

Mailing Date: AUG 25 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 05-1923
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-313241
v.	:	
	:	LID - 472
LOYAL ORDER OF MOOSE	:	
LODGE NO. 1562	:	
235 MARKET STREET	:	
NEWPORT, PA 17074-1517	:	
	:	
	:	
PERRY COUNTY	:	
LICENSE NO. C-54	:	

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire

For Licensee
NO APPEARANCE

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on September 22, 2005, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against LOYAL ORDER OF MOOSE LODGE NO. 1562, License Number C-54 (hereinafter "Licensee").

The citation contains four counts.

The first count charges Licensee with violation of Sections 471 and 493(12) of the Liquor Code [47 P.S. §4-471 and 4-493(12)], Section 311 of the Local Option Small Games of Chance Act [10 P.S. §311] and Section 901 of the Department of Revenue Regulations [61 Pa. Code §901] in that on July 15, 2005, Licensee, by its servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years concerning the Local Option Small Games of Chance Act.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 315 of the Local Option Small Games of Chance Act [10 P.S. §315] in that on May 29, 2005, and divers other occasions in the past year, Licensee club, by its servants, agents or employes, violated the Local Option Small Games of Chance Act, in that it conducted drawings other than those authorized by law.

The third count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 315(b) of the Local Option Small Games of Chance Act [10 P.S. §315(b)] in that during the period July 3 through 9, 2005, Licensee, by its servants, agents or employes, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven day period.

The fourth count charges Licensee with violation of Sections 5.73 and 5.74 of the Liquor Control Board Regulations [40 Pa. Code §5.73 and 5.74] in that on July 15, 2005, Licensee, by its servants, agents or employes, failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

The investigation which gave rise to the citation began on June 20, 2005 and was completed on August 17, 2005; and notice of the violation was sent to Licensee by Certified Mail on September 6, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on March 29, 2006 in the Office of Administrative Law Judge, 2221 Paxton Church, Brandywine Plaza, Harrisburg, Pennsylvania. Licensee(s) did not appear at the hearing, nor did anyone appear on its behalf. A citation hearing notice was sent to Licensee(s) at its address of record, 235 Market Street, Newport, PA 17074-1517 by certified mail, return receipt requested and by first class mail on February 17, 2006. The notice set forth the date and time of the hearing as March 29, 2006 at 2:30 p.m., and the place of hearing as Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNTS 1, 2, 3 AND 4

1. On June 23, 2005 two officers of the Bureau visited the licensed premises in order to conduct a routine inspection (N.T. 7).
2. The officers arrived at 3:00 p.m. and identified themselves to the barmaid and informed her that a routine inspection would take place. Immediately she contacted the governor of the premises, Jerry Robinson (N.T. 8).
3. One of the officers was able to speak with Mr. Robinson on the telephone and explained to him that an inspection was being conducted. Mr. Robinson explained that he was the only one that had access to the records and they were locked on the second floor. The officer stated he would complete the physical inspection of the premises and leave a request for records with the barmaid and have her sign it (N.T. 8).
4. On July 15, 2005 one of the officers returned to the licensed premises to complete inspection of the records. He arrived at 9:30 a.m. and was met by Mr. Robinson. They proceeded to the second floor of the premises. At that time the officer reviewed the recordkeeping which was available at that time (N.T. 8-9).
5. Mr. Robinson did not provide the officer with everything that he had requested previously. Robinson explained that the premises was having problems with its computer and would be approximately Monday, July 18, 2005 or Tuesday, July 19, 2005 until it would be possible to extract profit and loss and income and expenditures records from the computer. These records were therefore not available at that time (N.T. 8-9).
6. The officer was able, on July 15, 2005 to review the minutes of meetings kept by Licensee. He found that the minutes of meeting contained no treasurer's report. The minutes stated that there was a treasurer's report, but no income figures were given. There was no statement of profit and loss with the minutes as required (N.T. 9).
7. The officer also found that the minutes merely listed the names of new members. There was no list of any information regarding their dates of application or whether independent balloting on these members was conducted (N.T. 9).

8. The officer asked Mr. Robinson if Licensee held any free parties, i.e. gave free parties to their members and expended monies on these parties. Robinson stated that they had a Christmas party and also an Easter party for the children of members. There was no mention in the minutes for December or March about the parties at Christmas and Easter.

9. The officer attempted to examine liquor receipts. He found only two liquor receipts from February 12, 2005 and July 2, 2005. Upon questioning, Mr. Robinson stated that the Licensee only had the two receipts mentioned. He said that Licensee didn't buy much liquor. He indicated that Licensee did purchase liquor at other times, but did not use its wholesale purchase permit card. Someone would just go to the liquor store and buy a single bottle here and there (N.T. 10).

10. Mr. Robinson was not able to show the receipts for single purchases of liquors. He did give the officer one of the receipts that he could find and said that it was going to be difficult to show the others because of the way Licensee packaged its records. He indicated that all of the business for one week was packaged and all the receipts were packaged for that week and they were placed into a monthly binder (N.T. 10-11).

11. The officer examined the small games of chance records. He noticed immediately that there were very few games of chance listed in these records. He found this odd because there were at least eight games or more in play when he did the physical inspection of the licensed premises. The games that he had seen out were punchboard and pull tab games (N.T. 11).

12. The officer pulled the receipts for the games of chance he had seen that were in play. He asked Mr. Robinson if the receipts were accurate and Mr. Robinson said that they were (N.T. 12).

13. The officer went to L.B.C. Company, the vendor that sells pull tabs, punchboards and bingo supplies to the Licensee. The officer examined the receipts for approximately two weeks. He found that Licensee was very steadily every week purchasing small games of chance from L.B.C. He also found that there were games listed in those receipts which were not showing up in the records of Licensee (N.T. 13).

14. The officer went back to Mr. Robinson and asked if he kept a large inventory of games, punchboard and pull tab. Robinson stated that he had some. The officer asked Robinson to go down and write down what he had. The officer followed Robinson while he wrote these down. None of the games that Robinson had in inventory were found on either the small games of chance records or could be found. The officer found six pull tab games styled "Shake, Rattle and Roll." Each of these games had a serial number. These particular serial numbers were not listed in Licensee's inventory nor were they logged on the small games of chance recordkeeping sheet (N.T. 14). The officer found games listed on receipts from the supplier that were not in the inventory of games supplied by Robinson nor were they listed in the inventory of games supplied by Mr. Robinson.

15. The officer questioned Mr. Robinson about the missing games that were not listed in the inventory on their recordkeeping or in play. Robinson explained that he thought they had just not gotten into the recordkeeping and that they were played and not put into the records (N.T. 15).

16. Robinson could not provide any records with respect to the games that reflected money generated by these games or whether payouts were made (N.T. 16).

17. When asked by the officer whether Licensee kept records about the payouts to people who were paid more than \$100.00, Mr. Robinson stated they did keep such records, but did not provide any records to the officer (N.T. 16).

18. On his visit on June 23, 2005 the officer found records indicating a raffle. The officer found that the items raffled off were a Jen Cheng dirt bike and \$500.00. There were also two consolation prizes of \$300.00. The tickets were sold for a drawing on May 29, 2005 and corresponded to the daily number from the Pennsylvania Lottery on that date. The raffle was not a detachable stub raffle. The ticket did not have the date and time of the drawing as required by the Small Games of Chance Act (N.T. 17).

19. The officer made an attempt to find out the cost of the dirt bikes involved in the raffle. Robinson stated that he purchased the mini bikes from a member who works at a motorcycle shop. The club received three of these Jen Cheng bikes, one of which was donated by a member of the club, and the others were purchased from the motorcycle shop. Robinson showed the officer a check stub showing that Check No. 4870 was made out in the amount of \$995.00 to a Charlie Sturgeon. There was no accompanying receipt (N.T. 18).

20. In examining the records, the officer found that Licensee also had a sign in drawing on the same date as the raffle for the dirt bikes.

21. The officer also went into the bingo hall which is part of the licensed premises. While he was in there he did an inspection and found three pull tab games which were not listed on the small games of chance record sheet that Licensee was maintaining. The officer asked Mr. Robinson to produce the records for these pull tab games and found that they were not on that record (N.T. 19).

22. Prior to departing from the licensed premises the officer asked Mr. Robinson for several items of recordkeeping that were missing that were needed to tie up the inspection. Mr. Robinson stated that he would provide the recordkeeping. The officer indicated that they would set up another date when Mr. Robinson could come to the district headquarters with his records where the officer could review them. Mr. Robinson agreed to that (N.T. 19-20).

23. On July 28, 2005 at 1:00 p.m. Mr. Robinson came to the district office of the Bureau and brought a box of records with him. The box contained some of the state store receipts which are given for a retail purchase of liquor. When the officer compared these receipts with the profit and loss statements that Robinson had brought with him he could not find these purchases and expenditures in the records. He asked Mr. Robinson where the expenditure was showing up if he bought liquor on a particular date. Robinson stated that anytime anyone went to get liquor money was taken out of the cash register and handed to the person. They would go to the liquor store, bring it back and they would fill out a petty cash receipt form for it. The purchase was then being entered under miscellaneous merchandise expense (N.T. 21-22).

24. The officer asked Mr. Robinson if he had a receipt for the dirt bike in question. Mr. Robinson did not provide him with such a receipt. He stated that he would continue to look for it, and as soon as he found it he would fax it to the officer (N.T. 22).

25. Mr. Robinson was never able to produce records to account for where the money went that was generated by small games of chance or even how the games were being played (N.T. 23).

26. Mr. Robinson brought a box of cash register tapes to the district office and explained to the officer that they were a week's worth of cash register tapes. They were for the period from July 3, 2005 through July 9, 2005. He showed the officer on the receipt where it was keyed out every time any kind of payout was made on small games of chance. He further explained that payouts were only being recorded when the winner wanted money. If someone wanted to be reimbursed with tickets, nothing was rung into the cash register. Therefore, there was no accounting for winnings which were reimbursed with tickets (N.T. 24).

27. Mr. Robinson also explained that there were no records kept on the cash register for games being kept in the bingo hall. Payments were made out of a cash box for these games (N.T. 24-25). In reviewing the tapes, the officer determined that for the period from July 3 through July 9, 2005 Licensee paid out \$7,302.00 on small games of chance, not including payouts that were made in the bingo hall or any of the tickets that were a ticket exchange and no money was given out (N.T. 25).

CONCLUSIONS OF LAW:

Counts 1, 2, 3 and 4 of the citation are **sustained**.

PRIOR RECORD:

Licensee has been licensed since January 1, 1934, and has had four prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 88-0435. 10 days suspension.

1. Sales to nonmembers.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (tickets).

Citation No. 89-1954. 10 days suspension.

1. Sales to nonmembers.

Citation No. 01-0313. Fine \$50.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pools). January 14 and 20, 2001.

Citation No. 03-1928. Fine \$150.00.

1. Failed to maintain complete and truthful records for a period of 2 years concerning the Local Option Small Games of Chance Act. October 30, 2003.

PENALTY:

Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

Under the circumstances of this case, the penalty imposed shall be as follows:

Count 1 - \$250.00 fine
Count 2 - \$250.00 fine
Count 3 - \$250.00 fine
Count 4 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee LOYAL ORDER OF MOOSE LODGE NO. 1562, pay a fine of \$1,000.00 within 20 days of the mailing date of this Order. In the event the aforementioned fine is not paid within 20 days from the mailing date of this Order, Licensee's license shall be suspended or revoked.

The fine must be paid by Treasurer's Check, Cashier's Check or Certified Check. **Personal checks, which includes business-use personal checks, are not acceptable.** Make check payable to the Commonwealth of Pennsylvania and mail to:

PLCB-Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg PA 17110-9661

Jurisdiction is retained pending final resolution of the penalty in this matter.

Dated this 14th day of August, 2006.

Daniel T. Flaherty, Jr., J.

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MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.