

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

**STATE OF NEBRASKA ex rel.
DOUGLAS J. PETERSON, Attorney
General of the State of Nebraska,**

Relator,

v.

**DENNIS P. LEE, JANELL
BEVERIDGE, HELEN ABBOTT
FELLER, and JEFFREY GALYEN,
in their official capacities as
Commissioners of the Nebraska
State Racing Commission; HALL
COUNTY LIVESTOCK
IMPROVEMENT ASSOCIATION, a
Nebraska Nonprofit Corporation,
d/b/a FONNER PARK; PARIMAX
HOLDINGS LLC, a Delaware
Limited Liability Company; and
AMTOTE INTERNATIONAL, INC, a
Delaware Corporation,**

Respondents.

Case No. CI _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Relator Douglas J. Peterson, Attorney General of the State of Nebraska, for his cause of action against the Respondents, states and alleges as follows:

PARTIES

1. Relator is the duly elected, authorized, and acting Attorney General of the State of Nebraska.

2. Respondents Dennis P. Lee, Janell Beveridge, Helen Abbott Feller, and Jeffrey Galyen, are the duly appointed and acting Commissioners of the Nebraska State Racing Commission [collectively the "Commissioners"]. The Commissioners are

sued in their official capacities.

3. Respondent Hall County Livestock Improvement Association, d/b/a Fonner Park [“Fonner Park”] is a Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act, Neb. Rev. Stat. §§ 21-1901 to 21-19,177 (2012 and Cum. Supp. 2018), the purposes of which include “to promote the industries of agriculture and livestock breeding . . . [and] to hold and conduct...exhibits, fairs, horse races, and other forms of entertainment.”

4. Respondent PariMax Holdings, LLC is a Delaware Limited Liability Company with its principal place of business in Hunt Valley, Maryland. Respondent AmTote International, Inc. is a Delaware Corporation with its principal place of business in Hunt Valley, Maryland.

JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction of this action for declaratory judgment under Neb. Rev. Stat. § 24-302, the Nebraska Uniform Declaratory Judgments Act, Neb. Rev. Stat. §§ 25-21,149 to 25-21,164, and for injunctive relief pursuant to Neb. Rev. Stat. §§ 25-1062 to 25-1080.

6. Relator is authorized to bring this action pursuant to the statutory authority granted to him under Neb. Rev. Stat. §§ 84-203 and 84-205 and the common law authority vested in the Attorney General.

7. Venue is appropriate pursuant to Neb. Rev. Stat. § 25-403.01 as the Commissioners, in their official capacities, reside in Lincoln, Lancaster County, Nebraska, the location of the office of the Nebraska State Racing Commission

["Commission"].

FACTS

A. Commission Proceedings.

8. On or about October 26, 2018, Fonner Park requested an item be placed on the Commission's agenda for the public meeting to be held on October 29, 2018, for "approval of an additional pari-mutuel wager." A true and correct copy of the email making this request is attached as Exhibit 1 and incorporated by reference.

9. Pursuant to the request made by Fonner Park, the agenda for the Commission meeting on October 29, 2018, was amended to add as item number 12, "Fonner Park – Request to Approve an Additional Pari-Mutuel Wager." A true and correct copy of said agenda is attached as Exhibit 2 and incorporated by reference.

10. The minutes from the Commission's meeting on October 29, 2018, reflect that representatives of Fonner Park and AmTote International gave a live presentation of what is referred to as the "PariMax pari-mutuel wager." The minutes reflect that six exhibits were presented and accepted. The minutes also show that the Commissioners voted unanimously to find: "(a) . . . the PariMax historic horseracing wager is pari-mutuel and is a pari-mutuel wager, (b) that the wager does comply with the pari-mutuel requirements in Nebraska Statutes and the Nebraska rules and regulations; (c) that the Commission grants the Fonner Park request for the PariMax historic horseracing wager, and (d) that the Commission adopts as directives the Kentucky rules of racing pertaining to historic horseracing wagers with any and all necessary staff modifications to correspond with Nebraska racing statutes

and regulations.” A true and correct copy of said minutes are attached as Exhibit 3 and incorporated by reference.

11. Following the Commissioners’ action approving historic horseracing at the October 29, 2018 meeting, Relator sent a letter to Chairman Lee dated November 15, 2018, as well as sending a copy of the letter to each of the other Commissioners, advising that: (1) the Commissioners’ action was taken in violation of the Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014 and Cum. Supp. 2018), as the participation by two Commissioners by telephone was improper, and that the absence of a Commissioner for part of the meeting deprived the Commission of the quorum necessary to take formal action; (2) the Commissioners lacked authority to approve wagering on “historic horseraces”; and (3) the Commissioners’ attempt to adopt the rules for historic horseracing enacted by the Kentucky Racing Commission as “directives” was invalid and constituted unlawful rulemaking in violation of the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-910 (2014 and Cum. Supp. 2018). A true and correct copy of this letter is attached hereto as Exhibit 4 and incorporated by reference.

12. The agenda for the Commission meeting on January 16, 2019, included item number 15, “Rescind the Findings from the October 29, 2018 Racing Commission Meeting Agenda Item #12 Pertaining to Fonner Park’s request to Approve an Additional Pari-Mutuel Wager.” Also on the agenda for that meeting was item number 18, “Public Hearing on Fonner Park’s Request to Have New Form of Wagering Approved – Historic Horse Racing.” A true and correct copy of this agenda

is attached as Exhibit 5 and incorporated by reference.

13. The minutes for the Commission meeting held on January 16, 2019, show that the Commissioners, by a vote of four in favor and one against, acted to rescind the findings from the October 29, 2018 Commission meeting agenda item number 12 pertaining to Fonner Park's request to approve an additional pari-mutuel wager. The minutes further reflect that a public hearing was held on Fonner Park's request to have a new form of wagering approved – historic horse racing, including a “[a] live presentation...on the PariMax pari-mutuel wagering machine by representatives of AmTote International.” The minutes also state that “[a]ll exhibits were submitted and accepted . . .” and that “[p]roponents, opponents and those wanting to testify in a neutral capacity were heard.” The minutes further state the “matter is being taken under advisement, and the parties and the public have until February 1, 2019, to submit anything additional in writing to the Commission.” A true and correct copy of said minutes are attached as Exhibit 6 and incorporated by reference.

14. The agenda for the Commission meeting held on July 31, 2019, included as item number 4, “Fonner Park's Request to Have a New Form of Wagering Approved – Historic Horse Racing – Commission Decision.” A true and correct copy of said agenda is attached as Exhibit 7 and incorporated by reference.

15. The minutes for the Commission meeting held on July 31, 2019, reflect that, for agenda item number 4, a motion was made “[t]hat the historic horse racing proposal submitted by Fonner Park in regard to the PariMax System be approved,

that the Commission consider, if necessary, adopting rules to support the historic horse racing implementation and if the motion is approved that the Commission issue a formal written order with findings of fact, conclusions of law and the final order within 21 to 25 days.” This motion was approved, with three Commissioners voting aye and two Commissioners voting nay. A true and correct copy of the minutes of said meeting is attached as Exhibit 8 and incorporated by reference.

16. On December 4, 2019, a “Findings of Fact, Conclusions of Law, and Order” [the “Order”] was executed by the Commission Chairman Lee. The Order was not executed by any other Commissioner, and was not voted on or approved by any other Commissioner. A true and correct copy of the Order is attached as Exhibit 9 and incorporated by reference.

B. The Nature of Historical Horse Racing

17. Historical Horse Racing using the PariMax system [“HHR”] allows bettors to wager on the results of previously run horse races using electronic terminals. The machines reportedly can access thousands of previously run horse races. Wagers can be made by cash or insertion of a wager voucher. Players can choose to use limited past performance data (i.e. winning percentages, average earnings per start, trainer and jockey success, etc.), provided in graphic form prior to making their selections. The data is provided in such a way that bettors cannot identify the exact race. Wagers made on a single race or series of races at each HHR machine are not pooled with other wagers on the same race.

18. In appearance and operation, HHR machines resemble slot machines.

The machines are the same height and design as a slot machine, and include flashing buttons, blinking lights, and video displays which utilize simulated reels displaying numbers or symbols. If the symbols line up in one of various designated alignments, the player wins cash or a cash voucher.¹

19. Typically, HHR machines will display a short portion of the previously-run horse race (two to four seconds) at the top of the machine or in a small corner of the screen outside the player's main field of vision.²

20. HHR machines also feature an "Auto-play" button which allows bettors to have the machine select the numbers to be bet on a race. Using this automatic selection feature, players can place wagers repeatedly in as little as five seconds.

**FIRST CAUSE OF ACTION:
THE COMMISSIONERS EXCEEDED THEIR STATUTORY
AUTHORITY IN APPROVING WAGERING USING HHR MACHINES.**

21. Relator restates and incorporates paragraph 1 through 20 as if fully set forth herein.

22. Neb. Const. art. III, § 24(4), provides, in part: "Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within

¹ The PariMax system approved by the Commissioners includes numerous machines which utilize game displays that are indistinguishable in appearance from slot machines. <https://www.amtote.com/product-pges/games-library>. A true and correct copy of the games library screen display depicting these PariMax machines is attached hereto as Exhibit 10 and incorporated by reference.

² This is illustrated by clicking on the image for the game "Alchemist's Jackpot" from the games library listed at the site in footnote 1. The video image shows a brief clip of the finish of six races at the top of the machine.

or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure. . . .”

23. The Legislature has exercised the authority granted pursuant to Neb. Const. art. III, § 24(4), through the enactment of Neb. Rev. Stat. §§ 2-1201 to 1229 and 2-1246 and 2-1243.47 (2012 and Cum. Supp. 2018), which govern the conduct of parimutuel wagering on horse races in Nebraska.

24. The Commission has the “power to prescribe and enforce rules and regulations governing horseraces and race meetings licensed as provided in section 2-1201 to 2-1229.” Neb. Rev. Stat. § 2-1203 (Cum. Supp. 2018).

25. The Commission is empowered to “[e]nforce all state laws covering horseracing as required by sections 2-1201 to 2-1229 and enforce rules and regulations adopted and promulgated by the commission under the authority of section 2-1203.” Neb. Rev. Stat. § 2-1203.01(1) (Cum. Supp. 2018).

26. Neb. Rev. Stat. §§ 2-1201 to 2-1218 (2012 and Cum. Supp. 2018) include the following provisions which establish that these statutes authorize parimutuel wagering on the results of live horse races conducted by licensees on specified days at designated racetrack enclosures in Nebraska:

- Certain corporations or associations may apply “for a license to conduct horseracing at a designated place within the state . . .” and the application must be filed “at least sixty days before the first day of the horserace meeting which such corporation or association proposes to hold or conduct, shall specify

the day or days when and the exact location where it is proposed to conduct such racing . . .” (emphasis added). Neb. Rev. Stat. § 2-1204 (2012).

- “The license shall set forth the name of the licensee, the place where the race or race meetings are to be held, and the time and number of days during which racing may be conducted by such licensee.” (emphasis added). Neb. Rev. Stat. § 2-1205 (2012).
- “Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held...the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensees.”³ (emphasis added). Neb. Rev. Stat. § 2-1207(1) (Cum. Supp. 2018).
- “Under such system, the licensee may receive wagers of money from any person present at such race...”⁴ (emphasis added). Neb. Rev. Stat. § 2-1207(1) (Cum. Supp. 2018).
- “The parimutuel system of wagering on the results of horseraces, when conducted within a licensed racetrack enclosure at licensed horserace

³ At racetracks licensed to simulcast races or conduct interstate simulcasting, the licensee may accept wagers from “any person present at...[a] racetrack receiving the simulcast race or conducting interstate simulcasting...” Neb. Rev. Stat. § 2-1207(1) (Cum. Supp. 2018).

⁴ Licensees may also receive wagers from “any person present at such...racetrack receiving the simulcast race or conducting interstate simulcasting...” Neb. Rev. Stat. § 2-1207(1) (Cum. Supp. 2018).

meetings, shall not under any circumstances be held or construed to be unlawful . . .” (emphasis added). Neb. Rev. Stat. § 2-1216 (Cum. Supp. 2018).

27. Neb. Rev. Stat. §§ 2-1223 to 2-1229 (2012) authorize the Commission to license racetracks to conduct intrastate and interstate simulcast wagering on live horse races. The simulcasting statutes include the following:

- “[S]imulcast” is defined to “mean the telecast of live audio and visual signals of any horserace conducted in the state for the purpose of parimutuel wagering. . . .” Neb. Rev. Stat. § 2-1225(7) (2012) (emphasis added).
- “Interstate simulcast” is defined to “mean parimutuel wagering at any licensed racetrack within the state on the results of any horserace conducted outside the state.” Neb. Rev. Stat. § 2-1225(7) (2012).
- Any licensed racetrack “which operates at least one live race meet during each calendar year . . .” may be “issued a[n] [intrastate] simulcast facility license” allowing the licensee to “display the simulcast of a horserace on which parimutuel wagering shall be allowed.” Neb. Rev. Stat. § 2-1226 (2012).
- Intrastate simulcast licensing requires execution of a written agreement between the sending and receiving tracks, which must be approved by the organization representing a majority of licensed owners and trainers at each track. Neb. Rev. Stat. § 2-1227(1) (2012).
- Simulcasts between racetracks in Nebraska “shall result in the combination of all wagers placed at the receiving track located in the state with the wagers placed at the sending track located in the state so as to produce common

parimutuel betting pools for the calculation of odds and the determination of payouts from such pools. . . .” Neb. Rev. Stat. § 2-1227(4) (2012).

- Licensed racetracks which conduct “live racing” for a certain number of days are eligible to receive interstate simulcast facility licenses. Neb. Rev. Stat. § 2-1228 (2012). “Any racetrack issued an interstate simulcast facility license may conduct the interstate simulcast of any horserace permitted under its license, and parimutuel wagering shall be allowed on such horserace.” *Id.*
- An interstate simulcast facility license issued to a licensed racetrack in Nebraska allows the racetrack “to receive the interstate simulcast of horseraces for parimutuel wagering purposes from any track located outside of the state.” Neb. Rev. Stat. § 2-1229(1) (2012). Among the factors the Commission is to consider in acting on an interstate simulcast facility license is whether “such interstate simulcast would have a significant effect upon either live racing or the simulcasting of live racing of the same type and at the same time conducted in this state. . . .” *Id.* (emphasis added).
- Commission approval of an interstate simulcast facility license is conditioned upon: (1) Prior written approval of “any other racetrack issued a license . . . and conducting live racing of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the organization which represented a majority of the licensed owners and trainers at the racetrack’s immediately preceding live thoroughbred race meeting”; (2) Prior written approval of “any other racetrack issued a license . . . which is

simulcasting the racing program of any licensee conducting live racing in this state of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the organization which represented a majority of the licensed owners and trainers at the racetrack's immediately preceding live thoroughbred race meeting"; and (3) "[A] written agreement between the receiving track and the sending track located outside of the state . . . setting forth the division of all proceeds between the sending and receiving tracks and all other conditions under which such interstate simulcast will be conducted." Neb. Rev. Stat. § 2-1229(1)(a)-(c) (2012) (emphasis added). The agreement between the sending and receiving track "shall have the consent of the group representing the majority of horsepersons racing at the sending track and of the organization which represented a majority of the licensed owners and trainers at the receiving track's immediately preceding live thoroughbred race meeting." *Id.* at § 2-1229(1)(c) (emphasis added).

28. The Legislature has thus only enacted statutes authorizing parimutuel wagering in the following circumstances: (1) Pursuant to licenses issued by the Commission to qualified corporations or associations to hold and conduct live horse races or race meetings on specified days at a designated racetrack at which parimutuel wagers on the results of those races can be received from any person present at such races (Neb. Rev. Stat. §§ 2-1201 to 2-1218 (2012 and Cum. Supp. 2018); and (2) Pursuant to licenses issued by the Commission to racetracks conducting at least one live race meeting authorizing parimutuel wagering on

intrastate simulcast race events; and (3) Pursuant to licenses issued by the Commission to racetracks conducting live racing for a certain number of days authorizing parimutuel wagering on interstate simulcast race events (Neb. Rev. Stat. § 2-1224 to 2-1229 (2012)).

29. Pursuant to Neb. Rev. Stat. §§ 2-1204 to 2-1206 (2012), by application dated November 15, 2019, Fonner Park applied to the Commission for a license to conduct a live horse race meeting within the confines of Fonner Park Racetrack located in Grand Island, Nebraska, from February 21, 2020, through May 2, 2020. Fonner Park also applied to the Commission for a license to conduct simulcast wagering on intrastate and interstate horse races for 2020 pursuant to Neb. Rev. Stat. §§ 2-1224 to 2-1229 (2012). A true and correct copy of these license applications is attached as Exhibit 11 and incorporated by reference. The Commission voted to approve these license applications at its meeting on December 4, 2019. A true and correct copy of the minutes from the Commission meeting approving these license applications is attached as Exhibit 12 and incorporated by reference.

30. The Commissioners' vote to approve wagering on HHR machines is in excess of the Commission's statutory authority and jurisdiction, as the Legislature has only enacted statutes which permit the conduct of parimutuel wagering in the manner prescribed in Neb. Rev. Stat. § 2-1207 (Cum. Supp. 2018) on the results of live or simulcast horse races under licenses granted by the Commission. HHR consists of neither live nor simulcast horse races. Wagering on HHR machines is therefore unauthorized, void, and unlawful.

31. Further, the Order is void and of no effect, as it was executed by a single Commissioner, not the Commission as a body. To the extent the Order purports to support the Commissioners' vote approving wagering using HHR machines, it is unauthorized and in excess of the Commission's statutory authority and jurisdiction because the Legislature has only enacted statutes which permit the conduct of parimutuel wagering in the manner prescribed in Neb. Rev. Stat. § 2-1207 (Cum. Supp. 2018) on the results of live or simulcast horse races under licenses granted by the Commission.

32. Respondents, unless restrained and enjoined, will act pursuant to the Commissioners' approval of HHR, and commence and continue to allow the use of HHR machines in contravention of Nebraska law. Irreparable damage to the citizens of Nebraska will result should this conduct be permitted to commence and continue in contravention of the statutes limiting parimutuel wagering to only live or simulcast horse races.

**SECOND CAUSE OF ACTION:
THE COMMISSIONERS' APPROVAL OF HHR MACHINES IS UNLAWFUL
BECAUSE WAGERING USING THESE MACHINES IS NOT CONDUCTED
IN CONFORMANCE WITH THE CERTIFICATE SYSTEM OF PARIMUTUEL
WAGERING AUTHORIZED IN NEB. REV. STAT. § 2-1207.**

33. Relator restates and incorporates paragraphs 1 through 32 as if fully set forth herein.

34. The Nebraska Constitution authorizes the Legislature to enact laws permitting "wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by

licensees within a licensed racetrack enclosure. . . .” Neb. Const. art. III, § 24(4).

35. The Legislature has exercised the authority to permit parimutuel wagering on the results of horse races by enactment of Neb. Rev. Stat. § 2-1207 (Cum. Supp. 2018). Subsection (1) of § 2-1207 provides, in pertinent part:

(1) Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. . . . Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting . . . by any person who may legally wager on any horse race in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. Such licensee shall issue to each person so wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner [After taking out authorized or required deductions from amounts wagered], . . . [t]he balance remaining on hand shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses in such race to run first. The licensee may likewise

receive such wagers on horses selected to run second, third, or both, or in such combinations as the commission may authorize, the method, procedure, and authority and right of the licensee, as well as the deduction allowed to the licensee, to be specified with respect to wagers upon horses selected to run first. (emphasis added).

36. The requirements for lawful parimutuel wagering under Neb. Rev. Stat. § 2-1207(1) (Cum. Supp. 2018) thus include:

- At a licensed racetrack where a race is conducted, “[t]he licensee may receive wagers from any person present at such race.”⁵
- “[O]n any horse in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her.”
- The “licensee shall issue to each person so wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner.”
- The licensee has the option to “deduct from the total sum wagered on all horses as first winners not less than fifteen percent or more than

⁵ At racetracks licensed to simulcast races or conduct interstate simulcasting, the licensee may accept wagers from “any person present at...[a] racetrack receiving the simulcast race or conducting interstate simulcasting....” Neb. Rev. Stat. § 2-1207(1) (Cum. Supp. 2018).

eighteen percent from such total sum, plus the odd cents of the redistribution over the next lower multiple of ten.”

- The licensee has the option to “deduct up to twenty-five percent from the total sum wagered on exotic wagers as defined in section 2-1208.03.”⁶
- The licensee must notify the Commission “in writing of the percentages the licensee intends to deduct during the live race meet conducted by the licensee....”
- “The licensee shall also deduct from the total sum wagered by exotic bets, if any, the tax plus the odd cents of the redistribution over the next multiple of ten as provided in subsection (1) of section 2-1208.04.”⁷
- “The balance remaining...shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses in such race to run first.”
- “The licensee may likewise receive wagers on horses selected to run second, third, or both, or in such combinations as the commission may authorize, the method, procedure, and authority and right of the

⁶“Exotic wagers shall mean daily double, exacta, quinella, trifecta, pick six, and other similar types of bets which are approved by the State Racing Commission.” Neb. Rev. Stat. § 2-1208.03(1) (2012).

⁷ The Track Distribution Fund, created under Neb. Rev. Stat. § 2-1208.04 (2012), consists of amounts withheld from gross exotic daily receipts which are distributed to racetracks for purse supplements.

licensee, as well as the deduction allowed to the licensee, to be as specified with respect to wagers on horses to run first.”

37. Wagering using HHR machines fails to satisfy the requirements for lawful “parimutuel wagering” under Neb. Rev. Stat. § 2-1207(1) (Cum. Supp. 2018) in the following respects:

- As HHR machines utilize unidentified historic or previously run races, the person wagering is not “present at such race” or “at a racetrack receiving the simulcast race or conducting interstate simulcasting.”
- Persons placing wagers using HHR machines do not acquire an interest in the total money wagered on all horses in a particular race in proportion to the amount wagered.
- Persons wagering using HHR machines are not issued a certificate showing the number of the race, the amount wagered, and the number or name of the horse selected by the bettor.
- Wagering using HHR machines does not allow for deductions from “the total sum wagered on all horses selected as first winners” or the “total sum wagered on exotic wagers.”
- As persons wagering through HHR machines are not wagering on the same race or races with other persons, there is no “balance remaining” after deductions which can “be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each

certificate holder bears to the total amount wagered on all horses in such race to run first.”

- HHR machines also cannot satisfy these same parimutuel requirements for wagers other than those placed on horses selected to run first, including wagers on horses selected to run second, third, or both, or any combination thereof, as well as for exotic wagers authorized under Neb. Rev. Stat. § 2-1208.03 (2012).

38. The parimutuel wagering requirements in Neb. Rev. Stat. § 2-1207(1) (Cum. Supp. 2018) are consistent with the plain and ordinary meaning of “parimutuel betting” as “[a] system of gambling in which bets placed on a race are pooled and then paid (less a management fee and taxes) to those holding winning tickets.” Black’s Law Dictionary (11th ed. 2019).

39. Wagering using HHR machines is not “parimutuel” under the plain and ordinary meaning of that term because wagers are not pooled on each race. In HHR, bettors are not wagering on the same race and thus wagers on the same race cannot be pooled. In parimutuel wagering, bets on the same race or series of races are pooled together and players are wagering against each other, with winning bettors sharing the prize pool in proportion to their respective wagers. HHR does not involve the pooling of wagers in this manner. The patent for HHR machines listing PariMax Holdings, LLC, as the applicant, states “[t]he present gaming system emphasizes the role of the progressive carry-over pools, so that all tiers of winning payoffs are made from progressive pools. Each player is presented with a unique event, so there is no

pooling of other players' wagers on that event." U.S. Patent No. 9,747,748 B2 (August 29, 2017).

40. Neb. Rev. Stat. § 2-1207(3) (Cum. Supp. 2018) provides "there shall be no wagering except under the parimutuel method outlined in this section." As HHR wagering does not meet the requirements for parimutuel wagering under § 2-1207, the Commissioners were without statutory authority or jurisdiction to approve HHR machines and their approval is therefore void and unlawful. For the same reason, the Order was entered without jurisdiction, is void, and of no effect.

41. Respondents, unless restrained and enjoined, will act pursuant to the Commissioners' approval of the HHR machines, and commence and continue to allow the use of HHR machines in contravention of Nebraska law. Irreparable damage to the citizens of Nebraska will result should this conduct be permitted to commence and continue in contravention of the statutes permitting only parimutuel wagering on live and simulcast horse races that meets the requirements of Neb. Rev. Stat. § 2-1207 (Cum. Supp. 2018).

**THIRD CAUSE OF ACTION:
WAGERING USING HHR MACHINES IS UNLAWFUL AS IT CANNOT BE
CONDUCTED IN CONFORMANCE WITH THE COMMISSION'S DULY
ENACTED PARIMUTUEL WAGERING REGULATIONS.**

42. Relator adopts and incorporates paragraphs 1 through 41 as if fully set forth herein.

43. The Commission has the "power to prescribe and enforce rules and regulations governing horseraces and race meetings licensed as provided in section 2-1201 to 2-1229." Neb. Rev. Stat. § 2-1203 (Cum. Supp. 2018).

44. The Commission is empowered to “[e]nforce all state laws covering horseracing as required by sections 2-1201 to 2-1229 and enforce rules and regulations adopted and promulgated by the commission under the authority of section 2-1203.” Neb. Rev. Stat. § 2-1203.01(1) (Cum. Supp. 2018).

45. The Commission has exercised its rulemaking authority to enact regulations governing licensed horseraces and race meetings. Those regulations, having been duly enacted and filed with the Secretary of State at 294 Neb. Admin. Code. chs. 1 through 25, have the force and effect of statutory law. *Swift & Co. v. Nebraska Dep’t of Revenue*, 278 Neb. 763, 767, 773 N.W.2d 381, 385 (2009).

46. Wagering using HHR machines conflicts with, and thus cannot be conducted in compliance with, numerous Commission regulations governing the requirements for lawful parimutuel wagering, including, but not limited to:

- § 23.001.03 - Pari-Mutuel Tickets;
- § 23.001.04 – Pari-Mutuel Ticket Sales and Cancellations;
- § 23.001.09 – Display of Betting Information;
- § 23.001.20 – The Pari-Mutual Manager; and
- § 23.005 – Calculation of Payoffs and Distribution of Pools.

47. The motion to allow HHR machines approved by a majority of Commissioners provided “that the Commission consider, if necessary, adopting rules and regulations to support the historic horse racing implementation....” Exhibit 10 at 2.

48. As HHR machines cannot be operated in compliance with existing

Commission regulations, the Commission majority's purported approval of HHR machines is unlawful as it contrary to existing Commission regulations establishing requirements for lawful parimutuel wagering. For the same reason, the Order was entered without jurisdiction, is void, and of no effect.

49. Respondents, unless restrained and enjoined, will act pursuant to the Commissioners' approval of HHR, and commence and continue to allow the use of HHR machines in contravention of Nebraska law and the Commission's duly enacted regulations. Irreparable damage to the citizens of Nebraska will result should this conduct be permitted to commence and the use of these unlawful machines continue.

**FOURTH CAUSE OF ACTION:
THE COMMISSIONERS' APPROVAL OF WAGERING USING HHR
MACHINES VIOLATES NEB. CONST. ART. III, § 24(4).**

50. Relator restates and incorporates paragraphs 1 through 49 as if fully set forth herein.

51. Art. III, § 24 of the Nebraska Constitution, contains a general prohibition against the Legislature's authorization of "any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time." Neb. Const. art. III, § 24(1). The constitutional provision contains certain exceptions to this general prohibition, one of which allows the Legislature to authorize parimutuel wagering on horse races. Specifically, art. III, § 24(4), provides, in relevant part: "Nothing in this section shall be construed to prohibit (a) the enactment of laws providing for the

licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure. . . .”

52. The Nebraska constitutional provision allowing the Legislature to permit parimutuel wagering on horse races authorizes only the enactment of statutes such as those currently in place, providing for parimutuel wagering on live races conducted within Nebraska licensed racetrack enclosures or live races simulcast from other racetracks inside or outside Nebraska to Nebraska racetracks.

53. The HHR machines approved by the Commissioners are not a form of parimutuel wagering on horse races which may be authorized under art. III, § 24(4). By their nature and operation, HHR machines are player-activated instant gaming machines which more closely resemble slot machines than horse races. Unlike wagering on actual horse races, these devices do not allow bettors to know the identity of the horse, jockey, or racetrack; at most, bettors are provided limited “handicapping” information. The wagering involved in the use of HHR machines is far removed from conventional wagering on horse races conducted at a racetrack or simulcast live from other racetracks.

54. The Commissioners’ approval of the HHR machines violates Neb. Const. art. III, § 24, and is therefore void and unlawful. The Commissioners’ lacked jurisdiction to approve the HHR machines in violation of Neb. Const. art. III, § 24.

55. Respondents, unless restrained and enjoined, will act pursuant to the Commissioners’ approval of the HHR machines, and commence and continue to allow

the use of the HHR machines in contravention of the Nebraska Constitution. Irreparable damage to the citizens of Nebraska will result should this conduct be permitted to commence and continue in contravention of the public policy of the State of Nebraska in Neb. Const. art. III, § 2, to authorize only parimutuel wagering on live and simulcast horse races.

PRAYER FOR RELIEF

WHEREFORE, Relator prays:

A. For a judgment declaring the Commissioners' approval of the HHR machines, and accompanying Order, void and unlawful as in excess of their statutory authority, as the Legislature has only enacted statutes which permit the licensing and regulation of parimutuel wagering on the results of live or simulcast horse races;

B. In the alternative, for a judgment declaring that, as wagering on the HHR machines does not meet the requirements for lawful parimutuel wagering under Neb. Rev. Stat. § 2-1207 (Cum. Supp. 2018), the Commissioners were without jurisdiction or statutory authority to approve such wagering and their approval is therefore void and unlawful;

C. In the alternative, for a judgment declaring that wagering using HHR machines is unlawful as it cannot be conducted in conformance with the Commission's duly enacted parimutuel wagering regulations;

D. In the alternative, for a judgment declaring that the Commissioners' approval of the HHR machines, and accompanying Order, is null and void because it violates Neb. Const. art. III, § 24, as such machines are not a form of parimutuel

wagering on horse races which may be authorized under art. III, § 24(4);

E. For preliminary and permanent injunctive relief enjoining Respondents from acting pursuant to the Commissioners' unauthorized and unlawful approval of the HHR machines; and

F. For such other, further, and different relief as shall be just and equitable.

Dated January 22, 2020.

**STATE OF NEBRASKA ex rel.
DOUGLAS J. PETERSON, Relator,**

By: DOUGLAS J. PETERSON, NE #18146
Attorney General of Nebraska

By: *s/ Ryan S. Post*
Ryan S. Post, NE #24714
Laura A. Nigro, NE #25285
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Attorneys for Relator.

Sage, Tom

From: Bruce Swihart <bruceswihart@aol.com>
Sent: Friday, October 26, 2018 11:11 AM
To: Sage, Tom
Subject: Agenda Request

Ex 1
10/28/18

To: Mr. Tom Sage, NSRC
From: Bruce Swihart, CEO, Fonner Park

Fonner Park is requesting approval of an additional pari-mutuel wager.

Sent from my iPhone

NEBRASKA STATE RACING COMMISSION
AGENDA

DATE: October 29, 2018

TIME: 1:00 pm

LOCATION: NE State Racing Commission
Conference Room
5903 Walker Avenue
Lincoln NE 68507

1. Open Meetings Act Notification.

Public bodies shall make available at the meeting...at least one copy of all reproducible written material to Be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the Beginning of the meeting, the public shall be informed about the location of the posted information.
Nebraska Revised Statutes Cumulative Supplement, 2006. § 84-1412 (8)

2. Approval of Meeting Minutes and Financial Reports

- a. May 8, 2018 Commission Meeting Minutes
- b. May, June, July, August and September 2018 Financial Reports

3. Approval of Simulcast Applications Received since May 8, 2018

Fonner Park

Summer Simulcast Agreement 2018 June 10, 2018 - August 2, 2018
Simulcast Agreement August 3, 2018 - September 3, 2018
Simulcast Agreement September 4, 2018 – December 31, 2018
Simulcast Agreement September 24th – December 31, 2018 Zia Park

Horsemen's' Park

Summer Simulcast Agreement 2018 June 10, 2018 - August 2, 2018
Simulcast Agreement August 3, 2018 - September 3, 2018
Simulcast Agreement September 4, 2018 – December 31, 2018

Lincoln Race Course

Summer Simulcast Agreement 2018 June 10, 2018 - August 2, 2018
Simulcast Agreement August 3, 2018 - September 3, 2018
Simulcast Agreement September 4, 2018 – December 31, 2018

Columbus Exposition and Racing

Summer Simulcast Agreement 2018 June 10, 2018 - August 2, 2018
Simulcast Agreement August 3, 2018 - September 3, 2018
Simulcast Agreement September 4, 2018 – December 31, 2018
Export Simulcast Agreement

Hastings Exposition and Racing Inc., dba Fairplay Park
Simulcast Agreement June 10, 2018 – December 31, 2018
Quarter Horse Races

4. Columbus Exposition & Racing - Approved via Email
 - a. Approval of 2018 Racing Officials
 - b. Approval of Race Times for Live Racing
 - c. Approval of 2018 Takeout Rates

5. Hastings Exposition and Racing Inc., dba Fairplay Park – Approved via Email
 - a. Approval of 2018 Racing Officials
 - b. Request for Temporary Exception of NSRC Rule 3.003.08.4, 9.001.16 and 9.001.16A

6. Omaha Exposition & Racing Inc., dba Lincoln Race Course – Approved via Email
 - a. Request for 6:00 pm and 7:00 pm to be the post times for the two races on Friday, September 7th and 3:00 pm and 4:00 pm to be the post times for the two races on Sunday, September 9th
 - b. Approval of 2018 Racing Officials
 - c. Request for Temporary Exception of NSRC Rule 3.003.02, 3.003.04 and 3.003.08

7. South Sioux City Racing and Events Center, Inc. – Approved via email
 - a. Request for 3:00 pm to be the post time for the races on September 15th with the backup date being September 16th
 - b. Waiving of Rules
 - i. 3.003.04
 - ii. 3.003.08
 - c. Approval of Racing Officials

8. Hastings Request to Simulcast

9. Hearing
 - a. 2019 Live Race Date Applications
(Received Fonner, Horsemen's, Lincoln, Fairplay and Atokad)
 - b. 2019 Simulcast Facility Applications
(Received Fonner, Horsemen's, Lincoln, Fairplay and Columbus)

10. Chuck Turco – Patrick Fallon – Hearing Officer's Recommendation

11. Special Investigator's Report on Barry Lake/HBPA's Complaint

12. Fonner Park – Request to Approve an Additional Pari-Mutuel Wager

13. Meetings with Associations
 - a. Nebraska Thoroughbred Breeders' Association
 - b. NE Horsemen's Benevolent and Protective Association

NEBRASKA STATE RACING COMMISSION
MINUTES OF MEETING

DATE: October 29, 2018

TIME: 1:00 p.m.

LOCATION: Nebraska Racing Commission
Conference Room
5903 Walker Avenue
Lincoln NE

PRESENT COMMISSIONERS:

Dennis P. Lee Chairman
Jeffrey Galyen Commissioner
Helen Abbott Feller Commissioner

By Phone:

Janell Beveridge Vice Chairperson
Thomas Patterson Commissioner

Chm. Lee convened the meeting at 1:04 pm in compliance with the provision of Neb. Rev. Stat. 84-1411. Notice of the meeting was published in the Lincoln Journal Star. In addition, copies of such notice were sent to those on the Racing Commission agenda mailing list. Notification was given to the public of the open meetings law and notification to its location for public view.

Motion to Amend Agenda – Chm. Lee moved, seconded by Galyen to amend the order of the agenda items. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Approval of Meeting Minutes and Financial Reports – Galyen moved, seconded by Feller to approve the minutes from May 8, 2018 with one change: Remove the first sentence in the approval of Horsemen’s Park Racing Officials. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Approval of the May, June, July, August and September 2018 Financial Reports – Chm. Lee moved, seconded by Feller to approve. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Approval of Simulcast Applications Received since May 8, 2018 – Chm. Lee moved, seconded by Galyen to approve all requests for simulcasting through December 31, 2018. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Columbus, Hastings, Lincoln Race Course and South Sioux City (Items 4 – 7 on the agenda) – Chm. Lee moved, seconded by Feller to approve the request made by all tracks listed above that were approved previously via email. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Hastings Request to Simulcast – No action was taken. A signed lease agreement is necessary for the Commission to move forward with this item.

Hearing for 2019 Live Race Date and Simulcast Facility Applications – The date requested to race live by South Sioux City is amended to TBD, 2019. Chm. Lee moved, seconded by Feller to approve the Live Race Dates for 2019 to be:

Fonner Park - Grand Island
February 22, 2019 – May 4, 2019
31 Days of Live Racing

Horsemen's Park - Omaha
May 11, 17, 18, 25, 26, 31, 2019
June 1, 7, 8, 2019
9 Days of Live Racing

Lincoln Race Course – Lincoln
TBD, 2019
3 Days of Live Racing

Columbus Exp. & Racing – Columbus
August 2 – September 2, 2019
14 Days of Live Racing

Atokad – South Sioux City
TBD, 2019
1 Day of Live Racing

Hastings Exp. & Racing - Hastings
TBD, 2019
1 Day of Live Racing

Chm. Lee moved, seconded by Feller to also approve the simulcast applications for 2019. Voting aye: Lee, Beveridge, Feller and Patterson. Motion carried.

Chuck Turco – Patrick Fallon – Hearing Officer's Recommendation – Mr. Turco was present, Mr. Fallon was not. Mr. Turco was given 15 days to submit an amended itemization to the Commission. This item is continued until the next Commission Meeting.

Special Investigator's Report on Barry Lake/HBPA's Complaint – Special Investigator Dan McGovern was present along with Mr. Lake. Mr. McGovern presented his report. Mr. Lake was given 10 days to submit a response to Mr. McGovern's investigation.

Fonner Park – Request to Approve an Additional Pari-Mutuel Wager – Chris Kotulak, Chief Operating Officer for Fonner Park and Dan Waters, Attorney for Fonner Park were present along with two representatives from AmTote International - Tim Yelton, Vice President of Sales and Business Development and Cabot Haggin, Sales Manager, and Curtis Linnell, Vice President of the Thoroughbred Racing Protective Bureau. Six exhibits were presented and accepted. A live presentation was given on the PariMax pari-mutuel wager. Chm. Lee moved, seconded by Galyen, that (a) the Commission finds that the PariMax historic horseracing wager is pari-mutuel and is a pari-mutuel wager, (b) that the wager does comply with the pari-mutuel requirements in Nebraska Statutes and the Nebraska rules and regulations, (c) that the Commission grants the Fonner Park request for the PariMax historic horseracing wager, and (d) that the Commission adopts as directives the Kentucky rules of racing pertaining to historic horseracing wagers with any and all necessary staff modifications to correspond with Nebraska racing statutes and regulations.

Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Meetings with Associations

- a. Nebraska Thoroughbred Breeders' Association –None
- b. NE Horsemen's Benevolent and Protective Association – Update on Lincoln Race Course track extension to be presented at the next Commission meeting.

ADJOURNMENT

The meeting adjourned at 4:36pm.

Respectfully submitted,
Tom Sage
Executive Secretary



STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
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DOUGLAS J. PETERSON
ATTORNEY GENERAL

November 15, 2018

Dennis P. Lee, Chairman
Nebraska Racing Commission
5903 Walker Avenue
Lincoln, Nebraska 68507

RE: *Nebraska Racing Commission's October 29, 2018 Meeting*

Dear Chairman Lee:

I am writing with respect to a recent meeting of the Nebraska Racing Commission ["Commission"] held on October 29, 2018. It has come to my attention that Commission members may have committed violations of the Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 through 84-1414 (2014, Cum. Supp. 2016, Supp. 2017) ["Act"] during this meeting. It is also my understanding that the Commission considered and approved a request by Fonner Park to implement historic horserace wagering at this meeting. It appears that this action was premised on a vague and ambiguous agenda item and, more importantly, was taken in the absence of any statutory authority. The Commission's purported approval of wagering on historic horseracing also included the attempted adoption of rules and regulations in violation of the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-920 (2014, Cum. Supp. 2016, and Supp. 2017) ["APA"]. The Open Meetings Act violations, a discussion of the Commission's lack of authority to authorize historic horseracing, and the failure to comply with the APA, are set out below.

A. Open Meetings Act.

1. Participation by telephone. Three commissioners were physically present at the October 29, 2018 meeting—you, Feller, and Galyen. Commissioners Beveridge and Patterson participated by telephone. According to a recording of the meeting provided to my office, some agenda items were moved up to accommodate Commissioner Galyen, who had to leave before the conclusion of the meeting. Once Commissioner Galyen left the meeting, only two out of the five commissioners were present at the meeting location.

Neb. Rev. Stat. § 84-1411(6) (Supp. 2017) expressly provides that “[a] public body may allow a member of the public or any other witness *other than a member of the public body* to appear before the public body by means of video or telecommunications equipment.” (Emphasis added.) In addition, as this office has previously advised the Commission’s Executive Secretary, Tom Sage, the Commission is not statutorily authorized to conduct meetings by telephone.¹ Since § 84-1411(6) prohibits members of a public body from appearing at a public meeting by telephone, Commissioners Beveridge and Patterson’s appearance at the October 29 meeting, including any votes they may have cast, violated the Act. Moreover, since the Commission no longer had a quorum once Commissioner Galyen left, any and all actions taken by the Commission following his exit are invalid. Notably, this includes the vote taken under the item described in the minutes as “Hearing for 2019 Live Race Date and Simulcast Facility Applications,” which purportedly approved the live racing dates and simulcast applications for 2019.

2. Insufficient Agenda Item. The Commission’s agenda item number 12 read “Fonner Park – Request to Approve an Additional Pari-Mutuel Wager.” The meeting minutes indicate that representatives from Fonner Park, AmTote International and the Thoroughbred Racing Protective Bureau were present for this item. The minutes further indicate that “[s]ix exhibits were presented and accepted” and “[a] live presentation was given on the PariMax pari-mutuel wager.” Subsequently, the Commission unanimously adopted the following motion, offered by you and seconded by Commissioner Galyen:

(a) the Commission finds that the PariMax historic horseracing wager is pari-mutuel and is a pari-mutuel wager, (b) that the wager does comply with the pari-mutuel requirements in Nebraska statutes and the Nebraska rules and regulations, (c) that the Commission grants the Fonner Park request for the PariMax historic horseracing wager, and (d) that the Commission adopts as directives the Kentucky rules of racing pertaining to historic horseracing wagers with any and all necessary staff modifications to correspond with Nebraska racing statutes and regulations.

Minutes of the Commission, October 29, 2018, at 2.

Neb. Rev. Stat. § 84-1411(1) requires that “[a]genda items shall be sufficiently descriptive to give the public reasonable notice of the matters to be considered at the meeting.” As described above, the minutes indicate that that Commission discussed and approved wagering on *historic horseracing* at Fonner Park, which constitutes an entirely new form of wagering under Nebraska law, not just an “additional” pari-mutuel wager. In addition, the Commission purportedly adopted the State of Kentucky’s “rules of racing pertaining to historic horseracing wagers,” with necessary staff modifications to align them

¹ In this regard, telephone meetings may only be held by the specific entities enumerated in Neb. Rev. Stat. § 84-1411(3) and in matters of emergency. Neither scenario is applicable here.

with Nebraska law and regulations. I do not believe that an agenda item to approve Fonner Park's request for an "Additional Pari-Mutuel Wager" was sufficient to give members of the public notice that the Commission would be discussing and taking formal action on the implementation of historic horseracing wagering, or adopting another state's rules to implement such wagering. The Commission's actions as to these matters are in no way supported by the Commission's agenda item. Since agenda item number 12, i.e., "Fonner Park – Request to Approve an Additional Pari-Mutuel Wager," was not sufficiently descriptive under § 84-1411, the Commission's use of that agenda item violated the Act.

B. Commission's Lack of Authority to Approve Wagering on "Historic Horseraces."

As noted, the Commission's purported approval of wagering on historic horseracing was contrary to the agenda requirements of the Open Meetings Act. In the event the Commission seeks to revisit Fonner Park's request for historic horseracing wagering, I would strongly advise the Commission to deny such a request. There is little question that the Commission currently lacks statutory authority to approve such wagering.

In voting to approve wagering on historic horseracing, the Commission appears to be relying on the authorization of historic horseracing through regulations adopted by the Kentucky Racing Commission ["KRC"]. A recent Kentucky Circuit Court decision found that historic horseracing was lawful as the wagering authorized by the KRC met its definition of "pari-mutuel" wagering. *Kentucky Horse Racing Comm'n v. Family Trust Foundation of Kentucky, Inc.*, Civil Action No. 10-CI-01154 (Franklin Circuit Court, Div. II) (Opinion and Order dated Oct. 24, 2018) ["*Kentucky Horse Racing Comm'n*"]. Prior to this decision, the Kentucky Supreme Court held that the KRC had statutory authority to adopt regulations authorizing wagering on historic horseraces. *Appalachian Racing, LLC v. Family Trust Foundation of Kentucky, Inc.*, 423 S.W.3d 726 (Ky. 2014). The court found that Kentucky statutes provided no definition of pari-mutuel wagering, and thus relied on definitions taken from the Interstate Horse Racing Act and prior Kentucky case law. *Id.* at 737. In doing so, it approved the KRC's definition of "pari-mutuel wagering" as "a system or method of wagering approved by the commission in which patrons are wagering among themselves and not against the association and amounts wagered are placed in one or more designated wagering pools and the net pool is returned to the winning patrons." *Id.* (quoting 810 KAR 1:001(48); 811 KAR 1:005(54); and 811 KAR 2:010(68)). The court concluded the regulations were consistent with the statute authorizing "pari-mutuel wagering" on horse racing, and thus were not invalid as exceeding the KRC's statutory authority. *Id.* at 738.²

² The historical horseracing machines at issue in the Kentucky case utilize the Exacta System. *Kentucky Horse Racing Comm'n*, Opinion and Order at 7. Ironically, Parimax Holdings, LLC, has filed a federal court action against Exacta Systems, alleging

In contrast to Kentucky, however, Nebraska case law, and the current statutes authorizing pari-mutuel wagering on horse racing, do not permit such a broad definition of “pari-mutuel” wagering. *State ex rel. Sorenson v. Ak-Sar-Ben Exposition Co.*, 118 Neb. 851, 226 N.W. 705 (1929), *permanent injunction entered* 121 Neb. 248, 236 N.W. 736 (1931) [*Sorenson*], was an original action brought by the Attorney General to enjoin the conduct of pari-mutuel wagering on horse races conducted at defendant Ak-Sar-Ben’s race track as an unlawful game of chance or lottery. The wagering was described by the Attorney General as follows:

“[D]efendant receives money from patrons at its races, who pay the same to the defendant and the defendant receives said money in the purchase of tickets issued through said pari-mutuel machine designating specific horses taking part in such race meets, and the holder of such ticket receives after the conclusion of the race bet upon a sum of money evidenced by such ticket which depends entirely upon the result of such race between the horses entered in said race; that after issuing to the party purchasing such a ticket and registering the same, the defendant, after the race, pays out an amount of money for said ticket to the purchaser thereof depending on the result of such race between the horses entered in said meet;...that said pari-mutuel machine is a system of betting, wagering and gambling under which all of the money received by the defendant and bet upon the races as aforesaid is thrown into a common pool and is distributed at the conclusion of each race among the bettors backing the winning or victorious horse;...that under this system the bettors make the odds which vary according to the amount of money in the pool thus created and the number of tickets sold on the winning horse” 118 Neb. at 853-54, 226 N.W. at 706.

The Court in *Sorenson* noted this description of the pari-mutuel wagering system was consistent with that “recently described in a notable case” as follows:

“When a group of persons, each of whom has contributed money to a common fund and received a ticket or certificate representing such contribution, adopt a horse race, the result of which is uncertain, as a means of determining, by chance, which members of the group have won and which have lost upon a redivision of that fund, each contributor having selected a stated horse to win such race, the redeemable value of the

violations of the Lanham Act, § 43(a), 15 U.S.C. § 1125(a)(1). Parimax alleges, in part, that Exacta Systems has made false and misleading representations by advertising and promoting Exacta’s historic horseracing system and games (“Exacta Systems” or “Exacta Games”) as being “strictly pari-mutuel.” *Parimax Holdings, LLC v. Exacta Systems, LLC f/k/a Encore Gaming, LLC*, Civil Action No. 16-CV-259-J (D. Wyo.), Amended Complaint filed May 31, 2018 at ¶¶ 1, 3, 46, 47, and 103.

certificates so obtained and held by the contributors to such fund being varied or affected by the result of such race, so that the value of some is enhanced, while that of others is reduced or destroyed, the original purchase price of all having been the same, those who chose the winning horse being paid, from the fund so accumulated, more than they contributed thereto, by dividing amongst them the money contributed by those who chose losing horses and who therefore receive nothing, that process constitutes a 'game of chance'; and those who buy, sell, or redeem such certificates, for the purposes and in the manner stated, are 'engaged' in such game within the contemplation of § 5639, Rev. Gen. Stat. 1920. The acts just outlined also constitute 'gambling' as defined and prohibited by § 5514, Rev. Gen. Stat. 1920." 118 Neb. at 858-59, 226 N.W. at 708 (quoting *Pompano Horse Club v. State*, 93 Fla. 415, 111 So. 801 (1927)).³

Nebraska statutes, while not containing a separate definition of "pari-mutuel wagering," provide specific limits on the authorization of such wagering on horse races. Neb. Rev. Stat. § 2-1216 (Cum. Supp. 2016) provides: "The parimutuel system of wagering on the results of horseraces, when conducted within the racetrack enclosure at licensed horserace meetings, shall not under any circumstances be held or construed to be unlawful, any other statutes of the State of Nebraska to the contrary notwithstanding." Pari-mutuel wagering on horse racing is authorized and governed by Neb. Rev. Stat. § 2-1207 (Cum. Supp. 2016), which provides, in pertinent part:

(1) Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting on any horse in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. Such licensee shall issue to each person so wagering a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner...[After taking out authorized or required deductions from amounts wagered],...[t]he balance remaining on hand shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears

³ After *Sorenson*, the Nebraska Constitution was amended in 1934 to allow the Legislature to authorize pari-mutuel wagering on horseracing.

to the total amount wagered on all horses in such race to run first. The licensee may likewise receive such wagers on horses selected to run second, third, or both, or in such combinations as the commission may authorize, the method, procedure, and authority and right of the licensee, as well as the deduction allowed to the licensee, to be specified with respect to wagers upon horses selected to run first. (emphasis added).

Subsection (3) of § 2-1207 further provides that "there shall be no wagering except under the parimutuel method outlined in this section."⁴

The Legislature has limited its authorization of pari-mutuel wagering to "live" horse races conducted at Nebraska licensed racetracks and pari-mutuel wagering on intrastate and interstate simulcast horse races. Such wagering may be conducted on horse races under licenses issued to qualifying entities that designate "the place where the races or race meetings are to be held, and the time and number of days during which racing may be conducted by such licensee." Neb. Rev. Stat. § 2-1205 (2012). In addition to licensing these "live" races or race meetings at which parimutuel wagering is conducted, the Commission may license racetracks to conduct intrastate and interstate simulcast wagering on horse races. Neb. Rev. Stat. §§ 2-1223 to 2-1229 (2012). "[S]imulcast" is defined to "mean the telecast of live audio and visual signals of any horserace conducted in the state for the purpose of parimutuel wagering. . . ." Neb. Rev. Stat. § 2-1225(7) (2012).⁵ "Interstate simulcast" is defined to "mean parimutuel wagering at any licensed racetrack within the state on the results of any horserace conducted outside the state." Neb. Rev. Stat. § 2-1225(2) (2012).

Any licensed racetrack "which operates at least one live race meet during each calendar year" may be "issued a[n] [intrastate] simulcast facility license" allowing the licensee to "display the simulcast of a horserace on which parimutuel wagering shall be allowed." Neb. Rev. Stat. § 2-1226 (2012). Intrastate simulcast licensing requires execution of a written agreement between the sending and receiving tracks, which must

⁴ Exotic wagers, such as daily double, exacta, quinella, trifecta, pick six, and other similar types of bets, may also be approved by the Commission. Neb. Rev. Stat. § 2-1208.03(1) (2012). Not all live or simulcast bets involve wagering on a single race. In pick six wagering, for example, a bettor must correctly select the first place finisher in six consecutive races to win the jackpot. If no better has a winning ticket, a portion of the pot is paid to those coming closest to the winning combination, and the remainder is carried forward to subsequent racing days until a pick six winner occurs.

⁵ The definition of "simulcast" as the telecast of a live horse race is consistent with the commonly understood meaning of this term, which, in this context, refers to "a closed-circuit television broadcast of an event, as a horse race, while it is taking place." Dictionary.com, <http://dictionary.reference.com/browse/simulcast> (accessed October 12, 2018).

be approved by the organization representing a majority of licensed owners and trainers at each track. Neb. Rev. Stat. § 2-1227(1) (2012). Simulcasts between racetracks in Nebraska “shall result in the combination of all wagers placed at the receiving track located in the state with the wagers placed at the sending track located in the state so as to produce common parimutuel betting pools for the calculation of odds and the determination of payouts from such pools” Neb. Rev. Stat. § 2-1227(4) (2012).

Licensed racetracks which conduct “live” racing for a certain number of days are eligible to receive interstate simulcast facility licenses. Neb. Rev. Stat. § 2-1228 (2012). “Any racetrack issued an interstate simulcast facility license may conduct the interstate simulcast of any horserace permitted under its license, and parimutuel wagering shall be allowed on such horserace.” *Id.* An interstate simulcast facility license issued to a licensed racetrack in Nebraska allows the racetrack “to receive the interstate simulcast of horseraces for parimutuel wagering purposes from any track located outside of the state.” Neb. Rev. Stat. § 2-1229(1) (2012). Among the factors the Commission is to consider in acting on an interstate simulcast facility license is “whether such interstate simulcast would have a significant effect upon either live racing or the simulcasting of live racing of the same type and at the same time conducted in this state” *Id.*

Commission approval of an interstate simulcast facility license is conditioned upon: (1) Prior written approval of “any other racetrack issued a license . . . and conducting live racing of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the organization which represented a majority of the licensed owners and trainers at the racetrack’s immediately preceding live thoroughbred race meeting;” (2) Prior written approval of “any other racetrack issued a license . . . which is simulcasting the racing program of any licensee conducting live racing in this state of the same type on the same day at the same time as the proposed interstate simulcast race or races and of the organization which represented a majority of the licensed owners and trainers at the racetrack’s immediately preceding live thoroughbred race meeting;” and (3) “A written agreement between the receiving track and the sending track located outside of the state . . . setting forth the division of all proceeds between the sending and receiving tracks and all other conditions under which such interstate simulcast will be conducted.” Neb. Rev. Stat. § 2-1229(1)(a)-(c) (2012). The agreement between the sending and receiving track “shall have the consent of the group representing the majority of horsepersons racing at the sending track and of the organization which represented a majority of the licensed owners and trainers at the receiving track’s immediately preceding live thoroughbred race meeting.” § 2-1229(1)(c).

Addressing the limitations placed by the Legislature on the conduct of pari-mutuel wagering on horseracing by these statutes, this office previously stated:

A review of the Nebraska statutes authorizing pari-mutuel wagering on horse races demonstrates the Legislature has approved only pari-mutuel wagering on: (1) “live” horse races conducted in Nebraska within the

confines of a license racetrack; (2) "live" horse races simulcast "intrastate" from one racetrack in Nebraska to other licensed Nebraska racetracks; and (3) "live" horse races simulcast from racetracks outside Nebraska to licensed Nebraska racetracks. The statutory scheme authorizing pari-mutuel wagering on horse races does not permit wagering on replays of races previously run in Nebraska or elsewhere. Only pari-mutuel wagering on live races conducted at licensed race meets in Nebraska, or wagering on live events simulcast from within or outside Nebraska, is permitted under Nebraska's current statutes governing parimutuel wagering on horse racing. Op. Att'y Gen. No. 10009 at 11 (March 29, 2010).

Indeed, some basic requirements associated with the statutes authorizing pari-mutuel wagering illustrate how wagering on historic horseraces is inconsistent with Nebraska statutory requirements. For example, § 2-1207(1) provides that persons selecting a horse to run first "shall acquire an interest in the total money so wagered on all horses in such race as first winners" It also requires the person wagering be issued "a certificate on which shall be shown the number of the race, the amount wagered, and the number or name of the horse selected by such person as first winner." *Id.* After allowing for certain deductions from amounts wagered, "[t]he balance remaining on hand shall be paid out to the holders of certificates on the winning horse in the proportion that the amount wagered by each certificate holder bears to the total amount wagered on all horses in such race to run first." *Id.* These pari-mutuel wagering requirements cannot apply to historic horseracing, as no certificate is issued and there is no pooling of wagers on a single horse race or series of races. As one commentator has explained, in historic horseracing or "Instant Racing",

[t]here is no pooled wager. All bets of the same type are pooled together, but there is no provision for betting on the same race. Nobody shares a pool. The pools do not apply to specific races. There is no share of the pools since nobody else is betting on the same race. Thus, Instant Racing would fail the "pool" test. Without pools, there is no way to assess whether there are proportionate payouts to winning bettors, since that requirement presupposes the existence of pools. Bennett Liebman, *Pari-Mutuels: What Do They Mean and What Is at Stake in the 21st Century?*, 27 Marq. Sports L. Rev. 45, 109-10 (2016).

The Maryland Attorney General also explained how historic or "Instant Racing" differs from traditional pari-mutuel wagering:

In traditional pari-mutuel wagering, those who successfully bet on the same winning outcome share a betting pool This is not the case with Instant Racing. There, individual players — even those using machines in the same location — are each wagering on different races with different horses and different outcomes. A bettor who successfully chooses a winning horse can therefore never "share the mutuel pool" with another who

has done the same, for the simple reason that *no one else is betting on the same race*. In traditional pari-mutuel wagering, only the same type of bets on the same race or series of races are pooled together. By contrast, with Instant Racing, wagers on completely different races are pooled together based only on the various types of "wins" available to the players. Instead of each betting pool being shared by all of those who selected the correct order of finish in a particular race, the Instant Racing winner takes all of the money that has accumulated in the applicable betting pool at the time of that person's successful bet. This may be pooled betting, but it is not pari-mutuel betting as contemplated in the Maryland Horse Racing Act.

Furthermore, bettors in a traditional pari-mutuel system, through their differing opinions and the money wagered on such opinions, participate directly in setting the odds on the various possible outcomes of a given race. Typically, the bettors are the only determinant of what the odds will be. For obvious reasons, this *cannot* occur in Instant Racing because, as noted above, no two players are ever betting on the same race. To the extent the success or failure of other players, or other factors such as the timing of "wins," may influence the size of payouts available in Instant Racing, it does not occur through the same process which is at work in traditional pari-mutuel wagering. 94 Md. Op. Att'y Gen. 32, 2009 WL 998670, at 4-5 (citation omitted) (emphasis in original).

The detailed description of Patent No. US 9,747,748 B2 dated August 29, 2017, listing Parimax Holdings, LLC, as the applicant, titled "Web Based Methods and Apparatus for Pari-Mutuel Historical Gaming," confirms that the gaming system does not involve pooling of wagers on a single event:

One aspect of the present gaming system is to enable pari-mutuel wagering to offer instant payoffs. In the paradigm of live pari-mutuel wagering, a number of players place bets on the outcome of a single event. The players then wait for the results of the event, and then the winning players share the profits from their combined pool of wagers. Pools, such as, the Pick-6 and Twin-Trifecta add the elements of multi-tiered payoffs and a progressively increasing carryover pool by withholding a portion of the profits.

The present gaming system emphasizes the role of the progressive carry-over pools, so that all tiers of winning payoffs are made from progressive pools. Each player is presented with a unique event, so there is no pooling of other players' wagers on that event. Each wager forms a trivial pool of one, and either loses and is apportioned among the tiers of progressive pools, or wins and is awarded one of the progressive pools. U.S. Patent No. 9,747,748 B2 at 5 (emphasis added).

Moreover, while Nebraska's simulcasting statutes authorize pari-mutuel wagering only on live horseraces simulcast from Nebraska racetracks or from racetracks located outside Nebraska, those statutes also include provisions which negate any authorization of wagering on machines utilizing previously run horse races. Intrastate simulcasting is conditioned on written agreements with the receiving and sending racetracks, which agreements must have the consent of the organization representing the majority of the licensed owners and trainers at these racetracks. § 2-1227(1). Further, any intrastate simulcast must "result in the combination of all wagers placed at the receiving track located in the state with the wagers placed at the sending track located in the state so as to produce common parimutuel betting pools for the calculation of odds and the determination of payouts from such pools, which payout shall be the same for all winning tickets" § 2-1227(4). Again, these requirements cannot be squared with the manner in which historic horserace wagering is conducted.

The same is true with respect to the authorization of pari-mutuel wagering on interstate simulcast horse races. As with intrastate simulcasting, written agreements with the receiving and sending racetracks are required. § 2-1229(1). Also, such agreements must receive the consent of the group representing the majority of the horsepersons at the sending track and the group which represented the majority of licensed owners and trainers at the receiving track's immediately preceding live thoroughbred race meeting. § 2-1229(1)(c). The conduct of historic horseracing is inconsistent with these statutory requirements.

Administrative bodies have only that authority which is specifically conferred upon them by statute or by a construction necessary to achieve the purpose of the relevant act. *Southeast Rural Fire Dept. v. Nebraska Dept. of Revenue, Charitable Gaming Div.*, 251 Neb. 852, 560 N.W.2d 436 (1997); *Jolly v. State*, 252 Neb. 289, 562 N.W.2d 436 (1997). The Commission simply has no statutory authority to approve wagering on historic horseracing. Nebraska statutes governing the conduct of pari-mutuel wagering permit such wagering only on live or simulcast horse race events. The Constitution authorizes "the enactment of laws providing for the licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the parimutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure . . ." Neb. Const. art. III, § 24(4). The statutes enacted by the Legislature authorize only pari-mutuel wagering on live horse races conducted either at Nebraska licensed racetracks or simulcast from Nebraska racetracks or racetracks outside Nebraska. No law has been enacted purporting to authorize wagering on historic horseracing as a form of lawful "parimutuel wagering" permitted under art. III, § 24. As noted in our 2010 opinion, there is a serious question as to whether legislation attempting to allow wagering on historic horseracing is permitted under art. III, § 24(4). Op. Att'y Gen. No. 10009 at 4-8. Legislation proposing to authorize wagering on historic horseracing has been proposed, but not enacted. LB 1102 (2010); LB 806 (2012); and LB 590 (2013). Recognizing that legislation alone was likely not sufficient, a proposed constitutional amendment to permit wagering on replayed races (LR 41CA) was approved

by the Legislature in 2014. The Nebraska Supreme Court, however, held the proposed amendment violated the separate vote provision in Neb. Const. art. XVI, § 1, preventing the measure from being placed on the ballot. *State ex rel. Loontjer v. Gale*, 288 Neb. 973, 853 N.W.2d 494 (2014). While it is questionable if the Legislature could pass legislation authorizing pari-mutuel wagering, it has not done so, and the Commission has no authority to attempt to allow what the Legislature has refused to permit.

C. Administrative Procedure Act.

The minutes of the Commission's meeting also state "that the Commission adopt[ed] as directives the Kentucky rules of racing pertaining to historic horseracing wagers with any and all necessary staff modifications to correspond with Nebraska racing statutes and regulations." The Commission cannot adopt another state's rules and regulations as agency directives. This would be an unconstitutional delegation of authority to another governing body, and is an attempt to circumvent the requirements that such regulations be adopted pursuant to the APA. If the Commission wishes to adopt rules of general applicability which are binding on its regulated public, it must do so through the procedures found in the APA. See Neb. Rev. Stat. § 84-901(2).⁶ Attempting to adopt a "directive"⁷ in place of a rule or regulation is invalid and in violation of the APA. Consequently, we advise the Commission that it may not re-adopt this directive.

⁶ Neb. Rev. Stat. § 84-901(2) provides, in pertinent part: "Rule or regulation shall mean any standard of general application adopted by an agency in accordance with the authority conferred by statute and includes, but is not limited to, the amendment or repeal of a rule or regulation. Rule or regulation shall not include (a) internal procedural documents which provide guidance to staff on agency organization and operations, lacking the force of law, and not relied upon to bind the public, (b) guidance documents as issued by an agency in accordance with section 84-901.03, and (c) forms and instructions developed by an agency. For purposes of the act, every standard which prescribes a penalty shall be presumed to have general applicability and any standard affecting private rights, private interests, or procedures available to the public is presumed to be relied upon to bind the public."

⁷ The Commission appears to be using the term "directive" to refer to a "guidance document," which is "any statement developed by an agency which lacks the force of law but provides information or direction of general application to the public to interpret or implement statutes or such agency's rules or regulations. A guidance document is binding on an agency until amended by the agency. A guidance document shall not give rise to any legal right or duty or be treated as authority for any standard, requirement, or policy. Internal procedural documents which provide guidance to staff on agency organization and operations shall not be considered guidance documents" Neb. Rev. Stat. § 84-901(5). Guidance documents are not to be used in place of rules and regulations and are enforceable only against the agency, not the regulated public.

D. Remedial Action Required by the Commission.

Pursuant to Neb. Rev. Stat. § 84-1414(1) (2014), any formal action of a public body made in violation of the Act may be declared void by the district court when a civil action is commenced within 120 days of the meeting. However, the Commission may cure the open meetings violations which occurred at the October 29 meeting by reconsidering those matters in a subsequent meeting which complies with all statutory requirements. *Pokorny v. City of Schuyler*, 202 Neb. 334, 341, 275 N.W.2d 281, 285 (1979) (“[W]here a defect occurs in proceedings of a governmental body, ordinarily the defect may be cured by new proceedings commencing at the point where the defect occurred.”). Once the Commission lost its quorum on October 29, the public meeting ceased to exist. In addition, the agenda item the Commission relied on to approve Fonner Park’s request to approve an additional parimutuel wager was insufficient to authorize the purported approval of wagering on “historic horseracing.” Consequently, until the Commission takes affirmative action to cure the defects, we will caution all parties, including Fonner Park, from relying on the Commission’s defective actions taken on October 29, 2018. The Commission must properly notice another meeting to cure the Open Meetings Act violations associated with these actions.

Further, with respect to the Commission’s attempt to approve wagering on “historic horseracing,” the Commission lacks statutory authority to take such action. As explained above, Nebraska case law and statutes addressing pari-mutuel wagering on horse races do not allow betting using machines containing previously run or “historic” horseraces. Any attempt to authorize such wagering would, at a minimum, require legislation. Even if the Legislature were to enact enabling legislation, there is a serious question whether it could do so consistent with art. III, § 24. But the Commission alone may not act to approve wagering on historic horseraces. Accordingly, the Commission must act to rescind its attempted approval, and deny any application seeking to approve wagering on historic horseracing. The Commission must also rescind its directive improperly attempting to adopt rules promulgated by another state’s racing commission.

Dennis P. Lee
November 15, 2018
Page 13

If the Commission fails to take these remedial measures, litigation to void the actions noted above pursuant to Neb. Rev. Stat. § 84-1414(1) (2014) will be necessary.

Very truly yours,

A handwritten signature in black ink, appearing to read "Douglas J. Peterson". The signature is fluid and cursive, with a large initial "D" and "P".

DOUGLAS J. PETERSON
Attorney General

cc: Janell Beveridge, Commissioner
Helen Abbott Feller, Commissioner
Jeffrey Galyen, Commissioner
Thomas Patterson, Commissioner
Tom Sage, Executive Secretary
Chris Kotulak, Fonner Park
Dan Waters, Esq.

07-1211-29

NEBRASKA STATE RACING COMMISSION
Agenda

DATE: January 16, 2019

TIME: 10:00 am

LOCATION: Fonner Park Café
700 E Stolley Park Rd
Grand Island NE

THERE WILL BE A ONE HOUR LUNCH BREAK AT A TIME CHOSEN BY THE CHAIRMAN

1. Open Meetings Act Notification.
Public bodies shall make available at the meeting...at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.
Nebraska Revised Statutes Cumulative Supplement, 2006. § 84-1412 (8)
2. Election of Racing Commission Officers
3. Approval of Staff for 2019
4. Approval of Meeting Minutes and Financial Reports
 - a. October 29, 2018 Commission Meeting Minutes
 - b. October, November and December, 2018 Financial Reports
5. Approval of Simulcast Applications received since October 29, 2018:

Fonner Park
Simulcast Agreement dated November 6, 2018
Simulcast Agreement January 1, 2019 – February 21, 2019
Simulcast Agreement Exporting Full Card Signal February 22, 2019 – May 4, 2019

Horsemen's' Park
Simulcast Agreement January 1, 2019 – February 21, 2019

Lincoln Race Course
Simulcast Agreement January 1, 2019 – February 21, 2019

Columbus Exposition and Racing
Simulcast Agreement January 1, 2019 – February 21, 2019
6. License Application Review – Gilbert W. Ecoffey
7. Announce and Approve Horsemen's Bookkeeper – Deborah Moss
8. Fonner Park:
 - a. Approval of 2019 Racing Officials
 - b. Approval of 2019 Takeout Rates

9. Directives:
 - 01-19 Health Papers
 - 02-19 Jockey Mount Fees
 - 03-19 Steroids
 - 04-19 Cancel Delay
 - 05-19 Test Barn Staff Using Needles
 - 06-19 Wearing Licenses
 - 07-19 Veterinarian License
 - 08-19 Spirit of the Claim
 - 09-19 Rule 23.001.13
 - 10-19 Revocation
 - 11-19 Saddling Horses in the Paddock
 - 12-19 Approved Safety Vests
 - 13-19 Approved Safety Helmets
 - 14-19 Riding Crop
 - 15-19 Jockey Insurance
 - 16-19 NSAID'S
 - 17-19 Thresholds CTMS
 - 18-19 Environmental Contaminants
 - 19-19 Simulcast Agreements
 - 20-19 Five Year Old Maidens
10. Lincoln Race Course – Track Improvements – Rule 3.001.14
11. Status of Breeders Awards held by OER – Bill VonSeggern
12. Consider Asking the Nebraska Attorney General's Office to Represent the Racing Commission in the Appeal Filed with the Lancaster County District Court. Case CI 18-373
13. Fairplay Park – Request for Preliminary Approval to Begin Simulcasting When Facility is Remodeled
14. Acknowledge Receipt of an 11 Page Letter from the NE Attorney General's Office Dated 11/15/2018
15. Rescind the Findings from the October 29, 2018 Racing Commission Meeting Agenda Item #12 Pertaining to Fonner Park's Request to Approve an Additional Pari-Mutuel Wager
16. Rescind:
 - a. Approval of 2019 Live Race Date Applications Approved on October 29, 2018
 - b. Approval of 2019 Simulcast Facility Applications Approved on October 29, 2018
17. Hearing:
 - a. 2019 Live Race Date Applications
 - b. 2019 Simulcast Facility Applications
18. Public Hearing on Fonner Park's Request to Have a New Form of Wagering Approved – Historic Horse Racing

19. Meetings with Associations
 - a. Nebraska Thoroughbred Breeders' Association
 - b. NE Horsemen's Benevolent and Protective Association

20. Executive Session

This agenda is current through Tuesday, January 15, 2019, and is subject to revisions or additions prior to the meeting date. A current agenda may be obtained by contacting our office at (402) 471-4155, or visit our website at <http://racingcommission.nebraska.gov>.

NEBRASKA STATE RACING COMMISSION
MINUTES OF MEETING

DATE: January 16, 2019

TIME: 10:00 a.m.

LOCATION: Fonner Park Café
700 E Stolley Park Rd
Grand Island NE

PRESENT COMMISSIONERS:

Dennis P. Lee	Chairman
Janell Beveridge	Vice Chairperson
Jeffrey Galyen	Commissioner
Helen Abbott Feller	Commissioner
Thomas Patterson	Commissioner

ABSENT:

Chm. Lee convened the meeting at 10:09 am in compliance with the provision of Neb. Rev. Stat. 84-1411. Notice of the meeting was published in the Lincoln Journal Star. In addition, copies of such notice were sent to those on the Racing Commission agenda mailing list. Notification was given to the public of the open meetings law and notification to its location for public view.

ELECTION OF RACING COMMISSION OFFICERS

Galyen nominated to re-elect Dennis P. Lee as the Chairman of the Commission and Janell Beveridge as Vice-Chairperson, seconded by Feller. There were no other nominations. Voting aye: Lee, Beveridge, Galyen, Feller, Patterson. Motion carried.

APPROVAL OF COMMISSION STAFF FOR 2019

Chm. Lee moved, seconded by Feller to approve the staff of 2019. An announcement was made to inform the industry that Ann Shea has retired and she will be helping out for a couple more months in Omaha but she will not be working at Fonner Park. Ann will be dearly missed. Voting aye: Lee, Beveridge, Galyen, Feller, Patterson. Motion carried.

APPROVAL OF MEETING MINUTES AND FINANCIAL REPORTS – Feller moved, seconded by Patterson to approve the minutes from October 29, 2018. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Chm. Lee moved, seconded by Beveridge to approve the October, November and December 2018 financial reports. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Abstain: Galyen. Motion carried.

APPROVAL OF SIMULCAST APPLICATIONS SINCE OCTOBER 29, 2018 – Galyen moved, seconded by Beveridge to approve the simulcast applications received up to and through February 21, 2019. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

LICENSE APPLICATION REVIEW – GILBERT W. ECOFFEY – Mr. Ecoffey appeared via telephone. All exhibits were presented and accepted. Director of Investigations, Rodger Williams reported on behalf of the Racing Commission. Chm. Lee moved, seconded by Beveridge to approve the Owner/Trainer license application on a probationary basis for 2019 with three conditions: Prior to awarding the license, Mr. Ecoffey must subject himself to and pass a drug test. For all of 2019, Mr. Ecoffey must agree to random drug and alcohol testing as may be directed by the Commission or its staff. If Mr. Ecoffey has any arrests or criminal violations in any state the Board of Stewards at any race track in Nebraska has the opportunity to consider that and may take action to suspend or penalize the license. Mr. Tom Sage with the Racing Commission also requested that Mr. Ecoffey be fingerprinted in Nebraska in 2019 and that his license be conditional. Voting aye: Lee, Beveridge. Voting Nay: Galyen, Feller and Patterson. Motion failed. The application is denied and not approved at this time.

ANNOUNCE AND APPROVE HORSEMEN'S BOOKKEEPER – Lynn Schuller and Barry Lake with the HBPA reported that the previous bookkeeper, Carolyn Legenza is unable to continue as the bookkeeper due to significant health issues. Chm. Lee moved, seconded by Feller to approve Deborah Moss as the bookkeeper for the HBPA. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

FONNER PARK – APPROVAL OF 2019 RACING OFFICIALS & TAKEOUT RATES
Chm. Lee moved, seconded by Feller to approve the 2019 Racing Officials. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried. Beveridge moved, seconded by Patterson to approve the 2019 Takeout Rates. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

DIRECTIVES – Galyen moved, seconded by Chm. Lee to amend directive 20-19 to include rule 9.001.16A. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried. Chm. Lee moved, seconded by Beveridge to approve directives 01-19 – 19-19 as presented. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

LINCOLN RACE COURSE – TRACK IMPROVEMENTS – RULE 3.001.14 – Barry Lake and Lynn Schuller with the HBPA appeared and requested that this item remain open for 24 hours to have a chance to complete the final record since documents arrived late. Chm. Lee allowed this item to remain open until 1/18/2019 at 4:00pm.

STATUS OF BREEDERS AWARDS HELD BY OER – BILL VONSEGGERN – Mr. Vonseggern, Attorney for NTBA, Mike Newlin, OER Vice President, Barry Lake, HBPA and Zach Mader, NTBA and Dan Waters, Attorney for Fonner Park reported regarding this issue.

At 12:08 pm Chm. Lee moved, seconded by Beveridge to recess for a one hour lunch break until 1:15 pm. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

At 1:21 pm Chm. Lee reconvened the meeting.

CONSIDERSATION ASKING THE NE ATTORNEY GENERAL'S OFFICE TO REPRESENT THE RACING COMMISSION IN THE APPEAL FILED WITH THE LANCASTER COUNTY DISTRICT COURT CASE CI18-373 – Laura Nigro appeared on behalf of the Attorney General's office. Chm. Lee moved, seconded by Feller to request the Attorney General's office to represent the Commission on that Appeal. Voting Aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

FAIRPLAY PARK – REQUEST FOR PRELIMINARY APPROVAL TO BEGIN SIMULCASTING WHEN FACILITY IS REMODELED – Breann Becker and Brian Becker were present. Approval of simulcasting in the clubhouse only depends on if the live race date and simulcast facility applications are approved. This will be covered in item 17.

ACKNOWLEDGE RECEIPT OF AN 11 PAGE LETTER FROM THE NE ATTORNEY GENERAL'S OFFICE DATED 11/15/2018 – Chm. Lee briefly mentioned some points in the letter.

RESCIND THE FINDINGS FROM THE OCTOBER 29, 2018 RACING COMMISSION MEETING AGENDA ITEM #12 PERTAINING TO FONNER PARK'S REQUEST TO APPROVE AN ADDITIONAL PARI-MUTUEL WAGER – Based upon the recommendation of the Attorney General's opinion Chm. Lee moved, seconded by Patterson to rescind. Voting Aye: Lee, Beveridge, Feller, Patterson. Voting Nay: Galyen. Motion carried.

RESCIND THE APPROVAL OF 2019 LIVE RACE DATE AND SIMULCAST FACILITY APPLICATIONS – Chm. Lee moved, seconded by Feller to rescind. Voting aye: Lee, Beveridge, Feller, Patterson. Abstain: Galyen. Motion carried.

HEARING FOR 2019 LIVE RACE DATE AND 2019 SIMULCAST FACILITY APPLICATIONS – Beveridge moved, seconded by Galyen to approve the Live Race Dates for 2019 to be:

Fonner Park - Grand Island
February 22, 2019 – May 4, 2019
31 Days of Live Racing

Horsemen's Park - Omaha
May 11, 17, 18, 25, 26, 31, 2019
June 1, 7, 8, 2019
9 Days of Live Racing

Lincoln Race Course – Lincoln
September 6, 7 and 8, 2019
3 Days of Live Racing

Columbus Exp. & Racing – Columbus
August 2 – September 2, 2019
14 Days of Live Racing

Atokad – South Sioux City
September 7, 2019
1 Day of Live Racing

Hastings Exp. & Racing - Hastings
TBD, 2019
1 Day of Live Racing

Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Recess at 3:38 pm for about 10 minutes. Reconvened at 3:49 pm.

Chm. Lee moved, seconded by Galyen to also approve the simulcast applications for 2019. The application for Hastings is for quarter horse simulcasting only and in the clubhouse only. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

PUBLIC HEARING ON FONNER PARK'S REQUEST TO HAVE A NEW FORM OF WAGERING APPROVED – HISTORIC HORSE RACING – A live presentation was given on the PariMax pari-mutuel wagering machine by representatives from Amtote International. All exhibits were submitted and accepted. Proponents, opponents and those wanting to testify in a neutral capacity were heard. This matter is being taken under advisement and the parties and the public have until February 1, 2019 to submit anything additional in writing to the Commission. The Commission will then reconvene this hearing at its next Commission meeting in Grand Island.

Meetings with Associations

- a. Nebraska Thoroughbred Breeders' Association –None
- b. NE Horsemen's Benevolent and Protective Association - None

ADJOURNMENT

Chm. Lee moved, seconded by Beveridge to adjourn the meeting at 4:37 pm with the exception of Item 18 that is in recess. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Respectfully submitted,
Tom Sage
Executive Secretary

NEBRASKA STATE RACING COMMISSION

Agenda

DATE: July 31, 2019

TIME: 1:00 pm

LOCATION: Fonner Park Café
700 E Stolley Park Rd
Grand Island NE

1. Open Meetings Act Notification.
Public bodies shall make available at the meeting...at least one copy of all reproducible written material to be discussed at an open meeting. Public bodies shall make available at least one current copy of the Open Meetings Act posted in the meeting room at a location accessible to members of the public. At the beginning of the meeting, the public shall be informed about the location of the posted information.
Nebraska Revised Statutes Cumulative Supplement, 2006. § 84-1412 (8)
2. Approval of Meeting Minutes and Financial Reports
 - a. May 24, 2019 Commission Meeting Minutes
 - b. May and June 2019 Financial Reports
3. Approval of Simulcast Applications received since May 24, 2019:
Fonner Park
Simulcast Agreement July 9, 2019 – August 1, 2019
Simulcast Agreement August 2, 2019 – September 2, 2019

Horsemen's' Park
Simulcast Agreement Arizona Downs May 24, 2019 – September 2, 2019
Simulcast Agreement June 9, 2019 – August 1, 2019
Simulcast Agreement August 2, 2019 – September 2, 2019

Lincoln Race Course
Simulcast Agreement June 9, 2019 – August 1, 2019
Simulcast Agreement August 2, 2019 – September 2, 2019

Columbus Exposition and Racing
Simulcast Agreement June 9, 2019 – August 1, 2019
Simulcast Agreement Exporting Full Card Signal August 2, 2019 – September 2, 2019
Simulcast Agreement August 2, 2019 – September 2, 2019
4. Fonner Park's Request to Have a New Form of Wagering Approved – Historic Horse Racing – Commission Decision
5. Columbus Exposition & Racing Request to Change Number of Live Race Days – Approved via Email
6. Columbus Exposition & Racing
 - a. Request for 6:30 pm post time on Fridays and Saturdays and 2:00 pm post time on Sundays and Labor Day
 - b. Approval of 2019 Racing Officials
 - c. Approval of 2019 Takeout Rates

7. Omaha Exposition & Racing Inc, dba Lincoln Race Course
 - a. Request to change live race dates from September 6, 7 and 8, 2019 to November 9, 2019
 - b. Request for 2:00 pm post time for Live Races on November 9, 2019 (Two Races)
8. Dickey Martinez
 - a. Request for Continuance
 - b. Appointment of Hearing Officer(s)
9. Appoint Hearing Officer(s) Regarding the Bosselman Handicap Positive Test
10. Executive Secretary Contracted Salary Increase
11. Meetings with Associations
 - a. Nebraska Thoroughbred Breeders' Association
 - b. NE Horsemen's Benevolent and Protective Association
12. Executive Session

NEBRASKA STATE RACING COMMISSION
MINUTES OF MEETING

DATE: July 31, 2019

TIME: 1:00 p.m.

LOCATION: Fonner Park Café
700 E Stolley Park Rd
Grand Island NE

PRESENT COMMISSIONERS:

Dennis P. Lee Chairman
Janell Beveridge Vice Chairperson
Jeffrey Galyen Commissioner
Helen Abbott Feller Commissioner (joined at 2:16 pm)
Thomas Patterson Commissioner

ABSENT:

Chm. Lee convened the meeting at 1:38 pm in compliance with the provision of Neb. Rev. Stat. 84-1411. Notice of the meeting was published in the Lincoln Journal Star. In addition, copies of such notice were sent to those on the Racing Commission agenda mailing list. Notification was given to the public of the open meetings law and notification to its location for public view.

APPROVAL OF MEETING MINUTES AND FINANCIAL REPORTS – Galyen moved, seconded by Beveridge to approve the minutes from May 24, 2019. Voting aye: Lee, Beveridge, Galyen and Patterson. Motion carried.

Chm. Lee moved, seconded by Beveridge to approve the May and June 2019 financial reports. Voting aye: Lee, Beveridge, Galyen and Patterson. Motion carried.

Chm. Lee notified the racing industry that Bruce Swihart has retired. He also thanked Bruce for his commitment, leadership and dedication to the industry along with recommending Bruce be nominated to the Hall of Fame.

APPROVAL OF SIMULCAST APPLICATIONS SINCE MAY 24, 2019 – Beveridge moved, seconded by Galyen to approve the simulcast applications received. Voting aye: Lee, Beveridge, Galyen and Patterson. Motion carried.

FONNER PARK – HISTORIC HORSE RACING – COMMISSION DECISION

Chm. Lee moved, seconded by Beveridge to postpone this item until later in the meeting. Voting aye: Lee, Beveridge, Galyen and Patterson. Motion carried.

COLUMBUS EXPOSITION & RACING REQUEST TO CHANGE LIVE RACE DAYS

This item has been approved via email. Galyen moved, seconded by Patterson to ratify the prior approval and to allow Columbus to reduce their number of live race days from 14 to 11. Voting aye: Lee, Beveridge, Galyen and Patterson. Motion carried.

COLUMBUS EXPOSITION & RACING POST TIME, OFFICIALS, TAKEOUTS

Chm. Lee moved, seconded by Galyen to approve the 6:30 pm post time on Fridays and Saturdays and 2:00 pm post time on Sundays and Labor Day, the 2019 racing officials and the 2019 takeout rates. Voting aye: Lee, Beveridge, Galyen and Patterson. Motion carried.

OMAHA EXPOSITION & RACING INC., DBA LINCOLN RACE COURSE

Beveridge moved, seconded by Lee to approve the request to change live race dates from September 6, 7 and 8, 2019 to November 9, 2019 with a 2:00 pm post time for live races on November 9, 2019 (two races). Voting aye: Lee, Beveridge, Galyen and Patterson. Motion carried.

Commissioner Feller joined the meeting at 2:16 pm.

DICKEY MARTINEZ – Mr. Martinez contacted the Racing Commission Office and requested a continuance. Galyen moved, seconded by Beveridge to appoint Robert Pollock as the hearing officer. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

FONNER PARK'S REQUEST TO HAVE A NEW FORM OF WAGERING APPROVED – HISTORIC HORSE RACING COMMISSION DECISION

All exhibits were presented and accepted. Chm. Lee moved, seconded by Feller to approve the following: That the historic horse racing proposal submitted by Fonner Park in regard to the PariMax System be approved, that the Commission consider, if necessary, adopting rules to support the historic horse racing implementation and if the motion is approved that the Commission issue a formal written order with findings of fact, conclusions of law and the final order within 21 to 25 days. Voting aye: Lee, Galyen, Feller. Voting Nay: Beveridge and Patterson. Motion carried.

APPOINT HEARING OFFICER(S) REGARDING BOSSELMAN HANDICAP POSITIVE TEST

Beveridge moved, seconded by Feller to approve Robert Pollock as the hearing officer regarding the Bosselman handicap positive test. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

EXECUTIVE SECRETARY CONTRACTED SALARY INCREASE

Chm. Lee moved, seconded by Galyen to approve a 5% increase for the Executive Secretary, Tom Sage. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

MEETINGS WITH ASSOCIATIONS

- a. Nebraska Thoroughbred Breeders' Association – None
- b. NE Horsemen's Benevolent and Protective Association - Hall of Fame will be reconsidered. Thoughts were expressed on historic horse racing and the effects on racing licenses. Signatures are being collected for a constitutional amendment.

ADJOURNMENT

Chm. Lee moved, seconded by Beveridge to adjourn the meeting at 2:50 pm. Voting aye: Lee, Beveridge, Galyen, Feller and Patterson. Motion carried.

Respectfully submitted,
Tom Sage
Executive Secretary

BEFORE THE NEBRASKA STATE RACING COMMISSION

IN RE: }
 }
THE APPLICATION OF FONNER PARK }
FOR APPROVAL OF }
THE HISTORIC HORSE RACING }
PARI-MUTUEL FORM OF WAGERING }
AND }
THE PARIMAX MUTUEL WAGERING SYSTEM }

FINAL ORDER

FINDINGS OF FACT, CONCLUSIONS OF LAW, and FINAL ORDER

This matter came before the Nebraska State Racing Commission (hereinafter the “Commission”) on the application of Hall County Livestock Improvement Association, a Nebraska non-profit organization, d/b/a Fonner Park (hereinafter “Fonner”) for approval of the Historic Horse Racing (hereinafter “HHR”) form of pari-mutuel wagering and the PariMAX Mutuel Wagering System (hereinafter “PariMAX”).

After providing public notice in full compliance with Nebraska law, the Commission held an initial evidentiary hearing on this application in Lincoln, Nebraska on January 16, 2019. At the conclusion of that hearing, the Commission granted interested parties until 4 pm CST on February 1, 2019 to submit additional materials to the Commission before a supplemental evidentiary hearing was scheduled.

Thereafter, after providing public notice in full compliance with Nebraska law, the Commission convened a supplemental evidentiary hearing in Grand Island, Hall County, Nebraska on July 31, 2019.

WITNESSES

During the course of the evidentiary hearings the following individuals testified:

Proponents:

- 1: Chris Kotulak, Chief Executive Office of Fonner Park
- 2: Cavot Haggin, PariMAX
- 3: Tim Yelton, PariMAX
- 4: J. Curtis Linnell, Executive Vice-President, Thoroughbred Racing & Protective Bureau
- 5: Zac Mader, President, Nebraska Thoroughbred Breeders Association
- 6: Jesse Compton, Board Member and Licensed Trainer, Nebraska Horsemen's Benevolent and Protective Association
- 7: Mike Newlin, Vice-President, Omaha Exposition & Racing, Inc.
- 8: June O'Neill, Licensed Trainer and Thoroughbred Breeder
- 9: Barry Lake, President, Nebraska Horsemen's Benevolent and Protective Association

Opponents:

- 10: Nate Grasz, Policy Director, Nebraska Family Alliance
- 11: Laura Nigro, Assistant Nebraska Attorney General
- 12: Pat Loontjer, Executive Director, Gambling with the Good Life

EXHIBITS

The Commission received into evidence the following exhibits:

- 1: Kentucky Racing Regulations – redline version: 1:001, 1:011, 1:090, 1:005, 1:125, 2:010, 2:060, and 2:190.
- 2: Kentucky Racing Regulations: 1:001, 1:011, 1:090, 1:005, 1:125, 2:010, 2:060 and 2:1290.
- 3: Decision of Franklin County (KY) Circuit Court, Division II, Case No: CI-01-01154.
- 4: Brief of Fonner Park in support of the PariMAX Historic Horse Racing pari-mutuel wager.
- 5: Written report: A Field Trip to Ellis Park, Kentucky by Pat Loontjer. (Objection by Fonner Park was overruled).

- 6: Written report: Gambling with the Good Life History by Pat Loontjer.
- 7: Neb. Rule of Racing 23.001.01.
- 8: Email from Barry Lake dated January 16, 2019 referencing court decisions in Wyoming.
- 9: Letter of January 3, 2019 submitted by Wyoming Pari-Mutuel Racing Commission.
- 10: Documents submitted by the Wyoming Pari-Mutuel Racing Commission dated January 3, 2019.
- 11: Letter and documents submitted by the Kentucky Horse Racing Commission dated January 9, 2019.
- 12: Email from Oregon Racing Commission dated January 11, 2019.
- 13: Email from Edward Menton dated January 23, 2019.
- 14: Supplemental email brief submitted by Fonner Park on February 1, 2019.
- 15: Letter brief of PariMAX Holdings, LLC in support of PariMAX Pari-Mutuel Wagering System.

The Commission took judicial notice of the Nebraska Constitution, Neb. Rev Stat. section 2-1201, as amended, through and including Neb. Rev. Stat. section 2-1246, as amended, and the Nebraska Rules of Racing as adopted by the Commission.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came before the Commission for determination on July 31, 2019 in Grand Island, Hall County, Nebraska. Following the evidentiary hearings, the testimony, and the evidence received, the Commission made the following Findings of Fact and Conclusions of Law:

- 1: The Nebraska Constitution, Nebraska Statutes and the Nebraska Rules of Racing are the controlling legal foundation for any decision related to pari-mutuel wagering in Nebraska.

- 2: The Nebraska Constitution specifically provides the approval of pari-mutuel wagering:

“...licensing and regulation of wagering on the results of horseraces wherever run, either within or outside of the state, by the pari-mutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure.”
Nebraska Constitution, Article III – 24 (Emphasis Added).

- 3: Neb. Rev. Stat. section 2-1201.01 provides:

“The purpose of the State Racing Commission is to provide statewide regulation of horseracing in order to prevent and eliminate corrupt practices and fraudulent behavior, and thereby maintain a high level of integrity and honesty in the horseracing industry of Nebraska and to insure that all funds received by the commission are properly distributed.”

- 4: Neb. Rev. Stat. section 2-1207 (1) provides:

“Within the enclosure of any racetrack where a race or race meeting licensed and conducted under sections 2-1201 to 2-1218 is held or at a racetrack licensed to simulcast races or conduct interstate simulcasting, the parimutuel method or system of wagering on the results of the respective races may be used and conducted by the licensee. Under such system, the licensee may receive wagers of money from any person present at such race or racetrack receiving the simulcast race or conducting interstate simulcasting on any horse in a race selected by such person to run first in such race, and the person so wagering shall acquire an interest in the total money so wagered on all horses in such race as first winners in proportion to the amount of money wagered by him or her. (Emphasis Added).

- 5: Fonner Park is a racing association licensee of the Commission and operates a horse racing facility offering pari-mutuel wagering on races at its facility in Grand Island, Hall County, Nebraska.

- 6: Based on the foregoing, the Commission has the constitutional and statutory duty, authority, and obligation to determine the validity of a wager complying with the definition of pari-mutuel wagering in Nebraska by a licensing racing association within a

licensed racetrack enclosure without the necessity of statutory enactment or constitutional amendment.

- 7: For example, *inter alia*, the Commission has previously approved the following wagers in Nebraska for licensed racing associations within a licensed racing enclosure: win, place, and show; daily double, Pick N, exacta, and trifecta.
- 8: Technological growth and developments have allowed totalizator companies the ability to specifically program totalizator machines to offer pari-mutuel wagers in addition to those identified in section 7 hereinabove, with such pari-mutuel wagers complying in all respects with the rules and regulations in Nebraska of pari-mutuel wagering.
- 9: Fonner has requested that the Commission authorize the implementation of the pari-mutuel wager more commonly referred to as Historic Horse Racing (“HHR”). Further, Fonner has requested the Commission approve the pari-mutuel HHR wager and related software specifically known as the PariMAX Pari-Mutuel Wagering System (“PariMAX”).
- 10: That other states, *inter alia*, Kentucky, Wyoming and Oregon have statutes and rules of racing similar to Nebraska, and such states have previously authorized the Historic Horse Racing pari-mutuel wager and the PariMAX Pari-Mutuel Wagering System.
- 11: The Commission was presented with unrefuted testimony to the following facts:
 - A: That the money wagered on the PariMAX terminals is tied into a mutual pool, and a percentage is returned to the licensed racetrack.
 - B: That the PariMAX terminals are not slot machines, and there are no predetermined chip programmers, as are typical of slot machines.

C: That the PariMAX terminals operate like the independent betting terminals already in operation at Nebraska racetracks today.

12: J. Curtis Linnel, the Executive Vice-President of the Thoroughbred Racing Protective Bureau (hereinafter "TRPB"), presented the following unrefuted testimony:

A: That the TRPB is an independent third-party auditor of pari-mutuel systems.

B: That the TRPB audits and/or reviews \$10 billion in wagers across the country each year.

C: That the TRPB is the industry recognized and definitive expert for pari-mutuel systems.

D: That the PariMAX systems are pari-mutuel terminals and not independent machines.

E: That the PariMAX terminals are pari-mutuel in that there are specific wagers and pools, statutory commissions are deducted, and the payouts go from the pools to the customers.

F: That the only thing leveraged against the pool is the recognized statutorily permitted takeout rate (fees and expenses are not leveraged).

13: The PariMAX terminals have some visual similarities to slot machines. However, Nebraska law does not allow the design of the terminals to weigh into or be considered in the decision of whether the terminals comport with the requirements of pari-mutuel wagering in Nebraska law.

14: "Parimutuel" or "pari-mutuel wagering" is not defined by Nebraska statutes or regulations. However, the federal Interstate Horse Racing Act, 15 U.S.C. section 3001, *et seq.*, defines pari-mutuel wagering as "any system whereby wagers with respect to the

outcome of a horse race are placed with, or in, a wagering pool conducted by an entity licensed or otherwise permitted to do so under State law, and in which the participants are wagering with each other and not against the operator.” The PariMAX terminals meet that definition, and the HHR wagers permitted on the terminals are pari-mutuel wagers complying with this definition.

- 15: That the essential element of a pari-mutuel wagering system is that the patron does not wager against the Association. HHR and PariMAX satisfy this element.
- 16: That the request of Fonner Park for the approval of the pari-mutuel Historic Horse Racing wager and the PariMAX Pari-Mutuel Wagering System is within the express jurisdiction and authority of the Commission.

Further, this type of wager meets every statutory definition of pari-mutuel wagering including the Nebraska Constitution mandate of the state to govern the “licensing and regulation of wagering on the results of horseraces, wherever run, either within or outside of the state, by the pari-mutuel method, when such wagering is conducted by licensees within a licensed racetrack enclosure.”

See, Nebraska Constitution, Article III-24. (Emphasis Added)

- 17: The Commission finds that the Nebraska Constitution provides specific constitutional exceptions to the prohibition in Nebraska against games of chance and specifically permits and authorizes the licensing and regulation of pari-mutuel wagers on horse races.

See, Nebraska Constitution, Article III-24.

- 18: Through the testimony at the evidentiary hearings and the evidence received, the Commission hereby finds:

A: That Historic Horse Racing is a valid pari-mutuel wager in full compliance with the Nebraska Constitution and Nebraska law and is hereby approved as a pari-mutuel wager under Nebraska law; and

B: That the PariMAX Pari-Mutuel Wagering System is a valid pari-mutuel wagering system and related wagering software, with security and auditing systems in full compliance with the Nebraska Constitution, Nebraska law, and the Nebraska Rules of Racing and is hereby approved as a pari-mutuel wagering system and software.

FINAL ORDER

At the Commission's July 31, 2019 public hearing in Grand Island, Hall County, Nebraska and upon proper statutorily compliant notice, a motion was made and seconded to approved the Historic Horse Racing pari-mutuel wager and the PariMAX System of pari-mutuel wagering before the full five members of the Nebraska State Racing Commission

Thereafter, discussion was held on the motion before calling the question for a vote of the motion on the record.

Voting to approve the motion were:

Commissioner Dennis P. Lee
Commissioner Jeffrey P. Galyen
Commissioner Hellen Abbott Feller

Voting against the motion were:

Commissioner Thomas Patterson
Commissioner Janell Beveridge

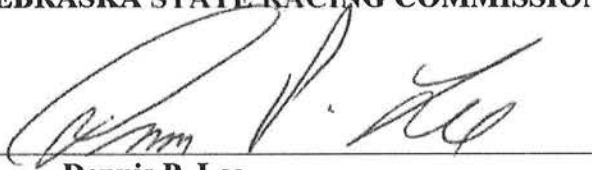
The motion was approved, 3-2.

IT IS THEREFORE THE ORDER OF THE NEBRASKA STATE RACING COMMISSION that the application of Fonner Park for approval of the Historic Horse Racing (HHR) pari-mutuel wager is hereby approved, and the PariMAX Pari-Mutuel Wagering System is hereby approved.

IT IS SO ORDERED this 4th day of December, 2019.

NEBRASKA STATE RACING COMMISSION

By: _____

A handwritten signature in black ink, appearing to read "Dennis P. Lee", is written over a horizontal line.

Dennis P. Lee
Chairman

GAMES LIBRARY

Click on images or names to view videos



(<https://youtu.be/6-JugrKpVXQ>)

Dragon Cache (<https://youtu.be/6-JugrKpVXQ>)



(https://youtu.be/ad_coUSHcRY)

Samurai Legacy (https://youtu.be/ad_coUSHcRY)



(<https://youtu.be/MtoxH9lj5cl>)

Fortunes of the Hinterlands (<https://youtu.be/MtoxH9lj5cl>)



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Tiki Tokens (<https://youtu.be/AePv6G71lbs>)



(<http://tts://youtu.be/-AxjgPocwhk>)

Nimbus Strike (<http://tts://youtu.be/-AxjgPocwhk>)



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The Great Jackpot (https://youtu.be/_Q6WoQJNs5M)



(<https://youtu.be/cC4M2Ts2x3g>)

Let's Get Spinning (<https://youtu.be/cC4M2Ts2x3g>)



(<https://youtu.be/PGIxl7osRM>)

Aztec Super Storm (<https://youtu.be/PGIxl7osRM>)



(<https://youtu.be/5gYXbpHC3nk>)

Scattered Diamonds (<https://youtu.be/5gYXbpHC3nk>)



(<https://youtu.be/FKIJff9yiii>)

Aphrodite's Favor (<https://youtu.be/FKIJff9yiii>)



(<https://youtu.be/7ILQHmsEXGM>)

Alchemist's Jackpot (<https://youtu.be/7ILQHmsEXGM>)



(<https://youtu.be/oKefPavoEoQ>)

Cowboy Wilds (<https://youtu.be/oKefPavoEoQ>)



(<https://youtu.be/rmCCrHBbXlk>)

Devil's Delight (<https://youtu.be/rmCCrHBbXlk>)



(https://youtu.be/8a3P2v_Qy9o)

Angel's Allure (https://youtu.be/8a3P2v_Qy9o)



(<https://youtu.be/YyghqVb-IKI>)

Cosmic Boost (<https://youtu.be/YyghqVb-IKI>)



(<https://youtu.be/i9Qr7iv1ZCE>)

Wheel Derby (<https://youtu.be/i9Qr7iv1ZCE>)



(<https://youtu.be/o7rCyCzbBNI>)

Egyptian Splendor (<https://youtu.be/o7rCyCzbBNI>)



(<https://youtu.be/mNDpyW2SvIE>)

Reactor Blast (<https://youtu.be/mNDpyW2SvIE>)

11200 Pepper Road
Hunt Valley, Maryland 21031

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NOTE: This application must be filed with the Commission at least sixty (60) days prior to the first Racing day.

NEBRASKA STATE RACING COMMISSION
APPLICATION FOR LICENSE

Submit to: Nebraska State Racing Commission, 5903 Walker Avenue, Lincoln NE 68507
License Fee of \$ 50.00 per race day accompanies this application.

Pursuant to the provisions of the Revised Statutes of Nebraska, Reissue of 1962 and 1965 Supplement. Thereto Article 12, Section 2-1201 through 2-1219 providing for the licensing and authorizing the racing of horses under the "Pari-mutuel" or "Certificate" System, hereby make application for a State License to conduct horse races and to use in connection therewith the said "Pari-mutuel or Certificate System" of contribution and distribution of money as set forth in said act.

The undersigned respectfully shows that:

1. The applicant is a non-profit sharing Corporation
(HERE STATE WHETHER ASS'N OR CORP.)
having its office or principal place of business at 700 E STOLLEY PK RD GRAND ISLAND NE HALL, Nebraska
STREET ADDRESS CITY OR TOWN COUNTY
(IF CORPORATION THE NAME OF THE STATE OF ITS INCORPORATION)

2. The names and addresses of all officers and directors of applicant are as follows:
SEE ATTACHED LIST

3. The land upon which applicants plant is erected is owned by HALL CO LIVESTOCK IMPRV ASSN and is located at 700 E STOLLEY PK RD GRAND ISLAND NE HALL, Nebraska.
STREET ADDRESS CITY OR TOWN COUNTY

4. The proposed dates of the meeting are for 31 days from FEB 21 - MAY 2, 2020 to 12 NOON TO SUNDOWN, both inclusive, between the hours of

5. License Fee of \$ 50.00 per race day accompanies this application.
6. Applicant agrees to furnish any additional information requested by the Commission as provided by law.
7. Applicant further specifically states, that no other person, other than those named herein, has any interest, directly or indirectly, in the race course described, and that the applicant has no agreement, tacit or express, or understanding, express or implied, with any other person whereby such other person is to have, directly or indirectly, any interest whatever in the license to be issued on this application of the racing of horses thereunder, or the operation at said race course of said "Pari-mutuel or Certificate System."

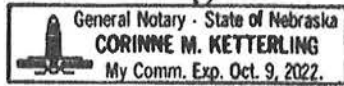
8. Applicant further represents that said races will be conducted and the Pari-mutuel or Certificate System will be operated in accordance with aforementioned law and in strict compliance with the rules and regulations made and promulgated by the Nebraska State Racing Commission, and that they are ready, able and willing to give bond as required by law, in such sum as the Commission may require and fix upon granting the license applied for and they are ready, able and willing to pay the license fee required by law, and in all other respects to comply with said statutes, rules and regulations.

(Signed) CHRIS KOTULAK CEO TITLE OF AFFIANT

ACKNOWLEDGMENT

STATE OF NEBRASKA,
County of Hall ss,
Chris Kotulak being first duly sworn, says that he is the Chief Executive Officer
of Fonner Park and the statements and answers made in the foregoing application are true.

Subscribed and sworn to before me this 15 day of November, 2019
Corinne M Ketterling
NOTARY PUBLIC




RACING COMMISSION
STATE OF NEBRASKA

APPLICATION FOR SIMULCASTING FACILITY LICENSE

To: Nebraska State Racing Commission
5903 Walker Avenue
Lincoln, Nebraska 68507

Pursuant to the provisions of the Revised Statutes of Nebraska and supplements thereto Article 12, Section 2-1201 through 2-1229, application is hereby made to the Nebraska State Racing Commission for a SIMULCAST FACILITY LICENSE for the display of horse races on which pari-mutuel wagering shall be allowed from a sending track located in the state, and an INTERSTATE SIMULCAST FACILITY LICENSE to receive the simulcast of horse races for pari-mutuel from any track located outside the state. This license shall authorize the applicant during the calendar year 2013 to display the simulcast of races, from a track located in the state subject to approval by the Nebraska Racing Commission of one or more applications meeting the requirements of Section 2-1227, and from tracks located outside the state subject to approval of the Nebraska Racing Commission of one or more applications meeting the requirements of Section 2-1229.

- I. Applicant: FONNER PARK
- a. Office or principal place of business:
700 E STOLLEY PK RD
(Street)
GRAND ISLAND NE 68801
(City or town, county)
NEBRASKA
(State)
(If corporation the name of the state of incorporation)
- b. The names and addresses of all officers and directors of applicant:
SEE ATTACHED
- c. The land upon which racetrack is erected is owned by
HALL CO LIVESTOCK IMPRV ASSN
And is located at 700 E STOLLEY PK RD
(Street)
GRAND ISLAND NE 68801
(City or town, county)
NEBRASKA
(State)
- II. Applicant agrees to furnish any additional information requested by the Commission as provided by law.
- III. Applicant represents that simulcast races will be conducted the Pari-mutuel System will be operated in accordance with the aforementioned law and in strict compliance with the rules and regulations promulgated by the Nebraska State Racing Commission.

(Signed) 
(Title/Date) CEO 11/15/19

Fonner Park - 2020 Live Racing Calendar - Feb. 21-May 2, 2020

All Post Times "Central"

31 Days of Thoroughbred Racing

FEBRUARY 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					2:00 PM 21	1:30 PM 22
1:30 PM 23					2:00 PM 28	1:30 PM 29

MARCH 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1:30 PM 1					2:00 PM 6	1:30 PM 7
1:30 PM 8					3:00 PM 13	1:30 PM 14
1:30 PM 15					3:00 PM 20	1:30 PM 21
1:30 PM 22					3:00 PM 27	1:30 PM 28
1:30 PM 29						

APRIL 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					3:00 PM 3	1:30 PM 4
1:30 PM 5					3:00 PM 10	1:30 PM 11
Dark-Easter 12					3:00 PM 17	1:30 PM 18
1:30 PM 19					3:00 PM 24	1:30 PM 25
1:30 PM 26						

MAY 2020

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					3:00 PM 1	1:30 PM 2

Last Name	First Name	Name	Address	City	State	Zip
Apfel	Derek	Derek Apfel	1123 W 2nd St	Grand Island	NE	68801
Baxter	Greg	Greg Baxter	2121 N Monitor Rd	Grand Island	NE	68803
Bosselman	Brandi	Brandi Bosselman	1607 S Locust St/POB 4905	Grand Island	NE	68802-4905
Cannon	James L	James L Cannon	3121 Brentwood Cir	Grand Island	NE	68801
Carpenter	Rex E	Rex E Carpenter	2735 Lakewood Dr	Grand Island	NE	68801
Dinsdale	Tom	Tom Dinsdale	1919 W LaMar	Grand Island	NE	68803
Dowding	Steve	Steve Dowding	4417 Drake Ln	Grand Island	NE	68801
Eakes	Dan	Dan Eakes	2827 Brentwood Blvd	Grand Island	NE	68801
Enck	Terry	Terry Enck	2021 N Howard Av	Grand Island	NE	68803-1948
Flagle	Corby	Corby Flagle	3932 Meadow Way Trail	Grand Island	NE	68803
Fogland	Dan	Dan Fogland	4604 Lakeside Dr	Grand Island	NE	68801
Galloway	Terry T	Terry T Galloway	122 Ponderosa Dr	Grand Island	NE	68803
Hamik	Mike	Mike Hamik	2910 Pioneer Blvd	Grand Island	NE	68801
Hansen	Stephen P	Stephen P Hansen	1420 Stagecoach Rd	Grand Island	NE	68801
Hehnke	Monte V	Monte V Hehnke	4019 Norseman Ave	Grand Island	NE	68803
Heidelk	Jerry	Jerry Heidelk	3012 Brentwod Sq	Grand Island	NE	68801
Henry	Jack	Jack Henry	3823 S Hwy 34	Grand Island	NE	68801
Jakubowski	Mike	Mike Jakubowski	3510 S Blaine St	Grand Island	NE	68801
Jardine	Keith	Keith Jardine	168 Ponderosa Ct	Grand Island	NE	68803
Kahrhoff	Tom	Tom Kahrhoff	2115 W LaMar Av	Grand Island	NE	68803
Kunzman	Steve	Steve Kunzman	2408 Riverside Dr	Grand Island	NE	68801-7642
Luebbe	Jason	Jason Luebbe	1032 N Gunbarrel Rd	Grand Island	NE	68801
Luebbe	Roger	Roger Luebbe	1012 S Shady Bend Rd	Grand Island	NE	68801
Mader	Max	Max Mader	3850 N Webb Rd	Grand Island	NE	68803
Mader	Zach	Zach Mader	3580 N Webb Rd	Grand Island	NE	68803
Maser	Matt	Matt Maser	1504 Stagecoach Rd	Grand Island	NE	68801
Norvell	Max	Max Norvell	810 E South St	Grand Island	NE	68801-8084
Oltean	Bill	Bill Oltean	1805 Stagecoach Rd	Grand Island	NE	68801
Rerucha	Russ	Russ Rerucha	156 Ponderosa Ct	Grand Island	NE	68803
Richardson	Jeff	Jeff Richardson	#47 Kuester Lake	Grand Island	NE	68801
Rosacker	Gary	Gary Rosacker	509 W Koenig St	Grand Island	NE	68801
Toner	Larry	Larry Toner	3018 Big Horn Pl	Grand Island	NE	68803
Usher	Alan	Alan Usher	1310 S Gunbarrel Rd	Grand Island	NE	68801
Werner	Albert	Albert Werner	2210 S Blaine St	Grand Island	NE	68801
Westering	William	William Westering	PO Box 1902	Grand Island	NE	68802-1902
Zabka	Dan	Dan Zabka	2319 Riverview Dr	Grand Island	NE	68801

A NON-PROFIT
PUBLIC SERVICE
CORPORATION



THOROUGHBRED RACING

www.fonnerpark.com

Racing Dates February thru May - Glass Enclosed Grandstand

Post Office Box 490 • Grand Island, NE 68802-0490 • PH: 308.382.4515 • FX: 308.384.2753

Fonner Park Board of Directors

2020

Greg Baxter* 2008
Jim Cannon* 1990
Corby Flagle 2016
Terry Galloway 2017
Jack Henry 2010
Keith Jardine* 2002
Tom Kahrhoff 2008
Jason Luebbe 2014
Roger Luebbe* 2002
Max Mader 1990
Bill Oltean 2017
Albie Werner 2017

2021

Derek Apfel 2012
Brandi Bosselman 2018
Steve Dowding* 2006
Dan Eakes 2003
Dan Fogland 2009
Mike Hamik 2015
Monte Hehnke* 2003
Jerry Heidelk 2019
Steve Kunzman* 2009
Max Norvell 2018
Jeff Richardson 2016
Alan Usher 2009

2022

Rex Carpenter 2004
Tom Dinsdale* 2004
Terry Enck 2013
Stephen P. Hansen 2010
Mike Jakubowski 2010
Zach Mader 2010
Matt Maser 2019
Russ Rerucha 2013
Gary Rosacker* 1994
Larry Toner * 1995
Bill Westering* 1995
Dan Zabka 2007

* Denotes Past President

Executive Board

Mike Jakubowski President
Dan Fogland 1st Vice-President
Russ Rerucha 2nd Vice-President
Jeff Richardson 3rd Vice-President
Derek Apfel Secretary
Bill Oltean Treasurer
Steve Hansen Ex-Officio

Executive Management Staff

Chris Kotulak Chief Executive Officer

Directors Emeritus

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Max Bachman
Daryl Baxter
Tom Baxter*
Steve Beltzer*
Oscar Bredthauer, Jr.
John Cannella
Tom Collins
Vince Dowding *
Randy Gard
Del Garrelts
Francis Gauthier*
Brian Hamilton*
Steve Hansen*
Doyle Hulme *
Larry Huwaldt *
Gil Kuntz *
Gene McCloud
Wilbur McCumber *
Orv Qualsett*
Delbert Rathman
Ed Richards
Barry Sandstrom*
Matt Shonsey
Ken Staab
Richard Wampler
E.J. Thayer
Howard Tracy

NEBRASKA STATE RACING COMMISSION
MINUTES OF MEETING

DATE: December 04, 2019
TIME: 1:30 pm
LOCATION: Nebraska Racing Commission
Conference Room
5903 Walker Avenue
Lincoln NE

PRESENT COMMISSIONERS:

Dennis P. Lee Chairman
Janell Beveridge Vice Chairperson
Helen Abbott Feller Commissioner

ABSENT:

Jeffrey Galyen Commissioner

Chm. Lee convened the meeting at 1:37 pm in compliance with the provision of Neb. Rev. Stat. 84-1411. Notice of the meeting was published in the Lincoln Journal Star. In addition, copies of such notice were sent to those on the Racing Commission agenda mailing list. Notification was given to the public of the open meetings law and notification to its location for public view. Chm. Lee also acknowledged the passing of Commissioner Tom Patterson and expressed the Commission's deepest sympathies.

APPROVAL OF MEETING MINUTES AND FINANCIAL REPORTS

Feller moved, seconded by Beveridge to approve the minutes from the July 31, 2019 meeting. Voting aye: Lee, Beveridge, Feller. Motion carried.

Chm. Lee moved, seconded by Beveridge to approve the July, August, September and October 2019 financial reports. Voting aye: Lee, Beveridge, Feller. Motion carried.

APPROVAL OF SIMULCAST APPLICATIONS REC'D SINCE JULY 31, 2019

Beveridge moved, seconded by Feller to approve the simulcast applications received from Fonner, Omaha, Lincoln and Columbus. Voting aye: Lee, Beveridge, Feller. Motion carried.

HASTINGS EXPOSITION AND RACING INC., dba Fairplay Park

Chm. Lee moved, seconded by Feller to ratify the approval of the 4:00 pm post time, the 2019 racing officials, the request for temporary exception of NSRC Rules 3.003.08.4, 9.001.16 and 9.001.16A, the waiving of rules 3.003.08.4 and 9.001.16A. The request to run 13 year old "Takin on Equatics" was not approved. Voting aye: Lee, Beveridge, Feller. Motion carried.

SOUTH SIOUX CITY RACING AND EVENTS CENTER, INC., dba Atokad Downs

Feller moved, seconded by Beveridge to approve the 2019 racing officials. Voting aye: Lee, Beveridge, Feller. Motion carried.

OMAHA EXPOSITION & RACING INC., dba Lincoln Race Course

Feller moved, seconded by Beveridge to ratify the approval of the 2019 racing officials with a change of Russell Scott replacing Bob Young and the waiving of rules 3.003.04 and 3.003.08. Voting aye: Lee, Beveridge, Feller. Motion carried.

COMMISSION FUNDING

Director Tom Sage gave a review of the decline in funding. Chm. Lee expressed the open invitation for the public to review all revenue and expenditures.

STATE STATUTE 2-1206 TRACK BONDS

Chm. Lee moved, seconded by Beveridge to approve the Commission policy and track bond amounts as presented and as required by State Statute. Voting aye: Lee, Beveridge, Feller. Motion carried.

HEARING 2020 LIVE RACE DATES & SIMULCAST FACILITY APPLICATIONS

Chm. Lee moved, seconded by Feller to approve the Live Race Dates for 2020 to be:

Fonner Park - Grand Island

February 21, 2020 – May 2, 2020

31 Days of Live Racing

Columbus Exp & Racing – Columbus

May 29, 2020 – June 28, 2020

11 Days of Live Racing

Atokad – South Sioux City

September 12, 2020

1 Day of Live Racing

Horsemen’s Park - Omaha

May 8, 9, 15, 16, 22, 23, 24, 2020

7 Days of Live Racing

Lincoln Race Course – Lincoln

July 3, 4, 5, 2020

3 Days of Live Racing

Hastings Exp. & Racing - Hastings

TBD, 2020

1 Day of Live Racing

Beveridge moved, seconded by Feller to also approve the simulcast applications for 2020 for Fonner Park, Horsemen’s Park and Lincoln Race Course. Voting aye: Lee, Beveridge, Feller. Motion carried. Feller moved, seconded by Beveridge to approve the application for Hastings for Quarter Horse simulcasting in the clubhouse only.

DIRECTOR’S THOUGHTS AND ISSUES FOR 2020

Director, Tom Sage thanked the tracks for running their live races consecutively. He also mentioned some possible changes for 2020 including:

- Reduction of licensing hours
- Online licensing (racingcommission.nebraska.gov)
- Test barn and office help
- Fingerprinting hours

MEETINGS WITH ASSOCIATIONS

Nebraska Thoroughbred Breeders’ Association – Zach Made discussion of Breeder’s funds.

NE Horsemen’s Benevolent and Protective Association – Bob Moser discussed jockey mount fees and HBPA involvement.

ADJOURNMENT

Chm. Lee mentioned copies were available of the final order of Historic Horse Racing. The meeting adjourned at 2:48pm.

Respectfully submitted,
Tom Sage
Executive Secretary