Administrative Rules (Rules of Racing, All Divisions)

ACTION: MOTION (Huber) Staff to Begin the Rule Making Process on Rules of Racing, All Divisions.
VOTE: 4 Aye, 0 Nay, 1 Excused

9. Public Comment

None.

There being no further business, the meeting was adjourned.