

New York State Gaming Commission 12-10-2018

Unidentified Male: New York State Racing Para mutual Wagering and Breeding Law Section 102 provides that the New York State Gaming Commission trial consists of seven members appointed by the Governor by and with the advice and consent of the Senate. Four members confirmed by the New York State Senate are \_\_\_\_\_ [00:00:15] to afford the Commission an ability to establish a quorum and undertake actions. This present meeting of the Commission is now called to order. Miss Secretary, please call the roll.

Secretary: John Crowdy [ph.]

John Crowdy: Here.

Secretary: Peter Machete.

Peter Machete: Here.

Secretary: John Baclemba [ph.].

John Baclemba: Here.

Secretary: Barry Sample.

Barry Sample: Here.

Secretary: Jerry Straig [ph.].

Jerry Straig: Here.

Secretary: Todd Snyder.

Unidentified Male: Miss Secretary, please have the record reflect that a quorum of qualified members is present thus enabling transaction of business. Chairman Sample.

Chairman Sample: Minutes of the Commission meeting conducted on September 24, 2018 have been provided to the members in advance. At this time, I'd like to ask members if there are any edits, corrections, or amendments. None? May I have a motion to approve?

Unidentified Male: So move.

Chairman Sample: Second?

Unidentified Male: Second.

Chairman Sample: All in favor?

All: Aye.

New York State Gaming Commission 12-10-2018

Chairman Sample: Thank you. Next item on the agenda is Executive Director's Report. Ron?

Ron: Thank you, Mr. Chairman. This afternoon I'd like to touch on a few items. The Lottery's new state of the art studio went live with its first drawing today. The studio renovation which follows a public procurement process replaces the Lottery's nearly 20-year-old studio and aging broadcast equipment. We are pleased that the new LED lights will reduce power consumption by 75% and require less maintenance. New digital capacities can integrate with social and digital media to live string drawings and lottery shows. The studio will also be used for other productions such as training videos, press conferences, advertisements, public service announcements, and winner presentations. I commend Lottery Director Gwen Dean for bringing this project to completion.

There are two significant portraits that I believe bear mention. First, since our last meeting, the New York Court of Appeals upheld the Sanctions levied against harness trainer Lou Pena who was found responsible in 2015 for 1,719 equine violations in 675 races. The ruling ends more than six years of litigation and validates the Commission's action of using veterinarian records to determine if pre-race drug violations had occurred. Recall that following a hearing, Pena was banned from the sport for three years and fined \$343,400.

The other case regards interactive fantasy sports. As you are all aware, the Supreme Court in Albany found the regulatory structure of interactive fantasy sports unconstitutional, while allowing the removal of daily fantasy sports from penal law prohibition. On November 28, the State began the process of appealing the ruling from last month by filing a Notice of Appeal. The Notice was filed the day after the plaintiff's petition to the judge to allow re-argument in an effort to obtain complete operation prohibition. With the Notice of Appeal, the Commission returned to regulating the industry.

As you are aware, Robert Bailey of Manhattan claimed a 343-point, \$8 million share of the October 27, 2018 Powerball drawing. Mr. Bailey opted to take the cash value of the annuitized prize. This ticket has the distinction of being the largest jackpot in New York Lottery history. Mr. Bailey, a retired postal worker, purchased his ticket at the West Harlem Deli.

The Commission's division of the Lottery renewed its appeal to give responsibly this holiday season, advising holiday shoppers to avoid gifting Lottery tickets to those under the legal purchase age. The reminder marks the fifth year the Lottery has joined with the National Council on Problem Gambling and other lotteries nationwide to promote the efforts made by individual lotteries to curb underage gambling and promote responsible play.

Finally, I'm sad to report the passing of two individuals who contributed to the success of New York Racing, Rick Violet, Jr. Many of you personally knew Rick Violet as a top trainer on the NYRA circuit. Many of you may not

New York State Gaming Commission 12-10-2018

be aware of his years of tireless advocacy as the head of the New York Thoroughbred Horseman's Association, as President of the Jockey Injury Compensation Fund, and as an advocate for backstretch employees. Most recently, Rick campaigned New York Bred Diversity to victory in the 2017 Grade 1 Jockey Club Gold Cup, as well as Grade 2 Suburban, Grade 1 Whitney this summer.

I would also note the passing of William Barry, who served as Chairman of the New York State Racing and Wagering Board, one of our predecessor agencies. Mr. Barry is survived by his wife of 68 years and of seven children, which includes Brian, who presently serves as the Director of Racing Officials.

On behalf of the Commission, we offer our sincere condolences to Bill and Rick's families, friends, and colleagues. They will be greatly missed.

Thank you, Mr. Chairman

Chairman Sample: Thank you. The next series of items on the agenda is Rule Making. New York State Racing Para mutual Wagering and Breeding Law authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its various responsibilities. In that regard, the Commission will from time to time promulgate rules and amendments pursuant to the State Administrative Procedure Act. We have several items for consideration today. And, Ron, could you start with the first item, please?

Ron: For Commission consideration is the adoption of a proposal to add a commercial casino rules, an open table game called Heads Up Hold'Em. Heads Up Hold'Em is a Texas Hold'Em variation that has many of the features of the traditional Texas Hold'Em, including its betting patterns. The proposed rulemaking was published in the September 19, 2018 State Register. The public comment period for the proposal expired on November 19, 2018. No comments were received. The staff recommends that the Commission authorize the adoption of this rulemaking.

Chairman Sample: Any questions on the adoption of this rule for Heads Up Hold'Em Poker? Any discussion? May I have a motion, please?

Unidentified Male: So move.

Chairman Sample: Second?

Unidentified Male: Second.

Chairman Sample: Any discussion on the motion? Hearing none, all in favor?

All: Aye.

- Chairman Sample: Any opposed? Motion carries. Next item.
- Ron: Is an amendment of multiple medication violations and a lead enhancement role.
- Chairman Sample: At the request of a fellow Commissioner, consideration of this item has been deferred. Next item?
- Ron: For Commission consideration is the adoption of a proposal to add flexibility to the Thoroughbred Claiming Price Rule in appropriate circumstances. The proposed rule would provide flexibility be permitted on a case-by-case basis for all or a portion of a race meeting, while requiring the track to meet increased requirements to ensure the competitiveness, soundness, and safety of the horses that enter any such race. The proposed rulemaking was published in the October 17, 2018 state register. The public comment period for the proposal expires on December 16, 2018, which is a Sunday. By law, that makes the public comment period expire the following day, December 17. To date we have not received any comment. In the event comments are received before the close of the comment period, staff will promptly inform each Commissioner. Staff recommends that the Commission authorize the adoption of this rulemaking.
- Chairman Sample: Commissioners, any questions on the adoption of this rule regarding the price ratio in thoroughbred claiming races? Hearing none, may I have a motion?
- Unidentified Male: So move.
- Chairman Sample: Second?
- Unidentified Male: Second.
- Chairman Sample: Any discussion on the motion? All in favor?
- All: Aye.
- Chairman Sample: Any opposed? Motion carries. Ron, the next item, please.
- Ron: For Commission consideration is the adoption of a revised proposed rule for gaming facilities fees and payments. The proposed rulemaking was published in the September 19, 2018 State Register. The proposed part addresses procedures for the annual license fees for machine and tables procedures transmitting payment to the Commission, rules for overdue payment, rules for regulatory investigative fees and costs, rules for regulatory cost assessment and procedures for distribution of taxes to counties. A section of the current county controls rules would be repealed with the substance of such section incorporated at Section 5302.3 of Part 5302. The proposed rulemaking was published in the September 19, 2018 State Register. The

New York State Gaming Commission 12-10-2018

public comment period for the proposal expired on November 19. Two commercial casinos submitted comments. SAB [sic] recommends that the Commission authorize the revised proposal of this rulemaking to many of the changes outlined in Council's memo.

Chairman Sample: Any questions on the proposal of the rule regarding casino fees and payments? Hearing none, may I have a motion, please?

Unidentified Male: So move.

Chairman Sample: Second?

Unidentified Male: Second.

Chairman Sample: Any discussion of the motion? All in favor?

All: Aye.

Chairman Sample: Any opposed? Motion carries. Next item.

Ron: For Commission consideration, our amendments to rules relating to the provision of Social Security numbers. The use of Social Security numbers would continue to be required where necessary to comply with tax laws and be allowable when voluntarily given, such as when a person chooses to self-exclude from gaming activities. This proposal is consistent with Federal Privacy Acts of 1974 and the New York Personal Privacy Protection Law. Staff recommends the Commission authorized proposal of this rulemaking.

Chairman Sample: Commissioners, any questions on the proposal of the rule regarding the use of Social Security numbers? Hearing none, can we have a motion?

Unidentified Male: So move.

Chairman Sample: Second?

Unidentified Male: Second.

Chairman Sample: Discussion on the motion? Hearing none, all in favor?

All: Aye.

Chairman Sample: Opposed? Motion carries. Ron, the next item please.

Ron: For Commission consideration is a proposal to amend the Spanish 21 table game to provide for an optional wager. At the request of a casino licensee pursuant to Commission Rule 5323.18, this table game feature was temporarily approved for conduct until March 17, 2019. The Gaming

New York State Gaming Commission 12-10-2018

Division has evaluated the conduct of the game and recommends formalization of a rule proposal to make its conduct permanent. Accordingly, staff recommends that the Commission authorize the proposal of this rulemaking.

Chairman Sample: Commissioners, any questions regarding this rule? For additional wager for Spanish 21? Hearing none, may I have a motion, please?

Unidentified Male: So move.

Chairman Sample: Second?

Unidentified Male: Second.

Chairman Sample: Any discussion? All in favor?

All: Aye

Chairman Sample: Any opposed? Motion carries. Next, Ron.

Ron: For Commission consideration is a proposed rule to set forth standards for housing maintained on the grounds of certain racetracks. A staff survey of housing among the various racetracks found varying levels of attention. Additional staff research found that nine other racing jurisdictions provide regulatory standards for racetrack housing. At present, on track housing is available at nine state-based racetracks: Aqueduct Raceway, Belmont Park, Buffalo Raceway, Finger Lakes Racetrack, Monticello Raceway, Saratoga Racecourse, Saratoga Harness, Vernon Downs and Yonkers Raceway. Of the 2,512 racetrack beds statewide, 2,261 or 90% are at facilities operated by the New York Racing Association. Given that, staff determined to limit our ability initially to any association housing 200 or more beds in one or multiple locations. Staff anticipates to propose extending language to other racetracks in the future. The proposed rule, which would provide, among other things, standards for buildings and residential rooms, sanitary water, garbage removal, and pest control is generally modeled after the New York Department of Health Migrant Farm Workers Housing Regulation. Staff from the New York State Department of Health and the New York State Department of Labor provided significant input in the development and refinement of the proposal. Staff recommends the Commission authorize the proposal of this rulemaking.

Chairman Sample: Commissioners, any question the proposed rulemaking for backstretch worker housing? Hearing none, may I have a motion?

Unidentified Male: So move.

Chairman Sample: Second?

New York State Gaming Commission 12-10-2018

Unidentified Male: Second.

Chairman Sample: Any discussion on the motion? All in favor?

All: Aye.

Chairman Sample: Any opposed. Motion carries. I would just like to take a moment to thank staff from the Gaming Commission, from the Department of Health, and Department of Labor for working with us in a collaborative manner to put together the ground floor of the proposed rules and—did I leave any agencies out? No, that was it. And thank you everyone from the Commission members

Next item, Ron?

Ron: For Commission consideration is a proposed rulemaking to update the requirements for helmets and safety vests worn by persons on horseback on the grounds of thoroughbred racetracks. While the Commission previously authorized a proposal of a form of this rule, upon further contemplation, staff determined additional revisions were necessary and appropriate. As a reminder, the Jockey Injury Compensation Fund commissioned a report from March risk consulting to assess operational risk in New York thoroughbred racing. The report recommended improving Commission safety rules for protective equipment by updating certain rules. At the request of Commission staff, the stewards, horsemen, and jockey representatives identified applicable product standards and recommended expanding the requirement of wearing safety helmets and vests to any person mounted on a horse. The proposal would also increase the maximum weight of the safety vest from two to four pounds to permit the wearing of newer vests would provide enhanced safety. The proposal would also update Commission rules that require protective helmets and safety vests for persons who load horses into the starting gate or is mounted on any horse on the grounds of a racetrack. SAB recommends the Commission authorize the proposal of this rulemaking.

Chairman Sample: Commissioners, any question on the proposal to update the thoroughbred rule regarding helmets and safety vests? Hearing none, may I have a motion to adopt?

Unidentified Male: So move.

Chairman Sample: Second?

Unidentified Male: Second.

Chairman Sample: Any discussion of the motion? Hearing none, all in favor?

All: Aye.

New York State Gaming Commission 12-10-2018

Chairman Sample: Any opposed? Motion carries. I think that closes out the rulemaking portion for today, correct?

Ron: That's right.

Chairman Sample: The next item on the schedule regards adjudications. Today we have two items for adjudication. Ron, please.

Ron: On June 6, 2018, the Bureau of Licensing issued a Notice of License Suspension and ordered the immediate temporary suspension of the Lottery sales agent license Puff 'N Stuff, Hicksville, Inc., located at 62 Jerusalem Avenue in Hicksville. The notice informed Puff 'N Stuff that the suspension was for fraud, deceit, misrepresentation, or conduct \_\_\_\_\_ [00:15:16] to public confidence in the State Lottery. The notice stated that there was evidence that there was an attempt to defraud a Lottery customer. The notice also stated that the suspension could become a revocation unless Puff 'N Stuff requested a hearing. The notice of hearing further alleged that Puff 'N Stuff had failed to remit bonds to the Commission when due. Puff 'N Stuff requested a hearing, which was conducted on September 19, 2018. The hearing officer submitted a report to the Commission Secretary dated October 17, 2018 in a superseding report dated October 30, 2018. The hearing officer recommended that the license be revoked and that the period from the date of suspension to the Commission decision be a suspension of the license. The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceeding exemption of the New York Public Officers' Law, Section 108.1.

Chairman Sample: The Commission duly deliberated and considered this matter and determined upon a 5 to 0 vote to sustain the hearing officer's report and recommendations, Next case, please.

Ron: The NYRA State Steward imposed a \$2,000 fine on jockey Javier Castellano for careless riding of the horse No Need to Appeal in the third race at Saratoga Racecourse on August 15, 2018 in violation of Commission Rule 4035.2D. Mr. Castellano requested a hearing, which was conducted on August 29, 2018. The hearing officer submitted a report to the Commission Secretary dated September 17, 2018. The hearing officer recommended that the finding of a violation and the penalty be upheld. The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceedings exemption of New York Public Officers Law, Section 108.1.

Chairman Sample: The Commission duly deliberated and considered this matter and determined upon a 5 to 0 vote to sustain the hearing officer's report and recommendations. The next order of business regards old business. Do we have any old business? Hearing none, the next item is new business. We have no items on the schedule for new business, but do we have any new business

New York State Gaming Commission 12-10-2018

presented by any members? No? The next item is the scheduling of our next meeting. And Kristin, if you could work with us to give us our next date over the course of the next week or so. Tentatively, we're scheduled to meet—

Kristin: January 28th.

Chairman Sample: January 28th.

Kristin: Yes, sir.

Chairman Sample: If you could get back to Kristin on how that works with your schedules. The sooner we do that, the better if we have to modify things. Okay? concludes today's published agenda. Do any Commissioners have any items they'd like to present for consideration? Hearing none, we'd like to wish everyone a safe Merry Christmas. Happy...