

Mailing Date: FEB 16 2012

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

PENNSYLVANIA STATE POLICE,	:	
BUREAU OF LIQUOR	:	Docket No.: 10-1124
CONTROL ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W03-393618
v.	:	
	:	PLCB LID No.: 44562
VFW POST 6241 CANTEEN, INC.	:	
VETERANS OF FOREIGN WARS	:	PLCB License No.: CC-5919
OF THE UNITED STATES	:	
20 VETERANS WAY	:	
MERCERSBURG, PA 17236-1203	:	
	:	
FRANKLIN COUNTY	:	

BEFORE: Administrative Law Judge Thau

FOR BLCE: John H. Pietrzak, Esquire

FOR LICENSEE: Patrick J. Redding, Esquire

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation, containing three counts, that was issued on May 27, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against VFW Post 6241 Canteen, Inc. (Licensee).

The first count charges Licensee with violations of Sections 471 and 493(12) of the Liquor Code [47 P.S. §§4-471 and 4-493(12)], Section 311 of the Local Option Small Games of Chance Act [10 P.S. §311], and Section 901 of the Department of Revenue Regulations [61 Pa. Code §901]. The charge is that Licensee, by your servants, agents, or employees, failed to maintain complete and truthful records covering the operation of the licensed business for

a period of two (2) years immediately preceding January 20, 2010, concerning the Local Option Small Games of Chance Act.

The second count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471], Section 314 of the Local Option Small Games of Chance Act [10 P.S. §314], and Section 901 of the Department of Revenue Regulations [61 Pa. Code §901]. The charge is that Licensee violated the Local Option Small Games of Chance Act, in that funds derived from the operation of games of chance were used for purposes other than those authorized by law, during the period January 1 through December 31, 2009.

The third count 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 Licensee, by your servants, agents, or employees, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period, during the periods November 7 through 13, November 14 through 20, November 21 through 27, December 12 through 18, December 19 through 25, 2009, January 2 through 8, January 9 through 15 and January 16 through 22, 2010.

I presided at an evidentiary hearing on October 5, 2011 at the Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on May 1, 2009 and completed it on April 27, 2010. (Commonwealth Exhibit No. C-1, N.T. 7)

2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested on, May 12, 2010. The notice alleged violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 6)

3. On January 20, 2010, two Bureau Enforcement Officers arrived at the premises at 11:05 a.m. The Officers were greeted by Mr. W., Quartermaster, Mr. K., Chairman of the Board, Mr. S., Service Manager, and Ms. F., Steward. Licensee was closed. Licensee's representatives allowed the Officers entrance to the premises to conduct an administrative inspection. (N.T. 21-22)

Count No. 1

4. The Officers determined that Licensee's records were deficient. Licensee did not list actual payout figures or record winners in excess of \$100.00. Licensee further failed to

record the serial number for each game that went in and out of play. Licensee did not record the exact date that a game went in and out of play. (N.T. 44)

5. On April 22, 2010, Licensee's Steward admitted that games were purchased and used but Licensee did not record the use of those games. (N.T. 111-113)

Count No. 2

6. During the administrative inspection, the Club Officials admitted that, for the period charged, all Small Games of Chance proceeds were deposited into one fund. Licensee drew money from that fund for club operation, purchasing alcoholic beverages, paying employees, and etc.(N.T. 71-72)

Count No. 3

7. During the administrative inspection of January 20, 2010, Licensee provided the Officers with Commonwealth Exhibit No. C-3, entitled Monthly Bowl Report. Licensee's Officials explained the significance of the notations on the Monthly Bowl Report. (Commonwealth Exhibit C-3, N.T. 22-25)

8. Commonwealth Exhibit C-3 represents the individual Small Games of Chance that are played during a seven days period. The listed dates represent the closing of a seven days period. The Exhibit identifies the name of a game and the number of games that went in and out of play during the identified seven days. (N.T. 25-27)

9. With Commonwealth Exhibit C-3 alone, it is impossible to calculate the value of payouts Licensee made during a seven days period. The Officer requested the Flare Cards for each of the games. (Commonwealth Exhibit No. C-4, N.T. 27-29)

10. The Officer correlated the entries in Exhibit No. C-3 to Exhibit No. C-4. By way of example, for the seven days period ending November 13, 2009, under the title: Bowl, Commonwealth Exhibit No. C-3 lists the first entry as: Skunk. Skunk is identified in Exhibit No. C-4 as: Stinky Le Pew. Similarly, the entry in Exhibit No. C-3 identified as: Maxi, corresponds to: Double Maxi Jar in Exhibit No. C-4. (N.T. 29-30)

11. The Officers applied the payout values in Exhibit No. C-4 to the corresponding games in Exhibit C-3. They did so in the presence of Club Officials, one of whom acknowledged the Officials were aware that Licensee was exceeding the \$5,000.00 weekly limit. The Officers arrived at the following values: (Commonwealth Exhibit No. C-5, N.T. 35-39)

- a. Seven Day's Period Ending November 13, 2009 - \$80,899
- b. Seven Day's Period Ending November 20, 2009 - \$89,474

- c. Seven Day's Period Ending November 27, 2009 - \$77,640
- d. Seven Day's Period Ending December 18, 2009 - \$78,644
- e. Seven Day's Period Ending December 25, 2009 - \$40,396
- f. Seven Day's Period Ending January 8, 2010 - \$73,160
- g. Seven Day's Period Ending January 15, 2010 - \$75,786
- h. Seven Day's Period Ending January 22, 2010 - \$26,853

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. The violations are sustained as charged.

DISCUSSION:

Given the Bureau's authority to inspect a Licensee's records, without warrant or probable cause, I am ever perplexed at how this powerful investigative tool for the most part, is permitted to remain fallow. In this matter for example, the investigators did not review Licensee's bank account statements or required government filings such as tax returns.

ADJUDICATION HISTORY:

Licensee has been licensed since July 20, 1999, and has the following Adjudication history:

Docket No. 06-1451. Fine \$450.00.

Awarded more than \$5,000.00 in cash or merchandise in any 7 day period.

April 1 through 7, April 8 through 14, April 15 through 21 and April 22 through 28, 2006.

Docket No. 07-1326. Fine \$450.00.

Possessed or operated gambling devices or permitted gambling on your licensed premises (altered pull-tab game).

May 9, 2007.

Docket No. 08-2803. Fine \$1,000.00 and 7 days suspension.

1. Failed to maintain complete and truthful records covering the operation of small games of chance for a period of 2 years.  
April 16, 2008.
2. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any 7-day period.  
March 8 through 14 and March 15 through 21, 2008.

PENALTY ASSESSMENT CRITERIA:

**Mandatory Requirement(s)**

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 the violations found herein.

**Discretionary Component(s)**

This is Licensee's third such violation. I take Official Notice (1 Pa. Code §35.173) of Act 2, 2012, signed by our Governor on February 2, 2012 and effective March 5, 2012. The Act significantly alters the Small Games of Chance Act. Among other things, the former \$5,000 weekly limit is now \$25,000. Act 2, 2012 also restructures the penalties I am authorized to impose for violations of the Small Games of Chance Act.

No statute is to be construed to be retroactive unless clearly and manifestly so intended by the General Assembly (1 Pa. C.S.A. §1926). As the events in controversy occurred prior to the implementation of Act 2, 2012, I am constrained to apply the former penalty perimeters.

Even with the new weekly limit, in all of the eight accounting periods listed in Finding of Fact No. 11, Licensee exceeded the new maximum. In seven of the eight, Licensee significantly eclipsed the new maximum. Accordingly I impose:

Count No. 1 - \$500.00

Count No. 2 - \$200.00

Count No. 3 - \$1,000.00 fine and thirty days suspension

ORDER:

**Imposition of Fine**

Licensee must pay a \$1,700.00 fine within 20 days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

**Imposition of Suspension**

I suspend the license, as well as all other permits or licenses issued by the Pennsylvania Liquor Control Board attendant to the Liquor License, for thirty days, beginning Monday, April 9, 2012, 7:00 a.m., and ending Wednesday, May 9, 2012, 7:00 a.m.

I order Licensee to post a Notice of Suspension Placard (PLCB Form 1925) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the licensed premises, on or before Monday, April 9, 2012, 7:00 a.m. The Suspension Placard may not be removed until the suspension ends.

In the event Licensee does not comply with all conditions herein, the Bureau may issue an additional citation claiming Licensee has violated this Order. Alternatively, the Bureau may assert the same claim by requesting this Adjudication be reopened.

**Retaining Jurisdiction**

Jurisdiction is retained to ensure compliance with this Adjudication.

Dated this 14<sup>TH</sup> day of February, 2012.



Felix Thau, A.L.J.

bc

### General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. Therefore, you may want to consult with an attorney.

### Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

### Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit [www.lcb.state.pa.us](http://www.lcb.state.pa.us). The full requirements for an appeal can be found in 47 P.S. §4-471.

### Detach Here and Return 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.** 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