

Mailing Date: MAY 28 2015

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 14-2270
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W05-477168
v.	:	
	:	
JOHNSTOWN TURN-VEREIN	:	PLCB LID No.: 582
632 RAILROAD ST.	:	
JOHNSTOWN, PA 15901-2232	:	
	:	PLCB License No.: C-411
CAMBRIA COUNTY	:	

ADJUDICATION

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Emily L. Gustave, Esquire

LICENSEE COUNSEL: Aaron M. Ling, Esquire

BACKGROUND:

This proceeding arises out of a citation, containing four counts, that was issued on November 17, 2014, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against Johnstown Turn-Verein (Licensee).

The first count charges Licensee with violations of Section 493(34) of the Liquor Code [47 P.S. §4-493(34)]. The charge is that Licensee, by your servants, agents, or employees, used, or permitted to be used on the inside of your licensed premises, a loudspeaker or similar device whereby the sound of music or other entertainment, or the advertisement thereof, could be heard beyond the licensee's property line, on May 4, June 1 and July 26, 2014.

The second count charges Licensee with violations of Section 406(a)(1) of the Liquor Code [47 P.S. §4-406(a)(1)]. The charge is that Licensee, by your servants, agents, or employees, sold alcoholic beverages to nonmembers, on May 4, June 1, 27, 28 and July 26, 2014.

The third count charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Sections 8272 and 8273 of the Cigarette Tax Act [72 P.S. §§8272 and 8273]. The charge is that Licensee, by your servants, agents, or employees, sold and/or possessed cigarettes, packages of which did not have affixed thereto Pennsylvania Cigarette Tax stamps, on August 11, 2014.

The fourth count charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 203(a) of the Cigarette Tax Act [72 P.S. §203(a)]. The charge is that, your licensed premises sold cigarettes without the necessary permit required by law, on August 11, 2014.¹

I presided at an evidentiary hearing on April 8, 2015 at 180 Charlotte Drive, Altoona, Pennsylvania. The matter was submitted by way of agreement of facts. (N.T. 7)

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

FINDINGS OF FACT:

1. The Bureau began its investigation on April 8, 2014 and completed it on September 29, 2014. (N.T. 7)

2. The Bureau sent a notice of the alleged violations to Licensee at the licensed premises by certified mail, return receipt requested, on October 10, 2014. The notice alleged the violations as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 4)

Count No. 1

3. On the three dates charged, Licensee permitted amplified music to escape the property line of the licensed premises as far away as 150 feet. The music was provided by live bands, one on each date. (N.T. 8-14)

¹ The Bureau requested that Count No. 4 be withdrawn. The request was granted.

Count No. 2

4. On May 4, June 1, June 27 and 28, representing one visit extending beyond midnight, and July 26, 2014, undercover Bureau Enforcement Officers completed non-member purchases of alcoholic beverages. (N.T. 15-19)

Count No. 3

5. On the date charged, Bureau Enforcement Officers found seven cartons of cigarettes, which were not taxed by the Commonwealth. The cigarettes were purchased in Virginia by Licensee's staff and intended for personal use only. (N.T. 30-35)

CONCLUSION(S) OF LAW:

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.
2. I sustain Count Nos. 1, 2 and 3 as charged.
3. Count No. 4 is withdrawn, with prejudice.

PRIOR ADJUDICATION HISTORY:

Licensee has been licensed since December 27, 1934, and has had nine prior Adjudication(s) since July 1, 1987, the date the Office of Administrative Law Judge was established.

In Re Citation No: 90-2393. Fine \$500.00.
Sales to nonmembers on June 19, July 10 and September 14, 1990.

In Re Citation No: 91-0203. Fine \$850.00.
Sales to nonmembers on December 18, 1990.

In Re Citation No: 92-1602. Fine \$550.00 and two days suspension.
Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (machines) on June 11 and 16, 1992.

In Re Citation No: 96-0278. Fine \$1,000.00 and two days suspension.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises (machines) on January 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15 and 16, 1996.

In Re Citation No: 97-1384. Fine \$1,000.00 and seven days suspension.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machines) on April 24, 1997.

In Re Citation No: 01-0012. Fine \$1,000.00 and eight days suspension.

Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on the licensed premises (machines) on February 14, 2000, and divers other occasions within the past year.

In Re Citation No: 03-1028. Fine \$300.00.

Sales to nonmembers on April 30, May 14 and 30, 2003.

In Re Citation No: 10-0148. Fine \$700.00.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (sign-up books and tickets) on November 14, 2009.
2. Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of two years immediately preceding December 8, 2009.
3. Funds derived from the operation of Small Games of Chance were used for purposes other than those authorized by law on December 8, 2009.

In Re Citation No: 11-1074. Fine \$200.00.

Failed to maintain records in conformity with the Liquor Code and Title 40 of the Pennsylvania Code on April 14, 2011.

PENALTY ASSESSMENT CRITERIA:

Mandatory Requirement(s)

Liquor Code Section 471 [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 the violations found herein.

Discretionary Component(s)

I impose:

Count No. 1 - \$1,000.00 fine.

Count No. 2 - \$1,000.00 fine.

Count No. 3 - \$500.00 fine.

ORDER:

Imposition of Fine

Licensee must pay a \$2,500.00 fine within twenty days of the mailing date of this Adjudication. The mailing date is located on this Adjudication's first page, upper left corner. If Licensee fails to comply, the Liquor Code requires that I suspend or revoke the license.

Retaining Jurisdiction

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 18TH day of May, 2015.



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.

Detach Here and Return Stub with Payment – Note Citation Number on Check

The fine must be paid by cashier's check, money order, or an attorney's check who is licensed to practice law in Pennsylvania. **Personal and business checks are NOT acceptable unless bank certified.** Please make your guaranteed check payable to the Commonwealth of Pennsylvania and mail it, along with any required documentation to:

PLCB – Office of Administrative Law Judge
Brandywine Plaza
2221 Paxton Church Road
Harrisburg, PA 17110-9661