

This citation¹ contains four counts.

The first count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471], Sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §5512 and/or §5513], and Section 320(a) of the Local Option Small Games of Chance Act [10 P.S. §320(a)]. The charge is that during the period May 12 through September 22, 2005, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises during a period when its Small Games of Chance License expired.

The second count charges 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]. The charge is that during the period February 1 through September 27, 2005, Licensee had 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 third count charges Licensee with a 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]. The charge is that on September 27, 2005, Licensee, by servants, agents or employes, 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 fourth count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding September 27, 2005.

An evidentiary hearing was conducted on July 7, 2006 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. Licensee was represented by its President, Mr. Robert Carter and its Secretary, Mr. Douglas Wagner.

After review of the transcript of that proceeding, the following Findings of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on September 13, 2005 and completed it on November 16, 2005. (N.T. 6-7)

1. Commonwealth Exhibit No. C-2, N.T. 7.

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 28, 2005. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

Count No. 1:

3. During the period charged, Licensee operated small games of chance when its license was expired. (N.T. 10-11)

Count No. 2:

4. During the period charged, Licensee used funds derived from its Small Games of Chance operation as that money was placed into the general account and used for such items as payroll.

Count Nos. 3 and 4:

5. During the period charged, Licensee's financial records were not up to date.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. Count Nos. 1, 2, 3 and 4 are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since February 1, 1939, and has had eight prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication No. 90-1044. Fine \$200.00.
Sales to nonmembers without prior arrangement.

Adjudication No. 92-1290. Fine \$500.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (machines).

Adjudication No. 93-1336. Fine \$200.00 and 3 days suspension.

Sales to nonmembers without prior arrangement.

Adjudication No. 94-1108. Fine \$500.00 and 5 days suspension.

Sales to nonmembers without prior arrangement.

Adjudication No. 96-1775. Fine \$200.00 and 1 day suspension.

1. Operated a club not in conformity with the Liquor Code definition of "club".
January 13, 1994 to July 25, 1996.
2. Failed to fulfill charter purposes.
January 13, 1994 to July 25, 1996.
3. Failed to charge and collect dues.
June 1, 1995 to July 25, 1996.

Adjudication No. 01-2141. Fine \$350.00. 1 day suspension and thereafter conditions.

1. Failed to maintain a photostatic or certified copy of the charter on the licensed premises.
August 6, 2001.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years immediately preceding August 6, 2001.

Adjudication No. 02-2217. Fine \$200.00.

1. Failed to maintain complete and truthful records for a period of 2 years concerning the Local Option Small Games of Chance Act.
February 19, 2002.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years immediately preceding June 14, 2002.

Adjudication No. 05-0390. Fine \$950.00.

1. Failed to maintain coil cleaning records.
January 1 through September 30, 2004.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years concerning the Local Option Small Games of Chance Act.
January 12, 2005.

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 Count Nos. 1, 2, 3 and 4 in this case.

I impose:

Count No. 1 – \$200.00 fine.

Count No. 2 – \$200.00 fine.

Count Nos. 3 and 4 – merged - \$100.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$500.00 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, Certified Check or Money Order. **Personal checks, which include business-use personal checks, are not acceptable.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail to:

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

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 31st day of July, 2006.

Felix Thau, A.L.J.

pm

MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER TO 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.