

NORTH DAKOTA RACING COMMISSION
Live and Telephone Meeting
500 N 9th Street, Lower Level, Bismarck, ND
Tuesday, November 2, 2010 – 10:00 a.m. (central time)

Call to Order: Chairman Jim Ozbun called the meeting to order at 10:02 a.m.

Present: Chairman Jim Ozbun, Commissioner Tom Senftner, Commissioner Steve Hartman. Also present was Legal Counsel, Bill Peterson, Director of Racing, Winston E. Satran, and Administrative Staff Officer, Helen Tessmann.

Present by phone: Commissioner Clarence Frederick, Commissioner Andy Maragos and Ian Meyers with Source One Technologies.

Others present: Roger Thompson, L.J. Harsche, Mike Cichy, Rod Austin, John Ford, Richard Nevins and Gail Hrdlicka.

AGENDA

1. **Approval of Minutes – September 28, 2010 meeting**
2. **Simulcast Service Provider - License Application**
- Source One Technologies
3. **Review Proposed Rule Changes**
- Review written comments which have been submitted.
4. **Adjournment**

MINUTES

Chairman Ozbun introduced the newly appointed Commissioner, Steve Hartman. Commissioner Hartman stated he has had years of experience in the horse industry and is looking forward to working with the North Dakota Racing Commission.

1. **Approval of Minutes – September 28, 2010 meeting**
Previously all commissioners had received a copy of the September 28, 2010 commission meeting minutes.

A motion was made by Commissioner Maragos and seconded by Commissioner Senftner to accept the minutes of the September 28, 2010 meeting as prepared. All Commissioners voted aye and hearing no negative vote the motion passed.

2. Simulcast Service Provider - License Application

- Source One Technologies

Director Satran reported that he has received the background investigation for Source One Technologies and the results were positive. Director Satran asked the President of the company, Ian Meyers, to give the Commission some background information on why he started this operation and what he intends to do in the future. Mr. Meyers explained that he was affiliated with Premier Turf Club, LLC an ADW company formerly licensed out of North Dakota. As of February 13, 2009, Mr. Meyers terminated his employment with Premier Turf Club, LLC.

Director Satran advised Mr. Meyers that the Racing Commission received an email from Wes Berman, Manager of Premier Turf Club, LLC. Mr. Berman included a copy of Mr. Meyers Employment Agreement wherein a section for "Non-Competition" was included stating that upon termination of the agreement the employee could not perform or be employed by any other company in the same business for two (2) years.

There was discussion among the Commissioners and Legal Counsel, Bill Peterson on whether North Dakota complied with those types of agreements between a company and an employee. Mr. Peterson said he did not have adequate time to look at the information that was received today regarding this matter, but he knew Mr. Meyers had a letter stating that Premier Turf Club had breached the Agreement and therefore Mr. Meyers would not be required to follow any stipulations made under the Agreement.

Mr. Meyers will e-mail the research he did regarding the validity of the Employment Agreement. Director Satran said that he could provide Mr. Meyers a letter from the Commission listing the concerns the Commission has so that Mr. Meyers can present it to his partners. Commissioner Senftner suggested that in the same letter we ask for more information regarding the standing of Linton Mortgage?

The Commission decided to continue further discussion of Source One Technologies' license application later in this meeting.

3. Review Proposed Rule Changes

- Review written comments which have been submitted.

Director Satran read the Public Written Comments from each individual along with his recommendations to the commission. The first group of comments and suggestions were submitted by Mr. John Ford, BAM Software and Services LLC. After an in-depth discussion among the Commissioners regarding Mr. Ford's comments and Director Satran's recommendations, the Commission made a decision to vote on each of Mr. Ford's comments.

Rule #69.5-01-08-4 Mr. Ford recommended a new section be added which would provide authority to the Commission to approve new wagering pools after notice and public hearing, but without going through the current rule making process.

Directory Satran and Attorney Bill Peterson recommended that it would not be advisable or legal to add a provision of this nature without going through the rule making process.

A motion was made by Commissioner Senftner and seconded by Commissioner Hartman to make no changes in response to Mr. John Ford's request to allow the Commission to receive authority to approve new wagering pools, after notice and public hearing, but without going through the current rule making

process. Roll call was taken: Senftner-Y, Hartman-Y, Frederick-Y, Maragos-Y and Ozbun-Y. Motion Passed.

After additional discussion of Mr. Ford's comments, Commissioner Senftner suggested that Mr. Ford's comments and any further discussion or voting by the Commission be tabled until Mr. Ford, Director Satran and Legal Counsel, Bill Peterson can develop a more condensed and understandable version of Mr. Ford's comments to eliminate future debate.

A motion was made by Commissioner Senftner and seconded by Commissioner Frederick to change the original motion and table the comments from Mr. John Ford until Director Satran and Legal Counsel Bill Peterson can develop a more condensed version of the comments submitted by Mr. John Ford and present them before the commission. Roll call was taken: Senftner-Y, Frederick-Y, Maragos-Y, Hartman-Y and Ozbun-Y. Motion Passed.

Comments by Tom Metzen, Horsemen's Consulting and Marketing Group LLC:

Rule #69.5-01-11-01 - 1. "Account wagering" means a form of pari-mutual wagering in which an individual deposits money in an account and uses the account balance to pay for pari-mutuel wagers. It includes advance deposit wagering.

Mr. Metzen's comment is asking the commission to **add**: All pari-mutual wagers made or processed by a licensed service provider are considered made in North Dakota, not the players' physical location.

Director Satran's recommendation to the Commission: Assistant Attorney General Peterson's comments are: As proposed, it would not work. Also, even if the Racing Commission could draft it properly there does not seem to be any significant importance.

Account holders shall not make wagers from their account while residing or located in a non-wagering jurisdiction in which pari-mutuel wagering is forbidden.

A motion was made by Commissioner Senftner and seconded by Commissioner Frederick not to make any changes in response to this comment by Mr. Metzen. Roll call was taken: Senftner-Y, Frederick-Y, Maragos-Y, Hartman-Y and Ozbun-Y. Motion Passed.

5. Mr. Tom Metzen's comment is asking the commission to **add** the following paragraph to **Rule #69.5-01-11-01**: 5. Cloud Computing is Internet-based computing, whereby shared resources, software, and information are provided to computers and other devices on demand, improving security and integrity. Cloud computing describes a new supplement, consumption, and delivery model for IT services based on the Internet, and it typically involves over-the-Internet provision of dynamically scalable and often virtualized resources.

Director Satran's recommendation to the commission: There is no need to define Cloud Computing in the Administrative Rules. Because of the changing dynamics in internet processes, we would recommend not naming an internet-based computing resource.

A motion was made by Commissioner Maragos and seconded by Commissioner Frederick not to make any changes in response to this comment by Mr. Tom Metzen. Roll call was taken: Maragos-Y, Frederick-Y, Hartman-Y, Senftner-Y and Ozbun-Y. Motion Passed.

6. Mr. Metzen's comment is asking the commission to **add** the following paragraph to **Rule #69.5-01-11-01**: 6. Computer Assisted Wagering is a pari-mutuel wager manually placed through the system once a pre-programmed set of terms, conditions, odds or payoffs are met.

Director Satran's recommendation to the Commission: The comment does not seem to have any significance that applies to this identification.

A motion was made by Commissioner Frederick and seconded by Commissioner Senftner not to make any changes in response to this comment made by Mr. Tom Metzen. Roll Call was taken: Frederick-Y, Senftner-Y, Hartman-Y, Maragos-Y and Ozbun-Y. Motion Passed.

9. "Service" provider means a person engaged in providing simulcasting or account wagering services to a site operator and establishing, operating and maintaining the combined pari-mutual pool, but does not include persons authorized by the federal communications commission to provide telephone service or space segment time on satellite transponders.

Mr. Metzen's comment is asking the commission to **add** additional wording: All wagers processed by a licensed service provider shall be deemed as being made in North Dakota.

Director Satran's recommendation to the Commission: As referenced in Recommendation #1, there is no purpose or importance of re-drafting the regulation.

A motion was made by Commissioner Senftner and seconded by Commissioner Maragos not to make any changes in response to this comment made by Mr. Tom Metzen. Roll call was taken: Senftner-Y, Maragos-Y, Hartman-Y, Frederick-Y and Ozbun-Y. Motion Passed.

Rule #69.5-01-11-11.1 Account wagering. The requirements for account wagering are as follows:

Mr. Tom Metzen's comment is asking the commission to **add** paragraph 5.1 as follows:

5.1 The Service Provider may establish and maintain its "Physical Presence" with licensed site operator's agreement, at site operator's location in order to be in compliance. Service provider shall be deemed in compliance when utilizing "Cloud Computing" or similar technology while maintaining agreement with Site Operator.

Director Satran's recommendation to the Commission: I am not sure what purpose is intended here. This recommendation appears to be irrelevant when considering the intent of the regulation.

A motion was made by Commissioner Frederick and seconded by Commissioner Maragos not to make any changes in response to this comment made by Mr. Metzen. Roll call was taken: Frederick-Y, Maragos-Y, Senftner-Y, Hartman-Y and Ozbun-Y. Motion Passed.

7. c. Authorized withdrawal from an account when the player sends to the service provider a properly identifiable request for a withdrawal. The service provider will honor the request contingent on funds being available in the account. If the funds are not sufficient to cover the withdrawal, the player will be notified, and the funds that are available may be made available for withdrawal. These transactions will be completed in accordance with financial institutions funds availability schedules.

Mr. Metzen's comment is asking the commission to **add** the words at the end of paragraph 7c: and after settlement from host tracks.

11. The service provider may close any account when the player attempts to operate with an insufficient balance or when the account is dormant for a period determined by the commission or the site operator. In either case, the service provider shall refund the remaining balance of the account to the player within thirty days.

Mr. Metzen's comment is asking the commission to **add** the words at the end of paragraph 11: or upon final settlement with host tracks.

Director Satran's recommendation to the Commission for paragraph 7c and 11: The ADW must have a method of settling accounts and not be subject to payment from the tracks. Tracks have extended payment plans with ADWs and it may take as long as 60 days for the track to make the settlement with the ADW, therefore requiring the ADW to have enough financial resources so that the players may be paid.

A motion was made by Commissioner Maragos and seconded by Commissioner Senftner not to make any changes in response to these comments from Mr. Metzen. Roll call was taken: Maragos-Y, Frederick-Y, Senftner-Y, Hartman-Y and Ozbun-Y. Motion Passed.

12. b. Service providers shall notify site operators of proposed rebate programs. Mr. Metzen's comment is asking the commission to **Strike/Remove: and receive authorization from site operators before implementation.**

Director Satran's recommendation to the commission for rule 12b: We recommend leaving the proposed rule as written because we must demonstrate that the charity is involved in conducting the wagering.

A motion was made by Commissioner Frederick and seconded by Commissioner Senftner not to make any changes in response to this comment from Mr. Metzen. Roll call was taken: Frederick-Y, Senftner-Y, Maragos-Y, Hartman-Y and Ozbun-Y. Motion passed.

Comments submitted by L.J. Harsche on behalf of the ND Horsemen's Advisory Council:

Rule #69.5-01-09-10. Distribution of funds for North Dakota-bred pari-mutual races.

The comments submitted by L.J. Harsche on behalf of the ND Horsemen's Advisory Council cannot be considered at this time because this rule was not part of the proposed rule changes submitted during the Public Notice process.

A motion was made by Commissioner Frederick and seconded by Commissioner Hartman not to make any changes in response to this comment from L.J. Harsche. Roll call was taken: Frederick-Y, Hartman-Y, Senftner-Y, Maragos-Y and Ozbun-Y.

Continuation of rule changes will be discussed at the December meeting.

Continuing with agenda item 2:

Simulcast Service Provider - License Application - Source One Technologies

The commission received legal information from Mr. Meyers and an e-mail from Premier Turf Club. The commission directed Director Satran to write a letter to Mr. Meyers advising him of the reasons for the delay. Commissioner Senftner asked Director Satran request in Mr. Meyers' letter the need for further information from Linton Mortgage showing their current status.

A motion was made by Commissioner Senftner and seconded by Commissioner Frederick to table Source One Technologies' license application until more information is provided to the commission and Legal Counsel Bill Peterson has an opportunity to review the newly submitted letters and information. Roll call was taken: Senftner-Y, Frederick-Y, Maragos-Y, Hartman-Y, and Ozbun-Y. Motion passed.

4. Adjournment

A motion was made by Commissioner Senftner and seconded by Commissioner Hartman to adjourn the meeting. All commissioners voted aye and hearing no negative vote the motion passed.

The meeting was adjourned at 11:45 a.m.