

Rob Williams: New York State Racing Pari-Mutuel Wagering and Breeding Law Section 102 provides that the New York State Gaming Commission shall consist of seven members appointed by the governor by and with the advice and consent of the senate. Four members confirmed by the NY state senate are necessary to afford the commission an ability to establish a quorum and undertake action. This present meeting of the Gaming Commission is now called to order.

This meeting is being conducted in conformity with Governor Andrew M. Cuomo's executive order 202.1 which is entitled Continuing Temporary Suspension and Modification of Laws Relating to the Disaster Emergency. The order suspended portions of the open meeting forum and specifically allows the conduct of meetings by telephone or other similar service. The governor's executive order in relevant part reads Article 7 of the Public Officers Law, to the extent necessary to permit any public body to meet and take such actions authorized by the law without permitting an in public in-person access to meetings and authorizing such meetings to be held remotely by conference call or other similar service, provided that the public has an ability to view or listen to such proceeding and that such meetings are recorded and later transcribed.

By executive order 202.89 Governor Cuomo extended the order of 202.1 through February 6<sup>th</sup>. Accordingly, this commission meeting is being conducted in conformance with such allowance and we are recording today's meeting for transcription as required.

Ms. Secretary, will you please call the roll?

Secretary: John Crotty?

John Crotty: Here.

Secretary: Peter Moschetti?

Peter Moschetti: Here.

Secretary: John Poklemba?

John Poklemba: Here.

Secretary: Barry Sample?

Barry Sample: Here.

Secretary: Jerry Skurnik?

Jerry Skurnik: Here.

Rob Williams: Ms. Secretary, please have the record reflect that a quorum of qualified members is present, thus enabling the transaction of business.

Chairman Sample.

Chairman: The first item on the agenda is consideration of minutes for the meeting of November 30, 2020. The minutes of the commission meeting conducted on November 30, 2020 have been provided to members in advance. At this time, I'd like to ask the members if there are any edits, corrections or amendments? Any comment? May I have a hearing then. May I have a motion to approve?

Unidentified: So moved.

Unidentified: So moved.

Chairman: Second?

Unidentified: Second.

Chairman: Ms. Secretary, please let the record reflect that the minutes were accepted.

Rulemaking. New York State Racing Pari-Mutuel Wagering and Breeding Law Section 104.19 authorizes the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. In that regard the commission will from time-to-time promulgate rules and rules amendments pursuant to the State Administrative Procedure Act. Today we have two rules for adoption. Rob, can you outline the first item?

Rob Williams: Certainly. For Commission consideration is the adoption of a rule making that would explicitly authorize the supervised use of veterinary technicians at New York racetracks. The purpose of these proposals is to make more feasible for horse persons and racetracks to provide appropriate veterinary care by permitting the use of supervised veterinary technicians. These proposals would create a specific license category for veterinary technicians and would apply to such personnel the same licensing and restrictions for recordkeeping, horse ownership, the possession and disposal of needles and drugs as currently applied to veterinarians.

Additionally, Commission approval for employment by racetrack would apply as it presently does to veterinarians. The proposals would also require that such personnel would act under the direction and general supervision of a licensed veterinarian. Veterinary technicians is a regulated profession subject to professional state education department licensing requirements including continuing education and are competent to perform certain functions at the direction and under the general supervision of a licensed veterinarian.

The Commission had initially considered a similar proposal with upon reflection was considered too narrow thus staff crafted a proposal intended to

accomplish the goal without unintended consequences. The revised language allows a veterinary technician employed by the Commission or the track who is taking biologic samples for regulatory testing to be under the general supervision of a veterinarian while eliminating the requirement that a veterinarian be on the same premise.

This proposal also makes stylistic changes to the applicable Commission rules. A notice of proposed rulemaking was published in the October 28<sup>th</sup>, 2020 State Register meaning that the public comment period for the proposed rulemaking expired on December 7<sup>th</sup>.

One timely comment was received from the President of the New York State Veterinary Medical Society who supported the proposal but recommended very strong guidelines for the supervision by an off-premise veterinarian of veterinary technicians who are collecting biologic samples.

The comment raised concern that when a supervisor is not on the premises a veterinary technician might be influenced by persons who lack the competence of the supervising veterinarian. They suggested that the guidelines ensure the strict supervision that is vital to the best possible care of horses.

Staff believes that this rule does not endanger the health and welfare of horses that requires the supervising veterinarian be present on the racetrack for all activities of veterinary technicians except for the collection of biologic samples. Blood and hair samples are collected for regulatory purposes only and not for the treatment of horses. Persons who might be present during the sample collection are regulated third-parties who have not influence over sample collection.

Additionally, the rule requires that when the sample is being collected, a supervising veterinarian is available for consultation. The supervising veterinarian is responsible to ensure in advance that all veterinary technicians are trained and instructed appropriately on the safe collection of biologic samples.

Finally, when the samples are collected off-track, another rule of the Commission requires that blood samples be collected by a licensed veterinarian.

The New York Racing Association did a letter supporting the proposal although it was not within the public comment period.

Staff recommends that the Commission adopt this rulemaking.

Chairman:

Commissioners, any questions on the adoption of a rule to expressly permit veterinary technicians to practice in horse racing veterinary technician? Any comment?

May I have a motion to adopt this rule?

Unidentified: So moved.

Chairman: Second?

Unidentified: Second.

Chairman: Any discussion of the motion?

Hearing none, all in favor?

Commission: Aye. (in unison)

Chairman: Any opposed?

No. Thank you. The motion carries. Next item, Rob.

Rob Williams: For Commission consideration is the adoption of a rulemaking authorizing the inclusion of instant lottery tickets to the existing lottery courier regulations. Recall the lottery courier regulations previously advanced and adopted did not include the allowance of instant tickets. Since the initial adoption of the Commission's regulations several other states have followed and approved the operation of courier sales including instant tickets. The rule changes were designed to fit within and along the existing courier regulations.

A notice of proposed rulemaking was published in the November 4<sup>th</sup> State Register, meaning that the public comment period expired on January 4<sup>th</sup>, 2021.

The first comment was received from Jackpocket, Inc. which is to date the lone licensed lottery courier service in New York. Jackpocket generally supported the expansion of permitted lottery games to include instant tickets but suggested that the proposed requirements to provide a courier customer with a scanned front and back of the purchased instant ticket be modified to enable a courier service to simply provide the customer with an exemplar of the ticket from which an instant game, along with a barcode or serial number of the ticket purchased. Jackpocket asserted that there was no utility in producing scanned images of each instant ticket purchased.

Staff disagrees. The regulations require a lottery courier service to deliver an instant lottery ticket to the lottery courier customer for the customer to play and claim any prize related to that ticket. Without producing a scan of the actual ticket purchased on the customer's behalf, the customer would have no assurance that the ticket delivered is the same ticket purchased and would not know contemporaneous with the purchase whether a purchased ticket is mutilated, tampered or otherwise not capable of being claimed for a prize.

An instant ticket that is scratched before deliver to the customer might cause

the customer to believe that only non-prizewinning tickets are \_\_\_\_\_ 00:10:03]. A scan of both the front and back of the instant ticket purchased would give the courier customer assurance that a valid unplayed ticket has been purchased on their behalf and that it is the same ticket that is delivered to the customer.

Jackpocket also raised concerns with the proposed rule language that requires a lottery courier service to destroy any ticket it purports to purchase on behalf of a customer but fails to timely complete the ticket transmission process. Jackpocket objected to this requirement and proposed that along with refunding the cost of the unprocessed ticket, a lottery courier service be permitted to provide the ticket to a customer who could still enjoy the ticket ordered.

Staff also disagrees. Current regulations require lottery courier service to process a ticket prior to a cutoff time before lottery drawing. If any lottery drawdeemed ticket is processed after a cutoff time, a ticket is invalid and ineligible to win a prize as a result of the related drawing.

The purpose of the cutoff is to ensure that all requirements are completed sufficiently in advance of the drawing in order to have a valid courier purchased ticket. Providing the invalid ticket to the customer would only serve to cause confusion if a customer then attempts to claim a prize with the ticket which would be rejected for failure to adhere to all courier regulatory requirements.

Staff disagrees that there would be any enjoyment for the customer to hold the ticket that cannot be redeemed for a prize. Rather the regulations provide that the ticket order that cannot be timely fulfilled is null and void.

The other comment received was from the New York Association of Convenience Stores or NYACS. NYACS objected to the proposal asserting that the Commission lacked clear statutory authority to license lottery courier services. They also questioned whether lottery sales agents should be indemnified against failures or omissions of a lottery courier service asserting that age verification requirements for lottery courier services are inadequate, complained about the lack of criminal penalties for a lottery courier services for transacting with minors and objected to the ability of a lottery courier services to charge a fee.

The staff disagrees. Staff notes that NYACS has made many of these comments during the initial lottery courier service rulemaking process. As noted in the staff response to a similar comment NYACS made at the time of the adoption of the initial lottery courier service rules, NY Tax Laws Section 1605E authorizes the Commission to license vendors associated with the lottery. This term is broadly sufficient to encompass potential lottery couriers.

With respect to lottery sales agent indemnification, staff believes that the required disclaimers of the Commission responsibility for lottery courier

services acts and omissions are appropriate. Lottery sales agents are continued to be accountable to the Commission through their sales agent agreements and applicable statutes and regulations for their acts and omissions. Any responsibilities or liabilities created by the interactions between a lottery sales agent and a lottery courier service would be governed by applicable law and any agreements that may exist among them.

As noted in the staff response to a similar comment NYACS made at the time of the adoption of the initial courier services rules, current age verification technology is used routinely to reject transactions with minors in lottery conscription program, with horse racing account wagering and in interactive fantasy sports. All activities that the Commission already conducts or regulates. This topic is not affected by this rulemaking.

Also as noted in the staff response to NYACS' comment made at the time of the initial lottery courier rules adoption, the Commission lacks the power to provide for criminal sanctions through regulation.

Finally, in response the NYACS previous comments at the time of the initial lottery courier service rules, the explicit authorization of a courier's ability to charge a reasonable fee for acting as a lottery courier and agent for the customer is recognition of the effort and services that the licensed lottery courier would perform as its business. The regulatory requirement that such a fee be reasonable is a protection for the customer and for the public perception of the lottery.

Staff recommends that the Commission adopt this rulemaking.

Chairman: Commissioners, any questions on the adoption of a rule to allowing licensed lottery courier services to purchase and deliver lottery tickets to customers? Any comment, discussion?

Hearing none, may I have a motion on this rule?

Unidentified: So moved.

Chairman: Anybody second?

Unidentified: Second.

Chairman: Any discussion on the motion?

Hearing none, all in favor?

Commission: Aye. (in unison)

Chairman: Any opposed?

Hearing none, the motion carries. Next item on the agenda is adjudications. Today we have three matters for adjudication. Rob.

Rob Williams:

On September 2<sup>nd</sup>, 2020 the Bureau of Licensing issued a notice of license revocation and ordered the immediate temporary suspension of the lottery sales agent license of Neal's Backyard, Inc. which is doing business as The Cliffton on Maple Avenue in Patchogue.

The notice informed Neal's that the suspension was for conduct prejudicial to public confidence in the state lottery and because the licensee's character and general fitness were such that the licensee's participation as a lottery sales agent was inconsistent with the public interest. The notice of hearing alleged that Neal's engaged in conduct that promoted violence and promoted illegal gambling in connection with a pool at the location alleged to have been illegal gambling.

Neal's has requested a hearing which was conducted on October 22<sup>nd</sup>, 2020. The hearing officer submitted a report to the Commission secretary on November 23<sup>rd</sup> recommending that the license be revoked.

Post report issuance Neal's submitted objections by email asserting that the pool results were determined by police reported discharges of firearms and did not relate to people being shot. They also allege that the Commission's counsel office failed to prove that the pool constituted illegal gambling.

Please note that on January 13<sup>th</sup>, 2021 Commission counsel's office withdrew the allegation of promoting illegal gambling. The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceeding exemption of New York Public Officer's Law Section 108.1.

Chairman:

The Commission duly deliberated and considered this matter and voted 5-0 to remand it back to the hearing officer in recognition of the withdrawal of the allegation of illegal gambling.

Next matter, Rob.

Rob Williams:

On August 14<sup>th</sup>, 2020 the Bureau of Licensing issued a notice of license suspension and ordered the immediate temporary suspension of a lottery sales agent license of New Windsor Station, Inc. which is in New Windsor.

The notice informed New Windsor Station that the suspension was due to a failure to remit funds due. A notice of hearing cited additional grounds for suspension, namely failures by an agent to properly account for lottery tickets and not making appropriate deposit of lottery revenues.

New Windsor Station requested a hearing which was conducted on September 24<sup>th</sup>, 2020. The hearing officer submitted a report to the Commission secretary recommending that the license be revoked.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial proceeding exemption of New York Public Officer's Law Section 108.1.

Chairman: The Commission duly deliberated and considered this matter and determined upon a vote of 5-0 to sustain the hearing officer's report and recommendations.

Next matter\_\_\_\_\_ [00:19:07]. Rob?

Rob Williams: Yes, sir. On February 20<sup>th</sup>, 2020 the Bureau of Licensing denied Sam F. Akree's application as a thoroughbred horse owner. The notice informed Mr. Akree that the basis for the denial was his experience, character or general fitness are such that his participation in racing or related activities would be inconsistent with the public interests, convenience or necessity or with the best interests of racing generally.

The denial is based on Mr. Akree's misdemeanor conviction in 1998 for promoting gambling in the second degree which involved sports gambling.

Mr. Akree requested a hearing which was conducted on November 20<sup>th</sup>, 2020. The hearing officer submitted a report to the Commission secretary recommending that Mr. Akree's license be granted.

The Commission considered this matter at a meeting conducted pursuant to the judicial or quasi-judicial meetings proceedings exemption of New York Public Officer's Law Section 108.1.

Chairman: The Commission duly deliberated and considered this matter and determined upon a vote of 3-2 to sustain the hearing officer's report and recommendations.

Rob Williams: Sir, could you read into the record who voted in the negative?

Chairman: The negative votes were Commissioner Poklemba and Commissioner Sample.

Rob Williams: Thank you very much.

Chairman: Next item on the agenda is old and new business. The old business we are happy to report that it just arrived to us in the last 24 hours on the use of the crop and commissioners will be spending time with that report and hope to address the issue at our next meeting.

The next item, does anybody have any new business? Nope?

The next item on our agenda is adjournment. That concludes our published agenda for today. And I would like to thank everyone for participating.

But before we close the meeting, I'd like to mark the passing of one of our commission's longtime employees, Mr. Bruce Hall. Bruce started professional life as an employee of RJ Reynolds Tobacco Company and spent the last quarter century working for the Division of Lottery as a marketing representative out of the Syracuse office.

He had spent several weeks in the hospital battling the COVID pneumonia and was initially responding well to treatment before regressing around Christmas time. Ultimately, he passed away on December 29<sup>th</sup> at Bassett Medical Center in Cooperstown.

Bruce was survived by his two children, William of Golden, Colorado and Jolene Hall of Chelsea, Massachusetts. His family indicated that they would advise when plans for memorial are set at a time when the world is a little safer.

I'd like to ask everyone to take a moment to remember Bruce and his contributions to our agency.

Do any commissioners have any items they'd like to present for consideration at this time?

As a commission we traditionally met on the fourth Monday of each month which for February would be the 22<sup>nd</sup>. For planning purposes, Secretary Buckley will be in contact with us to consider and identify our availability.

Are there any other items for consideration?

Hearing none, I'd like to have a motion to adjourn.

Unidentified: So moved.

Unidentified: So moved.

Chairman: Second?

Unidentified: Second.

Chairman: All in favor?

Commission: Aye. (in unison)

Chairman: Thank you.

Unidentified: Thank you, Mr. Chairman.