

Mailing Date: JUN 09 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0665
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-325417
v.	:	
	:	LID - 3243
THE ITALIAN CITIZENS	:	
ENJOYMENT CLUB	:	
126 E. OAK ST.	:	
PITTSTON, PA 18640-2465	:	
	:	
	:	
	:	
LUZERNE COUNTY	:	
LICENSE NO. CC-2040	:	

**ADJUDICATION**

**BEFORE:** JUDGE THAU

**BACKGROUND:**

This proceeding arises out of a citation that was issued on March 31, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Italian Citizens Enjoyment Club (Licensee), License Number CC-2040.

The citation charges Licensee with violations of Section 5513 of the Crimes Code [18 Pa. C.S. §5513] which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as “other sufficient cause.” The charge is that on January 11, 12, 18, 19 and 22, 2006 and divers other occasions within the past year, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

Licensee has executed a Statement of Waiver, Admission and Authorization in which Licensee: admits to the violation(s) charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a summary of facts and prior citation history as provided by the Bureau, and waives the right to appeal this Adjudication.

Based upon the admission(s) of Licensee and the summary of facts provided by the Bureau, I make the following Findings of Fact and reach the following Conclusions of Law.

FINDINGS OF FACT:

1. On January 11, 2006, a Bureau Enforcement Officer entered the licensed premises. Licensee held a card tournament. The Officer paid \$55.00 to join in on the card tournament. Each player took a randomly assigned seat and was given a total of 3,000 points worth of colored poker chips, which were used to bet on hands of cards in a typical fashion of "Texas Hold'em" poker. The game continued until the predetermined number of finalist players ran out of chips. These last players received predetermined payouts of cash. The Officer also observed two electronic video poker machines that were set up and in operation.

2. On January 18 and 19, 2006, the Officer returned to the premises. The Officer again paid \$55.00 to participate in the card tournament that was being held. The Officer also observed a patron receive a \$50.00 payout from the bartender after accumulating credits on a video poker machine.

3. On January 22, 2006, two Bureau Enforcement Officers entered the licensed premises. Both Officers paid \$45.00 each to participate in the card tournament. After payouts were observed, one of the Officers contacted a raid detail. The raid detail seized the following: two electronic video poker machines, a tub of assorted poker chips, a tub of assorted playing cards, a small metal case with poker chips and dice, a large metal case with poker chips and dice, a flyer advertising another poker club tournament and dates, a cardboard box that contained the tournament point system charts, blinds payout charts, poker chip value charts, seat and table assignment cards, a sign-in notebook and \$2,726.00. Subsequently, it was determined that both machines were determined to be gambling devices per se.

CONCLUSIONS OF LAW:

The citation is **sustained** as charged. The "Texas Hold'em promotion also violates 40 Pa. Code §5.32(e).

## DISCUSSION

The manner in which the “Texas Hold’em” competition was held also violates 40 Pa. Code §5.32(e), pertaining to prohibiting certain licensees from permitting any event, tournament or contest or the awarding of prizes subject to specifically defined exceptions. “Event/tournament/contest” is defined as a competitive endeavor involving skill, speed, strength or endurance (40 Pa. Code §5.30).

One may inquire how is it that I have traversed the conclusion that varying forms of poker constitute unlawful gambling? Since a critical element in unlawful gambling is that of chance, how can I also conclude the “Texas Hold’em” promotion has attributes of skill so as to qualify as a tournament in violation of the pertinent regulation? This seemingly insurmountable obstacle is actually overcome with ease.

In *Com. V. Two Electronic Poker Game Machines*, 465 A.2d 973 (Pa. 1983), the Supreme Court of Pennsylvania concluded the three elements of unlawful gambling are: consideration, chance, reward. In determining whether the three elements were present for a series of gaming devices, the Court remarked that accounting devices on such gaming machines serve no other purpose but to promote unlawful gambling. The Court reasoned that such accounting systems are circumstantial proof of reward.

More recently in *Liquor Control Bd. V. Kehler*, 538 A.2d 979 (Pa.Cmwlt. 1988), the Commonwealth Court of Pennsylvania concluded that playing poker on a licensed premises constitutes “gambling.” In doing so, the Court remarked that it was not prepared to hold that playing poker was unlawful gambling in violation of the Crimes Code. Curiously, in the very next paragraph, the Court reiterated the three elements of unlawful gambling (consideration, chance, reward) were present in the card game of poker.<sup>1</sup>

I do not find the Pennsylvania Supreme Court’s decision in *Com. V. Two Electronic Poker Game Machines*, supra to be controlling when applied to the actual card game of poker. It is true various forms of poker were involved but those games were electronic simulations in which a participant attempts to prevail over a machine. In this endeavor, skill has virtually no meaning.

---

1. I find *Kehler*, supra to be a difficult pill to swallow. I suggest this is because the Court went to great lengths to avoid the real question of whether playing poker with cards violates the Crimes Code.

Few would seriously disagree that real poker requires skill. The decision to “hold” or “fold” or “call” has significant impact on the outcome. Indeed, one may prevail even without the best hand, by “bluffing.” One who displays a “poker face” purposefully is emotionless, avoiding any physical signal that might alert opponents to the value of his hand. I’m told some players even wear sunglasses so that opponents cannot see the reflection of cards in their eyes or read any reaction whatsoever.

I submit one method of reconciling the skill/chance conflict is to view the two not as opposites but as part of a continuum. Thus, even the electronic video game version of poker has a measure of skill even if in nano-proportion. While skill is an element in the person-to-person form of poker, one may conclude the chance to skill ratio is such that chance still predominates. It is therefore not inconsistent to conclude playing poker in tournament format is unlawful gambling as well as an event/tournament/contest.

With a little bit of statutory history, all of the above discussion could well be viewed as precatory. In 1984, the General Assembly adopted Liquor Code Section 476 (47 P.S. §4-476; Act 1984, May 9, P.L. 246 No. 54, Section 5). Entitled “Sporting Tournaments, new Section 476, authorized licensees to sponsor, hold or permit to be held on a licensed premises, or on premises contiguous or adjacent thereto, a dart, billiard, bowling, shuffleboard, rings or card tournament or contest with the award of prizes in the form of money, trophies, prizes or premiums.

Licensees quickly understood the wide berth this new provision gave them. There followed every conceivable form of otherwise unlawful gambling but arranged in a tournament format. In what most would consider record time, the General Assembly repealed Liquor Code Section 476 (Act 1985, February 28, P.L. 1, No. 1 Section 2). Section 3 of that Act went on to repeal all regulations of the Pennsylvania Liquor Control Board which implemented Liquor Code Section 476.

The conclusion is transparent. In repealing Liquor Code Section 476, our General Assembly has manifested its intent to render unlawful card tournaments. Consequently, current regulations of the Pennsylvania Liquor Control Board must be read in consort with that legislative intent.

PRIOR RECORD:

Licensee has been licensed since May 21, 1934, and has had two prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication No. 02-0672. Fine \$100.00.  
Failed to maintain records in conformity  
with Title 40 of the Pennsylvania Code.  
May 1, 2001 through March 22, 2002.

Adjudication No. 04-0233. 2 days suspension.  
Possessed or operated gambling devices  
or paraphernalia or permitted gambling or  
lotteries, poolselling and/or bookmaking on  
your licensed premises (sports pool).  
January 21, 2004.

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.

Licensee has requested a suspension be imposed instead of a fine. Apparently, the last suspension had no curative impact. Moreover, the unlawful activity in question not only involved a "Texas Hold'em" tournament but two gambling devices per se. Accordingly, I impose an \$800.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$800.00 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 31<sup>st</sup> day of May, 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.**