

Mailing Date: NOV 08 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0026
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-316808
v.	:	
	:	LID - 31872
WICONISCO FIRE ENGINE	:	
CO. NO. 1, INC.	:	
387 ARCH ST.	:	
P.O. BOX 246	:	
WICONISCO, PA 17097-0246	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. CC-6245	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Thomas M. Ballaron, Esquire

For Licensee  
Frank C. Sluzis, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on January 26, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against WICONISCO FIRE ENGINE CO. NO. 1, INC., License Number CC-6245 (hereinafter "Licensee").

The citation contains four counts.

The first count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5513 of the Crimes Code [18 Pa. C.S. §5513] in that on November 3, 2005, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

The second 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 November 14, 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 third count charges Licensee with violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)] in that 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 immediately preceding November 14, 2005.

The fourth count charges Licensee with violation of Sections 5.71 and 5.73 of the Liquor Control Board Regulations [40 Pa. Code §§5.71 and 5.73] in that on November 14, 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 August 22, 2005 and was completed on December 15, 2005; and notice of the violation was sent to Licensee by Certified Mail on December 23, 2005. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on November 9, 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:

FINDINGS OF FACT:

COUNT 1

1. On November 3, 2005 two officers of the Bureau entered the licensed premises at 6:00 p.m. Upon entry they observed a female bartender later identified as Bernice Ritzel. Ritzel was behind the bar rendering service to patrons seated around the bar area (N.T. 12).

2. The officers identified themselves to Ritzel and informed her that they were there to conduct a routine inspection. They asked her if the manager or any of the club officers were present at that time. She responded that she was the manager for the licensed premises (N.T. 13).

3. During the routine inspection, the officers observed three video devices that were plugged in. The video devices were not being played however, the video images on the machines would switch from track mode to simulated play mode. The track mode showed the individual prizes that would be awarded to players depending on what group of fruit or other symbol was displayed on the reels of the machine. The screen would switch then to simulated play mode which showed simulated reels showing various symbols which would spin and stop automatically (N.T. 13-14).

4. Mrs. Ritzel admitted to one of the officers that payouts were made on the aforementioned machines (N.T. 25).

COUNTS 2, 3 AND 4

5. During the aforementioned inspection the officers determined that Licensee had a valid liquor license which was posted as well as a valid small games of chance license which was also posted (N.T. 16).

6. The officers determined that pull tabs were being sold at the bar as well as punchboards. The officer also discovered that 50/50 raffles using sequentially numbered tickets were being conducted by individuals that were running bingo on the licensed premises (N.T. 16-18).

7. One of the officers approached Mrs. Ritzel and asked if she had access to the financial records and all other club records pertaining to the operation of the club. She responded that at that time she had access to some of the records but did not believe she had access to all of the required records for the two year period of time. The officer then completed a request for records in duplicate. He had Mrs. Ritzel sign both of the requests. She kept one and the officer kept one. The officer indicated he would be returning to complete the routine inspection based upon her being able to obtain the records (N.T. 18-19).

8. The officer returned to the licensed premises on November 14, 2005 (N.T. 32).

9. The officer asked Mrs. Ritzel if she had been able to obtain all the records that he requested. She stated at that point that she had not been able to obtain all of them. She further stated the farthest back she could go was August 25, 2004. She stated there had been a change of manager and that the records were in substantial disarray (N.T. 32-33).

10. Specifically, Mrs. Ritzel was unable to produce the following records:

Cash income and expense records for the entire 2 year period (N.T. 33).

Beer invoices for the two year period up to August 25, 2005. There were also invoices missing after August 25, 2005. (N.T. 34).

There were no invoices for food purchases, utility bills and other expenses for operating the licensed club (N.T. 34).

Mrs. Ritzel was unable to provide the officer with the amount of cash on hand as of the date of the inspection. This was mainly because she couldn't determine how many small games of chance had been sold that day or on any given day (N.T. 35).

Mrs. Ritzel was unable to produce liquor purchase invoices going back to 2003 (N.T. 35).

With respect to small games of chance, no record was being kept of individuals awarded more than \$100.00 on a given day. The amount of small games of chance that had been sold on a given day were not being recorded (N.T. 35).

Also with respect to small games of chance Licensee was not maintaining the flare cards and all games as required (N.T. 35).

11. Mrs. Ritzel provided the officers with a ledger that had columns on it. The main entries in the ledger were for food, liquor and beer sales. Thrown in among these figures were entries for what appeared to be individual games such as pull tabs and punchboards. The officer asked Mrs. Ritzel if she would identify exactly how many games were sold on any given day or in any seven day period. She was unable to provide the officer that information from the ledger (N.T. 36).

12. From the information provided it was impossible for the officer to tell whether Licensee was exceeding the limit of \$5,000.00 for seven day period in payouts on small games of chance (N.T. 36-37).

CONCLUSIONS OF LAW:

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

DISCUSSION:

COUNT 1

The record in this case indicates that the manager of the licensed premises made payouts on the video machines that were seized on the licensed premises. Since this establishes gambling activity, it is unnecessary to go into an analysis of whether the machines seized were gambling devices per se. Since there was in fact gambling activity, Count 1 of the citation is **sustained**.

COUNTS 2, 3 AND 4

The record clearly indicates that Licensee did not keep records available on the licensed premises for the required period of time, nor did Licensee maintain proper and complete records concerning the operation of the licensed business and the running of small games of chance. Consequently, Counts 2, 3 and 4 of the citation are also sustained.

PRIOR RECORD:

Licensee has been licensed since January 6, 1994, and has had three prior violations:

Citation No. 99-1334. Fine \$250.00.

1. Sales to nonmembers.

Citation No. 02-2026. Fine \$750.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machine). August 16, 2002.
2. Failed to keep records on the licensed premises. August 16, 2002.
3. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code. August 16, 2002.

Citation No. 04-0010. Fine \$600.00.

1. Sales to nonmembers. August 1 and 2, 2003.
2. Improper admission of members. August 15, 2003.
3. You conducted drawings other than those authorized by law. October 9, 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 - \$750.00 fine  
Count 2 - \$500.00 fine  
Count 3 - \$350.00 fine  
Count 4 - \$350.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee WICONISCO FIRE ENGINE CO. NO. 1, INC., pay a fine of \$1,950.00 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.

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

Dated this 26<sup>th</sup> day of October, 2007.

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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.**

**Detach here and submit stub with payment**

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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

Citation No. 06-0026