

Mailing Date: JUL 01 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 07-2634
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-359329
v.	:	
	:	LID - 1542
POLITICAL CLUB OF THE	:	
7 <sup>TH</sup> WARD OF HARRISBURG	:	
1550 VERNON ST.	:	
HARRISBURG, PA 17104-1105	:	
	:	
	:	
DAUPHIN COUNTY	:	
LICENSE NO. C-3198	:	

**BEFORE:** JUDGE THAU

APPEARANCES:

For Bureau of Enforcement  
Andrew J. Lovette, Esquire  
Pennsylvania State Police  
3650 Vartan Way  
Harrisburg, PA 17110

For Licensee  
Frank C. Sluzis, Esquire  
2000 Linglestown Road  
Suite 106  
Harrisburg, PA 17110

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on November 21, 2007, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Political Club of the 7<sup>th</sup> Ward of Harrisburg (Licensee), License Number C-3198.

The citation<sup>1</sup> charges Licensee with violations of Sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §5512 and/or §5513], which is incorporated by reference in Liquor Code Section 471 [47 P.S. §4-471] as “other sufficient cause.” The charge is that on September 7, 2007 and divers occasions since August 14, 2007, Licensee, by servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on its licensed premises.

An evidentiary hearing was conducted on May 19, 2008 at Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

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

FINDINGS OF FACT:

1. The Bureau began its investigation on August 13, 2007 and completed it on September 24, 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 October 23, 2007. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. B-1, N.T. 6)
3. On September 7, 2007, a Bureau Enforcement Officer arrived at the licensed premises at approximately 1:10 p.m., to conduct an administrative inspection. The premises was open and operating, selling alcoholic beverages. (N.T. 8)
4. In the course of that administrative inspection, the Officer found a pull-tab game entitled: “Pic N Deli.” (N.T. 10)
5. There was a table of prizes. The table also contained the documents pertaining to the game. The pull-tab tickets were located behind the bar. (N.T. 10-14, Commonwealth Exhibit No. B-3, N.T. 45)
6. The prizes included a counter top dishwasher, various smaller prizes listed on the documents. (N.T. 15-16, Commonwealth Exhibit No. B-3, N.T. 45)

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1. Commonwealth Exhibit No. B-2, N.T. 6.

7. The cost for play is \$1.00. The purchaser of the last ticket is the guaranteed winner of the countertop dishwasher (Commonwealth Exhibit No. B-3, Page 1).

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The citation is **sustained** as charged. Licensee also violated 61 Pa. Code §901.633.

DISCUSSION:

The Bureau asserts the game in question specifically violates 61 Pa. Code §901.633, relating to participant control of winning. I agree.

Because the last play on the board is a guaranteed winner, the game violates the above regulation. Whether the game is completely fresh or one ticket away from completion, any participant controls the chance of winning the countertop dishwasher by purchasing all remaining tickets.

For example, if a game contained 100 chances with a guarantee of winning on the last chance selected and there were 85 plays available, the next player controls the chance (odds) of winning by purchasing all 85 remaining plays. If the prize is valued at \$170.00, then the odds of winning the prize is, at that point, a ratio of 1:1.

I rule otherwise with respect to the Bureau's second argument which is that there must be an identifying number on the game (Pic N Deli had none). Bureau counsel candidly remarked he could find no specific provision of law mandating an identifying number. There being no specific requirement, I must dismiss the charge with respect to this issue.

PRIOR RECORD:

Licensee has been licensed since May 17, 1937, and has had nine prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. B-4, N.T. 45):

Adjudication No. 94-0868. Fine \$400.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (tickets, punchboards and machines).

Adjudication No. 96-2608. Fine \$1,000.00.

1. Failed to require patrons to vacate the premises not later than one-half hour after the required time.
2. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.

Adjudication No. 99-0452. Fine \$700.00.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machines).  
January 10, 1999.

Adjudication No. 99-1461. Fine \$700.00 and 3 days suspension.

1. Sales between 3:00 a.m. and 7:00 a.m.  
August 14, 1999.
2. Failed to require patrons to vacate the premises not later than one-half hour after the required time.  
August 14, 1999.
3. Permitted patrons to possess and/or remove alcoholic beverages after 3:30 a.m.  
August 14, 1999.
4. Sold malt or brewed beverages for consumption off premises.  
August 14, 1999.

Adjudication No. 01-0519. Fine \$50.00 and 1 day suspension.

1. 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.  
January 4, 2001.
2. Failed to adhere to bylaws.  
February 9, 2001.

Adjudication No. 04-0062. Fine \$900.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machines, dice cup and football bets).  
June 5, August 22, September 5 and 24, 2003.
2. Sales to nonmembers.  
June 5, August 22 and September 5, 2003.

Adjudication No. 04-1841. Fine \$750.00.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises (machine).  
September 8, 2004.
2. Sold alcoholic beverages on credit in contravention of the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.  
On 11 dates between August 1 and September 8, 2004.

Adjudication No. 06-1393. Fine \$3,500.00 and 30 days suspension.

1. Failed to hold regular meetings.  
August 8, September 12 and October 10, 2005 and divers occasions between April 25, 2005 and April 25, 2006.
2. Operated a club not in conformity with the Liquor Code definition of "Club."  
April 25, 2005 through April 25, 2006.
3. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years immediately preceding October 10, 2005.
4. Falsified records covering the operation of the licensed business between April 26, 2005 and October 10, 2005.
5. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.  
September 15, October 20 and 27, 2005.

Adjudication No. 07-1477. Fine \$200.00.

Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of two (2) years.  
May 10, 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.

Further, Section 471(c) of the Liquor Code [47 P.S. §4-471(c)] requires that the penalty imposed include license revocation or suspension where the violation in question is the third or subsequent violation of any of the offenses referred to in subsection 471(b) of the Liquor Code [47 P.S. §4-471(b)] and/or the Crimes Code within a four year period. The following Adjudications (04-0062 – Count 1 and 04-1841 – Count 1), in combination with the charge in this citation, requires that license revocation or suspension must be included as part of the penalty.

Licensee's prior history regarding unlawful gambling is extensive. One would expect, at this point, Licensee's carefulness to be exceedingly high. I also recognize Licensee relied on the game's licensed distributor who, I am told, is being pursued by the Department of Revenue for violations of law.

Accordingly, I impose \$500.00 fine and a one day suspension.

ORDER:

**Imposition of Fine**

THEREFORE, it is hereby ordered that Licensee pay a fine of \$500.00 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.

**Imposition of Suspension**

THEREFORE, it is hereby ordered that the Club liquor license of Political Club of the 7<sup>th</sup> Ward of Harrisburg, License No. C-3198, be suspended for a period of one day, **BEGINNING** at 7:00 a.m., on Monday, August 25, 2008, and **ENDING** at 7:00 a.m., on Tuesday, August 26, 2008.

Licensee is directed on Monday, August 25, 2008, 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 Tuesday, August 26, 2008, 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 19<sup>th</sup> day of June, 2008.

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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.**

Detach Here and Return Stub with Payment

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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, PA 17110-9661

Citation No. 07-2634