

**CHAPTER 17. SPECIAL RULES OF PRACTICE AND
PROCEDURE FOR MATTERS BEFORE THE BOARD**

Subchap.

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Authority

The provisions of this Chapter 17 amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)), unless otherwise noted.

Subchapter A. GENERAL

Sec.

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§ 17.1. Purpose.

This chapter supplements 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) and governs the practice and procedure before the Board regarding license applications, appeals from ALJ decisions, applications for supersedeas, divestiture and noise exemption petitions.

Source

The provisions of this § 17.1 adopted May 6, 1983, effective May 7, 1983, 13 Pa.B. 1580; amended December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935; amended January 5, 2007, effective January 6, 2007, 37 Pa.B. 16. Immediately preceding text appears at serial page (229089).

§ 17.2. Liberal construction.

- (a) This chapter shall be liberally construed to assure just, speedy and inexpensive determination of issues presented.
- (b) This section supplements 1 Pa. Code § 31.2 (relating to liberal construction).

Source

The provisions of this § 17.2 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

§ 17.3. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

ALJ—Administrative Law Judge—An individual learned in the law and appointed by the Governor under section 212 of the Liquor Code (47 P. S. § 2-212).

Appellant—The party—Enforcement Bureau or licensee—who feels aggrieved by a decision of the ALJ.

Appellee—The party who prevailed before the ALJ.

Board—The Liquor Control Board, or its designee.

Bureau—The Bureau of Liquor Control Enforcement of the State Police.

Supersedeas—A stay or delay of a penalty; for example, payment of fine, imposition of suspension or revocation.

Special violation—A violation which is specially designated in section 471 of the Liquor Code (47 P. S. § 4-471) which, if found to have been committed, would prevent the appeal from operating as a supersedeas unless, upon sufficient cause shown, the reviewing authority determines otherwise.

Standard violation—A violation other than a “special violation.”

Source

The provisions of this § 17.3 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

§ 17.4. Legal representation.

(a) Appellants, appellees or applicants may represent themselves or may be represented by anyone presently admitted to practice law by the Supreme Court of Pennsylvania. Representation on behalf of an appellant, appellee or applicant by a legal intern certified under the Pennsylvania Bar Admission Rules is permitted.

(b) Legal representatives shall file a notice of appearance with the Board, prior to the time of the hearing, if any, or together with the appeal or application for supersedeas, or both.

(c) No person other than those set forth in subsection (a) is permitted to represent an appellant, appellee or applicant at a hearing of the Board.

(d) When a legal representative represents an appellant, appellee or applicant, notices of the date of hearing and of the decision, and other communications relating to the case, shall be directed to the legal representative. Notice to, or communication with, the legal representative shall have the same force as though personally given to the appellant, appellee or applicant.

(e) Subsection (b) supplements 1 Pa. Code § 31.24(a) and (b) (relating to notice of appearance). Subsection (d) supplements 1 Pa. Code §§ 31.26, 33.31 and 33.33 (relating to service on attorneys; service by the agency; and effect of service upon an attorney).

Source

The provisions of this § 17.4 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

§ 17.5. Subpoenas.

(a) *Issuance.* Except for subpoenas issued upon the Board's own motion, issuance of subpoenas will be as follows:

(1) Subpoenas for the attendance of witnesses or for the production of documents will be issued only upon written application to the Board, with a copy of the application to the opposing party.

(2) Written application shall specify as clearly as possible the relevance of the testimony or documentary evidence sought. Requests for documents must specify, to the extent possible, the documents desired.

(3) Failure to adhere to this subsection may result in the refusal by the Board to issue the requested subpoenas.

(b) *Service.* Service of subpoenas shall be as follows:

(1) A subpoena shall be served personally upon the witness by the party requesting the subpoena, who shall be responsible for witness fees.

(2) Subpoenas for the production of documents shall be served upon the individual in possession of the documents, if known, or the agency head, who may designate a custodian of the documents.

(3) Service shall be made at least 48 hours prior to the hearing, unless the witness agrees to waive the 48-hour requirement.

(4) Failure to adhere to this subsection may result in a ruling by the Board denying the enforceability of the subpoena.

(c) *Supersession.* Subsection (a) supersedes 1 Pa. Code § 35.142(a) (relating to subpoenas). Subsection (b) supplements 1 Pa. Code § 35.142(b) and (c).

Authority

The provisions of this § 17.5 amended under section 207(i) of the Liquor Code (47 P. S. § 2-207(i)).

Source

The provisions of this § 17.5 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935; amended March 5, 2010, effective March 6, 2010, 40 Pa.B. 1149. Immediately preceding text appears at serial page (215289).

§ 17.6. Depositions and discovery.

(a) *Depositions.* At the discretion of the Board, sworn depositions may be transcribed and submitted in lieu of testimony at hearing, if the witness is unavailable to testify because of unavoidable absence from the jurisdiction, illness or other compelling reasons.

(b) *Discovery of documents.* At the discretion of the Board, relevant documents may be obtained from an opposing party prior to the hearing.

(1) Requests for discovery of documents shall be in writing and shall be served upon the opposing party or legal representative in sufficient time to allow completion of discovery prior to the hearing.

(2) If the parties are unable to agree upon a reasonable scope of discovery, requests for discovery shall be forwarded in writing to the Board, which may issue appropriate subpoenas under this title.

(c) *Supplementation.* Subsection (a) supplements 1 Pa. Code § 35.145 (relating to depositions).

Source

The provisions of this § 17.6 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

§ 17.7. Exhibits.

(a) Exhibits to be presented in connection with a hearing shall be submitted in five copies each at the time of the hearing unless otherwise directed by the Board.

(b) Documents that the Board, a party, petitioner or intervener expects to offer as exhibits may be presented to the Board's hearing examiner and all other parties of record in advance of a hearing. The documents are not evidence unless admitted into the record by the hearing examiner at the hearing. Presentation of documents to the other parties before a hearing is encouraged.

(c) Subsection (a) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

Authority

The provisions of this § 17.7 amended under section 207(i) of the Liquor Code (47 P.S. § 2-207(i)).

Source

The provisions of this § 17.7 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935; amended March 5, 2010, effective March 6, 2010, 40 Pa.B. 1149. Immediately preceding text appears at serial page (215290).

§ 17.8. Continuances.

(a) A party moving for a continuance shall submit, if required by the Board, an affidavit containing the facts submitted in support of the motion. The facts

shall include the names and addresses of all parties concerned, the caption, number and term of a case which may be the subject of the motion, the reasons why the case should not proceed and other information the Board may request.

(b) When the application is made for continuance because of the illness of an applicant, licensee, witness or counsel, the Board may require a medical certificate attesting to the illness and inability to testify.

(c) A request for a continuance shall be received within the following time limits:

(1) Except as otherwise provided in this section, a continuance will not be approved unless a written request for the continuance is received by the Board at least 48 hours prior to the time fixed for hearing.

(2) A request for continuance received by the Board within the 48-hour period will not be granted unless satisfactory arrangements in writing are made with the Board for the payment of expenses resulting from the continuance. The Board may waive payment of the expenses in case of extenuating circumstances.

(3) Upon approval by the Office of the Chief Counsel of the Board, a motion for continuance may be granted at the time and place set for hearing. The motions will be granted only when a material party, witness or counsel is unavailable to appear for reasons of illness or other sufficient and reasonable cause, which unavailability was not known prior to the time set for the hearing, and could not have been known by the exercise of due diligence. A motion shall include the following:

(i) The name and address of the unavailable material party, witness or counsel.

(ii) A brief statement of the service or testimony to be offered by the party, witness or counsel.

(iii) The reason for the inability to be present.

(iv) A medical certificate, if required for an illness attesting to the illness and inability to appear.

(v) The willingness of the moving party to bear the expense of increased witness fees and mileage occasioned by the request.

(d) This section supplements 1 Pa. Code § 31.15 (relating to extensions of time).

Source

The provisions of this § 17.8 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

§ 17.9. Briefs.

(a) At the close of each hearing, a schedule for the submission of briefs will be determined. Briefs to be presented in connection with a hearing shall be submitted in four copies.

(b) The provisions of 1 Pa. Code § 35.193 (relating to filing and service of briefs) are supplemented as to acceptance and filing of briefs and superseded as to the number of copies to be filed. To the extent it relates to the time within which the Board must act on an appeal or application for supersedeas, 1 Pa. Code § 35.190(c) (relating to appeals to agency head from rulings of presiding officers) is superseded.

Source

The provisions of this § 17.9 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

Subchapter B. LICENSE APPLICATIONS

Sec.

- 17.11. License application protests.
- 17.12. Intervention in license application matters.
- 17.13. Protests/intervention procedure.
- 17.15. Intervention in noise exemption petitions.

§ 17.11. License application protests.

(a) *When location is at issue.* When an application has been filed for a new retail liquor license, retail malt or brewed beverage license, importing distributor or distributor license, or the transfer of these licenses to a premises not then licensed, or for the extension of premises of these licenses, a protest may be filed with the Board by the following:

- (1) A licensee whose licensed premises is located within 200 feet of the premises proposed to be licensed.
- (2) A church, hospital, charitable institution, school or public playground located within 300 feet of the premises proposed to be licensed.
- (3) A resident of the neighborhood within a radius of 500 feet of the premises proposed to be licensed.

(b) *When qualifications of an applicant are at issue.* A protest may be filed with the Board by a person having information regarding the qualifications of an applicant for a new retail liquor license, retail malt or brewed beverage license, importing distributor or distributor license, or for the transfer of these licenses to another person or when a corporation or club, as required by Chapter 5 Subchapter G (relating to change of officers of corporations and clubs) submits a change of officers, directors or stockholders.

(c) *Effect of protest.* A protest filed in compliance with this chapter is deemed a valid protest and is public information. Protestants may be called as witnesses to testify as to the fact and nature of the protest, if a hearing is convened.

(d) *Notice to Board.* A valid protest is intended to alert the Board of the fact and nature of protest. A protest will not be considered as establishing the truth of the assertions therein, but the Board may consider valid protests in determining what action is appropriate.

(e) *Need to intervene.* Only valid protests brought under subsection (a), relating to when location is at issue, render the protestant a party to the proceeding. A separate petition to intervene is not required for this purpose. Other protestants, including those objecting to the qualifications of an appellant, shall file a petition to intervene under §§ 17.12 and 17.13 (relating to intervention in license application matters; and protests/intervention procedure), in order to become a party.

(f) *Public file.* A valid protest shall be placed into a public file associated with, but not part of, the record upon which the decision of the Board is made.

Source

The provisions of this § 17.11 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

Notes of Decisions

Parties

It was clear to the Liquor Control Board that this was an application for a person-to-person transfer and not an application “for a new retail liquor license” or “the transfer of” a retail liquor license “to a premises not then licensed.” This being so, the protestants under Board rules, which it ignored, were required to petition to intervene consistent with the requisites set forth in § 17.13. The record is devoid of any petitions to intervene being filed by these protestors; thus, the participation of the protestants in the hearing before the hearing examiner of the Board was not consistent with established published procedures of the Board and they should not have been permitted to participate as parties. *Arrington v. Liquor Control Board*, 667 A.2d 439 (Pa. Cmwlth. 1995).

§ 17.12. Intervention in license application matters.

(a) A person who can demonstrate a direct interest in an application for a new retail liquor license, retail malt or brewed beverage license, importing distributor or distributor license, or the transfer of these licenses, whether person-to-person, place-to-place, or both, or an extension of premises of these licenses, and who can further demonstrate that a Board decision contrary to the person’s direct interest will cause the person to be aggrieved may file a petition to intervene.

(b) The petition to intervene may be granted at the discretion of the Board. The Board may grant or deny the petition in whole or in part or may authorize limited participation. In rendering its decision, the Board will consider whether the petitioner has a direct interest in the proceeding and will be aggrieved by a Board decision contrary to that direct interest.

Source

The provisions of this § 17.12 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

Notes of Decisions

Intervenor

Trade association of beer distributors had standing to petition to intervene in licensing proceedings in which the Liquor Control Board granted application for a double transfer of an eating place malt beverage license to premises on which a restaurant, convenience store, and gas station would operate

since the association showed sufficient harm from the license application and its members are within the group regulated and protected by the applicable statutory scheme. *MBDA v. Liquor Control Bd.*, 881 A.2d 37, 42 (Pa. Cmwlth. 2005).

A person not a party to a license transfer proceeding under the Liquor Code may petition to intervene, and will be permitted to do so upon a showing that the petitioner may be aggrieved by the outcome of the hearing. To demonstrate that she is aggrieved, the petitioner must have a direct and substantial interest in the adjudication, and must show a sufficiently close causal relation between the decision and the asserted injury. Where the petitioner provided evidence of negative impact from the past and present operation of the licensed establishment, and the petitioner resides within 500 feet of the premises, the petition to intervene should be granted. *Burns v. Rebels, Inc.*, 779 A.2d 1245 (Pa. Cmwlth. 2001).

Cross References

This section cited in 40 Pa. Code § 17.11 (relating to license application protests).

§ 17.13. Protests/intervention procedure.

(a) *Form.* A protest or petition to intervene must be substantially in the following form and contain:

- (1) The identity of the protestant or petitioner—name, address and telephone number.
- (2) The matter to which the protest or petition is addressed.
- (3) A concise statement of the objections, including the legal basis for consideration as a valid protest, if applicable.
- (4) In addition to the requirements in paragraphs (1)—(3), petitions to intervene must contain the following:
 - (i) A statement of the direct interest of the petitioner in the proceeding.
 - (ii) A description of how the petitioner will be aggrieved in the event of a Board decision contrary to the petitioner's direct interest.

(b) *Time.* A protest or petition to intervene shall be filed with the Board within 30 days of the posting of notice of application as required under Chapter 3, Subchapter B (relating to notice posting). The Board may accept an untimely filed protest or petition to intervene, but only upon good cause shown.

(c) *Notice.* A petition to intervene shall be served upon the applicant in compliance with 1 Pa. Code §§ 33.31—33.37 (relating to service of documents). With respect to a valid protest as determined by the Board, service upon a party is not required. The Board will notify the applicant of a valid protest if a hearing is convened.

(d) *Action or petition to intervene.* An answer to a petition to intervene or protest is not required.

(e) *Hearings.* When the Board orders a hearing, valid protestants and those who have been granted status as intervenors will be notified of the time and place of the hearing at least 10 days in advance of the hearing. The Board will render its decision based upon the record. Failure to appear or testify at the hearing may remove the reasons for protest or intervention from the Board's consideration.

(f) *Limitation of participation in hearing.* If the Board determines that two or more protestants or intervenors have substantially similar interests and positions, the Board may indicate the similarity of interests in the notice of hearing and direct that one or more persons testify as representative of the similar interests. Designated representatives shall advise the Board at the time of hearing. If no

designation has been effected, the Board will select a representative protestant or intervenor, or permit all or a portion of the group to testify as time permits or as appropriate under the circumstances.

(g) *Supersession.* This section supersedes 1 Pa. Code §§ 35.23, 35.24, 35.27—35.32 and 35.35—35.41 (relating to protests; intervention; and answers).

Authority

The provisions of this § 17.13 amended under section 207(i) of the Liquor Code (47 P.S. § 2-207(i)).

Source

The provisions of this § 17.13 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935; amended March 5, 2010, effective March 6, 2010, 40 Pa.B. 1149. Immediately preceding text appears at serial pages (314732) and (325025).

Notes of Decisions

Form

A party, who failed to raise an issue in its original protest, waived the issue and could not thereafter raise the issue in a supplemental protest well after the 30-day deadline for filing protests. *Pittsburgh Stake of the Church of Jesus Christ of Latter Day Saints v. Liquor Control Board*, 617 A.2d 843 (Pa. Cmwlth. 1992).

Petition to Intervene

It was clear to the Liquor Control Board that this was an application for a person-to-person transfer and not an application “for a new retail liquor license” or “the transfer of” a retail liquor license “to a premises not then licensed.” This being so, the protestants under Board rules, which it ignored, were required to petition to intervene consistent with the requisites set forth in § 17.13. The record is devoid of any petitions to intervene being filed by these protestors; thus, the participation of the protestants in the hearing before the hearing examiner of the Board was not consistent with established published procedures of the Board and they should not have been permitted to participate as parties. *Arrington v. Liquor Control Board*, 667 A.2d 439 (Pa. Cmwlth. 1995).

Cross References

This section cited in 40 Pa. Code § 7.63 (relating to municipal standing before the Board); and 40 Pa. Code § 17.11 (relating to license application protests).

§ 17.15. Intervention in noise exemption petitions.

(a) Petitions to intervene may be filed with the Board when a municipality has petitioned the Board for exemption from the Board’s regulation regarding the sound of amplified music or other entertainment, or the advertisement thereof, being heard outside of licensed premises.

(b) The deadline for filing a petition to intervene with the Board is 7 calendar days before the hearing. In extraordinary circumstances and for good cause, a petition to intervene may be accepted by the Board after the deadline, but not after the hearing begins.

(c) A petition to intervene must present proof that the petitioner has a substantial, direct and immediate interest in the outcome of the proceeding. For an interest to be substantial, it means that there is some discernible adverse effect to

the petitioner's individual interest. For the petitioner to have a direct interest, it means that the person claiming to be aggrieved must show the harm to his interest would be caused by the municipality's enforcement of its own noise ordinance. An immediate interest means that there is a close causal connection between the alleged injury and the grant of the exemption.

(d) The Board may allow petitioners to become interveners if the petition also shows the petitioner has an interest of such a nature so that intervention is necessary or appropriate to administration of the Liquor Code and this title. The Board will also consider whether or not the interest asserted in the petition to intervene is adequately represented by existing parties.

Source

The provisions of this § 17.15 adopted January 5, 2007, effective January 6, 2007, 37 Pa.B. 16.

Subchapter C. APPEALS TO BOARD FROM ADMINISTRATIVE LAW JUDGE DECISIONS

Sec.
17.21. Appeals.

§ 17.21. Appeals.

(a) Under section 471 of the Liquor Code (47 P. S. § 4-471), the Bureau or licensee who feels aggrieved by a decision of the ALJ has the right of appeal to the Board.

(b) An appeal to the Board shall be in the form prescribed by the Board, and is subject to the following conditions:

(1) The appeal shall be accompanied by a \$35 fee payable to the "Pennsylvania Liquor Control Board."

(2) Appeals shall be filed or postmarked within 30 calendar days of the mailing date of the opinion and adjudication of the ALJ; failure to file or have the appeal postmarked within 30 calendar days will result in dismissal of the appeal.

(3) A copy of the opinion and adjudication of the ALJ shall be attached to the appeal.

(4) The appeal shall include a concise enumeration and explanation, in the numbered paragraphs, as to each finding of fact which the appellant believes is not supported by substantial evidence.

(5) The appellee shall have 15 days from the mailing date of the Board's notice that an appeal has been filed to respond in writing to the matters raised on appeal; however, no response is required.

(c) The filing of a motion for reconsideration under the rules of the ALJ will stay the processing of an appeal filed with the Board. The filing of a notice for reconsideration will not toll the 30-day time period for the filing of an appeal with the Board.

(d) An appeal shall be reviewed solely upon the record made before the ALJ.

(e) The filing of briefs is optional. A brief shall be filed with the appeal, or response to an appeal, and served on the opposing party, to be considered by the Board. Reply briefs shall be filed within 10 days of the filing date of the brief as to which the reply is made.

Source

The provisions of this § 17.21 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

Subchapter D. SUPERSEDEAS

Sec.

17.31. Supersedeas.

17.32. Hearings.

§ 17.31. Supersedeas.

(a) An appeal from a decision of an ALJ does not act as an automatic supersedeas if the licensee has been found to have committed one or more of the special violations of section 471 of the Liquor Code (47 P. S. § 4-471), unless the Board, upon sufficient cause shown, determines otherwise.

(b) A completed application for supersedeas in decisions involving special violations shall be filed concurrent with the appeal but the Board will not consider an application for supersedeas filed more than 30 days after the mailing date of the opinion and adjudication of the ALJ, unless good cause is shown. The application for supersedeas shall be in the form prescribed by the Board and shall list each reason which would demonstrate to the Board that sufficient cause exists for the Board to grant the supersedeas.

(c) When a licensee files a timely appeal from a decision of the ALJ wherein the licensee is found to have committed one or more standard violations, penalties imposed only for standard violations shall be subject to an automatic supersedeas pending the Board's determination of the appeal unless, upon sufficient cause shown, the Board determines otherwise.

(d) The Bureau may apply to the Board to remove a supersedeas. The Bureau shall set forth in numbered paragraphs reasons which demonstrate that sufficient cause exists to remove the supersedeas. An immediate hearing may be scheduled.

(e) Within 10 days of the mailing date of the Board's notice that an application, whether for supersedeas or its removal, has been filed, a response may be filed by the Bureau.

Source

The provisions of this § 17.31 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

§ 17.32. Hearings.

(a) The Board may schedule a hearing for the purpose of receiving relevant evidence on the issue of the grant or the removal of a supersedeas. The hearing may be scheduled and held within 10 days of the mailing date of the notice. Continuances will be granted solely at the discretion of the Board.

Source

The provisions of this § 17.32 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.

Subchapter E. DIVESTITURE

Sec.
17.41. Divestiture.

§ 17.41. Divestiture.

(a) When the Board determines that a person is not eligible or qualified under the law to have an ownership interest in a licensed business, the Board may issue an order of divestiture to the licensee directing the removal of the person. Failure to comply with the Board's order may result in a citation by the Bureau.

(b) A person aggrieved by the Board's action of divestiture may request a hearing before the Board within 20 days from the date of the Board's order.

(1) The Board will, upon receipt of the request, fix a time and place for hearing before the Board.

(2) The request for hearing shall act as an automatic supersedeas of the Board's order.

Source

The provisions of this § 17.41 adopted December 27, 1991, effective December 28, 1991, 21 Pa.B. 5935.