

Mailing Date: JUN 25 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0089
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-365124
v.	:	
	:	LID - 55964
MOUNTAIN TOP ASSOCIATES, INC.	:	
T/A DENVER HOUSE	:	
240 MAIN ST.	:	
DENVER, PA 17517-1614	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. H-AP-SS-2149	:	

**BEFORE:** JUDGE FLAHERTY

APPEARANCES:

For Bureau of Enforcement  
Andrew J. Lovette, Esquire

For Licensee  
Frank C. Sluzis, Esquire

**ADJUDICATION**

BACKGROUND:

This proceeding arises out of a citation that was issued on February 14, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against MOUNTAIN TOP ASSOCIATES, INC., License Number H-AP-SS-2149 (hereinafter "Licensee").

The citation charges Licensee with violation of Section 102 of the Liquor Code [47 P.S. §1-102] in that from November 22 through December 6, 2007, the licensed premises was not a bona fide hotel where the public may, for a consideration, obtain meals in that there was an insufficient supply of food.

The investigation which gave rise to the citation began on November 20, 2007 and was completed on December 20, 2007; and notice of the violation was sent to Licensee by Certified Mail on January 14, 2008. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on December 2, 2008 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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 December 6, 2007 at 3:05 p.m. an officer of the Bureau entered the licensed premises where she found two female bartenders rendering service to five patrons (N.T. 8).
2. The officer identified herself by badge and identification and informed the bartenders that she was there to perform a routine inspection. She was referred to Patricia Knoll, who was the Board approved manager (N.T. 8).
3. The officer observed that there was no menu (N.T. 9).
4. The officer further observed that there was a hot dog cooker in the bar room area which was not in operation at that time (N.T. 9).
5. In the kitchen area the officer observed a sink, stove and a refrigerator. However, nothing requiring heat was operating (N.T. 9).
6. In the freezer part of the refrigerator the officer found a box about the size of a shoe box containing hot dogs (N.T. 11).
7. The officer left the premises at 4:15 p.m. (N.T. 16).
8. In looking at the financial records for the period of two years prior to the inspection, the officer found that the average monthly sales of food were \$99.00 (N.T. 19).
9. Licensee served a full Thanksgiving dinner November 22, 2007 (Thanksgiving Day). For days after that, Licensee served turkey pot pie and turkey sandwiches. There was turkey in the refrigerator and in the large freezer on the licensed premises when the officer was present on December 6, 2007 (N.T. 27).
10. There were two or three additional boxes of hot dogs in a cooler at the bar. These were in addition to the partial box of hot dogs that the officer found in the freezer section of the refrigerator (N.T. 27).

11. There were, at the time of the inspection, rolls for the hot dogs in drawers behind the back bar (N.T. 28).

12. On December 6, 2007 Licensee was expecting a delivery of hot dogs from Denver Meats, a local supplier of hot dogs (N.T. 28-29).

13. Licensee had a menu board on which were listed other items in addition to hot dogs. These items included barbecue and hamburger macaroni (N.T. 25, 29-30).

CONCLUSION OF LAW:

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

DISCUSSION:

The record establishes that Licensee had sufficient food upon the licensed premises to be considered a bona fide hotel.

Section 102 of the Liquor Code [47 P.S. §1-102] provides the following definitions of a hotel:

Hotel shall mean any reputable place operated by responsible persons of good reputation where the public may, for a consideration obtain sleeping accommodations and meals and which, in a city has at least ten and in any other place at least six permanent bedrooms for the use of guests, a public dining room or rooms operated by the same management accommodating at least thirty persons at one time and a kitchen, apart from the public dining room or rooms in which food is regularly prepared for the public (emphasis supplied).

It is plain, from the aforementioned definition that the legislature intended that a hotel should be prepared to regularly provide meals for the public. The question becomes: what constitutes a meal?

The Liquor Code [47 P.S. §1-101 et seq] provides us with no specific definition as to what constitutes a “meal.” We must therefore, look to other sources to instruct us as the meaning of this term.

Merriam Webster’s Collegiate Dictionary, Tenth Edition, provides us with the following definitions appropriate to this inquiry:

Meal: (1) an act or the time of eating a portion of food to satisfy appetite; (2) the portion of food eaten at a meal.

Appetite: (1) Any of the instinctive desires necessary to keep up organic life especially the desire to eat.

Combining these two definitions it seems logical to infer that a meal, for the purpose of the Liquor Code (supra) is a portion of food sufficient to satisfy hunger and sustain an individual until the next appropriate “meal” time.

When it comes to determining what may be considered food, I agree with Administrative Law Judge Thau who wrote in *Home Aid Asn. Of the Legion of Somerset, PA*, Citation No. 93-0885, Vol. 16 Sel. Op. 174 (1993):

When one is called upon to determine what precisely is food, one may be swayed by ethnic, religious or cultural factors. What is food to one group may be forbidden to another. In thinking about this issue further, it becomes clear the application of a standard based on cultural, ethnic or religious bias is constitutionally impermissible as violative of Equal Protection and Due Process (Fifth and Fourteenth Amendment, United States Constitution).

With the foregoing in mind, it seems that we should set aside our own ideas as to what is appropriate and instead apply a standard which reflects whether or not the items in question will reasonably fulfill the purpose of satisfying hunger.

Viewing “meals” in this light, it seems that hot dogs and rolls, barbecue and “hamburger macaroni” and turkey sandwiches all qualify as meals. All of these items were present on the licensed premises on December 6, 2007 (See Findings No. 6, 9, 10, 11 and 13). The fact that these items were not readily at hand when the inspection was held at 3:00 p.m. is not disturbing since this hour is not customarily viewed as a “meal” time.

Based upon the foregoing, I conclude that during the period charged in the citation, there was sufficient food on the licensed premises to provide meals, and the charge in the citation is dismissed.

ORDER

IT IS HEREBY ORDERED that Citation No. 08-0089 be **DISMISSED**.

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

Dated this 18<sup>TH</sup> day of June, 2009.

A handwritten signature in cursive script, reading "Daniel T. Flaherty, Jr.", written over a horizontal line.

Daniel T. Flaherty, Jr., J.

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**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.**