

Mailing Date: OCT 20 2006

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-0944C
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-329339
v.	:	
	:	LID - 46859
THE PENALTY BOX TAVERN, INC.	:	
T/A THE PENALTY BOX	:	
3277 PITTSTON AVE.	:	
SCRANTON, PA 18505-2905	:	
	:	
	:	
SCRANTON COUNTY	:	
LICENSE NO. R-AP-SS-2467	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Craig A. Strong, Esquire  
Pennsylvania State Police  
8320 Schantz Road, Second Floor  
Breinigsville, PA 18031

For Licensee  
John J. Brier, Esquire  
3738 Birney Avenue  
Moosic, PA 18507

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 3, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against The Penalty Box Tavern, Inc., t/a The Penalty Box (Licensee), License Number R-AP-SS-2467.

The citation<sup>1</sup> charges Licensee with a violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. The charge is that on March 15, 2006, Licensee, by servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one (1) male minor, nineteen (19) years of age.

An evidentiary hearing was conducted on September 7, 2006 at the Scranton State Office Building, PUC Hearing Room 318, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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 March 15, 2006 and completed it on March 21, 2006. (N.T. 8)

2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on July 21, 2006. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 9)

3. On March 15, 2006, the Bureau was engaged in an Age Compliance Check. At 6:25 p.m., a Bureau Enforcement Officer entered the premises. Several minutes later, the underage buyer entered the premises. (N.T. 9-10)

4. The underage buyer was nineteen years old on that date having been born January 12, 1987. He sat down at the bar counter. The barmaid asked him what he would like to drink. He ordered a Miller Lite. The barmaid asked for identification. The nineteen year old handed his valid and actual driver's license. The barmaid examined it and then gave the minor the requested beer. (N.T. 16-17)

5. After the minor was served the beer, he departed the premises to return with money. He returned to the premises and gave the barmaid money for the purchase. (N.T. 20)

6. A Bureau Enforcement Supervisor entered the premises after the sale of the Miller Lite beer to the minor had been consummated and the minor had left the premises for a second time to meet with that Supervisor. The Supervisor identified himself to the barmaid and advised her that she had just sold a beer to a nineteen year old. (N.T. 32-33)

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1. Commonwealth Exhibit No. C-2, N.T. 9.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged.

DISCUSSION:

It was Licensee's position that the barmaid did card the minor and the minor displayed identification which indicated he was of legal drinking age. Based on what I heard, I am convinced the barmaid read the information on the driver's license inaccurately.

Licensee nevertheless defends this matter by arguing that *CSC Enterprises v. State Police*, 782 A.2d 57 (Pa.Cmwlth. 2001), requires a dismissal. Of course, that case and its predecessor *Skoritowski v. Pennsylvania State police, Bureau of Liquor Control Enforcement*, 742 A.2d 704 (Pa.Cmwlth. 1999), are cases of statutory construction. The Commonwealth Court reasoned that the substitution of the word "may" for "shall" in Liquor Code Section 495 [47 P.S. §4-495] when it was amended in 1996, manifested a legislative intent to change what was an obligation to a choice. Accordingly, a licensee's defense of sales of alcoholic beverages to minors was narrowed only to require good faith.

It seems as a direct result of the Commonwealth Court's reasoning in *Skoritowski* (Supra) and *CSC Enterprises* (Supra), the Legislature again amended Liquor Code Section 495 to leave no doubt that a licensee's defense to the charge in question now includes one of three choices in addition to good faith.

The presentation of a valid identification card described in Liquor Code Section 495(a) [47 P.S. §4-495(a)] accompanied by one of three options: completion of a form similar to that found in Liquor Code Section 495(a); maintenance of a photograph, photocopy or other visual representation of the identification card [Liquor Code Section 47 P.S. §4-495(f)]; use of a transaction scan device as described in Liquor Code Section 495(g) [47 P.S. §4-495(g)].

In this matter, Licensee engaged none of those options.

PRIOR RECORD:

Licensee has been licensed since October 19, 2000, and has had three prior violations:

Adjudication No. 01-0317. Fine \$550.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pool). January 28, 2001.
2. Sold an unlimited or indefinite amount of alcoholic beverages for a fixed price. January 28, 2001.

Adjudication No. 03-1808. Fine \$150.00.

Used loudspeakers or devices whereby music could be heard outside.  
September 13, 2003.

Adjudication No. 05-1018. Fine \$300.00.

Used loudspeakers or devices whereby music could be heard outside.  
February 26 and March 27, 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 this case.

I impose a \$1,000.00 fine.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,000.00 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 11<sup>th</sup> day of October, 2006.

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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.**