

NATIONAL COUNCIL OF LEGISLATORS FROM GAMING STATES
COMMITTEE ON PARI-MUTUELS
LAS VEGAS, NEVADA
FRIDAY, JANUARY 9, 2015
2:45 P.M. – 3:45 P.M.
MINUTES

The Committee on Pari-Mutuels of the National Council of Legislators from Gaming States (NCLGS) met at the Paris Las Vegas Hotel and Casino in Las Vegas, Nevada, on Friday, January 9, at 2:40 p.m.

Sen. Bill Galvano of Florida, acting committee chair, presided.

Other legislators present included:

Rep. Helene Keeley, DE
Sen. David McBride, DE
Sen. Robert Bradley, FL
Sen. Oscar Braynon, FL
Sen. Bill Galvano, FL
Rep. Louie Luchini, ME
Sen. Greg Brower, NV
Sen. William Coley, II, OH
Sen. Anastasia Pittman, OK

Others present were:

Susan Nolan, Nolan Associates, NCLGS Executive Director
Andrew Williamson, Nolan Associates

MINUTES

The Committee accepted the minutes of its last meeting on June 6, 2014, in La Jolla, California.

CHALLENGES TO PARI-MUTUELS

Alan Koslow of Becker & Poliakoff stated the importance of balancing equities while making the policies. He said there are a number of states that have pari-mutuel industries that at one time were considered a major economic catalyst and that still have that potential. He reported that one of the biggest challenges facing pari-mutuels today is the number of competing interests, such as out-of-state gaming operators, gaming operators from outside of the country, and tribal gaming. He reported that in the state of Florida it is difficult to balance such issues. He noted that Florida has approximately 27 pari-mutuel operations and that we need to question what can be done to keep this industry alive and still benefit the state.

Mr. Koslow noted that all pari-mutuel locations in Florida were not just approved by state legislators and permitted by a state agency, but resulted from a constitutional referendum that was approved by the state. He said to improve revenue at these locations more products need to be introduced and that will, in turn, increase revenue for both the locations and the state. He said that this is also true in other states, but on a lower scale.

Mr. Koslow said that introducing incentives such as lower tax rates and requiring locations to use the money from the tax cut to create more jobs, and/or use that money towards new construction would benefit states and pari-mutuels.

Mr. Koslow also stated the importance of offering certain products to tracks outside of Dade and Broward Counties that they do not currently have in order to help increase revenue. As an example, Mr. Koslow said that states could legalize Fantasy Sports at pari-mutuel locations, since they are already equipped with windows and have other types of betting. He also stated his belief that legalization of Fantasy Sports would then lead to the legalization of professional sports betting. He said additional products such as social gaming should be introduced in the state of Florida and would add to the state revenue share. He said by not implementing these programs the state is leaving money on the table while also hurting the pari-mutuel locations throughout the state.

TECHNOLOGY ADVANCEMENTS IN PARI-MUTUEL WAGERING

Sen. Geller, Partner, Greenspoon Marder P.A., said the people who are attending pari-mutuel facilities are an aging demographic. He said there needs to be ways of getting younger bettors interested and involved. He reported that one suggestion is to introduce social gaming technology. He said an example of this type of technology is putting an OTB at sports bars where a younger demographic is going.

Sen. Geller said a second suggestion in order to attract a younger demographic is gamification, where people are wagering on issues that are not really pari-mutuel products but since pari-mutuels are legal it is used as a gateway, including sports betting. He indicated that these wagering issues raise some legal questions but that also depends on legislation within each jurisdiction. He reported that a Class II slot machines are an example because they are actually bingo games that are played like a slot machine.

DECOUPLING, HISTORICAL RACING, ADWS, TOTE AUDITS

Sen. Geller gave a brief history of his experience with decoupling in Florida. He said when he wrote the legislation permitting card games, a requirement was written to support and continue pari-mutuel wagering. Sen. Geller said this was done because the horses and greyhounds substantially contribute to the agricultural community. So, he stated, when slot machines became legal in Florida, continued support for pari-mutuel wagering was added to the bill.

Sen. Geller indicated that historically there has been a movement towards decoupling in several states, with a current push in Iowa and Florida. He said that in Florida a very unusual coalition of groups that have historically opposed each other have come together in support of decoupling. He stated the coalition includes Grey2K, greyhound permit-holders, and the American Society for the Prevention of Cruelty to Animals (ASPCA) and that these groups are all working together in support of decoupling. He said there are different reasons why such diverse groups are supportive of decoupling, including Grey2K, which says greyhound racing is a cruel sport and should be stopped, to the Greyhound permit-holders, who say they want to stop losing money.

Sen. Geller stated that there is also opposition to decoupling from the kennel holders, the people who provide the race at greyhound tracks, and the thoroughbred owners and breeders

association. He said their opposition to decoupling is out of fear that if it starts at the dog tracks, it will spread and eventually affect the horse tracks as well.

Sen. Geller said, in conclusion, that there will be legislation introduced in Florida. He stated that Iowa recently introduced legislation in support of decoupling but will phase it in over the next few years while paying the kennels.

In response to a question from Sen. Braynon, Sen. Geller said one argument in support of decoupling is you should not continue to require small greyhound tracks that are losing money to stay open. He said there are no easy answers when it comes to decoupling and indicated that one possible compromise would be to permit a reduction in the number of tracks.

ADVANCE DEPOSIT WAGERING

Tom DiPasquale, Executive Director of the Minnesota Racing Commission, said he wanted to highlight some recent developments on Advance Deposit Wagering (ADW). He stated there are three ways ADWs are regulated in various states. He said the first is expressly recognized and allowed, the second is expressly prohibited, and the third is where ADW is neither permitted nor prohibited.

Mr. DiPasquale indicated that in states where ADW is neither permitted nor prohibited, a decision needs to be made to either ignore it or manage it. He said New York has chosen to manage it. He said the legislature commissioned a study in 2012 to find out how much pari-mutuel wagering was being placed on out-of-state ADW platforms by New York residents. He reported that the study found \$200 million a year neither benefited the tracks, the state nor the horse people. He said as a result of the study, New York passed a law expressly allowing ADW. He stated that the same thing happened in Arkansas and is currently an issue in front of the Minnesota legislature.

HISTORICAL RACING

Mr. DiPasquale indicated that historical racing is an issue that can come to any jurisdiction. He reported that historical racing is essentially a physical machine that looks like a slot machine. He said a library of historical races is stored inside a machine, which may have as many as 20,000 races. He reported that a random generator brings up a race but the information as to which track and the names of horses is blinded. He said if you decide to wager you are given minimal blinded handicapped information and then choose a type of wager, some of which are the same as pari-mutuel wagers.

Mr. DiPasquale reported that, like a slot machine, you're not playing the same race as the other people using the machines, but the first person to win the wager sweeps the pool. He said after someone wins, the pool is reseeded with money from all others playing the historic gaming machines, until it reaches a minimal level, at which point it is available to the next winning bettor.

Mr. DiPasquale stated that concerns have been raised by a number of attorneys general. He said there is a question regarding if this is really pari-mutuel wagering. He said pari-mutuel wagering is traditionally defined as odds being established by all people who are betting and therefore after takeout and breakage, the winnings are distributed proportionally among all those who have a winning ticket. He said the difference between pari-mutuel and historic

racing is only one person wins, so there is a pool of one. He reported that some state attorneys general have said a pool of one is not a pari-mutuel pool and that historic racing is a betting pool, not a pari-mutuel pool.

Mr. DiPasquale reported that if an agreement is made that this is pari-mutuel wagering, the next question that must be addressed is whether it is approved by the state legislature or constitution. He reported that most states allow live and simulcast wagering and that there is precedent in Wyoming, where the state Supreme Court ruled historical racing is not constitutional because it is not simulcast wagering.

Mr. DiPasquale concluded that one company is trying to move historical racing through racing jurisdictions and a second company is entering historical racing. He said it raises an interesting set of questions that you may want to discuss with your regulators and attorneys general.

In response to a question from Sen. Bradley, Mr. DiPasquale said there is no way for a bettor to know what race or even what track you are betting on when an individual makes the wager. Mr. DiPasquale stated that historical racing is legal in Kentucky, Ohio, and Wyoming, where despite the Supreme Court ruling, the legislature passed a law authorizing it.

Kevin Mullally, Vice President of Government Affairs and General Counsel, Gaming Laboratories International (GLI), noted that when historical racing machines are placed in direct competition with slot machines, they do not fare particularly well. He said the machine is really a self-service wagering terminal that is using old data instead of live data.

Mr. Mullally said that the tote system that manages all pari-mutuel wagering is not independently reviewed by anyone. He reported that audits are done but the actual technology going down to the source code level—unlike slot machines, lottery systems, or electronic bingo—are not tested. He stated the only complete baseline for historical racing machines is in the state of Texas where GLI just completed that process. He reported this is the second time GLI has done so for the state of Texas. He said that GLI has done some testing in other states such as Kentucky, Iowa, and Indiana, which will allow them to conduct a proper forensic.

Mr. Mullally said a major problem of machines not being tested at all is if something does happen. He said, for example, in California when Big Brown won the Kentucky Derby, if you did a “quick pick” for a “pick-6” you had a zero chance of winning in California because Big Brown was the 20th horse in the race. The random number generator in California does not have 20 as an option. He said you can imagine what would happen if you had a state lottery with a \$100 million Powerball winner and the number 20, but if you played a “quick pick,” 20 was not an option. He stated that it is a software problem and no matter what business you’re in, eventually something like this will happen.

Mr. Mullally said the problem with historical racing machines is there is no way to conduct a proper forensic because there has been no baseline on the software, so there is no way to signature the software like you do in every other form. He reported that he could walk up to any slot machine in the hotel and pull it up on the GLI database and be able to tell down to the bit level the signature match for that particular machine. He said if you chance a one or a zero in that entire source code, that signature will not match with the approved database. He said there is no way to do that with a tote system.

STATE AND FEDERAL ANTI-DOPING INITIATIVES

Ed Martin, President, Association of Racing Commissioners International (RCI), said in the past year there has been a lot of news about drug testing and anti-doping in horse racing. He reported that a federal bill was introduced in the last United States Congress by U.S. Senator Udall of New Mexico that would bring the U.S. Anti-Doping Agency (USADA) into testing domestic horseracing. He stated that ARCI does not have a position for or against any federal legislation, but is in favor of enacting an interstate regulatory compact that NCLGS has previously endorsed.

Mr. Martin said performance enhancing drugs are not allowed in human sport and are definitely not allowed in equine sport. He noted that there is a major difference between the World Anti-Doping Agency international standards that are enforced by the USADA and the horseracing standards pertaining to the use of therapeutic exemptions. He said as opposed to human sport, horseracing does not allow therapeutic exemptions that would permit athletes to compete in competition under the influence of otherwise banned performance enhancing drugs.

Mr. Martin stated that if you examine the USADA annual report, it has itemized lists and that it processed 508 therapeutic use exemptions in 2013 and approved approximately 55 percent of them. He said a few of the substances they allow are stimulants, corticosteroids, and anabolic steroids, among others. He said horseracing does not allow any substances on race day. He noted there is a debate over Lasix, which is allowed and has a mild potential performance enhancement. He reported Lasix is highly controversial in some sectors of the horseracing industry but, when allowed, it is required to be disclosed to the public.

Mr. Martin reported that in 2013, the United State racing commissions tested 346,840 biological samples, while the USADA tested 9,100 samples. He said this demonstrates that the United States racing commissions' drug testing program is 37 times larger than the USADA program. He stated that the Worldwide Anti-Doping Agency program tested 200,094 samples during 2013. He said the results of testing in all of these programs are roughly the same, 99.55 or 99.6 percent of the samples come back clean. He indicated this means there are still people who are attempting to cheat.

Mr. Martin reported that in 2013 the USADA labs detected 16 different illegal substances and noted that the racing commission labs detected 74 different illegal substances. He said the network of racing regulatory labs have the ability to test and confirm all those substances.

Mr. Martin said in conclusion that there is a philosophical difference in the regulatory systems between human sport, which regulates the use of therapeutic drugs on their athletes in training, and horseracing, which regulates the presence of performing enhancement drugs in the contest. He stated that the racing regulatory system has taken the position of not denying an animal a therapeutic medication to treat a diagnosed condition on the advice of a medical professional. He indicated that there are concerns about overuse and potential abuse of otherwise legal treatments and that you will see proposals come forth from to expand jurisdiction over horses in training. He said such proposals would do a better job collectively in identifying at-risk horses.

ADJOURNMENT

There being no further business, the meeting adjourned at 3:45 p.m.

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