

Mailing Date: SEP 20 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2554
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W09-419925
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 December 13, 2010. There are two counts in the citation.

The first count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on October 30, 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.

The second count alleges that Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on October 30, 2010, by permitting patrons to possess and/or remove alcoholic beverages from that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

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 October 30, 2010, a liquor enforcement officer was traveling past the licensed premises at 2:45 a.m. when he noticed that the lights were still on and there were people inside. The officer stopped his car and walked up to the front window. He saw a bartender and six people

sitting at the bar. There were glasses on the bar, but the officer could not tell what was in them (N.T. 39-40).

2. The officer then called Northampton County police dispatch. He walked around to the back of the premises and got up on the porch. From that location the officer could see that one of the men inside was in possession of a bottle of Miller Lite beer. An officer of the Colonial Regional Police Department arrived, and the liquor enforcement officer returned to the front of the premises, waiting for additional police officers to arrive (N.T. 40-41).

3. While the officers were waiting, another man entered the premises through the front door. About two minutes later, a woman approached the front door and locked it. The liquor enforcement officer went to the front door and found it locked. He knocked. The woman he had seen lock it returned to the door. The liquor enforcement officer identified himself. The woman refused to open the door. The liquor enforcement officer asked the police officer to stay at the front door while he went around to the back (N.T. 41-42).

4. When the liquor enforcement officer got to the rear of the premises, he found that all of the patrons were leaving through the back door. He told them to stop, and to go back inside. Once inside, he opened the front door and allowed the police officers to enter. At that time the glasses and bottles on the bar had been removed (N.T. 42).

5. As the officer and the patrons entered the premises there was one man who left and was making his way up the back stairs to the hotel portion of the premises. The officer asked him to come back in. He refused. He said he lived upstairs and was going home. The officer took down the names of the other patrons and spoke to the bartender about what he had seen (N.T. 42-43).

CONCLUSIONS OF LAW:

Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on October 30, 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.

Licensee violated §499(a) of the Liquor Code, 47 P.S. §4-499(a), on October 30, 2010, by permitting patrons to possess alcoholic beverages in that part of the premises habitually used for the service of alcoholic beverages after 2:30 a.m.

DISCUSSION:

Licensee's president testified that he had instituted a "buddy system" policy, requiring that employees leaving the premises at night not do so alone, for their own safety. In his view, two of the people who were not employees of the establishment were there to serve that function – to walk outside with the two employees who were cleaning up, when they separately left the premises.

The section of the Liquor Code upon which the Bureau relies in this case provides that “all patrons of a licensee shall be required to leave that part of the premises habitually used for the serving of liquor or malt or brewed beverages to guests or patrons not later than one-half hour after the time the licensee is required by this act to cease serving liquor or malt or brewed beverages and shall not be permitted to have any previously served liquor or malt or brewed beverages in their possession, nor shall they be permitted to remove any previously served liquor or malt or brewed beverages from that part of the premises. Patrons of a licensee shall not be permitted to reenter that portion of the premises habitually used for the serving of liquor or malt or brewed beverages between the time designated by this act for patrons to vacate the licensed premises and the time designated by this act when the serving of liquor or malt or brewed beverages is allowed to begin unless the licensee has been granted a permit for extended hours food service.” 47 P.S. §4-499(a).

Hotel liquor licensees are permitted to sell “liquor and malt or brewed beverages only after seven o'clock antemeridian of any day until two o'clock antemeridian of the following day, except Sunday, and except as hereinafter provided, may sell liquor and malt or brewed beverages on Sunday between the hours of twelve o'clock midnight and two o'clock antemeridian.” 47 P.S. §4-406(a)(2).

The Liquor Code defines a “patron” as “an individual who purchases food, nonalcoholic beverages, liquor, alcohol or malt or brewed beverages for a consideration from a licensee or any person on the licensed premises except those actually engaged in an employment related activity.” 47 P.S. §1-102 (emphasis supplied).

I find that persons who are inside a licensed premises for the purpose of accompanying employees outside when they leave are not actually engaged in an employment-related activity because their presence in the premises is for the benefit of the person they are escorting, not for the benefit of the licensed business.

There is nothing wrong with Licensee's “buddy system” but it cannot be construed to magically convert patrons into non-patrons once the appointed hour has arrived. The answer to Licensee's security problem, if it exists, is to close the premises earlier so that no one remains inside after 2:30 a.m.

This licensed premises, with its large glass windows, is an easy target for liquor law enforcement. Licensee should have learned by now that an investigation is likely to follow whenever the lights are on after 2:30 a.m. Future citations will necessarily result in harsher penalties.

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. The two counts of the citation are merged for penalty purposes.

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 six hundred dollars (\$600.00) 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. Shenle, 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

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WSM, Inc.