

Mailing Date: DEC 4 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation Nos. 06-0385
LIQUOR CONTROL ENFORCEMENT	:	06-0433X
	:	and 06-0734
	:	(as consolidated)
	:	
	:	Incident No. W06-322875
v.	:	W06- 324559
	:	W06-326071
	:	
	:	LID - 44968
T.J. SHOOTERS, INC.	:	
724-726 E. MARKET ST.	:	
DANVILLE, PA 17821-2139	:	
	:	
	:	
	:	
MONTOUR COUNTY	:	
LICENSE NO. R-AP-13042	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Andrew J. Lovette, Esquire

For Licensee  
Patrick T. O’Connell, Esquire

**ADJUDICATION**

BACKGROUND:

**Citation No. 06-0385**

This proceeding arises out of a citation that was issued on March 2, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter “Bureau”) against T.J. SHOOTERS, INC., License Number R-AP-13042 (hereinafter “Licensee”).

The citation contains two counts.

The first count charges Licensee with violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §4-406(a)(2) and 4-493(16)] in that on January 22, 2006, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5514 of the Crimes Code [18 Pa. C.S. §5514] in that on January 22, 2006, 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 investigation which gave rise to the citation began on November 29, 2005 and was completed on January 30, 2006; and notice of the violation was sent to Licensee by Certified Mail on February 8, 2006. The notice of violation was received by Licensee.

**Citation No. 06-0433X**

This proceeding arises out of a citation that was issued on March 9, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against T.J. SHOOTERS, INC., License Number R-AP-13042 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 493(26) of the Liquor Code [47 P.S. §4-493(26)] in that Licensee, by its servants, agents or employes, issued checks or drafts dated December 8, 2005, in payment for purchases of malt or brewed beverages, when it had insufficient funds in, or credit with the institution upon which drawn for the payment of such checks.

The investigation which gave rise to the citation began on December 29, 2005 and was completed on January 23, 2006; and notice of the violation was sent to Licensee by Certified Mail on January 26, 2006. The notice of violation was received by Licensee.

**Citation No. 06-0734**

This proceeding arises out of a citation that was issued on April 6, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against T.J. SHOOTERS, INC., License Number R-AP-13042 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 15.62(a) of the Liquor Control Board Regulations [40 Pa. Code §15.62(a)] in that on February 21, 2006, Licensee, by its servants, agents or employes, failed to post in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the premises, a Notice of Suspension.

The investigation which gave rise to the citation began on January 26, 2006 and was completed on February 21, 2006; and notice of the violation was sent to Licensee by Certified Mail on March 7, 2006. The notice of violation was received by Licensee.

On October 26, 2006, counsel for the Bureau filed a Motion to Merge Citation Nos. 06-0385, 06-0433X and 06-0734. The Motion was granted.

An evidentiary hearing was held on this matter on October 31, 2006 in the PA Department of Agriculture, 2130 County Farms Road, Montoursville, 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:

COUNTS 1, 2, 3 AND 4

1. As of January 22, 2006, Licensee did not hold a Sunday Sales Permit (N.T. Exhibit C-8).
2. On Sunday, January 22, 2006 at 2:50 p.m. an officer of the Bureau arrived at the licensed premises. As he approached the main door to the licensed premises he observed a sign 8 ½" x 11" taped on the door stating that a private party was being held (N.T. 11-12).
3. The officer entered the foyer area of the licensed premises and took a stool at the bar. He observed two female barmaids rendering service to seven patrons which were located at the opposite end of the bar (N.T. 12).
4. The officer observed that the patrons were wearing Pittsburgh Steeler jerseys and that a Pittsburgh Steeler pre-game show was on the television (N.T. 12).
5. As the officer sat the bar, a barmaid approached and the officer requested a Miller Lite draft beer. Before making the request he laid a \$5.00 bill on the bar. The barmaid poured the officer a Miller Lite draft beer and placed it on the bar in front of him. She did not take any currency from the officer and said that the beer was free.
6. While sitting at the bar, the officer heard a male patron seated at the other end of the bar ask who wanted to get on the football pool. He could see this individual shuffling papers on the bar surface (N.T. 15).

7. The officer left his position at the bar and walked down behind the patrons seated at the other end of the bar. He looked over the shoulders of these patrons and could see the papers that the one individual had been shuffling. On the papers he saw clearly marked, "\$5.00 pool." He saw names going down the right hand side of the papers and numbers going down the left hand side of the papers. Because of his training he recognized this as a football pool. At this point he identified himself as a liquor enforcement officer and showed his credentials. He told the individual he would have to take possession of the pool that he had (N.T. 16 and Exhibit C-7). At this point the officer identified himself the barmaid and requested to know who was in charge. A barmaid whose name was Ronda Keefer indicated that she was in charge (N.T. 18). The officer discussed with the barmaids whether the licensed premises had permission to be operating on Sunday. Neither Keefer nor the other barmaid could produce anything to show that Licensee had permission to be operating on Sunday (N.T. 18-19).

8. During the course of his investigation on that date the officer observed that the barmaids were serving alcoholic beverages to everyone that was seated at the far end of the bar and also to the officer.

9. The sole stockholder and officer of Licensee corporation made arrangements with a group of his patrons who wanted to have a fantasy football party on the licensed premises. The holders of the party supplied food and draft beer for the party, and Licensee supplied one of his bartenders to serve the food and the draft beer in his establishment. The draft beer was bought by the patrons for the purposes of the party. The holders of the party also supplied the food (N.T. 50-51).

10. The principal of Licensee corporation knew nothing about the football pool (N.T. 51).

11. On December 8, 2005 Licensee purchased malt or brewed beverages from Durdach Bros., Inc. In payment therefore, Licensee issued its check in the amount of \$378.14. The check was returned by Licensee's bank for insufficient funds (N.T. 40-41 and Exhibit C-11).

12. Licensee had been issued a warning letter on May 24, 2005 in reference to an NSF check issued to Durdach Bros., Inc. for the purchase of malt or brewed beverages which was returned NSF (N.T. 41 and Exhibit C-12).

13. On January 26, 2006 this office issued a Second Supplemental Order which among other things suspended Licensee's liquor license for a period of one day beginning at 7:00 a.m. on Tuesday, February 21, 2006 and ending at 7:00 a.m. on Wednesday, February 22, 2006 (N.T. Exhibit C-9).

14. On February 21, 2006 at 9:30 a.m. an officer of the Bureau arrived at the licensed premises. Upon arrival she observed a Danville Police officer standing outside of his car talking to a male individual. She waited until the conversation between the police officer and this individual terminated, and at approximately 9:50 a.m. she walked around the licensed premises. At that time she observed that the premises was closed but there was no Pennsylvania Liquor Control Board placard posted on the licensed premises (N.T. 31-32).

15. At 1:45 p.m. on February 21, 2006 the officer returned to the licensed premises. At this time she found a homemade placard positioned at the main entrance to the licensed premises which indicated that the licensed establishment was closed on that day due to Liquor Control Board Regulations and would reopen on February 22, 2006 at 8:00 a.m.

CONCLUSION OF LAW:

Count 1 of the citation is **sustained**.  
Count 2 of the citation is **dismissed**.  
Count 3 of the citation is **sustained**.  
Count 4 of the citation is **sustained**.

DISCUSSION:

COUNT 1

The record in this case establishes that alcoholic beverages were served on the licensed premises on Sunday, January 22, 2006 when Licensee did not have a Sunday Sales Permit. Licensee contends in defense that the service of alcoholic beverages was at a private party and that the alcoholic beverages served belonged to the people holding the party and not to the Licensee, and that Licensee had no part in the service of such beverages.

Unfortunately the facts as established in this case do not provide Licensee with a defense. The Commonwealth Court has held that when a liquor licensee permits others to use its premises and knows that alcoholic beverages will be available for consumption, those to whom the permission is given become the licensee's agents for purposes of determining whether the Liquor Code has been violated by their conduct. *Liquor Control Board v. Buffalo Tavern*, 544 A.2d 1125 (Pa. Cmwlth 1988).

In view of the fact that the service of alcoholic beverages on the licensed premises was on a Sunday at a time when Licensee did not have a Sunday Sales Permit, I must conclude that Count 1 of the citation is sustained.

COUNT 2

Count 2 of the citation must be dismissed for lack of scienter.

It is clear that the selling of football pools on the licensed premises is a violation of Section 5514 of the Crimes Code [18 Pa. C.S. §5514]. More specifically, permitting poolselling to take place on the licensed premises is a violation of Section 5514(5) [18 Pa. C.S. §5514(5)].

The Pennsylvania Supreme Court has held that where Licensee is charged with violation of Section 471 of the Liquor Code [47 P.S. §4-471] as “other sufficient cause,” the Bureau must establish scienter on the part of the licensee. *Pa. Liquor Control Board v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988). In the *TLK* case (supra) the Supreme Court held that before a license may be suspended or revoked for violation of the Crimes Code as other sufficient cause under Section 471 of the Liquor Code (supra) there must be a showing that Licensee knew or should have known of the misconduct in question. In this case, there is no showing that Licensee either knew or should have known that the party attendees were going to conduct a football pool on the licensed premises. Thus, the necessary scienter has not been established and this count of the citation must be dismissed.

### COUNT 3

In this case the record clearly establishes that Licensee issued a check in payment for the purchase of malt or brewed beverages, and the check was returned for insufficient funds. Further, Licensee had previously been issued a warning letter for and NSF check issued during the same calendar year. It is therefore clear that this count of the citation is sustained.

### COUNT 4

The record discloses that Licensee did not have an appropriate placard displayed during the entire time that the license was to be suspended on February 21, 2006. Therefore, although Licensee later in the day put up a homemade placard, Licensee was not technically in compliance with the order of the citation earlier in the day. Under these circumstances the charge in the citation must be sustained.

### PRIOR RECORD:

Licensee has been licensed since December 3, 1999, and has had four prior violations:

Citation No. 01-2153. Fine \$200.00.

1. Discounted the price of alcoholic beverages between 12:00 midnight and 2:00 a.m. July 5, 2001.

Citation No. 04-0962. Fine \$1,250.00.

1. Sales between 2:00 a.m. and 7:00 a.m. January 29 and May 8, 2004.

Citation No. 05-1224. Fine \$150.00. Fine not paid and license suspended 1 day and thereafter until fine paid.

1. Issued worthless checks in payment for malt or brewed beverages. April 19, 2005.

Citation No. 05-1306. Fine \$150.00.

1. Issued worthless checks in payment for malt or brewed beverages. May 13, 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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in Count 1 of this case.

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 Counts 3 and 4 of this case.

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

- Count 1 – Two days suspension
- Count 2 - dismissed
- Count 3 - \$200.00 fine
- Count 4 - \$250.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee T.J. SHOOTERS, INC., pay a fine of \$450.00 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 restaurant liquor license (including all permits) of T.J. SHOOTERS, INC., License No. R-AP-13042 be suspended for a period of two days **BEGINNING** at 7:00 a.m. on Monday, January 7, 2008 and **ENDING** at 7:00 a.m. on Wednesday, January 9, 2008.

Licensee is directed on January 7, 2008 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 January 9, 2008 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

IT IS FURTHER ORDERED that Count 2 of the citation be DISMISSED.

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

Dated this 14th day of November, 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. 06-0385, 06-0433X  
And 06-0734 (as consolidated)