

Mailing Date: SEP 20 1011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-1941
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-417945
v.	:	
	:	LID - 46209
WSM INC T/A KICKER'S PUB & RESTAURANT	:	
204 W MAIN ST	:	
BATH PA 18014-1010	:	
	:	
NORTHAMPTON COUNTY	:	
LICENSE NO. H-AP-SS-335	:	

JUDGE SHENKLE
BLCE COUNSEL: Roy Harkavy, Esq.
LICENSEE COUNSEL: Charles E. Shoemaker, Jr., Esq.

ADJUDICATION

BACKGROUND:

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on September 13, 2010. The citation alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on August 20, 2010, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

A hearing was held on July 29, 2011, in Allentown, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

FINDINGS OF FACT:

1. On August 20, 2010, a liquor enforcement officer was traveling past the licensed premises at 3:20 a.m. when he noticed that the lights were still on and there were people inside. The establishment has large windows which make it easy to see inside. The officer parked his car. He then walked up to the premises and looked through the windows. He saw a bartender behind the bar, and two men and two women sitting at it (N.T. 5-6).

2. The officer could see that there were glasses on the bar, but couldn't tell what was in them, if anything. He then walked around to the back of the premises and got up on a concrete porch. From that location the officer could see inside, through one of the two windows. At that time one of the men was shooting pool, and the other one was at the juke box, as if selecting a song to play. The officer couldn't see at that point who was sitting at the bar, if anyone (N.T. 6-7, 9).

3. The liquor enforcement officer then called Northampton County police dispatch. Two officers of the Colonial Regional Police Department responded to the premises. The liquor enforcement officer relayed his observations to them and advised the police officers as to the requirements of the liquor law. The liquor enforcement officer asked the police officers to identify the bartender, but he remained outside (N.T. 7-8).

4. One of the police officers walked to the front door of the premises and found that it was locked. He knocked. Licensee's bartender opened the door and invited him in. The officer told the bartender about the liquor enforcement officer's investigation and advised him to shut the bar down. The bartender replied that he was just cleaning up after the night and the people were just in there. They were hanging out because one of the women was too drunk to drive and a couple of her friends were hanging out there and they were going to drive her home (N.T. 15-16).

5. The police officer noted in his incident report that the bartender claimed that the other people in the bar were employees. He understood this to refer to the men in the premises, not the two women. He did not observe any decorating or other preparations for a wedding reception going on (N.T. 18-19, Exhibit L-1).

6. The police officer saw that people were playing pool and two women were seated at the bar, where there were beverages in glasses, but he did not determine what type of beverages they were. One of the women appeared to be intoxicated (N.T. 16).

CONCLUSIONS OF LAW:

The weight of the evidence favors a conclusion that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on August 20, 2010, by failing to require patrons to vacate that part of the premises habitually used for the service of alcoholic beverages not later than one-half hour after the required time for the cessation of the service of alcoholic beverages.

DISCUSSION:

Licensee presented evidence to the effect that all of the people in the establishment were there for the purpose of decorating it and otherwise preparing for a wedding reception to be held the next afternoon. The women were said to be skilled at crafts, and were assembling and gluing table decorations. At the time of the police observations it was claimed that the glue in the table decorations needed time to dry, so naturally the people present killed time by playing pool and selecting songs on the juke box.

This account does not hold water. There was enough to do that there was no occasion to play pool, and if there were craft materials anywhere in the process of assembly or drying, they would have been noticed by the police officer. The spontaneous statement reported by the officer, about the intoxicated woman, seems a more likely explanation for the presence of her and her friends on the premises. There was no excuse given at the time about the wedding reception, which would have been offered if it were true.

PRIOR RECORD:

Licensee has been licensed since April 27, 2001, and has had prior violations as follows:

Citation No. 07-0602. \$1,250.00 fine.

1. Sales on Sunday between 2:00 a.m. and 11:00 a.m. December 3, 2006.

Citation No. 08-1883. \$400.00 fine.

1. Loudspeakers could be heard outside. May 31, June 1 and July 13, 2008.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, WSM, Inc., t/a Kicker's Pub & Restaurant, License No. H-AP-SS-335, shall pay a fine of four hundred dollars (\$400.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 13TH day of September, 2011



David L. Shenkle, J.

jb

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.

WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.

THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.

Detach Here and Return 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. 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. 10-1941
WSM, Inc.