Mailing Date: MAY 19 2016

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

PENNSYLVANIA STATE POLICE, BUREAU OF LIQUOR CONTROL ENFORCEMENT	:	IN RE Citation No.: 15-0463C
	:	BLCE Incident No. W05-481616 & W05-481129
v.	:	
AMERICAN LEGION HOME ASSN. OF EBENSBURG 213 W. HIGH ST. EBENSBURG, PA 15931-1540	:	Special Occasion LID No.: 64180 Special Occasion Permit No.: SO-8911 Catering Club LID No.: 1361 Catering Club License No.: CC-2703
CAMBRIA COUNTY	:	
As holder of both a Special Occasion Permit (License) and a Catering Club Liquor License	:	

BEFORE: JUDGE RICHARD O'NEILL EARLEY
BLCE COUNSEL: EMILY L. GUSTAVE, ESQUIRE
LICENSEE: PHILIP D. RICE, SECRETARY

ADJUDICATION

BACKGROUND:

This proceeding arises out of a citation that was issued on March 20, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against American Legion Home Assn. of Ebensburg (Licensee), holding Liquor License Number CC-2703 and Special Occasion Permit No SO-8911.

The citation charges Licensee with violation of the Liquor Code at 47 P.S. §4-493(1), alleging that on June 26, 2014, Licensee, by its servants, agents or employees, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one minor, 19 years of age.

Licensee has executed a Statement of Admission, Waiver and Authorization in which Licensee: admits to the violation(s) charged in the citation, agrees that the Bureau complied with the applicable investigatory and notice requirements of all pertinent laws and regulations, authorizes the Administrative Law Judge to enter an Adjudication without a hearing based on a

summary of facts as provided by the Bureau and prior citation history, and waives the right to appeal this Adjudication.

Based upon the admission(s) of Licensee and the summary of facts provided by the Bureau and mitigating correspondence from Licensee, I make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

1. Licensee is a catering club. It requested and received permission from the Board to operate on the licensed premises and an adjacent lot pursuant to a special occasion permit for the day of June 26, 2014, a day during which there was a community festival. (Licensee's April 11, 2016, letter to the court.)

2. On June 26, 2014, an undercover contingent from the Bureau visited Licensee's premises during regular business hours in conjunction with the Age Compliance Check Program (the Program). All Bureau participants received mandatory training under the Program before the undercover visit.

3. A Liquor Enforcement Officer entered the interior of Licensee's premises and observed a bartender serving approximately 100 patrons.

4. A short time later, a 19-year-old underage buyer entered the interior of Licensee's premises and ordered a bottled beer. The bartender served the underage buyer a bottled beer without asking for identification.

5. The underage buyer paid for the beer, and departed the premises without consuming any alcoholic beverages.

6. I take administrative notice of the fact that on April 22, 2015, approximately three hundred days after the June 26 community day, and one month after the citation here issued, the Board retroactively "de-licensed" the club's catering club liquor license for June 26, 2014.

CONCLUSION OF LAW:

Sustained as charged.

DISCUSSION:

The facts in this case are clear: Licensee served alcohol to an underage buyer in violation of §4-493(1) on June 26, 2014, when it served the underage member of the Bureau's undercover age compliance check entourage. Therefore, the citation is sustained, a penalty shall be imposed, and RAMP certification will be ordered.

However, the Bureau requests in its pre-hearing memorandum that I impose the above penalties specifically against the special occasion permit rather than against Licensee's liquor license. (Bureau's pre-hearing memorandum, § I, p. 1. [1]) The Bureau suggests that the holder of a special occasion permit is an Article IV licensee, giving this court jurisdiction to hear complaints against permit-holders. Although the Bureau does not specifically state its reason for this request, I understand it to be motivated by concern about the availability of the club's liquor license for attachment of a penalty because it was retroactively de-licensed at the time of the violation.

I cannot find compelling support for the Bureau's argument. While the Liquor Code states that Special Occasion Permittees are "subject to the provisions of section 493(1)" (47 P.S. §4-408.4(o)), we have never interpreted §408.4 as expanding this court's jurisdiction. Rather, this court has previously concluded that the court's jurisdiction is limited to licensees pursuant to §471, and that §408.4 does not affect that. BLCE v. Richard J. Gross Post 8896 VFW of US Home & Club Assn., Inc., Citation No. 15-0590C, p. 2, fn. 1 (ALJ 10/1/15). As Judge Flaherty clarified:

> Section 493(1) sets forth the rules under which a Permittee must operate, but does not confer jurisdiction upon this Office…
>
> [Section 471] exclusively uses the term "licensee." I am of the opinion that it was never meant to apply to anyone or anything other than a full liquor licensee.
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> …
>
> Consequently… the only effective way for the Bureau to bring enforcement action against autonomous Special Occasion Permittees is via criminal prosecution."

(Id., p. 2, fn. 1.) I find this reasoning to be persuasive. Thus, I cannot conclude this court has jurisdiction over Special Occasion Permittees.

Furthermore, in this case the distinction between a licensee and permittee borders on nonexistent. In Post 8896, this court concluded that when a liquor licensee is operating pursuant to a special occasion permit and violates the Liquor Code on its premises, there is no compelling reason to differentiate between the license and the permit. As Judge Flaherty explained: "both the Liquor Licensee and Special Occasion Permittee are the same entity, and because Licensee is responsible for the violations involved, I need not differentiate in this matter between the two, and do not do so." (Post 8896, p. 2.) Thus, in Post 8896, Judge Flaherty refused to impose the penalty on the permit. (See also several Advisory Opinions that support this proposition, for example Nos. 12-350, 07-039, and 09-191.) Again, I find this reasoning to be persuasive.

[1] The record reveals that the Bureau also filed a motion on January 5, 2016, to amend the citation to remove all reference to Licensee's catering club license. The motion was denied on January 11, 2016.

It appears the Bureau has taken a position not previously adopted by this court or the Board. Nor has the Bureau offered any justification for its request in that it has not suggested why such a distinction matters.[2] Therefore, I cannot find a reason to depart from our holding in Post 8896.

Finally, in addition to the difficult enforcement issues that would arise in attaching penalties to Special Occasion Permits outlined in Post 8896,[3] I find that the Bureau's request would undermine this court's and the Board's capability to enforce the Liquor Code. This court and the Board consider licensees' prior citation history for many purposes including the shaping of penalties and consideration of licensing requests. Therefore, it is essential that violations committed by licensees should be recorded against that liquor license. However, violations attached to a special occasion permit may or may not be readily apparent on a liquor licensee's citation history. If not, a licensee operating under a special occasion permit could unfairly "shield" its liquor license from the ramifications of Liquor Code violations. Thus, I find compelling justification to follow our holding in Post 8896 and the Board's Advisory Opinions.

Accordingly, a liquor license is endangered by a violation of the Liquor Code even when operating pursuant to a special occasion permit. Thus, the Bureau's request that the violation of §4-493(1) attach only to Licensee's special occasion permit is denied.

PRIOR RECORD:

Licensee has been licensed since January 21, 1936, and has had three prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

IN RE:

Citation No. 07-1738. (Club liquor license). Fine $200.00.
1. Sales to nonmembers.

Citation No. 08-0254. (Club liquor license). Fine $500.00.
1. Sales to nonmembers.

Citation No. 10-1693. Fine $500.00.
1. Sold malt or brewed beverages for consumption off premises. June 24, 2010.

PENALTY:

[2] If, as I surmised, the motivation for the request is over concern about the availability of the liquor license to be subjected to administrative penalties for violations occurring while it was de-licensed, the Bureau need not worry. This court and the Board have routinely exercised jurisdiction over liquor licenses for violations that occurred when a license was inactive, under suspension, expired, or in safekeeping. De-licensing, insofar as I understand it, does not void a liquor license, it merely indicates the extent of one's rights to sell alcohol.
[3] Id., p. 2, fn. 1.

For violations of the type found in this case, the Liquor Code permits any of the following penalties: (1) a license revocation, (2) a fine in the range of $1,000.00 to $5,000.00, (3) a license suspension, or (4) any combination of a fine and suspension. (47 P.S. §4-471) In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violation(s) as charged in this citation, and has waived the right to a hearing and appeal.

Moreover, the Liquor Code at 47 P.S. §4-471(d) provides for mandatory compliance with §4-471.1, pertaining to Responsible Alcohol Management when, as in this case, Licensee has been found to have violated §493(1) as a first offense as it relates to sales to minors or sales to a visibly intoxicated patron.

For the foregoing reasons, a penalty shall be imposed in the amount of $1,400.00, and Licensee is directed to participate in mandatory RAMP certification as set forth in §471.1 of the Liquor Code.

ORDER:

THEREFORE, it is hereby ordered that American Legion Home Assn. of Ebensburg, License Number CC-2703, 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.

IT IS FURTHER ORDERED that Licensee shall comply with the requirements set forth in the Liquor Code at 47 P.S. §4-471.1 pertaining to Responsible Alcohol Management in the following manner: Licensee is directed to contact the Bureau of Alcohol Education, Pennsylvania Liquor Control Board (Toll Free Telephone No. 1-866-275-8237; Web Site: www.lcb.state.pa.us) within 30 days of the mailing date of this Adjudication in order to seek assistance in the compliance process. Licensee must receive certification within 90 days of the mailing date of this Adjudication. Licensee must remain in compliance for a period of one year from the date such certification is issued.

Failure to comply with this Order will be grounds for modification of penalty in this case. Failure to comply may also constitute grounds for issuance of a new citation as authorized by the Liquor Code at 47 P.S. §4-471(d) or §4-471(e).

Jurisdiction is retained.

Dated this 17TH day of MAY, 2016.

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Richard O'Neill Earley, J.

AMERICAN LEGION HOME
ASSN. OF EBENSBURG
IN RE CITATION NO. 15-0463C

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A $25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

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

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The fine must be paid by cashier's check, money order, or a check drawn on the account of an attorney licensed 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

Credit/Debit Cards may be used: If you have already registered with PLCB+ you should be able to pay by Credit/Debit card; if you have not registered with PLCB+ you may obtain the information on how to register by sending an email message to: RA-LBLICENSINGMOD@pa.gov.

In Re Citation No. 15-0463C
American Legion Home Assn. of Ebensburg