

Mailing Date: JUL 03 2013

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

PENNSYLVANIA STATE	:	In re Citation No. 13-0752
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W09-453976
	:	
v.	:	PLCB LID No. 64620
	:	
SALUTE, LLC	:	PLCB License No. R-AP-SS-EHF-10388
300 E. BROAD ST.	:	
TAMAQUA, PA 18252-2130	:	

JUDGE SHENKLE  
BLCE COUNSEL: Roy Harkavy, Esq.  
LICENSEE: Antoinette Allesch

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on April 10, 2013. The citation alleges that License violated §406(a)(1) of the Liquor Code, 47 P.S. §4-406(a)(1), and §7.21(a) of the Liquor Control Board Regulations, 40 Pa. Code, §7.21(a), on January 9, 2013, by permitting an outside serving area to be used for purposes other than those authorized.

Licensee has executed a Statement of Waiver, Admission and Authorization in which it admits to the violation charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, authorizes the administrative law judge to enter an adjudication without a hearing based on a summary of facts and prior citation history, and waives the right to appeal this adjudication.

**FINDINGS OF FACT:**

1. On January 9, 2013, a liquor enforcement officer arrived at the licensed premises and saw two vehicles parked in the macadam area in the rear. One of the vehicles appeared to be a taxi used by Licensee to transport patrons. The officer did not see any patrons in this area, nor were there any tables and chairs set up. There were no signs prohibiting parking.

2. The officer entered the premises, met with Licensee's president, and conducted an inspection. They walked outside, where the officer noticed that one of the vehicles was no longer there. The officer asked where the taxi had gone, and the president said that it may have been taken by the landlord to dispose of recyclables. Licensee's president said that the outside area is used mainly for service during the summer. The enforcement officer said that it was a violation to use an

outside service area for unauthorized purposes, including vehicle parking. The president said that he was unaware of this<sup>1</sup>.

3. The officer later received certification from the Board stating that Licensee did not have permission to use any outside licensed areas for the parking of vehicles on the date of this visit.

DISCUSSION:

The statute said by the Bureau to be the basis for this citation provides in relevant part:

47 P.S. §4-406. Sales by liquor licensees; restrictions

(a) (1) Every...restaurant...liquor licensee may sell liquor and malt or brewed beverages by the glass, open bottle or other container, and in any mixture, for consumption only in that part of the...restaurant habitually used for the serving of food to guests or patrons....

I have deleted all of the words in the statute which do not pertain to restaurant liquor licensees, because that is the class of license held by the licensee involved in this case. (The deleted language applies only to clubs and hotels). As relevant to this case, a restatement of the law given by this statute might be: "Restaurant liquor licensees may sell liquor and malt or brewed beverages for consumption on their premises, in the place where food is usually served."

The statute does nothing else. It does not prohibit any licensee from doing anything. It does not define the extent of a licensed premises in any given case, nor does it state any rules restraining licensees from any activity. The singular purpose of this statute is to authorize the sale of alcoholic beverages in licensed premises. It provides no support for the proposition that licensees are prohibited from using their licensed premises in any particular way.

The regulation cited by the Bureau provides in its entirety:

40 Pa. Code §7.21. Inclusion of additional premises.

(a) A licensee may not conduct a business permitted by his license on another premise or a portion of the same premise other than that for which the license was issued without the approval of the Board for the inclusion of the additional premises in the license.

It may be seen that this regulation approaches the subject of the citation more closely, in that a licensee is prohibited from doing something, that is, conducting "a business permitted by his license" elsewhere than in the area licensed, absent Board approval. At least the regulation contains a prohibition.

The thing prohibited, however, is "a business permitted by his license" and that business is the sale and service by a restaurant of alcoholic beverages. Again, there is no evidence in this case

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<sup>1</sup> Board records list a woman as Licensee's president, so it is not clear to me whom the Bureau was referring to.

that Licensee was carrying on any business of any description when it allowed motor vehicles to park in the licensed area it uses for outside restaurant service in warm weather.

At best, the allowance of parking was ancillary to Licensee's restaurant business; there is no evidence that it was a separate economic activity or business.

The thought process by which an officer of the Bureau – and later, his or her supervisor – concluded that it was unlawful for a licensee, in January, to allow motor vehicles to park in an area used for the service of alcoholic beverages in the summer, is not known to me.

I have polled the other administrative law judges, and none of us has ever seen this averment before. To be sure, there are many cases concerning service of alcoholic beverages in portions of premises which are not licensed, but all of them involved the sale or service of alcoholic beverages, which did not happen in this case.

Suppose a restaurant had two licensed dining rooms, but on the date of an inspection by the Bureau had closed one of them for lack of business, and was using the space for storage. Since the closed room was licensed for service and not storage, would the Bureau cite that licensee as it has done the licensee in this case? Not likely.

I recognize that Licensee has waived its right to a hearing in this case, and has admitted the conduct described in the Bureau's case narrative. What cannot be admitted is that such a licensee should, by its waiver, undergo punishment for conduct which is not prohibited by law.

If there is some aspect of this case I have overlooked or misunderstood, I trust that the Bureau will enlighten me by filing a request for reconsideration.

CONCLUSIONS OF LAW:

47 P.S. §4-406(a)(1), and 40 Pa. Code, §7.21(a), do not prohibit a licensee from using its outside serving area for any purpose.

ORDER

THEREFORE, it is hereby ORDERED that Citation No. 13-0752 is DISMISSED.

Dated this 25<sup>TH</sup> day of JUNE, 2013.



David L. Shenkle, J.

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**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.**