

Mailing Date: November 3, 2010

PENNSYLVANIA LIQUOR CONTROL BOARD  
HARRISBURG, PA 17124-0001

PENNSYLVANIA STATE POLICE,	:	Citation No. 10-1327
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT	:	
	:	
	:	
v.	:	
	:	
AMERICAN LEGION HALL ASSN.	:	License No. CC-4188
POST NO. 101	:	
142-146 North Hanover Street	:	LID 3614
Carlisle, PA 17013-2410	:	
	:	

Counsel for Licensee: P. Richard Wagner, Esquire (on appeal)  
 Mancke, Wagner & Spreha  
 2233 North Front Street  
 Harrisburg, PA 17110

Counsel for Bureau: Thomas M. Ballaron, Esquire  
 Pennsylvania State Police,  
 Bureau of Liquor Control Enforcement  
 3655 Vartan Way  
 Harrisburg, PA 17110

**OPINION**

American Legion Hall Assn. Post No. 101 (“Licensee”) appeals from the Adjudication and Order of Administrative Law Judge Daniel T. Flaherty, Jr. (“ALJ”), wherein the ALJ sustained Citation No. 10-1327, imposed a fine in the

amount of three thousand dollars (\$3,000.00), and suspended the liquor license for a period of fifteen (15) days.

The first count of the citation charged that for a two (2)-year period preceding May 5, 2010, Licensee, by its servants, agents or employees, violated 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 (“LOSGCA”) [10 P.S. § 311], and section 901 of the Department of Revenue Regulations [61 Pa. Code § 901], in that Licensee failed to maintain complete and truthful records covering the operation of the licensed business.

The second count of the citation charged that during the periods July 25 through July 31, August 1 through August 7, October 10 through October 16, November 21 through November 27, November 28 through December 4, December 5 through December 11, 2009, and February 27 through March 5, 2010, Licensee, by its servants, agents or employees, violated sections 471 of the Liquor Code [47 P.S. § 4-471] and section 315(b) of the LOSGCA [10 P.S. § 315(b)], by offering and/or awarding more than five thousand dollars (\$5,000.00) in cash or merchandise in any seven (7)-day period.

The third count of the citation charged that during the period between February 5 and May 5, 2010, Licensee, by its servants, agents or employees,

violated section 493(12) of the Liquor Code [47 P.S. § 4-493(12)], in that Licensee falsified records covering the operation of the licensed business.

On July 9, 2010, Licensee submitted an Admission, Waiver and Authorization (“Waiver”) to the Office of the Administrative Law Judge (“OALJ”), in which Licensee admitted to the violation charged in the citation and, *inter alia*, waived a right to appeal the adjudication. [Adjudication p. 2]. The Waiver was signed by David Bowermaster, Licensee’s corporate officer, on July 2, 2010. The ALJ’s Order and Adjudication was mailed on September 3, 2010. On September 24, 2010, P. Richard Wagner, Esquire, filed this appeal to the ALJ’s Order and Adjudication on behalf of Licensee.

There is no question that Licensee’s right to appeal the substance of the violation and the penalty imposed were expressly waived. Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Wilner, 687 A.2d 1216 (Pa. Cmwlth. 1997); Pennsylvania Liquor Control Bd. v. Dentici, 117 Pa. Cmwlth. 70, 542 A.2d 229 (1988). However, recognizing that subject matter jurisdiction cannot be waived and may be raised at any stage of the proceedings, the Board will consider Licensee’s appeal to the extent it addresses that issue. Alexander v. Pennsylvania Dept. of Transportation, 880 A.2d 552 (Pa. 2005).

On appeal, Licensee contends that the Pennsylvania State Police, Bureau of Liquor Control Enforcement (“Bureau”) lacks jurisdiction to investigate and impose penalties under section 471 for offenses not enumerated in the Liquor Code, such as those found in the LOSGCA. Thus, it argues the ALJ lacked subject matter jurisdiction and committed an error of law by imposing penalties under the Liquor Code for LOSGCA offenses. Counts 1 and 2 involve violations of section 471 based upon underlying LOSGCA offenses; however, the third count, falsifying records, stands on its own as a violation of section 493(12) of the Liquor Code and is thus not addressed by Licensee’s appeal.

In response to Licensee’s appeal regarding the Counts 1 and 2, the Bureau argues that resolution of this issue is governed by the Commonwealth Court’s decision in Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Harrisburg Knights of Columbus Home Association, 989 A.2d 39 (Pa. Cmwlth. 2009).

The Board agrees that the Knights of Columbus case makes it clear that the Bureau is empowered to investigate and cite a licensee for violations of gambling laws such as those found in the Crimes Code and the LOSGCA, under section 471 of the Liquor Code. [47 P.S. § 4-471(a)]. The Bureau has jurisdiction in matters involving the LOSGA since such would constitute “other sufficient

cause shown” as set forth in section 471 of the Liquor Code, as acknowledged by the Commonwealth Court in Knights of Columbus and the Pennsylvania Supreme Court in Pennsylvania Liquor Control Bd. v. TLK, 544 A.2d 931 (Pa. 1988). The courts have consistently held that violations of criminal laws other than the Liquor Code may constitute sufficient cause for the imposition of penalties, pursuant to section 471, when reasonably related to the sale and use of alcoholic beverages, including gambling. Knights of Columbus, 989 A.2d at 44.

Proceeding on the terms of the Waiver, Licensee has no grounds for challenging Count 3. Furthermore, it is well established that the Bureau had jurisdiction to issue the citation for Counts 1 and 2. Therefore, the ALJ acted properly and was well within the parameters established by section 471 of the Liquor Code [47 P.S. § 4-471] in sustaining all three (3) counts of the citation and in the imposition of a fine and suspension.

**ORDER**

The decision of the ALJ is affirmed.

The appeal of the Licensee is dismissed.

The fine of three thousand dollars (\$3,000.00) has been paid.

This case is hereby remanded to the ALJ for imposition of new dates for the fifteen (15)-day suspension.

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Board Secretary