

Mailing Date: JUL 30 2009

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 09-0017
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W07-382890
v.	:	
	:	LID - 1245
INDEPENDENT POLITICAL &	:	
SOCIAL CLUB	:	
219 W. WASHINGTON AVE.	:	
DUBOIS, PA 15801-1816	:	
	:	
CLEARFIELD COUNTY	:	
LICENSE NO. C-2350	:	
	:	

BEFORE: JUDGE THAU
BUREAU COUNSEL: Michael C. Nickles, Esquire
LICENSEE: Darnell A. Kirsch, Trustee

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 14, 2009, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Independent Political & Social Club (Licensee), License Number C-2350.

The citation charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 315(b) of the Local Option Small Games of Chance Act [10 P.S. §315(b)]. The charge is that during the periods September 8 through 14, September 15 through 21, September 22 through 28, September 29 through October 5 and October 13 through 19, 2008, Licensee, by servants, agents or employees, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period.

An evidentiary hearing was conducted on July 9, 2009 at the Hampton Inn, 180 Charlotte Drive, Altoona, Pennsylvania. Licensee was represented by its Trustee, Mr. Darnell A. Kirsch.

1. Commonwealth Exhibit No. C-2, N.T. 11.

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 October 14, 2008 and completed it on November 4, 2008. (N.T. 10)

2. The Bureau sent a notice of alleged violations to Licensee at the licensed premises by certified mail-return receipt requested on November 10, 2008. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 10)

3. A Bureau Enforcement Officer conducted an administrative inspection of Licensee's records on October 23, 2008. The records indicated Licensee awarded prizes pursuant to its Small Games of Chance license in the following amounts for the following weeks: (N.T. 17-18)

September 8 to September 14, 2008	-	\$ 6,150.00
September 15 to September 21, 2008	-	\$ 8,025.00
September 22 to September 28, 2008	-	\$13,525.00
September 29 to October 5, 2008	-	\$ 8,865.00
October 6 to October 12, 2008	-	\$ 4,650.00
October 13 to October 19, 2008	-	\$ 9,985.00

4. Licensee fired the individual who was in charge of the Small Games of Chance operation. (N.T. 22-24)

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.

PRIOR RECORD:

Licensee has been licensed since August 9, 1934, and has had four prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication No. 89-2534. Fine \$300.00 and 5 days suspension.

1. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
2. Unexplained cash shortage.
3. Organization not operated for the mutual benefit of the entire membership.

Adjudication No. 93-0841. Fine \$200.00.

Sales to nonmembers.

Adjudication No. 01-1430. Fine \$100.00.

Cashed, received, handled or negotiated payroll checks.

Adjudication No. 08-1662. Fine \$500.00.

1. Failed to maintain records in conformity with the Liquor Code and Title 40 of the Pennsylvania Code. May 29, 2008.
2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period. During 12 periods from February 17 through May 10, 2008.

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.

I impose a \$400.00 fine.

ORDER:

Imposition of Fine

THEREFORE, it is hereby ordered that Licensee pay a fine of \$400.00 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 23RD day of July, 2009.



Felix Thau, A.L.J.

pm

NOTICE: 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.

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