

Mailing Date: MAY 28 2009

[Appeal](#)

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

| | | |
|-----------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 06-2592 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W03-337434 |
| | : | |
| v. | : | |
| | : | LID - 23110 |
| | : | |
| THE MECHANICSBURG CLUB | : | |
| 333 HEINZ STREET | : | |
| MECHANICSBURG PA 17055-3211 | : | |
| | : | |
| | : | |
| | : | |
| CUMBERLAND COUNTY | : | |
| LICENSE NO. CC-5354 | : | |

BEFORE: JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement
Andrew Lovette, Esquire

For Licensee
P. Richard Wagner, Esquire

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on November 16, 2006, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against THE MECHANICSBURG CLUB, License Number CC-5354 (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 Sections 5512 and/or 5513 and/or 5514 of the Crimes Code [18 Pa. C.S. §5512 and/or 5513 and/or 5514] in that on August 28, September 4, 6, 2006, and divers other occasions in the past year, 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 5.71 and 5.74 of the Liquor Control Board Regulations [40 Pa. Code §5.71 and 5.74] in that on September 19, 2006, and divers other occasions in the past year, Licensee, by its servants, agents or employes, failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

The third count charges Licensee with violation 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)] in that during the periods July 31 through August 6, August 7 through 13, August 14 through 20 and August 21 through 27, 2006, Licensee, by its servants, agents or employes, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven day period.

The fourth 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 September 27, 2006, and divers occasions in the past year, 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 investigation which gave rise to the citation began on August 7, 2006 and was completed on October 5, 2006; and notice of the violation was sent to Licensee by Certified Mail on October 26, 2006. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on August 23, 2007 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. The hearing was continued and finished on November 17, 2008

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. On September 6, 2006, an officer of the Bureau entered the licensed premises at 10:35 a.m. There were six bartenders on duty at that time (N.T. 8-9).
 2. The officer identified himself to one of the bartenders, Mr. Charles Sechrist by badge and credentials and asked if there were any club officers present (N.T. 9).
 3. The club president, John Renninger appeared. The club treasurer, Charles Way was also present. The club manager, Mike Gallagher was summoned to the premises. The officer identified himself to these three individuals and told them he was there to conduct a “routine inspection” of the club (N.T. 9-10).
 4. The officer proceeded to the office area of Licensee club where he reviewed the charter and bylaws for Licensee club. He also obtained membership information concerning the classes of membership and the number of members (N.T. 10).
 5. After completing the review of the aforementioned documents, the officer returned to the barroom area to conduct a physical inspection of the bar counter area. He initially approached Mr. Sechrist’s work station. He went behind the service side of the bar counter. He immediately took notice that there was a metal cash box on the island countertop behind the bar (N.T. 10-11).
 6. The officer looked in the cash box and found an NFL football pool (N.T. 11).
 7. The officer also found in the cash box the following items:
 - (a) A payment sheet for individuals and pairs of individuals who had paid to play in the pool.
 - (b) The actual pool itself entitled “2006/2007 – 33 Football pool”.
 - (c) 11 small manila envelopes each containing \$170.00 with names of individuals or nicknames written on the outside.
- (N.T. 11-13 and Exhibit C-5).
8. Upon questioning Mr. Sechrist the officer learned that the pool belonged to a club member named Mr. Sabochik and that Mr. Sechrist was assisting Mr. Sabochik in operating the pool by accepting payments from persons wishing to participate in the pool. For each individual or pair of participants, the fee for the entire 17-week NFL season was \$170.00 or \$10.00 per week (N.T. 16-17).
 9. The officer learned that the weekly payout for the pool would be \$320.00. The pool would run from one week to the next during the NFL season. If, during a particular week a team

- would score exactly 33 points, the individual or pair of individuals that had that particular team in the pool would win \$320.00. In the event that none of the NFL teams scored exactly 33 points to designate a winner, the pot of \$320.00 would carry over to the next week when the pot would be \$640.00 (N.T. 17).
10. The officer observed postings throughout the barroom area of the licensed premises that warned persons not to engage in bookmaking or selling football spread tickets (N.T. 19).
 11. The officer discovered a number of cork bulletin boards with tickets posted on them. On one of these bulletin boards he observed that the results of the drawing book were posted. There was a record keeping sheet which contained the results of a September 4, 2006 weekly drawing. In looking at the record the officer became aware that for that date there were seven different \$500.00 pots and an eighth partial pot (N.T. 20-21 and Exhibit C-6).
 12. The consideration for participants in the weekly drawing was \$1.00 (N.T. 21).
 13. There were multiple drawings and winners on Monday, September 4, 2006 (N.T. 21-22).
 14. The officers also discovered the record of the weekly drawing on August 28, 2006. There were eight pots available and a ninth partial pot. The record shows that there were two \$250.00 winners and one \$500.00 winner. There was also a winner of the partial pot, and \$35.00 had been paid out on that (N.T. 62 and Exhibit C-7).
 15. The officer's attention was drawn to another posting on the bulletin board entitled "\$100.00 loser drawing" for the date of August 26, 2006. When a member purchases a pull tab ticket which is a loser, the member may put his member number on the ticket and throw the ticket into a jar for a chance at another drawing. The member pays a consideration for each ticket he places in the loser drawing jar. There were four \$100.00 loser drawings and a fifth partial for \$23.00 on August 28, 2006 (N.T. 24-25 and Exhibit C-8).
 16. The officer also found a posting for losers drawings for September 4, 2006. The posting shows that there were two \$100.00 drawing and a partial drawing of \$84.00. The winning tickets were attached to the card as well as the winning member's club number and name (N.T. 25-26 and Exhibit C-9).
 17. The officer found posted on the bulletin board the winners of 50/50 drawings. These drawings involved the sale of double coupon sequentially numbered tickets. The tickets are torn in half upon sale. Each half bears the same number. One half is given to the player. The other half is put into the pot for the drawing. The posting found was for drawings held on September 4, 2006. These were two double coupon tickets for pots worth \$500.00 and one ticket for a partial pot of \$54.00 (N.T. 26-28 and Exhibit C-10).

18. The officer also found posted on the bulletin board a winning ticket for a merchandise raffle for a water cooler/fridge. This raffle again used the double coupon sequentially numbered tickets. The drawing was held on September 4, 2006 (N.T. 28-29 and Exhibit C-11).
19. The officer made a request for records that he would need to review on a return visit in order to complete the inspection. He also made arrangements with Mr. Renninger and Mr. Gallagher to return on another date. The specific records that he requested were: all financial records required by Title 40, to include itemized cash income and expense records; liquor and beer purchase invoices for the past two years; operating invoices to include small games of chance including income and expense records related to small games of chance; bank statements; cancelled checks; cash register tapes and payroll records (N.T. 30-31).
20. The officer also requested: minutes of club meetings; a listing of current club officers with full name, address and telephone number (N.T. 31).
21. The officer further requested small games of chance recordkeeping be made available including annual records, operating week records, itemized records per game, and records concerning use of proceeds. Also requested were catering records (N.T. 31-32).
22. A written request for records was made by the officer which specified all of the records indicated above. This was presented to Mr. Renninger who signed the request and retained a copy (N.T. 32 and Exhibit C-12).
23. On September 27, 2006 the officer returned to the licensed premises to complete the club routine inspection. At that time, he met with Mr. Renninger, Mr. Gallagher and the bartender, Mr. Sechrist (N.T. 33).
24. In reviewing the minutes of meeting of Licensee club held on September 19, 2006 the officer noted that while a list of names of new member applicants was attached to the minutes, the dates of application did not accompany the information for the new member applicants (N.T. 34-35 and Exhibit C-13).
25. With respect to small games of chance the officer found that the only records being maintained by Licensee were tickets for individual prizes in excess of \$100.00 (N.T. 3637).
26. The officer asked if there was any documentary evidence of income and expenditures with respect to the operation of small games of chance. Mr. Gallagher produced the profit and loss statement for Licensee club for the period from September 2005 through August, 2006. This statement listed under the general heading, "1 Entertainment (SGC Income) some 35

different sources of income from small games of chance with a total income shown of \$1,686,829.00. Licensee provided no records detailing the items found in the profit and loss statements (N.T. 37-40 and Exhibit C-14).

27. The officer explained to Mr. Gallagher and Mr. Renninger that he was obligated to identify what the operating week payouts on small games of chance were for Licensee. Mr. Gallagher indicated that he would be able to identify these operating week payouts. On October 5, 2006, Mr. Gallagher delivered a sheet of paper upon which the following total payout figures on small games of chance made by Licensee during the following seven day periods:

July 31-August 6, 2006 - \$61,770.00
August 7-13, 2006 - \$56,454.00
August 14-20, 2006 - \$58,529.00
August 21-27, 2006 - \$68,925.00

(N.T. 42-46 and Exhibit C-15).

CONCLUSIONS OF LAW:

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

DISCUSSION:

COUNT 1

Licensee held several drawings for different lotteries on each of the days enumerated in Count No. 1 of the citation. All but one of these lotteries on each day was not entitled to exemption under the Local Option Small Games of Chance Act (LOSGCA) [10 P.S. §311 et seq.], and were therefore illegal lotteries maintained by Licensee which constitutes “other sufficient cause” as that term is used under Section 471 of the Liquor Code [47 P.S. §4-471].

Violation of a gambling statute by a liquor licensee is considered “other sufficient cause” as that term is used in Section 471 of the Liquor Code (supra), thus subjecting the licensee to the penalties provided by that section. *Mar-Kodis Diner, Inc. v. Commonwealth of PA Liquor Control Board*, 522 A.2d 940 (Pa. Cmwltth 1987).

Section 5512 of the Crimes Code [18 Pa. C.S. §5512] makes it unlawful to set up or maintain any unlawful lottery or numbers game. The term “unlawful” as used in this section is defined to mean, “...not specifically authorized by law.”

The LOSGCA (supra) permits organizations holding Local Option Small Games of Chance licenses to conduct weekly drawings, which are forms of lotteries.

Section 901.791(a) of the Local Option Small Games of Chance Regulations [61 Pa. Code §901.791(a)] provides in part, as follows:

(a) A licensed eligible organization may sell chances for and hold only one weekly drawing during an operating week...

In this case the record established that Licensee held multiple weekly drawings on the dates enumerated in Count No. 1 of the Citation (See Findings No. 11-14). All but one of these drawings on each of these dates was not authorized by the LOSGCA (supra) or its attendant regulations (supra) and was an unlawful lottery under Section 5512 of the Crimes Code (supra).

In addition the record establishes that Licensee permitted football pools to be conducted on the licensed premises. Such conduct is in violation of Section 5514 of the Crimes Code [18 Pa. C.S. §5514(5)] and also subjects Licensee to the penalty provisions of Section 471 of the Liquor Code (supra).

Section 5514(5) of the Crimes Code (supra) provides that a violation of that Section occurs when a “person” being the owner, lessee or occupant of any premises, permits the same to be used, for the purpose of pool selling or bookmaking.

In this case, during an inspection by an officer of the Bureau, the officer found, in plain sight, on an island behind the bar a cash box which contained an NFL football pool payment sheet for individuals who had won the pool and manila envelopes containing cash for the winners of the pools (See Findings 6 and 7).

A bartender named Sechrist maintained that the pool belonged to a club member, and that he (Mr. Sechrist) accepted payments from persons who wished to participate (See Finding 8).

It is therefore clear that Licensee permitted pool selling on the licensed premises which also makes Licensee under appropriate circumstances subject to the penalty provisions of Section 471 (supra).

The Supreme Court of Pennsylvania has mandated that when a licensee has been found to have committed a violation which is classified as “other sufficient cause,” some element of scienter must be present before the penalties set forth in Section 471 of the Liquor Code (supra) may be applied. The test set forth by the court is as follows:

1. Whether the licensee knew or should have known of the illegal activities by an employe or patron. If so, the licensee is liable.
2. A licensee may defend his license by demonstrating he took substantial, affirmative steps to guard against a known pattern of illegal activities.

Pa. Liquor Control Board v. TLK, Inc., 544 A.2d 931 (Pa. 1988).

In this case, it is clear that the officers of Licensee were aware of the multiple weekly drawings since the results were openly posted on bulletin boards. As to the football pool, I conclude that if the officers of Licensee were not aware of this activity they should have been since the cash box was in plain sight behind the bar and the bartenders were actively taking bets.

I do not believe that the presence of signs throughout the bar room area warning persons not to engage in bookmaking or selling football spread tickets meets the test of “substantial affirmative steps” under *TLK* (supra). It appears that these signs represented a token effort which was largely disregarded by employes and members.

Based upon the foregoing, I conclude that the scienter required under *TLK* (supra) is present and the charge in Count No. 1 of the citation is sustained.

COUNT 2

The minutes for the meeting of Licensee club held on September 19, 2006 did not contain all of the information required by the regulations for applicants for membership.

Section 5.74(2) of the Regulations of the Liquor Control Board [40 Pa. Code §5.74(2)] requires that club licensees shall maintain minute books which shall contain, among other things:

- ...(2) The names and dates of applicants for membership and the dates the members were admitted and whether ballots were taken.

In this case, the officer found that, with respect to the minutes for the meeting held on September 19, 2006 the names of the new members were attached to the minutes but the dates of application did not accompany that information (See Finding No. 24). Consequently, Count No. 2 of the citation is sustained.

ISSUE COMMON TO COUNTS 3 AND 4

OTHER SUFFICIENT CAUSE

The Supreme Court of Pennsylvania has held that violation of the criminal laws of the Commonwealth, where appropriate scienter is present constitutes “other sufficient cause” as that term is used in Section 471 of the Liquor Code (supra). *Pa. Liquor Control Board v. TLK, Inc.* (supra).

Section 327 of the LOGSCA [10 Pa. C.S. §327] provides that anyone violating the LOGSCA is subject to criminal sanctions. Therefore violations of the LOGSCA by liquor licensees constitute “other sufficient cause” as that term is used in Section 471 of the Liquor Code (supra) where the appropriate scienter is present.

With the foregoing in mind I will address Counts 3 and 4 of the Citation.

COUNT 3

The record establishes that Licensee made payouts on small games of chance during the four weekly periods between July 31, 2006 and August 27, 2006 which significantly exceeded \$5,000.00 in each of these periods. The charge in Count No. 3 is, therefore, sustained.

Section 315(b) of the LOGSCA [10 P.S. §315(b)] provides as follows:

...(b) Weekly limit – No more than \$5,000.00 in cash or merchandise shall be awarded by any eligible organization in any seven day period.

In this case the record establishes that licensee paid out on small games of chance during the four 7-day periods between July 31, 2006 and August 27, 2006: \$61,770.00, \$56,454.00, \$58,529.00 and \$68,925.00 consecutively (See Finding No. 27).

Since the violations within this count fall within the “other sufficient cause” language of Section 471, my comments concerning scienter are incorporated herein by reference.

In light of the above, I conclude that the charge in Count 3 of the citation is sustained.

COUNT 4

Licensee’s failure to keep any records with respect to small games of chance except tickets for individual prizes in excess of \$100.00 was in violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)], Section 311 of the SGOCA [10 P.S. §311] and the Small Games of Chance Regulations of the Department of Revenue [61 Pa. Code §901.1 et seq.].

Section 493(12) of the Liquor Code (supra) requires licensees to maintain complete and accurate records covering the operation of the licensed business for a period of two years.

Section 319 of the LOSGCA [10 P.S. §319] authorizes the Department of Revenue to promulgate regulations to carry out the provisions of the LOSGCA.

Section 317(f) of the LOSGCA [10 P.S. §317(f)] requires a licensee to make and keep such records as the Department of Revenue shall prescribe and make such records available as required by the Department of Revenue pursuant to regulation.

Section 901.461 of the Regulations of the Department of Revenue [61 Pa. Code §901.461] requires that licensees maintain records regarding small games of chance for a period of two years. Further, this section also requires eligible organizations keep and maintain annual records of the activities related to small games of chance with separate totals of activities for each operating week.

The specific records which an eligible organization is required to keep are found at Section 901.462 through 901.467 [61 Pa. Code §901.462 through 901.467].

Finally, Section 901.468 of the Regulations of the Department of Revenue [61 Pa. Code §901.468] again provides that records including invoices shall be maintained for a minimum of two years.

As previously indicated, the only records being maintained by Licensee with respect to small games of chance were tickets for individual prizes in excess of \$100.00 (See Finding No. 25).

Since the violation in this Count falls partially within the “other sufficient cause” language of Section 471 of the Liquor Code (supra) my comments regarding scienter as found in Count No. 1 are incorporate herein by reference. Here, as in Count No. 1, it is obvious that the officers of Licensee club were aware of what records were not being kept with respect to local option small games of chance.

Based upon the foregoing, Count No. 4 of the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since September 26, 1952, and has had two prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 89-1041. Fine \$900.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.

Citation No. 05-0611. Fine \$250.00.

1. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven day period. February 13 through 19, 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 this case.

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

Count 1 - \$350.00 fine

Count 2 - \$250.00 fine

Count 3 - \$1,000.00 fine and 10 days suspension

Count 4 - \$1,000.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee THE MECHANICSBURG CLUB, pay a fine of \$2,600.00 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 Licensee's liquor license (including all permits) License No. CC-5354 be suspended for a period of ten days **BEGINNING** at 7:00 a.m. on Monday, August 17, 2009 and **ENDING** at 7:00 a.m. on Thursday, August 27, 2009.

Licensee is directed on August 17, 2009 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 August 27, 2009 at 7:00 a.m. to remove the placard of suspension and return his license to its original wall location.

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

Dated this 18th day of May, 2009.



Daniel T. Flaherty, Jr., J. an

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

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. 06-2592
The Mechanicsburg Club