

STATE OF WEST VIRGINIA

SPECIAL REPORT

OF

**WEST VIRGINIA GREYHOUND BREEDING
DEVELOPMENT FUND**

AS ADMINISTERED BY

THE

WEST VIRGINIA RACING COMMISSION

FOR THE PERIOD

JULY 1, 2005 - JUNE 30, 2007



OFFICE OF THE LEGISLATIVE AUDITOR

CAPITOL BUILDING

CHARLESTON, WEST VIRGINIA 25305-0610

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WEST VIRGINIA LEGISLATURE
Joint Committee on Government and Finance

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CHARLESTON, WEST VIRGINIA 25305-0610

To the Joint Committee on Government and Finance:

The objectives of this special report were to obtain an understanding of the scope of the benefits provided and a review of the expense transactions of the West Virginia Greyhound Breeding Development Fund for which monies were received by members of the West Virginia Greyhound Breeders Association. Our report of the West Virginia Greyhound Breeding Development Fund administered by the West Virginia Racing Commission covered the period July 1, 2005 through June 30, 2007.

To achieve the above objectives, we performed the following:

- a. Obtained an understanding of the Racing Commission's responsibilities under the West Virginia Code and the Racing Commission's rules governing Dog Racing
- b. Obtained a listing of expense transactions for the West Virginia Greyhound Breeders Association which are the beneficiaries of the Greyhound Breeding Development Fund during the examination period; and,
- c. Reviewed a sample of those expense transactions and supporting documentation to determine whether each transaction was properly paid in accordance with West Virginia Code and the rules promulgated by Racing Commission.

The results of our work are contained in the General Remarks section of this Special Report.

Respectfully submitted,

Stacy L. Sneed, CPA, Acting Director
Legislative Post Audit Division

April 1, 2008
Auditors: Ethelbert Scott, Jr., CPA, Audit Manager
Gregory M. Rogers
M. Hunter Delligatti

WEST VIRGINIA RACING COMMISSION
WEST VIRGINIA GREYHOUND BREEDING DEVELOPMENT FUND

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WEST VIRGINIA RACING COMMISSION
WEST VIRGINIA GREYHOUND BREEDING DEVELOPMENT FUND
EXIT CONFERENCE

We held an exit conference on April 4, 2008 with the Executive Secretary, the Director of Audits and other representatives of the West Virginia Racing Commission, and all findings and recommendations were reviewed and discussed. The responses of the West Virginia Racing Commission are included in bold and italics in the Executive Summary and after our findings in the General Remarks section of this report.

WEST VIRGINIA RACING COMMISSION
WEST VIRGINIA GREYHOUND BREEDING DEVELOPMENT FUND
INTRODUCTION

Background

The West Virginia Racing Commission licenses all persons, associations, or corporations that hold any dog racing meet within the State where racing is permitted for any stake, purse, or reward, as well as Satellite Simulcast Betting and inter-track betting. The Commission makes all regulations governing the races and, through its stewards and judges, officiates the conduct of racing. All persons engaged in racing in West Virginia must be licensed and a person operating under an assumed name must register with the Commission for permission to use such a name. The Commission may revoke or suspend the license of any person or corporation engaged in racing within the State who violates the racing laws or Commission rules. The Commission conducts hearings on appeals, collects taxes and fees, distributes the taxes and fees collected to various subdivisions and other entities, collects and tests specimens at its laboratory of dogs participating in the races and oversees the administration of the West Virginia Greyhound Breeding Development Fund.

The West Virginia Racing Commission maintains a registry for West Virginia bred Greyhounds and disburses monies from the Greyhound Breeding Development Fund to the owners of West Virginia registered Greyhounds. The Greyhound Breeding Development Fund was established to promote the ownership and breeding of racing Greyhounds by West Virginia residents in West Virginia. To be eligible to receive purse money in a stake race where the purse is funded in whole or in part with money from the West Virginia Greyhound Development Fund

as well as for purse supplements and awards that are funded in whole or in part from the West Virginia Greyhound Breeding Development Fund, all registered owners of racing greyhounds shall be a member in good standing of the West Virginia Greyhound Owners and Breeders Association. Additionally, a person must be a member in good standing with the National Greyhound Breeders Association and a bona fide resident of West Virginia as required by West Virginia Code Chapter 19, Article 23, Section 10(d).

Prior to the addition of video lottery terminals at Mountaineer Racetrack and Gaming Resort, there were only three tracks, Tri-State, Wheeling Downs and Charles Town Race Track, in which payments from video lottery terminals were made into the Greyhound Development Fund. The Development Fund during this time paid out 75% of the total deposits from the dog tracks and gaming centers. This ended in August of 2005 when payments from Mountaineer Racetrack video lottery terminals were added to the total funds collected. The payouts from the fund were then reduced to pay only 60% of the total deposits from the dog tracks and gaming centers. From the remaining balance deposits were made to the appropriated special revenue account (7307) to cover wages and expenses of the dog inspector(s) and bookkeeper/registrar.

**WEST VIRGINIA RACING COMMISSION
GREYHOUND BREEDING DEVELOPMENT FUND**

ADMINISTRATIVE OFFICERS AND STAFF

AS OF JUNE 30, 2007

George T. Sidiropolis Commission Chairman
Dr. Bryan Mitchell Commissioner
Fred C. Peddicord Commissioner
Linda L. Lacy Executive Secretary
Joseph F. Cuomo, CPA Director of Audits
Sherry J. Dorsey Racing Specialist
Beverly Enochs Bookkeeper/Registrar

WEST VIRGINIA RACING COMMISSION
GREYHOUND BREEDING DEVELOPMENT FUND

EXECUTIVE SUMMARY

Calculation of Carryover

1. The uncertainty associated with the interpretation of Chapter 19, Article 23, Section 10(d) in its application pertaining to the carryover/rollover calculation is a point of legal contention.

Auditor's Recommendation

We were unable to audit or express, nor do we express a recommendation in this matter due to pending litigation and the vagueness of Chapter 19, Article 23, Section 10(d) of the West Virginia Code. We defer to the Racing Commission to seek clarification from the Legislature of Chapter 19, Article 23, Section 10(d) of the West Virginia Code.

Racing Commission's Response

The West Virginia Racing Commission sought and obtained legal advice concerning Chapter 19, Article 23, Section 10(d) of the West Virginia Code from the office of the Attorney General in 1996. The Racing Commission believes moneys distributed from that account as provided for in the statute were reasonable based on the legal advice provided.

Deposits not made into Special Revenue Account

2. During the period under review, revenue transfers were not made from the Commission's "Greyhound Breeding Development Fund" checking account to an appropriated special revenue account called the 'Administration, Promotion and Educational and Capital Improvement Account' 7307 as required by law.

Auditor's Recommendation

We recommend the Commission comply with Chapter 19, Article 23, Section 10(d) of the West Virginia Code and place 10% of all deposits into the 'Administration, Promotion and Educational and Capital Improvement Account' 7307 and request and get statutory approval before deviating from the language as set forth in the West Virginia Code.

Racing Commission's Response

Starting with the months of January and February (2008), and henceforth, ten percent (10%) monthly of the deposits to the "West Virginia Racing Commission – Special Account – West Virginia Greyhound Breeding Development Fund are being made to the Special Revenue Fund 7307 in the State Treasurer's Office.

Distribution Percentage Not Recorded into Racing Rules and Regulations

3. The West Virginia Racing Commission does not include the percentage rate of the funds to be awarded to the participants of the Greyhound Breeding Development Fund in their promulgated Rules and Regulations.

Auditor's Recommendation

We recommend the West Virginia Racing Commission comply with Chapter 19, Article 23, Section 10(d), Chapter 5A, Article 8, Section 9, and Chapter 6, Article 9A, Section 5 of the West Virginia Code. We also recommend the Racing Commission comply with our counsel's interpretation of subsection 10(d). Also, incorporate into the rules references to the amount of the percentage to be paid to owners/breeders of West Virginia greyhounds, and maintain documentation of the Racing Commission's board minutes.

Racing Commission's Response

The West Virginia Racing Commission began last summer a review of all current and proposed rules, with the assistance of the Attorney General's Office. The recommendations of the Legislative Auditor pursuant to the requirements of Chapter 5A and 6 are accepted. During the next rule-making submission, the recommendations will be adopted.

Bookkeeping Errors

4. During the study period of July 1, 2005 to June 30, 2007 we noted that the Director of Audits general ledger sheets for the period and the monthly calculation worksheets contain mathematical errors.

Auditor's Recommendation

We recommend that the West Virginia Racing Commission comply with Chapter 5(A) Article 8, Section 9(b) of the West Virginia Code. We also recommend WV Racing Commission adopt a computerized system for recording deposits and disbursements pertaining to the West Virginia Greyhound Breeding and Development Fund.

Racing Commission's Response

These unintentional errors should not continue to occur since the data is now taken directly from the computer screen. We will comply with this recommendation by adopting a computerized system for recording deposits and disbursements pertaining to the West Virginia Greyhound Breeding Development Fund.

Weakness of Internal Controls

5. During the review period from July 1, 2005 to June 30, 2007, we noted several internal control weaknesses relating to the operation of the Racing Commission's check writing function and bank reconciliation procedures.

Auditor's Recommendation

We recommend the Racing Commission comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code by correcting weaknesses and establishing a more effective system of internal controls.

Racing Commission's Response

We will pursue this.

- (1). Check numbers associated with the transaction: Check numbers are now being listed;*
- (2). Check number not always in sequence: checks will be released and issued in sequential order.*

WEST VIRGINIA RACING COMMISSION
GREYHOUND BREEDING DEVELOPMENT FUND
GENERAL REMARKS

INTRODUCTION

We have completed the review as requested by the Post Audit's Subcommittee of the Joint Committee on Government and Finance of the West Virginia Greyhound Breeding Development Fund as administered by the West Virginia Racing Commission. The examination period covers the period July 1, 2005 to June 30, 2007.

LOCAL ACCOUNT

In order to have cash available to meet the required day to day operations a local bank account is used to manage these required operations. This account is maintained at Centra Bank in Morgantown, West Virginia and is used to pay purse awards (stake races), and supplement awards and to make transfers to the special revenue account the Administration, Promotion, Education and Capital Improvement Account.

COMPLIANCE MATTERS

Chapter 19, Article 23 of the West Virginia Code, as amended, generally governs the West Virginia Racing Commission's administration of the West Virginia Greyhound Breeding Development Fund. We tested applicable sections of the above plus other applicable chapters, articles, and sections of the West Virginia Code as they pertain to the findings listed below.

Calculation of Carryover

The uncertainty associated with the interpretation of Chapter 19, Article 23, Section 10(d) in its application pertaining to the carryover/rollover calculation is a point of legal

contention. The Racing Commission calculates the carryover/rollover money as “new money” and applies the monthly percentage payout rate for the determination of disbursements to the participants in the Greyhound Development Fund. This has resulted as the basis of a civil suit naming the Racing Commission as defendants. This civil suit filed in the Circuit Court of Kanawha County, civil action number 06-C-2368, contends the carryover/rollover moneys should be disbursed in the following year at a one-hundred percent payout without the application of the monthly percentage rate and cites Chapter 19, Article 23, Section 10(d) as the controlling basis of their civil action.

Chapter 19, Article 23, Section 10(d), of the West Virginia Code states in part:

“... The registered greyhound owner of accredited West Virginia whelped greyhounds that earn points at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia Greyhound Breed Development Fund monthly.”

Also:

“...Any balance in purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year; ...”

The Executive Secretary of the Racing Commission requested legal advice regarding statutory provisions of the West Virginia Code, Chapter 19, Article 23, Section 10(d), providing for payments from the Greyhound Breeding Development Fund. The Attorney General Office’s response date July 2, 1996 states in part:

“...Review of the provisions of W. Va. Code §19-23-10(d) supports the Commission’s interpretation of how the rollover moneys should be distributed. The statute provides that the rollover funds “revert to the general account of the fund for distribution in the following year.” The Commission’s position that rollover moneys thus instantly become new moneys in the Fund’s general

account and that they should be distributed from that account as provided for in the statute, is thus reasonable....”

We were unable to audit or express, nor do we express a recommendation in this matter due to pending litigation and the vagueness of Chapter 19, Article 23, Section 10(d) of the West Virginia Code. We defer to the Racing Commission to seek clarification from the Legislature of Chapter 19, Article 23, Section 10(d) of the West Virginia Code.

Racing Commission response

The West Virginia Racing Commission sought and obtained legal advice concerning Chapter 19, Article 23, Section 10(d) of the West Virginia Code from the office of the Attorney General in 1996. The advice included, “The Commission’s position that rollover moneys thus instantly become new moneys in the Fund’s general account and that they should be distributed from that account as provided for in the statute is thus reasonable...” (please see copies of advice for request and response from the Office of the Attorney General).

(Exhibit-1)

Deposits Not Made Into Special Revenue Account

During the period under review, revenue transfers were not made from the Commission’s “Greyhound Breeding Development Fund” checking account to an appropriated special revenue account called the ‘Administration, Promotion and Educational and Capital Improvement Account’ 7307 as required by law. As a result, the Commission used approximately \$1.41 million of special revenue funds to pay purse supplements to breeders in noncompliance with Chapter 19, Article 23, Section 10(d) of the West Virginia Code states in part:

“...Ten percent of the deposits into the greyhound breeding development fund beginning the first day of July, one thousand nine hundred ninety-three and continuing each year thereafter, shall be withheld by the Racing Commission and placed in a

special revenue account hereby created in the State Treasury called the ‘Administration, Promotion and Educational and Capital Improvement Account’....”

During our test of deposits and amounts paid to breeders from the Fund, we found the Commission does not place 10% of all deposits into the special revenue ‘Administration, Promotion and Educational Account and Capital Improvements Account’ 7307. We asked the Commission’s Director of Audits why 10% of all deposits were not transferred; he stated that he only transferred receipts necessary to meet the budgeted revenue estimates for Account 7307 which totaled \$250,000 and \$61,425 for fiscal years 2007 and 2006 respectively. We believe if the account is to be used for this purpose, it is imperative upon the Racing Commission to request statutory approval for this. However, until the Racing Commission receives statutory approval we believe they must transfer ten percent of the total deposits to the special revenue account until the West Virginia code is changed to reflect the Racing Commission’s current practice. Total deposits, amounts transferred to Account 7307, audited amounts due and differences are as follows:

	<u>Deposits</u>	<u>Amounts Transferred to Account 7307</u>	<u>Audited Amounts Due Account 7307</u>	<u>Difference</u>
FY-2006 Deposits	\$ 7,588,263.65	\$ 52,270.94	\$ 758,826.36	\$ 706,555.42
FY-2007 Deposits	<u>7,834,564.22</u>	<u>81,158.72</u>	<u>783,456.42</u>	<u>702,297.70</u>
Total	<u>\$15,422,827.87</u>	<u>\$133,429.66</u>	<u>\$1,542,282.78</u>	<u>\$1,408,853.12</u>

Because the required revenue transfers were not made from the Fund, the monies remained in the checking account of which 60% was allocated to breeders and the residual 40% was used for either administrative costs or carry-over funds as discussed in a previous finding.

We recommend the Commission comply with Chapter 19, Article 23, Section 10(d) of the West Virginia Code and place 10% of all deposits into the ‘Administration,

Promotion and Educational and Capital Improvement Account' 7307 and request, and get, statutory approval before deviating from the language as set forth in the West Virginia Code.

Racing Commission's Response

Starting with the months of January and February (2008), and henceforth, ten percent (10%) monthly of the deposits to the "West Virginia Racing Commission – Special Account – West Virginia Greyhound Breeding Development Fund are being made to the Special Revenue Fund 7307 in the State Treasurer's Office...

The draft report states the Commission used approximately \$1.41 million of the special revenue funds to pay purses supplements to breeders in noncompliance with Chapter 19, Article 23, Section 10(d) of the West Virginia Code ..."

In response to this, please note that more than 99% each year of that ten percent (10%) remains in the "West Virginia Racing Commission – Special Account – West Virginia Greyhound Breeding Development Fund" (i.e., banking institution).

Distribution Percentage Not Recorded into Racing Rules and Regulations.

The West Virginia Racing Commission does not include the percentage rate of the funds to be awarded to the participants of the Greyhound Breeding Development Fund in their promulgated Rules and Regulations. Prior to August of 2005, the Racing Commission paid 75% of the total monthly deposits deposited to the fund. In August of 2005 the Mountaineer Gaming Resort started paying into the West Virginia Greyhound Breeding and Development Fund, and the Racing Commission lowered the payout percentage to owners/breeders to 60%. The Racing Commission could not provide documentation of their board minutes reducing the percentage payouts from 75% to 60% of total deposits and the percentage amount is not stated in Title 178,

Legislative Rule, Racing Commission, Series 2, Greyhound Racing rules as promulgated by the Racing Commission.

West Virginia Code Chapter 19, Article 23, Section 10(d) states in part:

“...The registered greyhound owner of accredited West Virginia whelped greyhounds that earn points at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited...”

Additionally:

“...The funds shall be expended solely for the purpose of supplementing regular purses under the rules promulgated by the Racing Commission ...”

We requested assistance in interpreting the previous subsection of the West Virginia Code from our counsel in the Legislative Auditor’s Office. In a letter dated March 7, 2008 our counsel states in part:

“... As the subsection provides that the moneys shall be expended under rules promulgated by the racing commission, the percentage pay-out, as moneys being expended from the Greyhound Breeding Development Fund, should be reflected in the rules of the Racing Commission....”

Chapter 5A, Article 8, Section 9 of the West Virginia Code states in part:

“The head of each agency shall: ... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities....”

Furthermore:

Chapter 6, Article 9A, Section 5 of the West Virginia Code states in part:

“Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except of executive sessions, if any are taken shall be available to the public within a reasonable time after the meeting and shall include: ... (3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and (4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.”

By not including the percentage rate to be disbursed to the owners/breeders into the rules promulgated by the West Virginia Racing Commission, frequent percentage payouts changes may be made by the Commission, which may be a source of confusion to new and current participants of the Greyhound Breeding and Development Fund.

We recommend the West Virginia Racing Commission comply with Chapter 19, Article 23, Section 10(d), Chapter 5A, Article 8, Section 9, and Chapter 6, Article 9A, Section 5 of the West Virginia Code. We also recommend the Racing Commission comply with our counsel’s interpretation of subsection 10(d). Also, incorporate into the rules references to the amount of the percentage to be paid to owners/breeders of West Virginia greyhounds, and maintain documentation of the Racing Commission’s board minutes.

Racing Commission’s Response

The West Virginia Racing Commission began last summer a review of all current and proposed rules, with the assistance of the Attorney General’s Office. The recommendations of the Legislative Auditor pursuant to the requirements of Chapter 5A and 6 are accepted. During the next rule-making submission, the recommendations will be adopted

The reduction starting August 1, 2005, from 75% to 60% was approved by the West Virginia Racing Commission. Please see attached documentation for the August 1, 2005 change, including then Chairman Payne's approval. (Exhibit-2)

The recipients of the breeder awards are notified through written correspondence when any changes, including changes in all statute, rules and percentages of payouts, are made. Each month, the breeder awards checks are accompanied by a detailed letter of explanation.

Last fall, the Treasurer's office requested copies of our bank statements to do an analysis of taking our bank accounts for investment purposes and issuing checks. We were contacted by Ms. Glenda Probst. Also, we are working with our bank (see attached) to facilitate the oversight of checks. (Exhibit-3)

Bookkeeping Errors

During our study period, we noted the Director of Audits general ledger sheets for the period and the monthly calculation worksheets contain mathematical errors. The Director of Audits only records deposits and disbursements monthly in the general ledger instead of recording the transactions as they occur. Also, the Director's monthly general ledger totals do not match up with the Director's monthly racing calculation sheet totals for certain months. The following table shows the differences between the monthly general ledger totals and the monthly racing calculation sheet totals:

<u>Date</u>	<u>Racing Sheets</u>	<u>General Ledger</u>	<u>Difference</u>
July, 2005	\$586,878.85	\$587,475.85	\$ (597.00)
August, 2005	\$550,363.99	\$550,366.99	\$ (3.00)
September, 2005	\$651,953.36	\$651,853.36	\$ 100.00
July, 2006	\$646,932.00	\$646,833.00	\$ 99.00
September, 2006	\$714,107.83	\$713,055.58	\$1,052.25
January, 2007	\$530,293.02	\$530,393.02	\$ (100.00)
February, 2007	\$507,401.86	\$508,201.86	\$ (800.00)

<u>Date</u>	<u>Racing Sheets</u>	<u>General Ledger</u>	<u>Difference</u>
April, 2007	\$530,808.00	\$530,810.82	\$ (2.82)
May, 2007	\$657,886.23	\$655,569.45	\$2,316.78
June, 2007	\$498,246.02	\$498,264.02	\$ (18.00)

Also, the Director of Audits prepares cash in bank GAAP Reporting Form 26 for the West Virginia Department of Administration and Finance Division at the end of every fiscal year. This form contains the ending balance per bank statement at June 30th of the past fiscal year, deposits in transit, outstanding checks, other adjustments, and the reconciled book balance at June 30th. The following illustration shows the actual amounts listed in the Director of Audits prepared form for fiscal year 2006:

	<u>Amount</u>
1. Balance Per Bank Statement as June 30	\$3,698,260.61
2. ADD- Deposits in Transit	\$ 95,465.85
3. SUBTRACT- Outstanding Checks	\$ (13,798.76)
4. Other Adjustments	\$ 0.00
5. Reconciled Book Balance at June 30	\$3,779,185.50

The reconciled book balance on the fiscal year 2006 form reads \$3,779,185.50. The audited numbers of the Reconciled Book Balance at June 30 should read \$3,779,927.70. The reconciled book balance on June 30th on the GAAP Reporting Form 26 line 5 is understated by \$742.20.

Chapter 5A, Article 8, Section 9, Subsection (b) of the West Virginia Code states in part:

“...Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the energy designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency’s activities....”

Based on discussions with the Director of Audits and the Executive Secretary as well as research pertaining to the Greyhound Breeding Development Fund, we believe the errors in the calculations were unintentional and resulted from a lack of management oversight. By

including miscalculations in the general ledger sheets and in other accounting information reports, the financial statements will be misstated causing readers of the financial statements to be misled.

We recommend the West Virginia Racing Commission comply with Chapter 5A Article 8, Section 9(b) of the West Virginia Code. We also recommend WV Racing Commission adopt a computerized system for recording deposits and disbursements pertaining to the West Virginia Greyhound Breeding and Development Fund.

Racing Commission's Response

The general ledger sheet for the "West Virginia Racing Commission – Special Account – West Virginia Greyhound Development Fund" is maintained in accordance with generally accepted accounting principles, including utilizing accruals. Revenues and expenses are "booked" on a monthly basis. Our auditors of pari-mutuels at the greyhound racetracks do calculate and record amounts due the West Virginia Greyhound Breeding Development Fund daily on their worksheets and notify the State Treasurer's office daily in order to make EFT transfers to the Racing Commission's outside bank account. In addition, the Lottery Commission, on a weekly basis, makes EFT transfers to the Racing Commission's outside bank account. These deposits are totaled monthly and posted to the ledger sheet.

The Legislative Auditors in a discussion recommended that daily and weekly recordings be made for these deposits and withdrawals in order to determine at any time the balance in the outside bank account. We will comply with this recommendation by adopting a computerized system for recording deposits and disbursements pertaining to the West Virginia Greyhound Breeding Development Fund. Currently, our on-site auditors compile a quarterly

report with daily listings. In addition the Lottery Commission provides a weekly running total throughout the fiscal year that shows weekly deposits, which are in our files.

The draft report refers to differences between the monthly general ledger total and the monthly calculation sheet totals. During the period of the audit, figures for deposits from Video Lottery were taken from sheets that were faxed. Often, these numbers on the faxed sheets were difficult to determine which resulted in unintentional errors as listed. These unintentional errors should not continue to occur since the data is now taken directly from the computer screen.

Weakness of Internal Controls

During the study period, we noted several internal control weaknesses relating to the operation of the Racing Commission's check writing function. These weaknesses include all the monthly print-outs of check registries during the study period generated by the bookkeeper/registrar lack a corresponding check number associated with the transaction. In addition, we noted that checks are hand typed and contain type-over errors on the duplicate check copies that reflect errors made on spelling of names and of amounts paid to participants in the Breeding Development Fund. We also noted that check numbers are not always in sequential order and is attributable to checks being generated in the bookkeeper/registrar office at Mountaineer Gaming Resort and the Racing Commission's Charleston office.

We also noted during our review of the signature process, that the Racing Commission requires that two signatures appear on all checks drawn upon the Development Fund, the Executive Secretary's signature whose handwritten signature must always appear, and one Commission member must sign all checks. However, in the absence of an available Commission member checks may be signature stamped. This stamp is in the possession of the

racing clerk who works under the direct supervision of the Executive Secretary that also has direct access to the stamp. In addition, the Executive Secretary in the absence of the racing clerk has access to blank checks maintained at the Racing Commission's office and may issue checks as needed for the conducting of business of the Racing Commission.

Our review of the reconciliations performed by the Racing Clerk between the bank statement and the account ledger (book) balances show the reconciliations are ineffective because differences between bank and book balances would not be identified. Additionally, the account ledger does not contain a running daily balance of the total amount of funds available in the local bank account. The Racing Clerk responsible for performing the bank statement reconciliation does not obtain an actual "book" balance for the Breeding Development Fund from the Director of Audits accounting ledger which, on any given day the daily book balance cannot be determined. The Racing Clerk performs the reconciliation between the bank statement balance and a "calculated" book balance. The Racing Clerk obtains the beginning book balance from the ending balance of the prior month's bank "reconciliation". Using copies of checks written, the Racing Clerk determines the outstanding checks and calculates an ending book balance based on the total of all outstanding checks and then compares this "calculated" amount to the bank statement balance.

The Racing Commission does not have an effective system of internal controls in place to ensure compliance with applicable State laws, rules and regulations.

Chapter 5A, Article 8, Section 9 of the West Virginia Code states in part:

"The head of each agency shall: ... (b) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities...."

This law requires the agency head to have in place an effective system of internal controls in the form of policies and procedures set up to ensure the agency operates in compliance with the laws, rules and regulations which govern it.

Based on our observations the weakness in internal controls can be partially attributed to the lack of agency personnel and the overlapping of duties to carry out the business functions of the Racing Commission. However, we believe typographical errors, lack of corresponding check numbers made to payees from the Development Fund, non-sequentially numbered checks generated from two different sources, ineffective bank reconciliations and weakness in the segregation of duties does not conform to Chapter 5A, Article 8, Section 9 of the West Virginia Code.

By not associating check numbers to the payees from the Development Fund checks and check amounts can not be readily verified with the payees. Also, manual typing of checks causes errors in spelling of names and amounts that appear on the checks. This causes duplicate copies to come into question as to the actual amount and name that appears on the original check due to over-typing of corrected errors. Additionally, generating checks in two different locations causes checks to be generated out of sequence opening the possibility of a misappropriated check to be generated due to overlapping of duties, direct supervisory oversight of employee, signing authority, and access to blank checks and signature stamp.

Also, the reconciliations performed are ineffective because differences between bank and book balances would not be identified and may miss errors caused by the bank or the reconciliation process leaving actual account balances indeterminable.

We recommend the Racing Commission comply with Chapter 5A, Article 8, Section 9(b) of the West Virginia Code by correcting weaknesses and establishing a more effective system of internal controls.

Racing Commission's Response

(1). Check numbers associated with the transaction: Check numbers are now being listed;

(2). Check number not always in sequence: checks will be released and issued in sequential order;

The matter of checks can be resolved by having distributions being made by the State Treasurer's Office. The Registrar/bookkeeper could continue to prepare the documentation for each breeder's award and submit the documentation to the Treasurer's office with checks being subsequently issued therefrom. We will pursue this.

West Virginia Racing Commission
Greyhound Breeding Development Fund
Statement of Cash Receipts and Disbursements
Special Account – Local

	Year Ended June 30,	
	<u>2007</u>	<u>2006</u>
Beginning Balance:		
Centra Bank, Morgantown WV	\$ 3,698,260.61	\$1,767,463.69
Cash Receipts:		
West Virginia Video Lottery	6,599,795.42	6,424,259.62
Excess Video Lottery	1,053,275.00	1,038,561.00
Wheeling Downs	103,737.40	98,077.73
Tri-State Racing	55,488.61	66,122.46
Unredeemed Pari-Mutual Tickets	13,000.00	13,000.00
Interest	<u>238,372.72</u>	<u>120,022.69</u>
Total Cash Receipts	\$ 8,063,669.15	<u>\$7,760,043.50</u>
TOTAL CASH TO ACCOUNT FOR	<u>\$11,761,929.76</u>	<u>\$9,527,507.19</u>
Ending Balance:		
Centra Bank, Morgantown WV	<u>\$ 4,703,782.16</u>	<u>\$3,698,260.61</u>
Disbursements:		
Breeder/Owner pay-outs	\$ 6,976,988.88	\$5,776,975.64
Transfers to Special Revenue Account 7307	<u>\$ 81,158.72</u>	<u>\$ 52,270.94</u>
Total Cash Disbursements	\$ 7,058,147.60	<u>\$5,829,246.58</u>
TOTAL CASH ACCOUNTED FOR	<u>\$11,761,929.76</u>	<u>\$9,527,507.19</u>

WEST VIRGINIA RACING COMMISSION
GREYHOUND BREEDING DEVELOPMENT FUND
NOTES TO FINANCIAL STATEMENT

Note A – Accounting Policy

Accounting Method: The cash basis of accounting was followed for the Greyhound Breeding Development Fund. Therefore, certain revenues and the related assets are recognized when received rather than when earned and certain expenses are recognized when paid rather than when the obligation is incurred. Accordingly, the financial statement is not intended to present financial position and results of operations in conformity with generally accepted accounting principles.

Note B – Pending Litigation

The uncertainty associated with the interpretation of Chapter 19, Article 23, Section 10(d) in its application pertaining to the carryover/rollover calculation is a point of legal contention. The Racing Commission calculates the carryover/rollover money as “new money” and applies the monthly percentage payout rate for the determination of disbursements to the participants in the Greyhound Development Fund. This has resulted as the basis of a civil suit naming the Racing Commission as defendants. This civil suit filed in the Circuit Court of Kanawha County, civil action number 06-C-2368, contends the carryover/rollover moneys should be disbursed in the following year at a one-hundred percent payout without the application of the monthly percentage rate and cites Chapter 19, Article 23, Section 10(d) as the controlling basis of their civil action.

Currently, this matter is still pending before the Circuit Court. General Counsel for the West Virginia Department of Revenue believes that an unfavorable outcome is reasonably possible.

West Virginia Racing Commission

Response

Exhibits



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. MCGRAW, JR.
ATTORNEY GENERAL

(304) 558-2522

FAX (304) 558-2525

2 July 1996

Lois J. Graham, Executive Secretary
West Virginia Racing Commission
Post Office Box 3327
Charleston, West Virginia 25333

Re: Request for advice regarding statutory provisions of the
West Virginia Code providing for payments from the
Greyhound Breeding Development Fund.

Dear Ms. Graham:

You have requested the advice of the Attorney General's Office regarding the interpretation to be given the provisions of W. Va. Code § 19-23-10(d), which provide for payments from the West Virginia Greyhound Breeding Development Fund ("the Fund"). Your request for advice indicates that, "[i]n particular, our inquiry centers on lines 206 through 209 [of the Enrolled Committee Substitute for House Bill 2632]." You go on to state that "[w]e think that this is instructive concerning the disposition or application of 'balance' from a previous year being applied in a succeeding year."

Lines 206 through 209 of the Enrolled Committee Substitute for House Bill 2632 provide for treatment of undistributed moneys at the end of each year as follows¹:

Any balance in the purse supplement funds after all distributions have been made for the year revert to the general account of the fund for distribution in the following year.

This House Bill provision is now part of W. Va. Code § 19-23-10(d), which establishes the Fund. Section 19-23-10(d) provides for

¹Moneys left undistributed at the end of one year that revert to the Fund's general account for distribution in the following year are hereinafter referred to as "rollover" moneys.

2 July 1996
Page 2

distributions from the Fund as follows:

The moneys shall be expended by the racing commission for purses for stake races, supplemental purse awards, administration, promotion and educational programs involving West Virginia whelped dogs, owned by residents of this state under rules and regulations promulgated by the racing commission. The racing commission shall pay out of the greyhound breeding development fund to each of the licensed dog racing tracks the sum of seventy-five thousand dollars for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-four. The licensee shall deposit the sum into the special fund for regular purses established under the provisions of section nine (§ 19-23-9) of this article. The funds shall be expended solely for the purpose of supplementing regular purses under rules and regulations promulgated by the racing commission.

Supplemental purse awards will be distributed as follows: Supplemental purses shall be paid directly to the owner of an accredited greyhound or, if the greyhound is leased, the owner may choose to designate a percentage of the purse earned directly to the lessor as agreed to via a written purse distribution form on file with the racing commission.

The owner of accredited West Virginia whelped greyhounds that earn a purse at any West Virginia meet will receive a bonus award calculated at the end of each month as a percentage of the fund dedicated to the owners as purse supplements, which shall be a minimum of fifty percent of the total moneys deposited into the West Virginia greyhound breeding development fund monthly.

The total amount of the fund available for the owners' awards shall be distributed according to the ratio of purses earned by an accredited West Virginia whelped greyhounds for that month as a percentage of the funds dedicated to the owners' purse supplements.

Pursuant to a telephone conversation I had with Joseph Cuomo on Monday, 1 July 1996, it is my understanding that currently the Commission treats the "rollover" moneys from a prior year as "new" moneys in the following year, and distributes them proportionally as provided in W. Va. Code § 19-23-10(d). Mr. Cuomo also indicated that the reason behind your request for advice on this matter is that at least one greyhound breeder has expressed his opinion that distributions from these rollover moneys should be made exclusively with regard to stakes races, rather than with regard to all races.

Review of the provisions of W. Va. Code § 19-23-10(d) supports the Commission's interpretation of how the rollover moneys should be distributed. The statute provides that the rollover funds "revert to the general account of the fund for distribution in the following year." The Commission's position that rollover moneys thus instantly

2 July 1996
Page 3

become new moneys in the Fund's general account and that they should be distributed from that account as provided for in the statute, is thus reasonable. "Interpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous." Appalachian Power Co. v. Tax Dept., ___ W. Va. ___, 466 S.E.2d 424, 439 (1995). Nothing in the statute provides for distributing any moneys from the Fund exclusively to the stakes races, so the Commission's interpretation of the statute should be followed.

Please feel free to call me at 558-2522 if you have any questions.

Sincerely,



Stephen Stockton
Assistant Attorney General

**West Virginia Greyhound Owners and Breeders
Association
(WVGOBA)
P.O. Box 7176
Cross Lanes, West Virginia 25356
August 11, 2005**

To: West Virginia Racing Commission
106 DEE Drive
Charleston, West Virginia 25311

From: WVGOBA

Subject: West Virginia Greyhound Breeder Development Fund (WVGBDF)

Dear Commissioners,

On August 8, 2005 the WVGOBA Board Members were polled by phone and ask for their opinions in regards to changing the WVGBDF monthly payout from seventy five percent (75%) to sixty percent (60%) payout. As a result of this poie the majority voted to change the monthly payout to sixty percent (60%) effective July 1, 2005.

On August 11, 2005 a WVGOBA Board Meeting was held and in that meeting discussion took place in reference to reducing the WVGBDF payout from seventy five percent (75%) to sixty percent (60%) monthly. After discussion a motion was made to keep the payout at the present level (75%), this motion failed on a vote of three (3) for and six (6) against. Another motion was made to reduce the WVGBDF monthly payout from seventy five percent (75%) to sixty percent (60%) effective July 1, 2005. This motion passed on a vote of six for and three (3) against.

As a result of the majority of those board members who were present, I am requesting the commission approve this change effective July 1, 2005.

Sincerely,


Roger D. White
President WVGOBA

Linda Lacy

From: "Joseph F Cuomo" <cuomoj@wvnet.edu>
To: <lacyl@mail.wvnet.edu>
Sent: Friday, August 12, 2005 12:25 PM
Subject: Fw: WEST VIRGINIA GREYHOUND BREEDING DEVELOPMENT FUND (WVGBDF) FUND

----- Original Message -----

From: [george.sidiropolis](#)
To: [Joseph F Cuomo](#)
Sent: Friday, August 12, 2005 10:20 AM
Subject: Re: WEST VIRGINIA GREYHOUND BREEDING DEVELOPMENT FUND (WVGBDF) FUND

Joseph: I am supportive of the WVGOBA suggestion. Please consider this my affirmative vote.

George

----- Original Message -----

From: Joseph F. Cuomo
To: [sidiropg@mail.wvnet.edu](#)
Sent: Friday, August 12, 2005 9:08 AM
Subject: Fw: WEST VIRGINIA GREYHOUND BREEDING DEVELOPMENT FUND (WVGBDF) FUND

----- Original Message -----

From: Joseph F Cuomo
To: [Andrew A. Payne III](#)
Sent: Friday, August 12, 2005 9:08 AM
Subject: WEST VIRGINIA GREYHOUND BREEDING DEVELOPMENT FUND (WVGBDF) FUND

DREW, GEORGE, BRYAN, AND LINDA:

The statute provides that at least 50% of deposits (monthly) to the WVGBDF are to be paid out for the monthly breeding awards. Over the past several months, this translates to approximately \$450,000 to \$500,000 each month being distributed to the WVGBDF bred greyhounds. In the month of July, approximately \$830,000 was deposited to the WVGBDF. Over the past several months, 75% of the deposits have been distributed in awards. This percentage, 75%, is a result of the recommendation of the West Virginia Greyhound Owners and Breeders (WVGOBA) suggestion.

An issue as come up for the month of July since Mountaineer Park is now paying into the WVGBDF. Of the \$830,000 for July, \$129,000 came from Mountaineer's video lottery. With Mountaineer's contribution, 75% of the \$830,000 for distribution for July would be \$622,000. The WVGOBA (BOARD OF DIRECTORS) voted last night to reduce the 75% to 60% and, thus, pay 60% of the \$830,000, or \$498,000 for the month of July rather than \$622,000. The vote was 6 to 3 to reduce to 60%. The difference between what is actually paid out and the \$830,000 is carried over to the comparable month of the next year for inclusion in determining the amount to be paid next year. (i.e. JULY, 2006)

Thus, the issue (for the WVRC) is approving the recommendation of the WVGOBA to reduce to 60% (\$498,000) or to keep the percentage at 75%, or pay \$622,000. I have received two phone calls from breeders wanting to keep the percentage at 75% and an e-mail (SEE FOLLOWING) to keep the 75% at least for July.

PLEASE ADVISE.

JOE

3/31/2008

Linda Lacy

From: "Sherry J. Dorsey" <dorseys@mail.wvnet.edu>
To: "Joseph F. Cuomo" <cuomoj@mail.wvnet.edu>
Cc: "Linda Lacy" <lacyl@mail.wvnet.edu>
Sent: Monday, March 31, 2008 11:09 AM
Subject: Fw: Cuomo email of 8/12/2005

----- Original Message -----

From: "Andrew Payne III" <andrewpayne3@gmail.com>
To: <dorseys@wvnet.edu>
Sent: Monday, March 31, 2008 10:42 AM
Subject: Cuomo email of 8/12/2005

> In regard to Joe's email of 8/12/2005, I called the office and agreed to
> lower the payout to 60%.
>

3/31/2008

CentraBank

980 Elmer Prince Drive / P.O. Box 658 • Morgantown, WV 26507-0658 • Phone: (304) 598-2000 • Fax: (304) 598-2035

To: Linda Lacy, Executive Secretary

Date: March 28, 2008

Re: Account Reconciliation

In November, 2007, we set up for WV State Racing Commission a file that would show every check that has been presented to the bank. This file is sent to the Racing Commission every end of month. With the volume of transactions this should decrease the time spent reconciling each of your accounts. We will continue to work together to make this process less burdensome and time consuming.

Sincerely,



Linda Moxley
Commercial Services Officer

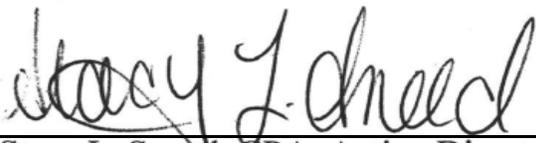
www.centrabank.com

STATE OF WEST VIRGINIA

OFFICE OF THE LEGISLATIVE AUDITOR, TO WIT:

I, Stacy L. Sneed, Acting Director of the Legislative Post Audit Division, do hereby certify that the report appended hereto was made under my direction and supervision, under the provisions of the West Virginia Code, Chapter 4, Article 2, as amended, and that the same is a true and correct copy of said report.

Given under my hand this 6th day of April 2008.


Stacy L. Sneed, CPA, Acting Director
Legislative Post Audit Division

Copy forwarded to the Secretary of the Department of Administration to be filed as a public record. Copies forwarded to the West Virginia Racing Commission; Governor; Attorney General; State Auditor; and, Director of Finance Division, Department of Administration.