

Mailing Date: SEP 05 2007

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 05-2078
LIQUOR CONTROL ENFORCEMENT	:	06-0213
	:	(consolidated for Hearing)
	:	
	:	Incident Nos. W03-315204
v.	:	W03-322145
	:	
	:	LID - 3823
AMERICAN LEGION HOME ASSN.	:	
OF ANNVILLE	:	
35 S. MANHEIM STREET	:	
ANNVILLE, PA 17003-1823	:	
	:	
	:	
LEBANON COUNTY	:	
LICENSE NO. CC-5113	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Thomas M. Ballaron, Esquire

For Licensee  
James A. Snell, Esquire

**ADJUDICATION**

BACKGROUND:

**Citation No. 05-2078**

This proceeding arises out of a citation that was issued on October 13, 2005, by the

Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against AMERICAN LEGION HOME ASSN. OF ANNVILLE, License Number CC-5113 (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 August 8, 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(b) of the Local Option Small Games of Chance Act [10 P.S. §315(b)] in that during the period July 16 through 22, 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 third count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 901 of the Department of Revenue Regulations [61 P.S. §901] in that on January 1 through August 31, 2005, Licensee violated the Local Small Games of Chance Act, in that funds derived from the operation of games of chance were used for purposes other than those authorized by law.

The fourth 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 August 17, 2005, the licensed club, by its servants, agents or employes, violated the Local Option Small Games of Chance Act, in that you conducted drawings other than those authorized by law.

The investigation which gave rise to the citation began on July 25, 2005 and was completed on September 12, 2005; and notice of the violation was sent to Licensee by Certified Mail on September 20, 2005. The notice of violation was received by Licensee.

**Citation No. 06-0213**

This proceeding arises out of a citation that was issued on February 16, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against AMERICAN LEGION HOME ASSN. OF ANNVILLE, License Number CC-5113 (hereinafter "Licensee").

The citation contains two counts.

The first 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 periods October 1 through 7, October 8 through 14, October 15 through 21 and October 22 through 28, 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 second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 901 of the Department of Revenue Regulations [61 Pa. Code §901] in that during the period October 1 through 31, 2005, Licensee violated the Local Small Games of Chance Act, in that funds derived from the operations of games of chance were used for purposes other than those authorized by law.

The investigation which gave rise to the citation began on November 15, 2005 and was completed on December 14, 2005; and notice of the violation was sent to Licensee by Certified Mail on January 10, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on these matters on May 2, 2006 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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

**CITATION NO. 05-2078**

FINDINGS OF FACT:

COUNTS 1, 2, 3 AND 4

1. On August 8, 2005, an officer of the Bureau visited the licensed premises. He met with the club secretary, Bob Hartman at the door (N.T. 8).
2. The officer reviewed small games of chance records, and observed that payouts for the seven day period from July 16, 2005 through July 22, 2005 were at least \$7,285.00 (N.T. 9).
3. The officer also ascertained that if a game is not sold in its entirety, any unused portion of that game, such as a flare card or unplayed tickets were not maintained. Only winning tickets were maintained (N.T. 9).

4. The officer discovered that Licensee did not maintain a list or record of individuals winning prizes over \$100.00 including name, serial number of the game, and the amount of the prize (N.T. 9).
5. At this time the officer stopped the routine inspection and provided a records request for cash income and expense records as well as additional small games of chance records to be produced on August 17, 2005 (N.T. 9-10).
6. The officer returned to the licensed premises on August 17, 2005 with a second officer. While reviewing small games of chance records, they discovered that the total payout for the period from July 16 through July 22, 2005 was \$11,126.60 (N.T. 10).
7. The officers learned that Licensee was conducting a daily drawing. In addition to the daily drawing, Licensee held a 60/40 drawing on Saturday. For the 60/40 drawing, tickets were sold to club members at \$.50 a piece; and the winner of the drawing was awarded 60% of the proceeds and Licensee club retained 40% of the proceeds (N.T. 11).
8. The officer returned to the licensed premises on August 24, 2005. He questioned Mr. Rogers, the club treasurer, about the usage by the club of proceeds of small games of chance. Rogers explained that much of the proceeds from small games of chance were used to cover general operating costs of the club such as payroll and utility bills. A review of the records determined that as of August 24, 2005 only \$5,175.82 was dispersed from Licensee Home Assn. to the Connor-Stricker Post (N.T. 12-14).
9. On August 29, 2005 the officer contacted Mr. Rogers by telephone and requested further details about the small games of chance revenue. On September 2, 2005 Mr. Rogers left a message in which he related that the gross receipts for small games of chance for the period from January 1, 2005 through August 31, 2005 were \$650,461.60, and the total small games of chance payout and expenses were \$519,692.31. This produces a difference of \$130,769.29, which is the net revenue from the small games of chance (N.T. 15).
10. Of the difference of \$130,769.29 mentioned above \$5,175.82 was given to the Conner-Stricker Legion Post. The balance of this money was used to cover the operating costs of Licensee club (N.T. 16).
11. For the year 2005, Licensee had small games of chance revenue of \$865,894.00 and small games of chance expenses of \$679,007.00 making net proceeds for the year of \$186,887.00 (N.T. Exhibit L-1).

12. During the year 2005 Licensee made contributions to the Conner-Stricker American Legion Post in the amount of \$30,498.00 (N.T. Exhibit L-1).
13. The Conner-Stricker American Legion Post made charitable contributions in the amount of \$15,650.00 during the year 2004 and \$6,418.00 during the year 2005 (N.T. Exhibits L-10 and L-11).
14. The difference between the gross revenue from net receipts for small games of chance for the entire year 2005 (\$186,887.00) and the contributions to the Conner-Stricker American Legion Post (\$30,489.00) was \$156,398.00. This was used for general operating expenses of Licensee club (N.T. 66 and Exhibit L-1).
15. One member of Licensee club, a retired educator who has been a member for 38 years, visits the licensed premises five to six times a week. He stays an hour or two on each visit, depending on the conversation. He enjoys the pool table, dart board, and television sets as well as plenty of lively conversation. The conversation is usually what detains him (N.T. 93-94).
16. The aforementioned member has maintained his membership in Licensee club because he considers it a great place to go. He considers the atmosphere much better than the typical barroom, and the clientele of better quality. He feels that his membership has definitely benefited his emotional or social well being because he has a lot of friends, and if he didn't go to the licensed premises he probably wouldn't see them from one year to the next (N.T. 95-96).
17. Licensee holds a golf tournament in which members can play and can invite guests to play (N.T. 97-98).
18. A second member of Licensee club who is also a retired educator has been a member for 12 years. He considers himself one of their "newer members." He visits the licensed premises three times a week. He joined Licensee club after visiting the licensed premises as a guest. He feels that he has met "great people" at the licensed premises (N.T. 100102).
19. The aforementioned "second member" finds that when he visits the licensed premises, there is always someone there he knows. He has several friends there that are in their eighties who go there in the afternoon. He finds "great fellowship" there (N.T. 102).
20. The aforementioned "second member" feels he has derived social benefit from being a member of Licensee club. He enjoys the fellowship he experiences there. He socializes

inside and outside the club with 50 people that he did not know before he joined Licensee club (N.T. 103).

21. The "second member" has seen a number of elderly people at the licensed premises. He knows of one elderly gentleman who has had several heart attacks. He feels that belonging to the club has given him some peace of mind. He comes to the club about four times a week and he and his wife seem to be enjoying themselves when they are there (N.T. 104).

CONCLUSIONS OF LAW:

1. Count 1 of Citation No. 05-2078 is **sustained**.
2. Count 2 of Citation No. 05-2078 is **sustained**.
3. Count 3 of Citation No. 05-2078 is **dismissed**.
4. Count 4 of Citation No. 05-2078 is **sustained**.

**CITATION NO. 06-0213**

FINDINGS OF FACT:

COUNTS 1 AND 2

22. On November 17, 2005 the officer returned to the licensed premises to do a follow up investigation (N.T. 21).
23. While reviewing the small games of chance records kept by Licensee for the month of October 2005 the officer discovered that Licensee made the following total awards for the following seven day periods: for the period from October 1 through 7, 2005 - \$11,973.87; for the period from October 8 through 14 - \$10,848.67; for the period from October 15 through 21 - \$10,782.44; and for the period from October 22 through October 28 - \$10,210.15 (N.T. 22).
24. The board of directors of Licensee had advised employes to continue making payouts as usual despite being told about the \$5,000.00 limitation during the previous inspection (N.T. 24-25).
25. On December 14, 2005 the officer determined that, for the month of October 2005, gross receipts from small games of chance minus payouts and expenses to purchase new games was \$12,727.00 (N.T. 25).

26. Of the aforementioned \$12,727.00, \$4,212.26 was dispersed to various charities. The remainder was used to cover operational costs of Licensee, such as payroll and utility bills (N.T. 25-26).
27. Finding No. 15 is incorporated herein by reference.
28. Finding No. 16 is incorporated herein by reference.
29. Finding No. 17 is incorporated herein by reference.
30. Finding No. 18 is incorporated herein by reference.
31. Finding No. 19 is incorporated herein by reference.
32. Finding No. 20 is incorporated herein by reference.
33. Finding No. 21 is incorporated herein by reference.

CONCLUSIONS OF LAW:

1. Count 1 of Citation No. 06-0213 is **sustained**.
2. Count 2 of Citation No. 06-0213 is **dismissed**.

DISCUSSION:

ISSUES COMMON TO ALL COUNTS OF BOTH CITATIONS

OTHER SUFFICIENT CAUSE

Violations of the provisions of the Local Option Small Games of Chance Act [10 Pa.C.S. §311 et seq), hereinafter LOSGCA constitute “other sufficient cause” as that term is used in Section 471 of the Liquor Code [47 P.S. §4-471]. Thus, liquor licensees who have violated the provisions of the LOSGCA (supra) are subject to the penalties provided in Section 471 of the Liquor Code (supra).

The Supreme Court of Pennsylvania has held that violation of the criminal laws of the Commonwealth, under the appropriate circumstances constitutes “other sufficient cause” as that term is used in Section 471 (supra) *PA Liquor Control Board v. TLK, Inc.* 544 A.2d 931 (Pa. 1988).

Section 327 of the LOSGCA [10 Pa.C.S. §327] provides that anyone violating the LOSGCA is subject to criminal sanctions. Therefore violations of the LOSGCA by liquor licensees constitute “other sufficient cause” as that term is used in Section 471 of the Liquor Code (*supra*) where the appropriate conditions are present.

### SCIENTER

The scienter requirement has been met with respect to those counts in both citations where a violation has occurred.

The Supreme Court of Pennsylvania has held that in those cases where the subject conduct does not directly violate the Liquor Code or attendant regulations, “some element of scienter on the part of the licensee is required to endanger the liquor license.” (*TLK*, *supra*). In connection therewith, two principles were established by the court, to wit:

1. If a licensee knows or should have known of illegal activities of an employe or patron, the licensee is liable.
2. A licensee may defend his license by demonstrating he took substantial, affirmative steps to guard against a known pattern of illegal activities.

In this case it is clear that the club secretary and treasurer and board of directors were aware of the activities in question. Further, the record contains no indication that any steps were taken to prevent these activities. I, therefore, conclude that the necessary element of scienter is present as to all of those counts where a violation is found to have occurred.

With the foregoing in mind, I will now address the particular counts of both citations.

### CITATION NO. 05-2078 – COUNT 1

The record establishes that Licensee failed to keep records as required by the Regulations of the Pennsylvania Department of Revenue [61 Pa. Code §901.1 et seq].

Section 901.734(2) of the Regulations of the Department of Revenue, Chapter 901 pertaining to Local Option Small Games of Chance [61 Pa. Code §901.734(2)] reads as follows:

...(2) A punchboard or pull-tab game which is removed from play, unplayed punches or pull tabs and winning punches or pull tabs for prizes in excess of \$100.00 shall be retained by the licensed eligible

organization for at least 2 years following the last day of the month in which it was removed from play. The board, unplayed punches or pull tabs, flare and winning punches or pull tabs must remain available for inspection on the licensed premises...

In this case the officer ascertained that in situations where a game was not sold in its entirety, the unused portions of the game such as the flare card and unused tickets were not maintained. Licensee only maintained the winning tickets (See Finding No. 3).

Section 901.733(f) of the Small Games of Chance Regulations of the Department of Revenue [61 Pa. Code §901.733(f)] requires that when a person wins a cash prize of over \$100.00 or wins merchandise with a cash value of over \$100.00 from the play of a punchboard or pull tab deal, the licensee is required to make a record of the win. The record must contain the following information:

1. The serial number of the pull tab deal or punchboard from which the prize was won.
2. The name of the punchboard or pull tab deal.
3. The month, day and year of the win.
4. The amount of the prize won if the prize is cash.
5. A description of the prize won and its cash value if the prize is merchandise.
6. The printed full name of the winner.
7. The address of the winner which will include the street address, the city, the state and zip code.
8. The form number of the punchboard or deal.

Section 901.733(g) of the Small Games of Chance Regulations [61 Pa. Code §901.733(g)] requires that such records be kept by licensees for a period of two years.

In this case, the officer discovered that Licensee maintained no records of individuals winning prizes of over \$100.00 (See Finding No. 4).

Licensee has clearly failed to maintain the records as noted above, and Count No. 1 of Citation No. 05-2078, is therefore sustained.

CITATION NO. 05-2078 COUNT NO. 2 AND CITATION NO. 06-0213 COUNT NO. 1

The record establishes that the violations charged in both of these counts occurred, and the charges will, therefore, be sustained.

Section 315(b) of the LOSGC Act [10 P.S. §315(b)] provides as follows:

...(b) Weekly limit - No more than \$5,000 in cash or merchandise shall be awarded by any eligible organization in any seven day period.

With respect to Count No. 2 of Citation No. 05-2078 the record reflects that during the seven day period from July 16 through July 27, 2005 Licensee made payouts on small games of chance in the amount of \$11,126.60 (See Finding No. 6). Further with respect to Count No. 1 of Citation No. 06-0213, Licensee made payouts of more than \$5,000 in each of the seven day periods listed in that Count (See Finding No. 23). The findings in Count No. 2 of Citation No. 05-2078 and Count No. 1 of Citation No. 06-0213 are, therefore, sustained.

COUNT NO. 4 OF CITATION NO. 05-2078

Section 315(e) of LOSGC Act provides, in pertinent part, as follows:

...An eligible organization shall not conduct daily drawings during a period when a weekly drawing is taking place.

In this case, the record reveals that Licensee was conducting daily drawings during a period when "60/40 drawings" were held each Saturday (See Finding No. 7). In light of the above, Count No. 4 of Citation No. 05-2078 is sustained.

CITATION NO. 05-2078 COUNT NO. 3 AND CITATION NO. 06-0213 COUNT NO. 2

The proceeds from small games of chance were used for "public interest purposes" or for the purchase of games of chance. Count No. 3 of Citation No. 05-2078 and Count No. 2 of Citation No. 06-0213 must, therefore, be dismissed.

The record reveals that for the period January 1, 2005 through August 31, 2005 Licensee realized gross receipts from small games of chance in the amount of \$650,461.50. Of this amount \$519,692.31 was used to make payouts to winners and to purchase new games of chance. This left a balance of \$130,769.29. Of this balance \$5,175.82 was given to the Conner-Stricker Legion Post and the balance was used to cover the operating costs of Licensee club (See Finding Nos. 9 and 10).

The record further reflects that for the year 2005 Licensee had small games of chance gross revenue of \$865,894.00 and small games of chance expenses and payouts to winners of \$679,007.00 having net proceeds of \$186,887.00. During the year 2005 Licensee made

donations to the Conner-Stricker American Legion Post in the amount of \$30,498.00. The Conner-Stricker American Legion Post made charitable contributions of \$6,418.00 during the year 2005. The remaining net revenue from small games of chance for the year 2005 after deduction of the \$30,498 donated to the Conner-Stricker Legion Post was \$156,398. This amount was used for general operating expenses of Licensee club (See Finding Nos. 11, 12, 13 and 14).

In addition the record establishes that for the month of October 2005, gross receipts from small games of chance minus payouts to winners and expenses to purchase new games \$12,727.00. Of this amount \$4,212.26 was dispersed to various charities, and the remainder was used to cover the operational costs of Licensee such as payroll and utility bills (See Finding Nos. 25 and 26).

The question presented is whether Licensee's use of the net proceeds from small games of chance to defray the general operation expenses of Licensee club violates the Local Option Small Games of Chance Act (LOSGCA) [10 P.S. §311 et seq]. I believe it does not.

Section 314 of the LOSGCA [10 P.S. §314] provides, in part, as follows:

...All proceeds of games of chance shall be used exclusively for public interest purposes or for the purchase of games of chance as permitted by this act.<sup>1</sup>

Section 313 of the LOSGCA [10 P.S. §313] defines "Public interest purposes" in part as follows:

...One or more of the following:  
(1) Benefiting persons by enhancing their opportunity for religious or education advancement by relieving or protecting them from disease, suffering or distress by contributing to their physical, emotional or social well-being, by assisting them in establishing themselves in life as worthy and useful citizens or by increasing their comprehension and devotion to the principles upon which this nation was founded...(emphasis supplied)

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<sup>1</sup> Section 901.701(b) of the Local Option Small Games of Chance Regulations as promulgated by the Department of Revenue [61 Pa. Code §901.701(b)] contains virtually identical language.

The question in its essence becomes whether the use by Licensee of most of the net proceeds of small games of chance can be said to be “(1) Benefiting persons...by contributing to their...social well being.”

The term “social well being” is not defined in the LOSGCA nor in the attendant regulations.

Section 1921(b) of the Statutory Construction Act [1 Pa. C.S. §1921(b)] provides:

(b) When the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

Webster’s Illustrated Encyclopedia Dictionary defines the word “social” in part as: “(5) Fond of the company of others; sociable.”

Similarly Webster’s defines the term “well being” as: “The state of being healthy, happy or prosperous; welfare.”

The combination of the two terms clearly means happiness and/or health while in the company of others.

Further Section 313 of the LOSGCA (supra), when defining “public interest purposes” talks in terms of “benefiting persons.” The term “persons” is nowhere qualified to exclude members of the clubs such as licensees that are offering the small games of chance in question.

The record in this case clearly establishes that the operation of Licensee club contributes to the social well being of two members who testified at the hearing in this case (See Finding Nos. 15, 16, 17, 18, 19, 20 and 21). Since these members are clearly persons, the operation of the club qualifies as a “public interest” purpose.

Based upon the foregoing, I conclude that the use of the net proceeds of small games of chance to cover the operating costs of the club does not violate the LOSGCA, and Count No. 3 of Citation No. 05-2078 and Count No. 2 of Citation No. 06-0213 will be dismissed.

PRIOR RECORD:

Licensee has been licensed since August 22, 1944, and has had no prior violations. Licensee is, therefore, entitled to be treated as a first time offender.

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:

**Citation No. 05-2078**

- Count 1 - \$250.00 fine
- Count 2 - \$500.00 fine
- Count 3 – DISMISSED
- Count 4 - \$250.00 fine

**Citation No. 06-0213**

- Count 1 - \$1,000.00 fine and 15 days suspension
- Count 2 – DISMISSED

Licensee is warned that further violation of the type found in Counts 2 of Citation No. 05-2078 and Count 1 of Citation No. 06-0213 will result in penalties of increasing severity.

ORDER

THEREFORE, it is hereby ordered that Licensee AMERICAN LEGION HOME ASSN. OF ANNVILLE, pay a fine of \$2,000.00 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.

IT IS FURTHER ORDERED that the catering club license (including all permits) of AMERICAN LEGION HOME ASSN. OF ANNVILLE, License No. CC-5113 be suspended for a period of fifteen days **BEGINNING** at 7:00 a.m. on Monday, December 3, 2007 and **ENDING** at 7:00 a.m. on Tuesday, December 18, 2007.

Licensee is directed on December 3, 2007 at 7:00 a.m. to place the enclosed placard of notice of suspension (identified as Form No. PLCB-1925 and as printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Wine & Spirits Shoppes.

The Bureau is directed to visit and monitor the aforementioned licensed premises for compliance with this Order.

Licensee is authorized on December 18, 2007 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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 30<sup>th</sup> day of August, 2007.

Daniel T. Flaherty, Jr., J. an

**MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW**

AMERICAN LEGION HOME  
ASSN. OF ANNVILLE  
CITATION NO. 05-2078 & 06-0213

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**JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.**