

LOUISIANA STATE RACING COMMISSION
MINUTES – October 21, 2014 Meeting
As transcribed by Janita L. Anderson, Certified Court Reporter

COMMISSIONERS IN ATTENDANCE

Bob F. Wright, *Chairman*
R. Hamilton "Hammy" Davis
Kevin S. Delahoussaye
Benjamin J. Guilbeau, Jr.
Richard M. "Dick" Hollier, Jr.
Mike R. McHalfey
Kenneth "Kenu" Romero
Delia A. Taylor
Luke Turner
Judy W. Wagner

ABSENT

Keith W. Babb
Thomas H. Grimstad, M.D.
Dion Young, *Second Vice Chairman*

The meeting of the Louisiana State Racing Commission was called to order by the Chairman on Tuesday, October 21, 2014 at 10:09 AM in the Conference Room of the Louisiana State Racing Commission, 320 N. Carrollton Ave., Suite 2-B, New Orleans, Louisiana. Roll call was taken; a quorum was present.

Mr. Wright informs the purpose of this meeting is to decide by what right, if any, the Fair Grounds has to withhold certain funds from purses for their upcoming 2014-2015 thoroughbred meet. He informs the matter is part of a lawsuit by the Louisiana Quarter Horse Association that is currently pending in court. Mr. Wright states that since the matter involves both legal and factual issues, the legal decisions should be made by the courts. He informs today's hearing will allow all parties involved to express their views to why these funds should or should not be withheld from purses for the upcoming 2014-2015 Fair Grounds thoroughbred meet.

Mr. Wright turns over the meeting to Mr. Guilbeau, Chairman of the Legal Committee.

Mr. Guilbeau welcomes Mr. Mike R. McHalfey (4th District) and Mrs. Delia A. Taylor (6th District) as the newest members of the Commission. Mr. Wright thanks them for serving on the Commission and that he looks forward to working with them.

I. ASSOCIATION REQUESTS

A. CHURCHILL DOWNS LOUISIANA HORSERACING COMPANY, LLC
d/b/a FAIR GROUNDS RACE COURSE & SLOTS

1. **Rule to Show Cause by What Authority approximately \$2,684,964 is being withheld from purses at the Fair Grounds 2014 /2015 Thoroughbred Meet approved by the LSRC at a April 29, 2014 Commission Meeting.**

Mr. H. Withers, General Manager of Racing at the Fair Grounds, apologizes that Mr. Tim Bryant, President of the Fair Grounds, was not able to make today's meeting due to a prior commitment. Mr. Withers states Fair Grounds received and understood the notice requesting today's appearance. He informs Mr. David Waguespack, attorney representing Fair Grounds, is authorized to speak in front of the Commission regarding the matter.

Mr. Waguespack states he received the meeting notice on Thursday of last week, while he was out of town for a family wedding. He informs he had limited time to assess the matter. He states he is restricted by the bounds of attorney client privilege but will do his best to answer the initial and follow-up questions the Commission may have.

Mr. Guilbeau states the Commission is specifically looking at the matter of the reduction of \$2.6 million in purses and not the merits of the pending lawsuit. He asks Mr. Waguespack if the Fair Grounds has officially announced \$2.6 million plus as a figure and whether the purse structure will be reduced for the 2014-2015 thoroughbred meet. Mr. Waguespack informs that Churchill does not want to hold back this money. He says Churchill wants to pay the money to the proper group since it appears there are competing claims from two different groups for the same purse monies. He informs a group of Quarter horsemen filed a class action lawsuit claiming they are entitled to the funds, however, the HBPA and Thoroughbred owners are claiming the money should be paid out throughout the thoroughbred meet. He states there is no issue regarding the Fair Grounds keeping the funds. Mr. Waguespack informs that normally the money would be put in a registry of the court through a concursus proceeding or interpleading proceeding. He informs it was indicated during the August 25, 2014 commission meeting that this would potentially happen if the matter was not resolved. He informs Fair Grounds worked hard to get all parties together to resolve the matter but it did not work out. He informs on July 2, 2014 a letter was sent out to the Commission outlining the two critical issues raised by the lawsuit. The first issue being the statutory matter whether the money goes to the quarter horse or thoroughbred race meet. The second issue being whether a group of horsemen purportedly representing the Quarter horsemen through a class action lawsuit has standing to file this lawsuit. He states it is very dangerous to allow that type of lawsuit to go forward and undermine the role and authority of the HBPA. He informs there have been exceptions filed before the court set for November 21, 2014, which could dispose of the lawsuit. He states Fair Grounds hopes that the money is not put in the registry of the court. Mr. Waguespack states the Fair Grounds will put the money into the appropriate meet if the Commission directs them through their interpretation of the statute.

Mr. Guilbeau informs the Commission is focusing on the decision made by the Fair Grounds to withhold the video poker money earned from the 2013-2014 thoroughbred meet from the upcoming 2014-2015 thoroughbred meet. He informs that on August 25, 2014, Mr. Bryant stood before the Commission and said, "The Fair Grounds will not be able to use these funds for purses, and we'll have to place the funds in the registry of the court or otherwise hold the funds until the court tells us what to do with it." Mr. Guilbeau states the question is not who the court is going to side with but what authority does Fair Grounds have, regardless of the merits of the lawsuit, to take this \$2.6 million and hold it and not fund the purses for the upcoming meet.

Mr. Waguespack informs if Fair Grounds is forced to institute a concursus proceeding that would be justification, which allows a party with conflicting claims to put the money in the registry of the court to relieve itself of liability as to those conflicting claims. He says Fair Grounds is stuck with conflicting claims and a difficult regulatory issue.

Mr. Guilbeau asks Mr. Waguespack if the plaintiff sought protection from the court to ask for the money to be put into the court registry. He replies no, the plaintiff is demanding the money. Mr. Guilbeau asks if he sought protection from the court to put money in the registry. Mr. Waguespack responds not yet since it would complicate the case once doing so. He informs both Fair Grounds and HBPA filed exceptions. Mr. Waguespack states there are preliminary issues, one of which is that this Commission ought to be deciding this issue, not some court.

Mr. Guilbeau asks Mr. Waguespack if the money is currently in an account. Mr. Waguespack responds the money is in an interest bearing account. Mr. Guilbeau asks if this matter is solved in the near future, would the Fair Grounds pay out the money plus interest. Mr. Waguespack responds it has been discussed and the money plus interest would be paid out to the winners if it was determined to be paid out to the thoroughbred owners. Mr. Guilbeau asks if he is anticipating a retroactive payout. Mr. Waguespack states that is one way to do it. However, he informs if the money is in the registry of the court then it would make the logistics more difficult. He says there are issues when placing money in the registry of the court, such as complicating regulatory matters, but it would relieve the Fair Grounds from liability.

Mr. Guilbeau asks Mr. Waguespack if the money can be kept in a fund until after the end of the 2014-2015 thoroughbred meet. Mr. Waguespack states there are litigation issues intersecting with regulatory issues. He informs Fair Grounds is seeking direction from the Racing Commission as how to handle it.

Mr. Guilbeau states most companies typically do not hold out funds because there is a lawsuit. He asks Mr. Waguespack if there is any type of insurance available as a revenue source, in the case the court rules is in favor of the quarter horse group. Mr. Waguespack replies he is not familiar with any.

Mr. Guilbeau asks what the impact will be on purse structure if the funds are held. Mr. Waguespack informs if the matter is not resolved by the beginning of the meet then the potential reduction is \$2.7 million. Mr. Guilbeau asks if the cuts have already been announced. Mr. Withers responds yes and the first condition book has been sent out.

Mr. Guilbeau asks Mr. Waguespack if there is a court order in place ordering the Fair Grounds to hold the money out. Mr. Waguespack responds not at this point. Mr. Guilbeau asks if the Fair Grounds sought a court order enabling them to deposit the money. Mr. Waguespack responds not yet because the Fair Grounds asked the Racing Commission back in July for guidance.

Mr. Guilbeau informs in the current statutory construction, there is nothing that specifically says, "Fair Grounds you have the right to pull that \$2.7 million out?" There is no statutory authority that you can go to and say, "This is our justification for holding the money out when faced with this lawsuit." Mr. Waguespack points out this matter is damaging to racing and to the upcoming Fair Grounds 2014-2015 thoroughbred meet. However, he says, there are provisions in the racing law that contemplate money becoming available later in the meet and

also there is the historical case against the Fair Grounds that no action was taken despite \$80 million was withheld from purses.

Mr. Waguespack asks the Commission if this is an informational meeting, if so, then he will not put any evidence in. However, he says, if the Commission makes a decision at this meeting then he will go ahead and build a record. Mr. Wright suggest that he should go ahead and do so.

Mr. Waguespack under no objection submits the following seven exhibits to the Commission:

- 1) Fair Grounds letter dated July 2, 2014 to the Louisiana Racing Commission.
- 2) Louisiana State Racing Commission response letter.
- 3) Louisiana State Racing Commission Agenda for October 21, 2014 Commission meeting.
- 4) Amended lawsuit filed seeking the money from the video poker purse funds.
- 5) Exceptions filed to the lawsuit.
- 6) Rule to show cause as to when they will be heard.
- 7) HBPA exceptions to the lawsuit.

Mr. Guilbeau asks if these is anyone else that would like to comment on this subject matter.

Mr. Harry Bruns, thoroughbred owner, states he is appreciative to see the Commission being involved in these matters. He states the Commission has the authority to require to do what is in the best interest of racing. He says that cutting \$2.6 million in purses is not in the best interest of racing. Mr. Bruns states Fair Grounds will argue that they cannot afford to fund purses even if it is in the best interest of racing. He states Churchill Downs Inc., is financially strong and provides stats from their financial statements. Mr. Bruns states it would be in the best interest of racing if the Commission sent a powerful message by suspending the Fair Grounds license until the money is deposited into the registry.

Mr. John L. Duvieilh, on behalf of HBPA states cutting purses would cause irreparable harm to the 2014-2015 thoroughbred meet. He states the likelihood of resolving this matter before the start of the meet is remote. He informs HBPA filed exceptions with the court, and HBPA is not here today to comment on the exceptions. He states he agrees with the Fair Grounds and that it is dangerous for the industry to have separation from member groups. However, he says, there is no authority for the Fair Grounds to withhold the funds from the thoroughbred meet.

Mr. Bill Townsend, an attorney representing the quarter horsemen, states the Fair Grounds has the authority to withhold the \$2.6 million in purse funds. He informs the statute does not distinguish between breeds. He says the statute speaks in terms of putting an obligation on the Fair Grounds or the licensed establishment to pay out those video poker proceeds derived from the OTBs at the next live race meet. He states he has not provided any documentation comprising of the amounts and percentages but the money earned during the dark days prior to the quarter horse meet as well as the money earned during the live quarter horse meet need to be paid out at the following live quarter horse meet.

The Commissioners go into Executive Session.

Mr. Guilbeau motions that before the Commission was rule to show cause, testimony, evidence and positions were expressed by the parties. Fair Grounds has not shown to have statutory authority or a court order allowing them to withhold the funds, and immediately order:

- 1) Approximately \$2.7 million in the held out purse money be put back into the purses for the 2014-2015 thoroughbred meet and;
- 2) Fair Grounds be ordered to issue a new condition book that reflects the purses that include that purse monies and;
- 3) Issue an immediate press release reflecting the decision of the Commission so that our horsemen can be aware of the additional purse monies;

Mr. Davis seconds; motion carries.

II. ADJOURNMENT

Commissioners motion to adjourn; Mr. Turner seconds; Mr. Wright adjourns the meeting.



Charles A. Gardiner III
Executive Director