

Mailing Date: FEB 28 2007

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 06-1192
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-319469
v.	:	
	:	LID - 4058
HOME ASSN. RED LION POST 543	:	
AMERICAN LEGION	:	
23 E. BROADWAY	:	
RED LION, PA 17356-1401	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. CC-5713	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Andrew J. Lovette, Esquire  
Pennsylvania State Police  
3655 Vartan Way  
Harrisburg, PA 17110

For Licensee  
Larry C. Heim, Esquire  
345 East Market Street  
York, PA 17403-5614

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on May 18, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Home Assn. Red Lion Post 543 American Legion (Licensee), License Number CC-5713.

The citation<sup>1</sup> contains five counts.

The first count charges Licensee with a violation of Sections 5.71, 5.72, 5.73 and 5.74 of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §5.71, §5.72, §5.73 and §5.74]. The charge is that on March 30, 2006, Licensee, by servants, agents or employes, failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

The second count charges Licensee with violations of Sections 401(b) and 406(a)(1) of the Liquor Code [47 P.S. §4-401(b) and §4-406(a)(1)]. The charge is that on October 29 and December 9, 2005, Licensee, by servants, agents or employes, sold alcoholic beverages to nonmembers.

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 March 30, 2006, Licensee, by servants, agents or employes, failed to maintain complete and truthful records covering the operation of its 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 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 on March 30, 2006, Licensee 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 fifth count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 315(b) of the Local Option Small Games of Chance Act [10 P.S. §315(b)]. The charge is that during the periods January 15 through 21, January 22 through 28, February 12 through 18 and February 19 through 25, 2006, Licensee, by servants, agents or employes, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period.

An evidentiary hearing was conducted on January 17, 2006 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

This matter was presented by way of Stipulations of Fact.

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1. Commonwealth Exhibit No. C-2, N.T. 12.

FINDINGS OF FACT:

1. The Bureau began its investigation on October 4, 2005 and completed it on March 30, 2006. (N.T. 12)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 21, 2006. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 11)

Count No. 1:

3. On March 30, 2006, a Bureau Enforcement Officer conducted a routine inspection of the licensed premises at a time when it was open and operating. Licensee did have member application information. The investigation of the proposed member was conducted by posting membership applications on a board. None of the information on the application was verified any other way. (N.T. 20-22)

4. Licensee intends to verify information via some identification, such as a driver's license. (N.T. 29)

5. Licensee had no financial records for the time period November to December 2004. (N.T. 30)

6. The financial records Licensee did have beginning from November, 2005 up to the date of the inspection, failed to record the finances for Licensee's only salaried employe. There was no record of such an expense. (N.T. 35)

7. Licensee's records were further deficient in that those records had no information regarding the election and appointment of club officers. (N.T. 39)

Count No. 2:

8. On the two dates charged, an undercover Bureau Enforcement Officer was able to be served alcoholic beverages. The Officer is not a member of the organization. (N.T. 14-15)

Count No. 3:

9. During the inspection of March 30, 2006, the Officer discovered that Licensee failed to maintain independent records regarding names and addresses of winners in excess of \$100.00. Licensee also failed to report the amount of income derived from each individual game. Licensee failed to record the number of tickets in each game as well as the cost of each game to Licensee. (N.T. 43-44)

Count No. 4:

10. Some of the proceeds from the Small Games of Chance operation were used to repair plumbing on the premises and to replace broken appliances. (N.T. 45)

Count No. 5:

11. Licensee awarded in excess of \$5,000.00 in cash for the following seven day period: January 15 through January 21, 2006 - \$18,712.00; January 22 through January 28, 2006 - \$18,956.00; February 12 through 18, 2006 - \$10,075.00; February 19 through February 25, 2006 - \$15,141.00.

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, 4 and 5 are **sustained** as charged.

DISCUSSION:

At the hearing, I remarked the Bureau may be estopped from charging Licensee with a violation of failing to keep records for a period of two years because of the one year limitation in Liquor Code Section 471. I have since thought out this issue more carefully and conclude the actual violation date from which one calculates the one year statute of limitations is the day the records were discovered to be deficient for a period of two years prior thereto.

PRIOR RECORD:

Licensee has been licensed since October 8, 1974, and has had one prior violation since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-3):

Adjudication No. 05-1381. Fine \$800.00.

1. Failed to maintain complete and truthful records for a period of 2 years concerning the Local Option Small Games of Chance Act. June 2, 2005.
2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7 day period. April 17 through 23, 2005.
3. Failed to conduct a catered event in conformity with Title 40 of the Pennsylvania Code. May 13, 2005.
4. Used funds derived from the operation of games of chance for purposes other than those authorized by law. June 9, 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, 4 and 5 in this case.

I adopt the jointly recommended penalty of a \$1,000.00 fine and a 5 days suspension as to Count No. 5.

- Count No. 1 - \$100.00 fine.  
Count No. 2 - \$350.00 fine.  
Count No. 3 - \$200.00 fine.  
Count No. 4 - \$200.00 fine.  
Count No. 5 - \$1,000.00 fine and 5 days suspension.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$1,850.00 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

**Imposition of Suspension**

THEREFORE, it is hereby ordered that the Catering Club liquor license (including all permits) of Home Assn. Red Lion Post 543 American Legion, License No. CC-5713, be suspended for a period of five days, **BEGINNING** at 7:00 a.m., on Monday, May 7, 2007, and **ENDING** at 7:00 a.m., on Saturday, May 12, 2007.

Licensee is directed on Monday, May 7, 2007, at 7:00 a.m., to place a 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 Saturday, May 12, 2007, at 7:00 a.m., to remove the placard of suspension and return its license to its original wall location.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 20<sup>th</sup> day of February, 2007.

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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.**