

Mailing Date: DEC 11 2008

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 08-0920
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W07-368905
v.	:	
	:	LID - 3369
PUNXSUTAWNEY ARMY &	:	
NAVY CLUB, INC.	:	
200 N. FINDLEY ST.	:	
PUNXSUTAWNEY, PA 15767-2021	:	
	:	
	:	
JEFFERSON COUNTY	:	
LICENSE NO. CC-2952	:	

BEFORE: JUDGE THAU

APPEARANCES:

For Bureau of Enforcement
Michael C. Nickles, Esquire
Pennsylvania State Police
313 Mt. Nebo Road
Pittsburgh, PA 15237-1305

For Licensee
Raymond Depp – President
Russell Depp - Member

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on May 2, 2008, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Punxsutawney Army & Navy Club, Inc. (Licensee), License Number CC-2952.

The citation charges Licensee with a violation of Sections 401(b) and 406(a)(1) of the Liquor Code [47 P.S. §4-401(b) and §4-406(a)(1)]. The charge is that on February 1, 2008, Licensee, by servants, agents or employees, sold alcoholic beverages to nonmembers.

An evidentiary hearing was conducted on November 13, 2008 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. Licensee was represented by its President, Mr. Raymond Depp and a Member, Mr. Russell Depp.

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 February 1, 2008 and completed it on March 24, 2008. (N.T. 21)
2. The Bureau sent a notice of an alleged violation to Licensee at the licensed premises by certified mail-return receipt requested on April 2, 2008. The notice alleged a violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 24)
3. Licensee had no catered events scheduled for February 1, 2008. (N.T. 18)
4. Bureau Enforcement Officers were participating in Groundhog Day investigations on February 1, 2008, in the Punxsutawney area. Several Officers were dispatched to the licensed premises at 11:07 p.m. The Officers were challenged as to membership. The Officers advised an individual seated by a table at the front door that they were not members. One Officer purchased a social membership for \$10.00. As part of the process, the Officer filled out an Application Card. The card was taken to a back room where it was signed by an authorized Club official. The Officer was then allowed to enter the premises and purchase alcoholic beverages. (N.T. 27-30)

1. Commonwealth Exhibit No. C-2, N.T. 24.

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.

DISCUSSION:

Social and Active Membership

I was advised Licensee has approximately 320 “active” members with an additional 130 “social” members. A social member has the sole privilege of drinking (N.T. 8-10).

The concept of social membership is one which has befuddled me for some time. My research found no reference to the term in Title 40, Pa. Code. The sole reference to this term in the Liquor Code is Section 406(a)(1) [47 P.S. §4-406(a)(1)]. The last sentence provides:

... For purposes of this paragraph, the term “active member” shall not include a social member.

Phrased in the manner above referenced, neither “active member” nor “social member” is actually defined.² Without any substantive statutory or regulatory guidance, the interpretive field is largely unplowed.

Nevertheless, the common understanding of “active member” seems to be one who has a vote in a club’s political process. A “social member” seems to be one who has the privilege of drinking without a right to vote. Given these meanings, the concept of social membership is anathema to the central purpose of a club.

Liquor Code Section 102, tells us that a club is a group of individuals associated for a primary purpose to which the sale of alcoholic beverages is secondary. In this definition, there may be some room for social membership. However, when the ratio of social membership to total membership increases, at some point, the club may be viewed as no more than a drinking establishment. Without benefit of regulation or statute, precisely where that line is drawn can be rather vague or arbitrary.

2. Liquor Code Section 102 [47 P.S. §1-102], relating to definitions, is also of no help.

By way of example, a club having a total of 100 members, ninety-nine of which are social members, is clearly no more than an ‘after hours’ drinking place in violation of the Liquor Code. On the other hand, a club having 100 members, one of which is a social member, remains a bona fide club.

Licensee’s ratio is: $130 \div (130 + 320)$ or about 29 percent. Thus, about three of every ten members have joined for the sole purpose of drinking. In my opinion, this ratio places Licensee in the likely-to-be-unlawful column. However, without Legislative or Agency guidance, such a conclusion is difficult to draw.³

PRIOR RECORD:

Licensee has been licensed since August 1, 1936, and has had seven prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, (Commonwealth Exhibit No. C-4, N.T. 46):

Adjudication No. 87-3236. Fine \$350.00 and 5 days suspension.
Possessed or operated gambling devices or paraphernalia
or permitted gambling or lotteries on your licensed
premises.

Adjudication No. 92-1062. Fine \$650.00.

1. Sales to nonmembers without prior arrangement.
2. Improper admission of members.
3. Used loudspeakers or devices whereby music could be heard outside.

3. Part of this deliberative process recognizes the special privileges conferred upon clubs as they need not maintain food and may stay open until 3:00 a.m. In exchange for these privileges, a club is restricted to selling to members.

Adjudication No. 98-1701. Fine \$100.00.

1. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
July 6, 1998.
2. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years.
July 6, 1998.

Adjudication No. 01-1628. Fine \$200.00.

1. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
January 1 through July 10, 2001.
2. Failed to clean coils, tap rods and connections at least once every 7 days.
January 1 through July 10, 2001.

Adjudication No. 04-0606. Fine \$500.00.

Failed to require patrons to vacate the premises not later than one-half hour after the required time.
February 2, 2004.

Adjudication No. 06-0771. Fine \$500.00.

Sales to nonmembers.
February 1, 2006.

Adjudication No. 07-2559. Fine \$700.00.

1. Failed to maintain complete and truthful records covering the operation of the licensed business for a period of 2 years.
July 24, 2007.
2. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
September 24, 2007.
3. Failed to adhere to by-laws.
September 24, 2007.
4. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period.
January 1 through May 6, 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.

It is quite evident Licensee was operating openly and notoriously to sell to anyone who paid the cover charge, in clear violation of the Liquor Code.⁴ Given the influx of tourists into Punxsutawney for the Ground Hog Day festivities, Licensee's vision of dollar signs clouded its better judgment.

As I advised Licensee at the hearing, I will no longer tolerate such palpable violations of the law by Licensee or any other licensed facility in the Punxsutawney community. Let this Adjudication be a warning to all that the law will be obeyed, lest the violator be severely sanctioned.

With this warning in mind, I will adopt the recommended penalty of a \$700.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$700.00 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.

Retaining Jurisdiction

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 3RD day of December, 2008.



Felix Thau, A.L.J.

pm

4. Licensee also improperly admitted members but was not charged for same.

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

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. 08-0920
PUNXSUTAWNEY ARMY &
NAVY CLUB, INC.