

Mailing Date: JUL 15 2014

[Appeal](#)

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 13-2597
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	BLCE Incident No.: W02-456450
	:	
v.	:	PLCB LID No.: 2288
	:	
LEGION POST 304 HOME ASSN.	:	PLCB License No.: CC-4972
20 W. 6 TH STREET	:	
JIM THORPE, PA 18229-2114	:	SGOC License No.: 10013

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE: Keith McQuait, President

BACKGROUND:

This proceeding arises out of a citation, containing two counts, that was issued on January 13, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Legion Post 304 Home Assn. (Licensee).

First Cause of Action: Local Option Small Games of Chance Act Violations

The first count charges Licensee with violations of Sections 328.103 and 328.307(a) of the Local Option Small Games of Chance Act [10 P.S. §§328.103 and 328.307(a)] and Section 901.1 of the Department of Revenue Regulations [61 Pa. Code §901.1]. The charge is that Licensee, by your servants, agents, or employees, failed to operate Small Games of Chance in conformity with the Small Games of Chance Act and Title 61 of the Pennsylvania Code, during the period April 5 through August 17, 2013.

Second Cause of Action: Liquor Code Violations

The second count charges Licensee with violations of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 303 and 304 of the Bingo Law [10 P.S. §§303 and 304]. The charge is that Licensee, by your servants, agents, or employees, failed to operate bingo in conformity with Title 10 of the Bingo Law, during the periods April 28 and August 21 through 26, 2013.

I presided at an evidentiary hearing on June 5, 2014 at 100 Lackawanna Avenue, Scranton, Pennsylvania.

Therefore, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT:

1. The Bureau began its investigation on January 30, 2013 and completed it on October 17, 2013. (Commonwealth Exhibit No. C-1, N.T. 31)
2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on October 24, 2013. The notice alleged violations as charged in the citation but did not identify which of the two charges was a Liquor Code violation. (Commonwealth Exhibit No. C-1, N.T. 8)

First Cause of Action: Local Option Small Games of Chance Act Violations

Count No. 1

1. During the interval April 5, 2013 to August 17, 2013, Licensee engaged in Small Games of Chance sales after its license expired. (Commonwealth Exhibit No. C-5 and C-6, N.T. 68-72)
2. License obtained a Small Games of Chance license within two days of discovering the former license expired. (N.T. 74)

Second Cause of Action: Liquor Code Violations

Count No. 2

3. April 28, 2013 and the period August 21, 2013 through 26, 2013, Licensee operated a game pursuant to its bingo license. The winning bingo card/sheet (Commonwealth Exhibit No. C-3) was established earlier in the business day with various winning combinations posted. (Commonwealth Exhibit No. C-4 and C-5, N.T. 33-43)
4. It was Licensee's practice to select the winning bingo combinations for the day in the morning. Licensee selected a member to draw cards. Each card displayed a distinct bingo letter and number. (N.T. 76-80)

CONCLUSIONS OF LAW:

1. The Bureau has complied with the applicable notice requirements of Liquor Code Section 471 [47 P.S. §4-471], as incorporated by reference in the Local Option Small Games of Chance Act [10 P.S. §702(b)], with respect to Count No. 1.
2. The Bureau has failed to comply with the notice requirements of Liquor Code Section 471 [47 P.S. §4-471], with respect to Count No. 2.
3. The wording of Count No. 1 offends Due Process/Notice.
4. The wording of Count No. 2 offends Due Process/Notice.
5. Alternatively to Conclusion of Law No. 4, the Bureau has failed to prove that Licensee, by your servants, agents, or employees, failed to operate bingo in conformity with Title 10 of the Bingo Law.

DISCUSSION:

With two added wrinkles, this matter's resolution fits squarely within the confines of: In Re Citation No.: 13-1786, New Oxford Social & Athletic Club. Both counts must be dismissed as they fail to pass Due Process/Notice muster (Discussion, Sections F and G of the referenced Adjudication). Count No. 2 is also dismissed based on the above referenced Adjudication's analysis (Discussion, Section B) on the merits as more fully discussed herein. Independently, Count No. 2 is dismissed.

The first added issue is Licensee's defense to Count No. 1. Licensee argues it could not have violated the Small Games of Chance Act because the license was issued to a related but separate organization. The evidence overwhelming reveals that Licensee made no distinction between it and the organization to which the Small Games of Chance license was issued. The business between the two was so intertwined that any differentiation is entirely lost. In fact, carrying the argument to its logical conclusion would result in Licensee having engaged in unlawful gambling.

Without considering the applicability of New Oxford Social & Athletic Club (*supra*), Count No. 2 is dismissed on the merits. The Bureau argues the manner in which Licensee conducted the bingo game is tantamount to an instant win thus rendering the game a virtual strip ticket; put another way, the Bureau claims the game is not "traditional" bingo, i.e. the Bingo Law was not intended to allow a bingo licensee to operate as Licensee did. (N.T. 76-78)

When statutory construction is the game, the law is abundantly clear that we are not to look to legislative intent when a statute has no ambiguity. Assuming for purposes of argument, the Bingo Law is unclear, where is one to go to look for interpretive guidance? The Bureau cannot provide such guidance as none exists.

A careful reading of "BINGO" as defined in the Bingo Law leads to one result; Licensee's method of playing bingo, however untraditional, is lawful. That definition [10 P.S. §3-303] provides:

"BINGO" A game in which each player has a card or board containing five horizontal rows all but the central one containing five figures. The central row has four figures with the word "free" marked in the center thereof. Any preannounced combination of spaces when completed by a player constitutes bingo. In the absence of a preannouncement of a combination of spaces, any combination of five in a row whether horizontal or vertical when completed by a player constitutes bingo when its numbers are announced and covered. A wheel or other mechanical device may be used by any

person conducting the game of bingo, and any such person may award a prize to any player or players first completing any combination constituting bingo.

Winning combinations may be preannounced but if no preannouncement is made, the definition calls for a default winning configuration of any five horizontal or vertical rows. One may forcefully argue that silence carries with it a legislative intent that permits more than an immediate, temporal connection between announcing winning card arrangements and card purchase. Selecting numbers that form winning card arrangements at the beginning of a day's game is entirely consistent with the law.

The last sentence of "BINGO" provides for the bingo number selection process. It allows for the use of a wheel or other mechanical device which *may* be used in the selection process. Because the law is couched in the suggestive, "may" rather than the directive, "shall," the references to wheel or other mechanical device must be viewed as examples rather than an exclusive list.

These illustrative terms convey a legislative intent to inject a level of randomness, although far short of statistically scientific standards, into the bingo number selection process. As such, it is reasonable to infer that any selection method is acceptable so long as it includes a similar quantum of randomness. Using cards, as Licensee did, satisfies this concern.

I hope to put to rest the argument that this method of playing bingo is a strip ticket game. Out of an abundance of caution, I took a legal journey through the Local Option Small Games of Chance Act (Act) and the Department of Revenue regulations (Regulations) attendant thereto. I was surprised to discover that "strip ticket" appears only once in the Act and never in the Regulations.

The Act defines a "PULL-TAB" as a single folded or banded ticket or a strip ticket or card with a face covered to conceal one or more numbers or symbols, where one or more of each set of tickets or cards has been designated in advance as a winner [10 P.S. §328.103]. The Regulations expand on this point.

A pull-tab must award at least 65% of the potential gross receipts for prizes [61 Pa. Code §901.603]. Standards for "flares" are found in 61 Pa. Code §901.608. A pull-tab game must be

made only by the manufacturer. The flare may not be altered. It must list the winning numbers or symbol for each prize. Further, 61 Pa. Code §901.731(b)(2) permits an eligible organization to alter a flare but only to substitute merchandise, as a prize of equivalent cash value, to that originally on the flare. There is no authority to alter the winning numbers or symbols.

These references readily distinguish a pull-tab game from Licensee's bingo game. Other than substituting merchandise for cash, winning numbers or symbols are pre-determined at the manufacturing level. Because winning odds are fixed and flares may only marginally be altered, Licensee's bingo game has no similarity to a pull-tab (strip ticket) whatsoever.

ORDER:

Dismissal

I dismiss the citation.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 10TH day of July, 2014.

A handwritten signature in cursive script that reads "Felix Thau". The signature is written in black ink and is positioned above a horizontal line.

Felix Thau, A.L.J.

bc

General Information

This Adjudication is a legal document. It affects your rights, privileges, and obligations. The information which follows is a general guide. If you have not already done so, it may be prudent for you to consult with an attorney.

Applying for Reconsideration

If you want the Administrative Law Judge to reconsider this Adjudication, you must submit a written application and a nonrefundable \$25.00 filing fee. Both must be received by the Office of Administrative Law Judge, (PLCB - Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, PA 17110-9661) within fifteen days of this Adjudication's mailing date. Your application must describe the reasons for reconsideration. The full requirements for reconsideration can be found in Title 1 Pa. Code §35.241.

Appeal Rights

If you wish to appeal this Adjudication, you must file an appeal within thirty days of the mailing date of this Adjudication by contacting the Office of Chief Counsel of the Pennsylvania Liquor Control Board (717-783-9454). For further information, visit www.lcb.state.pa.us. The full requirements for an appeal can be found in 47 P.S. §4-471.