



## Message from the President



Dear NLLEA Members,

A new year is upon us; I trust you and your loved ones experienced a safe and joyous holiday season, and I hope 2011 brings you much happiness. I know I am looking forward to an exciting and challenging year with the NLLEA and in my “real job”.

With the many changes of administrations following the November elections there is no doubt some uncertainty in your state with regards to liquor enforcement. Please know that the NLLEA is here to lend any assistance we can. We have case studies relating to the correlation of alcohol and crime that might assist you in addressing law makers in budget matters. We recently posted an article from Wyoming on this matter on our web site [http://www.nllea.org/reports\\_publications.htm](http://www.nllea.org/reports_publications.htm). We are all in this together so

please reach out to your colleagues from coast to coast and Canada for support in dealing with the challenges in liquor law enforcement.

With that being said, I also encourage you to reach across county lines and build relationships between the state ABC and the local police and sheriff departments. By pooling our resources we can accomplish much more with less. An example of doing more with less is when I was in San Diego we created a county wide alcohol task force. We had participation from every police department and the sheriff’s department as well as the California ABC. The task force took one officer from each jurisdiction and CABC investigators and we would saturate several cities once or twice a month. We rotated cities so every jurisdiction got worked several times per year. The Chiefs and Sheriff appreciated the task force because problem locations were worked and in most cases only one officer from the city

*Continued on page 2*

## Inside This Issue

### NHTSA Corner

- Funding Opportunity to Conduct High Visibility Enforcement ..... 3

### This Just In

- ATC Agents Shut Down Organized Retail Theft Operation .....4
- ABC & Escondido Police Make Arrests for Illegal Narcotics Charges .....5



### New Research

- Restricting Bar Closing Times May Reduce Assaults..... 6

### Liquor Enforcement Around the Nation

- Department of Liquor Control introduces new Online Training School..... 7
- Maple Lawn bar fined \$5,000 for rowdy patrons, underage service ... 7

### Looking at the Law

- We Put It in the Mail..... 8

## NLLEA Officers

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**Richard Cologie**  
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**James Wilson**  
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**Phillip Calvert**  
Sergeant-at-Arms

**Ted Mahony**  
Immediate Past President

*Message from the President - continued from page 1*

was assigned thereby keeping police services minimally affected. I know some states have terrific relationships with the local law enforcement community, but others are faced with challenges. It is a goal of the NLLEA to do what we can to foster those relationships and build strong cohesive law enforcement partnerships. If you are a state ABC, I encourage you to step out and meet with the local policing agencies and explain how you can assist them. If you are a local police agency I encourage you to do the same, invite the ABC to the Captain or Chief/Sheriff's meetings. Let's all check our egos at the door and face the problems we have in our communities together!

In December PIRE invited the Board to attend the Alcohol Policy 15 Conference in Washington DC. This conference was important for the NLLEA to be in attendance. We were able to share with many alcohol policy people the importance of liquor law enforcement and how strong enforcement can help with the issues that the alcohol policy researchers, educators and medical professionals face. Likewise it was educational for the Board in understanding better the "behind the scenes" alcohol issues that we as cops are not necessarily familiar with. We look forward to attending future conferences.

Following the conference the Board stayed an extra day to meet and discuss the future of the Association. As you know, we are developing an umbrella agreement with NHTSA and joining us in the meeting were Chief Heidi Coleman and Joey Syner of the Impaired Driving Division of NHTSA. Joey will be working with NLLEA on our contract with NHTSA; (Joey is our new Bob Hohn). I got the feeling that Heidi and Joey are just as excited about partnering with NLLEA as we are with them. The opportunity for gathering information regarding liquor law enforcement as well as the potential for introducing programs combating impaired driving from an ABC perspective are exciting possibilities and something I believe the NLLEA can champion across the country in an effort to make an impact in our communities. Thank you Heidi and Joey for being able to meet with the Board, and we look forward to working with NHTSA in addressing the tragedies that impaired driving brings to our roadways.

I have a couple announcements I would like to draw your attention to before signing off. Your agency recently received the 2010 National Liquor Enforcement Data Survey. We ask that you give this a degree of importance, and I would like to thank you in advance for your cooperation in completing the survey in a timely manner. I would also like to announce that this year's conference will be held in Orlando Florida, August 10-12. More information will be on our website soon, so please make your plans now to attend. We look forward to seeing you there. Also, please consider running for the Board as the Sergeant-At-Arms; we have an amazing Executive Board and the future of the NLLEA is promising and exciting.

Finally, in light of the fiscal climate across the nation and the fact that out of state travel has been put on hold in most states, the Board had to make a decision on the 2011 academy. After much discussion between the Board and Academy Director Chuck Conkling it has been decided to put the 2011 academy on hiatus for one year. With the uncertainty in our states and the budgets within our departments, we did not want to put the NLLEA at a financial risk with an academy that we may not have enough students to make it a break even endeavor. The fact of the matter is that the past couple years the academy has gone into the red and the risk is too great for this year. However, know that your Board is committed to the Academy, and we will be working with Chuck in evaluating how we can provide a first class training academy that will not be a financial burden to the Association or the Department that sends their peace officers.

Until next time remember, "All that is necessary for evil to triumph is for good men to do nothing!"



Steven Ernst  
President



## NHTSA Corner

### A Funding Opportunity to Conduct High Visibility Enforcement and Source Investigations!

The National Highway Traffic Safety Administration (NHTSA) is seeking local community-based organizations to conduct demonstration programs to demonstrate the feasibility and effect of pairing two complementary strategies for reducing youth access to alcohol: High Visibility Enforcement (HVE) and Source Investigations. PerformTech, Inc., is providing logistical and technical support to NHTSA in this effort. PerformTech will award two 23-month, \$175,000 contracts for conducting these demonstration programs.

The HVE phase will conduct six or seven waves of enforcement of laws intended to identify youth who unlawfully obtain alcohol, and publicizing those enforcement efforts before, during, and after each wave. The HVE activities will focus around the timing of significant year-round events that are associated with increased opportunities for youth to drink alcohol, such as spring break, prom/graduation, summer parties, sports events, or winter holidays.

The Source Investigation phase will be conducted concurrently with the HVE activities to identify and prosecute individuals (older youth, adults, or parents) who supply alcohol to youth.

The schedule allows four months for program planning, coordination, and training. Enforcement waves will be

scheduled throughout the year during or near events in the calendar that are associated with increased temptations for youth to drink alcohol. An additional three months following implementation permit wrap-up activities and completion of the evaluation.

The Request for Proposals provides a detailed description of the demonstration program, the essential ingredients of a successful demonstration program, the proposal evaluation factors, and information on how to submit proposals for consideration for these demonstration projects. The solicitation package also includes an Implementation Guide describing how to form or adapt a community coalition to conduct a High Visibility Enforcement program. The full RFP is available on NLLEA's website at <http://www.nllea.org/about.htm> under Funding Opportunities. Proposals must be received by March 15, 2011.

Questions about the RFP should be addressed to:

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 810 King St.  
 Alexandria, VA 22314  
[jblatt@performtech.com](mailto:jblatt@performtech.com) ●

## Save the Date for the 2011 NLLEA Conference

The 2011 NLLEA Conference will be held in conjunction with the Underage Drinking Enforcement Training Center's National Leadership Conference in Orlando, Florida from August 10-12, 2011. Check the NLLEA website frequently for more information about the conference agenda and to make your travel plans: <http://www.nllea.org/conference.htm>.



Rosen Shingle Creek Hotel in Orlando



## This Just In

# ATC Agents Shut Down Organized Retail Theft Operation Operated Out of Convenience Store

January 12, 2011

Baton Rouge - Louisiana Alcohol and Tobacco Control (ATC) Commissioner Troy Hebert announced that last night, agents arrested a Hammond businessman and his wife for running an organized retail theft operation. Thanh Dong Dinh and Loan Thi Tran both of Hammond, La are charged with organized retail theft and criminal conspiracy, connected to stolen alcohol purchased from local thieves.

The Dinhs' alleged operation was based at their convenience store known as Mary's Food Mart located at 605 Pecan Street in Hammond. ATC's Investigative Services Unit initiated an investigation into the business after receiving information from the Hammond Police Department about a rash of alcohol related shoplifting arrests made by officers.

Through undercover investigations, agents were able to gather information about the Dinhs' operation. According to ATC agents, the Dinhs' placed orders with professional thieves known as 'boosters' for certain brands of liquor. The orders were filled after the requested brands were stolen from a neighboring Albertsons grocery store and sold to the Dinhs' at less than half the retail price. ATC agents say the Dinhs' eventually sold the stolen liquor to unsuspecting consumers who visited their store.

Acting on a search warrant, ATC Investigative Services Unit seized suspected stolen alcohol and other evidence related to the theft operation. The Dinhs' are suspected of purchasing stolen alcohol allegedly obtained during the course of more than 30 separate shoplifting incidents.



Commissioner Hebert said, "Organized retail theft is a major problem in Louisiana and across the nation which costs taxpayers millions of dollars each year. The economic impact caused by theft rings obviously attributes to increased business operating expenses and is ultimately paid for by consumers." Additionally, ATC agents emphasize that along with unsanitary conditions in which the thieves maintain the stolen products, public safety is at risk every time an incident involving shoplifting or robbery occurs.

Commissioner Hebert continued, "Those that will benefit the most from our efforts on these types of cases are the hard working consumers and honest business owners of this state. I commend our special agents and Hammond Police Department on their work and I want to assure our citizens and legitimate businesses that ATC will remain vigilant against those who threaten the economic stability and safety of our state's alcohol and tobacco industries." ●

## ABC & Escondido Police Arrest Several People on Illegal Narcotics Charges

### Dozens of Police Officers Crack Down on Illegal Drug Sales at Seven Escondido Locations

(Escondido) – On Friday, October 22, 2010, California Alcoholic Beverage Control (ABC) Investigators and the Escondido Police Department arrested 13 individuals at seven different ABC licensed locations in the city of Escondido.

Many law enforcement officers conducted a citywide raid resulting in the arrests. It is the largest drug raid conducted by ABC this year in the State of California. At the briefing prior to the raid, Escondido Police Chief Jim Maher thanked ABC and officers from his own force for their “great police work” that will make the community he serves safer for the citizens who live and work there.



ABC and Escondido Police Officers are briefed by Supervising Investigator Truc Vo just before Big Escondido Drug Bust.

ABC and the Escondido Police Department arrested nine individuals for sales and possession of illegal drugs on the night of the sweep and were still seeking four others for illegal drug sales. During the investigation, ABC undercover investigators were able to make a total of 32 separate



ABC and Escondido Police gather evidence during Big Drug Raid.

The arrests follow a lengthy investigation involving the sale of illegal drugs including methamphetamines, cocaine, illegal prescription drugs and high-grade marijuana. Officers entered seven different premises simultaneously to make the arrests, this was done to increase public safety. At least one employee from each of the seven businesses was arrested for illegal drug activity.



ABC San Marcos District Supervisor Melissa Beach (in far back - behind bar) and her team, work with Escondido Police to arrest two suspects during big Escondido Drug Bust.

purchases of methamphetamine, cocaine, illegal prescription drugs, and high-grade marijuana from employees on several different occasions.

In addition to the criminal charges, ABC will pursue administrative disciplinary action against each of the seven locations where employees were involved in illegal drug sales. ●



## New Research

### Restricting Bar Closing Times May Reduce Assaults

A study out of New South Wales found that a restriction in bar closing times reduced the incidence of assault by 37%. In 2008, the NSW State Government’s Office of Liquor Gaming and Racing answered a series of formal complaints about violence, property damage, and disorderly conduct filed in 2007 by shortening the operating hours of 14 bars/pubs from 5 a.m. to 3 a.m. and imposing a 1 a.m. “lockout” time where patrons already in the establishment could continue drinking but no new patrons would not be allowed entry. This time was extended to 3:30 a.m. and 1:30 a.m., respectively, after some backlash from pub owners.

It was ultimately found that the early bar closing contributed to the assault rate in the central business district of Newcastle, Australia falling from 99.0 per quarter to 67.7 per quarter as compared to a control area in nearby Hamilton. One thought behind the reduction rate is that the



early closing time may have reduced the number of people coming into the central business district entirely, thereby reducing the likelihood of aggressive interactions occurring in, out, and in between establishments.

Kypri K, Jones C, McElduff P, and Barker D (2010). Effects of restricting pub closing times on night-time assaults in an Australian city. *Addiction*, 106, 303-310.

Please email [support@nllea.org](mailto:support@nllea.org) if you would like to request a copy of this article. ●

## CONGRATULATIONS! ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★



### Congratulations to Jacob Appelsmith: Newly Appointed Director of the California Department of Alcoholic Beverage Control

Governor Edmund G. Brown Jr. recently announced the appointment of 47 year old Jacob Appelsmith of Sacramento as Director of the California Department of Alcoholic Beverage Control.

Appelsmith began his career as a lawyer with Pillsbury, Madison & Sutro in San Francisco, where he worked for six years as a commercial litigator. He joined the California Department of Justice, Office of the Attorney General, in 1994. He began working in the Employment Law Section. He eventually became the Department of Justice’s general counsel for personnel and equal employment opportunity matters, as well as the statewide head of the employment law section.

In 2008, Appelsmith was promoted to Special Assistant to then Attorney General Edmund G. Brown Jr. on matters pertaining to law enforcement and the criminal justice system, and was also appointed Chief of the California Bureau of Gambling Control. As Chief of the Bureau, Appelsmith oversaw regulatory and criminal enforcement relating to California’s 60 tribal casinos and 90 card rooms.

Appelsmith graduated from Middlebury College in Vermont in 1985. He was Phi Beta Kappa and was awarded the History Department’s highest honor award. He returned to his native Berkeley to attend law school, graduating from the University of California Boalt Hall School of Law in 1988. While at Boalt, he worked as a student clerk to California Supreme Court Justice Allen Broussard.

In his new capacity at ABC, Appelsmith will oversee a Department that is responsible for the administration, licensing and regulation of businesses that manufacture, distribute and sell alcoholic beverages in California. In addition, Appelsmith will be a Senior Advisor to the Governor.



## Liquor Enforcement Around the Nation

### Department of Liquor Control introduces new Online Training School

The Vermont Department of Liquor Control has partnered with Global Classroom, a local Vermont e-technology company to provide innovative online training for stores and their employees working with alcohol and tobacco in the state of Vermont.

The DLC currently provides free in-person seminars around the state as well as an In-House Training Kit, but wanted to provide another option for how people could be trained. Using Global Classroom’s innovative “in the clouds” software-as-a-service technology, businesses and individuals can take this user friendly course. It is designed, not only for employees who sell alcohol and tobacco in stores, but for owners/managers in order to maintain their licenses. Denis Noel, owner of Bennington Beverage and one of the first to try the new program stated that it was a well done and thorough program.

The DLC is currently offering two trainings as part of their new e-school catalog. These new programs are designed to meet Vermont State Law for certification for Stores which sell Alcohol and/or Tobacco as well as for Stores that are Tobacco Only. The online seminar’s individual sections cover not only the laws and regulations for alcohol and tobacco sales, but information on

carding and refusal skills. It offers practical examples of skills needed as well as interactive lessons. Within the next year the training will be expanded to include bars/restaurants.

Training is mandatory in the State of Vermont for anyone selling alcohol and/or tobacco. Businesses that violate alcohol and tobacco laws risk penalties. Dealing with intoxicated customers or minors attempting to purchase are just some of the issues that can arise when selling alcohol and/or tobacco. Properly training employees is one way a business can promote a successful and safe environment for themselves and their communities.

Over the years, the VT DLC Education Division has trained thousands of employees for employers of all sizes throughout Vermont. The objective of these training programs is to provide participants with the most up to date information on the laws and regulations as well as practical tools for identifying problem situations. More information about Global Classroom can be found at their website: <http://globalclassroom.us>. For more information about Vermont’s in-person or online training services, please call 802-828-2339. To go directly to the new e-school, please see: <http://vdlc.globalclassroom.us>. ●

### Maple Lawn bar fined \$5,000 for rowdy patrons, underage service

[Looney’s Pub infractions took place in 2009](#)

January 06, 2011

By Larry Carson, The Baltimore Sun

Owners of Looney’s Pub in Maple Lawn were fined \$5,000 by Howard County’s liquor board for a series of infractions during the first few months after the establishment opened in spring 2009.

The fine was imposed Monday by the County Council, sitting as the liquor board. The council members normally hear only unusual or serious liquor cases, leaving the majority to an appointed Alcoholic Beverage Hearing Board. Looney’s problems began opening day, March 14, 2009, when two county police officers saw children playing the bar’s electronic games. Police also reported several obviously drunken and aggressive patrons still being served alcohol and others taking their drinks beyond the licensed outdoor patio. Two months later, on June 3, a 19-year-old

*Maple Lawn bar - continued from page 7*

police cadet was served a beer from the bar without being asked for identification.

Detective Mark Baxter told the board in an Oct. 20 hearing, however, that there have been no new infractions during his six visits to Looney's over the past year, and licensee

Steve Litrenta said all 128 employees are now alcohol-certified, the games have been removed from the bar area and the gate to the patio is locked. Employees are offered rewards now for finding forged identification. Defense attorney Joseph F. Snee Jr. said nearly the entire opening day staff is gone, along with the original general manager. ●



## Looking at the Law

### “We put it in the mail.”

by Aidan J. Moore, JD\*



On October 21, 2010, the Commonwealth Court of Pennsylvania, handed down their opinion in the case of *Erie Sports Bar, Inc. v. Pennsylvania State Police, Bureau of Liquor Control Enforcement*, 6 A.3d 663 (Pa.Cmwlth. 2010)

Appellant Pennsylvania State Police, Bureau of Liquor Control Enforcement (Bureau), appeals from an order of the Court of Common Pleas of Erie County (Trial Court) which granted the appeal of Erie Sports Bar, Inc., t/a Coach's Sports Bar & Grill (Licensee) from an order and decision of the Liquor Control Board (Board). The Trial Court's order also dismissed a civil citation against Licensee for a violation of Section 493(1) of the Liquor Code,<sup>[1]</sup> for selling, furnishing, and/or giving an alcoholic beverage to an underage person.

#### The Facts of the Case

On April 9, 2007, an undercover Liquor Enforcement Officer entered Licensee's premises. Shortly thereafter, as part of the Bureau's Age Compliance Check Program, a 19-year-old female identified as an Underage Buyer entered Licensee's premises and approached the bar. The Underage Buyer then ordered a bottle of beer from Licensee's bartender, who served the Buyer without questioning her age, and completed the sale. The Underage Buyer then promptly left Licensee's premises without consuming the beer.

The Bureau subsequently notified Licensee, by certified

letter received thereby on May 1, 2007, of the alleged violation of Section 493(1) of the Liquor Code<sup>[2]</sup> resulting from Licensee's sale of the beer to the Underage Buyer. The Bureau issued a citation dated May 25, 2007, via certified mail, to Licensee for the violation at issue.

A hearing on the citation ensued before a Bureau Administrative Law Judge (ALJ), at which both parties appeared and were represented by counsel. After hearing testimony, and upon review of the evidence presented, the ALJ issued an Adjudication dated December 11, 2007. Following the Adjudication's Findings of Fact, the ALJ concluded that the Bureau had failed to provide immediate notification to Licensee's Board-approved premises manager, and/or person in charge, once the alleged violation within the premises had been established, in violation of Section 23.23(1) of Title 37 of the Pennsylvania Code.<sup>[3]</sup> The ALJ's Adjudication accordingly dismissed the citation.<sup>[4]</sup>

The Bureau thereafter appealed the Adjudication to the Board. Following its review of the parties' arguments, and the record to the matter, the Board issued an Opinion and Order dated April 2, 2008. Therein, the Board concluded, *inter alia*, that Licensee was strictly liable for the alleged violation of Section 493(1) of the Liquor Code notwithstanding the Bureau's failure to demonstrate that it had complied with the immediate notification provisions of Section 23.23(1) of Title 37 of the Pennsylvania Code. The Board expressly concluded that Section 23.23(1) did not add to the burden of proof required of the Bureau in civil administrative hearings against licensees for a violation of Section 493(1) of the Liquor Code. The Board further concluded that the ALJ's dismissal was an error of law, re-

*Continued on page 9*

Law Corner - continued from page 8

versed the ALJ's Adjudication, and granted the Bureau's appeal.<sup>[5]</sup>

Licensee thereafter appealed to the Trial Court, which heard argument from the parties without receiving additional evidence. By Order dated August 5, 2008,<sup>[6]</sup> the Trial Court concluded that the Bureau's compliance with the applicable provisions of the Pennsylvania Code, including Section 23.23(1) of Title 37, was mandatory and required for the pursuit of any alleged violations detected under the Bureau's employment of the Age Compliance Check Program, and that the Pennsylvania Code's notice requirements provided a licensee with particularly important opportunities regarding both the defense of a subsequent violation proceeding, and the ability to take responsibility and correct any noted problems. Further, the Trial Court emphasized that without any sanction for the Bureau's notice failure at issue, no incentive would exist for the Bureau to conform their behavior to the clear requirements of the law. Accordingly, the Trial Court granted Licensee's appeal, overturned the Board's Decision and Order, and dismissed the citation. The Bureau now appeals from the Trial Court's order.

### Standard of Review

The Court's review was limited to determining whether the decision of the trial court is based on substantial evidence, and whether the trial court abused its discretion or committed an error of law. *5708 K & T, Inc. v. Pennsylvania Liquor Control Board*, 951 A.2d 1232 (Pa. Cmwlth.2008).

### The Court's Analysis

The Bureau asserts one issue in the instant appeal: whether the Trial Court erred in concluding that the notice provisions of the Age Compliance Program Check applied to a civil proceeding for a licensee violation of Section 493(1) of the Liquor Code.

The Bureau argues that the Trial Court erred in judicially amending the statutory language of the Liquor Code, in that the elements of an offense under Section 493(1) do not require the immediate notification of a licensee for a violation thereof. Under the Bureau's view, to prove a violation of Section 493(1) the Bureau need only prove that on the date of the violation, the establishment provided alcohol to a minor; the only valid defense to this charge is found in Section 495 of the Liquor Code, 47 P.S. § 4-495,<sup>[7]</sup> which defense is not applicable under the instant facts. The Bureau emphasizes that the Board noted

that the Age Compliance Check Program provisions are not implicated in a civil administrative prosecution by the Bureau. *R.R. at 153a.*

The Bureau further argues that the Underage Buyer herein did not violate Section 6308(a) of the Crimes Code,<sup>[8]</sup> when she purchased alcohol, and that nothing in any subsection of Section 6308, and nothing in the attendant regulations promulgated thereunder, alters the elements of a charged offense under the Crimes Code. The Bureau asserts that it only needs to show compliance with Section 6308 requirements in a criminal prosecution against an underage buyer for having made an otherwise unlawful purchase, and that those provisions are relevant only in a Bureau attempt to establish an effective defense for an underage buyer. The Bureau's position is founded upon its conclusion that the only notification requirement to a licensee relevant to the instant matter is that required upon completion of the Bureau's investigation. Section 471(b) of the Liquor Code, 47 P.S. § 4-471(b).<sup>[9]</sup> The Bureau asserts, correctly, that there is no dispute herein that the Bureau provided this notification via timely certified letter to Licensee upon the completion of its investigation. *R.R. at 122a.*

We cannot adopt the Bureau's preferred interpretation of the statutory and regulatory scheme at issue herein. Section 6308(e) (3) of the Crimes Code mandates that compliance checks conducted under the Program *shall* (*emphasis added*) be conducted in a manner consistent with the regulations promulgated under that Section. In availing itself of the distinct enforcement advantages statutorily provided for in the Age Compliance Check Program, the Bureau must concomitantly submit to the clear statutory and regulatory requirements thereof, including the immediate notice provision at issue. Following the mandate for regulatory promulgation under Section 6308, the language of Section 23.23(1) of Title 37 of the Pennsylvania Code is clear and unambiguous, and requires without exception that immediate verbal notification *will* be provided as a mandated part of the Age Compliance Check Program. There is no provision anywhere within the applicable regulations to the Age Compliance Check Program that supports the Bureau's theory that the notification provision at issue herein is only applicable for purposes of providing a defense to a minor or the Bureau if either were to be prosecuted with a violation of Section 6308; there is only a mandate for immediate verbal notice in the face of a violation, without exception thereto or qualification thereof. It is undisputed that immediate no-

Law Corner - continued from page 9

tification was not provided by the Bureau in this case.

Further, due process implications attach to the notice provisions of the statute at issue, and to the regulations promulgated thereunder. Section 23.23(1) of Title 37 of the Pennsylvania Code requires immediate verbal notification to be provided to the in-charge personnel of the premises at which the enforcement action has been undertaken, if a violation is found. It is axiomatic that due process rights encompass rights to both notice, and to an opportunity to be heard. *See, e.g., DeMarco v. Pennsylvania Liquor Control Board*, 657 A.2d 1359 (Pa.Cmwlth.1995). To the extent that particular forms of notice have been mandated by the General Assembly via statute, or via regulation properly promulgated thereunder, due process protections are implicated. Given that the notice provision required by Section 23.23(1) is directed solely at the premises at which the Bureau has undertaken an action (and found a violation) under the Age Compliance Check Program, due process demands that such an action (when a violation has been found) include the mandated immediate notice to those premises.<sup>[10]</sup> Where specifically provided for and expressly mandated without exception, due process protections are not optional.

#### Footnotes:

[1] Act of April 12, 1951, P.L. 90, as amended, 47 P.S. § 4-493(1).

[2] Section 493(1) states:

Unlawful acts relative to liquor, malt and brewed beverages and licensees  
The term "licensee" when used in this section, shall mean those persons licensed under the provisions of Article IV, unless the context clearly indicates otherwise.

It shall be unlawful-

(1) Furnishing liquor or malt or brewed beverages to certain persons. For any licensee or the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated, or to any minor: Provided further, That notwithstanding any other provision of law, no cause of action will exist against a licensee or the board or any employe, servant or agent of such licensee or the board for selling, furnishing or giving any liquor or malt or brewed beverages or permitting any liquor or malt or brewed beverages to be sold, furnished or given to any insane person, any habitual drunkard or person of known intemperate habits unless the person sold, furnished or given alcohol is visibly intoxicated or is a minor. 47 P.S. § 4-493(1).

[3] Section 23.23 of Title 37 of the Pennsylvania Code reads:  
Notification of results of age compliance check.

A Bureau officer will be responsible for insuring notification is made of the results of the age compliance check to the Board-approved manager or person in charge of the licensed premises.

(1) If the licensed premises is not in compliance, immediate verbal notification will be provided followed by written notification within 10 working days.

Additionally, as Licensee has argued, any lack of the notice plainly mandated in Section 23.23(1) prejudices the owner, operator, or possessor of the premises subject to the Age Compliance Check Program by removing the opportunity to observe, document, and/or preserve any evidence, witnesses, or surveillance of the incident at issue, as well as depriving the premises of any opportunity to immediately correct any problem perceived with procedures, or with the employees responsible for any found violation.

#### Conclusion

In summation, we hold that if the Bureau avails itself of the Age Compliance Check Program, it must abide by the mandates of that program, including the notice provisions promulgated thereunder, notwithstanding the subsequent criminal burden the Bureau may face in its subsequent criminal prosecution of the premises targeted by the Program under a section of the Crimes Code. Where the General Assembly, or an administrative body under its own regulations promulgated pursuant to statute, expressly provides for mandated notice, due process protections attach to that notice. ●

(2) If the licensed premises is found to be in compliance, written notification of compliance will be provided within 10 working days.

(3) Verbal and written notification will include the date and time of the compliance check as well as the name of the server if known. 37 Pa.Code § 23.23.

[4] By Supplemental Order dated January 8, 2008, the ALJ denied the Bureau's Request for Reconsideration.

[5] The Board's order further remanded the matter to the ALJ for the imposition of an appropriate penalty consistent with the Board's Decision and Order. By Supplemental Order dated April 2, 2008, the ALJ ordered Licensee to pay a fine of \$1,250.00, and to contact the Bureau for further compliance process and certification thereof under the Liquor Code. *See* Reproduced Record (R.R.) at 155a.

[6] The Trial Court did not subsequently file a Memorandum Opinion in support of its Order. *See* R.R. at 49a.

[7] Section 495 reads, in relevant part:  
Identification cards; licensees and state liquor store employees saved from prosecution

(e) No penalty shall be imposed on a licensee, licensee's employee or State Liquor Store employee for serving alcohol to a minor if the licensee or employee can establish that the minor was required to produce an identification card as set forth in subsection (a), the minor completed and signed the form as set forth in subsection (c) and these documents were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions.

(f) In addition to the defense set forth in subsection (e), no penalty shall be imposed on a licensee, licensee's employee or State Liquor Store employee for serving alcohol to a minor if the licensee or employee can

Law Corner - continued from page 10

establish that the minor was required to produce an identification card as set forth in subsection (a), a photograph, photocopy or other visual or video presentation of the identification card was made and those documents were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions.

(g) In addition to the defenses set forth in subsections (e) and (f), no penalty shall be imposed on a licensee, licensee's employee or Pennsylvania Liquor Store employee for serving alcohol to a minor if the licensee or employee can establish that the minor was required to produce an identification card as set forth in subsection (a), the identification card is identified as a valid card by a transaction scan device and the identification card and transaction scan results were relied upon in good faith. This defense shall apply to all civil and criminal prosecutions. For purposes of this section, a "transaction scan device" is a device capable of deciphering in an electronically readable format the information encoded on the magnetic strip or bar code of an identification card set forth in subsection (a).

[8] Section 6308(a) reads, in relevant part:

Purchase, consumption, possession or transportation of liquor or malt or brewed beverages

(a) Offense defined.-A person commits a summary offense if he, being less than 21 years of age, attempts to purchase, purchases, consumes, possesses or knowingly and intentionally transports any liquor or malt or brewed beverages, as defined in section 6310.6 (relating to definitions). For the purposes of this section, it shall not be a defense that the liquor or malt or brewed beverage was consumed in a jurisdiction other than the jurisdiction where the citation for underage drinking was issued.

18 Pa.C.S. § 6308(a).

However, Section 6308(e) of the Crimes Code, 18 Pa.C.S. § 6308(e), creates an exception for Bureau compliance checks intended to shield underage buyers from criminal prosecution under Section 6308(a), and includes a list of conditions that must be satisfied without exception:

(e) Exception for compliance checks.-

(1) An individual who is under 21 years of age may purchase, attempt to purchase, possess or transport liquor or malt or brewed beverages if all of the following apply:

- (i) The individual is at least 18 years of age.
- (ii) The individual is an officer, employee or intern of the Bureau of Liquor Control Enforcement of the Pennsylvania State Police.
- (iii) The individual has completed training specified by the bureau.
- (iv) The individual is acting within the scope of prescribed duties.
- (v) The individual is acting under the direct control or supervision of a bureau officer who is an adult.

(2) Under no circumstances may individuals under 21 years of age consume liquor or malt or brewed beverages.

(3) The Pennsylvania State Police shall promulgate regulations prescribing the manner in which compliance checks are to be performed. Compliance checks under this subsection shall be conducted in a manner consistent with the regulations. Regulations shall require, at a minimum, all of the following:

(i) Prior to participation in the compliance check, the officer, employee or intern shall undergo training approved by the Bureau of Liquor Control Enforcement.

(ii) A person licensed to sell liquor or malt or brewed beverages that is found to be in compliance with this section during a compliance check shall be notified in writing of the compliance check and the determination of compliance.

(iii) A person licensed to sell liquor or malt or brewed beverages that is found to be noncompliant with this section during a compliance check shall be immediately verbally advised by the supervising bureau officer and shall be notified in writing of the failure to comply within ten working days of the date of the compliance check.

[9] Section 471(b) reads, in relevant part:

[I]f a licensee has been cited and found to have violated section 493(1) as it relates to sales to minors or sales to a visibly intoxicated person but at the time of the sale the licensee was in compliance with the requirements set forth in section 471.1 and the licensee had not sold to minors or visibly intoxicated persons in the previous four years, then the administrative law judge shall immediately suspend or revoke the license, or impose a fine of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), or both. The administrative law judge shall notify the licensee by registered mail, addressed to the licensed premises, of such suspension, revocation or fine.

[10] Relatedly, we reject the Bureau's argument that Section 6308 exists solely to shield an underage buyer participating in the Age Compliance Check Program from subsequent prosecution; while such protection may be the primary goal of that Section, the notice provision clearly and unambiguously, on its face, inures solely to the benefit of the premises targeted thereby. We agree with Licensee that there is no rational basis upon which to conclude that immediate notice to the premises could in any way protect the underage buyer from a subsequent criminal prosecution.

\* Aidan Moore served as NLLEA President from 2003-2004.

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We're looking for articles for the Spring 2011 issue of the *NLLEA Today*. If you would like to contribute an article, news about your agency and its programs, or career updates to the next issue, please submit to the address at right by **April 4, 2011**.

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