

The Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
Boston, Massachusetts 02114

Deborah B. Goldberg
Treasurer and Receiver General

Kim J. Gainsboro, Esq.
Chairman

NOTICE OF SUSPENSION

March 30, 2016

**HERMAN A. SPEAR WWII POST #331 AMERICAN LEGION, INC.
D/B/A AMERICAN LEGION, INC.
3 JUDSON STREET
BEVERLY, MA 01915
LICENSE#: 010000018
VIOLATION DATE: 11/30/2015
HEARD: 03/15/2016**

After a hearing on March 15, 2016, the Commission finds Herman A. Spear WWII Post #331 American Legion Inc. violated:

- 1) M.G.L. c. 23K, §37 (a) Unlawful conduct or operation of game or gaming device;
- 2) 204 CMR 2.05 (1)-Permitting Gambling (2 Counts);
- 3) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 140, §177A (6) No person keeping or offering for operation, or allowing to be kept or offered for operation an automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling; and
- 4) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 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 to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets.

Therefore, the Commission **suspends the license for a total 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 occur.**

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

The suspension shall commence on Wednesday, May 18, 2016, and terminate on Thursday, May 19, 2016. The license will be delivered to the Local Licensing Board or its designee on Wednesday, May 18, 2016 at 9:00 A.M. It will be returned to the Licensee Friday, May 20, 2016.

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.

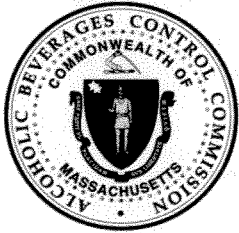
ALCOHOLIC BEVERAGES CONTROL COMMISSION



Kim S. Gainsboro
Chairman

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这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Brad Doyle, Investigator
Jan Kujawski, Investigator
Frank O' Brien, Esq. via facsimile 617-722-0144
Administration, File



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Department of the State Treasurer

Alcoholic Beverages Control Commission

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DECISION

**HERMAN A. SPEAR WWII POST #331 AMERICAN LEGION, INC.
D/B/A AMERICAN LEGION, INC.
3 JUDSON STREET
BEVERLY, MA 01915
LICENSE#: 010000018
VIOLATION DATE: 11/30/2015
HEARD: 03/15/2016**

Herman A. Spear WWII Post #331 American Legion Inc. (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, §12. The Alcoholic Beverages Control Commission (the "Commission") held a hearing on Tuesday, March 15, 2016, regarding alleged violations of:

- 1) M.G.L. c. 23K, §37 (a) Unlawful conduct or operation of game or gaming device;
- 2) 204 CMR 2.05 (1)-Permitting Gambling (2 Counts);
- 3) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit; M.G.L. c. 140, §177A (6) No person keeping or offering for operation, or allowing to be kept or offered for operation an automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling; and
- 4) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 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 to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets.

The following documents are in evidence:

1. Investigator Doyle's Report dated November 30, 2015;
2. Licensee's Stipulation of Facts;
3. Photo of Black Metal Box;
4. Photo of Blue Beverly Bank bag and cash;
5. Photo of Red Notepad;
6. Photo of Blue Warren Bank bag and cash;
7. Photo of Plastic Bin with Approximately 800 – 900 Pull Tabs;
8. Photo Close-up of Pull Tab;

9. Photos of Interior of Amusement Devices;
10. Photos of Receipts/Print-Outs from the Devices; and
11. Red Notepad Detailing Record of Credits In and Payments Out

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

The Commission took administrative notice of the Licensee's file.

FACTS

1. On Monday, November 30, 2015, at approximately 10:45 a.m., Investigators Doyle and Kujawski ("Investigators") conducted an investigation of the business operation of Herman A. Spear WWII Post #331 American Legion Inc. to determine the manner in which the business was being conducted.
2. Investigators entered the licensed premises and a man, later identified as Paul Genest, introduced himself as the Commander of the club.
3. Investigators asked Mr. Genest if there were any electronic video devices on the premises.
4. Mr. Genest stated there were and that he would get a manager to speak to Investigators.
5. An individual, later identified as Scott Perry, stated that he has been the manager for six years.
6. Investigators asked him where the electronic video devices were located.
7. Mr. Perry brought Investigators to a room adjacent to the bar area.
8. Investigators asked Mr. Perry to describe the process of collecting credits earned on the devices.
9. Mr. Perry stated that the machines would print out a ticket and the bartender would pay each person according to the number of credits on the ticket.
10. Mr. Perry then led Investigators into the office.
11. Mr. Perry showed Investigators a metal box that was usually kept behind the bar and inside this box was a blue "Beverly Savings Bank" bag containing \$4,000 in U.S. currency.
12. Mr. Perry stated that he took the metal box from the bar to the office after he heard Investigators were in the area today.
13. Mr. Perry stated that the automatic devices were owned by 4 Star Vending and the club would split the profits 50/50 from the electronic video devices with 4 Star.
14. Inside the metal box, Investigators found a red pocket size notepad. Inside this notepad were recordings from September 21, 2015 to November 29, 2015. Each day listed a dollar amount reflecting the money put into the machines and the money paid out. The profit for the day was also recorded.
15. Also inside the metal box was a "Warren Bank" bag labeled "tickets." This bag contained \$815 in U.S. Currency.
16. Mr. Perry stated that the bag was for pull tabs that the club offers. Each pull tab is \$1.00 and the bartenders would pay any winning tickets from the bag.
17. A plastic container with approximately 800-900 tickets was taken as evidence.
18. Investigators observed that the electronic video devices had several characteristics which they know based on their training experience to be indications that the electronic video devices are utilized as gambling devices. Those characteristics are:

- The electronic video devices accepted dollar bills ranging from \$1, \$5, \$10, \$20.
 - The electronic video devices had markings indicating "for amusement only."
 - All seven electronic video devices had a "knock off" mechanism to reset the credits earned to zero.
19. Investigators proceeded to place \$1.00 into each device and record their findings.
 20. Electronic video device # 1; \$1.00 received 20 credits (\$.05 per credit). Investigator Doyle selected 4 credits to be played and the device registered the bet reflecting 16 credits remaining. After pressing the play button, the device earned 68 credits reflecting 84 credits remaining. Investigators pressed a white button on the front of the device marked "Print Ticket." This knock off mechanism reset the remaining credits from 84 to zero. A yellow slip came out of the front of the device reflecting 84 points.
 21. Electronic video device # 2; \$1.00 received 100 credits (\$.01 per credit). Investigator Doyle selected 25 credits to be played and the device registered the bet reflecting 75 credits remaining. Investigators pressed a white button on the front of the device marked, "Print Ticket." This knock off mechanism reset the remaining credits from 75 to zero. A yellow slip came out of the front of the device reflecting 75 points.
 22. Electronic video device # 3; \$1.00 received 100 credits (\$.01 per credit). Investigator Doyle selected 25 credits to be played and the device registered the bet reflecting 75 credits remaining. Investigators pressed a white button on the front of the device marked, "Print Ticket." This knock off mechanism reset the remaining credits from 75 to zero. A yellow slip came out of the front of the device reflecting 75 points.
 23. Electronic video device # 4; \$1.00 received 100 credits (\$.01 per credit). Investigator Doyle selected 10 credits to be played and the device registered the bet reflecting 90 credits remaining. There was a button on the touch screen labeled "Redeem Credit." After several attempts, a ticket failed to print out.
 24. Electronic video device # 5; \$1.00 received 100 credits (\$.01 per credit). Investigator Doyle selected 86 credits to be played and the device registered the bet reflecting 14 credits remaining. There was a button on the touch screen labeled "redeem credit." This knock off mechanism reset the remaining credits from 14 to zero. A yellow slip printed out of the front of the device reflecting 14 points.
 25. Electronic video device # 6; \$1.00 received 100 credits (\$.01 per credit). Investigator Doyle selected 25 credits to be played and the device registered the bet reflecting 75 credits remaining. Investigators pressed a white button on the front of the device marked, "Print Ticket." This knock off mechanism reset the remaining credits from 75 to zero. A yellow ticket came out of the front of the device reflecting 75 points.
 26. Electronic video device # 7; \$1.00 received 100 credits (\$.01 per credit). Investigator Doyle selected 25 credits to be played and the device registered the bet reflecting 75 credits remaining. Investigators pressed a white button on the front of the device marked, "Print Ticket." This knock off mechanism reset the remaining credits from 75 to zero. A yellow ticket came out of the front of the device reflecting 75 points.
 27. Investigators informed Mr. Perry that a violation report would be submitted to the Chief Investigator for review.

CONCLUSION

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

- 1) M.G.L. c. 23K, §37 (a) Unlawful conduct or operation of game or gaming device;
- 2) 204 CMR 2.05 (1)-Permitting Gambling (2 Counts);
- 3) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 140, §177A (6) No person keeping or offering for operation, or allowing to be kept or offered for operation an automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling; and
- 4) 204 CMR 2.05 (2) Permitting an illegality on the licensed premises to wit: M.G.L. c. 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 to be therein kept, exhibited, used or employed, any device or apparatus for registering such bets.

On the first violation, M.G.L. c. 23K, §37 (a) the Commission **suspends the license for 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 occur.**

On the second violation, 204 CMR 2.05 (1)-Permitting Gambling (2 Counts), the Commission **suspends the license for 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 occur. This suspension to run concurrently with the one above.**

On the third violation, 204 CMR 2.05 (2), to wit: M.G.L. c. 140, §177A (6), the Commission **suspends the license for 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 occur. This suspension to run concurrently with those above.**

On the fourth violation, 204 CMR 2.05 (2), to wit: M.G.L. c. 271, § 17, the Commission **suspends the license for 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 occur. This suspension to run concurrently with those above.**

Therefore, the Commission **suspends the license for a total 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 occur.**

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

Elizabeth A. Lashway, Commissioner Elizabeth A. Lashway

I, the undersigned, hereby certify that I have reviewed the hearing record and concur with the above decision.

Kathleen McNally, Commissioner Kathleen McNally

Dated: March 30, 2016

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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