

OKLAHOMA HORSE RACING COMMISSION

RAY BAYLIFF, CHAIR

ROGER COLE, VICE-CHAIR

TERRY SIMONSON, SECRETARY

GENE BLEDSOE, DC, MEMBER

RANDY CALVERT, MEMBER

DEAN SPENCER, DDS, MEMBER

AGENDA

Regularly Scheduled Meeting
Thursday, February 19, 2004, 9:30 a.m.

Meeting Location:

Activity Center – ***Suite 40B***, Shepherd Mall
Located at Former GNC Store In Mall
(South East End of Mall on N.W. 23 Side)
Enter at Mall Entry "B"
2401 N.W. 23rd Street
(N.W. 23rd & Villa Avenue)
Oklahoma City, OK 73107

Address of the:

OKLAHOMA HORSE RACING COMMISSION
SHEPHERD MALL, 2614 VILLA PROM
(N.W. 23rd & Villa Avenue)
OKLAHOMA CITY, OKLAHOMA 73107
TELEPHONE: (405) 943-6472; FAX: (405) 943-6474
E-MAIL: OHRC@SOCKET.NET; WEBSITE: WWW.OHRC.ORG

AGENDA POSTED IN ACCORDANCE WITH THE OKLAHOMA OPEN MEETING ACT.

All customers who attend public meetings of the Commission who need special accommodations, i.e., Sign Language Interpreter, amplification device, large print materials, Braille materials, audio cassette materials, readers or other special accommodations must notify the Commission by the deadline date and time for acceptance of agenda requests.

CALL TO ORDER Mr. Bayliff, Chair

ROLL CALL

BUSINESS

A. Minutes

The Minutes of the January 8, 2004 Rescheduled Regular Commission Meeting will be considered for approval (**Item A.1**).

B. Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding the Election of Horsemen's Representative at Blue Ribbon Downs

At the January 8, 2004 Rescheduled Regular Meeting, the Commission granted a Conditional Organization License to Backstretch, LLC d/b/a Blue Ribbon Downs (BRD) to conduct racing activities in CY 2004. In that License Order, the Commission made a Conclusion of Law relating to a horsemen's representative election for the two race meetings to be operated under the License issued to Backstretch, LLC, and further established the deadline for bona fide Horsemen's Organizations or Associations to inform the Commission of their desire to be placed on the Horsemen's Organization Election Ballot for representation at the race meetings conducted by the new Licensee. The specific wording in the Order related to the election and notice deadline is as follows:

Finding of Fact # 11:

Under Commission Rule 325:35-1-34, an election of a Horsemen's Representative Organization is to be held with respect to each Organization Licensee for each race meeting. As Backstretch, LLC is a new Licensee, an election, under that Rule, must be held to elect the Horsemen's Representative Organization at that Licensee's racetrack.

Condition # 19:

It is further ordered that the tenth calendar day after the issuance of this License is established as the deadline for bona fide Horsemen's Organizations or Associations to inform the Commission of their desire to be placed on the Horsemen's Organization election ballot for representation at race meeting(s) conducted under this License.

Since the Conditional Organization License was issued Friday, January 9, 2004, the deadline under Condition # 19 would have been Monday, January 19. However, because that day was a holiday, the written notice of intent deadline was 5:00 p.m. on Tuesday, January 20, 2004. The Commission's January 9, 2004 letter of notice (**Item B.1**) was forwarded to seven Oklahoma horsemen's organizations.

As of the January 20, 2004 deadline, the Oklahoma Quarter Horse Racing Association (OQHRA) was the only horsemen's organization that advised the Commission of its desire to be placed on the election ballot (**Item B.2**). In keeping with the provisions of OAC 325, OHRC *Rules of Racing*, Rule 325:35-1-34, Election of Horsemen's Representative Organizations and Agreements, Paragraph D.1.a. "If only one bona fide Horsemen's Organization has filed for any representative position, the Commission shall declare that Horsemen's Organization as the winner and there will be no election held with regard to that position."

STAFF RECOMMENDATION: That, in accordance with the provisions of Rule 325:35-1-34 and given that the OQHRA was the only organization to file written notice of intent for

horsemen's representation at BRD, that the Commission declare the OQHRA the horsemen's representative organization at BRD.

C. Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding the Horsemen's Representative Agreement Between Oklahoma Quarter Horse Racing Association and Blue Ribbon Downs

Item C.1 is the proposed Horsemen's Representative Agreement between the Oklahoma Quarter Horse Racing Association (OQHRA) and Blue Ribbon Downs (BRD) for its two CY 2004 Mixed Breed Race Meetings with the first race meeting scheduled to begin February 21 for Commission consideration for approval.

D. Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding a Recommendation for Funding from the Oklahoma-Bred Advisory Council for Added Monies to Certain Stakes Races at Blue Ribbon Downs

Mr. Frank Deal, General Manager at Blue Ribbon Downs (BRD), requested in a January 13, 2004 letter (**Item D.1**) that Oklahoma-Bred funds be added to sixteen (16) stakes races to be run at BRD in CY 2004. The Commission responded in a January 16, 2004 letter (**Item D.2**) that the Oklahoma-Bred Advisory Council would be polled for its recommendation for funding from the Oklahoma Breeding Development Fund Special Account (OBDFSA) for these races. **Item D.3** contains the Commission's January 21, 2004 memorandum and materials sent to the Advisory Council. **Item D.4** contains a January 27, 2004 letter from the Oklahoma Quarter Horse Racing Association (OQHRA) related to four (4) other stakes races, inadvertently omitted by BRD, to be added to the list.

Item D.5 is a February 9, 2004 memo from Ms. Jacquie Pilling, Co-Chair of the Oklahoma-Bred Advisory Council, regarding the polling of Advisory Council members on the subject funding requests.

In a 12-0 vote, the Advisory Council recommends funding of \$29,282.00 from the OBDFSA for the 16 races listed in BRD's January 13, 2004 as follows:

\$20,500.00 added to purses
\$ 5,859.00 for broodmare awards
\$ 2,923.00 for stallion awards
\$29,282.00

In relation to the four (4) additional stakes races, the Advisory Council voted 9-0 for recommendation of \$2,856.00 funding from the OBDFSA for three (3) of the stakes races [Cricket Bars Futurity, Sooner Frontier Futurity and Supreme Futurity] as follows:

\$2,000.00 added to purses
\$ 572.00 for broodmare awards
\$ 284.00 for stallion awards
\$2,856.00

Regarding the fourth stakes race, Pot O Gold Futurity, the Advisory Council voted 2-7 against recommending the \$2,856.00 funding from the OBDFSA.

E. Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding an On-Site Inspection of Pari-Mutuel Machines at Blue Ribbon Downs by the Horse Racing Division, Office of State Auditor and Inspector

Following the January, 2004 Commission meeting, the Horse Racing Division of the Office of State Auditor and Inspector (SA&I) advised the Commission in a January 8, 2004 letter (**Item E.1**) that it was satisfied about “the ability of Blue Ribbon Downs to accept simulcast wagers using AmTote pari-mutuel equipment.”

The Commission requested in a January 15, 2004 letter (**Item E.2**) that the SA&I Horse Racing Division conduct an on-site inspection at BRD to which the Horse Racing Division advised the Commission orally on January 29, 2004 that the inspection is scheduled to occur the second week of February or the first part of the third week of February, shortly before the beginning of live racing scheduled to begin Saturday, February 21. A representative of the SA&I Horse Racing Division will make a presentation about the inspection report at the February meeting.

F. Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding an On-Site Inspection of Blue Ribbon Downs by Commission’s Law Enforcement Division

Mr. Mel Webb, OHRC Director of Law Enforcement, will report on the current status of the safety/security, Test Barn requirements and readiness for live racing at Blue Ribbon Downs (BRD) in anticipation of its February 21 opening. Mr. Webb will also provide an updated status report on the background investigations on officers of Backstretch, LLC d/b/a BRD.

G. Consideration and Action, If Any, Deemed Appropriate Regarding a Request from Race Horses, Inc. to Release the Bond Required by Title 3A, O.S., Section 205.2(D)

Item G.1 contains an October 23, 2003 Commission letter to Mr. Don Essary, General Manager of Race Horses, Inc. (RHI), regarding the outstanding annual audit report for CY 2002. RHI, as the former owner of Blue Ribbon Downs, has requested that the Commission release the bond, as required pursuant to Title 3A, O.S., Section 205.2.D, prior to its expiration in March so that it may have the collateral released by the bond company. **Item G.2** is a November 24, 2003 letter from Old Republic Surety Company and **Item G.3** is Old Republic’s Cancellation Notice of the bond, effective March 1, 2004, which reflects a November 24, 2003 processing date. **Item G.4** is the January 9, 2004 Commission letter to Ms. Mary Watkins, RHI President, regarding the proposed release of the bond.

Because RHI has not furnished, as required, year-end audits for its last two fiscal years, the Commission has no way of confirming that all purse monies have been properly paid. Accordingly, the Executive Director has requested that, in addition to the bankruptcy filings dealing with payments of purse monies, RHI furnish a limited audit – an audit covering only the horsemen’s purses for the months not covered by the bankruptcy filings. RHI has not yet presented an audit of the account and has suggested that the Commission accept an accounting review called a special procedure rather than an audit.

H. Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding the Horsemen’s Representative Agreement Between Oklahoma Quarter Horse Racing Association and Remington Park

Item H.1 is the proposed Horsemen’s Representative Agreement between the Oklahoma Quarter Horse Racing Association (OQHRA) and Remington Park (RP) for its 28-day Mixed Breed Race Meeting, scheduled to begin March 20, for Commission consideration for approval.

I. **Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding the Horsemen's Representative Agreement Between Oklahoma Quarter Horse Racing Association and Fair Meadows at Tulsa**

Item I.1 is the proposed Horsemen's Representative Agreement between the Oklahoma Quarter Horse Racing Association (OQHRA) and Fair Meadows at Tulsa (FMT) for its two Mixed Breed Race Meetings for Commission consideration for approval.

J. **Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding Possible Adoption of Proposed Amendment to OAC 325 Rules of Racing Under Permanent Rulemaking Requirements**

At the November 20, 2003 Commission meeting, the Commission authorized publication in *The Oklahoma Register* and the scheduling of a Public Hearing to consider a proposed rule amendment to Rule 325:25-1-17, Coupling of Entries, under permanent rulemaking requirements. The Commission action was the result of a November 11, 2003 letter (**Item J.1**) from Mr. Clinton Stuart, a Thoroughbred Owner/Trainer. In the letter, Mr. Stuart requested that the Commission consider a proposed rule amendment under permanent rulemaking requirements to Rule 325:25-1-17 for "perceived same-owned entries to remain uncoupled and race as separate betting interests, as they are permitted to in California, New York, Kentucky and Iowa." Mr. Stuart states that "in an era where field size and number of betting interests are more important than ever, this change should make both it a little easier to achieve. This rule change still allows the Stewards and the Racing Secretary to use their discretion (in that the entries may be coupled) but permits horses in races in which a trainer's spouse owns all or part of one of the entrants, not to be coupled. Such is not the case at this time." Mr. Stuart proposes the following language change to the current Rule:

[NOTE TO READER: Proposed deletions are shown in the double strikethrough font; proposed new wording is presented in bold and underline fonts.]

In no case shall more than two (2) horses having common ties through ownership, training, or lease be entered in a purse race (overnight). When making a double entry, the second same owner entry drawn shall have no preference over any single entry in purse races, excepting a preference over an "in today" horse. If horses are entered in the same race owned wholly or in part by the same Owner and trained by the same Trainer, then that entry ~~shall~~ **may** be coupled for wagering purposes. At the time of entry, a preference must be made to the end that each interest may have an entry in each division should the race be divided. For different Owners, an organization licensee, with approval of the Stewards, may allow for each entrant to have an equal shake to draw into a race providing the horse(s) have preference. Horses with identical ownership interests regarding prepayment, nomination and stakes races ~~must~~ **may** be coupled in races which have an incremental purse payout from first to last.

The proposed amendment was published in the December 15, 2003 issue of *The Oklahoma Register*, and a Public Hearing was held January 20, 2004. No oral comments were received at the Public Hearing. Written comments in opposition to the proposed rule amendment were received from the Board of Stewards at Remington Park (**Item J.2**) and the Commission Executive Director (**Item J.3**).

K. Status Report by Parties Regarding the Petition From Mr. John Lowder Requesting a Declaratory Ruling Concerning the Purse Distribution at Fair Meadows at Tulsa

Mr. Lowder presents a Declaratory Ruling Petition regarding a complaint about purse distribution at Fair Meadows at Tulsa (FMT) for the Years of 1997, 1998, 1999 and 2000.

At the September 25, 2003 Commission meeting, the current status of the complaint was discussed by respective counsel for Mr. Lowder (Mr. Larry Brawner), Fair Meadows at Tulsa (Mr. Michael Keester) and the Oklahoma Horsemen's Benevolent and Protective Association (Mr. Daniel Hoehner), the latter of which is in the process of approving a Voluntary Dismissal to end its participation in the complaint. By a 5-0 vote, the Commission tabled consideration of the Request for sixty days to allow discussion time among the attorneys. **Item K.1** is a December 9, 2003 Commission letter to the parties regarding the deferral of further discussion to the February 19, 2004 meeting due to the focus of the January 8, 2004 Commission meeting on the application for original organization license by Backstretch, LLC d/b/a Blue Ribbon Downs. At the February Commission meeting, the parties, or their Counsel, will be asked for a status report concerning the discussion among the attorneys since the September 25, 2003 Commission meeting.

L. Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding Legislative Bills Which May Impact Horse Racing

The Second Regular Session of the 49th Legislature opened on February 2. **Item L.1** contains a Bill Tracking List for proposed legislation that may impact the horse racing industry. SB 553 has been previously distributed to Commissioners.

M. Consideration and Action, If Any, Deemed Appropriate by the Commission Regarding Possibility of Rescheduling Certain Commission Meetings in CY 2004

Item M.1 is a calendar of Commission meetings scheduled for the balance of Calendar Year 2004. In the past, each racetrack has hosted a monthly Commission meeting during its live race meeting so that horsemen in that part of the State could more easily attend as well as provide an opportunity for Commissioners and Commission Staff to meet horsemen. The Commission forwarded January 20, 2004 letters to each of the three licensed racetracks about the possibility of the racetrack hosting one of the CY 2004 Commission meetings at its respective racetrack facility. **Item M.2** is a January 22, 2004 verbal response from Mr. Frank Deal, General Manager at Blue Ribbon Downs (BRD), to the Commission letter to BRD regarding the possibility of holding the April 15, 2004 Commission meeting at that racetrack during its live race meeting. **Item M.3** is a January 23, 2004 verbal response from Mr. Ron Shotts, Director of Racing at Fair Meadows at Tulsa (FMT), to the Commission letter to FMT regarding the possibility of holding the July 15, 2004 Commission meeting at that racetrack. **Item M.4** is a January 23, 2004 letter from Mr. R.D. Logan, General Manager at Remington Park (RP), regarding an invitation to hold a Commission meeting in September or October at RP during the straight Thoroughbred race meeting.

N. REPORTS

1. OHRC Boards of Stewards

Item N.1 is the End-of-Meet Report from the Board of Stewards at Blue Ribbon Downs regarding the CY 2003 race meeting which was conducted by the prior owner, Race Horses, Inc.

Item N.2 is the End-of-Meet Report from the Board of Stewards at Remington Park regarding the second Mixed Breed race meeting that ended August 17, 2003. **Item N.3** is the End-of-Meet Report from the Board of Stewards at Remington Park regarding the Thoroughbred race meeting that ended November 30, 2003.

2. Update on Chapter 11 Bankruptcy Filed by Race Horses, Inc. d/b/a Blue Ribbon Downs

Item N.4 is the Final Decree, closing the case, signed by Tom R. Cornish, U.S. Bankruptcy Judge, dated and filed February 3, 2004.

O. NEW BUSINESS: Any Matter Not Known About or Which Could Not Have Been Reasonably Foreseen Prior to Posting the Agenda

P. ANNOUNCEMENTS..... Mr. Bayliff, Chair

1. Backstretch, LLC d/b/a Blue Ribbon Downs (BRD) accepted its Conditional Organization License on January 14, 2004. Live racing is scheduled to begin at BRD on Saturday, February 21, 2004.
2. With BRD's license to conduct racing activities for CY 2004, the Commission transferred the \$97,799.24 in accrued horsemen's purse funds from pari-mutuel racing activities conducted by Race Horses, Inc. during CY 2003, being held at the Oklahoma State Treasurer's Office, to Backstretch, LLC d/b/a Blue Ribbon Downs on January 30, 2004 for use in the two CY 2004 race meetings.
3. Live racing is scheduled to begin at Remington Park on Saturday, March 20.
4. The Oklahoma Quarter Horse Racing Association's Annual Awards Banquet is scheduled for Friday, March 19, at Heritage Place (2829 S. MacArthur in Oklahoma City). In addition to awards presented by OQHRA, the Commission will present Accredited Oklahoma-Bred Champion awards for Quarter Horses, Appaloosas and Paints at this banquet.
5. The Financial Statements, including benevolence activities, by each elected horsemen's representative organization are due to the Commission office by March 1, 2004, and will be reflected under the Reports agenda topic on the March, 2004 meeting agenda. OQHRA submitted its financial statements on Monday, February 9.
6. The next Regularly Scheduled Commission Meeting is set for 9:30 a.m., Thursday, March 18, 2004, at the Shepherd Mall Activity Center, Suite 40B, 2401 Villa Prom (N.W. 23rd and Villa Avenue), Oklahoma City, Oklahoma 73107. March 9, 2004 is the published deadline for receipt by the Commission office of requests for agenda consideration for the scheduled March 18 meeting.
7. The next meeting of the Oklahoma-Bred Advisory Council is scheduled for Wednesday, March 3, 2004, at 11:00 a.m. in the Shepherd Mall Activity Center, Suite 40B.

Q. APPEAL HEARING FOR MR. THEODORE GOEHL, JR.

The record in the matter reflects that Mr. Goehl, after having been notified to appear at a hearing before the Board of Stewards scheduled for October 29, 2003, at the Stewards' Office at Blue Ribbon Downs, did appear in person at the hearing and was not represented by legal counsel.

The Notice to Appear from the Board of Stewards alleged that Mr. Goehl, as an Owner/Trainer, owed a financial obligation to Terry Underwood Racing Stables in the amount of \$11,099.00 for training services provided for a number of Mr. Goehl's horses beginning March, 2003.

On November 8, 2003, after taking the matter under advisement, the Board of Stewards at Blue Ribbon Downs, in Order No. 03-BRD-083, found Mr. Goehl in violation of OHRC Pari-Mutuel *Rules of Racing* Rule 325:35-1-10, Financial Responsibility, and suspended the occupation license issued by the Commission to Mr. Goehl pending settlement of the financial obligation in the amount of \$11,099.00 to Mr. Underwood.

The record in the matter further reflects that on November 13, 2003, the Commission received a Petition for Appeal and Request for Stay from Ms. Belva Brooks Barber, Counsel for Mr. Theodore Goehl, Jr., regarding the Board of Stewards at Blue Ribbon Downs' Order 03-BRD-083, dated November 8, 2003. The Commission issued a Temporary Stay on November 13, 2003 effective that date pending full Appeal Hearing before the Commission. **Item Q.1** is the January 14, 2004 Notice to Appear. **Item Q.2** is the record in the matter.

The Appeal Hearing before the Commission will be conducted pursuant to the authority and jurisdiction of the Administrative Procedures Act, Title 75, § 301 et seq., the Oklahoma Horse Racing Act, Title 3A O.S. §200 et seq., OAC 325 (OHRC *Rules of Racing*) and OAC 325:70-1-22, Grounds for Appeal from Decision of the Stewards. The procedure for the Appeal Hearing before the Commission is as follows:

1. The Appeal is not a new hearing and is limited to the record.
2. The Appellant and the Board of Stewards are entitled to be present and to present arguments or to do so through counsel.
3. The Appellant will present oral arguments first, with the Board of Stewards proceeding next. Each party will be allowed twenty (20) minutes to present argument.
4. All parties are subject to questioning by Commissioners, Commission staff members and Commission legal counsel.

Commission Deliberation Regarding Appeal of Mr. Theodore Goehl, Jr.

Deliberation may take place in Open Session, or if the Commission desires, may take place in Executive Session. If the Commission elects to conduct deliberation in Open Session, no motion to do so is necessary. If the Commission desires to conduct deliberation in Executive Session, it will vote to do so.

Possible Executive Session For Purpose of Deliberation in Individual Proceeding, Appeal of Mr. Theodore Goehl, Jr.

Pursuant to 75 O.S. §312, 25 O.S. §307(B)(8), and §311(B)(1), an Executive Session is proposed for deliberation regarding Mr. Theodore Goehl, Jr.'s Appeal. [A motion and the recorded vote of each Commissioner is required to go into and return from an Executive Session if the Commission opts to so deliberate in order to reach a final or intermediate Order in an individual proceeding.]

1. Purpose of Executive Session

This Executive Session is proposed for the purpose of deliberation regarding Mr. Theodore Goehl, Jr.'s Appeal.

2. Proposal for Executive Session

[Requires motion and vote by the Commission, which motion must include the naming of persons requested to attend the Executive Session to assist Commissioners.]

3. Vote to Reconvene in Open Session

4. Commission Consideration of and Possible Action on Mr. Theodore Goehl, Jr.'s Appeal

Possible actions may include, but are not limited to: no action taken, continuation of the matter, entrance of either preliminary or final Findings of Fact and Conclusions of Law, or the issuance of a preliminary or final Order.

ADJOURNMENTMr. Bayliff, Chair