

Mailing Date: NOV 08 2016

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: CITATION NO. 16-1034C
LIQUOR CONTROL ENFORCEMENT	:	
	:	BLCE INCIDENT NO. PA 2016-370786
v.	:	
	:	
OAKLAND VOLUNTEER FIRE	:	PLCB LID - 80693
COMPANY	:	
1741 BEDFORD ST.	:	SPECIAL OCCASION PERMIT NO. 30199
JOHNSTOWN, PA 15902-3425	:	
	:	
CAMBRIA COUNTY	:	

ADJUDICATION

BEFORE: DANIEL T. FLAHERTY, JR., ALJ
BUREAU COUNSEL: NADIA VARGO
LICENSEE: PRO SE

BACKGROUND:

This proceeding arises out of a citation that was issued on July 27, 2016, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter "Bureau") against OAKLAND VOLUNTEER FIRE COMPANY, (hereinafter "Permittee").

The citation charges Permittee with violation of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)] in that on June 25, 2016, Licensee, by its servants, agents or employes, sold, furnished and/or gave or permitted such sale, furnishing or giving of alcoholic beverages to one minor, nineteen (19) years of age.

Permittee has executed a Statement of Waiver, Admission and Authorization in which Permittee: admits to the violation(s) charged in the citation and that the Bureau complied with the applicable investigatory and notice requirements of the Liquor Code, 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.

A waiver was submitted by Permittee, and there are no facts in dispute. Permittee does not hold a liquor license.

DISCUSSION:

On August 9, 2016, I issued an Interim Order in this case in which I indicated that I was inclined to reject the waiver and dismiss the Citation for lack of jurisdiction; however, before doing so I gave both parties an opportunity to brief the question of jurisdiction. Consequently, the waiver was rejected and a briefing schedule was established.

The Bureau has submitted a letter brief, but Permittee has not.

The sole question to be answered is whether the Office of Administrative Law Judge for the Pennsylvania Liquor Control Board (OALJ) has jurisdiction to decide citations brought against Special Occasion Permit holders (SOPs) who do not hold regular liquor licenses issued by the Liquor Control Board (LCB). I am of the opinion that it does not. Further, it is clear that the criminal courts of this Commonwealth have been given clear jurisdiction to handle cases of this type.

The Supreme Court of Pennsylvania has stated that jurisdiction over subject matter is conferred solely by the constitution and laws of the Commonwealth *In re: Administrative Order No. 1-MO*. 2003, 936 A.2d 1 (Pa. 2007).

Section 408.4 of the Liquor Code [47 P.S. §4-408.4] creates Special Occasion Permits; and subsection (o) of that Section provides that a Special Occasion Permittee is subject to the provisions of Section 493(1) of the Liquor Code [47 P.S. §4-493(1)]. Section 493(1) (supra), sets forth a small portion of the rules under which a liquor licensee must operate, but does not confer jurisdiction.

Jurisdiction to decide whether violations of the Liquor Code [47 P.S. §1-102 et seq] and related statutes have occurred and to impose appropriate penalties is found solely in Section 471 of the Liquor Code [47 P.S. §4-471]. This Section exclusively uses the term "licensee." Nowhere in Section 471 is the term permittee used. Further, the citation process does not provide an effective framework for enforcement against SOPs. This office would be placed in a position of issuing orders in cases where violations are found against SOPs whose permits have lapsed. There would be no way to enforce payment of a fine and no way to effectively suspend the transient permittee.

It has been suggested that in the event that an SOP fails to pay a fine that they could be considered an undesirable entity to whom a subsequent Special Occasion Permit could be denied. This amounts to requiring this office to rely for enforcement upon the actions of another agency (i.e. the Liquor Control Board) to withhold the issuance of a subsequent permit, a tenuous enforcement mechanism at best.

There is, however, a clear path to enforcement through the criminal courts. Section 494 of the Liquor Code [47 P.S. §4-494] provides clear and definite penalties against anyone violating Article 4 of the Liquor Code, even in the event that the SOP has lapsed.

To insist that an ineffectual path to enforcement be followed through the administrative procedure found in Section 474 (supra) rather than the solid and definitive provisions of Section 494 (supra) flies in the face of 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...

ORDER

IT IS HEREBY ORDERED that Citation No. 16-1034 be **DISMISSED**.

Dated this 7TH day of November, 2016.



Daniel T. Flaherty, Jr., J.

an

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.