



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

NOTICE OF SUSPENSION

September 30, 2024

**HOLMES CURRAN BENNETT POST 361 THE AMERICAN LEGION INC.
35 NEW IPSWICH ROAD
ASHBY, MA 01431
LICENSE#: 00001-VC-0036
VIOLATION DATES: 10/27/2023
HEARD: 2/27/2024**

After a hearing on February 27, 2024, the Commission finds Holmes Curran Bennett Post 361 The American Legion Inc. violated:

- 1) 204 CMR 2.05(2) Permitting an illegality on the licensed premises to wit: M.G.L. Ch. 271 § 17 Keeping a building or room, or any part thereof, with apparatus, books or any device, for registering bets, upon the result of a machine; knowingly permitting the same to be used or occupied for such purpose, knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets; and
- 2) M.G.L. Ch. 138 § 23 Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A (15 counts).

For the first violation of 204 CMR 2.05(2), to wit: M.G.L. Ch. 271 § 17, the Commission **SUSPENDS the license for a period of five (5) days of which two (2) days will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations are found by this Commission.**

For the second violation of M.G.L. Ch. 138 § 23 (15 counts), the Commission **SUSPENDS the license for a period of seven (7) days of which four (4) days will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations are found by this Commission.**

The above suspensions shall run concurrently with one another. Therefore, the Licensee shall serve a total of four (4) days.

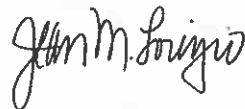
The suspension shall commence on Monday, November 18, 2024, and terminate on Thursday November 21, 2024. The license will be delivered to the Local Licensing Board or its designee

on Monday, November 18, 2024, at 9:00 A.M. It will be returned to the licensee on November 22, 2024.

You are advised that pursuant to the provisions of M.G.L. c.138 § 23, you may petition the Commission to accept an offer in compromise in lieu of suspension within twenty (20) calendar days following such notice of such suspension. If accepted, you may pay a fine using the enclosed form which must be signed by the Licensee and a Massachusetts Licensed Accountant.

You are advised that you have the right to appeal this decision under M.G.L. c. 30A to Superior Court within thirty (30) days upon receipt of this notice.

ALCOHOLIC BEVERAGES CONTROL COMMISSION



Jean M. Lorizio
Chairman

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2023-000259-ad-enf

cc: Local Licensing Board
Katherine McCormick, Esq., Associate General Counsel
Frederick G. Mahony, Chief Investigator
Sean Fleming, Investigator
Dennis Keefe, Investigator
David McDonough, Investigator
James F. McGrail, Esq.
Mail to: P.O. Box 234, Ashby MA 01431
Administration, File



Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
95 Fourth Street, Suite 3
Chelsea, Massachusetts 02150-2358

Jean M. Lorizio, Esq.
Chairman

DECISION

HOLMES CURRAN BENNETT POST 361 THE AMERICAN LEGION INC.
35 NEW IPSWICH ROAD
ASHBY, MA 01431
LICENSE#: 00001-VC-0036
VIOLATION DATES: 10/27/2023
HEARD: 2/27/2024

Holmes Curran Bennett Post 361 The American Legion Inc. ("Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, February 27, 2024, regarding alleged violations of:

- 1) 204 CMR 2.05(2) Permitting an illegality on the licensed premises to wit: M.G.L. Ch. 140 § 177A (6) No person keeping or offering for operation or allowing to be kept or offered for operation any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling;
- 2) 204 CMR 2.05(2) Permitting an illegality on the licensed premises to wit: M.G.L. Ch. 271 § 17 Keeping a building or room, or any part thereof, with apparatus, books or any device, for registering bets, upon the result of a machine; knowingly permitting the same to be used or occupied for such purpose, knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets;
- 3) M.G.L. Ch. 138 § 23 Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A (15 counts).

Prior to the commencement of the hearing, the Licensee stipulated to the facts in Investigator Fleming's report.

The following documents are in evidence:

1. Investigator Fleming's Violation Report;
2. Photograph of Gaming Devices #1;
3. Photograph of Gaming Devices #2;
4. Photograph of Gambling Cash Box #1;
5. Photograph of Gambling Cash Box #2;
6. Photograph of Payout Slips;

7. Photograph of NH Alcohol #1;
8. Photograph of NH Alcohol #2;
9. ABCC Form 43, New License Approved 11/18/1968;
10. Licensee's Stipulation of Facts.

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

FINDINGS OF FACT

1. On Friday, October 27, 2023, at approximately 2:40 p.m., Investigators Keefe, McDonough, and Fleming ("Investigators"), inspected The American Legion Inc. Holmes Curran Bennett Post 361 ("Licensee" or "American Legion Post") as a result of a complaint.
2. At approximately 3:40 p.m., Investigator McDonough entered the licensed premises in an undercover capacity and observed three (3) electronic video devices located in the bar area. Investigator McDonough also observed a cash box with several envelopes next to it, behind the bar.
3. While outside the licensed premises, Investigators Keefe and Fleming observed a red pickup truck enter the parking lot. A male individual exited the truck and carried several boxes of alcoholic beverages into the establishment. Investigators observed approximately four other male individuals exited the American Legion Post and assisted in carrying the alcoholic beverages into the premises.
4. At approximately 4:40 p.m., Investigators Keefe and Fleming entered the establishment and identified themselves. Investigator McDonough then left the licensed premises. Michael Bigwood, the manager of record, was on the premises.
5. Investigators observed the boxes of alcoholic beverages which had been brought in from the parking lot inside the licensed premises. The boxes of beer had distinct Market Basket stickers on them and the boxes of liquor had labels from a New Hampshire Liquor Store.
6. Mr. Bigwood stated to Investigators that he had just purchased the alcoholic beverages from package stores in New Hampshire. Investigators confiscated the following:
 - Three 18-packs of Twisted Tea Original;
 - Three 12-packs of Samuel Adams Octoberfest beer;
 - One 18-pack of Rolling Rock Beer;
 - One 1.75 Liter bottle of Bacardi White Rum;
 - One 1.75 Liter bottle of Chi Chi's Margarita;
 - One 1.75 Liter bottle of Captain Morgan Spiced Rum;
 - One 1.75 Liter bottle of Jose Cuervo Gold Tequila;
 - One 1.75 Liter bottle of Jack Daniels Whiskey;
 - One 1.75 Liter bottle of Tanqueray Dry Gin;
 - One 1 Liter bottle of Jameson Irish Whiskey; and
 - One partial 18-pack of Corona Premium Beer (10 bottles).

7. Investigators observed the three electronic video devices in the bar area had several characteristics which they knew, based on their training and experience, indicated that the machines were being utilized as gambling devices.
8. Mr. Bigwood stated to Investigators the electronic video devices were used for gambling and that the metal cash box behind the bar, which contained \$530.00 in U. S. Currency, was used to pay off individuals who won games on the video poker devices.
9. Mr. Bigwood informed Investigators:
 - A to Z Vending of Fitchburg, Massachusetts owns the machines;
 - Four (4) points are equivalent to \$1.00;
 - There is a 50/50 split of profits between A to Z Vending and the Licensee;
 - Individuals who win on the devices notify Mr. Bigwood who would look at the points accumulated and then pay the winner in U.S. currency from the above-referenced cash box;
 - Machines were reset monthly by A to Z Vending; and
 - The U.S. currency, envelopes and payout slips located to the left of the cash register behind the bar were directly related to the making and recording of video slot machine device payoffs.
10. Investigators observed:
 - Each accepted U. S. Currency in bills ranging from \$1 to \$5;
 - Each device had a "knock off" mechanism, a magnet on the button right corner of each device, to reset the points earned to zero;
 - Each device had a double up option;
11. Investigators placed \$1.00 in U. S. Currency into one of the devices and observed it registered 4 credits. Investigators then selected the number of points to wager which was registered on the device.
12. Investigators informed Mr. Bigwood of the violations and that a report would be submitted to the Chief Investigator for further review.
13. The Licensee has held a license under M.G.L. c. 138, § 12 since 1968 with no prior violations.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

- 1) 204 CMR 2.05(2) Permitting an illegality on the licensed premises to wit: M.G.L. Ch. 271 § 17 Keeping a building or room, or any part thereof, with apparatus, books or any device, for registering bets, upon the result of a machine; knowingly permitting the same to be used or occupied for such purpose, knowingly permitting to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets; and

- 2) M.G.L. Ch. 138 § 23 Sale of alcoholic beverages other than those purchased from a licensee under §18 or §19 or from a holder of a special license under §22A (15 counts).

The Commission finds No Violation of 204 CMR 2.05(2) Permitting an illegality on the licensed premises to wit: M.G.L. Ch. 140 § 177A (6) No person keeping or offering for operation or allowing to be kept or offered for operation any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling as no evidence was presented establishing the licensure of the video poker machines.

For the first violation of 204 CMR 2.05(2), to wit: M.G.L. Ch. 271 § 17, the Commission **SUSPENDS the license for a period of five (5) days of which two (2) days will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations are found by this Commission.**

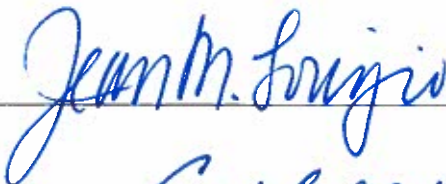
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The above suspensions shall run concurrently with one another. Therefore, the Licensee shall serve a total of four (4) days.

In addition, the Licensee must not possess in or on the licensed premises any automatic amusement devices or video poker machines.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: September 30, 2024

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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