

Mailing Date: APR 10 2019

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

PENNSYLVANIA STATE	:	
POLICE, BUREAU OF	:	IN RE: Citation No.: 18-1931
LIQUOR CONTROL ENFORCEMENT	:	
	:	
v.	:	BLCE Incident No.: PA 2017-1126310
	:	
VETERANS OF FOREIGN WARS	:	
CLUB INC	:	PLCB LID No.: 3630
346 W MAIN STREET	:	
WAYNESBORO PA 17268-1412	:	PLCB License No.: CC-4267
	:	
	:	SGOC License No.: 2016482
FRANKLIN COUNTY	:	(Expires: May 28, 2019)
	:	

**BEFORE:** JUDGE RODERICK FRISK  
**BLCE COUNSEL:** JOHN H PIETRZAK, ESQ  
**LICENSEE:** JON B COOK, CLUB PRESIDENT

**ADJUDICATION**

**BACKGROUND:**

This proceeding arises out of a citation that was issued on December 27, 2018, by the Bureau of Liquor Control Enforcement of the Pennsylvania State Police (hereinafter Bureau) against Veterans of Foreign Wars Club Inc., License Number CC-4267, SGOC No. 2016482 (hereinafter Licensee).

The citation contains thirteen counts.

**FIRST CAUSE OF ACTION:** The Pennsylvania Local Option Small Games of Chance Act

The first count charges Licensee with violation of Section 328.502(a) of the Local Option Small Games of Chance Act [10 P.S. §328.502(a)] and Section 901 of the Department of Revenue Regulations [61 Pa. Code §901] in that during the period January 1, 2017 through April 9, 2018, Licensee, by its servants, agents or employees, used funds derived from the operation of games of chance for purposes other than those authorized by law.

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The second count charges Licensee with violation of Section 328.307(d)(2) of the Local Option Small Games of Chance Act [10 P.S. §328.307(d)(2)] and Section 901.502(c) of the Department of Revenue Regulations [61 Pa. Code §901.502(c)] in that during the period November 25, 2017 through June 16, 2018, Licensee, by its servants, agents or employees, permitted or allowed a person who has been convicted of a felony in a federal or state court within the past five (5) years or has been convicted in a federal or state court within the past ten (10) years of a violation of this act or the Bingo Law, to manage, set up, supervisor or participate in the operation of games of chance.

The third count charges Licensee with violation of Section 328.501(a)(1) of the Local Option Small Games of Chance Act [10 P.S. §328.501(a)(1)] in that during the period February 2 through May 14, 2018, Licensee, by its servants, agents or employees, failed to submit annual reports to the Pennsylvania Department of Revenue.

The fourth count charges Licensee with violation of Section 328.302(b) of the Local Option Small Games of Chance Act [10 P.S. §328.302(b)] in that during the periods February 25 through March 3, March 4 through 10, 11 through 17 and 25 through 31, 2018, Licensee, by its servants, agents or employees, awarded more than \$35,000 in prizes in any seven-day period.

The fifth count charges Licensee with violation of Section 328.503 of the Local Option Small Games of Chance Act [10 P.S. §328.503] and Sections 901.461-468 of the Department of Revenue Regulations [61 Pa. Code §901.461-468] in that, Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding April 9, 2018.

SECOND CAUSE OF ACTION: Pennsylvania Liquor Code

The sixth count charges Licensee with violation of Section 5.81 of the Liquor Control Board Regulations [40 Pa. Code §5.81] in that during the period September 8, 2016 through February 28, 2018, Licensee, by its servants, agents, or employees, failed to adhere to constitution and/or by-laws.

The seventh count charges Licensee with violation of Section 102 of the Liquor Code [47 P.S. §1-102] in that on September 15, October 20, November 17, December 15, 2016; January 19, February 16, May 18, June 15, July 20, September 21 and November 16, 2017, Licensee, by its servants, agents or employees, failed to hold regular meetings.

The eighth count charges Licensee with violation of Section 493(12) of the Liquor Code, [47 P.S. §4-493(12)] and Sections 5.71, 5.72 and 5.74 of the Liquor Control Board Regulations, [40 Pa. Code §§5.71, 5.72, and 5.74] in that during the period of September 8, 2016 through February 28, 2018, Licensee, by its servants, agents or employees, failed to maintain records in conformity with the provisions of the Liquor Code and Title 40 of the Pennsylvania Code.

The ninth count charges Licensee with violation of Section 493(12) of the Liquor Code, [47 P.S. §493(12)] in that on February 28, 2018, Licensee, by its servants, agents, or employees, failed to keep records on the licensed premises and/or provide an authorized employee of the

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Enforcement Bureau access to, or the opportunity to copy, complete and truthful records covering the operation of the licensed business.

The Bureau of Liquor Control Enforcement re-alleges the third or subsequent violation(s) of the Local Option Small Games of Chance Act in the first cause of action, as (a) violation(s) of the Liquor Code, as follows:

The tenth count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] Section 328.307(d)(2) of the Local Option Small Games of Chance Act [10 P.S. §328.307(d)(2)] and Section 901.502(c) of the Department of Revenue Regulations [61 Pa. Code §901.502(c)] in that during the period November 25, 2017 through June 16, 2018, Licensee, by its servants, agents or employees, permitted or allowed a person who has been convicted of a felony in a federal or state court within the past five (5) years or has been convicted in a federal or state court within the past ten (10) years of a violation of this act or the Bingo Law, to manage, set up, supervisor or participate in the operation of games of chance.

The eleventh count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] Section 328.501(a)(1) of the Local Option Small Games of Chance Act [10 P.S. §328.501(a)(1)] in that during the period February 2 through May 14, 2018, Licensee, by its servants, agents or employees, failed to submit annual reports to the Pennsylvania Department of Revenue.

The twelfth count charges Licensee with violation of Section 471 of the Liquor Code [47 P.S. §4-471] Section 328.302(b) of the Local Option Small Games of Chance Act [10 P.S. §328.302(b)] in that during the periods February 25 through March 3, March 4 through 10, 11 through 17 and 25 through 31, 2018, Licensee, by its servants, agents or employees, awarded more than \$35,000 in prizes in any seven-day period.

The thirteenth count charges Licensee with violation of Sections 471 and 493(12) of the Liquor Code [47 P.S. §§4-471 and 4-493(12)] Section 328.503 of the Local Option Small Games of Chance Act [10 P.S. §328.503] and Sections 901.461-468 of the Department of Revenue Regulations [61 Pa. Code §§901.461-468] in that, Licensee, by its servants, agents or employees, failed to maintain complete and truthful records covering the operation of the licensed business for a period of two (2) years immediately preceding April 9, 2018.

Licensee has executed a Statement of Admission, Waiver and Authorization (PLCB-1947) in which Licensee: 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.

Based upon the admission(s) of Licensee and the summary of facts provided by the Bureau, the following Findings of Fact and Conclusions of Law are entered:

FINDINGS OF FACT:

FIRST CAUSE OF ACTION: The Pennsylvania Local Option Small Games of Chance Act

Count One

1. On April 9, 2018, Liquor Enforcement Officers entered Licensee's premises and met with its Board approved manager. Upon reviewing Licensee's SGOC records, Officer's verified that Licensee kept two separate SGOC accounts; one of which was devoted to a 60 percent split and the other a 40 percent split.
2. According to Licensee's manager the 60 percent account was used to pay expenses for payment of employees, sales and IRS taxes, insurance and repair and maintenance costs of the building. Calculated 2017 proceeds based on Licensee's records were \$239,696.00. 60 percent of that amount is \$148,818.00.

FIRST CAUSE OF ACTION: The Pennsylvania Local Option Small Games of Chance Act third or subsequent violations counts two through five

SECOND CAUSE OF ACTION: Pennsylvania Liquor Code counts ten through thirteen as re-alleged

Counts Two and Ten

3. This investigation disclosed, that Licensee employed a bartender that was convicted of a felony charge in the state of California in March of 2015. This investigation further disclosed that this bartender was also engaged in the sale of small games of chance at Licensee's premises.
4. The aforementioned bartender was terminated from employment at Licensee's premises on June 16, 2018.

Counts Three and Eleven

5. The Bureau's investigation disclosed that Licensee failed to submit its 2017 annual SGOC report to the Pennsylvania Department of Revenue.
6. On March 5, 2019, Licensee filed its 2017 SGOC annual report with the Pennsylvania Department of Revenue.

Counts Four and Twelve

7. A review of Licensee's SGOC records revealed that Licensee awarded prizes exceeding \$35,000.00 during each of the seven day periods as charged.

Counts Five and Thirteen

8. On April 9, 2018, Officers found that Licensee's SGOC annual records did not include a total annual amount of gross income, expenses, payouts or net proceeds. Weekly records did not include the number of tickets in a game, the number of tickets not sold, nor computed income. Records for their "meat board" games were lacking in detail. There was no record of the use of proceeds provided.

SECOND CAUSE OF ACTION: Pennsylvania Liquor Code

Count Six

9. During the February 28, 2018 inspection, Officers reviewed Licensee's club records and by-laws. The by-laws required that an auditing committee report be made monthly. No report was found in the meeting minutes or as a separate record. Nomination of officers were to be made in March and elections held in April; however, there was no evidence of these nominations or elections. Meetings were to be held on the third Thursday of every month, but the meetings were held on an inconsistent basis from September 8, 2016 through February 28, 2018.

Count Seven

10. This investigation further disclosed that Licensee did not hold regular meetings on the dates charged.

Count Eight

11. On February 28, 2018, Officers reviewed Licensee's meeting minutes from September 2016 through the present. These records did not reflect information such as the nomination, election and installation of Licensee's officers. The treasurer's report was not included, although they are attached in bi-weekly directors' meeting records. The date of application of proposed members was not included in the minutes. Membership records were not properly organized with both active and inactive member records commingled.

Count Nine

12. During the January 19, 2018 inspection, an Officer requested written applications for all classes of membership. During the visit of February 28, 2018, Licensee did not provide applications for membership to the Officer, except for five applications from 2018 and 33 from 2016. Licensee's manager stated that she was unable to find 2017 and most of the 2018 applications for membership or that they were not currently on the licensed premises and under the care of an unknown Licensee manager.

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CONCLUSIONS OF LAW:

Count one: Sustained only as to the dates of December 27, 2017 to April 9, 2018, in accordance with §471(a) of the Liquor Code and Mallios v. BLCE, 633 A.2d 1163 (Pa. 1993).

Count two and ten: Sustained only as to the dates of December 27, 2017 to June 16, 2018, in accordance with §471(a) of the Liquor Code and Mallios v. BLCE, 633 A.2d 1163 (Pa. 1993).

Count six: Sustained only as to the dates of December 27, 2017 to February 28, 2018, in accordance with §471(a) of the Liquor Code and Mallios v. BLCE, 633 A.2d 1163 (Pa. 1993).

Count seven: Dismissed in accordance with §471(a) of the Liquor Code and Mallios v. BLCE, 633 A.2d 1163 (Pa. 1993).

Count eight: Sustained only as to the dates of December 27, 2017 to February 28, 2018, in accordance with §471(a) of the Liquor Code and Mallios v. BLCE, 633 A.2d 1163 (Pa. 1993).

Counts three, four, five, nine, eleven, twelve and thirteen: Sustained as charged.

PRIOR RECORD:

Licensee has been licensed since August 2, 1945 and has had five prior violations since July 1, 1987, the date of establishment of the Office of Administrative Law Judge, to wit:

IN RE:

Citation No.: 88-0999. Fine \$500.00 and ten days suspension.

1. Possessed or operated gambling devices or paraphernalia or permitted gambling or lotteries on the licensed premises.

Citation No.: 04-0250. Fine \$2,050.00.

1. Sales to visibly intoxicated persons on June 12, 2003.
2. Failed to maintain complete and truthful records covering the operation of small games of chance for a period of two years.
3. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven day period.
4. Conducted drawings other than those authorized by law.
5. Awarded an individual prize exceeding the maximum cash value of \$500.00 for any single chance without a special permit.

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Citation No.: 09-1246. Fine \$1,500.00.

1. Possessed or operated gambling devices or permitted gambling on the licensed premises (sign up books and tickets).
2. Failed to maintain complete and truthful records covering the operation of small games of chance for a period of two years.
3. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven day period.

Citation No.: 10-2751. Fine \$1,850.00.

1. Sales at a place other than the licensed premises.
2. Conducted small games of chance at an unapproved location.
3. Operated the licensed establishment without a valid health permit or license.
4. Offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven day period.

Citation No.: 16-1289. Fine \$500.00 and one day suspension with thereafter conditions.

FIRST CAUSE OF ACTION

1. Failed to submit annual reports to the Pennsylvania Department of Revenue.  
February 2 through August 17, 2016

SECOND CAUSE OF ACTION

2. Failed to keep records on the licensed premises.  
August 10 and September 7, 2016
3. Failed to return records to the licensed premises within 24 hours of the request.  
August 10 and September 7, 2016

PENALTY:

Regarding count one: The record discloses that this citation represents Licensee's second violation of the SGOC. Section §328.706 of the SGOC, as it applies to club licensees, provides for a fine of up to \$1,000.00 for a second offense. In addition, the Administrative Law Judge may suspend or revoke the SGOC license as well as any Special Permit.

As to counts two through five: The record discloses that this citation represents Licensee's third or subsequent violation of the SGOC. Section §328.706 of the SGOC, as it applies to club licensees, provides for a fine of up to \$2,000.00 for a third or subsequent offense. In addition, the Administrative Law Judge may suspend or revoke the SGOC license as well as any Special Permit.

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As to counts six through thirteen: Section 471 of the Liquor Code [47 P.S. §4-471] prescribes a penalty of liquor license suspension or revocation or a fine of not less than \$50.00 or more than \$1,000.00 or both for violations of the type found in this case.

In mitigation, some consideration shall be given to the fact that Licensee has admitted to the violation(s) as charged in this citation and has waived the right to a hearing and appeal.

For the foregoing reasons, the following penalties shall be imposed: count one - \$750.00, count two - \$300.00, count three - \$600.00, count four - \$750.00, count five - \$500.00, count six - \$400.00, count seven - dismissed, count eight - \$400.00, count nine - \$500.00, count ten - \$300.00, count eleven - \$400.00, count twelve - \$500.00 and count thirteen - \$300.00.

**ORDER:**

THEREFORE, it is hereby ordered that Veterans of Foreign Wars Club Inc., License Number CC-4267, SGOc No. 2016482 pay a fine of \$5,700.00 within 20 days of the mailing date of this Order. If Licensee fails to comply with this Order, the Liquor Code, in combination with the SGOc, requires suspension or revocation of the catering club liquor license. Additionally, the small games of chance license may also be suspended or revoked.

Jurisdiction is retained to ensure compliance with this Order.

Dated this 5<sup>TH</sup> day of APRIL, 2019.



Roderick Frisk, J.

NOTE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED WITHIN 15 DAYS OF THE MAILING DATE OF THIS ORDER IN THE OFFICE OF ADMINISTRATIVE LAW JUDGE AND REQUIRE A \$25.00 FILING FEE. A WRITTEN REQUEST FOR RECONSIDERATION MUST BE SUBMITTED WITH THE FILING FEE.

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**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.** 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

**Credit/Debit Cards may be used:** if you have registered with PLCB+ you may pay by Credit/Debit card at [www.lcb.pa.gov](http://www.lcb.pa.gov) by following the PLCB+ link. 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](mailto:RA-LBLICENSINGMOD@pa.gov).

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