

Mailing Date: DEC 20 2011

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	Citation No. 11-0180
LIQUOR CONTROL ENFORCEMENT	:	
	:	Incident No. W05-421728
v.	:	
	:	LID - 2081
AMERICAN LEGION HOME ASSN.	:	
OF BEAVERDALE PA	:	
506 CEDAR STREET	:	
BOX 246	:	
BEAVERDALE, PA 15921-0246	:	
	:	
CAMBRIA COUNTY	:	
LICENSE NO. CC-4529	:	

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

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on February 11, 2011, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against AMERICAN LEGION HOME ASSN. OF BEAVERDALE, PA, License Number CC-4529 (Licensee).

The citation contains three counts.

The first count charges Licensee with a violation of Sections 401(b) and 406(a)(1) of the Liquor Code [47 P.S. §§4-401(b) and 4-406(a)(1)]. The charge is that on December 10, 2010, Licensee, by its servants, agents or employes, sold alcoholic beverages to nonmembers.

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 on December 10, 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 Sections 104(c), 401(a) and 406(a)(1) of the Liquor Code [47 P.S. §§1-104(c), 401(a) and 406(a)(1)]. The charge is that on December 10, 2010, Licensee, by its servants, agents or employes, offered and/or gave liquor and/or malt or brewed beverages as a prize.

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

A citation hearing notice was mailed by the Office of Administrative Law Judge on May 27, 2011 to Licensee by both certified receipt-return mail and first-class mail to the licensed premises. The notice notified Licensee of the date, time and place of the hearing.

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 November 1, 2010 and completed it on January 18, 2011 (N.T. 7).

2. The Bureau sent a notice of alleged violation to Licensee at the licensed premises by certified mail, return receipt requested on January 27, 2011. The notice alleged violations as charged in the citation (Commonwealth Exhibit No. C-1, N.T. 8).

Count No. 1

3. On December 10, 2010 two Bureau Enforcement Officers arrived at the licensed premises at 9:20 p.m. They entered through a front door in an undercover capacity. Both made nonmember purchases of beer (N.T. 10-12).

Count Nos. 2 and 3

4. The Officers noticed 16 bottles of liquor in a basket which were being raffled. One Officer purchased a raffle ticket (N.T. 12-15 and 20-21).

CONCLUSIONS OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. Counts 1, 2 and 3 of the citation are **sustained** as charged.

PRIOR RECORD:

Licensee has been licensed since November 27, 1946, and has had six prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

Adjudication No. 92-2412. Fine \$800.00 and 1 day suspension with thereafter conditions.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on a licensed premises (poker machine and machines).
2. By-Laws do not meet requirements of the Liquor Code.
3. Failed to give the Board immediate written notice of a change of manager which occurred on August 12, 1991.
4. Failed to charge and collect dues.
5. Improper admission of members.
6. Failed to maintain records in conformity with Title 40 of the Pennsylvania Code.
7. The licensed corporation was not the only one pecuniarily interested in the operation of the licensed premises.

Adjudication No. 93-1025. Fine \$350.00 and 1 day suspension.

1. Sold, furnished and/or gave liquor and/or malt or brewed beverages during a time when Club Liquor license was suspended.
2. Sales to nonmembers.
3. Failed to post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the premises, a Notice of Suspension.

Adjudication No. 93-1202. Fine \$750.00.

Possessed or operated gambling devices or permitted gambling on your licensed premises (machines).

Adjudication No. 08-0449. 4 days suspension.

Sales after your license expired and had not been renewed and/or validated.

February 2, 2008.

Adjudication No. 09-0041. Fine \$1,500.00.

1. Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of 2 years. August 1, 2008.
2. Failed to maintain records in conformity with the Liquor Code and Title 40 of the Pennsylvania Code. January 1 through August 1, 2008.
3. Funds derived from the operation of games of chance were used for purposes other than those authorized by law. January 1 through August 1, 2008.

Adjudication No. 09-1473. Fine \$1,000.00.

Failed to keep records on the licensed premises. April 17, 2009.

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.

Licensee initially submitted a Waiver, Admission and Authorization which I would not accept without a hearing. I was concerned because Licensee was developing a serious violation pattern. Prior penalties have been unsuccessful in altering Licensee's behavior.

Consequently, I impose the following:

Count 1 - \$450.00 fine
Counts 2 and 3 merged - \$750.00 fine

ORDER

THEREFORE, it is hereby ordered that Licensee AMERICAN LEGION HOME ASSN. OF BEAVERDALE, PA, pay a fine of \$1,200.00 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. 11-0180
American Legion Home Assn.
Of Beaverdale, PA