

MAINE STATE HARNESS RACING COMMISSION

**IN RE: PARI-MUTUEL HARNESS)
RACING LICENSES, DATE)
ASSIGNMENTS FOR)
CALENDAR YEAR 2024 &) **DECISION AND ORDER**
AUTHORIZATION)
REQUESTS FOR)
INTERSTATE SIMULCAST)**

I. INTRODUCTION

On November 21, 2023, the Maine State Harness Racing Commission (“Commission”) held an adjudicatory hearing in Room 101, Deering Building, 90 Blossom Lane, Augusta Maine pursuant to Title 8 M.R.S. §§ 271, 275-N, 5 M.R.S. §§ 9061 – 9064, and Chapter 19, Section 4 of the Maine State Harness Racing Commission Rules (“Commission Rules”). The purpose of the hearing was to consider applications for licenses to hold live harness horse meets for public exhibition with pari-mutuel pools at agricultural fairs and commercial racetracks in the State of Maine, to allocate race dates for live harness racing, and to authorize interstate simulcasting at commercial tracks, all for calendar year 2023. The applicants were:

1. Sagadahoc Agricultural & Horticultural Society, Topsham: Fair Meet (“Topsham Fair”);
2. Skowhegan State Fair, Skowhegan: Fair Meet (“Skowhegan Fair”);
3. Windsor Fair, Windsor: Fair Meet (“Windsor Fair”);
4. Franklin County Agricultural Society; Farmington Fair, Farmington: Fair Meet.
 (“Farmington Fair”);
5. Cumberland Farmers Club / Cumberland Fair, Cumberland: Fair Meet and Extended Meet
 (“Cumberland Fair”);
6. West Oxford Agricultural Society / Fryeburg Fair, Fryeburg: Fair Meet (“Fryeburg Fair”);
7. Bangor State Fair (“Bangor State Fair”);

8. HC Bangor, LLC; Bangor Raceway; Commercial Meet (“Bangor Raceway”); and
9. First Tracks Investments, LLC; First Tracks Cumberland; Commercial Meet (“First Tracks”)

The applications for licenses and race dates were heard on a consolidated basis pursuant to Commission Rule, Chapter 19, § (4)(5). A quorum of the Commission was present during all stages of the proceedings. Harry B. Center, II, Barry Norris, Patricia Varnum, Diane Dunn, and Don Marean participated and voted as Commission members. The Commission determined that Commission members did not have a conflict of interest that would prevent any of them from participating in the hearing.

The Department of Agriculture, Conservation and Forestry, the Maine Association of Agricultural Fairs, the Maine Standardbred Breeders and Owners Association, and the Maine Harness Horsemen’s Association (“MHHA”) have automatic intervenor status under Chapter 19, § 4(6). Executive Director Shane Bacon represented the Department of Agriculture, and Debbie Patterson was present for the MHHA. No other intervenors were present.

Admitted into evidence were the following non-confidential staff exhibits:

Exhibit #	Description
1	Notice of Hearing to applicants and intervenors
2	November 21, 2023, agenda
3	8 M.R.S. § 271
4	Chapter 19, Commission Rules
5	8 M.R.S. § 272
6	8 M.R.S. § 275-A
7	8 M.R.S. § 275-N
8	Horse supply data - Department compilation of 2023 statistics
9	Bacon memo with per Fair raceback statistics and analysis
	Ex. 10 Proposed 2024 Race Date Calendar — WITHDRAWN
11	2023 Race Date Calendar

12	HC Bangor LLC, d/b/a Bangor Raceway request for authorization for interstate simulcasting
13	First Tracks Investments d/b/a/ First Tracks Cumberland request for authorization for interstate simulcasting
14	Farmington Fair Simulcasting request
15	1990 Census Excerpt

Admitted into evidence were the following confidential staff exhibits that were viewed only by Commission members:

16	WIPFLI financial report determining agricultural fairs are financially responsible
17	WIPFLI financial report determining commercial tracks are financially responsible
18	Bangor State Fair Application
19	Franklin County Agricultural Society application (Farmington Fair)
20	West Oxford Agricultural Society application (Fryeburg Fair)
21	Skowhegan State Fair application
22	Sagadahoc Agricultural & Horticultural Society application (Topsham Fair)
23	Windsor Fair application
24	HC Bangor LLC, d/b/a Bangor Raceway application
25	First Tracks Investments d/b/a/ First Tracks Cumberland application
Unmarked but included in Commission packets	Cumberland Farmer's Club application (Cumberland Fair)

Also admitted into evidence were the following exhibits:

Maine Harness Horsemen Association (MHHA) Exh. 1 – letter to Shane Bacon (11/20/23)

First Tracks (FT) Exh. 1 – proposed race day calendar

First Tracks (FT) Exh. 2 – alternate proposed race day calendar

First Tracks (FT) Exh. 3 – letter to Shane Bacon (November 15, 2023)

Bangor Raceway Exh. 1 – proposed race day calendar.

Testifying at the hearing were Shane Bacon, Executive Director of the Maine State Harness Racing Commission, Mike Hopkins of Bangor Raceway, Mike Timmons of Cumberland Fair, Chris McErlean of Penn National, Mike Cianchette of First Tracks, and Gunner laCour of Black Bear Racing at First Tracks.

II. STATUTORY CRITERIA

A. Licensing and Allocating Race Dates for Live Racing

Title 8 M.R.S. § 271 sets forth the criteria for licensing and allocating race dates for live racing. In accordance with 8 M.R.S. § 271(1), the Commission may issue a license to conduct racing when it is satisfied that (1) all of the laws and rules governing harness racing have been substantially complied with during the past year and will be fully complied with during the coming year; (2) the applicant, its members, directors, officers, shareholders, employees, creditors and associates are of good moral character; (3) the applicant is financially responsible; and (4) the award of racing dates to the applicant is appropriate under the criteria set forth in Section 271(2). Section 271(2) contains the following criteria for the Commission to consider when exercising its judgment and discretion in the assignment of race dates:

- A. The revenues to be generated, consistent with the profitability and financial health of the licensee and the development of revenues from interstate simulcasting of the licensee's race programming, for the operating account pursuant to section 287; the purse supplements pursuant to section 286; the Sire Stakes Fund pursuant to section 281; and the Stipend Fund pursuant to Title 7, section 86;
- B. The quality of race programming and facilities offered and to be offered by the licensee, the suitability of the applicant's racing facilities for operation at the season for which the race dates are requested and the ability of the applicant to offer racing at night;
- C. The necessity of having and maintaining proper physical facilities for racing meetings, including the ability to maintain ownership of or a leasehold on the facilities; and consequently, to ensure the continuance of the facilities, the quality of the licensee's maintenance of its track and plant, the adequacy of its provisions for rehabilitation and capital improvements and the necessity of fair treatment of the economic interests and investments of those who, in good faith, have provided and maintained racing facilities;

- D. The desirability of reasonable consistency in the pattern of race date assignments from year to year;
- E. With respect to agricultural societies seeking licenses to conduct harness racing meets at the time of their annual fairs, the scheduling of agricultural fairs determined by the Commissioner of Agriculture, Conservation and Forestry pursuant to Title 7, sections 83 and 84;
- F. The preservation of a diversity of harness racing tracks in the State;
- G. The quality of the licensee's observance and enforcement of this chapter and the rules adopted pursuant to this chapter during the past year;
- H. The extent to which the licensee fully utilized race dates granted to it for the past year;
- I. The personnel and resources available to the commission for the enforcement of this chapter and the rules adopted pursuant to this chapter;
- J. The likely availability of race-worthy horses throughout the year with a goal of promoting full cards and avoiding 5-horse fields; and
- K. Such other criteria consistent with the betterment of harness racing and the public health, safety and welfare as the commission may establish by rule.

Among the other criteria to be considered and established by Commission Rule is the feasibility of the applicant conducting a race meet on dates other than those applied for, the winter training and stabling facilities provided by the applicant, and the competitive situations affecting certain applicants. *See* Commission Rule Chapter 19, § 4(11)(A)-(N).

The Commission has discretion to award a term of licenses for a two-year period. 8 M.R.S. 271(8).

Regarding commercial tracks only, the Commission may award fewer than the minimum race dates set forth in § 275-A(1) if both the track and the Maine Harness Horseman's Association give express written approval and credible evidence is presented that shows fewer race days is in the best interest of Maine's harness racing industry.

In summary, the Commission must determine, based on the witnesses' testimony and exhibits, whether each applicant should be granted a license to hold a live harness horse race or meet for public exhibition at which pari-mutuel betting is permitted, and if so, the particular date and time of day on which a licensee may conduct racing. The Commission is authorized to impose

conditions on a license if one or more of the criteria are not met at the time the license is issued but may be brought into compliance within a time period during the licensing year. 8 M.R.S. § 271(6).

B. Simulcasting

Pursuant to 8 M.R.S. § 275-N, “interstate simulcasting always must be allowed at any commercial track.”

Pursuant to 8 M.R.S. § 268, 8 M.R.S. § 275-B, and Commission Rules. Ch. 1, section 1 (76), simulcasting results from an agricultural fair are permitted to broadcast fair race results out but not to permit off track betting at fairs without a license as required by 8 M.R.S. 270.

III. DISCUSSION

A. Licensing

Executive Director Shane Bacon provided testimony regarding all the license applications. Mr. Bacon had prepared exhibits, with staff assistance, and submitted the race dates that all applicants had requested in a consolidated Proposed Race Date Calendar. Bangor Raceway submitted its proposed race date calendar as Bangor Exh. 1; First Tracks submitted its proposed race date calendar and an alternate proposed calendar as First Tracks Exh. 1 and 2. At the hearing, a proposed race date calendar by Board Staff marked Exhibit 10 was withdrawn.

Mr. Bacon testified that all applications were complete, all applicants had complied with the harness racing statutes and rules for the prior year and were expected to for the coming year and met all statutory and regulatory requirements for renewed licensure.

Christian Smith, CPA, Certified Fraud Examiner and Partner at WIPFLI, reviewed financial information submitted by the applicants. Mr. Smith gave his professional opinion that each of the applicants had satisfied the requirement that they were financially responsible.

Mr. Bacon testified that that there were significant efficiencies if applicants for licensure were granted two-year licenses. Mr. Smith testified that his conclusions regarding financial responsibility supported granting two-year licenses.

B. Race Dates

During the race date assignment portion of the hearing, Mr. Bacon explained that the horse supply in Maine has been low and that for calendar year 2023, race dates were removed from the fairs to allow more days for horses to rest between their race dates. Mr. Bacon explained that he analyzed the fairs' race dates and the number of days between each horse's races. He testified that he did not find that removing dates from the fairs met the desired result. This was shown by Exhibit 9 which gives a clearer picture than Exhibit 8, a horse supply tracking sheet for calendar year 2023 created by the Commission Staff. Exhibit 9 shows the number of 8, 7, 6, and 5 horse fields raced by each applicant, and the number of racebacks each applicant had.

In a Decision and Order addressing race dates for 2023, the Commission reduced each fair's racing by one day. However, in reviewing the racebacks from 2023, Mr. Bacon testified that the reduction did not result in fewer racebacks and recommended that the fairs have all the dates they requested.

The Maine Harness Horsemen's Association ("MHHA") submitted one exhibit marked MHHA Exh. 1 where it asked Bangor Raceway to relinquish Saturday, September 14 and race instead on September 8, 2024. MHHA also requested that Bangor Raceway relinquish racing on Wednesday, October 9 and race instead on November 6, 2024. Debbie Patterson testified on behalf of MHHA that Bangor Raceway had agreed to its request and Mr. Hopkins of Bangor Raceway did not dispute that representation.

Mike Hopkins of Bangor Raceway testified that he and representatives of First Tracks tried to work out the race dates to everyone's satisfaction. He testified that Bangor Raceway gave up

three nights of evening racing in July to First Tracks and that he believed that Bangor Raceway and First Tracks agreed that Bangor Raceway could keep November 2 and 3, 2024, as Bangor Raceway race dates. Mr. McErlean of Penn National testified that they conceded 3 days in July and were surprised that the November dates were contested. He wanted 39 race days for Bangor Raceway and would only have 37 if the November dates were awarded to First Tracks.

Mike Cianchette and Gunner laCour testified that there had been no agreement on the November 2 and 3 dates and that First Tracks wanted those dates for financial viability. With those dates, First Tracks would have 53 race days.

Mr. Timmons testified that in the past, the Cumberland Fair racing brought between \$250,000 and \$300,000 but that last fair, they brought in \$814,000 which he viewed as a favorable development.

C. Interstate Simulcasting

Mr. Bacon testified that both First Tracks and Bangor Raceway requested authorization to conduct interstate simulcasting and that the Commission has historically authorized this in the past. Mr. Bacon testified that First Tracks and Bangor Raceway are both commercial tracks and recommended that the Commission grant the requests.

For the calendar year 2024, the Farmington Fair has requested permission to simulcast. Title 8 M.R.S. §295(2) permits agricultural fair associations that have provided simulcast transmission of live racing in the State on the dates that the Commissioner of Agriculture has approved pursuant to Title 7, section 84 and take a share of the simulcast funds. Farmington Fair conducted simulcasting of their races out in 2023 and Mr. Bacon recommended that the Commission grant its request.

IV. FACTS

Based on the record, the evidence showed the following facts:

1. Bangor Raceway applied for license renewal to conduct harness racing meets with pari-mutuel pools at racetracks in the State of Maine during calendar year 2024 and has requested licensure for a one-year period.
2. First Tracks applied for license renewal to conduct harness racing meets with pari-mutuel pools at racetracks in the State of Maine during calendar year 2024 has requested licensure for a two-year period. The Board has statutory authority to grant a two-year license.
3. Shane Bacon testified that First Tracks serves the southern half of Maine and other areas, and which has a population in excess of 300,000 people. Accordingly, First Tracks and the MHHA jointly requested to have fewer than the statutorily required race dates for the region it serves.
4. All of the applicants' renewal applications for calendar year 2024 are complete as of November 21, 2023.
5. All of the applicants have substantially complied with the requirements of Title 8, Chapter 11 of the Maine Revised Statutes, and the Commission Rules for calendar year 2023.
6. Each of the applicants, their members, directors, officers, shareholders, employees, creditors, and associates are of good moral character.
7. The applicants requesting a renewal license to hold harness horse races for meets for public exhibition with pari-mutuel pools have met the criteria established in 8 M.R.S. § 271(1) and the Commission finds that they are financially responsible.
8. All of the applicants have satisfied the relevant criteria established in Title 8, Section 271, Subsection 2 and Chapter 19, Section 4, subsection 11 of the Commission Rules.
9. Pursuant to 8 M.R.S. § 272, all of the applicants already have or will satisfy the requirement of providing a bond or irrevocable letter of credit for calendar year 2023, prior to the actual issuance of their respective licenses for calendar year 2023.

10. All applicants have all agreed to work with the Maine Standardbred Breeders and Owners Association to host, at their respective racing tracks, Breeder Stake's races in addition to their allocated races, for calendar year 2024.

11. First Tracks and Bangor Raceway have requested Commission authorization to transmit interstate simulcasting for the licensed race meets conducted by them. The Commission may authorize this under 8 M.R.S. § 275-N.

12. Farmington Fair has requested permission to simulcast out their races run at the fair.

13. The applicants submitted their proposed race date requests which have been provided as First Tracks' Exh. 1 and 2, and Bangor Raceway's Exh. 1.

14. During the hearing, there was a conflict between First Tracks and Bangor Raceway as it relates to racing on November 2 and 3, 2024.

15. For the racing year 2022, First Tracks had the first weekend in November and split it with Bangor Raceway for 2023.

16. First Tracks requested November 2 and 3, 2024, to get a total of 53 race days for financial viability.

17. Bangor requested November 2 and 3, 2024, to get a total of 39 race days.

V. DELIBERATIONS AND DECISIONS

The Commissioners considered the licensing criteria set forth in 8 M.R.S. § 271 and Chapter 19, Section 4 of the Commission Rules; evidence presented by the parties and Commission staff; and additional evidence in the record not specifically referred to herein. The Commission deliberated and made the following decisions.

A. Licensing

The Commissioners expressed their collective opinion that all the applications have satisfied the relevant criteria for license renewal and race dates and dashes for the calendar year

2024 and 2025. Accordingly, the Commissioners voted unanimously to award licenses to all the applicants for the purpose of conducting pari-mutuel harness horse races for calendar year 2024 and 2025 as permitted by 8 M.R.S. § 271(8). The license applications were approved upon the condition that the licenses will be issued by the Department after its receipt of all necessary information from the applicants to show that Section 272's bonding requirements will be current and met during the 2024 license year. No license shall be issued without a bond.

B. Race Dates

Regarding race dates, the Commissioners discussed which commercial track should be allocated the dates for November 2 and 3, 2024. All other race dates were agreed to by the licensees.

Although Mr. Hopkins and Mr. McErlean testified that Bangor Raceway gave up three Friday nights in July to First Tracks and in return expected to get the benefits of the race weekend in November, there was contrary evidence from Mike Cianchette and Gunner LaCour that there was no such quid pro quo. The Commission noted that First Tracks puts in for dates voluntarily and that Bangor Raceway is compelled to because of its casino. The Commission also noted that Bangor Raceway already has all October race dates, except for the Fryeburg Fair dates, and that it created better financial stability for First Tracks to have both days of that weekend of November 2 and 3, 2024 to keep operating costs down.

A motion to approve all fair race dates as requested was unanimously approved.

A motion to approve and grant all undisputed race dates at commercial tracks, and to grant the disputed race dates of November 2 and 3, 2024 to First Tracks, was unanimously approved.

The race dates as approved for the two commercial tracks and for the agricultural fairs are as reflected in Exhibit A to this Decision and Order.

C. Simulcast Authorization

The Commissioners unanimously voted to authorize full card simulcasting for First Tracks and Bangor Raceway. The Commissioners unanimously voted to permit Farmington Fair to simulcast transmit its live racing during its approved dates.

The Commission voted to authorize the Chair to sign this decision and order without further action by the Commission.

Dated: 12/18/2023



Harry B. Center, II, Chair
Maine State Harness Racing Commission

RIGHT OF APPEAL

Any party to these proceedings may seek review of this Decision, to the extent that review is permitted by law, by filing a petition for review in Superior Court pursuant to 5 M.R.S. § 11001, et seq., within thirty (30) days after receiving notice of this Decision.

The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by Certified Mail, Return Receipt Requested on the Maine State Harness Racing Commission, all parties to the agency proceedings and the Attorney General. Any other person aggrieved by this Decision may seek judicial review in like manner by filing a petition for review in Superior Court within forty (40) days after the date of this Decision.

cc: Members of the Maine State Harness Racing Commission
Shane Bacon, Executive Director
Sagadahoc Agricultural & Horticultural Society
Skowhegan State Fair
Bangor State Fair
Windsor Fair
Franklin County Agricultural Society
Cumberland Farmers Club / Cumberland Fair
West Oxford Agricultural Society / Fryeburg Fair
HC Bangor, LLC; Bangor Raceway
First Tracks Investments, LLC
Maine Association of Agricultural Fairs
Maine Harness Horsemen's Association
Maine Standardbred Breeders and Owners Association