

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

**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**BOLTON COUNTRY CUPBOARD INC.  
476 MAIN STREET  
BOLTON, MA 01740  
LICENSE#: 00007-PK-0112  
VIOLATION DATE: 6/06/2024  
HEARD: 9/03/2024**

Bolton Country Cupboard Inc. ("Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 15. The Alcoholic Beverages Control Commission ("ABCC" or "Commission") held a remote hearing via Microsoft Teams on Tuesday, September 3, 2024, regarding an alleged violation of 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age.

The following documents are in evidence:

1. Investigators Temple and McDonough's Minimum Purchase Age Compliance Check Field Report 6/6/2024;
2. ABCC Form 43, New License Approval, 3/14/1985.

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

**FINDINGS OF FACT**

1. On Thursday, June 6, 2024, at approximately 5:05 p.m., Investigators Temple and McDonough ("Investigators"), conducted a compliance check at Bolton Country Cupboard Inc. (Testimony, Exhibit 1)
2. An underage operative working under the supervision of Investigators purchased an alcoholic beverage, one 25-ounce container of Bud Light beer, for three dollars and forty-nine cents (\$3.49). The underage operative was not asked for identification. Id.
3. Investigators entered the store and advised the clerk of the violation. (Testimony)
4. The Licensee has held a license under M.G.L. c. 138, § 15 since 1985. (Exhibit 2)
5. Jane Houde, Licensee, appeared at the Commission hearing along with Tim Houde, Manager. Mr. Houde testified that the clerk who made the sale had been trained and was provided with additional training following this incident. In addition, he stated employees

had already been trained to request identification from all patrons appearing to be 35 years of age or younger. Employees are now instructed to request identification from all patrons. (Testimony)

### 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 M.G.L. c. 138.

M.G.L. c. 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) (emphasis supplied). The Commission is given “comprehensive powers of supervision over licensees.” Connolly, 334 Mass. at 617.

The law is well-settled that 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.” Commonwealth v. Gould, 158 Mass. 499, 507 (1893); Burlington Package Liquors, Inc. v. Alcoholic Beverages Control Comm'n, 7 Mass. App. Ct. 186, 190 (1979). It is, thus, quite possible for a licensee to offend the regulatory scheme without scienter. Rico's of the Berkshires, Inc. v. Alcoholic Beverages Control Comm'n, 19 Mass. App. Ct. 1026, 1027 (1985).

The Licensee is charged with a 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 years of age. Pursuant to M.G.L. c. 138, §34, the sale of alcohol to minors is prohibited, and imposes both criminal and civil sanctions. M.G.L. c. 138, § 34 provides: Whoever makes a sale or delivery of any alcoholic beverages or alcohol to any person under twenty-one (21) years of age, either for his own use or for the use of his parent or any other person...or whoever furnishes any such beverage or alcohol for a person under twenty-one (21) years of age shall be punished by a fine of not more than two thousand (2,000) dollars or by imprisonment for not more than one (1) year or both. The Appeals Court has stated that “the purpose of the statute [is] to protect the welfare of children from the danger of alcohol,” See Tobin v. Norwood Country Club, Inc., 422 Mass. 126, 133-134 (1996); Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass. App. Ct. 663, 664 (1998).

To enforce the provisions of M.G.L. c. 138, § 34, both the Commission and Local Boards commonly perform compliance checks, also known as “stings”, at licensed establishments.

The legality of using an underage operative to conduct compliance checks was established in Fran's Lunch, Inc., 45 Mass. App. Ct. 663 (1998). The Appeals Court held that “[a]bsent entrapment or other abuses violative of fundamental fairness, government involvement in criminal activity for purpose of investigating possible violations of law is permissible, even if technical violations of law occur.” Id at 664. The Appeals Court further 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.” Id at 665.

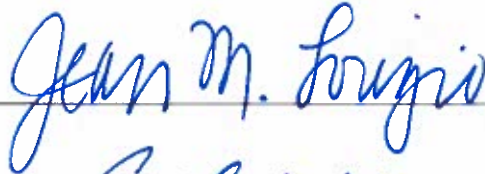
In this matter, direct evidence was presented through the investigator’s testimony as to the compliance check, wherein an underage operative, a person under the age of twenty-one, working under the supervision of the investigator, purchased alcoholic beverages at the licensed premises. The Commission is persuaded by the evidence that the Licensee sold alcoholic beverages to a person under the age of twenty-one years inside the licensed premises.

### CONCLUSION

Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2) Permitting an illegality on the licensed premises, to wit: M.G.L. Ch. 138, § 34 Sale or Delivery of an alcoholic beverage to a person under twenty-one years of age. As a result, the Commission issues a **WARNING**.

### **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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यह दस्तावेज़ महत्वपूर्ण है और इसका तुरंत अनुवाद किया जाना चाहिए

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‘Đây là tài liệu quan trọng và cần được dịch ngay’

ឯកសារនេះសំខាន់ណាស់ ហើយត្រូវបកប្រែជាបន្ទាន់។

2024-000133-ad-enf

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Katherine McCormick, Esq., Associate General Counsel  
David McDonough, Investigator  
Chris Temple, Investigator  
Administration, File