

Mailing Date: APR 17 2007

[Appeal](#)

COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ADMINISTRATIVE LAW JUDGE
FOR THE PENNSYLVANIA LIQUOR CONTROL BOARD

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1692
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W01-307329
v.	:	
	:	LID - 2794
POST 162 AMDG CATHOLIC WAR	:	
VETERANS OF PHILADELPHIA PA	:	
9859 BUSTLETON AVE	:	
PHILADELPHIA PA 19115-2611	:	
	:	
	:	
PHILADELPHIA COUNTY	:	
LICENSE NO. CC-6179	:	BEFORE: JUDGE SHENKLE

APPEARANCES:

For Bureau of Enforcement: James E. Dailey, Esq.
For Licensee: Gregory H. Quigley, Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on August 26, 2005. There are two counts in the citation.

The first count alleges that Licensee violated §5.83(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.83(a), on January 6, 7, 8, 13, 14, 15, 20, 21, 22, 27, 28, 29, February 3, 4, 5, 10, 11, 12, 17, 18, 19, 24, 25, 26, March 3, 4, 5, 11, 12, 17, 18, 19, 24, 25, 26, 31, April 1, 2, 7, 9, 10, 14, 15, 16, 21, 22, 23, 28, May 5, 6, 7, 12, 13, 14, 19, 20, 21 and June 8, 2005, by failing to conduct a catered event in conformity with Title 40 of the Pennsylvania Code.

The second count alleges that Licensee violated §§401(b) and 406(a)(1) of the Liquor Code, 47 P.S. §§401(b) and 406(a)(1), on June 8, 2005, by selling alcoholic beverages to nonmembers.

A hearing was held on Thursday, July 6, 2006, in Plymouth Meeting, Pennsylvania. The parties stipulated to the timely service of the notice letter and the citation.

FINDINGS OF FACT:

1. Liquor Enforcement Officer Julie Kohler arrived at the licensed premises at about 10:30 p.m. on June 8, 2005. This catering club is in a strip mall, and there is an illuminated sign on top of the building which contains the licensed premises which identifies it as "Studio 98." The door to the premises was unlocked, so Officer Kohler entered and found herself in a coatcheck area. Beyond that area there were bars, a dance floor, a stage, and a pole (N.T. 4-6).

2. Officer Kohler and Officer Cooper, who was accompanying her, sat down at the bar. Gino Tripodi, Licensee's Commander, approached the two officers and handed them a clipboard with a ledger and a pen attached to it. Officer Kohler assumed they were being asked to sign in, although nothing was said. The officers both wrote their names on the ledger. Officer Kohler was never a member of this club. After Mr. Tripodi left their presence, a bartender approached the officers and asked what they wanted. Officer Kohler purchased beer for both of them. The money she paid was deposited in a cash register. There was no sign or other indication that there was any type of event going on. Although there was a DJ booth, there was no disc jockey working during the half hour the officers remained in the club (N.T. 7-9).

3. There were no other patrons present during the officers' visit. Officer Kohler agreed that it was possible they had arrived early for a catered event, although the officers had no knowledge concerning such an event. Officer Kohler agreed that it was possible the club wasn't even open at the time of this visit (N.T. 10-11).

4. Liquor Enforcement Officer Libby Hess visited the licensed premises on March 17, 2005, and left a request for records with Mr. Tripodi. She returned on March 24, 2005, to pick up the records which had been requested. She visited the premises again at 12:40 a.m. on May 22, 2005. A disc jockey named Ian Manners was playing music for about twenty patrons, who were also attended by bar personnel and in possession of alcohol (N.T. 17-21).

5. On May 22, 2005, Officer Hess interviewed Mr. Manners in the presence of Mr. Tripodi. Mr. Manners stated that he and his brother C.J. had been disc jockeying at the premises under the name EMCE Entertainment for approximately one year (N.T. 21-22).

6. Club records received as documentary evidence in this case consist of Exhibits B-3 through B-23. In general, each of these documents conforms to the following pattern: the first page is labeled "CATHOLIC WAR VETERANS OF PHILADELPHIA POST 162 A.M.D.G." followed by the title "MINUTES". Below this there are two typewritten paragraphs. The first line contains a blank space for a date, which is written in by hand in each case. The remainder of the typed text is identical, and reads as follows:

On _____, 200____, a meeting was held and all officers were present At said meeting which constituted a quorum, it was decided by unanimous vote of the officers present that in accordance with the Constitution, and the Bylaws, that:

In accordance with the arrangements made with the certain entities 24 hours in advance of said parties, in the attached memorandum, a catered event will be held at 9859 Bustleton Avenue for a certain number of persons, on the dates and times specified in the attached invoices for use of the catering club associated with Catering club liquor license C-6179 owned and operated by the organization.

By:

GINO TRIPODI, COMMANDER

Attached to each of these “minutes” pages are one or more forms filled in by hand. The forms each bear the title “Catholic War Veterans” followed by the address of the organization.

In the space below this heading there are places to write the following: Event, Event Date, Event Time, Number of person, Catered By, Deposit, Due, and Total.

(Exhibits B-3 through B-24)

7. The forms described in the previous finding of fact are filled in with the following information. In every case the event time is listed as 9 p.m. to 3 a.m., except that Exhibits B20 and higher have a 10 p.m. start time. In every case the line for “deposit” bears the same date as the date of the “minutes” and the notation “\$50 nominal fee or greater.” In every case the lines for “Due” and “Total” are blank. The variable information is shown in this chart:

Exhibit	Minutes Date	Event	Event Date	# of persons	Catered by
B-3	1-3-05	D.C. Entertainment	Thursday 1-6-05	25-200	Cucco Pazzo
		EMCE	Friday 1-7-05	100-300	Cucco Pazzo
		EMCE	Saturday 1-8-05	100-300	Cucco Pazzo
B-4	1-10-05	D.C. Entertainment	Thursday 1-13-05	25-200	Cucco Pazzo
		EMCE	Friday 1-14-05	100-300	Cucco Pazzo
		EMCE	Saturday 1-15-05	100-300	Cucco Pazzo
B-5	1-17-05	D.C. Entertainment	Thursday 1-20-05	25-200	Cucco Pazzo
		EMCE	Friday 1-21-05	100-300	Cucco Pazzo
		EMCE	Saturday 1-15-05	50-300	Cucco Pazzo
B-6	1-24-05	D.C. Entertainment	Thursday 1-27-05	50-200	Cucco Pazzo
		EMCE	Friday 1-28-05	100-300	Cucco Pazzo
		EMCE	Saturday 1-29-05	100-300	Cucco Pazzo
B-7	1-31-05	D.C. Entertainment	2-3-05	25-75	Corsetti Catering
		EMCE Entertainment	2-4-05	50-250	Corsetti Catering
		EMCE Entertainment	2-5-05	50-250	Corsetti Catering
B-8	2-7-05	D.C. Entertainment	2-10-05	50-100	Corsetti Catering
		EMCE Entertainment	2-11-05	50-250	Corsetti Catering
		EMCE Entertainment	2-12-05	100-300	Corsetti Catering
B-9	2-14-05	D.C. Entertainment	2-17-05	50-100	Corsetti Catering
		EMCE Entertainment	2-18-05	50-250	Corsetti Catering
		EMCE Entertainment	2-19-05	75-250	Corsetti Catering
B-10	2-21-05	D.C. Entertainment	2-24-05	50-100	Corsetti Catering
		EMCE Entertainment	2-25-05	100-250	Corsetti Catering
		EMCE Entertainment	2-26-05	100-300	Corsetti Catering
B-11	2-28-05	D.C. Entertainment	3-3-05	25-150	Diantonio's
		EMCE Entertainment	3-4-05	100-300	Diantonio's

		EMCE Entertainment	3-5-05	100-200	Diantonio's
B-12	3-7-05	illegible	illegible	illegible	Diantonio's
		illegible	illegible	illegible	Diantonio's
B-13	3-14-05	D.C. Entertainment	3-17-05	50-100	Diantonio's
		EMCE Entertainment	3-18-05	100-300	Diantonio's
		EMCE Entertainment	3-19-05	100-300	Diantonio's
B-14	3-21-05	D.C. Entertainment	3-24-05	50-150	Diantonio's
		EMCE Entertainment	3-25-05	100-300	Diantonio's
		EMCE Entertainment	3-26-05	100-300	Diantonio's
B-15	no "minutes" - deposit date is 3-28-05 each	D.C. Entertainment	3-31-05	50-100	Diantonio's
		EMCE Entertainment	4-1-05	100-300	Diantonio's
		EMCE Entertainment	4-2-05	100-300	Diantonio's
B-16	4-4-05	D.C. Entertainment	4-7-05	50-100	Diantonio's
		EMCE Entertainment	4-8-05	100-300	Diantonio's
		Baum Entertainment	4-10-05	25-100	Diantonio's

Exhibit	Minutes Date	Event	Event Date	# of persons	Catered by
B-17	4-11-05	D.C. Entertainment	4-14-05	50-100	Diantonio's
		EMCE Entertainment	4-15-05	100-300	Diantonio's
		EMCE Entertainment	4-16-05	100-300	Diantonio's
B-18	4-18-05	D.C. Entertainment	4-21-05	50-150	Diantonio's
		EMCE Entertainment	4-22-05	100-300	Diantonio's
		EMCE Entertainment	4-23-05	100-300	Diantonio's
B-19	4-25-05	D.C. Entertainment	4-28-05	25-100	Diantonio's
B-20	5-2-05	D.C. Entertainment	5-5-05	50-150	Diantonio's
		EMCE Entertainment	5-6-05	100-300	Diantonio's
		EMCE Entertainment	5-7-05	100-300	Diantonio's
B-21	5-9-05 These "minutes" are about members	D.C. Entertainment	5-12-05	50-150	Jin Jin
		EMCE Entertainment	5-13-05	100-300	Jin Jin
		EMCE Entertainment	5-14-05	100-300	Jin Jin
B-22	5-16-05	D.C. Entertainment	5-19-05	25-100	Jin Jin
		EMCE Entertainment	5-20-05	100-300	Jin Jin
		EMCE Entertainment	5-21-05	100-300	Jin Jin
B-23	6-6-05	Europe Entertainment	6-8-05	25-50	Jin Jin

(Exhibits B-3 through B-23)

8. Officer Hess discussed the contract for the event of March 25, 2005, with Mr. Manner as an example of the procedure used. He stated that the entry "\$50 nominal fee or greater" meant that he paid the club \$50 to come to the premises to perform as a disc jockey in order to promote his business (N.T. 26).

9. Officer Hess interviewed a disc jockey, Davil Catrol (phonetic) at the club on July 1, 2005, and asked him what the arrangement was concerning his services. Mr. Catrol stated that he paid fifty dollars per day to the club for the right to perform, which he did in order to promote himself as a disc jockey and to sell mix tapes of his work (N.T. 27-28).

10. On July 28, 2005, Officer Hess interviewed the disc jockey who was working at the club that evening for Yaropa Entertainment (phonetic). This man, who called himself DJ Larry T., stated that his work at the premises was on the same terms, fifty dollars paid to the club on the same basis as the other disc jockeys (N.T. 28-29).

11. Officer Hess initiated this citation case, and specified dates of violation for which she had contracts between Licensee and the individuals conducting DJ events at the premises. She based the case as well on the statements of the disc jockeys, the vagueness of the number of patrons who would be attending each event, the minimal nature of the food provided, and the fact that the disc jockey essentially ran the party (N.T. 30-31).

12. Every time Officer Hess visited the premises she asked for and was shown food, which consisted of one or two chafing dishes containing pasta or lo mein. Sometimes pretzels and potato chips were set out. One time the officer saw cookies. In her judgment, this did not constitute a catered event (N.T. 31).

13. In Officer Hess' judgment, the intent of the law regarding catered events is that they have to have more of a nonprofit character than what the evidence in this case showed: a wedding, a beef and beer, possibly, a party for the mutual benefit of the patrons as opposed to just one person promoting and essentially making money out of the event. Usually an event would involve a specific group of people, such as come to a wedding or a beef and beer. Usually the people attending would have tickets; they would be personal invitees. By contrast, the events described in this case were just to promote the individual disc jockey's business (N.T. 44).

14. Officer Hess felt that the range of patrons expected at these events was too great: 25 to 200 or 300, or 100 to 300. Catered events such as weddings or beef and beers usually involve a known number of people coming, rather than this wide range of numbers seemingly arbitrarily selected. Also, the vagueness of the payment provision "\$50 or greater" and the fact that the contracts were not signed was an issue for her (N.T. 45-46).

15. Gino Tripodi was the commander of this catering club at all times relevant to this investigation. He served in the Air Force during the first Gulf War. In the entry way to the organization there is an American Flag and a Catholic War Veterans flag. The policy of the organization is that everyone who enters must sign in as a guest of the entertainment that is provided for that night (N.T. 53-54).

16. Mr. Tripodi's understanding of the effect of signing in is that it indicates that the person who signs in is a guest of the catered event "that the DJ put on for that night." Mr. Tripodi is at the premises every night, and he usually opens the club an hour before people would be expected to come in. He preheats food and puts it out in a chafing dish to keep it warm. He also puts out pretzels or chips and the like. If a warm dish is running out, he has a bunch of frozen trays in the back, and he will take one out, reheat it and put it in the chafing dish. Jin Jin is the name of a Chinese food store next door to the licensed premises (N.T. 55-57).

17. John Tripodi was the treasurer of this club at all times relevant to this investigation. The contracts were designed to comply with the "LCB blue booklet" at page 18. Usually DC Entertainment would have his events on a Thursday, while EMCE Entertainment would have

Fridays and Saturdays. He prepared the contracts for the entertainment groups and they paid the \$50 to the club through him. The minutes were always attached to the contracts for the week. The kind of catered event would be characterized as a dance party (N.T. 65-66).

18. The DJ's were not members of this club. They were basically in the business of selling CD's and their interest was in promoting their own music. EMCE Entertainment, for example, has done a few weddings – not at this club, but elsewhere – and they were promoting their business by getting weddings and other events. It did not matter to the club that the people were members or not; if not members, they were guests (N.T. 67).

19. Generally the business at the club picks up after midnight. The Tripodis' intention was to run the club in accordance with the mandates of the Code, which is what they attempted to do in creating the minutes and the contracts. John Tripodi regarded this organization as a club/business. He stated that he is the treasurer and the judge adjutant is Anthony Frorey (phonetic) and Gino serves as both the commander and the vice commander, but records of the Board list only one officer, Gino Tripodi, as manager/steward and responsible officer (N.T. 6869 and Board records).

20. Although each of the documents attached to Exhibits B-3 through B-23 refers to a "\$50 nominal fee or greater," it never really gets greater. The Tripodis are just "happy that the DJ's promoting an event and he's soliciting people to come into the place, the establishment. So it's never really, you know, a greater fee than that . . . we're just happy that they're taking the hall . . . 'cause we [charge for drinks]. And we do charge an entrance fee." (N.T. 72).

21. A lot of times with the DJ's the club makes up guest passes and the DJ's "go out and promote, let people know that he's going to be having his event, you know, at the club on those certain nights It's by word of mouth and also by printed cards [the DJ handles that] . . . The club doesn't do it, but I will help with the promotion myself, sure (N.T. 73).

22. An "Information Booklet" with a blue cover bearing the logo of the Pennsylvania Liquor Control Board and identified as publication LCB-119 2/04 contains the following paragraph on page 18, under the heading "Catering Record (Catering Club Licensees Only):" "**Catering Club** licensees shall maintain a club record showing the date and time catering arrangements were made, the name of the persons or organization making the arrangements and the approximate number of persons to be accommodated." (Files of Bureau of Licensing).

CONCLUSIONS OF LAW:

The evidence and controlling precedent require the conclusion that Licensee did not violate §5.83(a) of the Liquor Control Board Regulations, 40 Pa. Code §5.83(a), as alleged.

The evidence and controlling precedent require the conclusion that Licensee did not violate §§401(b) and 406(a)(1) of the Liquor Code, 47 P.S. §§401(b) and 406(a)(1), as alleged.

DISCUSSION:

People who have reached a certain age, including the undersigned, have in their minds a picture of what a veteran's organization such as the Catholic War Veterans looks like. It looks like a group of older guys in uniform marching proudly down Main Street on Memorial Day. In the club house there is, perhaps, a pool table, a bar room and a few regulars nursing their beer and reliving their memories during nights out after the regular post meeting. Perhaps there is a scout troop. There are regular outings and an annual convention. Graves are decorated.

This licensed club does not resemble the picture carried in the minds of we older folk. Disc jockeys playing modern dance music three nights a week for a younger crowd seem out of sync with the more traditional image, which is probably why we tend to suspect that what we are seeing in a case such as this is not genuine, especially when the commander of the organization testifies that he regards it as a "club/business" (N.T. 69).

There is also the difficulty presented by a long series of documents purporting to be minutes of meetings of the organization's officers, prepared in advance with only the date to be filled in, attached to a series of supposed catering contracts for the coming week. The first observation to be made is that the officers never have anything to discuss concerning the affairs of the organization apart from the catering arrangements, about which there is never any substantial variation.

The cognitive dissonance we older veterans may experience when viewing such a scene is not, of course, a proper basis for decision in a citation case. To reach a fair result one must put aside one's intuitive reaction and examine the facts and the law.

The Liquor Code provides in §401(b), 47 P.S. §4-401(b) that:

The board may issue to any club which caters to groups of non-members, either privately or for functions, a catering license, and the board shall, by its rules and regulations, define what constitutes catering under this subsection except that any club which is issued a catering license shall not be prohibited from catering on Sundays during the hours which the club may lawfully serve liquor, malt or brewed beverages.

Subchapter F of the regulations of the Pennsylvania Liquor Control Board provides in §5.83, 40 Pa. Code §5.83, that:

(a) Catering, for the purpose of this section, means the furnishing of liquor or malt or brewed beverages, or both, to be served with food prepared on the premises or brought onto the premises already prepared, for the accommodation of groups of nonmembers who are using the facilities of the club by prior arrangement, made at least 24 hours in advance of the time for private meetings or functions, such as dances, card parties, banquets and the like; and which is paid for by the nonmembers.

(b) A record shall be maintained showing the date and time catering arrangements were made, the name of the person or organization making the arrangements and the approximate number of persons to be accommodated.

In *PSP, BLCE v. American Serbian Club of Pittsburgh*, 750 A.2d 405 (Pa. Cmwlth. Ct. 2000), the premises of a licensed catering club had been hired several weeks in advance by the Serbian National Federation, an unaffiliated group, for a dinner dance for approximately 500 people. A liquor enforcement officer who was not affiliated with either organization arrived at the club's door and purchased a \$5 admission ticket at about 11:30 p.m. on the date of the event. Once inside, she purchased "refreshment tickets" stamped with the licensee's name and used them to obtain alcoholic beverages during her 45-minute visit.

Administrative Law Judge Roderick Frisk sustained the citation on the basis of his opinion that the sale of admission tickets at the door for a catered event is contrary to the provisions of 40 Pa. Code §5.83(a), as it circumvents the requirement that arrangements be made at least 24 hours in advance. In addition, Judge Frisk observed that the sale of such tickets at the door opens to the public what would otherwise be a private event.

Licensee appealed to the Pennsylvania Liquor Control Board, which affirmed, noting that the regulation was intended to permit the operation of a cash bar during a private, prearranged, and catered function for a specific group of nonmembers. The Board stated that the indiscriminate sale of admission tickets at the door is contrary to the regulation.

Licensee appealed to the Court of Common Pleas of Allegheny County, which reversed. The court held that no legal basis existed for the conclusion that the 24-hour pre-arrangement requirement precluded ticket sales for admission to a private event, and that the Board cited no specific statutory language to support its interpretation of §5.83(a).

On appeal to Commonwealth Court, the Bureau argued that because the Serbian National Federation event was billed as a private social dance for members and their guests only, the licensee violated §5.83(a) by allowing anyone from the public to enter the event and to purchase alcoholic beverages without first being questioned as to group affiliation.

Commonwealth Court affirmed, holding that the language of 47 P.S. §4-401(b) plainly allows a catering licensee to furnish alcoholic beverages "for the accommodation of groups of nonmembers who are using the facilities of the club by prior arrangement . . . for private meetings *or functions, such as dances, card parties, banquets and the like . . .*" (Emphasis added by Commonwealth Court).

Commonwealth Court reasoned that there was nothing in the Code or Regulations prohibiting ticket sales at the door to nonmembers attending a catered event, and it was therefore permissible for the Serbian National Federation to sell tickets to its dinner dance to individuals unaffiliated with its group, provided only that the event was paid for by the federation and that arrangements had been made at least 24 hours in advance. The court also noted that the circumstances did not support the Bureau's contention that Licensee's activities amounted to the operation of a retail establishment open to the public in contravention of the Code.

In *Falcons of Manayunk*, Citation No. 02-1377, I attempted to distinguish the rule of *American Serbian Club*, arguing that there was no separate group renting the facilities in advance for a private function. On the contrary, the contract with Licensee that case recited that the agreement was with “Cory AK, a member in good standing ...” This was not a group of nonmembers using the facility by prior arrangement; rather, it is nothing more than a sub-letting of the premises from Licensee to one of its members.

The Court of Common Pleas of Philadelphia County did not agree, however, and dismissed the citation, finding that it did not matter whether the person contracting with the club to hold the event was a member or not. Although the Bureau appealed this decision to Commonwealth Court, the appeal was later withdrawn.

The facts in the present case are quite similar to the facts in *Falcons of Manayunk*. In light of the history of that case, as well as the rule of *American Serbian Club*, I am constrained to find that a catering club may rent its premises to a disc jockey, who may hold a dance party to which non-members may be admitted.

Since there was always food of some description whenever an officer visited the premises in this case, and since there is no regulatory requirement that the food served meet a certain level of sumptuousness, it follows that Licensee did not violate the provisions of title 40 of the Pennsylvania Code governing the conduct of a catered event.

This being so, and there having been a contract for rental of the premises on June 8, 2005, I am likewise constrained to find that Licensee’s sale of alcoholic beverages to officers who were not members on that date was not unlawful.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 05-1692 is DISMISSED.

Dated this 27th day of March, 2007.

David L. Shenkle, J.

NOTICE: MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.