

NEW JERSEY RACING COMMISSION
WEDNESDAY, AUGUST 15, 2012
Library Room - Monmouth Park
Oceanport, New Jersey

A meeting of the New Jersey Racing Commission was held on Wednesday, August 15, 2012, in the Library Room of Monmouth Park, located in Oceanport, New Jersey.

The following were present:

Anthony T. Abbatiello, Commissioner
Manny E. Aponte, Commissioner (by phone)
Pamela J. Clyne, Commissioner
Peter J. Cofrancesco, III, Commissioner
Francis X. Keegan, Jr., Commissioner
Frank Zanzuccki, Executive Director
DAG Judith A. Nason

The following were absent:

Anthony R. Caputo, Commissioner

Executive Director Frank Zanzuccki read the following statement:

“This meeting today conforms with Chapter 231, P.L. 1975, called the “Open Public Meeting Law,” and as per the requirements of the statute, notification of this meeting has been filed with the Secretary of State and with the following newspapers: Daily Racing Form, Bergen Record, Asbury Park Press, Courier-Post and the Newark Star Ledger.

WHEREAS in order to protect the personal privacy and to avoid situations wherein the public interest might be disserved, the Open Public Meetings Act permits bodies to exclude the public from that portion of a meeting at which certain matters are discussed.

NOW, THEREFORE, be it resolved that consistent with the provision of N.J.S.A. 10:4-12(b), the New Jersey Racing Commission will now adjourn to executive session to obtain legal advice protected from disclosure by the attorney-client privilege on the following matters:

1. Legal advice concerning ACRA Turf Club, LLC, et al. V. Francesco Zanzuccki;
2. Legal advice concerning the matter of Nicholas Sodano, Sr. v. New Jersey Racing Commission; OAL Docket No. RAC 02161-2012S;
3. Legal advice concerning the matter of Nicholas Sodano, Jr. v. New Jersey Racing Commission; OAL Docket No. RAC 02162-2012S;
4. Legal advice concerning the reconsideration of the distribution of Casino Simulcasting Special Funds accumulated in 2005 and 2006 pursuant to N.J.S.A. 5:12-205d.;
5. Legal advice concerning the request of the Standardbred Breeders' and Owners Association to amend its 2012 budget;
6. Legal advice concerning the adoption of the proposed new rules establishing and regulating a pilot program authorizing wagering on horse racing through electronic wagering terminals located in a limited number of eligible taverns, restaurants and similar venues; N.J.A.C. 13:74B;
7. Legal advice regarding the investigation concerning the Thoroughbred Breeders' Association's allegation that Monmouth Park was in violation of N.J.S.A. 5:5-49.

Discussion of the above matters fall within the exceptions under the law; specifically matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the Commission's attorney to exercise her ethical duties as a lawyer."

Commissioner Cofrancesco then motioned to adopt the resolution to adjourn. Commissioner Abbatiello seconded the motion and the Commission adjourned to Executive Session.

The Commission ended the executive session and Commissioner Abbatiello motioned to return to public session. Commissioner Keegan seconded the motion and the public session resumed.

Executive Director Zanzuccki introduced Pamela Clyne as a new Racing Commissioner.

CONSIDER APPROVAL OF THE MINUTES OF THE PUBLIC AND EXECUTIVE SESSIONS OF THE JUNE 20, 2012 COMMISSION MEETING

Commissioner Abbatiello made a motion to approve the public and executive session minutes of the June 20, 2012 public meeting. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE BILLS

Commissioner Cofrancesco made a motion to table the agenda item concerning the bills until a better explanation of the bills can be presented to the Commission. Commissioner Keegan seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF DEPARTMENT HEADS, OFFICIALS MUTUEL POOLS, POST-TIME, ETC. FOR THE FREEHOLD RACEWAY 2012 FALL MEETING

Commissioner Abbatiello motioned to approve Freehold Raceway's 2012 fall race meeting. Commissioner Keegan seconded the motion and all Commissioners voted yes. Howard Bruno, General Manager of Freehold Raceway stated there were no changes in the race format from the prior meeting.

CONSIDER RATIFICATION OF THE APPROVAL GRANTED CONCERNING THE FOLLOWING HANDICAPPING CONTESTS;

- a) Monmouth Park Handicapping Contest held on July 7, 2012
- b) Monmouth Park Handicapping Contest held on July 21, 2012

Commissioner Cofrancesco motioned to approve the noted handicapping contests. Commissioner Abbatiello inquired as to why the Commission is considering the approval of the handicapping contests subsequent to the events taking place. The Executive Director stated that racetracks require approval for the contests prior to the event in order to advertise the contests, and based upon the Commission's meeting schedule, the requests on occasion appear after the contests have taken place. Commissioner Keegan seconded the motion and all Commissioners voted yes.

RECONSIDER DISTRIBUTION OF THE 2005 AND 2006 CASINO SIMULCASTING SPECIAL FUND

The Executive Director stated that staff, based upon advice of counsel, is recommending that this matter be tabled until the next Commission meeting, and is also recommending that a committee of Commissioners be appointed to thoroughly review all of the materials submitted by the parties. The committee will be prepared at the next meeting to discuss the issues in public session with all the Commissioners. Commissioners Cofrancesco and Keegan indicated that they will serve on the committee.

The Executive Director recommended that a motion be made to table the agenda item and appoint a committee comprised of Commissioners Cofrancesco and Keegan for the purposes of indicated above.

Commissioner Abbatiello made a motion to approve the draft motion as stated by the Executive Director. Commissioner Clyne seconded the motion and all Commissioners voted yes.

CONSIDER THE REQUEST OF THE STANDARDBRED BREEDERS' AND OWNERS' ASSOCIATION TO AMEND ITS 2012 BUDGET

At this time, Executive Director Zanzuccki recused himself and took a seat in the audience.

Deputy Director Michael Vukceovich stated the Commission has previously approved the SBOA's 2012 budget and as background to this request, Racing Commission rule 13:71-1.25 requires that the SBOA use statutory funds as follows: at least 70 percent for horsemen benevolency programs and no more than 30 percent for administrative costs. The Deputy Director stated that where these percentages are not met, Commission approval is required in advance.

The Deputy Director explained that on July 23, 2012, the SBOA requested to revise their 2012 budget in order to reclassify \$60,000 of benevolency money from contributions to the health and welfare plan to professional legal costs. He indicated that this morning, however, the SBOA amended their request to adjust the 30 percent/70

percent split required by the statutory allocation rule, to allow for an additional ten percent for anticipated legal fees to come from administrative expenses in 2012 and 2013. The Deputy Director stated that if approved by the Commission, there would be less than 70 percent allocation of SBOA

statutory funds for benevolency funding and more than 30 percent for administrative costs. The Deputy Director then called upon the SBOA to explain and justify the request and as

part of the explanation, asked: 1) is the additional ten percent more or less than the \$60,000 originally requested; 2) is the request for that amount for 2012 only or also for the 2013 budget; and 3) if all of this money is not used for legal costs, what will the money be used for?

Thomas Luchento, President of the SBOA, addressed the Commission. He explained that the SBOA is asking for the use of the money for the 2012 and 2013 budgets. The difference between the \$60,000 for the two years would total approximately \$100,000. He stated that the money will only be used if necessary and would be utilized as needed with the amount remaining in the 70/30 allocation. Mr. Luchento indicated that the SBOA's intent is to defend their rights in establishing off-track wagering facilities and it believes that the health, welfare and pension funds are stable and the use of the \$100,000 would not put a burden on the funds.

Deputy Director Vukcevic inquired if the SBOA was asking for \$100,000 for two years. Mr. Luchento replied the SBOA is asking for ten percent, if needed, for 2012 and up to ten percent from the 2013 budget. The Deputy Director asked Mr. Luchento if the money is not used, it would not then be returned to benevolency and would remain allocated to administrative costs. Mr. Luchento replied the unused money would remain in benevolency.

Commissioner Aponte asked Mr. Luchento to explain what he meant when he indicated the health, welfare and pension funds are well funded. Mr. Luchento asked Leo McNamara to respond and he indicated that the pension fund is 100 percent funded and is not a defined benefit plan and the money contained in the fund is allocated to the participants. Mr. McNamara stated that the health and welfare fund is a self-funded insurance plan whereby the SBOA pays all dental and prescription claims and there are significant reserves of approximately 2.5 million dollars that is available to pay large claims. Mr. Luchento stated that the SBOA purchased re-insurance to protect the organization against a single large claim, and in the event several people had significant illnesses, the SBOA would be responsible for the expenses up to \$75,000. Commissioner Aponte asked Mr. McNamara what would the \$60,000 be used for if it was not utilized

for legal expenses. He stated that during the year adjustments are made to insure that the 30/70 percent statutory allocation benchmarks are met and on occasion there are overpayments or underpayments which need to be adjusted. For example, if there was a \$60,000 expense for litigation, there would be a reduction in the benevolence fund because the administrative fund is near depletion due to the operation of the business.

The Deputy Director asked the SBOA to clarify that the money being requested has been amended from \$60,000 to \$100,000. Mr. McNamara responded that is correct and since there are five months remaining in the year, it is highly unlikely that the entire \$100,000 would be utilized in 2012, however, he believes \$100,000 could be expended in 2013. The Deputy Director asked if the SBOA is requesting \$200,000–\$100,000 for years 2012 and 2013. Mr. Luchento responded that the SBOA is requesting ten percent of the 70 percent statutory money for each year. The Commission staff indicated a concern that the SBOA request listed on the meeting agenda is only to amend the 2012 budget and not its 2013 budget. The Deputy Director pointed out that the Commission has not yet considered the SBOA's 2013 budget. Mr. Luchento rescinded the SBOA's request for the use of benevolence money in 2013 and indicated he will appear before the Commission at a later date to amend the 2013 budget.

The Deputy Director clarified for the record that the request is for the Commission to adjust the 70/30 percent breakdown under the rule to allow ten percent of the budget to be allocated to legal costs under administration for the 2012 budget.

Commissioner Cofrancesco made a motion to approve the request. Commissioner Keegan seconded the motion. All Commissioners voted yes with the exception of Commissioner Aponte who voted no.

(ON SEPTEMBER 11, 2012, THE RACING COMMISSION'S ACTION TAKEN ON THIS AGENDA ITEM WAS VETOED BY GOVERNOR CHRIS CHRISTIE.)

CONSIDER THE ADOPTION OF THE PROPOSED NEW RULES ESTABLISHING AND REGULATING A PILOT PROGRAM AUTHORIZING WAGERING ON HORSE RACING THROUGH ELECTRONIC WAGERING TERMINALS LOCATED IN A LIMITED NUMBER OF ELIGIBLE TAVERNS, RESTAURANTS AND SIMILAR VENUES; N.J.A.C. 13:74B

The Executive Director indicated that the rule proposal was advertised in the New Jersey Register for the purpose of receiving written comment. He read the following "Summary of Comments and Agency Response" into the record:

Donald F. Weinbaum, Executive Director of The Council on Compulsive Gambling of New Jersey, Inc. ("Council"), 3635 Quakerbridge Road, Suite 7, Hamilton, N.J. 08619, submitted a written comment, dated August 1, 2012.

The comment set forth the Council's concerns regarding three areas: underage patrons, self-exclusion by problem gamblers and the posting of helpline numbers and awareness messages. The Council indicates its agreement with the Commission's statement

in the Social Impact section that with the expansion of legalized gaming, a potential exists for negative social implications. The Council stated its belief that many of these implications can be mitigated through the broad regulatory authority granted to the Commission in P.L. 2011, c. 228.

Citing proposed rules N.J.A.C. 13:74-2.4(d), 2.4(h) and 3.2, which require the exclusion of persons under the age of 18 from wagering areas, safeguards to prevent underage persons from wagering and the reporting of violations to the Commission annually at the time of license renewal, the Council indicates its preference that violations be reported as they occur to allow for timely investigation and appropriate remedies. The Council states its concern about the practical and logistical implications of the differing age requirements for wagering on horse racing (18) and for consuming alcohol (21) which, it believes, will complicate security and enforcement for bars and taverns that choose to set up wagering terminals. Pointing out that the proposed rules are silent on whether alcohol will be allowed within the wagering area, the Council urges that alcohol use and the service of alcohol not be allowed within the wagering area in order to reduce the risk of persons under the age of 21 being served alcohol. The Council also points out that the proposed rules are silent on whether a history of alcohol-related violations will affect the issuance of an initial or renewal license by the Commission. The Council strongly recommends that this be considered, noting that "[o]ur experience has been that underage and early on-set gambling and drinking increase the risk that vulnerable persons will develop addictions in adulthood."

Regarding problem gambling and responsible gaming, the Council first points out its concern that the proposed rules do not specifically address problem gambling awareness or the responsibility of operators to post signage with the 1-800-GAMBLER helpline number and include this number in all forms of advertising. The Council notes that the proposed rules do not include an explicit requirement for operators to exclude problem gamblers who have signed up for the Commission's self-exclusion list. Citing the variety of wagering methods in

the proposed rules, the automated nature of the terminals and the absence of a pre-screening mechanism, the Council indicates that these provisions all increase the likelihood that self-excluded persons might seek to place bets. The Council recommends that the Commission's existing rules that require the posting of information about the self-exclusion program be made applicable to the newly licensed venues in the Pilot Program and that violations be subject to the same penalties and reporting requirements that are applicable to other venues.

The Council points out that proposed rules N.J.A.C. 13:74B-1.2(f) and 2.1(d), which incorporate the Commission's rules governing Horse Racing, Harness Racing and Off-Track

and Account Wagering by reference, include embedded references to the existing self-exclusion rules codified at N.J.A.C. 13:74A. The Council indicates that these references may resolve some of the concerns it has raised and asks the Commission to confirm and clarify whether the Pilot Program is subject to all of the existing self-exclusion requirements. Noting "the unique nature of the pilot program," the Council asserts that amended or additional language also may be warranted.

Finally, the Council states that it raised a number of these concerns during the Assembly and Senate committee hearings and was advised that the committee members were sensitive to these issues and that "[i]t was their hope that the bill language was sufficiently broad as to permit the Racing Commission to address such issues in rulemaking."

The Commission rejects the comments related to underage drinking and accepts the comments related to problem gambling, responsible gaming and the requirements of New Jersey's Self-Exclusion law. The regulation and investigation of underage drinking do not lie within the Commission's authority. The Division of Alcoholic Beverage Control ("ABC") within the Department of Law and Public Safety is the unit of State Government that is charged with regulating the commerce of alcoholic beverages within the State of New Jersey. ABC is required to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to fulfill the public policy and legislative purpose of the New Jersey Alcoholic Beverage Control law. Investigations of violations of the ABC law are conducted by the Alcoholic Beverage Control Investigations Bureau. The Commission notes that the practical and logistical implications of the differing age requirements for wagering on horse racing (18) and for consuming alcohol (21) are not limited to the Pilot Program as these

implications presently exist at racetracks and off-track wagering facilities which also serve alcohol.

The Commission accepts the comments related to problem gambling, responsible gaming and the requirements of New Jersey's Self-Exclusion law. The Council correctly points out that the Commission's rules in N.J.A.C. 13:74 require off-track wagering facilities to comply with all aspects of New Jersey's Self-Exclusion law. Specifically, N.J.A.C. 13:74-12.1, titled "'Self-exclusion list' rules incorporated herein by reference", mandates that all of the Commission's self-exclusion "rules in N.J.A.C. 13:74A are applicable to this chapter and are incorporated herein by reference."

P.L. 2011, c. 228, which establishes the Pilot Program, supplemented the Off-Track and Account Wagering Act by allowing this new form of off-track wagering at a limited

number of taverns, restaurants and similar venues in certain designated areas of the State through the use of electronic wagering terminals. As noted by the Council, proposed rule N.J.A.C. 13:74B-1.2(f) mandates that "N.J.A.C. 13:70, 13:71, and 13:74 shall be applicable to all persons licensed by the Commission and every patron who places a parimutuel wager pursuant to the pilot program." As a result, the self-exclusion rules have been incorporated by reference and they are fully-applicable to the Pilot Program.

Jean Public, New Jersey, submitted a written comment, dated June 7, 2012.

The Racing Commission received an e-mail from a member of the public identifying herself as "Jean Public". The comment is largely devoted to a dissatisfaction with horse racing generally. The commentator states her belief that "horse racing is a vile, stupid activity for druggies and dopies" and that the social impact is negative, not beneficial, when horses are abused and dying in increasing numbers. According to the commentator, "the backstretch alleged 'benevolence' left out the horses' welfare" and the security guards need to protect the horses from drugging. The commentator argues that most of the jobs generated are held by illegal immigrants and questions the benefit of horse breeding "when horses are being sent to the slaughterhouse to die ugly deaths." Regarding the Pilot Program, the commentator asks why an applicant has to pay for a horse race. The commentator states that "the NY system of this type of wagering has been a huge bust and loss for the taxpayers." The commentator

asserts that taxpayers do not want this Program and that the Pilot Program needs to provide for the horses' benefit.

The Racing Commission does not accept the comment, which in large part voices objection to horse racing generally and provides little or no support or opposition to the rule. The commentator misunderstands the proposed rules. The rules require an applicant seeking licensure to pay a license fee and not, as the commentator suggests, to pay for a horse race. Contrary to the commentator's statement, New York has not and does not allow the type of wagering authorized by the Pilot Program. The commentator's assertion that this type of wagering "has been a huge bust and loss for the taxpayers" in New York is factually unsupported.

Commissioner Keegan made a motion to adopt the proposed rules. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER THE MATTER OF NICHOLAS SODANO, SR. V. NEW JERSEY RACING COMMISSION; OAL DOCKET NO. RAC 02161-2012S;
AND THE MATTER OF NICHOLAS SODANO, JR. V. NEW JERSEY RACING COMMISSION; OAL DOCKET NO. RAC 02162-2012S

Commissioner Cofrancesco motioned to impose the original penalties issued Nicholas Sodano, Jr. and Nicholas Sodano, Sr. by the Board of Judges as contained in Rulings 12MDH1 and 12MDH2, and to refer the matters to the State Steward to determine whether the abandonment of their contested cases are deemed frivolous appeals. Commissioner Abbatiello seconded the motion and all Commissioners voted yes.

CONSIDER APPROVAL OF THE NEW JERSEY RACING COMMISSION PROGRAM BUDGET FOR FISCAL YEAR 2013

The Commission's staff recommended that the agenda item be tabled to allow for additional review and that the budget be considered at the September 2012 public meeting.

Commissioner Abbatiello motioned to table the item. Commissioner Cofrancesco seconded the motion and all Commissioners voted to table the agenda item.

OTHER DISCUSSION

Commissioner Abbatiello inquired as to whether the permit holders have submitted the required progress report demonstrating the progress toward establishing their share of the off-track wagering facilities consistent with the requirements of the law. It was noted that at the June 20, 2012 Commission meeting, the permit holders were requested to submit monthly reports to the Executive Director detailing the progress of off-track wagering facilities with the first report due within 60 days, and thereafter on a monthly basis. The Executive Director indicated that as of this date, no parties have supplied a status report to the Commission. The permit holders were reminded that progress reports are due on August 20, 2012.

There being no further discussion or comments from the public, Commissioner Abbatiello moved that the meeting be adjourned. Commissioner Cofrancesco seconded the motion and it was approved unanimously.

ATTEST:

Frank Zanzuccki, Executive Director