

*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
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**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**KOKIE INC. D/B/A 110 LIQUORS  
25 MACY STREET, RTE. 110  
AMESBURY, MA 01913  
LICENSE#: 0022-00027  
VIOLATION DATE: 05/18/2017  
HEARING DATE: 08/01/2017**

Kokie Inc. d/b/a 110 Liquors (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, August 1, 2017, regarding an alleged violation of 204 CMR 2.05 (2) – Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, § 34 – Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. Prior to the commencement of the hearing, the Licensee stipulated to the violation alleged in Investigator Doyle's Report.

The following documents are in evidence:

1. Investigator Doyle's Compliance Check Field Report; and
2. Licensee's Stipulation of Facts.

There is one (1) audio recording of this hearing.

The Commission took Administrative Notice of the Licensee's record.

**FACTS**

1. On Thursday, May 18, 2017, at approximately 6:07 p.m., Investigators Bailey and Doyle ("Investigators") investigated the business operation of Kokie Inc. d/b/a 110 Liquors.
2. An underage operative, working with Investigators, purchased from the Licensee an alcoholic beverage, an 18 ounce bottle of Bud Light beer, for five dollars and five cents (\$5.05). The underage operative was asked for identification. She did not produce any identification but informed the employee that she had left it in the car.

## DISCUSSION

Licenses to sell alcoholic beverages are a special privilege subject to public regulation and control, Connolly v. Alcoholic Beverages Control Comm'n, 334 Mass. 613, 619 (1956), for which States have especially wide latitude pursuant to the Twenty-First Amendment to the United States Constitution. Opinion of the Justices, 368 Mass. 857, 861 (1975). The procedure for the issuance of licenses and required conduct of licensees who sell alcoholic beverages is set out in Massachusetts General Laws, Chapter 138.

Chapter 138 gives the Commission the authority to grant, revoke and suspend licenses. Chapter 138 was “enacted ... to serve the public need and ... to protect the common good.” M.G.L. c. 138, §23. “[T]he purpose of discipline is not retribution, but the protection of the public.” Arthurs v. Bd. of Registration in Medicine, 383 Mass. 299, 317 (1981). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

Every violation the Commission finds must be based on substantial evidence. See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 528 (1988). “Substantial evidence” is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” Id. Evidence from which a rational mind might draw the desired inference is not enough. See Blue Cross and Blue Shield of Mass. Inc., v. Comm'r of Ins., 420 Mass 707, 710 (1995). Disbelief of any particular evidence does not constitute substantial evidence to the contrary. New Boston Garden Corp. v. Bd. of Assessor of Boston, 383 Mass. 456, 467 (1981).

The Licensee is charged with a violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: c 138, § 34 Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age. A Commission regulation promulgated at 204 CMR 2.05(2) provides in pertinent part, that “[n]o licensee for the sale of alcoholic beverages shall permit any disorder, disturbance or illegality of any kind to the place in or on the licensed premises. The licensee shall be responsible therefore, whether present or not.” The law is well-settled that “under the regulation, [204 C.M.R. 2.05(2)] the responsibility of the licensee is to exercise sufficiently close supervision so that there is compliance with the law on the premises. A vendor who sells alcohol is ‘bound at his own peril to keep within the condition of his license.’” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n, 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507 (1893)). “It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter.” Id. The licensee is responsible for illegalities that occur on the licensed premises.

Courts have upheld compliance checks, or “stings” as constitutionally permissible. Fran’s Lunch v. Alcoholic Beverages Control Comm’n, 45 Mass. App. Ct. 663, 665 (1998). It is generally recognized that absent entrapment or other abuses violative of fundamental fairness, government involvement in criminal activity for the purposes of investigating possible violations of law is permissible.” Id. Reliance on strict procedure retains the constitutionality of compliance checks. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 383-383 (2006). The legality of the use of a minor to conduct underage stings was decided in Fran’s Lunch, Inc. v. Alcoholic Beverages Control Commission, 454 Mass. App. Ct. 663 (1998). The Appeals Court held that where a “sting operation was conducted in accordance with published guidelines designed to ensure that such operations were conducted fairly, the commission could properly rely on this evidence.” Fran’s Lunch, 45 Mass. App. Ct. at 665

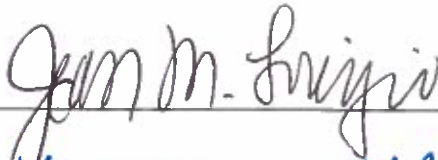
The Commission's 2017 Compliance Check Guidelines direct that "if asked for identification, the underage person should leave the establishment." The Commission found that by engaging in conversation as to where her identification was left, the underage operative failed to strictly comply with the Compliance Check Guidelines. Therefore, the Commission finds no violation in this matter.

### CONCLUSION

Based on the evidence the Commission finds **NO VIOLATION** of 204 CMR 2.05 (2) - Permitting an illegality on the licensed premises, to wit: M.G.L. c. 138, §34 – Sale or delivery of an alcoholic beverage to a person under twenty-one (21) years of age occurred.

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Kathleen McNally, Commissioner



Dated: November 2, 2017

You have the right to appeal this decision to the Superior Courts under the provisions of Chapter 30A of the Massachusetts General Laws within thirty (30) days of receipt of this decision.

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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Brad Doyle, Investigator  
Rose Bailey, Investigator  
Administration, File