

**STATE OF VERMONT
LIQUOR CONTROL BOARD**

**IN RE: VERMONT BREWERS ASSOCIATION
142 KIRK MEADOW ROAD
SPRINGFIELD, VERMONT**

BOARD DECISION AND ORDER

The Liquor Control Board (“Board”) held a contested case hearing on October 14, 2015 to consider the Department of Liquor Control’s (“DLC”) allegation that Licensee, Vermont Brewers Association (“Licensee”), holder of a Festival Permit, violated General Regulation No. 49(a) by furnishing alcoholic beverages at no charge. Licensee appeared through counsel, Mark H. Kolter, Esq. DLC was represented by Jacob A. Humbert, Esq., Assistant Attorney General. Licensee waived its option to submit proposed findings of fact and conclusions of law for the Board’s consideration.

Based on the evidence admitted¹ and testimony of DLC Investigator Matthew J. Gonyo, DLC Investigator Sgt. Andre Thibault and Ms. Laura Streets, the Board rules as follows:

FINDINGS OF FACT

1. The Board granted Licensee a “Festival Permit” for a “craft beer fundraising event” permitting it “to sell malt or vinous beverages; or both, by glass or unopened bottle to the public.” This matter arises from that event, the 2015 Vermont Brewers Festival, held at the Burlington Waterfront on July 17 and 18, 2015. It is a popular, well-attended “beer tasting festival” for which tickets are sold in advance online and with sessions selling out in a matter of minutes. No one under 21 years of age can attend. Several Vermont and some out-of-state brewers participate and sample their beers during the Festival.

¹ DLC Exhibit 1: DLC Enforcement Division Ticket No. 01895 for violations of General Regulation Nos. 16, 17 and 49; DLC Exhibit 2: Check from Licensee to DLC for \$510.00; and Licensee Exhibit A: Investigator Matt Gonyo’s Affidavit.

7. The glass is the only vessel in which beer could be poured at the Festival. The glass could not be purchased outside of a \$37.00 Festival ticket. The same glass is used at all four sessions.
8. In contrast, the tickets are unique to each of the four sessions. They are specially printed, with a design and color scheme known only to Ms. Streets and the printer prior to the Festival's start. The determination of which ticket will be used for each session is not determined until the last minute. Ms. Streets also indicated that patrons are forbidden from taking photographs of the tickets.
9. Each ticket could be redeemed for a four-ounce pour of beer. Festival staff circulated through the event reminding the brewers to take tickets for each pour.
10. To determine a limit on how many tickets were available to each patron, Licensee worked with DLC to determine that a "safe" limit on patrons' alcohol consumption is sixty (60) ounces of beer over the four-hour session and fewer ounces for stronger beers. The capacity of the glass, four and a half ounces, was chosen specifically to ensure that beers would be poured as close to four ounces each as possible. Offering fifteen tickets, therefore, would provide a maximum of sixty ounces of beer.
11. In the event that the beer poured had an Alcohol By Volume ("ABV") of 8% or more, two tickets would be required for that pour. Patrons opting for a 7.0% ABV beer could, however, consume twice as many four-ounce pours as patrons choosing the only somewhat stronger 8.0% ABV beer.
12. Licensee made an allowance for patrons to purchase up to five (5) additional tickets for \$2.00 per ticket provided that they were assessed, by staff dedicated for this purpose, to be sufficiently sober. Those patrons electing to and eligible (not apparently intoxicated) to purchase additional tickets had their wristbands marked with an "X" to prevent multiple additional purchases. Ms. Streets testified that they assigned a "high price" to those tickets, \$10.00 for 10-20 ounces of beer, as a deterrent to their purchase.

13. If a patron's glass were to break during a session, he could purchase a new glass for a combination of \$5.00 and handing over the broken glass' remains, which Ms. Streets testified was "just for safety." In contrast, Ms. Streets testified that if any of the fifteen tickets provided upon admission were lost, they would not be replaced under any circumstances, even if the patron appeared completely sober. A patrons' only option was to purchase the additional five tickets, subject to the screening described above.
14. DLC and Licensee agreed that the tickets were intended to reduce the likelihood of overconsumption and overservice. There were conflicting accounts of the tickets' significance as a *payment* device. DLC asserted that the tickets are a form of currency to obtain beer. In essence, the admission price provided for fifteen pours total (or fewer with higher ABV beer). Ms. Streets testified that the purchase of the glass *was* the purchase of the beer.
15. Licensee testified that the beer brought to the Festival was limited in quantity and expensive to produce, contain and transport. The brewers were not in the business of giving away beer and were adamant, as a condition precedent to participation, that there would be sufficient control to ensure that there were enough samples for as many patrons to sample their products as possible. Giving away "free" beer would have thwarted the intent of the Festival.
16. Ms. Streets testified that there were 170,000 tickets printed. Of that number, approximately 140,000 of them were issued to patrons. While no number of pours was documented or testified to, there was testimony that at least 90,000 four-ounce pours of beer were served.
17. Of those (at least) 90,000 pours, DLC investigators, including Sgt. Andre Thibault, observed one brewer engage with multiple patrons and pour drinks without requiring a ticket. In all, according to the DLC *Notice of Hearing*, "up to eight (8)" 4-ounce beers were poured with no ticket taken in exchange for it. When confronted by DLC, the brewer apparently conceded it should have taken a ticket.
18. Licensee does not challenge DLC's assertion that it served beer to patrons without exchanging the beer for a ticket. Licensee asserts that those beers were paid for, regardless of the use of a ticket.

19. DLC determined that the most appropriate sanction was a written warning, rather than a fine, because Licensee's compliance with DLC regulations had improved considerably over prior years' Festivals.
20. While undoubtedly a successful event, there were other violations noted, including a violation of General Regulation No. 17. Licensee did not contest this violation and paid a \$510.00 fine.

CONCLUSIONS OF LAW

1. The Board is established as the paramount authority in the administration of Vermont's liquor statutes and regulations. *See Verrill, Jr. v. Daley, Jr.*, 126 Vt. 444, 446 (1967).
2. When passing upon the question whether a licensee shall be sanctioned for the violation of a liquor statute or regulation, the Board sits as a tribunal with a judicial function to perform and has statutory authority under 7 V.S.A. §236 to suspend or revoke any license for violating the provisions of Title 7 or any regulation. *See In Re: Wakefield*, 107 Vt. 180, 190 (1935).
3. Licensee holds a Festival Permit, granted by the Board consistent with its authority under Title 7, Vermont Statutes Annotated. Licensee is, therefore, subject to this Board's jurisdiction.
4. Licensee was properly notified of its alleged violations and of its right to appear at a hearing to respond to these alleged violations consistent with 3 V.S.A. §809(a)-(c). The Hearing was held and the evidence closed on October 14, 2015.
5. The Board is mindful of its obligation to promote public safety through the responsible control, production, distribution, licensing, enforcement, education and sale at agencies, retail stores, restaurants, bars, festivals, venues and markets of alcoholic beverages within our state.
6. DLC must prove all alleged violations by a preponderance of the evidence. If any violations are found, then the Board has concluded that DLC has met its burden.

7. Licensee is alleged to have violated General Regulation No. 49(a), which reads as follows:
“Licensees or their employees shall not offer or permit games, contests, or promotions, which encourage the consumption of alcohol beverages nor shall they furnish alcoholic beverages to anyone for no charge.”
8. We are faced with two perspectives on the tickets’ importance as a means of payment:
 - a. From the Licensee’s perspective, there was a charge for all beer consumed, because each admission ticket covered the purchase of a glass and the purchase of that glass was tantamount to purchase of the beer. The tickets were merely additional safeguards against overconsumption and to ensure availability of product. Licensee relied primary on Festival staff to exercise discretion in serving apparently intoxicated individuals.
 - b. From DLC’s perspective, there were carefully selected limits on how much alcohol a patron could consume and the tickets were both crucial to limiting consumption and the cash equivalent for purchasing beer at the event.
9. During the Festival, there were between 90,000-140,000 individual pours of beer. Of those pours, DLC charges that Festival staff poured eight (8) beers without obtaining a ticket in exchange.
10. We find that the tickets, not the glass, were proof of purchase of beer. The tickets were specifically and carefully coded for each session with no provision for replacement of lost tickets, while the glass was the same for all four sessions and could be replaced if broken.
11. Moreover, if the glass *and* fifteen beer tickets cost \$5.00 *combined*, charging the same amount, another \$5.00, for a replacement glass *alone* is illogical because the new glass’ purchase would not afford the patron any additional tickets.
12. The most likely explanation for the beer ticket valuation is found in the “general admission” portion of the festival ticket. If the \$30.00 for “general admission” was split among fifteen

tickets, the price per ticket would be \$2.00, which is the exact price that Licensee charged for each of the five “additional” tickets. We do not believe this to be a coincidence, but rather it is evidence of the cash value of the tickets to be used to obtain beer.

13. The Board concludes that the tickets were a form of payment for beer. Therefore, by providing beer to patrons without exchanging it for a ticket, Licensee did violate General Regulation 49(a).
14. We are authorized to impose the maximum fine of \$260.00 for each of the “up to eight violations,” for a maximum of \$2,080.00. In mitigation of this, Licensee conducted an event that successfully promoted and showcased Vermont brewers and hosted over 10,000 people. Given that DLC’s investigators confirm it was a success, we defer to their determination that a warning is the most appropriate sanction here.

ORDER

The Board agrees with DLC’s imposition of a warning for violations of General Regulation No. 49(a).

DATED at Montpelier, Vermont this 16th day of December 2015.

VERMONT LIQUOR CONTROL BOARD

By: 
Stephanie O’Brien, Chair

RIGHT TO APPEAL

Within 30 days after copies of this Order have been mailed, either party may appeal to the Vermont Supreme Court by filing a Notice of Appeal with the Department of Liquor Control and paying the requisite filing fee. See 3 V.S.A. § 815(a); V.R.A.P. 4 and 13(a).