

Mailing Date: DEC 20 2011

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

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|----------------------------|---|-------------------------|
| PENNSYLVANIA STATE | : | |
| POLICE, BUREAU OF | : | Citation No. 10-1554 |
| LIQUOR CONTROL ENFORCEMENT | : | |
| | : | Incident No. W05-412006 |
| v. | : | |
| | : | LID - 27371 |
| OAKTON STRIP, INC. | : | |
| T/A OAKTON HOTEL | : | |
| 351 GOLF COURSE RD. | : | |
| STOYSTOWN, PA 15563-9801 | : | |
| | : | |
| | : | |
| SOMERSET COUNTY | : | |
| LICENSE NO. H-AP-5563 | : | |

**BEFORE JUDGE THAU
BUREAU COUNSEL VARGO
LICENSEE: THEODORE MOSKEY, PRO SE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on August 2, 2010, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against OAKTON STRIP, INC., License Number H-AP-5563 (Licensee).

The citation charges Licensee with a violation of Sections 406(a)(2) and 493(16) of the Liquor Code [47 P.S. §§4-406(a)(2) and 4-493(16)]. The charge is that on April 25, 2010, Licensee, by its servants, agents or employes, sold, furnished and/or gave alcoholic beverages on Sunday after 2:00 a.m.

An evidentiary hearing was conducted on July 12, 2011 in the Hampton Inn, Altoona, Pennsylvania.

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 April 26, 2010 and completed it on July 6, 2010 (N.T. 16).
2. The Bureau sent a notice of alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on July 12, 2010. The notice alleged violations as charged in the citation (Commonwealth Exhibit No. C-1, N.T. 12).
3. On April 25, 2010, a State Police Trooper responded to the premises after receiving a complaint from the neighboring golf course. The Officer arrived at 2:00 a.m. There was a private party going on inside the licensed premises. Alcoholic beverages were being served at the party (N.T. 21-24).
4. Licensee had no Sunday Sales Permit on that date (N.T. 15).

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:

Mr. M., Licensee's President does not deny that the premises was being used for a private party. His defense was that he could not find any information expressly providing that one could not use an otherwise licensed premises for a private party at a time when the licensee was not authorized to provide alcoholic beverages (N.T. 29-34).

I told Mr. M., private party or not, Licensee was not permitted to provide alcoholic beverages on that Sunday as Licensee had no Sunday Sales Permit, *Pa. Liquor Control Board v. Mignogna*, 548 A.2d 689 (Pa. Cmwltth 1988).

I also mentioned the possibility that the Liquor Code prohibited Licensee from allowing patrons on the premises because Licensee did not have an extended hours food permit.

PRIOR RECORD:

Licensee has been licensed since August 14, 1991, and has had eight prior violations:

Adjudication No. 92-2661. Fine \$60.00.

You maintained on the licensed premises a stage used by a rock band, which stage and entertainment produced thereon, was visible from the outside.

Adjudication No. 93-1798. Fine \$51.00.

Used loudspeakers or devices whereby music could be heard outside.

Adjudication No. 95-0633. Fine \$80.00.

Issued worthless checks in payment for malt or brewed beverages.

Adjudication No. 96-0040. 1 day suspension.

Issued worthless checks in payment for malt or brewed beverages.

Adjudication No. 96-2732. Fine \$1,000.00. Licensee's appeal to Board dismissed. Fine not paid and license suspended for 10 days and thereafter until fine paid. 10 day suspension vacated. ALJ modified penalty to 3 days suspension in consideration of licensee withdrawing appeal to Common Pleas Court.

Permitted entertainers to contact or associate with patrons for a lewd, immoral, improper or unlawful purpose.

Adjudication No. 98-2350. Fine \$200.00 and 1 day suspension.

Your corporate president consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

Adjudication No. 01-1377. Fine \$3,000.00 and 60 days suspension of Amusement Permit. Licensee's appeal to Board dismissed. Licensee's appeal to Common Pleas Court affirmed Board's Order and modified penalty to \$3,000.00 and 7 days suspension.

1. Permitted entertainers to contact or associate with patrons.
2. Permitted lewd, immoral or improper entertainment.

Adjudication No. 02-1084. Fine \$1,000.00 and 3 days suspension.

Your corporate president consumed alcoholic beverages while tending bar or otherwise serving alcoholic beverages.

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 \$1,000.00 or more than \$5,000.00 or both for violations of the type found in this case.

As Licensee incorrectly thought the practice of scheduling a private party where alcoholic beverages are served at a time when Licensee is not authorized to operate is legal, I impose a \$1,000.00 fine.

ORDER

THEREFORE, it is hereby ordered that Licensee OAKTON STRIP, INC., pay a fine of \$1,000.00 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.

Jurisdiction is retained.

Dated this 8TH day of December, 2011.



Felix Thau, A.L.J.

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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.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

Detach here and submit stub with payment

The fine must be paid by Cashier's Check, Certified Check or Money Order. **Personal and business checks are not acceptable unless bank certified.** Make 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. 10-1554
Oakton Strip, Inc.