

Mailing Date: July 15, 2009

PENNSYLVANIA LIQUOR CONTROL BOARD
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 06-2592
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
vs.	:	
	:	
THE MECHANICSBURG CLUB	:	License No. CC-5354
33 Heinz Street	:	
Mechanicsburg, PA 17055-3211	:	
	:	

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OPINION

The Mechanicsburg Club (“Licensee”) appealed from the Adjudication and Order of Administrative Law Judge Daniel T. Flaherty (“ALJ”), wherein the ALJ sustained the citation, and imposed a penalty consisting of a two thousand

six hundred dollar (\$2,600.00) fine, and a ten (10)-day suspension of the license.

The citation consisted of four (4) counts. The first count of the citation charged that Licensee violated section 471 of the Liquor Code and sections 5512 and/or 5513 and/or 5514 of the Crimes Code in that on August 28, September 4, 6, 2006, and divers other occasions over the past year, Licensee possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises. [47 P.S. § 4-471; 18 Pa. C.S. §§ 5512, 5513, 5514].

The second count of the citation charged that Licensee violated sections 5.71 and 5.74 of the Liquor Control Board Regulations in that on September 19, 2006, and divers other occasions in the past year, Licensee failed to maintain records in conformity with Title 40 of the Pennsylvania Code. [40 Pa. Code §§ 5.71, 5.74].

The third count of the citation charged that Licensee violated section 471 of the Liquor Code and section 315(b) of the Local Option Small Games of Chance Act (“LOSGCA”) by offering and/or awarding more than five thousand dollars (\$5,000.00) in cash or merchandise in any seven (7)-day period, during

the periods July 31 through August 6, August 7 through 13, August 14 through 20, and August 21 through 27, 2006. [47 P.S. § 4-471; 10 P.S. § 315(b)].

The fourth count charged that Licensee violated section 471 and 493(2) of the Liquor Code, section 311 of the LOSGCA, and section 901 of the Department of Revenue Regulations by failing to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding September 27, 2006, concerning the LOSGCA. [47 P.S. §§ 4-471, 4-493(2); 10 P.S. § 311; 61 Pa. Code § 901].

Pursuant to section 471 of the Liquor Code [47 P.S. § 4-471], the appeal in this case must be based solely on the record before the ALJ. The Board shall only reverse the decision of the ALJ if the ALJ committed an error of law or abused his discretion, or if his decision was not based upon substantial evidence. The Commonwealth Court defined "substantial evidence" to be such relevant evidence as a reasonable person might accept as adequate to support a conclusion. Joy Global, Inc. v. Workers' Compensation Appeal Bd. (Hogue), 876 A.2d 1098 (Pa. Cmwlth. 2005); Chapman v. Pennsylvania Bd. of Probation and Parole, 86 Pa. Cmwlth. 49, 484 A.2d 413 (1984).

The Board has reviewed the certified record, including the Notes of Testimony from hearings held on August 23, 2007, and November 17, 2008, as

well as the ALJ's Adjudication and Order, with Licensee's contentions in mind and has concluded that the ALJ's ruling is without error and is supported by substantial evidence. Accordingly, we affirm.

Licensee raises five (5) issues on appeal. First, Licensee contends the ALJ committed an error of law in penalizing Licensee for alleged violations of the LOSGCA, in that the Pennsylvania Liquor Control Board ("Board") does not have jurisdiction over administration of small games of chance. [10 P.S. § 315(b)]. Licensee next avers that the ALJ erred since the Board does not have jurisdiction to enforce the LOSGCA. Licensee's third issue on appeal is that the ALJ erred in penalizing Licensee for any violation of LOSGCA since enforcement of the act lies with law enforcement officials which do not include members of the Pennsylvania State Police, Bureau of Liquor Control Enforcement ("Bureau"). In its fourth issue, Licensee contends the ALJ erred in his Findings of Fact 8 and 9 (cash box and football pool), in that there was no testimony that any of the illegal conduct occurred on the licensed premises. Finally, Licensee maintains that an alleged violation of the LOSGCA constitutes an alleged violation of that Act, and does not constitute a violation of any gaming statute as suggested by the ALJ.

As to issues I, II, III, and V, Licensee essentially argues that the Board cannot impose sanctions on a licensee for operating small games of chance that violate the provisions of the LOSGCA¹. The Board rejects this argument. By citing a licensee for its failure to comply with the LOSGCA, the Board is not seeking to enforce the LOSGCA; rather it is complying with the legislative mandate that it enforce the provisions of the Liquor Code. [47 P.S. § 2-211].

Section 471 of the Liquor Code states, in part, that the Bureau may issue a citation and order a licensee to appear before an administrative law judge “upon any other sufficient cause shown.” [47 P.S. § 4-471(a)]. This catch-all phrase was specifically included in the Liquor Code to provide the ample powers of enforcement needed to ensure the protection of the public welfare, health, peace and morals of the people of the Commonwealth. Such a broad provision is required because “it is almost impossible to anticipate all of the actions that may justify enforcement.” In Re Quaker City Development Co., 365 A.2d 683 (Pa. Cmwlth. 1976). Consequently, the Board has been assigned the task of monitoring all conduct reasonably related to the sale and use of alcoholic beverages, not just enforcing the laws directly related to the sales of liquor and malt or brewed beverages.

¹ The Board notes that Licensee does not challenge the sufficiency of the evidence to establish the violations, only the authority of the Board to act.

The courts have held that “other sufficient cause shown” includes a variety of conduct not expressly prohibited by the statute but related to the sale and use of alcoholic beverages. Examples of prohibited conduct include drug trafficking, prostitution, gambling and disorderly conduct. Pennsylvania Liquor Control Board v. T.L.K., 544 A.2d 931 (Pa. 1988) (drug trafficking); V.J.R. Bar Corp. v. Pennsylvania Liquor Control Board, 390 A.2d 163 (Pa. 1978) (gambling); Tahiti Bar, Inc. Liquor License Case, 150 A.2d 112 (1959) (prohibiting association between entertainers and patrons); In re Ciro’s Lounge, Inc., 358 A.2d 141 (Pa. Cmwlth. 1976) (noisy and disorderly conduct); Reiter Liquor License Case, 98 A.2d 465 (Pa. Super. 1953) (presence of prostitutes, lewd acts, obscene language, and noisy and disorderly conditions on premises). Each of these activities, when conducted in a licensed establishment, disrupts the orderly and peaceful sales and use of alcoholic beverages. Thus, because the troublesome conduct occurs on a licensed premises, the Board has the authority to take action.

When small games of chance are conducted in a licensed establishment, all laws governing their operation must be followed. The LOSGCA governs the operation of small games of chance. [10 P.S. 311 et seq.]. The penalties for failure to comply with the LOSGCA include summary and misdemeanor criminal

charges, fines, and forfeiture of the license. [10 P.S. § 327]. When a licensee does not comply with the provisions of the LOSGCA, unlawful and criminal behavior occurs on a licensed premises. Like drug trafficking and prostitution, unlawful small games of chance disrupt the orderly and peaceful sales and use of alcoholic beverages. Therefore, the Board has the authority to regulate this activity, and is required to do so, under the legislative mandate found in the Liquor Code.

Licensee argues that the actions of the Board, the Bureau, and the ALJ constitute enforcement of the LOSGCA. This position is incorrect. Each count of the citation was based on a violation of the Liquor Code or Board Regulations. Furthermore, the penalties imposed by the ALJ were those dictated by section 471 of the Liquor Code, not the penalties set forth in the LOSGCA [47 P.S. § 4-471; 10 P.S. § 327]. The Board was enforcing the Liquor Code and Board Regulations, not the LOSGCA.

Licensee does not dispute that there is sufficient substantial evidence to prove the violations set forth in Counts Three (3) and Four (4) of the Citation. Therefore, upon a finding that the Board has the authority to regulate conduct that occurs on a licensed premises as part of its duty to enforce the Liquor

Code, including the operation of small games of chance, the first three, as well as the fifth issue raised on appeal by Licensee, are dismissed.

The Board now turns its attention to the fourth issue of Licensee's appeal. Although it is not clear, it appears that Licensee is arguing there is insufficient substantial evidence to prove that the illegal gambling referenced in the ALJ's Finding of Fact 8 and 9 occurred on the licensed premises and that there is insufficient evidence to establish the use of the cash fund box that is referenced in those findings.

The record reveals the findings are based on ten (10) pages of testimony regarding the grey cashbox that was observed by Officer Royer of the Bureau during a routine club inspection. [N.T. 10 – 20]. Officer Royer testified about his interview with Charles Sechrist, a club bartender, during which they discussed the cashbox located in plain view near the cash register at the bar and the evidence of a football pool contained in the box. [N.T. 15 – 18]. Mr. Sechrist stated the football pool belonged to a club member, Steven Sabochick, and that it was his job to collect ten dollars (\$10.00) per week from pool participants. [N.T. 16]. Furthermore, Mr. Sechrist went into great detail about how the pool operated, when payouts would be made, and how the payout was calculated. [N.T. 17]. Clearly there is substantial evidence in the

record to support the ALJ's eight and ninth Findings of Fact. Accordingly, the appeal of Licensee must be dismissed.

ORDER

The decision of the ALJ is affirmed.

The appeal of Licensee is dismissed.

It is hereby ordered that Licensee pay the fine of two thousand (\$2,600.00) dollars within twenty (20) days of the mailing date of this Order. Failure to do so will result in license suspension and/or revocation.

It is further hereby ordered that Licensee's Catering Club Liquor License No. CC-5354 be suspended for a period of ten (10) days, beginning at 7:00 a.m. on Monday, August 24, 2009 and ending at 7:00 a.m. on Thursday, September 3, 2009.

This case is hereby remanded for imposition of the fine and license suspension.

Licensee must adhere to all other conditions set forth in the ALJ's Order dated May 28, 2008.

Board Secretary