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SPECIAL REPORT

WEST VIRGINIA RACING COMMISSION FUNDS

Audit Overview

West Virginia Greyhound Breeding
Development Fund

West Virginia Thoroughbred
Development Fund



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Building 1, Room W-314
State Capitol Complex
Charleston, West Virginia 25305
(304) 347-4890

Aaron Allred John Sylvia Tina L. C. Baker
Legislative Auditor Directorr Research Analyst

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EXECUTIVE SUMMARY

Issue 1: The Racing Commission Has Inadequate Control of the Outflows of Funds from the Thoroughbred Development Fund.

At the request of the Chairman of Subcommittee D of the House Government Organization Committee, the Legislative Auditor's Office has completed a review of the West Virginia Greyhound Breeding Development Fund and the West Virginia Thoroughbred Development Fund. The intent of this review is to evaluate how revenues are distributed into and out of these funds, and what is the extent of the Racing Commission's control of these funds.

The Legislative Auditor found that the statute creating the Greyhound Breeding Development Fund and the Thoroughbred Development Fund is specific in many respects and is fairly free of any ambiguity. The statute also gives the Racing Commission adequate control of the inflow of revenues to the Greyhound and Thoroughbred Development Funds. The primary area of concern is the Racing Commission's lack of adequate control of the outflow of funds from the Thoroughbred Development Fund. The Legislative Auditor found that moneys from the Thoroughbred Fund are awarded based on information provided to the Racing Commission by the West Virginia Thoroughbred Breeders Association, a private entity not controlled by the Racing Commission or the State. The Racing Commission indicates that it began the process of revising its rules in spring 2008 to propose the requirement that thoroughbreds must be registered with the Racing Commission and the Thoroughbred Association. However, the proposed rule amendment did not progress in time to be available for consideration in the 2009 legislative session. The Racing Commission has adequate control over the Greyhound Breeding Development Fund.

The Legislative Auditor found that the statute creating the Thoroughbred Development Fund does not give the Racing Commission adequate control of the outflows of funds because it must rely on thoroughbred registration data from a private entity.

Recommendations

- 1. The West Virginia Racing Commission should promulgate rules in compliance with WVC §19-23-9(b)(1).*
- 2. The Legislature should consider either requiring thoroughbred registration information be submitted to both the Thoroughbred Breeders Association and the Racing Commission, or placing full control of registration requirements in the hands of the Racing Commission rather than in the control of the Association.*
- 3. The Legislature may want to consider specifying how interest revenue that accrues to the Greyhound Development Fund and the Thoroughbred Development Fund should be used.*

Issue 1

The Racing Commission Has Inadequate Control of the Outflows of Funds from the Thoroughbred Development Fund.

At the request of the Chairman of Subcommittee D of the House Government Organization Committee, the Legislative Auditor's Office has completed a review of the West Virginia Greyhound Breeding Development Fund and the West Virginia Thoroughbred Development Fund. The intent of this review is to evaluate how revenues are distributed into and out of these funds, and what is the extent of the Racing Commission's control of these funds.

The West Virginia Greyhound Breeding Development Fund (Greyhound Fund) was created to "promote better breeding, a training facility, and racing of greyhounds in the state through awards and purses to bona fide resident registered greyhound owners of accredit West Virginia whelped greyhounds" (WV Code §19-23-10d). The West Virginia Thoroughbred Development Fund (Thoroughbred Fund) was created to "promote better breeding and racing of thoroughbred horses in the state through awards and purses for accredited breeders/raisers, sire owners, and thoroughbred race horse owners" (WV Code §19-23-13b). Both are special revenue funds controlled by the WV Racing Commission.

The Racing Commission's control of the Greyhound Fund is extensive, primarily because it is responsible for registering and determining the eligibility of greyhounds that can participate in the Greyhound Fund. However, the Racing Commission has less control over the distribution of the Thoroughbred Fund because the West Virginia Thoroughbred Breeders Association (Thoroughbred Association) determines the eligibility of horses that can participate in the Thoroughbred Fund. With respect to the statutory language that specifies the distribution formulas for how much is deposited into these funds, the code is fairly clear and exact, leaving little room for ambiguity.

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Control of the West Virginia Thoroughbred Development Fund

Appendix A provides a flowchart of funds into and out of the Thoroughbred Fund. The Thoroughbred Fund consists of two outside accounts, one in the name of each thoroughbred racetrack. These are the Charles Town Thoroughbred Development Account (Charles Town Account) and the Mountaineer Park Thoroughbred Development Account (Mountaineer Park Account). Although the accounts are established in the name of the racetracks, the moneys in the accounts are under

signature authority of the Racing Commission and are not accessible by the racetracks themselves.

Deposits into the Charles Town Account

WV Code §19-23-9(b) stipulates that two percent of multiple and non-multiple pari-mutuel pool commissions be withheld by licensed racetracks for payment to the Racing Commission. Ninety-five percent of this withheld amount is to be applied to the Charles Town Account. The remaining five percent is to be applied to the Administration and Promotion Account within the WV State Treasury to be used for administration and promotion costs of the Thoroughbred Fund. This account is controlled by the Racing Commission, subject to legislative budget approval.

The percentages of the commissions to be withheld are specified in §19-23-9 as upper limits:

“The commission deducted by any licensee from the pari-mutuel pools on thoroughbred horse racing, except from...multiple betting...shall not exceed seventeen and one-fourth percent of the total of the pari-mutuel pools for the day... The Commission deducted by any licensee from...multiple betting in which the winning pari-mutuel ticket or tickets are determined by a combination of two winning horses shall not exceed nineteen percent and by a combination of three or more winning horses shall not exceed twenty-five percent of the total of such pari-mutuel pools for the day.”

According to Code (§19-23-9(b)(1)), the commission percentages can be lowered by the racetrack, but only by mutual agreement between the racetrack and a majority of the licensed trainers and horse owners. These reductions can be for a particular race, a racing day or several race days. The idea behind lowering the commission percentages would be to allow more money to go back to patrons in the form of winnings, allowing more money to be bet. The Racing Commission has stated that it has been rare, if ever, that racetracks have lowered the commission percentages below the top limits established in Code. Although the code requires the Racing Commission to promulgate rules concerning lowering the commission percentages by the racetrack, the Thoroughbred Racing Legislative Rule, Title 178 Series 1 does not address this issue. The Racing Commission indicates that it has been working in conjunction with the Attorney General’s Office to update its rules since mid-2007.

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The Charles Town account also receives 25 percent of returned video lottery funds (i.e., slot machine moneys) from racetracks, 7.5 percent of signal transmission fees (i.e., fees charged by the Charles Town track

to export races taking place at Charles Town to other racetracks), and six percent of net simulcast income (i.e., wages on races imported to Charles Town which take place at other racetracks) as detailed in WVC §19-23-13c(b)(3)(B), §19-23-12c(b), and §19-23-12b-e(3). These amounts are laid out in detail and not subject to interpretation.

Additionally, racetracks electronically remit gross terminal income from video lottery terminals to the Lottery Commission. The Lottery Commission deducts an amount sufficient to cover its administrative costs incurred in administering racetrack video lottery. The amount deducted for administrative expenses cannot exceed four percent of gross terminal income. The Lottery Commission transfers an amount not less than one and one-half percent of Net Terminal Income to the Racing Commission. This amount is divided equally by the Racing Commission between the Thoroughbred Fund and the Greyhound Fund, which has been 0.75 percent of the Net Terminal Income to each Fund. The Charles Town account receives its Net Terminal Income from the Charles Town Racetrack, Wheeling Downs Racetrack and Gaming Center, and Tri-State Racetrack and Gaming Center.

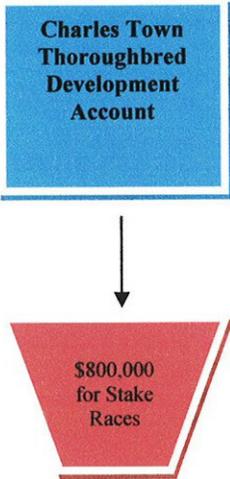
The Racing Commission also indicated that bank interest accrued on moneys in the Charles Town account is also reverted back to the fund. Although there are no statutory stipulations on the use of interest revenue, the Racing Commission has assumed interest is to be reverted back to the Thoroughbred Fund and has done so in practice. The amount of interest accrued to the fund for 2007 was \$259,812. This and deposit and expenditure information for both the Charles Town and Mountaineer Park Accounts are provided in Appendix B.

Deposits into the Mountaineer Park Thoroughbred Development Fund

The Mountaineer Park account has three sources of revenue. Two percent of total adjusted receipts based on table gaming at Mountaineer Park only and .75 percent of the Net Terminal income at Mountaineer Park only is deposited into the fund. As with the Charles Town account, interest accrued on the moneys in the Mountaineer Park account remains with the fund. Although there are no statutory stipulations to indicate interest usage, the Racing Commission has assumed interest is to be reverted back to the Thoroughbred Fund and has done so in practice. The amount of interest accrued by the fund for 2007 was \$38,823.

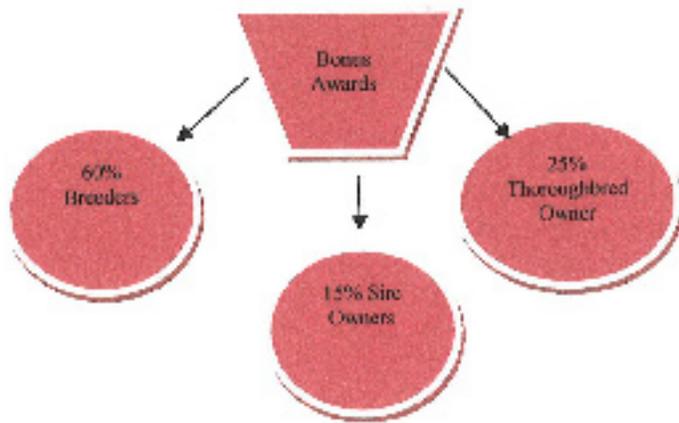
Thoroughbred Development Fund Expenditures

The first \$800,000 deposited into the Thoroughbred Fund is required to be available for at least 14 Stake Races that are held at the Charles Town Racetrack.



According to WVC §19-23-13b(d), these Stake Races are chosen by a three-member committee. One member is the racing secretary, who is an employee of the racetrack, one member represents the majority of owners and trainers at the track (Horsemen’s Benevolent Protective Association), and one member represents the Thoroughbred Association. Although the Racing Commission is not represented on this committee, there is oversight in the form of the Board of Stewards, a three member board established in the Thoroughbred Racing Legislative Rule §178-1-10. The Stewards, two of which are employees of the Racing Commission, are “strictly responsible to the Racing Commission for the conduct of all meeting in every detail, directly or indirectly, pertaining to the racing law and rules of the Racing Commission.” (§178-1-10.2). Although the Racing Commission has some measure of control over the Stake Races through the Steward Board, the Steward Board relies on the registration data of thoroughbreds from the Thoroughbred Association, which effectively diminishes the Racing Commission’s control over Stake Races.

The remaining amount after the first \$800,000, is to be used for bonus awards, which are paid out on February 15th of each year for the previous year’s activity according to the stipulations illustrated below.



Sixty percent of money for disbursement from each account is allotted to breeders (the owner of the horse at birth), 15 percent is allotted to sire owners (the owner of the horse that sired the winning thoroughbred), and 25 percent is allotted to the owner of the winning thoroughbred. The amounts disbursed to a breeder, sire owner, or thoroughbred owner is based on a ratio of purses earned by a particular thoroughbred to the total number earned by accredited race horses or, in the case of sire owners, accredited progeny. Any unused amounts are first used to fund daily restricted races. Any additional unused amounts are then placed back into the Thoroughbred Fund for disbursement the following year.

While the Racing Commission is in control of most aspects of the administration of the Thoroughbred Development Fund, some control is lost in the actual awarding of funds.

Thoroughbred Fund Cash Flow Process

While the Racing Commission is in control of most aspects of the administration of the Thoroughbred Fund, some control is lost in the actual awarding of funds. The Thoroughbred Racing Legislative Rule §178-1-72 states:

“All West Virginia bred, sired or raised horses shall be registered with the West Virginia Thoroughbred Breeders Association to be eligible to participate in any phase of the West Virginia Thoroughbred Development Fund”

The Thoroughbred Association is a private, non-profit organization. As opposed to the award system of the Greyhound Fund, in which owners file purse distribution forms with the Racing Commission to claim purses from the Greyhound Fund, the Racing Commission receives from the Thoroughbred Association an eligibility list of breeders and owners who are registered with the Thoroughbred Association. The Racing Commission uses this list and its data on each horse’s racing

performance in the previous calendar year to determine the amounts to award each owner. Although the Thoroughbred Association collects registration dues, there is no cash flow between it and the Thoroughbred Fund – no portion of the registration fees is allotted to the Fund and no Thoroughbred Fund money is allotted to the Thoroughbred Association. The Racing Commission indicates that it began the process of revising its Rules in spring 2008 to include the requirement that thoroughbreds must be registered with the Racing Commission in addition to registration with the Thoroughbred Association, but the changes did not progress in time to be available for consideration in the 2009 legislative session. Currently, this is not addressed in the rules.

Control of the Greyhound Breeding Development Fund

Appendix C provides a flowchart of funds into and out of the Greyhound Fund. There are two Greyhound racetracks in the state, the Wheeling Downs Racetrack and Gaming Center and the Tri-State Racetrack and Gaming Center. Rather than splitting the fund money into separate accounts as with the Thoroughbred Fund, the Greyhound Fund has one centralized account.

Deposits into the Greyhound Fund

Licensed racetracks pay 3/10 of one percent into the Greyhound Fund from the pari-mutuel tax based on live wagering as detailed in §19-23-10(d). All four of the racetrack and gaming centers pay 0.75 percent of their recalculated Net Terminal Income (i.e. funds left over from slot machines after winnings) into the Greyhound Fund. Two percent of the total adjusted gross receipts from table gaming at Wheeling and Tri-State only, 2/10 of one percent of net simulcast income (importing), and 50 percent of returned racetrack video lottery funds are also paid into the Greyhound Fund. No moneys are received from signal transmission fees (exporting).

The Racing Commission indicates that bank interest accrued on fund moneys are to remain with the account. Although there are no statutory stipulations to indicate interest usage, the Racing Commission has assumed interest is to be reverted back to the Greyhound Fund and has done so in practice. The amount of interest accrued on the account in 2007 was \$232,204. This and deposit and expenditure information for the Greyhound Fund are provided in Appendix D.

West Virginia Code stipulates that in addition to amounts deposited into the Greyhound Fund by racetracks, the Racing Commission is to pay \$200,000 into the fund annually from the West Virginia Racing Commission Special Account – Unredeemed Pari-mutuel Tickets, subject

The Racing Commission indicates that it began the process of revising its Rules in spring 2008 to include the requirement that thoroughbreds must be registered with the Racing Commission in addition to registration with the Thoroughbred Association, but the changes did not progress in time to be available for consideration in the 2009 legislative session.

to fund availability as laid out in WVC §19-23-13(b)(5)(A). However, the Racing Commission indicates that there is no longer available funding from this source, as shown in Appendix D.

Greyhound Fund Expenditures

Ten percent of all deposits into the Greyhound Fund are to be deposited into the Administration, Promotion, and Educational and Capital Improvement Account within the State Treasury. This account is controlled by the Racing Commission subject to Legislative budget approval and is to be used for administration and promotion of the Greyhound Fund.

The remainder of fund money is for supplemental purses paid directly to registered owners of West Virginia greyhounds. The amounts due are calculated at the end of each month and based on the ratio of points earned by an accredited greyhound to the total amount earned in races by all accredited West Virginia whelped greyhounds for that month as a percentage of funds dedicated to owner supplements.

Additionally, on June 26, 2008, H.B 213 was passed, which added a provision for funding the construction and maintenance of two West Virginia greyhound training facilities with two million dollars, one million per facility, from the fund balance.

The entire cash flow process of the Greyhound Fund is controlled by the Racing Commission.

Greyhound Breeding Development Fund Cash Flow Process

The entire cash flow process of the Greyhound Fund is controlled by the Racing Commission. The Commission employs a registrar, who registers accredited greyhounds. In order to claim fund moneys, accredited greyhound owners must submit purse distribution forms to the Racing Commission, which then computes the amount of money due and disburses the funds directly to the owner.

Conclusion

The statute creating the Greyhound Breeding Development Fund, and the Thoroughbred Development Fund is specific in many respects. The percentage distributions assigned to revenue flowing in and out of these funds and individual accounts are specified in exact percentage terms. Moneys from the Thoroughbred Fund are awarded based on information provided to the Racing Commission by the West Virginia Thoroughbred Breeders Association, a private association not controlled by the Racing Commission or the State. This is the primary area of the distribution process where the Racing Commission is not in

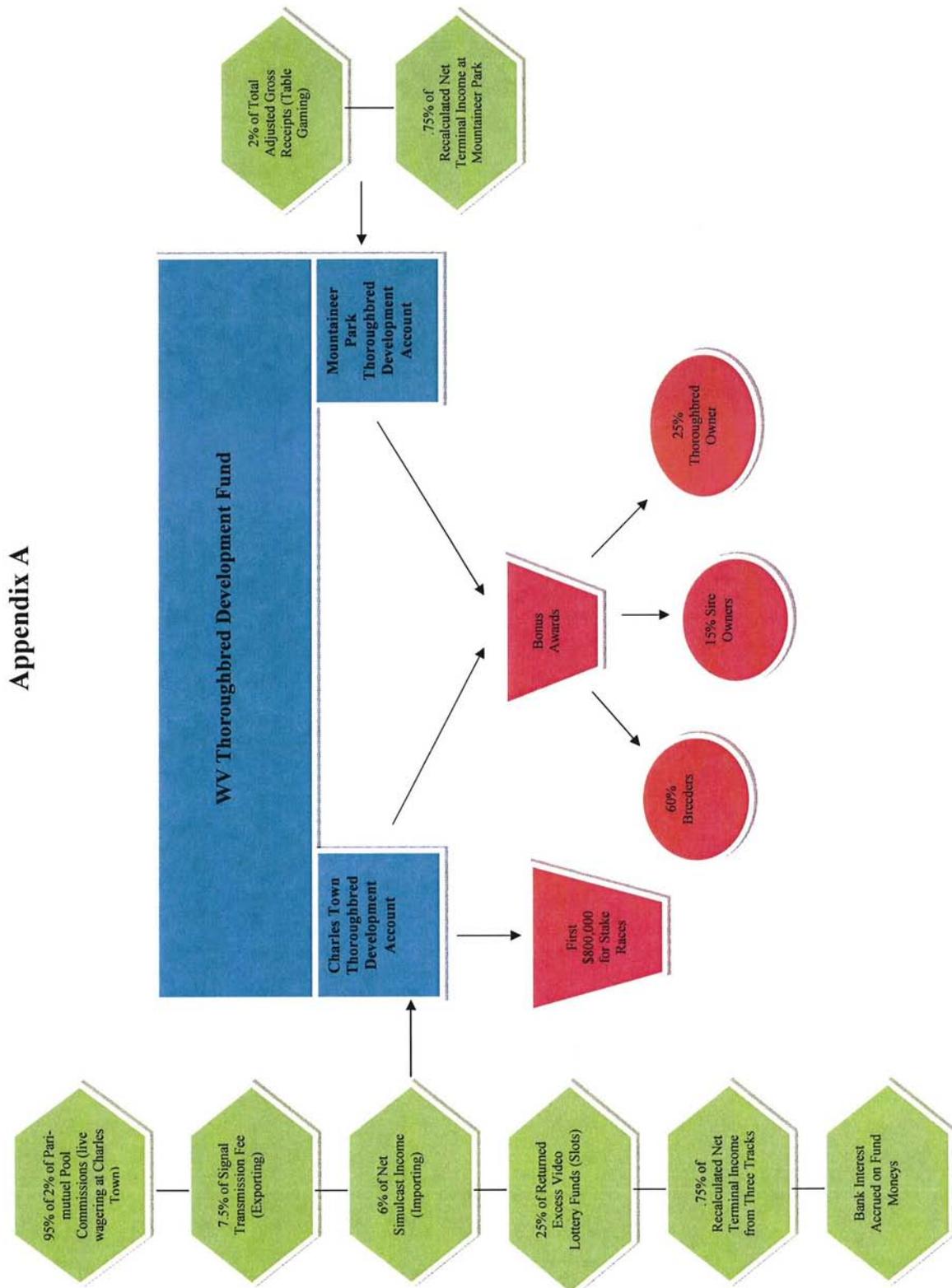
complete control. The statutory language that the Legislature may want to consider adding to the Code is 1) language that either gives the Racing Commission complete control of the registration process of West Virginia Thoroughbreds or require registration information to be submitted to both the Thoroughbred Association and the Racing Commission, 2) language specifying how interest revenue accrued in these funds should be treated. Currently, the Racing Commission has assumed that interest revenue should remain in the respective funds. Furthermore, the Racing Commission should amend its rules to address when racetracks reduce the percentages of commissions deducted from pari-mutuel pools from the statutorily prescribed percentages.

Recommendations

1. *The West Virginia Racing Commission should promulgate rules in compliance with WVC §19-23-9(b)(1).*
2. *The Legislature should consider either requiring registration information be submitted to both the Thoroughbred Breeders Association and the Racing Commission, or giving full control of registration requirements in the hands of the Racing Commission rather than in the control of the Association.*
3. *The Legislature may want to consider specifying how interest revenue that accrues to the Greyhound Development Fund and the Thoroughbred Development Fund should be used.*

The only statutory language that the Legislature may want to consider adding to the Code is language specifying how interest revenue accrued in these funds should be treated.

Appendix A: WV Thoroughbred Development Funds Chart



Appendix B: WV Thoroughbred Development Funds

West Virginia Thoroughbred Development Funds

Chapter Nineteen, Article Twenty-Three, Section Thirteen b

Calendar Year 2007

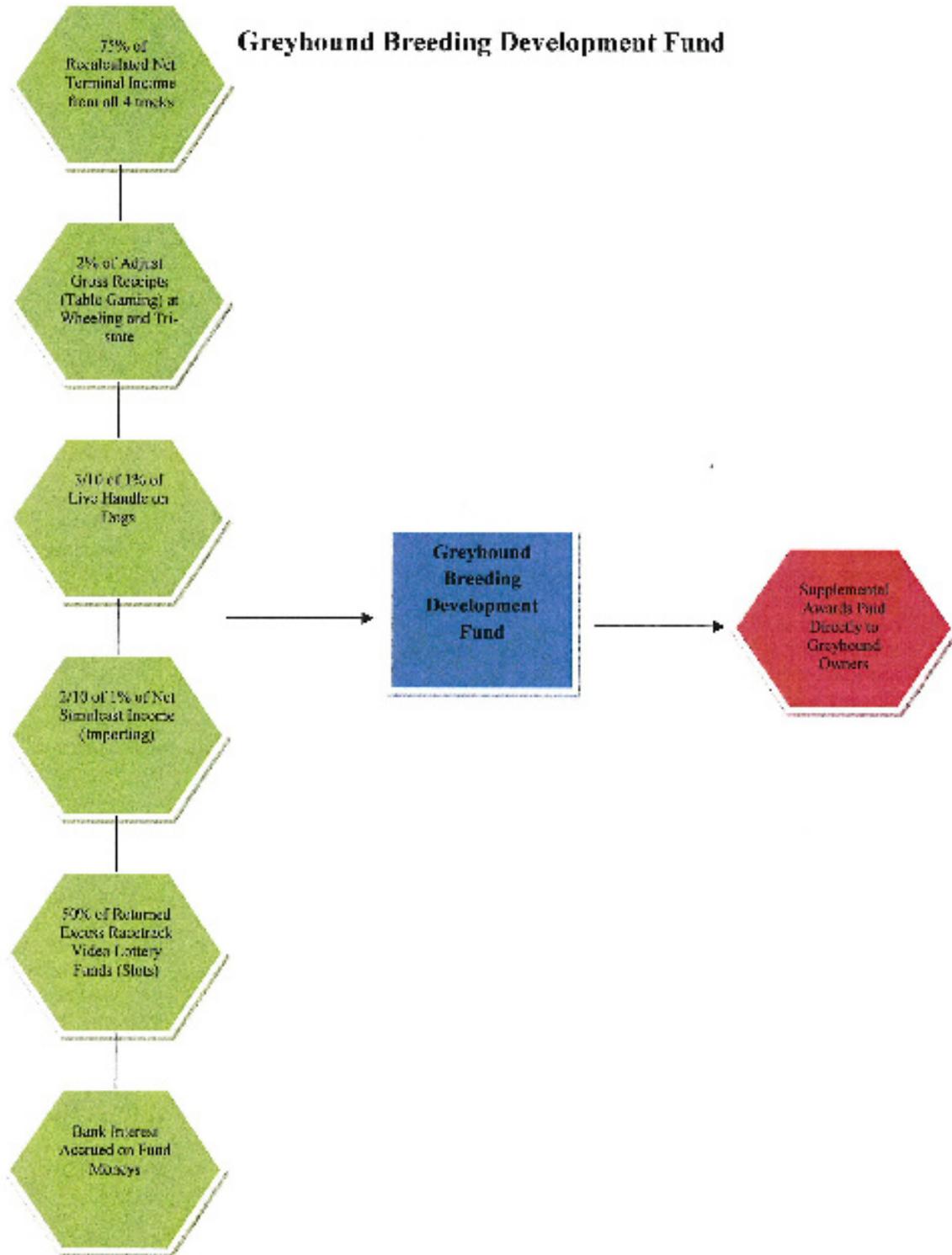
Charles Town Racetrack – West Virginia Thoroughbred Development Fund

DEPOSITS	\$5,324,095
INTEREST	259,812
Breeder/Raiser Awards	(\$2,214,150)
Sire Owner Awards	(919,125)
Owner Awards	<u>(1,531,877)</u>
Total	<u>(\$4,665,152)</u>
Administration and Promotion	(\$121,582)
Encumbered Balance	<u>\$797,173</u>

Mountaineer Park – West Virginia Thoroughbred Development Fund

DEPOSITS	\$1,567,85
INTEREST	38,823
Breeder/Raiser Awards	(\$602,736)
Sire Owner Awards	(149,473)
Owner Awards	<u>(240,023)</u>
Total	<u>(\$992,232)</u>
Administration and Promotion	(\$18,168)
Encumbered Balance	<u>\$596,276</u>

Appendix C: Greyhound Breeding Development Fund



Appendix D: Greyhound Breeding Development Fund

West Virginia Racing Commission – Special Account

West Virginia Greyhound Breeding Development Fund

Chapter 19, Article 23, Section 10 (d)

Calendar Year 2007

Share of Net Terminal Income – Video Lottery		\$7,393,083
Share of Live and Simulcast Pari-Mutuel Wagering		146,512
Unredeemed Pari-Mutuel Tickets		0
	TOTAL	7,539,595
INTEREST		232,204
Monthly Supplemental Purse Awards		(\$7,163,802)
Stake Races		(200,000)
Administration and Promotion		(81,158)
	Total	<u>(\$7,444,960)</u>
Encumbered Balance		<u>\$326,839</u>



WEST VIRGINIA LEGISLATIVE AUDITOR

PERFORMANCE EVALUATION & RESEARCH DIVISION

Building 1, Room W-314, State Capitol Complex, Charleston, West Virginia 25305

telephone: 1-304-347-4890 | www.legis.state.wv.us/Joint/PERD/perd.cfm | fax: 1-304-347-4939