

Mailing Date: NOV 20 2015

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

PENNSYLVANIA STATE POLICE,	:	In Re Citation No.: 15-0843
BUREAU OF LIQUOR CONTROL	:	
ENFORCEMENT (BLCE)	:	
	:	BLCE Incident No.: W02-484772
v.	:	
	:	
VFW POST NO. 283 CANTEEN, INC.	:	PLCB LID No.: 51021
753-757 WYOMING AVE	:	
KINGSTON, PA 18704-0168	:	
	:	PLCB License No.: CC-2298
LUZERNE COUNTY	:	

**ADJUDICATION**

BEFORE: Felix Thau, Administrative Law Judge

FOR BLCE: Craig A. Strong, Esquire

LICENSEE COUNSEL: James J. Haggerty, Esquire

**BACKGROUND:**

This proceeding arises out of a citation, containing one count that was issued on May 13, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (Bureau) against VFW Post No. 283 Canteen, Inc. (Licensee).

The citation charges Licensee with a violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 5513 of the Crimes Code [18 Pa. C.S. §5513]. The charge is that Licensee, by your servants, agents, or employees, possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries, poolselling and/or bookmaking on your licensed premises, on April 2, 2015.

I presided at an evidentiary hearing on October 22, 2015 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 September 11, 2014 and completed it on April 7, 2015. (N.T. 29)

2. The Bureau sent a notice of the alleged violation to Licensee at the licensed premises by certified mail, return receipt requested, on April 20, 2015. The notice alleged the violation as charged in the citation. (Commonwealth Exhibit No. C-1, N.T. 27)

3. On April 2, 2015, four Bureau Enforcement Officers entered the premises at a time when it was open and in operation. While in uniform, the four conducted an administrative inspection, beginning at about 6:25 p.m. (N.T. 32-33)

4. On Officer spoke to the Steward who admitted Licensee did payoff on two electronic video gaming devices which were operational in the back room of the licensed premises. After the verbal admission, the Steward endorsed a written statement in which he also admitted to making payoffs. (Commonwealth Exhibit No. C-3, N.T. 34-62)

**CONCLUSION(S) OF LAW:**

1. The notice requirements of Liquor Code Section 471 [47 P.S. §4-471] have been satisfied.

2. I sustain the violation as charged.

**DISCUSSION:**

Licensee propounded several legal issues as defenses even though the Steward, as witness, admitted the Club did make payoffs on the machines. (N.T. 131-135)

I find all defenses to be meritless. Licensee argued the Steward's verbal and written admission were coerced. There is no coercion whatsoever. The Officer was merely providing the Steward with the reality of his options. Moreover, the Steward's admission, under oath and at trial, was not coerced.

Licensee next argues the admission alone is insufficient to sustain a charge based on the *Corpus Delicti* principle (Rule). A criminal law concept, the Rule essentially requires there be evidence of a crime; a confession without independent evidence of a crime cannot sustain a conviction. It is unclear whether the Rule is transferable to this quasi-criminal administrative process.

One would expect the Rule to be applicable since other criminal law concepts, such as the body of search and seizure jurisprudence, do apply. With respect to the Steward's admission, the "body of the crime" are the video gaming devices thus defeating that defense.

Licensee further argues, the citation must be dismissed as, on the date charged, there was no proof of gambling and the video gaming devices were not gambling devices *per se*. This very fine point will not carry the day. Since payoffs were made on the two machines, Licensee maintained gambling paraphernalia on the date charged. Moreover, the offer to make payoffs for accumulated credits was alive and well on the date charged. That no payoffs were actually made is consequently irrelevant.

The Bureau must overcome the hurdle of *scienter* as expressed in *PLCB v. TLK, Inc.*, 544 A.2d 931 (Pa. 1988). In any number of cases, I have expressed the opinion, because the Manager/Steward holds a special position within the Liquor Code framework requiring reporting and approval pursuant to Title 40, Pa. Code, the Manager/Steward is the Licensee for purposes of *PLCB v. TLK, Inc.*, (supra). Therefore, the Bureau has proved direct Licensee knowledge. In any event and even though the Commander denied any knowledge, the Commander should have known of the payoff practice.

### **PRIOR ADJUDICATION HISTORY:**

Licensee has been licensed since June 13, 2003, and has the following Adjudication history:

In Re Citation No.: 07-2260. Fine \$550.00.

1. Sales to nonmembers on July 14, 2007.
2. Sold and/or served an unlimited or indefinite amount of alcoholic beverages on July 14, 2007.

In Re Citation No.: 10-0019. Fine \$850.00.

1. Possessed or operated gambling devices or permitted gambling on your licensed premises (machines) on September 9, 2009.

2. Failed to maintain complete and truthful records covering the operation of Small Games of Chance for a period of 2 years on September 9, 2009.
3. Unexplained cash shortage during the period January 1 through September 9, 2009.

In Re Citation No.: 11-0194. Fine \$500.00.

Possessed or operated gambling devices or permitted gambling on the licensed premises (horse bets and wheels) on October 23, 2010.

In Re Citation No.: 12-0367. Fine \$1,000.00 and five days suspension.

Possessed or operated gambling devices or permitted gambling on the licensed premises (machines) on January 18, 2012.

In Re Citation No.: 14-1292. Fine \$1,000.00 and 15 days suspension.

Possessed or operated gambling devices or permitted gambling on the licensed premises (machines) on May 24, June 4 and 5, 2014.

### **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 violation found herein.

Further, this violation, in combination with two prior Adjudications, In Re Citation Nos.: 12-0367, 14-1292, represents the third violation of the Crimes Code within four years. Liquor Code Section 471(c) [47 P.S. §4-471(c)] requires the penalty herein imposed to include license revocation or suspension.

#### ***Discretionary Component(s)***

On the mitigation side, the Commander testified that it was his announced policy that Licensee was not to engage in any unlawful gambling. He further testified that he was surprised by the Steward's admission as witness. Also, the Bureau conducted more than ten visits to the premises finding no violations. Lastly, the video gaming devices were not gambling devices *per se*.

Looking towards exacerbating factors, I recognize that Licensee already had authority to offer gambling legally through the Local Option Small Games of Chance Act as a method of raising funds. Apparently, the recent six fold weekly payout limit increase is still not enough.

Accordingly, I impose a \$1,000.00 fine and a ten days suspension.

**ORDER:**

***Imposition of Fine***

Licensee must pay a \$1,000.00 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.

***Suspension Length and Date(s)***

I suspend the license, as well as all other permits or licenses issued by the Pennsylvania Liquor Control Board attendant to the license, for ten days, beginning Friday, January 8, 2016, 7:00 a.m., and ending Monday, January 18, 2016, 7:00 a.m.

***Instructions to Post Notice of Suspension Placard***

Licensee shall post a Notice of Suspension Placard (PLCB Form 1925) in a conspicuous place on the outside of the licensed premises, or in a window plainly visible from the outside of the licensed premises, on or before Friday, January 8, 2016, 7:00 a.m. The Suspension Placard may not be removed until Monday, January 18, 2016, 7:00 a.m.

Licensee is advised if replacement placards are needed for any reason they are available at all Pennsylvania Liquor Stores/Fine Wine and Good Spirits stores.

***Consequence of Failing to Comply With This Order***

In addition to any other consequence at law, if Licensee does not comply with all conditions herein, the Bureau may issue an additional citation alleging Licensee has violated this Order. Alternatively, the Bureau may assert the same claim by requesting this Adjudication be reopened.

***Retaining Jurisdiction***

I retain Jurisdiction to ensure compliance with this Adjudication.

Dated this 18<sup>TH</sup> day of November, 2015.

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](http://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**

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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