

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

The American Legion Club of	:	
Gettysburg Pennsylvania,	:	
Appellant	:	
	:	
v.	:	
	:	
Pennsylvania State Police, Bureau	:	No. 771 C.D. 2010
of Liquor Control Enforcement	:	Submitted: December 7, 2010

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge
HONORABLE JOHNNY J. BUTLER, Judge
HONORABLE KEITH B. QUIGLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: January 5, 2011

The American Legion Club of Gettysburg Pennsylvania (Licensee) appeals from the April 15, 2010 order of the Court of Common Pleas of Adams County (trial court) denying its appeal from an order of the Pennsylvania Liquor Control Board (Board) affirming the order of an Administrative Law Judge (ALJ) and dismissing Licensee’s appeal. The issues before this Court on appeal are whether the trial court erred as a matter of law or abused its discretion by: (1) holding that the Bureau of Liquor Control Enforcement (BLCE) of the Pennsylvania State Police is authorized to enforce the Local Option Small Games of Chance Act (Act);¹ (2) holding that the BLCE is authorized to enforce the Act pursuant to Section 471(a) of the Liquor Code;² (3) holding that the BLCE complied with the Act and regulations

¹ Act of December 19, 1988, P.L. 1262, *as amended*, 10 P.S. §§ 311-327.

² Act of April 12, 1951, P.L. 90, *as amended*, 47 P.S. § 4-471(a).

adopted pursuant thereto; (4) allowing the counts in the citation to stand while acknowledging that Section 471(a) of the Liquor Code does not set forth violations of the Liquor Code; (5) refusing to dismiss the violations of Sections 5512 and/or 5513 of the Crimes Code, 18 Pa.C.S. §§ 5512, 5513, as *de minimis* infractions or no infractions at all; and, (6) refusing to forgive Licensee's violations. For the reasons that follow, we affirm the order of the trial court.

The facts of this case are not in dispute. Licensee holds Catering Club Liquor License No. CC-4570 issued by the Board in 1950. Licensee also holds a small games of chance permit issued by the Department of Revenue under the Act. Licensee stipulated: (1) on May 8, 2009, an officer with the BLCE conducted an administrative inspection of Licensee's records, during which it was discovered that Licensee's permit expired on April 19, 2009 and was not reissued until April 29, 2009, and that Licensee was, nonetheless, operating small games of chance during that period; (2) Licensee modified an otherwise legally manufactured seal game; and (3) for the seven-day period ending April 1, 2009, Licensee paid out \$33,820.00 in small games of chance prizes; for the similar period ending April 8, 2009, the payout was \$42,071.00; for the period ending April 15, 2009, the payout was \$50,435.00; and, for the period ending May 6, 2009, the payout was \$60,320.00. It is also undisputed that Licensee was previously fined \$750.00 relative to Citation No. 06-1510 for similarly awarding more than \$5,000.00 in a seven-day period during three weeks in April of 2006, and for failing to maintain truthful records of its small games of chance for a period of two years. Thereafter, Licensee was fined \$1,000.00 and its liquor license was suspended for five days relative to Citation No. 08-2706 for again failing to maintain truthful records of its small games of chance for a period of two years.

The Bureau sent a notice of violation to Licensee on July 2, 2009. On July 16, 2009, the BLCE issued Citation No. 09-1662. Count I of the citation alleged:

From April 20 through 28 and May 8, 2009, and divers occasions during the previous year, you, 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, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471 and Sections 5512 and/or 5513 of the Crimes Code, 18 Pa.C.S. §§5512 and/or 5513.

Reproduced Record (R.R.) at 3a. Count II of the citation alleged:

During the periods March 26 through April 1, April 2 through April 8, April 9 through April 15 and April 30 through May 6, 2009, you, by your servants, agents or employees, offered and/or awarded more than \$5,000.00 in cash or merchandise in any seven-day period, in violation of Section 471 of the Liquor Code, 47 P.S. §4-471 and Section 315(b) of the Local Option Small Games of Chance Act, 10 P.S. §315(b).

R.R. at 4a. A hearing was held before an ALJ on October 20, 2009. By adjudication and order issued November 20, 2009, the ALJ sustained the charges against Licensee, imposed a fine in the amount of \$1,750.00, and suspended its liquor license for seven days. Licensee appealed the ALJ's determination to the Board. By Opinion and Order mailed January 13, 2010, the Board affirmed the ALJ's order. Licensee appealed the Board's decision to the trial court which held a hearing on March 5, 2010. On April 15, 2010, the trial court affirmed the Board's order. Licensee now appeals to this Court.³

³ "This Court's standard of review in a Liquor Code enforcement appeal is limited to determining whether the trial court committed an error of law or an abuse of discretion." *Pa. State Police, Bureau of Liquor Control Enforcement v. Harrisburg Knights of Columbus Home Ass'n*, 989 A.2d 39, 43 n.5 (Pa. Cmwlth. 2009).

Licensee first argues on appeal that since BLCE officers are not State Police officers, they have no authority to enforce the Act. We disagree. This Court addressed this very question in *Pennsylvania State Police, Bureau of Liquor Control Enforcement v. Harrisburg Knights of Columbus Home Association*, 989 A.2d 39, 43 (Pa. Cmwlth. 2009) (*Harrisburg Knights*) as follows:

Section 211 of the Liquor Code provides that the Bureau is a subdivision of the Pennsylvania State Police authorized to enforce the Liquor Code and its attendant regulations. *See* 47 P.S. § 2-211(a).^[4] Section 323[(b)] of [the Act] provides that ‘[n]othing in this act shall be interpreted to restrict the power of State, county or local law enforcement officials to conduct investigations and enforce the provisions of this act.’ 10 P.S. § 323(b). Moreover, according to Section 313 of [the Act], a law enforcement official is defined as a ‘municipal police officer, a member of the Pennsylvania State Police, the sheriff of a county or a deputy sheriff.’ 10 P.S. § 313. Thus, as the Bureau is a subdivision and member of the Pennsylvania State Police, it is a law enforcement official. Additionally, in 1987, this Court noted that the Liquor Code was reenacted and amended such that the enforcement powers previously possessed by the Board were given to the Bureau.

However, Licensee argues that the failure by this Court to address *Fraternal Order of Police v. Pennsylvania Labor Relations Board*, 454 A.2d 686 (Pa. Cmwlth. 1983), *aff’d*, 502 Pa. 541, 467 A.2d 323 (1983) (*1983 FOP case*) and *Fraternal Order of Police, Conference of Pennsylvania Liquor Control Board Lodges v. Pennsylvania Labor Relations Board*, 751 A.2d 726 (Pa. Cmwlth. 2000) (*2000 FOP case*) in *Harrisburg Knights* casts doubt on the validity of its *Harrisburg Knights* decision. Licensee’s argument is without merit. Both the *1983 FOP case* and the *2000 FOP case* examined whether the BLCE’s officers were considered

⁴ Section 211 of the Liquor Code was added by Section 14 of the Act of June 29, 1997, P.L. 32.

“police officers” for purposes of determining labor representation and/or collective bargaining. Since *Harrisburg Knights* did not involve labor representation and/or collective bargaining, those cases were properly disregarded in *Harrisburg Knights*. Accordingly, the trial court did not err as a matter of law or abuse its discretion by holding that the BLCE is authorized to enforce the Act.

Licensee’s second and fourth arguments on appeal go hand in hand. One argument is that the rules of statutory construction require that the more specific language of the Act supersede the general “other sufficient cause shown” language of Section 471(a) of the Liquor Code. The other argument is that since there are no specific violations identified in Section 471(a), that section cannot form the basis for a citation. We disagree with both arguments. The citations against Licensee were issued pursuant to the Liquor Code rather than the Act. Section 471(a) of the Liquor Code provides:

Upon learning of any violation of this act or any laws of this Commonwealth relating to liquor, alcohol or malt or brewed beverages, or of any regulations of the board adopted pursuant to such laws, or any violation of any laws of this Commonwealth or of the Federal Government relating to the payment of taxes on liquor, alcohol or malt or brewed beverages by any licensee within the scope of this article, his officers, servants, agents or employes, *or upon any other sufficient cause shown*, the enforcement bureau may, within one year from the date of such violation or cause appearing, cite such licensee to appear before an administrative law judge, not less than ten nor more than sixty days from the date of sending such licensee, by registered mail, a notice addressed to him at his licensed premises, to show cause why such license should not be suspended or revoked or a fine imposed, or both. The bureau shall also send a copy of the hearing notice to the municipality in which the premises is located.

(Emphasis added). While it is true that Section 471(a) of the Liquor Code does not list all of the specific violations for which a liquor licensee may be cited, this Court has held that the BLCE is authorized to cite licensees for violations of the Act pursuant to the “any other sufficient cause shown” provision in Liquor Code Section 471(a).

In *Harrisburg Knights*, this Court stated:

As to the Bureau’s authority to enforce [the Act] and issue citations under the Liquor Code, Licensee is correct that there are no provisions of [the Act] which provide the Bureau with such authority. It is well established that ‘violations of criminal laws other than the Liquor Code may constitute sufficient cause for revocation or suspension of a liquor license’ pursuant to Section 471 of the Liquor Code. [Pennsylvania Liquor Control Bd. v.] *TLK, Inc.*, 518 Pa. [500,] 504, 544 A.2d [931,] 933 [(1988)] (citations omitted). Courts have interpreted Section 471 of the Liquor Code as providing similar authority for the imposition of penalties for a variety of conduct not expressly prohibited by the Liquor Code, but reasonably related to the sale and use of alcoholic beverages, including gambling.

In *V.J.R. Bar Corporation v. Pennsylvania Liquor Control Board*, 480 Pa. 322, 390 A.2d 163 (1978), the Supreme Court relied upon the ‘any other sufficient cause shown’ language to uphold the revocation of the liquor license based upon gambling by the licensee even though the criminal charges were later dismissed and gambling was not an enumerated offense in the Liquor Code. In *V.J.R. Bar Corporation*, the Supreme Court noted that any other conclusion ‘would thwart the command of the Legislature that all the provisions of the [Liquor Code] ‘shall be liberally construed’ for the protection of the public welfare, health, peace and morals of the people of the Commonwealth.’ *V.J.R. Bar Corporation*, 480 Pa. at 323, 390 A.2d at 164; *see also Matter of Revocation of Restaurant Liquor License No. R-12122*, 78 Pa.Cmwlth. 159, 467 A.2d 85 (1983) (concluding that the inclusion of the ‘other sufficient cause’ language reflected the

Legislature's recognition that the remedial purposes of the Section 471 of the Liquor Code would not best be served by an attempt to catalogue all possible grounds for disciplinary actions against licensees); *Shenanigans of Lake Harmony, Inc. v. Pennsylvania Liquor Control Board*, 654 A.2d 166 (Pa.Cmwlth.1995) (noting that although Section 471 of the Liquor Code did not expressly set forth the power to suspend an ancillary permit allowing sales on Sunday, it was necessarily implied as within the Legislative grant and to find otherwise would be unreasonable and illogical).

Id., 989 A.2d at 44-45. Because no conflict exists between the Liquor Code and the Act, the specific rules of statutory construction which are employed for purposes of resolving such conflicts are not implicated in the matter before us. Accordingly, the trial court did not err as a matter of law or abuse its discretion by holding that the BLCE is authorized to enforce the Act pursuant to Section 471(a) of the Liquor Code.

Licensee's third argument on appeal is that, since there was no reasonable belief of a violation of the Act, the BLCE officer was not authorized to conduct a routine inspection of Licensee's operation. We disagree. We acknowledge that Section 901.28(a) of the Department of Revenue's regulations, 61 Pa. Code § 901.28(a), requires that premises holding small games of chance permits:

shall be open to inspection by the Department or its authorized representatives with or without prior notice, but the inspection shall:

- (1) Take place during the registrant's or licensee's normal business hours or normal operating hours.
- (2) Take place only when a reasonable belief exists that a violation of the act or this part has occurred, is occurring or will occur.
- (3) Be limited to the inspection of matters, areas and records associated with games of chance to insure compliance with the act and this part.

However, the citation against Licensee at issue here was issued pursuant to the Liquor Code, rather than the Act. Section 493(21) of the Liquor Code, 47 P.S. § 4-493(21), makes it unlawful for a licensee to:

refuse . . . the enforcement bureau . . . the right to inspect completely the entire licensed premises at any time during which the premises are open for the transaction of business, or when patrons, guests or members are in that portion of the licensed premises wherein either liquor or malt or brewed beverages are sold.

Moreover, this Court has held that the BLCE may conduct a warrantless inspection of a licensed club for gambling activities or devices. *Commonwealth v. Runkle*, 430 A.2d 676 (Pa. Cmwlth. 1981).

In this case, the BLCE had the authority to conduct a routine inspection of Licensee's premises during its hours of operation, and even to search specifically for gambling activities or devices. The record reflects that the BLCE properly exercised that authority and cited Licensee for violations of the Act pursuant to the "any other sufficient cause shown" language in Section 471(a) of the Liquor Code, which it was authorized to do. Therefore, the BLCE complied with the law. The trial court, thus, did not err as a matter of law or abuse its discretion by holding that the BLCE complied with the Act and regulations adopted pursuant thereto.

Licensee's fifth argument on appeal is that the trial court should have dismissed its violations because they are *de minimis* or are not violations at all, since the BLCE officer did not observe Licensee's violations of the Act by Licensee,⁵ the Crimes Code authorizes a court to dismiss actions it deems *de minimis*, and the lapse

⁵ Licensee refers on several occasions in its brief to the fact that the employee to whom the BLCE officer spoke was not given warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966). Since Licensee ultimately admitted that it committed acts in violation of the Liquor Code, and there is no evidence in the record that its employee was in custody when interviewed by the BLCE officer, *Miranda* warnings are not relevant here.

of Licensee's small games of chance permit was an unintended mistake constituting a summary offense. We disagree.

Licensee admitted its violation of Section 5512 and/or 5513 of the Crimes Code, for which it was cited by the BLCE pursuant to Section 471(a) of the Liquor Code. Section 312(a) of the Crimes Code, 18 Pa.C.S. § 312(a), provides:

General rule.--The court shall dismiss a prosecution if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the conduct of the defendant:

(1) was within a customary license or tolerance, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;

(2) did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or

(3) presents such other extenuations that it cannot reasonably be regarded as envisaged by the General Assembly or other authority in forbidding the offense.

Thus, it is true that the Crimes Code authorizes a court to dismiss a case due to the *de minimis* nature of the offense, and it is clear that Section 327(a) of the Act, 10 P.S. § 327(a), makes a violation of the Act a summary offense. However, these points are not relevant in this instance.

This case was brought pursuant to the Liquor Code, rather than the Act or the Crimes Code. The Liquor Code does not have a *de minimis* provision similar to that of the Crimes Code. Moreover, in *Pennsylvania Liquor Control Board v. Dobrinoff*, 471 A.2d 941, 943 (Pa. Cmwlth. 1984), this Court specifically declared that “[a] court cannot reverse Liquor Code charges by declaring the violations to be

de minimis.” Therefore, the trial court did not err as a matter of law or abuse its discretion by refusing to dismiss Licensee’s violations of Sections 5512 and/or 5513 of the Crimes Code as *de minimis* infractions or no infractions at all.

Licensee’s last argument on appeal is that it is in the public interest for Licensee’s violations to be forgiven, in whole or in part, and allow it to operate its club and continue to pursue its charitable endeavors. We again disagree. Licensee supports veterans and the community and makes charitable contributions, and the funds for that work are generated in part by its small games of chance.⁶ However, there is nothing in the Liquor Code, the Act, or in case law that would authorize this Court to forgive Licensee’s violations. In fact, Section 104 of the Liquor Code, 47 P.S. § 1-104, provides:

(a) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, health, peace and morals of the people of the Commonwealth and to prohibit forever the open saloon, and all of the provisions of this act shall be liberally construed for the accomplishment of this purpose.

Although not necessarily relevant in this case, since the citation was due to violations of the Liquor Code, Section 312 of the Act, 10 P.S. § 312, similarly provides:

It is hereby declared to be the policy of the General Assembly that all phases of licensing, operation and regulation of small games of chance be strictly controlled, and that all laws and regulations with respect thereto as well as all gambling laws should be strictly construed and rigidly enforced.

⁶ Despite taking in \$186,646.00 during the four-week period in 2009 at issue here, Licensee’s charitable contributions in 2009 totaled only approximately \$14,000.00. R.R. at 32a, 47a, 52a-53a.

Forgiveness of Licensee's violation would not, therefore, be in accord with the General Assembly's intent.

In addition, we concur with the ALJ's sentiment that, rather than seeking forgiveness for its violations, a veteran's organization whose members fought and died for our society's values should strive to obey rather than disregard the laws. R.R. at 103a-106a. Moreover, the penalty in this case is suspension of Licensee's liquor license, and not its small games of chance permit. Thus, while Licensee's sale and service of alcohol on its premises will be suspended for seven days, its small games of chance permit would still be in effect and Licensee will not lose the use of its small games of chance as a result of the instant citation. Further, we cannot overlook the fact that Licensee twice previously committed violations of the Liquor Code relative to its small games of chance. Accordingly, we hold that the trial court did not err as a matter of law or abuse its discretion by refusing to forgive Licensee's violations.

Based upon the foregoing, the trial court's order is affirmed.

JOHNNY J. BUTLER, Judge

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The American Legion Club of	:	
Gettysburg Pennsylvania,	:	
Appellant	:	
	:	
v.	:	
	:	
Pennsylvania State Police, Bureau	:	No. 771 C.D. 2010
of Liquor Control Enforcement	:	

ORDER

AND NOW, this 5th day of January, 2011, April 15, 2010 order of the Court of Common Pleas of Adams County is affirmed.

JOHNNY J. BUTLER, Judge