

Mailing Date: SEP 16 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 15-1150
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. W03-490780
	:	
v.	:	SGOC LICENSE NO. 20140216
	:	(Expired: 07/30/15)
	:	
	:	PLCB LID - 2540
	:	
COLUMBIA POST NO. 1306	:	
CATHOLIC WAR VETERANS	:	PLCB LICENSE NO. CC-5540
250 NORTH 7 TH ST.	:	
COLUMBIA, PA 17512-1226	:	
	:	
	:	
LANCASTER COUNTY	:	

ADJUDICATION

BEFORE: DANIEL T. FLAHERTY, JR., ALJ
BUREAU COUNSEL: JOHN H. PIETRZAK
LICENSEE COUNSEL: C. EDWARD BROWNE

BACKGROUND:

This proceeding arises out of a citation that was issued on July 2, 2015, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against COLUMBIA POST NO. 1306 CATHOLIC WAR VETERANS, (hereinafter "Licensee").

The citation contains five counts.

The first count charges Licensee with violation of Section 901.745 of the Department of Revenue Regulations [61 Pa. Code §901.745] in that on December 21, 2014, Licensee, by its servants, agents or employees, failed to operate Small Games of Chance in conformity with Small Games of Chance Act and Title 61 of the Pennsylvania Code, in that it conducted an unlawful raffle.

The second count charges Licensee with violation of Section 901.29 of the Department of Revenue Regulations [61 Pa. Code §901.29] in that on December 21, 2014, Licensee, by its servants, agents or employees, failed to operate Small Games of Chance in conformity with Small Games of Chance Act and Title 61 of the Pennsylvania Code, in that it offered and/or awarded an illegal prize.

The third count charges Licensee with violation of Section 328.103 of the Local Option Small Games of Chance Act [10 P.S. §328.103] and Section 901.1 of the Department of Revenue Regulations [61 Pa. Code §901.1] in that during the period February 1 through March 9, 2015, Licensee, by its servants, agents or employees, failed to operate Small Games of Chance in conformity with Small Games of Chance Act and Title 61 of the Pennsylvania Code, in that it conducted an unlawful drawing.

The fourth count charges Licensee with violation of Sections 104(c), 401(a) and 406(a)(1) of the Liquor Code [47 P.S. §§1-104(c), 4-401(a) and 4-406(a)(1)] in that on December 21, 2014, Licensee, by its servants, agents or employees, offered and/or gave liquor and/or malt or brewed beverages as a prize.

The fifth count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] and Section 328.103 of the Local Option Small Games of Chance Act [10. P.S. §328.103] and Section 901.1 of the Department of Revenue Regulations [61 Pa. Code §901.1] in that during the period February 1 through March 9, 2015, Licensee, by its servants, agents or employees, failed to operate Small Games of Chance in conformity with Small Games of Chance Act and Title 61 of the Pennsylvania Code, in that it conducted an unlawful drawing.

The investigation which gave rise to the citation began on January 26, 2015 and was completed on March 31, 2015; and notice of the violation was sent to Licensee by Certified Mail on April 29, 2015. The notice of violation was received by Licensee.

An evidentiary hearing was held on this matter on February 24, 2016 in the Office of Administrative Law Judge, Brandywine Plaza, 2221 Paxton Church Road, Harrisburg, Pennsylvania.

Upon review of the transcript of this hearing, we make the following Findings of Fact and reach the following Conclusions of Law:

FINDINGS OF FACT:

COUNT 1

1. Licensee conducted a raffle on December 21, 2014 for which a raffle ticket was used (N.T. Written Stipulation Exhibit J-1 No. 3).
2. The raffle ticket did not have printed on it the location or time of the drawing (Written Stipulation N.T. Exhibit J-1 No. 4).

COUNTS 2 AND 4

3. The raffle listed as the prize a “gift certificate for alcoholic or nonalcoholic prizes (sic) at your local Wine and Spirits Store.” (Written Stipulation N.T. Exhibit J-1 No. 5).

4. Licensee awarded a \$300.00 Wine and Spirits Store gift card as a prize for the raffle on December 21, 2014 (Written Stipulation N.T. Exhibit J-1 No. 6).

5. Before offering a Wine and Spirits Store gift card as a prize, William T. Wright, Executive Director of Licensee Club conducted Internet research and found an Opinion Letter by the Chief Counsel of the Pennsylvania Liquor Control Board (LCB Advisory Opinion No. 1109-167) which provided, inter alia, "Gift cards for the Board's Wine and Spirits stores may be offered as prizes in a raffle because a Pennsylvania Wine and Spirits gift card is redeemable for both alcoholic and nonalcoholic items." Relying on this letter and previous letters, Mr. Wright allowed the awarding of a gift card from the Board's Wine and Spirits stores as a prize in raffles (N.T. 19-20 and Exhibits L-1 and L-2).

COUNTS 3 AND 5

6. During the period February 1, 2015 through March 9, 2015, Licensee operated a monthly drawing. The drawing cost \$5.00 to enter. Licensee awarded a prize for the February 2015 monthly drawing on February 23, 2015. Licensee sold entries for the March 2015 monthly drawing until March 9, 2015, after which it discontinued operating the monthly drawings (Written Stipulation N.T. Exhibit J-1 Nos. 7, 8 and 9).

CONCLUSIONS OF LAW:

1. Count No. 1 of the citation is **sustained**.
2. Count No. 2 of the citation is **dismissed**.
3. Count No. 3 of the citation is **sustained**.
4. Count No. 4 of the citation is **dismissed**.
5. Count No. 5 of the citation is **dismissed**.

DISCUSSION:

COUNT NOS. 1 AND 3

Licensee, through counsel, has conceded that the facts stipulated establish violations as to the allegations in Counts No. 1 and No. 3. Specifically, the raffle ticket used in the raffle mentioned in Count 1 did not have printed on it the location or time of the drawing as required by the Department of Revenue Regulations [61 Pa. Code §901.745]. Further the "monthly drawing" mentioned in Count No. 3 is not among the games of chance authorized by the Small Games of Chance Act [10 P.S. §328.103] or the Department of Revenue Regulations [61 Pa. Code §901.1]. (See N.T. 25 and 27).

Based upon the Stipulations of Fact submitted by the parties and the statements of counsel, I conclude that Count No. 1 and Count No. 3 are sustained.

COUNTS 2 AND 4

Both Count No. 2 and Count No. 4 of the Citation must be dismissed because the gift certificate from the Pennsylvania Wine and Spirits Store offered as a prize in the raffle in question is not the equivalent of offering liquor as a prize.

Count No. 2 of the Citation alleges a violation of Section 901.29 of the Department of Revenue Regulations [61 Pa. Code §901.29]. This Section reads as follows:

A prize may not be given which is illegal under municipal, State or Federal law.

In the context of this case, this count relies upon the Liquor Code [47 P.S. §1-101 et seq.] to establish whether a prize is legal or illegal.

Count No. 4 of the Citation relies upon Sections 104(c), 401(a) and 406(a)(1) of the Liquor Code [47 P.S. §§1-104(c), 4-401(a) and 4-406(a)(1)] as the basis for the charge in this Count.

Both parties agree that there is no specific provision of the Liquor Code (supra) or the Regulations of the Liquor Control Board [40 Pa. Code §1.1 et seq.] that prohibits the awarding of liquor or malt or brewed beverages as a raffle prize. Rather, such prohibitions are based upon the interpretation of Sections 401(a) and 406(a)(1) of the Liquor Code (supra) that liquor licensees may only sell alcohol and thus may not give it away as a raffle prize. This interpretation is at the heart of the charges in Counts 2 and 4 of the Citation.

The Bureau argues that the awarding of a Pennsylvania Wine and Spirits State store gift certificate which may be redeemed for alcoholic and nonalcoholic items as a raffle prize is the equivalent of awarding alcohol as a prize and is therefore illegal.

The Liquor Control Board, through its Office of General Counsel has written advisory opinions on the issue at hand, i.e. *Advisory Opinion 2009-167* and *Advisory Opinion 2006-209*. In each of these advisory opinions the same dispositive language has been used:

Gift Cards for the Board's Wine and Spirits Stores may be awarded as prizes in a raffle because a Pennsylvania Wine and Spirits gift card is redeemable for both alcoholic and nonalcoholic items.

The Bureau argues that the Board advisory opinions have indicated that were the gift cards redeemable for alcoholic beverages only, they would not be permissible, as no alcoholic beverages may be awarded as part of such a contest; thus the gift cards in question are an “exception” to this general rule which is legally erroneous and amounts to the creation of law rather than an interpretation.

In support of its position, the Bureau argues that the Liquor Code is to be interpreted in a manner which restricts the sale of alcohol rather than permitting it. Further the Bureau argues that the opinions in question essentially negate the general prohibition against awarding alcohol as a raffle prize.

It is my opinion that the opinions in question are refinements upon the interpretation which has been the basis for the prohibition in question (offering liquor as a prize). Contrary to the Bureau’s argument that the gift cards are actually for alcohol only, the plain language of the cards say that they are for alcoholic and nonalcoholic items. The logical extension of the Bureau’s argument would be that the awarding of cash in a raffle would be illegal since that too could be redeemed both for alcoholic and nonalcoholic items. Consequently, these particular opinion letters are neither illegal rule making nor attempts to legislate, but are refinements of the original interpretation and not clearly erroneous.

Section 211.1 of the Liquor Code [47 P.S. §2-211.1] reads as follows:

Upon written request by a licensee the board or its counsel shall issue a legal opinion regarding any subject matter relating to this act or any regulation promulgated pursuant to it. ***This legal opinion shall be binding on the enforcement bureau*** (Emphasis supplied).

Consequently, the plain and unambiguous language of the above quoted statutory language precludes the Bureau from asserting that offering gift cards from the Board’s wine and spirit stores which are redeemable for both alcoholic and nonalcoholic items as a raffle prize are tantamount to offering liquor as a raffle prize and are, therefore illegal.

Based upon the foregoing, I conclude that Counts 2 and 4 must be dismissed as being in conflict with opinion letters from the Liquor Control Board which clearly cover the issue at hand and are not clearly erroneous.

COUNT 5

Count No. 5 is premised upon three or more violations of the Local Option Small Games of Chance Act [10 P.S. §328.702(g)(2)]. Since I have concluded that Licensee has not committed three separate violations of the Small Games of Chance Act, this count must also be dismissed.

PRIOR RECORD:

Licensee has been licensed since January 28, 1959, and has had three (3) prior violation(s) since July 1, 1987, the date of establishment of the Office of Administrative Law Judge:

IN RE:

Citation No. 88-1029. Fine \$500.00.

1. Gambling (poker machines and tickets).

Citation No. 91-2647. Fine \$700.00.

1. Improper admission of members.
2. Sales to nonmembers.

Citation No. 10-1859. Fine \$500.00.

1. Gambling (block pools, tickets, punchboards, and sign up book). June 9 through 22, 2010.

PENALTY:

Counts 1 and 3

The Small Games of Chance Act provides that a club licensee is subject to a penalty up to \$800.00 for a first violation. In addition, the ALJ may suspend or revoke the Small Games of Chance license as well as any Special Permit.

Under the circumstances of this case, the penalty imposed shall be as follows:

- Count 1 - \$250.00 fine
- Count 2 - Dismissed
- Count 3 - \$250.00 fine
- Count 4 - Dismissed
- Count 5 - Dismissed

ORDER

THEREFORE, it is hereby ordered that Licensee COLUMBIA POST NO. 1306 CATHOLIC WAR VETERANS, pay a fine of \$500.00 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. Additionally, I may also suspend the Small Games of Chance license.

Jurisdiction is retained.

Dated this 13TH day of September, 2016.



Daniel T. Flaherty, Jr., J.

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MOTIONS FOR RECONSIDERATION CANNOT BE ACTED UPON UNLESS THEY ARE IN WRITING AND RECEIVED BY THE OFFICE OF ADMINISTRATIVE LAW JUDGE WITHIN 15 DAYS AFTER THE MAILING DATE OF THIS ORDER, ACCOMPANIED BY A \$25.00 FILING FEE.

IF YOU WISH TO APPEAL THE DECISION OF THE ADMINISTRATIVE LAW JUDGE'S ORDER, THE APPEAL MUST BE FILED WITHIN 30 DAYS OF THE MAILING DATE OF THE ORDER. PLEASE CONTACT CHIEF COUNSEL'S OFFICE AT 717-783-9454.

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

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

IN RE: CITATION NO. 15-1150
COLUMBIA POST NO. 1306
CATHOLIC WAR VETERANS

Credit/Debit Cards may be used: If 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