

Mailing Date: MAY 05 2016

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

PENNSYLVANIA STATE	:	In re Citation No. 15-1255
POLICE, BUREAU OF	:	
LIQUOR CONTROL ENFORCEMENT	:	BLCE Incident No. W02-494643
	:	
v.	:	PLCB LID No. 1688
	:	
WILKES-BARRE REPUBLIC CLUB	:	PLCB License No. C-3610
280 S. SHERIDAN ST.	:	
WILKES-BARRE, PA 18702-6229	:	Luzerne County

JUDGE SHENKLE  
BLCE COUNSEL: Craig A. Strong, Esq.  
LICENSEE: Patrick McDermott, president

**ADJUDICATION**

**BACKGROUND:**

The Bureau of Liquor Control Enforcement of the Pennsylvania State Police issued this citation on July 22, 2015. The citation alleges that Licensee violated the Liquor Control Board Regulations, 40 Pa. Code §15.62(a), on May 18, 2015, by failing to post in a conspicuous place on the outside of the licensed premises or in a window plainly visible from the outside of the premises, a Notice of Suspension.

A hearing was held on Thursday, March 31, 2016 in Scranton, Pennsylvania. The parties stipulated to the timely service of the notice letter and citation.

**FINDINGS OF FACT:**

1. In an adjudication of Citation No. 14-2406, mailed on April 10, 2015, the Honorable Daniel T. Flaherty, Jr., ordered that “Licensee’s liquor license (including all permits and Licensee Discount Card) License No. C-3610 be suspended for a period of one day **BEGINNING** at 7:00 a.m. on Monday, May 18, 2015 and **ENDING** at 7:00 a.m. on Tuesday, May 19, 2015.” (Ex. C-3).

2. The order included the instruction “on May 18, 2015 at 7:00 a.m. to place the enclosed Notice of Suspension Placard (Form No. PLCB-1925, printed with red and black ink) in a conspicuous place on the outside of the licensed premises or in a window plainly visible from outside the licensed premises and to remove said license from the wall and place it in a secure location.” (Ibid).

3. On May 18, 2015, a liquor enforcement officer visited the licensed premises at about 3:04 p.m. and found it closed, but there was no suspension placard posted (N.T. 7).

4. On the evening of May 17, 2015, Licensee's president spoke to the nighttime bartender, who had possession of the suspension placard which Licensee was required to post as of 7:00 a.m. the next morning. The bartender confirmed that he had posted the placard. At 11:45 the next morning Licensee's president visited the premises and saw that there was no suspension placard posted. He checked again with the bartender, who confirmed again that he had posted the placard on the outside of the premises' locked metal door. Outside of the metal door is a storm/screen door which can't be locked, and Licensee's officer supposes that the school children who wait for the bus outside the premises must have pulled it down; the placard was never found (N.T. 8-10).

5. Licensee's president taped a copy of the relevant portion of the suspension order to the door, and at 3:30 p.m. picked up another placard at the liquor store and posted it. He did not know that the liquor enforcement officer had already visited the premises. There are glass windows to the inside of which Licensee could have posted the placard, but Licensee's president didn't think of that because during a previous suspension he had posted the placard on the door with no problem, although that suspension took place during school summer vacation (N.T. 10-13).

CONCLUSIONS OF LAW:

Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since August 11, 1938, and has had prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, as follows:

In re Citation No. 99-1412. \$100.00 fine.

1. Gambling (machine). August 3, 1999.

In re Citation No. 07-1630. \$350.00 fine.

1. Gambling (numbers pools). May 23, 2007.

In re Citation No. 09-1820. \$550.00 fine.

1. Gambling (machines). May 13, 2009.

In re Citation No. 10-1101. \$650.00 fine and 1 day suspension.

1. Gambling (machines). April 28, 2010.

In re Citation No. 11-0138. \$800.00 fine and 1 day suspension.

1. Gambling (machines). December 5 and 6, 2010.

In re Citation No. 11-0159. \$1,000.00 fine and 1 day suspension.

1. Gambling (machines). January 5 and 6, 2011.

In re Citation No. 13-0413. \$1,000.00 fine and 1 day suspension.

1. Gambling (machine). February 7, 2013.

In re Citation No. 14-2406. \$1,400.00 fine and 1 day suspension.

1. Sales after license expired. September 1 through 17, 2014.

PENALTY:

Section 471 of the Liquor Code, 47 P.S. §4-471, prescribes a penalty of license suspension or revocation or a fine in the \$50.00 to \$1,000.00 range, or both, for violations of this type.

I accept Licensee's president's explanation of what happened in this case, but since the posting of a suspension notice is an absolute administrative requirement and there was a method of insuring that the sign remained in place, I cannot allow the explanation to constitute an excuse.

Licensee also raised the question whether the Bureau should not have done the suspension check until after its ordinary opening time, 4:00 p.m., which Licensee's president believed was stated on the waiver form submitted regarding Citation No. 14-2406.

However, the form submitted in this case does not state the times of Licensee's operations, and the duty to post the suspension placard is not affected by the hours during which Licensee usually operates.

ORDER

THEREFORE, it is hereby ORDERED that Licensee, Wilkes-Barre Republic Club, License No. C-3610, shall pay a fine of one hundred dollars (\$100.00) within 20 days of the mailing date of this order. In the event the fine is not paid within 20 days, Licensee's license will be suspended or revoked. Jurisdiction is retained.

Dated this 28<sup>TH</sup> day of APRIL, 2016.



David L. Shenkle, J.

jb

**NOTICE: 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.**

**WHETHER OR NOT RECONSIDERATION HAS BEEN REQUESTED, AGGRIEVED PERSONS MAY APPEAL TO THE PLCB, NORTHWEST OFFICE BUILDING, HARRISBURG, PA 17124 WITHIN 30 DAYS AFTER THE MAILING DATE OF THIS ORDER.**

**THE PLCB CHIEF COUNSEL'S TELEPHONE NUMBER IS 717-783-9454.**

**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.** If you are paying by guaranteed check, please make it 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. 15-1255  
Wilkes-Barre Republic Club