

AGENDA

North Dakota Racing Commission
Live Meeting - 500 N 9th St, Bismarck, ND
Thursday, March 6, 2003
12:30 p.m.

1. Approval of Minutes for February 12, 2003
2. Legislative Update
3. Office Security Issues
4. Other Matters Which May Come Before the Commission

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If you plan to attend the meeting and will need special facilities or assistance relating to a disability, please contact the Racing Commission at 701-328-4633.

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North Dakota Racing Commission
Live Meeting
Thursday, March 6, 2003
12:30 p.m.

PRESENT:

Chair Commissioner Ann Mahoney, Commissioners Dr. Charlie Stoltenow, Howard W. Wrigley, and James Boehm, Director of Racing Paul Bowlinger, Counsel Bill Peterson, and Administrative Assistant Kelly Boespflug.

ABSENT:

Commissioner Jim Arthaud

OTHERS PRESENT:

Leigh Backhaus, Backhaus & Sons Ranch
Rachelle Backhaus, Backhaus & Sons Ranch
Nancy Bayer, NDQHRA & NDTBA
Rick Buchholz, BB Stables
Pete Davis, Belcourt
Tim Leppert, NDQHRA & NDTBA
Bill Maulding, Montpelier
Larry Polensky, Flasher
Joe Schaefer, Fessenden
Leslie Schmidt, Horse Race ND

The meeting was called to order at 12:50 p.m. by Chair Commissioner Mahoney. The roll call was taken as indicated above by Executive Director Bowlinger.

Commissioner Stoltenow	-	Here
Commissioner Wrigley	-	Here
Commissioner Boehm	-	Here
Chair Mahoney	-	Here

AGENDA ITEM #1
Approval of Minutes of February 12, 2003

Chair Mahoney asked if any amendments need to be made. None stated.

Commissioner Boehm moved to approve the minutes from the February 12, 2003, meeting. Commissioner Stoltenow seconded the motion.

Executive Director Bowlinger called the roll as follows:

Commissioner Boehm	-	Yes
Commissioner Wrigley	-	Yes
Commissioner Stoltenow	-	Yes
Chair Mahoney	-	Yes

The motion carried unanimously.

Leigh Backhaus Request to be on Agenda

Chair Mahoney stated one matter will be taken out of order. The Racing Commission received a letter, dated March 4, 2003, from Leigh Backhaus requesting to be on the agenda. His request was granted by Chair Mahoney.

Executive Director Bowlinger stated the Administrative Rules in the breeders' fund had previously stated that you have until the end of the year from the foaling date, December 31, to register your foal, with a fee of \$10.00. However, if the foal is not registered within the foaling year, you have the yearling year until December 31 to register the foal; however, with a penalty of \$1,000.00. In the old rule, which was promulgated in 1989, it used to be \$250.00. Executive Director Bowlinger stated he doesn't know how long the rule has been enforced to be \$1,000.00, but it was being enforced at \$1,000.00, and that had been done in the minutes of the Racing Commission, and it is Executive Director Bowlinger's understanding that it had been done for approximately five years. When the old rules were transcribed to have them re-codified into the new breeders' rules, the Commission sent the breeders' fund rules out to all the breed associations, hearings were set up, and no comments were made regarding the \$1,000.00 fee. When the Commission came to the issue of taking everybody's statements after the hearings and after the publication, the Commission then had a meeting pursuant to the Administrative Rules under the North Dakota Century Code and adopted the new breeders' rules. In the breeders' rules, in the November 19-20, 2001, minutes, the Commission specifically discussed this item. The language was, "The next item discussed was the \$1,000.00 late fee for foal registrations submitted after the foaling year ended. Bowlinger asked for consideration of \$250.00 for the yearling year. The thought behind it was that this would not allow people to see if they were going to have a runner and then decide to pay \$250.00. The \$1,000.00 was meant to be punitive. After discussion, the Commission decided to have the \$1,000.00 remain." This language went out in the rules, it was published, was given to everybody, and then the Commission discussed it before being voted upon.

Chair Mahoney added that she attended a meeting with the representatives of the different breeds one Saturday at the Doublewood. She went back through her notes and made a page of comments that people had made as to different provisions in the rules. When coming to that provision, there were no comments. Apparently there were no strong feelings about it at that point in time.

Executive Director Bowlinger stated the reason this issue is being brought up is Mr. Backhaus is asking the Commission to change the rule. The Commission just received a letter today from the North Dakota Thoroughbred Association, asking the Commission to reconsider that rule. Executive Director Bowlinger stated that at the last meeting, Leon Glasser, representing the North Dakota Quarter Horse Racing Association, said that most states only have thirty to sixty days. One of the reasons is so you can go back and check to see if that foal was actually dropped in your state, and Leon Glasser thought that 60 days was too lenient. Executive Director Bowlinger would like to know what the Quarter Horse's position would be in extending the ability to register the foaling date until two years without any penalty.

Leigh Backhaus stated he talked to Leon Glasser, and Mr. Glasser was in favor of what Leigh is asking. Leigh Backhaus feels the \$1,000.00 is too big of a penalty. In his case, he knows he registered a horse, and somehow it didn't happen. Mr. Backhaus stated the Racing

Commission offered to him to pay the \$1,000.00. Financially he can't do it. There's a lot of people out there than can. His horses are going to go east. They are not going to stay here in the state. There are hundreds of horses out there that would come back to North Dakota and support Fargo if it would be opened up to two, three, four, and five year olds. Now that something is actual that they can participate in, it's locked away.

Executive Director Bowlinger stated there are some things in the breeders' rules that the Commission has already determined that need to be changed. The rules have been followed, as least from Executive Director Bowlinger's perspective, and he has not allowed exemptions in the past.

Executive Director Bowlinger stated he receives phone calls probably once or twice a week asking for exemptions to the rule and he has applied the rule uniformly. Executive Director Bowlinger wants the Commission to understand the reason Mr. Backhaus is here is because we would not allow him to do this, but we haven't allowed anyone else. Executive Director Bowlinger asked Counsel Peterson what the Commission would have to do if they want to change the rule.

Counsel Bill Peterson stated the Commission needs to go through the Administrative Rules' process, have a hearing on the rule, advertise a public hearing, and consider all comments. This process takes approximately five months.

Tim Leppert made the comment, what do you do with the people who did pay the \$1,000.00. Leigh Backhaus stated he would like it retroactive for the people who paid the \$1,000.00.

Executive Director Bowlinger stated the Commission decided they meant it to be punitive, but there were no comments against it at that time.

Chair Mahoney stated this was not changed when she met with horsemen. It was already being implemented by the Commission. It was not something new that people should not have been aware of.

Tim Leppert stated he wasn't sure why that was put in there, but the reason for the punitive, and probably why it was put there at that time, was to protect the North Dakota bred program.

Executive Director Bowlinger's understanding was that Leon Glasser was advocating a shorter period, that you only have 60 days to get your foal in, and you have to have a vet certificate that shows this because he is concerned that we have so much money in our breeders' program that people are going to be sneaking horses in. Executive Director Bowlinger stated he can't just make an exemption for this rule; it would need to be changed. The process will take approximately five months and will cost approximately \$1,000.00.

Chair Mahoney stated a decision should not be made today, that more notice should be given for other horse owners to come in so both sides can be heard. Chair Mahoney feels it should be tabled today.

Commissioner Stoltenow stated if this is what the horsemen want to do, then he as a Commissioner would expect documentation from the associations of the votes taken in their associations on official minutes, official documentation, on official stationary stating that's what they want done. Commissioner Stoltenow stated he is getting tired of documents appearing without a signature on it. It is then unknown if it represents the whole association or not. This

Commission will make sure these people are speaking for the horsemen and not just for a few individuals, so this is why this is not going to move quickly. The Commission will not make a decision based on two or three people's opinions.

Leigh Backhaus stated the only quickness he would like to see is that races will be running in Fargo this summer, and he would like to run his horses.

Commissioner Stoltenow stated that legal counsel explained that the Racing Commission's hands are tied, as other state agency hands are tied. The Commission does not have the authority to just change it right here. It has to go through the rule making process.

Commissioner Wrigley moved to table this issue. Commissioner Boehm seconded the motion.

Commissioner Stoltenow stated at some time point in time it will have to be taken off the table. When a motion is made to table, sometimes it is tabled for years. That's not the Commission's intent. The intent is to table it now because the Commission needs to make a correct decision.

Chair Mahoney stated maybe a time needs to be set when we would like the association feedback back and then advise them in turn when it appears on the agenda.

Executive Director Bowlinger stated it used to be just the Thoroughbred and Quarter horses, but now he received a letter stating the Arabians are starting their group, and by statute, they are part of the definition, and the Trotters and Pacers. They would all need to be consulted.

Chair Mahoney stated in the past when they needed something from the associations, there is a notice that comes out from the Racing Commission office stating this issue has come up, and it's been tabled, and the Commission will be acting on it at a future meeting. The associations will need to get this to the association members.

Joe Schaefer asked if a questionnaire could be placed in the association newsletter. Nancy Bayer stated the horsemen are not all necessarily members of the breed associations.

Commissioner Wrigley amended his previous motion to table the issue and place a deadline of July 1, 2003, for the Racing Commission to prepare for the rule-change process.

Counsel Peterson stated if the Commission is going to do a rule-making change, to consider all the rules all at once.

Chair Mahoney questioned how cumbersome it would be to copy a letter to those who don't belong to an association. Executive Director Bowlinger stated it is not possible to notify everyone of changes by mail. The horsemen are required to read the rules. The rules have been online for two years.

Commissioner Wrigley stated if there are other rules needing to be changed, those comments should also be received on July 1. Commissioner Wrigley stated he would like to see this done, otherwise it will drag on.

Counsel Peterson suggested that the Commission ask the associations for comments on any breeders' fund rules or any rules they would like to see changed. During the process there is a

public hearing and people can submit comments concerning the rules at that time. In order to know where to start, it's necessary to have information on what people want before the Commission starts changing the rules. After comments are received, then the Commission can decide whether they want a rule change.

Commissioner Wrigley moved to withdraw his previous motion. Commissioner Boehm withdrew his second.

Commissioner Wrigley moved to table the issue regarding changing the \$1,000 late foal fee of the breeder's fund rules, pending sending out a notice to all the breed associations requesting that they, in turn, notify their memberships of the specific request for the rule change regarding the \$1,000 late foal fee if they are not timely registered, and any other rules that they may want to consider, to be returned by July 1, 2003. Commissioner Boehm seconded the motion.

Commissioner Wrigley stated this will give everybody a chance to send their comments to the Commission, so they can't state that they did not know about it.

Nancy Bayer asked if the Commission can include in the letter how and where to find the rules.

Tim Leppert stated he has gotten the rules on his own. If people are really interested in wanting to receive the rules, they can get them.

Chair Mahoney stated after the information is received by the deadline of July 1, 2003, the Commission will schedule it at the next meeting, and it will be placed on the agenda. The agenda will serve as public notice.

Executive Director Bowling called the roll as follows:

Commissioner Stoltenow	-	Yes
Commissioner Wrigley	-	Yes
Commissioner Boehm	-	Yes
Chair Mahoney	-	Yes

AGENDA ITEM #2 Legislative Update

Chair Mahoney stated three of the Commissioners were at the legislative committee hearing before the Senate Political Subdivision Committee this morning. We testified in opposition to HB1282. There was considerable support for the bill, as was there opposition.

Chair Mahoney asked Executive Director Bowling for an update on the remaining bills.

Executive Director Bowling stated SB 2130, which would allow Racing Commissioners to be reappointed, passed the Senate. It went to House Judiciary yesterday, and it came out of that committee with a 7-4 "do not pass." If HB1282 is defeated and SB2130 is defeated, the Racing Commission law will stay status quo. SB 2028 is a bill to allow the Racing Commission to get license fees and administrative fees of registrations returned directly to the Racing Commission to defray the Racing Commission's operating budget. It passed the Senate and is now going in front of that same House Judiciary Committee. We are taking no position on SB 2285. There

have been some amendments regarding structure of the payments. From the horsemen's perspective, Executive Director Bowlinger thinks the horsemen came out pretty well, in that the first \$5,000,000 it stays the same; for the first \$100,000,000 it actually stays the same, and it isn't until the second \$100,000,000 of handle that the horses' funds are reduced by a third, where after the first \$5,000,000 for the general fund, it is reduced by 60%. SB 2003 is the budget for the Racing Commission which is embedded in the budget for the Attorney General's Office, and that hearing is at 3:00 today.

AGENDA ITEM #3 Office Security Issues

Chair Mahoney asked Executive Director Bowlinger to address security issues.

Executive Director Bowlinger stated the Racing Commission has gone from 800 to 2,200 horses, and we have not increased our staff. During Legislative Session, Kelly has been in the office by herself a lot. We're getting under harassment conditions. People are passionate about horse racing and they have their issues. Executive Director Bowlinger stated he has no problem with them taking it up with him, but he does have a problem with them taking it up with Kelly. Executive Director Bowlinger stated he has copies of two petitions, one from Doug Plummer and one from Vic Ternes. Mr. Ternes' petition reads, "We now have a Racing Commission that doesn't know jack shit about horse racing," and Mr. Plummer's petition reads, "Some heads should roll." Executive Director Bowlinger stated when he sees comments like this, although they appear somewhat humorous, they also give him pause. He doesn't think anyone in any other agency would put up with this sort of language or abuse, and he doesn't intend to tolerate it anymore. The back door is going to be locked from this point forward. Maybe a table will be placed in the meeting area for people to sit down at to have their breeders' papers stamped. It's extremely unfortunate for Kelly in that she will have a meeting like this where she's attempting to get ready for, and while the horsemen are here they think they can get their papers stamped. It's convenient for them, but a nightmare for her. Executive Director Bowlinger stated he is thinking about putting a button underneath Kelly's desk to alert security. He will check further into this and plans on making more pertinent points to the Commission about the actions that he has taken at the next meeting. Funds will not be expended yet, but Executive Director Bowlinger may ask the Commission to do so.

Commissioner Stoltenow wanted to comment to the whole horsemen population. He stated he also is a consulting veterinarian to the Board of Animal Health and there have been some contentious people who have come there and have threatened. Commissioner Stoltenow stated that you do not threaten a state employee, you do not threaten anybody on the Commission, and you do not touch a member of the Commission or any employees working for them at the racetrack or here. If there is any violation, you will suffer the consequences. It is uncalled for and it is illegal. You have been duly served notice.

Executive Director Bowlinger stated he will take what steps he feels necessary.

Commissioner Boehm stated if there are any individuals who want to come to see Executive Director Bowlinger or Kelly, anything that would take time, an appointment should be made.

Executive Director Bowlinger stated he's also looking at maybe having a sign-in book. People can just walk into Kelly's office, where at times there are checks and other items on the desk. Cash may no longer be accepted.

Chair Mahoney stated the comments are not necessarily directed to making an appointment to stamp the papers. If someone wants to meet with Executive Director Bowlinger or Kelly about some matter that is going to take more than just a few minutes or that is out of the ordinary, that it would only be polite to call ahead and make an appointment to ensure that they are available.

Executive Director Bowlinger stated there a lot of people coming in to get their papers stamped and right now it's done over Kelly's desk. There should be a place here where people can come, like any other office. It's time to upgrade. We will have a policy in place so people know what it is. It's not meant to be punitive; it's meant to be much more efficient.

Chair Mahoney stated we need to have it convenient for the horsemen, so if they are in town and they have their papers, they can stop in. The Commission is not trying to impede that process.

AGENDA ITEM #4 **Other Matters Which May Come Before the Commission**

a. Chair Mahoney recognized Pete Davis.

Pete Davis stated he has some economic development studies that he would like to present to the Commission on what Chippewa Downs puts into the state of the North Dakota as far as revenue. Our intent was never to get anybody to build us a racetrack. The only intent we wanted was to continue having races with our dates so people in our area of the state could receive breeders' funds. All we want dates for is recognized races so everyone in the state can benefit and come support our facility with horses.

Executive Director Bowlinger asked Mr. Davis how much money the casino or the tribe gave to ORDA last year to sponsor the races. Mr. Davis replied it was \$40,000. Mr. Davis agreed he would send that information on amounts donated by the Tribe.

b. Chair Mahoney recognized Les Schmidt.

Les Schmidt, with Horse Race ND, stated he wrote a conditions book and proposed it to the Racing Commission. He got together with Randy Blaseg, who is the state steward for the Racing Commission, and they put together a conditions book based probably on what other tracks have done, other than what the Fargo track has done because there was no history of racing in Fargo. Mr. Schmidt feels, along with one of the horsemen organizations, that there was a little inconsistency in the writing of the conditions and races. We were giving the thoroughbred races two races to one race for the quarter horse with no history of what is going to happen in Fargo. Mr. Schmidt proposed the conditions book to the Commission for approval. The ND Quarter Horse Racing Association feels that the current conditions book is serving them an injustice. Mr. Schmidt stated he can understand where they are coming from because we have no history. The ND Quarter Horse Racing Association has suggested an amendment to the conditions book as follows: 54 thoroughbred races, which would be reduced by eight races over the entire race meet. That would give them 41 quarter horse races, which would still be a 5 to 4 ratio in favor of the thoroughbreds. They feel that even though this ratio is not even treatment that they say the Racing Commission assured they would receive, they can live with this ratio. Mr. Schmidt stated he has the ND Quarter Horse Racing Association's assurance. Another thing the ND Quarter Horse Racing Association wants to do is they want to change the

Dan Diemert listed in the conditions book as qualified by trials, and they want to take it from a ten-horse gate down to an eight horse gate. Mr. Schmidt stated he has no objection to making those changes as an amendment to the conditions book. Mr. Schmidt asked whether or not the Commission wants to approve the conditions book as written first and then approve the proposed amendment.

Chair Mahoney stated it is her understanding that the Commission has never acted on the conditions book. That is what our Executive Director has typically done. He looks through it to ensure that requirements are met.

Executive Director Bowlinger stated there are very few requirements. Basically each breed has a North Dakota race written for them each day of racing.

Counsel Peterson stated the only rule on the conditions book is that it shall be furnished to the Commission. Additional conditions books or sheets must be furnished to the Commission as soon as published.

Commissioner Stoltenow stated this goes back to where the Racing Commission has stated we want the track and the horsemen to work together to get this worked out. The Racing Commission will not get into the day-to-day operation.

Counsel Peterson stated it's the racing associations responsibility to find out what criteria needs to be met and meet that criteria. Counsel Peterson read from the rules, "Number of races for performance unless otherwise permitted by the commission, no association may offer more than 12 races for performance." Counsel Peterson stated he doesn't feel they need to come to the Commission to decide what the requirements are.

Commissioner Wrigley stated Mr. Schmidt's agreement with the horsemen is that this program is for its maiden year, and the Horse Park will have history after this which will give direction to the Horse Park as to what will work best for the Horse Park and racing.

Chair Mahoney asked for a motion to adjourn the meeting.

Commissioner Boehm moved to adjourn the meeting at 1:50 p.m.. Commissioner Stoltenow seconded the motion.

Executive Director Bowlinger called the roll as follows:

Commissioner Boehm	-	Yes
Commissioner Wrigley	-	Yes
Commissioner Stoltenow	-	Yes
Chair Mahoney	-	Yes

The motion carried unanimously.