

STATE OF MICHIGAN
OFFICE OF THE EXECUTIVE DIRECTOR OF
THE MICHIGAN GAMING CONTROL BOARD

In the Matter of

OIL CAPITAL RACE VENTURE, INC., and
POST IT STABLES, INC.

Case No.

Respondents.

NON-DISCIPLINARY ORDER REDUCING RACE DATES

Respondents, Oil Capital Race Venture, Inc., a/k/a Mount Pleasant Meadows, and Post It Stables, Inc., a/k/a Pinnacle Race Course are race meeting licensees operating under the authority of the Horse Racing Law of 1995, (Racing Act) MCL 431.101 *et seq.*

On October 8, 2009 the Governor of the State of Michigan issued Executive Order No. 2009-45. The Order transferred the powers and duties of the Office of Racing Commissioner to the Executive Director of the Michigan Gaming Control Board. The Governor abolished the Office of Racing Commissioner and the position of Racing Commissioner and transferred all of the authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, or other funds of the Office of Racing Commissioner to the Michigan Gaming Control Board. Executive Order No. 2009-45 provided that all powers and duties transferred from the Office of Racing Commissioner must be performed under the direction of the Executive Director who is to perform all functions and exercise all powers of the Racing Commissioner including regulating pari-mutuel wagering, licensing, issuing final agency decisions on all contested case hearings, and the promulgation of agency rules. The Executive Director may also delegate his powers in writing to another. The transfer was effectuated on January 17, 2010 and the Executive Director undertook a review of the financial viability of live racing in the State of Michigan. Based on that review, the Executive Director has determined that funding and appropriations for regulating racing are insufficient to support the full schedule of live race dates issued for this year.

For the fiscal year beginning October 1, 2009, the Legislature appropriated \$2.5 million for the Office of Racing Commissioner to regulate horse racing in the State of Michigan. In November 2009, the Legislature issued a supplemental appropriation that reduced the amount to \$1.785 million. For the current year, 261 live race days were approved. The \$1.785 million amount was further reduced to \$1.428 million by the Department of Agriculture due to a revenue shortfall in the Agriculture Equine Industry Development Fund. The Executive Director determined that the remaining amount of the appropriation was insufficient to support the existing live race dates schedule. The Executive Director has determined that the cost of a live race day, to the State of Michigan, is \$5,923.00. As a result, the racing budget was underfunded

by over \$900,000.00 and required that 157 race days needed to be canceled. To preserve live racing dates, supplemental appropriations were granted.

On May 10, 2010, Public Act 66 was enacted into law and provided for an additional appropriation of \$306,684 to provide a total of 217 race dates in the fiscal year ending September 30, 2010. The legislation had the effect of fully restoring all 62 race dates originally allotted for Hazel Park Raceway, all 32 race dates at Northville Downs and all 35 race dates at Northville Racing Corporation. In addition, the legislation provided funding for 43 race dates at Pinnacle Race Course (11 of which were already run in October of 2009) and 11 race dates at Mount Pleasant Meadows.

Article 9, Section 17, Constitution of the State of Michigan, prohibits payments from the state treasury without an appropriation. Under the Racing Act and per Executive Order No. 2009-45, the Executive Director of the Gaming Control Board is compelled to employ personnel for the administration of the Racing Act within the limits of the appropriations made by the Legislature.¹ If appropriations are not made, the Executive Director will be unable to employ the personnel necessary to administer and enforce the Racing Act and Administrative Rules. The Racing Act simply does not contemplate the continuance of horse racing without strict and continuing regulation which requires the Executive Director and his staff. The inability to administer and enforce the Racing Act and Administrative Rules creates a situation where emergency action is needed for the immediate preservation of the integrity of horse racing, the regulation of horse racing, and the protection of the public health, safety and welfare.²

Horse racing is only authorized to the extent this it is conducted in accordance with the Racing Act.³ There is broad discretion under the Racing Act to fully and effectively execute the licensing, enforcement, and regulation of horse racing, pari-mutuel wagering and simulcasting.⁴ The powers and duties include those specified in the Racing Act and "...those additional powers necessary and proper to implement and enforce this act and to regulate and maintain jurisdiction over the conduct of each licensed race meeting within this state where horse races or pari-mutuel wagering on the results of horse races is permitted for a stake, purse, prize, share, or reward."⁵

There is a strong public interest justifying close regulation of horse racing. Specifically, the many regulatory duties under the Racing Act and Administrative Rules that require regulated personnel.⁶ Horse racing is accompanied by legalized gambling, making the activity especially susceptible to fraud and corruption. Strong regulation protects not only the wagering public but

¹ MCL 431.306(1)

² MCL 431.307 and MCL 24.292.

³ MCL 431.301 *et seq.*

⁴ MCL 431.303

⁵ MCL 431.303

⁶ R 431.1250, R 431.1260, R 431.1205, R 431.1220, R 431.1275, R 431.1340, R 431.2010, R 431.2030, R 431.3025, R 431.4020, R 431.3070, R 431.3075, R 431.3175, R 431.3280, R 431.3290, R 431.4255, R 431.4170, R 431.4195, R 431.4205, R 431.4265, MCL 431.323, MCL 431.318, MCL 431.333.

also advances the state's economic interests in the racing business by preserving public confidence in the activity.⁷

If the Executive Director is unable to discharge his statutory duties of regulation, an emergency exists requiring a reduction of race dates as the Executive Director and his staff will not be able to do the following:

- Discharge his statutory duties if he has no funding to employee regulators, stewards, veterinarians, investigators and other track officials.
- Regulate live race meetings because this requires qualified and trained state stewards, investigators, veterinarians and others to protect the public health, safety and welfare and the integrity of horse racing and its industry. Only these regulators have the thorough knowledge of the numerous provisions contained in the Act and Rules that make it possible for an official and legal live race to occur. Without these employees/regulators a lawful live race meeting can not occur.
- Regulate simulcast racing to the fullest extent possible. At this time, the Executive Director will allow the regulation of simulcasting by designating an essential on-call regulator. But if this is not possible the Executive Director may also be forced to order that simulcasting temporarily cease.
- Conduct official live horse races because it will be without the necessary and required track stewards officiating over the race.
- Promote overall safety while preserving the integrity of horse racing, public peace, health, safety, morals, good order, general welfare and public confidence in gaming.
- Have continuous monitoring and control of horse race track operations to ensure compliance with the Racing Act and rules.
- Have continuous monitoring and control of occupational licensees.
- Assure the orderly conduct of horse racing operations.
- Certify the revenue collected by the race meeting licensees.
- Receive complaints from the public.
- Receive the required written and verbal notifications of criminal activity and violations of the Racing Act, and rules.⁸

⁷ *Berry v Racing Commissioner*, 116 Mich App 164, 170; 321 NW2d 880, app dism 469 US 806 (1982):

Police presence alone does not adequately protect the public as its function is to enforce the Penal Code and not to regulate horse racing. Regulation of the race meeting licensees requires qualified and trained state stewards, investigators, veterinarians and others to protect the public health, safety and welfare and the integrity of horse racing and its industry.

NOW THEREFORE, IT IS ORDERED THAT:

Due to insufficient funding and appropriations, and according to the Executive Director's authority under the Racing Act and its Administrative Rules, specifically, but not limited to § 3, 7, and 12 of the Racing Act⁹ and consistent with the findings in this order, the following live race dates are reduced canceled:

- The Executive Director and his staff hereby changes Mixed Breed horse racing dates in 2010 on which live horse racing shall be conducted by the licensee, Oil Capital Ventures, Inc. d/b/a/ Mt. Pleasant Meadows, during the term of its 2010 Mixed Breed race meeting license. **Race dates from May 15, 2010 through September 25, 2010 will be reduced to the following: A total of 11 days beginning May 30, 2010 through August 1, 2010. Racing shall be conducted every Sunday, with the exception of the last weekend in July, when racing will be conducted on Saturday, July 31 and Sunday, August 1.**
- The Executive Director and his staff hereby changes Thoroughbred horse racing dates in 2010 on which live horse racing shall be conducted by the licensee, Post It Stables, Inc. d/b/a Pinnacle Race Course, during the term of its 2010 Thoroughbred race meeting license. **Race dates from June 4, 2010 through September 30, 2010 will be reduced to the following: A total of 32 days beginning June 5, 2010 through September 25, 2010. Racing shall be conducted every Saturday and Sunday, with the exception that no racing will be conducted on Saturday, August 29, 2010.**

IT IS SO ORDERED THIS 26th DAY OF May, 2010.


Richard Kalm, Executive Director

⁸ MCL 431.333

⁹ MCL 431.303, 431.307, and 431.312.