Mailing Date: OCT 01 2015

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. 15-0590C
	:	BLCE INCIDENT NO. W03-489350 W03-489567
v.	:	
RICHARD J. GROSS POST 8896 VFW OF U.S. HOME & CLUB ASSN., INC. LOCUST ST. EXTENDED PO BOX 375 EAST BERLIN, PA 17316-0375	:	SPECIAL OCCASION LID – 60631 SPECIAL OCCASION PERMIT NO. SO-8389
	:	CATERING CLUB LID – 2355 CATERING CLUB LICENSE NO. CC-5095
ADAMS COUNTY	:	

ORDER IN RESPONSE TO
MOTION TO CLARIFY ADJUDIDCATION

BEFORE: DANIEL T. FLAHERTY, JR., ALJ
BUREAU COUNSEL: JOHN H. PIETRZAK
LICENSEE: PRO SE

The Catering Club Licensee (Licensee) in this case obtained a Special Occasion Permit which was issued on September 17, 2013. The Licensee then applied to the Pennsylvania Liquor Control Board to delicense a portion of its licensed premises for 24 hours and have it relicensed on the following day. On the day in question, December 31, 2014, the Licensee, under the authority of the Special Occasion Permit conducted an event on the delicensed portion of its premises.

During the aforementioned event on December 31, 2014, Licensee under the auspices of the Special Occasion Permit sold alcoholic beverages to a minor during an age compliance check in violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)].

A citation was issued by the Bureau of Liquor Control Enforcement (Bureau) against both the Catering Club Licensee and against the Special Occasion Permit, for violation of Section 493(1) (supra) on December 31, 2014.

Licensee submitted a Waiver in this case, and on July 28, 2015, this Office issued an undifferentiated Adjudication.

This Office sustained the citation against the Catering Club License, but made no specific conclusion of law regarding whether the Office of Administrative Law Judge had subject matter jurisdiction over a Special Occasion Permit or whether the Special Occasion Permittee was considered an Article IV Licensee with respect to liability for violation of Section 493(1) (supra).

The Bureau requests that this Office issue an Amended Adjudication specifically concluding as a matter of law as follows:

> (1) Special Occasion Permit holders are Article IV Licensees.
>
> (2) This Office has subject matter jurisdiction over Special Occasion Permittees with respect to citations for which violations of the Liquor Code through Section 408.4 of the Liquor Code [47 P.S. §4-408.4] are alleged.
>
> (3) The Special Occasion Permit holder violated Section 493(1) by selling alcohol to a minor on December 31, 2014.

The Bureau further requests that if a violation is found against the Special Occasion Permittee as requested, that the Citation then be dismissed against the Catering Club Licensee. I decline to do so.

Initially, I would note that this is an uncontested matter in which neither Licensee nor Special Occasion Permittee have challenged the allegation. Further, since the violation alleged is a direct violation of the Liquor Code of which Licensee had complete knowledge, Licensee is not insulated from liability simply because it occurred somewhere other than the licensed premises [See ***Commonwealth v. Price Bar, Incorporated***, 201 A.2d 221 (Pa. Super); ***Primo's Bar v. Com. PA Liquor Control Board***, 409 A.2d 1369 (Pa.Cmwlth 1979); ***Com. Pa. Liquor Control Board v. Pollock***, 484 A.2d 206 (Pa.Cmwlth 1984)].

Off premises conduct may be chargeable to a licensee where there is a nexus to the licensed business. ***Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Goodfellas, Inc.***, 850 A.2d 868 (Pa.Cmwlth 2004).

Since, in this case, both 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.[1]

Based upon the foregoing, the instant Motion to Clarify the Adjudication, as the Adjudication applies to the Liquor Licensee is denied, and the Adjudication dated July 28, 2015 shall remain in force. Since imposition of the penalty against Licensee as Special Occasion Permittee would be to penalize the same entity twice for the identical activity the Citation is DISMISSED as to the Special Occasion Permittee.

Dated this 29TH day of September, 2015.

Daniel T. Flaherty, Jr., J.

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[1]I feel obliged to note that I do not believe that this Office would have jurisdiction over citations charging Special Occasion Permittees, who do not hold liquor licenses, with violations of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)].

Section 408.4(o) of the Liquor Code [47 P.S. §4-408.4(o)] provides that a Special Occasion Permittee is subject to Section 493(1) of the Liquor Code (supra). Section 493(1) sets forth the rules under which a Permittee must operate, but does not confer jurisdiction upon this Office.

Section 471 of the Liquor Code [47 P.S. §4-471] is the section that does confer jurisdiction upon this Office. This section 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.

Finally, to reach the conclusion as requested by the Bureau would put this Office in the position of issuing orders in cases where violations are found against Permittees who may no longer hold such permits which are limited in duration. Thus, there would be no way to enforce payment of a fine and no way to effectively suspend the transient permittee. This would fly in the face Section 1922(i) of the Statutory Construction Act [1 Pa. C.S.A. §1922(i)] which suggests that we may presume in ascertaining the intentions of the General Assembly that:

> …(i)…the General Assembly does not intend a result that is absurd, impossible of execution or unreasonable…

Consequently, I am of the opinion that the only effective way for the Bureau to bring enforcement actions against autonomous Special Occasion Permittees is via criminal prosecution.