

Mailing Date: JUNE 24 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-1487
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W02-350139
v.	:	
	:	LID - 3831
THE TAURAS CLUB	:	
104-106 W. MARKET ST.	:	
SCRANTON, PA 18508-1948	:	
	:	
	:	
	:	
LACKAWANNA COUNTY	:	
LICENSE NO. CC-5148	:	

**BEFORE JUDGE FLAHERTY  
BUREAU COUNSEL STRONG  
LICENSEE: CHARLES R. WITACONIS, ESQUIRE**

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on July 18, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against THE TAURAS CLUB, License Number CC-5148 (hereinafter "Licensee").

The citation charges Licensee with violation of Sections 401(b) and 406(a)(1) of the Liquor Code [47 P.S. §§4-401(b) and 4-406(a)(1)] in that on March 31 and April 28, 2007, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

The investigation which gave rise to the citation began on March 14, 2007 and was completed on May 27, 2007; and notice of the violation was sent to Licensee by Certified Mail on June 4, 2007. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on April 13, 2011 in the Scranton State Office Building, 100 Lackawanna Avenue, Scranton, Pennsylvania.

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:

1. On March 31, 2007 an officer of the Bureau entered the licensed premises (N.T. 8).
2. Upon entry, the officer observed approximately 40 patrons being served by two barmaids heard to be called Beverly and Kris (N.T. 8).
3. The officer ordered three Coors Light draft beers at 9:50, 9:55 and 10:10 p.m. She was served on each occasion by Beverly and was charged \$.50 per draft. She was never asked for proof of membership (N.T. 9).
4. The officer entered the licensed premises a second time on April 28, 2007 at 8:10 p.m. Beverly and Kris were tending bar. The officer purchased a 12-ounce bottle of Budweiser beer for \$1.00. She was not asked for proof of membership (N.T. 9).
5. The officer returned to the licensed premises on May 22, 2007. She identified herself, and conducted a routine inspection and examined catering records (N.T. 9-10).
6. Upon examination of the catering records, the officer found a written record of a catered event taking place on April 28, 2007, but found no evidence of a catering event taking place on March 31, 2007 (N.T. 10).
7. Personnel of Licensee had a record of an event held at the licensed premises for the North Scranton Card Club on March 31, 2007. The record of the event was kept at another place on the licensed premises and was not shown to the officer because no food was provided for the event. Members of the card club were permitted to order from the menu (N.T. 19 and Exhibit L-1).
8. The officer was not a member of Licensee club (N.T. 9).

CONCLUSION OF LAW:

The charge in the citation is **sustained**.

DISCUSSION:

Licensee has failed to establish that the event which took place on March 31, 2007 was a catered event. Further, Licensee has failed to establish that the officer was a participant in the event held on March 31, 2007 or the event held on April 28, 2007. Consequently, Licensee has failed to establish the “catered event” exception, and the charge in the citation must be sustained as to both dates.

In *Christopher Club of Mount Carmel*, Citation No. 99-0980 (2001), I discussed the “catered event” defense to the charge of serving nonmembers in detail. That discussion (found in Count 2) is incorporated herein by reference.

In *Christopher* (supra) I noted that the “catered event” defense, being an exception, is an affirmative defense and the burden of proving that defense falls upon the Licensee (Citing *Commonwealth of Pennsylvania Liquor Control Board v. T.J.J.R., Inc.*, 548 A.2d 390 (Pa. Cmwlth. 1988)).

Also, as noted in *Christopher* (supra), two of the factors which Licensee must prove to establish the defense are:

1. Alcoholic beverages must be served with food; and
2. The nonmember served the alcoholic beverages must be a participant in the catered event.

The record establishes that no food was provided for the card club meeting on March 31, 2007 (See Finding No. 7). This meeting does not qualify as a catered event and the service of alcoholic beverages to the nonmember officer, therefore constitutes a violation.

Further, Licensee has failed to establish that the officer was a participant in the events on March 31, 2007 or April 28, 2007. Therefore, the attempt to assert the defense as to both dates must fail on this basis as well.

In view of the fact that the officer was not a member of Licensee club, and was served alcoholic beverages on both dates charged, and the “catered event” defense does not apply; I conclude that the charge in the citation is sustained.

PRIOR RECORD:

Licensee has been licensed since July 18, 1956, and has had eight prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Citation No. 88-1039. Fine \$200.00.

1. Sales to nonmembers without prior arrangement.

Citation No. 92-2505. Fine \$200.00.

1. Failed to adhere to bylaws.
2. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

Citation No. 93-2110. Fine \$250.00.

1. Sales to nonmembers without prior arrangement.

Citation No. 95-2643. Fine \$250.00.

1. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.

Citation No. 97-1023. Fine \$700.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (machines).
2. Sales to nonmembers without prior arrangement.

Citation No. 04-0308. Fine \$400.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (sports pool). February 1, 2004.

Citation No. 04-1754. Fine \$1,200.00 and 7 days suspension.

1. Sales to nonmembers. September 15, 2004.
2. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machines). September 22, 2004.

Citation No. 07-0516. Fine \$50.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (dice). February 4, 2007.

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 a fine of \$250.00.

ORDER

THEREFORE, it is hereby ordered that Licensee THE TAURUS CLUB, pay a fine of \$250.00 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.

Jurisdiction is retained.

Dated this 22<sup>ND</sup> day of June, 2011.



Daniel T. Flaherty, Jr., J.

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**MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.**

**IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.**

**Detach here and submit stub with payment**

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The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make guaranteed 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. 07-1487  
The Taurus Club

