

Horseracing in New Mexico:

An Opportunity for Improvement

A presentation to the New Mexico
Economic Development and Policy
Committee

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Horseracing in New Mexico: An Opportunity for Improvement

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Shannon Gilliland, CPA, Taylor Roth & Co PLLC

Paul Jenson, DVM, President, NMHA

Gary C. Mitchell, P.C., Attorney at Law

Terri Montoya, Administrative Assistant NMHA



Today's Presenters

- Richard Erhard – Overview and and Brief History
- Shannon Gilliland, CPA – Financial Snapshot of the NMHA
- Paul Jenson, DVM – Collateral Economic Impact of Horseracing in New Mexico
- Gary Mitchell, Esq. – Legal Issues and Prospective Solutions
- Note:
 - Teri Montoya and Brenda Gabaldon will be available on-line via Zoom

Richard Erhard

Executive Director, NMHA

- Richard Erhard is a graduate of New Mexico State University's School of Teacher Preparation, Administration and Leadership
 - Advanced degrees in Educational Management and Development and Special Education
- Adjunct Faculty of the USC Gould School of Law
- President of the Southern California Mediation Association
- Mediator in Private Practice

Overview

- The NMHA is the recognized organization representing horsemen in New Mexico under the Interstate Horseracing Act
 - The NMHA is a not-for-profit corporation organized in 1966 under Section 501(c)(4) of the Internal Revenue Code to actively promote the general welfare and health of licensed owners, trainers, and grooms (the horsemen) who race in the State of New Mexico
 - Membership qualifications include a license as an owner or trainer of racehorses from the New Mexico Racing Commission (Commission) and active involvement in racing within the state of New Mexico

Overview

- On December 2, 2020, the horsemen filed a lawsuit in New Mexico District Court seeking Declaratory Judgment on the following issues:
 1. Is it proper for the Commission to authorize the tracks use of purse funds to pay for jockey and exercise rider insurance? – In other words, indemnify the track for an injury occurring on their track?
 2. Is it proper for the Commission to Order the NMHA to pay a starter fee to the tracks due simply to make up for lost revenue due to the lack of spectators?
 3. Is it proper for the COMMISSION to require the NMHA to have a racing license as an Association, where the definition of Association under NM Stature refers to an entity holding live horse races? Here, we were fined \$10,000

Overview

- Subsequent lawsuits and complaints to our initial December 2, 2020, filing are due to retaliatory actions taken by the Commission, racetracks and/or New Mexico Gaming Control Board.

Brief History

- Lived in New Mexico on and off for 53 years
- Racetrack Farrier on New Mexico racetracks - 1982-1996
 - Graduate of NMSU, Department of Agriculture Farrier Science Program - 1979
- Started graduate school in 1988 at NMSU
- Put myself through graduate school at NMSU shoeing racehorses
- Retired as Assistant Superintendent of Schools in CA in 2016
 1. Opened private practice as a mediator in 2017
 2. Approached by a representative of NMHA in 2014 re: the Executive Director for NMHA
 3. Approached again in 2016 and again in 2019

Why was I Approached?

- The request, made by a friend and colleague of 40 years affiliated with the NMHA was made due to my experience
 - On the backside of racetracks
 - Dispute Resolution/Mediation Experience and training
- Disputes with the Commission and the five (5) racetracks
 - Reduction of authorized race days
 - Fewer racing opportunities for horsemen

Tenure as Executive Director of the NMHA

- Tenure began November 19, 2019
 - Mid-March 2020 – COVID-19, all _____ broke loose...for everyone
- Prior to starting the position, NMHA Board asked me two relevant questions:
 1. Why do you want this position?
 - To give back to the horseracing industry in NM
 2. Are you willing to sue the Commission and tracks?
 - Given my Dispute Resolution training, litigation is the last thing you do
 - Costs too much/ both fiscal and HR/personnel
 - Takes too much time

Why are we here today?

- To let you know the NMHA is fighting for its life!
 - Individual horsemen and horsewomen are fighting for their livelihood and way of life
- Horseracing, despite it being called the sport of Kings, in New Mexico has historically been an “Every Man’s” Sport. Since its inception, racing stables of modest means, like small farms and ranches, have been able to support themselves and their families in this sport.
- Today, big business, Corporate Racinos, with predominately out-of-state ownership, is in my opinion, attempting to change the face of horseracing in the state forever, through the on-going reduction in race days and racing opportunities

Horseracing is part of Fabric, Culture and Heritage of New Mexico

Areas that make us unique as a State

- Tri-culture
 - Native American, Hispanic and Anglo
- Agriculture
 - Chili, Pecans, Cotton, Alfalfa, Pistachios...
- Industry
 - Oil and Gas, Wind, Solar and Technology
- Tourism
 - Art, Music and *Horseracing*

Horseracing in New Mexico

- **1541: Earliest history of horse racing in what is now the State of New Mexico**
- New Mexico, since the Conquistadors, has had some type of horse racing and no doubt people bet on those races
- The first recorded horserace in what is now the United States took place in New Mexico.
- In 1541, the Spanish explorer Coronado challenged one of his officers to a match race while they were camped on the banks of the Rio Grande river, near Bernalillo, New Mexico, just North of present-day Albuquerque.

The New Mexico Horsemen's Association (NMHA)

- In 1966 the New Mexico NMHA's Association was formed.
- Every trainer and owner of a racehorse licensed by the New Mexico Racing Commission would be an automatic member.
- Contributions to the NMHA came from owners contributing 1% of their winnings to the NMHA after their racehorse earned money. The track's horsemen's bookkeeper made the deduction after the race was official from the checks/deposits to the owner.
- Later a \$5.00 starter fee and a \$2.00 PAC fee per horse entered in a race would be contributed by owners from their winnings [**earned income**] The starter fee to help with medical bills for members and for the PAC fee for lobbying purposes.

Shannon Gilliland, CPA

- Shannon Gilliland, CPA, is a graduate of the University of New Mexico, Anderson School of Business, and is the Partner in charge of Taylor Roth's Albuquerque office
- Taylor, Roth and Co., PLLC, is a CPA firm that works exclusively with nonprofit organizations, primarily in New Mexico and Colorado
- NMHA has engaged Taylor Roth since 2017 to provide an annual audit of the Association's financial statements.

Paul Jenson, DVM

President, NMHA

- Paul W. Jenson, Doctor of Veterinary Medicine, Washington State University 1995
- Master of Science, Kansas State University, 2004
- Diplomate, American College of Veterinary Surgeons, 2001-2005
- Owner, Jenson Equine Hospital, Surgical Referral Center, Sunland Park, NM
- International Society of Equine Locomotor Pathologists-currently training, Normandy, France

Economic Power of New Mexico Horseracing

- Each horseracing state has incentives for people to support their economy by keeping all horse breeding, raising and training, in state
- New Mexico has one of the most desirable programs in the nation to attract national and international horse owners
- Attractive because the program requires owners bring their top mares to New Mexico and keep them here year around
- Stimulates broad swath of the New Mexico economy in support of family business, corporate industry and agriculture

Incentives Program

- The incentive to keep horses here year-round is horses get to run in designated races with increased purse money, if they remain in state
- This economy attracts both out-of-state and international horsemen to New Mexico
- The process to get a horse ready to race takes approximately 3 years from foaling to racing
- Therefore, each horse stimulates the New Mexico economy for three years, prior to the horse earning any income

Climate of Horseracing has Changed in New Mexico

- Our industry has become less inviting; therefore, horse owners now keep their horses in state the bare minimum required during breeding and foaling
- Previously horse owners keep their horses here beyond the minimum due to a great support staff and industry
- Now, the rules have been changed to accommodate the loss of this support industry, such that the bare minimum time in state is required
- The mare now only must remain in state to be bred, leave, and then come back to drop the foal, and leave again

Solution

- Commission support a full year of horseracing as required by law
- Racetracks schedule racing and training so there is no gap between race meets as required by law
- Allow the horsemen equal representation in decision making

Richard Erhard

Executive Director, NMHA

- The First Year – 2019/2020...leading to what brings us before you today.

NMHA Attempts at Collaboration:

From November 2019 - December 2020; one year and a month, I tried to work collaboratively with the Commission and all (5) NM racetracks

- **April/May 2020** - I facilitated an agreement between the NMHA, the NMHBA and representatives from all five-tracks, then authorized by the Commission, to move the remaining purse funds from Sunland Park, closed mid-March 2020 and SunRay Park, never to open in 2020, due to COVID, to the Downs at Albuquerque and Ruidoso Downs, allowing these tracks to have purse money to operate
 - One member of this group noted, “We should have these types of collaborative discussions more often.”-Here, I was encouraged; thought we were getting somewhere.

NMHA Attempts at Collaboration:

July 2020 - Even after being given a portion of purse funds through the Purse Tax Agreement, The Downs at Albuquerque (DAA) announced, they would not open until August 2020, as opposed to July 2020, as scheduled

- Given the Governor's Order not allowing patrons in the stands due to COVID, the DAA demanded, for the first time in NM racing history, a Starter's Fee of \$100 per head to compensate for the alleged loss of revenue due to no patrons in the stands
- As I recall, the NMHA was given approximately 24 hours to agree with the Starter Fee, or the track threatened not to open for the season
 - Many Horsemen in the state had not raced and therefore, not earned any money since mid-March. They were desperate!
 - Now mid-August, the NMHA agreed to the Starter's Fee...under duress

NMHA Attempts at Collaboration:

September 2020 – Horseracing moves to Zia Park

- Given the Order to not allow patrons in the stands, track management also demands a Starter's Fee to compensate for the alleged loss of revenue
- NMHA counters, stating they will not authorize the Simulcast Export Signal unless the Starter Fee is dropped
- Negotiations with Commission and track management, prove unsuccessful
- NMHA, with membership facing financial ruin, ultimately agrees with the Starter's Fee...again, under duress!

NMHA Attempts at Collaboration:

October/November 2020-Conditions at Zia Park are considered substandard by NMHA – Situation was chronic – Multiple years of documented issues as follows:

- Backside
 - No water at many wash racks; Insufficient electric power; Caleche rocks on bridle path to track and through barn area; Loose aluminum siding, in barn stalls, siding and roofs
- Track Surface – Dry and Rocky
- General Health/Safety for horses and NMHA
 - Lack of personnel to staff ambulances-resulting in closure of track on training days; Lack of timely trash disposal; Lack of timely muck disposal; at times as high as the eaves of the barns; Lack of proper bathroom and shower facilities, especially for women

NMHA Attempts at Collaboration:

November 2020 - Commission Meeting: the horsemen's final attempt at collaboration!

- I presented a letter to the Commission, signed by approximately 60 trainers and owners, with horses at Zia Park, concerned about safety for horsemen and horses
 - Multiple Pages of back-up documents from these trainers and owners stating their concerns
- Forwarded this information to the Commission for their review prior to the meeting
 - However, was told I did not submit my written report within the Commission's required timelines

NMHA Attempts at Collaboration:

November 2020 - Commission Meeting:

- After finishing my oral report to the Commission, the then Chair of the Commission, asked the Commissioners if they had any questions
- There were no questions...Radio silence
- How does a Commission receive a report like this and not have any questions?
- It was at this time; I realized, a year and a month into my tenure, it appeared the Commission simply did not care about the NMHA's concerns. Shortly after this meeting. On December 2, 2020, the NMHA filed their first legal complaint with the court...
- All attempts at collaboration had proved fruitless...litigation, the last stop on the continuum was apparently the NMHA's only option to be heard.

Legal Issues and Concerns of the New Mexico Horsemen's Association (NMHA)

- 1. Retaliation against the NMHA by the NM Racing Commission (Commission)
- 2. Retaliation against the NMHA by Racetrack Management
- 3. Failure of the Commission to support industry stakeholders
- 4. Failure of the Commission to follow New Mexico Statutes
- 5. Failure of the Commission to consult and seek consent of veterinary experts re: medication rules

Legal Issues and Concerns of the New Mexico Horsemen's Association (NMHA)

- 6. Failure of the Commission to enhance rather than diminish New Mexico horseracing
- 7. Failure of the Commission to keep accurate accounting records of gaming purse money
- 8. Failure of the Commission to ensure qualified personnel are hired to fill positions required under the Horseracing Integrity and Safety Act (HISA)
- 9. Failure of the Commission to authorize the state's 6th racetrack
- 10. Ethical Violations

Gary Mitchell, Attorney at Law

NMHA Legal Counsel

- Gary C. Mitchell is a graduate of the University of Seattle School of Law and an attorney practicing in New Mexico since 1977
- He is a life-long resident of New Mexico
- President of the ACLU-New Mexico; President of the Board of Trustees of the Lincoln County Medical Center in Lincoln County, New Mexico; President of the Upper Hondo Water Users Conservancy District
- A former New Mexico Racing Commissioner
- He and his wife Tricia are ranchers in Lincoln County

1. Issue: *Retaliation by the New Mexico Racing Commission (Commission) against the New Mexico Horsemen's Association (Horsemen) given the Horsemen's objection to wrongful taking of gaming purse money, shortening of race meets, racing conditions, extra charges to Horsemen, poor backside conditions, ethical conflicts, rule changes to eliminate the Horsemen, improper taking of contributions to the Horsemen, interference with federal and state law and removal of Horsemen as the trustee and caretaker of gaming purse money.*

Solution

- Require Commission pay for the contributions they stopped to the Horsemen, which now exceeds \$700,000;
- Repeal the retaliatory rule changes against the Horsemen.
- Require the Commission reinstate contributions from the owner of racehorses who wins a portion of the purse and reinstate the program that deducts the money from the owners' money and send it to the Horsemen.
- Defeat any calls to modify the gaming purse money statute which supplies purse money for the industry.

1. Issue: *Retaliation by the New Mexico Racing Commission (Commission) against the New Mexico Horsemen's Association (Horsemen) given the Horsemen's objection to wrongful taking of gaming purse money, shortening of race meets, racing conditions, extra charges to Horsemen, poor backside conditions, ethical conflicts, rule changes to eliminate the Horsemen, improper taking of contributions to the Horsemen, interference with federal and state law and removal of Horsemen as the trustee and caretaker of gaming purse money.*

Solution

- Require all licensees to have health insurance and request the Horsemen provide to its members a group health insurance policy, with a catastrophic insurance provision, each member may purchase and require the Horsemen increase its membership to allow jockeys and exercise riders be members, enabling jockeys and exercise riders to purchase adequate insurance coverage.
- Require the Horsemen be the watchdog over the gaming purse money and require the Horsemen provide an annual audit of the gaming purse money showing the amounts received, the amounts spent, with a written approval of each expenditure from the Commission and do so at no cost to the New Mexico taxpayer.
- Require the Horsemen be allowed to have representation and be a member of all standing committees of the Commission.

2. Issue: *Retaliation by Sun Ray against Directors of the Horsemen because the Horsemen refused to be coerced into Sun Ray's simulcast agreement.*

Solution

- Sun Ray will pay damages, to be determined by a District Court, however the Commission must prohibit and punish this type of conduct by a racetrack racino against the Horsemen's directors and members.

3. Issue: *Failure of the New Mexico Racing Commission to support the people of New Mexico, the gambling public, the Horsemen and the racehorse industry rather than the five owners of the racinos.*

Solution

- Combine the Commission with the NM Gaming Control Board and set forth ethical rules for members to avoid conflicts of interest and monetary conflicts. Require each member of the Racing/Gaming Board have knowledge of the gaming and horse racing industries.
- Require the Commission in concert with the Horsemen and the New Mexico Horse Breeders Association (Breeders) conduct a scientific study of the economic impact of horse racing in New Mexico and report back to the New Mexico Legislature with joint recommendations for improvement.
- Defeat any calls to modify the gaming purse money statute which supplies purse money for the industry.
- Require the Commission reinstate contributions from the owner of racehorses who wins a portion of the purse and reinstate the program that deducted the money from the owners' money and sent it to the Horsemen.

3. Issue: *Failure of the New Mexico Racing Commission to support the people of New Mexico, the gambling public, the Horsemen and the racehorse industry rather than the five owners of the racinos.*

Solution

- The Horsemen kept excellent records and every year has an independent audit. The Horsemen have a perfect record never losing a penny of the gaming purse money. The Horsemen kept the records without any cost to the New Mexico taxpayer. A perfect record with no costs to the State of New Mexico means the decision of the NMRC was not only an act of retaliation but also poor decision. The Horsemen should be reinstated with access on a daily basis to watch over and account for all gaming purse money. The Horsemen are happy to provide this watch dog duty without cost.
- Require that the Horsemen be the watchdog over the gaming purse money and require the Horsemen provide an annual audit of the gaming purse money showing the amounts received, the amounts spent to the penny with a written approval of each expenditure from the Commission and do so at no cost to the New Mexico taxpayer.
- Require the Horsemen have a member and be a member of all standing committees of the Commission

4. Issue: *Failure of the Commission to require year-long racing requiring the racinos to be open as required by law and failure of the Commission to have a race meet be at least 60 days long rather than 30 days except, of course for the New Mexico State Fair*

Solution

- Demand the Commission support a full year of horse racing
- Require racetracks schedule in such a fashion, horses always have a barn to stall in and a track to exercise on, between race meets.
- Given collaboration of all stakeholders, such a schedule would be easy to accommodate and organize.

5. Issue: *Failure of the New Mexico Racing Commission to confer with and obtain the consent of New Mexico Board of Veterinary Medicine regarding proper medication of horses in order to protect the horses especially the use of Lasix at high altitudes.*

Solution

- Change the law allowing New Mexico Veterinarians who practice equine healthcare to serve on all committees regarding medication, have an equal vote on medication decisions made
- Commission required to take equine veterinarian's input under consideration and written rationale for refusal if not adopted

6. Issue: *Failure of the New Mexico Racing Commission to require racinos to enhance horse racing rather than denigrate and diminish it and*

Solution

- Commission shall obligate themselves to enhancement/improvement projects for racing rather than attempting to decrease horse racing
- Commission shall require writing conditions for horse races beneficial to the horsemen of New Mexico.
- The Commission shall become an advocate for horse racing not the destruction of it. All present Commissioners should be neutral ethical and follow the law.

7 .Issue: *Require the New Mexico Racing Commission keep proper accounting records of the gaming purse money and allow the Horsemen access to that information.*

Solution

- The Horsemen kept excellent records and every year had and still has an independent audit. The Horsemen had a perfect record never losing a penny of the gaming purse money. The Horsemen kept the records without any cost to the New Mexico taxpayer. A perfect record with no costs to the State of New Mexico means the decision of the NMRC was not only an act of retaliation but also very ignorant. The Horsemen should be reinstated with access on a daily basis to watch over and account for every penny of gaming purse money. The Horsemen are happy to provide this watch dog duty without cost.
- Demand the keepers of the purse money be transparent and the Commission, Horsemen and Breeders have the ability to check the accounts on a day-to-day basis to ensure the money is present, no money is being wrongfully taken and permission for each expenditure is approved in writing by the NMRC.

8. Issue: *Failure of the New Mexico Racing Commission to ensure the Horseracing Integrity Safety Act (HISA) corporation hire proper personnel in New Mexico rather than the people who cannot keep a job in New Mexico.*

Solution

- The Fifth Circuit United States Court of Appeals has declared HISA unconstitutional.
- Until the United States Supreme Court takes the case and reverses the Fifth Circuit that decision now stands, and HISA is not applicable.
- If the decision is reversed and HISA becomes effective again the Commission must request the New Mexico Legislature for an appropriation to pay the HISA dues which may be close to one million dollars annually
- Commission must reinstate the Horsemen and because HISA places horses running in New Mexico in jeopardy due to lack of Lasix, the NMRC should be required to work closely with and follow the advice of equine veterinarians and their association.

9. Issue: *Failure of the New Mexico Racing Commission to approve the state's sixth racetrack license.*

Solution

- Approve the sixth license if the licensee meets necessary requirements

10. Issue: *Ethical violations*

Solution

- Combine the Commission with the Gaming Control Board and set forth ethical rules for members to avoid conflicts of interest and monetary conflicts. Require each member of the Racing/Gaming Board have knowledge of the gaming and horse racing industries.
- Require all Racing Commissioners during their term of appointment not be engaged in the racing of horses and if they have been, place their horses and racehorse business in a blind trust.

An Opportunity for Improvement

- The NMHA believes there is an opportunity for improvement in horseracing through the resolution of the conflict between the stakeholders
- The parties by looking to their common interests, of which there are many, as opposed remaining wed to their individual positions, durable agreements are possible and should be sought
- Here, the NMHA respectfully requests the New Mexico legislature consider the issues we bring forward to you today; be forward looking, and promote horseracing, an industry that is an integral part of the unique fabric of what is New Mexico culture

Horseracing in New Mexico:

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Questions/Comments
Thank you!

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