

IN THE MATTER OF  
VFW GUNPOWDER POST 10067  
APPLICANT/LEGAL OWNER  
6309 EBENEZER ROAD

RE: DENIAL OF  
AMUSEMENT LICENSE

15<sup>th</sup> ELECTION DISTRICT  
6<sup>th</sup> COUNCILMANIC DISTRICT

\* BEFORE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO.: CBA-10-003  
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**OPINION**

This matter comes to this Board on an appeal of the June 19, 2009 Final Decision of the Code Enforcement Hearing Officer, in which the Applicant/Appellant, VFW (Veterans of Foreign Wars) Gunpowder Post 10067, request for five (5) licenses to operate amusement devices was denied. The License Applicant and Appellant, VFW Gunpowder Post 10067 was represented by Jay D. Miller, Esquire and standing in for Mr. Miller was Jose' A. Molina, Esquire. Baltimore County was represented by Jeffrey Cook, Assistant County Attorney of the Baltimore County Office of Law. A de novo public hearing was held by the Board on December 15, 2009. At the conclusion of the hearing, Counsel agreed to submit a short brief on the issue of case standing. Nancy West, Assistant County Attorney entered her appearance in January 7, 2010, indicating that her colleague, Mr. Cook, had taken a Leave of Absence. Counsel mutually agreed to waive the submission of the case standing brief and the request to submit on the record was granted.

**Background**

VFW Gunpowder Post 10067 is a auxiliary of the National Veterans of Foreign Wars organization. As such it operates a facility located at 6309 Ebenezer Road. The apparent

functioning of this facility is a gathering place for VFW Members and their guest. For an unspecified number of years, prior to the events giving rise to this case, the VFW operated, but did not own, a series of coin-operated amusement devices. On or about January 22, 2009, the Baltimore County Police Department (BCPD) executed a Search and Seizure Warrant at the location of 6309 Ebenezer Road and seized the coin-operated amusement devices. The coin-operated amusement devices were owned by a company trading as Nick's Amusements. The search warrant that gave rise to this particular incident, was part of a larger seizure involving over thirty (30) locations in Baltimore County. The stated purpose of the warrant was to find evidence of illegal gambling and gambling payouts at the particular locations, including the VFW Post. The amusements devices were examined by the Baltimore County Police Department (BCPD) and determined to be capable of use in illegal gambling operations. That is to say, that according the Baltimore County Police, the amusement devices had been altered to allow various types of activities, which could indicate a use for illegal gambling purposes.

Thereafter, on or about May 22, 2009, representatives of the VFW Post filed an Application for a License Renewal in an attempt to allow for the installation of new coin-operated devices at their facility. The application request was rejected by the County.

**Issue**

**Is the Appellant, the VFW Gunpowder Post I0067 precluded from obtaining a license renewal for the use of coin-operated machines by reason of the prior seizure of the coin-operated devices located on its premises?**

Evidence and Testimony

The evidence presented at the hearing before this Board included a twenty-two (22) page Application and Affidavit for Search and Seizure Warrant. Said Application having been presented to the District Court for Baltimore County. Named therein were a number of locations at which it is alleged that coin-operated devices owned by the aforesaid Nick's Entertainment, were located at each of these locations and beyond the foregoing, the Application indicated that at a number of these locations, undercover members of the BCPD Vice Squad had noted instances of gambling, by way of payouts to customers after their use of these coin-operated amusement devices.

A review of the Application and Affidavit for this Search Warrant did not disclose any indication on the part of the Affiant, that any gambling payouts had been observed to have happened at the VFW Post.

The BCPD Vice Squad concluded that the amusement devices located at the VFW Gunpowder Post were electronic gambling devices because the seized devices each had characteristics of one or more of the following categories of alternation for gambling purposes:

1. Multiple currency/coin feature;
2. Multiple bet feature;
3. Short duration of play;
4. Retention ratio;
5. Knock off feature; and
6. Mislabeling.

Testimony at the hearing further disclosed that neither the VFW Gunpowder Post nor any of its employees were prosecuted or otherwise sanctioned for engaging in illegal gambling activities.

The Appellants contended at the hearing that the focus of the Search and Seizure Warrant was not the VFW Gunpowder Post, but rather the actual owner of the coin-operated machines.

### Decision

The Board, in reviewing *Baltimore County Code* §24-4-206, and in particular sub-sections 5 and 6 therein as noted by the Hearing Officer below, has examined the evidence presented to the Board and determined that there is not sufficient evidence, on the record, that the Appellant has failed to meet its obligations under those two provisions. In particular, sub-section 5 and 6 of *Baltimore County Code* §24-4-206 which state:

#### § 21-4-206. LICENSE SUSPENSION, REVOCATION, OR NONRENEWAL - AUTHORITY OF THE DIRECTOR.

"(a) *Causes for suspension, revocation or nonrenewal enumerated.* The Director may suspend, revoke, or refuse to renew a license issued under this subtitle if the licensee has: ...

(5) Failed to maintain a licensed coin-operated amusement device in proper physical and mechanical condition;

(6) Failed to properly supervise the premises or individuals using the premises where a licensed coin-operated amusement device is maintained and operated including: ...

(iii) The failure to prevent individuals from gambling on the premises;..."

The Board had before it, only the testimony of the Officials from the VFW, wherein they testified that no gambling activities or illegal payouts were conducted on the premises. As aforesaid, the Baltimore County Office of Law, produced the detailed Search and Seizure Warrant, which included the Police Department's observations of the VFW Post that were taken prior to the Application for the Search Warrant in this matter. There is no indication, from the text of the Application for the Search Warrant, that any Officers of the BCPD observed any illegal gambling activities at the VFW Post.

We are left then with the consideration of the impact of the seizure of the coin-operated devices and the issue now is whether that seizure of the altered gambling devices, in and of itself, establishes that illegal gambling was on-going at the VFW Post.

The Board believes that the presence of these devices on the premises of the VFW Post does not, in and of itself, establish that illegal gambling operations were occurring on the premises. There is no evidence that has been presented to indicate that these devices were maintained by the VFW or any of its employees.

Moreover, it appears that the amusement devices were operated by the VFW with no indication that the maintenance of same was undertaken by the VFW.

In addition, it appears that the coin-operated devices were leased from the company known as Nick's Amusements and there is no indication that any alternations to the design or functioning of these devices was carried out by the VFW.

The Board concludes that while the location of these altered coin-operated devices on the premises of the VFW Post was inarguably sufficient for a finding of probable cause to search and seize same, the location of these devices does not, in and of itself, establish culpability on the part of the VFW as the Lessee of the said devices.

The Hearing Officer below concluded that the Licensee, VFW Gunpowder Post 10067, was held responsible for the proper maintenance and operation of the devices and that in this particular case, the Licensee failed to meet its obligation to maintain the amusement devices in a proper condition; as amusement devices and not electronic gambling devices.

The Board differs with the Hearing Officer in that, the Board has not received any evidence indicating that the VFW Post was responsible for the maintenance of these devices. The operation of the devices in question is clearly the responsibility of the VFW Post. Here again, we find no evidence presented at the hearing, which would indicate any illegal activity engaged in by the VFW and/or its employees.

#### Conclusion

The Board therefore concludes that the presence of these coin-operated gambling devices at the VFW does not establish that the VFW had any hand in the design and maintenance of the devices, likewise, as stated above there is no indication for the evidence presented to this Board, that any gambling activities whatsoever occurred.

Therefore, this Board will reverse the decision of the Hearing Officer and direct that the requisite County Official accept the Renewal Application for new amusement devices on the part of the VFW Gunpowder Post 10067.

ORDER

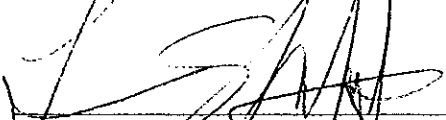
THEREFORE, IT IS, this 22<sup>nd</sup> day of March, 2010, by the Board of Appeals of Baltimore County,

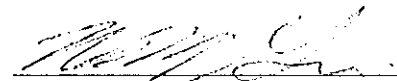
**ORDERED** that the June 19, 2009 Final Decision of the Code Enforcement Hearing Officer, in which the Applicant/Appellant, VFW (Veterans of Foreign Wars) Gunpowder Post 10067, was denied submission of a renewal application request for five (5) licenses to operate amusement devices, is hereby **REVERSED**; and it is further

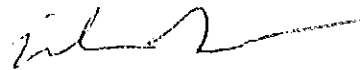
**ORDERED** that the Applicant, VFW Gunpowder Post 10067 be permitted to file an Application for License Renewal with the Department of Permits and Development Management.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

**BOARD OF APPEALS  
OF BALTIMORE COUNTY**

  
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Lawrence M. Stahl, Panel Chairman

  
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Wendell H. Grier

  
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Andrew M. Belt