

Mailing Date: November 15, 2007

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE, : Citation No. 05-2078  
BUREAU OF LIQUOR CONTROL :  
ENFORCEMENT :

vs. :

AMERICAN LEGION HOME : License No. CC-5113  
ASSOCIATION OF ANNVILLE :  
35 South Manheim Street :  
Annville, PA 17003-1823 :

Counsel for Licensee: James A. Snell, Esquire  
250 South Eighth Street  
Lebanon, PA 17042

Counsel for Bureau: Thomas M. Ballaron, Esquire  
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**AMENDED OPINION**

The Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) appealed from the Adjudication and Order of Administrative Law Judge Daniel Flaherty (“ALJ”), wherein the ALJ imposed a fine of one thousand dollars (\$1,000.00) and dismissed the third count of the citation against American Legion Home Association of Annville (“Licensee”).

The citation contained four (4) counts. The first count charged Licensee with violations of sections 471 and 493(12) of the Liquor Code [47 P.S. §§ 4-471, 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 employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years concerning the Local Option Small Games of Chance Act.

The second count of the citation charged Licensee with violations 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 between July 16 and 22, 2005, Licensee, by its servants, agents or employees, offered and/or awarded more than five thousand dollars (\$5,000.00) in cash or merchandise in a seven (7)-day period.

The third count of the citation charged Licensee with violations 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 between January 1 and August 31, 2005, Licensee, by its

servants, agents or employees, in that funds derived from the operations of games of chance were used for purposes other than those authorized by law.

The fourth count of the citation charged Licensee with violations 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, Licensee, by its servants, agents or employees, conducted drawings other than those authorized by law.

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court has defined “substantial evidence” to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers’ Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

On appeal, the Bureau contends that the ALJ committed an error of law in dismissing the third count of the citation. Specifically, the Bureau takes

issue with the ALJ's conclusion that Licensee's use of the net proceeds from its small games of chance to cover its operating costs did not violate the Local Option Small Games of Chance Act.

There is no dispute between the parties as to the material facts underlying the subject citation. Licensee held a Small Games of Chance permit, and sold small games of chance during the 2005 calendar year in the amount of \$865,894.00. (N.T. 32, 56, 62-63; Ex. L-1). Licensee spent \$679,007.00 purchasing additional small games of chance, as permitted by Small Games of Chance Act section 314. (N.T. 63; Ex. L-1). Licensee made charitable contributions in the amount of \$30,498.00 during 2005. (N.T. 32, 66; Ex. L-1). The remaining proceeds, in the amount of \$156,384.00 were used for Licensee's general operating expenses. (N.T. 17, 26, 66; Ex. L-1). Michael Miller and Thomas Sheaffer stated that their memberships with Licensee have benefited their emotional and social well-being, in that they see friends there. (N.T. 96, 103).

Section 901.701(b) of the Department of Revenue's Local Option Small Games of Chance Regulations [61 Pa. Code § 901.701(b)] requires that "[a] licensed eligible organization shall use games of chance proceeds

exclusively for public interest purposes or for the purchase of games of chance permitted by this act . . . .” .

In his Adjudication, the ALJ examined section 314 of the Local Option Small Games of Chance Act [10 P.S. § 314] which, like section 901.701(b) of the Department of Revenue’s Local Option Small Games of Chance Regulations, requires that “[a]ll proceeds of games of chance shall be used exclusively for public interest purposes or for the purchase of games of chance permitted by this act.” He noted that section 313 of the Local Option Small Games of Chance Act [10 P.S. § 313] defines “public interest purposes” as “[o]ne 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 of and devotion to the principles upon which this nation was founded.
- (2) Initiating, performing or fostering worthy public works or enabling or furthering the erection or maintenance of public structures.
- (3) Lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people.
- (4) Improving, expanding, maintaining or repairing real property owned or leased by an eligible organization and used for purposes specified in paragraphs (1), (2) and (3).

The term does not include the erection or acquisition of any real property, unless the property will be used exclusively for one or more of the purposes specified in this definition.

The ALJ determined that the issue was whether Licensee's use of the net proceeds of its small games of chance can be said to be "[b]enefiting persons . . . by contributing to their . . . social well-being . . ." in subsection (1). He found that, since the applicable regulations do not further define "social well-being" or "persons," use of standard definitions was in order. He concluded that, since nowhere in section 313 did the term "persons" exclude the members of the eligible organizations, and since two (2) persons who are Licensee's members stated that Licensee's operation contributes to their social well-being, then Licensee's use of the net proceeds from its small games of chance to cover its operating costs did not violate the Local Option Small Games of Chance Act.

The Bureau does not take issue with the ALJ's interpretation of the phrase "social well-being," nor his recognition that the enjoyment of fellowship of two (2) of Licensee's members enhances their social well-being. Instead, the Bureau finds fault in the ALJ's determination that the term "persons," as it is used in section 313 of the Local Option Small Games of

Chance Act, includes members of the organization that holds a small games of chance permit. The Bureau argues that such a broad interpretation would lead organizations to spend their small games of chance proceeds for nearly everything. The Bureau contends that the ALJ's interpretation is contrary to intent of the General Assembly and, therefore, is an error of law.

In support of its contention, the Bureau sets forth compelling arguments. First, using the mandate of section 1921(a) of the Statutory Construction Act [1 Pa. C. S. § 1921(a)], the Bureau looked at the intent of the Legislature which, specifically stated in section 312 of the Local Option Small Games of Chance Act, was that the playing of small games of chance for the purpose of raising funds by certain nonprofit associations, for the promotion of charitable or civic purposes, is in the public interest. [10 P.S. § 312]. Then the Bureau defined "charitable" as a gift for general public use, and "civic" as pertaining to a city or citizen/citizenship, then declared that, read together, returning profits from gambling to the community is the "pivotal condition upon which the right to operate as a gambling venue relies," and it is within this context that section 313 of the Local Option Small Games of Chance Act must be read.

The Bureau then analyzed section 313 of the Local Option Small Games of Chance Act and highlighted that subsection (1), which the ALJ relied upon to reach his conclusion, is replete with references to helping, protecting, advancing others, rather than the cause of the holder of the small games of chance permit. The Bureau declared that its interpretation of “public interest purpose” is consistent with the legislative intent expressed in section 312, and that it is supported by sections 1922(1) and 1922(5) of the Statutory Construction Act [1 Pa. C. S. §§ 1922(1), 1922(5)], which respectively require that contested provisions be viewed “in a manner that “favors the public interest as against any private interest,” and that one refrain from an interpretation of a provision that may be absurd, impossible of execution or unreasonable.

Finally, the Bureau looked at the practical effects of the ALJ’s interpretation of the Local Option Small Games of Chance Act relative to the third count of this citation. It stated that that if eligible organizations are not required to direct their gambling proceeds for the public good, then small games of chance proceeds will become a primary source of income for permit holders, and charitable giving will give way to the pressures of paying bills and enhancing business operations.

While the Board is unwilling to make the leap that, under the ALJ's interpretation of the Local Option Small Games of Chance Act, liquor licensees would stop making charitable donations and make gambling their primary sources of income, it finds that the Bureau's interpretation of section 313 of the Local Option Small Games of Chance Act and, by extension, section 901.701(b) of the Department of Revenue's Local Option Small Games of Chance Regulations is the proper one. The Board agrees that Licensee's use of the net proceeds from its small games of chance to cover its operating costs violates the Local Option Small Games of Chance Act.

Based upon the foregoing, the Board finds that the ALJ committed an error of law in dismissing the third count of the citation.

AMENDED ORDER

The decision of the ALJ dismissing the third count of the citation is reversed.

The Bureau's appeal is granted.

It is hereby ordered that this matter is remanded to the ALJ in order to impose an appropriate penalty consistent with this Opinion and Order.

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Board Secretary