

Mailing Date: SEP 02 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 10-2759
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W03-411019
v.	:	
	:	LID - 1125
CONESTOGA LODGE NO. 140	:	
IBPOE OF W. INC.	:	
320 N. CHERRY ST.	:	
LANCASTER, PA 17602-4912	:	
	:	
	:	
LANCASTER COUNTY	:	
LICENSE NO. CC-1948	:	

**BEFORE JUDGE THAU
BUREAU COUNSEL PIETRZAK
LICENSEE: NO APPEARANCE**

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on January 13, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against CONESTOGA LODGE NO. 140 IBPOE OF W, INC., License Number CC-1948 (Licensee).

The citation contains six counts.

The first count charges Licensee with a violation of Section 493(12) of the Liquor Code [47 P.S. §4-493(12)]. The charge is that on October 19, 2010, Licensee, by its servants, agents or employes, failed to keep on the licensed premises and/or provide an authorized employe of the Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.

The second count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 5512 and/or 5513 of the Crimes Code [18 Pa. C.S. §§5512 and/or 5513]. The charge is that during the periods August 4 through 8, August 11 through 15, August 18 through 22, August 25 through 29, September 1 through 5, September 8 through 12, September 15 through 18 and September 21 through 23, 2010, Licensee, by its servants, agents or employes, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises.

The third count charges Licensee with violation of Section 474.1(a) of the Liquor Code [47 P.S. §4-474.1(a)] and Section 7.31(a) of the Liquor Control Board Regulations [40 Pa. Code §7.31(a)]. The charge is that Licensee, by its servants, agents or employes, failed to return its Catering Club Liquor license and Wholesale Liquor Purchase Permit Cards to the Board after its licensed establishment had not been in operation for a period of fifteen consecutive days between September 23, 2010 and October 19, 2010.

The fourth count charges Licensee with violation 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] in that Licensee, by its servants, agents or employes, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two years immediately preceding October 19, 2010, concerning the Local Option Small Games of Chance Act.

The fifth count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 637.6(a)(1) of the Clean Indoor Air Act [35 P.S. 637.6(a)(1)]. The charge is that on May 16, June 11 and September 5, 2010, Licensee, by its servants, agents or employes, failed to post signage as required by the Clean Indoor Air Act.

The sixth count charges Licensee with violation of Section 437 of the Liquor Code [47 P.S. §4-437] and Section 5.41 of the Liquor Control Board Regulations [40 Pa. Code §5.41]. The charge is that during the periods August 25 through 29, September 1 through 5 and September 8 through 12, 2010, Licensee, by its servants, agents or employes, operated the licensed establishment without a valid health permit or license, which expired on August 24, 2010.

An evidentiary hearing was conducted on June 8, 2011 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, 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 Office of Administrative Law Judge posted a citation hearing notice, addressed to Licensee at the licensed premises on April 21, 2011. The notice was sent by certified mail, return receipt requested and first-class mail. The notice alerted Licensee to the date, time and place of the hearing. The certified Notice was returned as unclaimed.

2. The Bureau began its investigation on April 8, 2010 and completed it on December 15, 2010 (N.T. 11).

3. The Bureau sent a notice of alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on December 23, 2010. The notice alleged violations as charged in the citation (Commonwealth Exhibit No. C-1, N.T. 8).

Count Nos. 1 and 4

1. A Bureau Enforcement Officer went to the licensed premises to conduct a prearranged administrative inspection on October 19, 2010. Mr. G., a Trustee, permitted the Officer entry. The Officer determined there were no meeting minutes, no recent bank statements as well as no Small Games of Chance records. The only item Mr. G. produced was beer and liquor invoices for 2008. Mr. G. and the Officer conducted a search of the premises to find additional records. They found none. The Officer provided Licensee another opportunity to produce more records. Mr. G. was to contact the Officer by no later than October 26, 2010. No one on behalf of the club contacted the Officer by that date (N.T. 47-49).

Count No. 2

2. During the period charged, Licensee engaged in gambling that would otherwise be authorized by the Local Option Small Games of Chance Act, however, Licensee's permit to do so expired (Commonwealth Exhibit C-7, N.T. 40-44).

Count No. 3

3. During the administrative inspection of October 19, 2010, Mr. G. advised the Officer that the club had not been in operation since September 23, 2010. The Officer advised Mr. G. that Licensee was required to place the license in safekeeping (N.T. 49-50).

Count No. 5

4. On May 16, 2010 the Bureau Enforcement Officer visited the premises. Licensee is authorized to permit smoking in the establishment but there were no signs indicating so (N.T. 14-15).

5. The Officer visited the premises at 11:00 p.m. on June 11, 2010 and again verified there were no signs indicating that smoking was permitted (N.T. 18).

6. The Officer made a similar observation during the administrative inspection of September 5, 2010 (N.T. 22-24).

Count No. 6

7. During the September 5, 2010 administrative inspection, the Officer noticed Licensee's health permit expired on August 24, 2010 (Commonwealth Exhibit C-5). Licensee's officials admitted that they were open and in operation selling food during the intervals charged (Commonwealth Exhibit C-5, C-6 and C-7, N.T. 24-29, 41 and 56).

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. Counts 1, 2, 3, 4, 5 and 6 of the citation are **sustained** as charged.

DISCUSSION:

I sustain Count No. 1 because Mr. G. indicated the records were available but that he would not provide them. Had Mr. G. indicated there were no records, there would be no basis to sustain Count No. 1.

PRIOR RECORD:

Licensee has been licensed since April 18, 1934, and has had two prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge (Commonwealth Exhibit C-9, N.T. 56):

Adjudication No. 09-1873. Fine \$300.00.
Sales to nonmembers. May 2 and June 13, 2009.

Adjudication No. 10-2202X. Fine \$150.00.

Issued worthless checks in payment for malt or brewed
beverages. August 4, 2010.

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 \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

I kept the record open for the Bureau to provide evidence regarding the tax sale of the property in which Licensee was housed. Although the property was sold at tax sale, that sale was voided. On July 12, 2011, Licensee paid all back taxes thereby cancelling any tax sale.

I impose:

Counts 1 & 4 merged - \$500.00 fine
Count 2 - \$500.00 fine
Count 3 - \$100.00 fine
Count 5 - \$100.00 fine
Count 6 - \$200.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee CONESTOGA LODGE NO. 140 IBPOE OF W. INC., pay a fine of \$1,400.00 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 30TH day of August, 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. 10-2759
Conestoga Lodge No. 140
IBPOE of W. Inc.