

## AGENDA

North Dakota Racing Commission  
Live Meeting  
500 N 9th St, Bismarck, ND  
Wednesday, August 20, 2003  
1:00 p.m.

1. RSI
2. Previously Tabled Harness Race Dates
3. Approval of State Steward to Enact Variances (specific \$2.20 breakage variance)
4. Approval of July 2, 2003, Minutes
5. 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  
Wednesday, August 20, 2003  
1:00 p.m.

PRESENT:

Chairman Howard W. Wrigley, Commissioners James Arthaud, James Boehm, and James Clement, Director of Racing Paul Bowlinger, Counsel Bill Peterson, Auditor Roger Thompson, and Administrative Assistant Kelly Boespflug

OTHERS PRESENT:

Susan Bala, RSI  
Nancy Bayer, NDTBA/NDQHRA  
Michael Cichy, RSI  
Janell Cole, The Fargo Forum  
Bruce Crummy, The Fargo Forum  
Dennis Fischer, RSI  
Leon Glasser, NDQHRA  
Wes Heinert, NDQHRA  
James MacPherson, Associated Press  
Ken Maloney, RSI  
Wayne Stenehjem, Attorney General

The meeting was called to order at 1:00 p.m. by Chairman Wrigley. The roll call was taken by Executive Director Bowlinger.

Commissioner Boehm	-	Here
Commissioner Arthaud	-	Here
Commissioner Clement	-	Here
Chairman Wrigley	-	Here

**AGENDA ITEM #1**  
**RSI**

Chairman Wrigley turned Agenda Item #1 over to Executive Director Paul Bowlinger. Executive Director Bowlinger stated Attorney General Wayne Stenehjem requested to address the Commission.

Attorney General Wayne Stenehjem stated, "Mr. Chairman, members of the Commission, I want to thank you for this opportunity to appear before the Commission today to explain what is happening from my office's standpoint regarding the issues surrounding RSI. The state of North Dakota is extremely concerned about this situation. It is no secret that RSI now owes the state special and general funds about \$6.5 million, all of which is past due. Nor is it a secret that there are investigations currently underway by both my office and the U.S. Attorney's Office. This has been widely reported in the media. I am not privileged to outline in great detail the status of those investigations at this time, and I hope you will understand that I can't comment further on all of that right now. I do want to thank the members of this Commission, and in particular Racing Director Paul Bowlinger, for all of your cooperation in this matter. I trust that you will understand the necessity of my limiting contact between him and the target of any

investigation. At the same time, this Commission has appropriately notified RSI of its monetary defaults and has made it clear that you will seek appropriate sanctions if they fail to make good on the amount that it owes. You sent a letter to RSI informing them the failure to make the payment that were due would result in action against them. Although they made a last minute payment to meet that deadline for part of the amount, \$1,482,189.64, that payment does not justify the failure to remit the remainder of the amount due. I likewise informed RSI, in a letter faxed to them yesterday, that their obligation to pay what is due does not require a demand or a reminder from the state to pay it. My office has the duty to enforce the law, and together with this Commission, to take appropriate action. This we are prepared to do. I have a variety of legal options that are available to enforce compliance with the statute. You, as a Commission, likewise have authority to follow the course that you threatened. However, the issue potentially affects more than just Racing Services Incorporated. There are dozens of employees who would be out of work if RSI's license were revoked. Public perception of horse racing generally would be tarnished. The state of North Dakota and this Commission receive substantial revenue from the wagers placed in the system, as do the charities that are involved. Therefore, no action should be taken without exploring all other options first. Certainly none of these alone is a sufficient reason to permit a company to do business in the state if it is unwilling or unable to fully comply with the law. This is, after all, a highly regulated industry and that's as it should be. Yesterday we were again asked to meet with officials from RSI to discuss their payment plan. I responded that I saw no point in such a meeting if their intent is merely to quibble about the amount that is due because those amounts can be simply calculated, and they're not subject to serious dispute. And, of course, as I alluded earlier, there are other issues that will require your consideration as well as mine. Still it seems there can be little harm in agreeing to a meeting with RSI officials immediately to determine if there is any point in a delay. Make no mistake about it; RSI is in a crisis. Therefore I ask that you not take action on RSI's license today. Instead I am willing to meet with those officials this afternoon in my office and then subsequently to inform you of the results of that discussion, or to inform you of the legal course that the state will pursue as soon as this Commission is able to schedule a special meeting and I would ask that perhaps you let Kelly know what telephone numbers you might be available to be reached at so that we could have that discussion. I want to stress that I am talking about a delay of hours or a day or two, not weeks or months. We are going to resolve this issue forthwith one way or another. The laws are clear. The interests of the people of the state of North Dakota are clear and the duties imposed upon everyone are clear. I also think that it's fair to remind everyone as we are about to embark on the opening of the new North Dakota Horse Park, that this investigation does not in any way involve that enterprise. The operation of the racing at the North Dakota Horse Park is to the best of our knowledge, in full compliance with all applicable statutes and rules. The fact that the racing industry of the whole takes a hit when any one faction is under suspicion underscores why it is essential that the industry be fully regulated and that any irregularities be fully investigated. Again, I want to thank this Commission for giving me a chance to meet with you this afternoon to explain my recommendation for you. I reiterate the offer that I made to meet this afternoon with officials from RSI regarding their default and to immediately inform this Commission of the approach we intend to take. If there are questions from the Commission beyond those that I can answer as a result of investigations that are going on, I would be happy to entertain them."

Executive Director Bowlinger stated he has been in consultation with Attorney General Stenehjem and his staff, and it seems that he has laid out exactly what his course of action is going to be. I think we should wait for further instruction from the Attorney General as to what guidance he may give the Commission, and then we can then call an emergency meeting based on that information.

Ken Maloney, President of RSI, provided to the Commission a written statement on behalf of RSI.

**AGENDA ITEM #2**  
**Previously Tabled Harness Race Dates**

Chairman Wrigley turned over this agenda item to Executive Director Bowlinger. Executive Director Bowlinger stated as of this date, the Commission has not received a resubmitted application for any harness dates. The Legislature has mandated that the Racing Commission provide race dates to the Harness Association in Bottineau. However, it is not the Racing Commission's job to plan those races or determine what they need to comply with licensing requirements, including affidavits and bonding. The Racing Commission regulates racing, but does not run it. Legally, Executive Director Bowlinger sees no way to plan the meet. The Commission previously tabled harness race dates in Bottineau. A letter was written to the three members of the Trotters and Pacers Association asking if they would prefer to run in Bottineau or Fargo, and two letters were received stating they would prefer to run in Fargo. The Commission has information received from an application in late June of what they were requesting at that time. The Commission does not have an up to date bond, or a letter from the governing authority which would give Executive Director Bowlinger legal authority to approve the application.

Commissioner Boehm asked if the Commission doesn't do anything and the Harness Association wants to come to the racetrack, do they have to be scheduled? How can the Commission let them run if they don't show up at a meeting first? Commissioner Boehm stated he went to a meeting the other day and they stressed rules. You have to have rules. Be consistent. The races start this weekend, isn't this short notice? Is Norman Glinz the only one who has trotters for harness races?

Executive Director Bowlinger stated three percent of the horses in the database and approximately seven to nine owners represent standardbreds. The Harness Association was prepared to run in Bottineau. Fair Circuit Horse Racing Association (FCHRA) was supposed to take care of the application. The problem is the application was not received. Executive Director Bowlinger doesn't believe there has been contact or work on the part of representatives of the North Dakota Trotters and Pacers to help this meet get going. It's been left to the FCHRA. Executive Director Bowlinger asked Mr. Glasser if there was a FCHRA meeting regarding this issue.

Leon Glasser stated, "Yes, there was. There was a meeting the week after the last Commission meeting that you had. The part that bothers me is Fair Circuit has applied for race dates for the harness horses and after the fact we had a meeting to approve that. And that's the only thing that I have a little bit of a problem with, with the Fair Circuit thing, is it was done after the fact."

Executive Director Bowlinger asked Mr. Glasser if any action was taken at that meeting to give Loren Schmidt, President of FCHRA, the authority to apply for a harness race meet. Leon Glasser stated, "After the fact, yes."

Executive Director Bowlinger asked if Mr. Glasser voted on it? Leon Glasser stated, "Yes."

Executive Director Bowlinger asked how Mr. Glasser voted. Leon Glasser stated, "I voted with the rest of them, which I shouldn't have, but I did. "

Executive Director Bowlinger asked Mr. Glasser if the vote was to support a harness meet, and Mr. Glasser stated, "Right."

Executive Director Bowlinger asked whose responsibility was it at that time to get the application into the Racing Commission or if it was delegated to anyone? Mr. Glasser stated, "Not that I know of. Mr. Cichy was there as secretary and he would have the minutes, I'm sure."

Executive Director Bowlinger stated he has had three contacts from three different individuals who stated the Commission will receive an application, but in an attempt to exercise due diligence and trying to get it out to the Racing Commission so the Commission can make an informed decision on whether it's accurate, Executive Director Bowlinger stated he hasn't received anything to provide to the Commission.

Commissioner Boehm asked if FCHRA needs to have a bond to run, and Executive Director Bowlinger stated there are two requirements. They need to have a bond, and the Commission needs to have a letter from the governing authority that it would be allowed. The Commission needs to comply with the statute.

Chairman Wrigley stated the previously supplied application was null and void. FCHRA voted to have a harness meet. Chairman Wrigley reminded Les Schmidt that the Commission had not received the application. Chairman Wrigley doesn't know whom the application was turned over to. The Harness Association was asked to have a new application in for this meeting, and the Commission did not receive it. There is no way the Commission can authorize races with no application.

Mike Cichy stated the letter from the Mayor was picked up by himself three weeks ago, and he gave it to the FCHRA accountant. He believed it was going to be faxed to the Racing Commission. Loren Schmidt was going to get the bond.

Executive Director Bowlinger stated that is the dilemma the Director of Racing and the Racing Commission office finds itself on these issues often. It's going to come, but it doesn't come, and then the Commission is asked to make a determination. If the Commission does not grant race dates in Fargo, there's going to be criticism of this Commission for not going ahead with this race meet. Executive Director Bowlinger realizes this is coming, but doesn't know what to do with it short of going out there and pricing out the materials and retrieving the letter from the Mayor himself.

Commissioner Boehm stated he feels the Commission went the extra mile to get in touch with the Harness Association individuals to get the race meet rolling.

Executive Director Bowlinger stated the Legislature mandated in the last OMB bill that the Commission provide race dates, but no money. The reality is they cannot run in Bottineau unless the Commission gives them money. The Racing Commission made a strategic choice to say it would be in everyone's best interest to have the harness meet in Fargo, but this hasn't been followed-up by the horse people that should have an interest in this. It's been left to this Commission.

Commissioner Arthaud asked Mr. Cichy when the Harness Association assumes they will be running at the race meet according to their application. Mr. Cichy stated the last two weekends in September. Commissioner Arthaud asked if the quarter horse and thoroughbred people have

been working around this, and if there is going to be an open slot if the Commission does not approve the meet. Mr. Cichy said it was the intent to tag it on the end of the meet starting in Fargo on Friday.

Executive Director Bowlinger stated he looked at the previously submitted July 2 application, which was legally insufficient. He asked Chairman Wrigley to look at the numbers so they could try to come up with some sort of fallback alternative that would work if this Commission were to grant them race dates.

Commissioner Clement stated the Commission should not have to baby sit them, but it's obvious that Commission is going to have to. Commissioner Clement ask if the Commission could contact the harness racers that are interested in having the meet to have a brief meeting to tell them exactly what they need to do to get it done.

Executive Director Bowlinger stated that he has done that and has had explicit conversations with at least three people telling them explicitly what they need to do. Commissioner Wrigley has been in contact with Fargo Horse Park management.

**Commissioner Boehm moved to grant the ND Harness Association until August 22, 2003, to submit their application to the Racing Commission. Commissioner Arthaud seconded the motion.**

Discussion held.

Commissioner Boehm withdrew his motion, and Commissioner Arthaud withdrew his second in order to amend the motion.

**Commissioner Boehm moved to grant the ND Harness Association until August 27, 2003, to submit their application. Commissioner Arthaud seconded the motion.**

Discussion held.

Executive Director Bowlinger called the roll as follows:

Commissioner Boehm	-	Yes
Commissioner Arthaud	-	Yes
Commissioner Clement	-	Yes
Chairman Wrigley	-	Yes

**The motion carried unanimously.**

**AGENDA ITEM #3**  
**Approval of State Steward to Enact Variances**  
**(specific \$2.20 breakage variance)**

Executive Director Bowlinger stated he has prepared a list of variances. About 60 or 70 percent of them have been in existence since racing started in North Dakota. There are a couple new variances. These are variances to the Administrative Code or to the Rules of Racing. Executive Director Bowlinger stated he has gone through each variance and has discussed them with the steward. The variances all regard basically the safety and rules of racing and are in the best

interest of the horsemen, jockeys, equine safety, and wagering integrity. Variance #14 is not a matter of equine safety, but a matter of payment of great importance to a racetrack. The minimum wager to be accepted by any licensed association is \$1.00. That is not being changed. The only part that is being changed is the minimum payoff on a \$2.00 wager. It used to say \$2.20. Executive Director Bowlinger asked the Commission to vary the rule to \$2.10 to conform to most other jurisdictions and for the best interest of the Fargo racetrack. Variance #15 reads, "For the Fargo race meet to be conducted from August 22 through September 14, 2003, the North Dakota Racing Commission hereby grants the State Official Steward authority to grant any variance he deems necessary for the protection of horses, jockeys, and the public on the racing grounds and any variance to assure compliance within the spirit of the North Dakota Administrative Rules and the Rules of Racing." Executive Director Bowlinger placed this variance in the list of variances in hopes that if the Commission adopts Agenda Item 3 as all variances, the matter could be covered efficiently.

Commissioner Clement asked about variance #7 regarding requirements for negative Coggin's test. He asked if Executive Director Bowlinger is saying it will not be a requirement, and Executive Director Bowlinger stated that was correct. Commissioner Clement asked Executive Director Bowlinger to change the variance to rescind a Coggin's test for in-state horses only.

**Commissioner Boehm moved to approve the variances with an amendment of the variance to rescind to require a Coggin's test on in-state horses. Commissioner Clement seconded the motion.**

Executive Director Bowlinger called the roll as follows:

Commissioner Arthaud	-	Yes
Commissioner Boehm	-	Yes
Commissioner Clement	-	Yes
Chairman Wrigley	-	Yes

**The motion carried unanimously.**

**AGENDA ITEM #4  
Approval of July 2, 2003, Minutes**

**Commissioner Clement moved to approve the minutes of July 2, 2003. Commissioner Boehm seconded the motion.**

Executive Director Bowlinger called the roll as follows:

Commissioner Boehm	-	Yes
Commissioner Clement	-	Yes
Commissioner Arthaud	-	Yes
Chairman Wrigley	-	Yes

**The motion carried unanimously.**

**AGENDA ITEM #5  
Other Matters Which May Come Before the Commission**

Chairman Wrigley stated the ribbon cutting will take place at the Fargo track this Friday, August 22, at 3:15. The races begin at 4:15.

**Commissioner Boehm moved to adjourn the meeting at 1:45 p.m. Commissioner Arthaud seconded the motion.**

Executive Director Bowlinger called the roll as follows:

Commissioner Boehm	-	Yes
Commissioner Clement	-	Yes
Commissioner Arthaud	-	Yes
Chairman Wrigley	-	Yes

**The motion carried unanimously.**