

Mailing Date: JAN 22 2008

[Appeal](#)

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1028
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-349651
	:	
v.	:	LID - 33511
	:	
ALTLAND HOUSE CATERING, INC.	:	
T/A THE VALENCIA BALLROOM	:	
142 N. GEORGE ST.	:	
YORK, PA 17401-1117	:	
	:	
	:	
YORK COUNTY	:	
LICENSE NO. R-AP-SS-11720	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Thomas M. Ballaron, Esquire
Pennsylvania State Police
3655 Vartan Way
Harrisburg, PA 17110

For Licensee
Andrew M. Paxton, Esquire
135 N. George Street
York, PA 17401

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 17, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Altland House Catering, Inc., t/a The Valencia Ballroom (Licensee), License Number R-AP-SS-11720.

The citation¹ charges Licensee with violations of Section 3.52(c) of the Pennsylvania Liquor Control Board Regulations [40 Pa. Code §3.52(c)]. The charge is that from March 21, 2006 through March 21, 2007, Licensee, by servants, agents or employees, operated another business on its licensed premises without Board approval.

An evidentiary hearing was conducted on November 14, 2007 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania. The matter was submitted by way of Stipulations of Fact.

After review of the transcript of that proceeding, the following Stipulations of Fact and Conclusions of Law are entered.

FINDINGS OF FACT:

1. The Bureau began its investigation on March 6, 2007 and completed it on April 10, 2007. (N.T. 7)
2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on April 20, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1)
3. During the period charged, Licensee contracted with York County Meals on Wheels. The contract required Licensee to prepare meals and deliver those meals to a Senior Citizens Center. (N.T. 8-9)
4. Licensee also prepares food for the York Expo Banquet Center and Ski Round Top and delivers the food to those sites for catering purposes. Licensee prepares the food at its facility which is a large banquet hall. (N.T. 9-11)
5. Licensee also provides the silverware and the soft drinks. (N.T. 12-13)

1. Commonwealth Exhibit No. C-2.

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The Bureau **failed** to prove Licensee, by servants, agents or employes, operated another business on its licensed premises without Board approval, from March 21, 2006 through March 21, 2007.

DISCUSSION:

The Bureau routinely cites restaurant liquor licensees when such a licensee fails to sell food. This is a case where Licensee has been cited for the opposite situation, i.e., selling food. Of course, the above statement is an intentional over simplification. The Bureau's concern is that Licensee is operating a de facto catering hall in addition to a significant off-premises food catering operation. Licensee has not obtained approval from the Pennsylvania Liquor Control Board for the off-premises catering operation.

The Bureau's letter/brief explains Licensee's operation does not comport with the more traditional restaurant business thus violating the definition of the restaurant within the meaning of the Liquor Code. I emphatically disagree.

The Liquor Code does restrict the hours a restaurant liquor licensee may sell alcoholic beverages. There is no similar restriction as to when a restaurant liquor licensee may sell food. However, within the restrictions conferred upon a restaurant liquor licensee, that licensee may choose hours of operation based on business exigency. Further, Liquor Code Section 491(6) [47 P.S. §4-491(6)] permits a restaurant liquor licensee to engage in on premises catering, on the entire licensed premises, for special occasions. Clearly, a restaurant liquor licensee may operate a catering hall and be open for business exclusively and only for those private functions.

The off-premises catering business takes this analysis one step further. It is unquestionable the originators of the restaurant liquor license concept could not have conceived of any sales of food for off-premises consumption as part of the ordinary business of being a restaurant. Greater

mobility, advances in packaging material and cooking methods in addition to our high paced way of life have so changed, that take-out food has become an accepted and normal business practice.

Indeed, some restaurant liquor licensees not only prepare food to go but also offer delivery. The service of transporting prepared food, by itself, may be viewed as a separate and independent business lacking conformity with the Liquor Code.² I have yet to see a licensee charged with transporting prepared food without approval. I suggest, such a charge is not brought because even transporting prepared food is now understood as an integral part of the prepared food service industry.

On more than one occasion, I have attended celebrations at private homes where food has been prepared, delivered and creatively displayed by a local restaurant liquor licensee.³ That restaurant liquor licensee also provided a food server, warming trays, napkins, cups, plates, and silverware. I have yet to see any citation charging a licensee for catering and/or delivering food for off-premises consumption for such events.

The Bureau attaches to its letter/brief Licensee's sales record for 2006 so as to demonstrate Licensee's catering for off-premises consumption is a substantial part of Licensee's business. I glanced briefly at those documents because they are not part of the record. More importantly, I believe the ratio of off-premises food sales in relationship to total sales is largely irrelevant.

Whether a licensee has one contract to prepare and deliver food for off-premises consumption valued at \$50,000.00 per year or 5,000 such contracts, each valued at \$10.00 per contract, is a distinction without legal consequence. As I inquired at the hearing in rhetorical fashion, what is the threshold ratio of off-premises food sales to total food sales that would require a licensee to seek special governmental approval? Is that ratio even the appropriate formula?

2. May it also be said that providing food packaging items, utensils, non-alcoholic beverages and/or renting serving equipment and etc., in addition to providing food and deliver qualify as “other businesses?”

3. The parties tacitly agreed my observations are accurate.

Absent a clear, lawfully promulgated formula, any calculation is arbitrary and baseless. If selling and/or delivering food for off-premises consumption constitutes another business within the meaning of the pertinent regulation, I will not be the one to say so.⁴

ORDER:

NOW THEREFORE, it is ordered that Citation No. 07-1028, issued against Altland House Catering, Inc., License No. R-AP-SS-11720, is DISMISSED.

Dated this 15th day of January, 2008.

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.

4. At the hearing, Bureau counsel commented the Bureau's only interest in this matter was to see to it that Licensee gained approval from the Pennsylvania Liquor Control Board to engage in preparing and/or delivering food for off-premises consumption. My response was that Licensee should not be compelled to seek approval if not required to do so.