

***Commonwealth of Massachusetts  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, Massachusetts 02114  
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**Jean M. Lorizio, Esq.**  
*Chairman*

**DECISION**

**COYLE'S ROADHOUSE TAVERN INC. D/B/A EDDIE COYLE'S TAVERN  
1480 BROADWAY ROAD, UNIT 1  
DRACUT, MA 01826  
LICENSE#: 0292-00067  
VIOLATION DATE: 04/06/2018  
HEARD: 9/18/2018**

Coyle's Roadhouse Tavern Inc. d/b/a Eddie Coyle's Tavern (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, September 18, 2018, regarding alleged violations of:

- 1) 204 CMR 2.05 (1): Permitting Gambling;
- 2) 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 any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling.
- 3) 204 CMR 2.05 (2), to wit: M.G.L. c. 140 § 177A (5) Automatic devices under this section shall be so installed on the premises described in the license as to be in open view at all times while in operation, and shall at all times be available for inspection.

The above captioned occurred on Friday, April 6, 2018, according to Investigator Doyle's Report.

The following documents are in evidence:

1. Investigator Doyle's Investigative Report;
2. Photo of Closed Door Marked "Employees Only";
3. Photo of Gaming Devices, Unplugged;
4. Photo of Gaming Devices, Turned On; and
5. Slips from Vendor of All Machines on Premises.

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

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

## FINDINGS OF FACT

1. On Friday, April 6, 2018, at approximately 4:30 p.m., Investigators Bailey and Doyle (“Investigators”) inspected Coyle’s Roadhouse Tavern Inc. d/b/a Eddie Coyle’s Tavern to determine the manner in which their business was being conducted and to address a complaint filed with this Commission.
2. Investigators identified themselves to the bartender on duty, Bob Cox, and asked to speak with the owner or manager. Cox said he was the owner’s son but went to get his manager.
3. While waiting for Cox to return, Investigators observed a closed door marked “employees only” near the restrooms. Investigators opened this door and observed two automatic amusement devices which were turned on and one was in use, with a male individual playing a game. Investigators then closed the door.
4. Investigators were eventually greeted by a male individual who identified himself as the owner, Robert Cox. Investigators asked Mr. Cox if there were any automatic amusement devices/poker machines on the premises. Mr. Cox stated that he did have a few machines on site.
5. Investigators asked to see permits for the automatic amusement devices, which Robert Cox provided to them. Investigators walked to the room marked “employees only” and opened the door to view the devices. At this time, no one was in the room, the two devices had been unplugged from the wall socket, and the light was turned off.
6. Investigators informed Robert Cox that the devices had been plugged in and someone had been playing the machines within the last ten minutes. Investigators asked Cox if the bar was paying out on the devices. Investigators reported that Cox stated the bar did pay out for winning on the devices.
7. Investigators asked who owned the machines. Cox stated the machines were owned by R-K Vending and the profits were split between the club and the vending company, with the bar getting 50% and the vending company getting 50%.
8. Investigators asked Cox how customers collected winnings on these devices. Mr. Cox stated that an individual would notify the bartender when they wanted to stop playing. The bartender would write the remaining credits on the device and then press a metal object to the two bolts on the front of the device (knock-off mechanism) which would reset the credits earned to zero. The bartender then paid the person twenty-five cents (25¢) for each credit earned.
9. Investigators observed that the electronic video devices (marked as “Champion”) had several characteristics which, based on their training and experience, indicate that the devices were being utilized as gambling devices:
  - Each accepted U. S. Currency in bills ranging from \$1, \$5, \$10, and \$20;
  - Each device had markings which indicated, “for amusement only”;
  - Each device had a “knock off” mechanism to reset the credits earned to zero;
  - Each device was fitted with the capacity to “double up” the bet with a “double up” button.

10. Investigators asked Mr. Cox if he had keys to open the devices. Cox stated that he did not have keys and that the vendor would come to the premises every month or so to open the devices and give the bar its share of the profit from them.
11. Investigators asked Mr. Cox how long the devices had been on the premises. Cox stated he removed the devices about five or six years ago for a period of time, but he did not remember when the devices were brought back.
12. Investigators asked Mr. Cox if he had any records from the vendor reflecting the bar's share of earnings. Mr. Cox provided Investigators with four slips reflecting monetary amounts which he said represented the split from all of the devices at the premise, including the 2 gaming devices in question.
13. Investigators did not observe any patron receiving payment and did not find any receipts/slips indicating payment had been made to any patrons.
14. Investigators informed Mr. Cox of the violation and that a report would be submitted to the Chief Investigator for further review.
15. The Licensee informed the Commission that the income earned from the devices is reported as income for tax purposes.
16. The automatic amusement devices are properly licensed by the local licensing authorities.
17. The Licensee admitted to Investigators on the night of the inspection and to the Commission during the hearing that they had paid out on the machines in years past, prior to the time period wherein the machines were removed.
18. The Licensee admitted that the door to the room wherein the amusement devices are located is sometimes closed.

### 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 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) (emphasis supplied). 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). "Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 879 (1981).

Re: 204 CMR 2.05(1) Permitting Gambling, and 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 any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling.

While the machines at the licensed premise had characteristics, which indicate that the devices could be utilized as gambling devices, the Commission is persuaded otherwise. The Investigators neither observed the Licensee paying any patron, nor found any evidence that payments had been previously made. The Commission believes that the Licensee was truthful in stating that they had paid out on the machines in years past but were no longer paying out on the machines at the time of the investigation. The Commission finds no evidence of a violation in this instance.

Re: 204 CMR 2.05 (2), to wit: M.G.L. c. 140 §177A (5): Automatic devices under this section shall be so installed on the premises described in the license as to be in open view at all times while in operation, and shall at all times be available for inspection.

The Licensee admitted that the automatic amusement devices were located in a room to which the door was sometimes open, and sometimes closed and therefore, not in open view at all times as required to by law.

### CONCLUSION

Based on the evidence, the Commission finds NO VIOLATIONS of 204 CMR 2.05 (1) Permitting Gambling, and 204 CMR 2.05 (2), 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 any automatic amusement device licensed under this section shall permit the same to be used for the purpose of gambling, occurred.

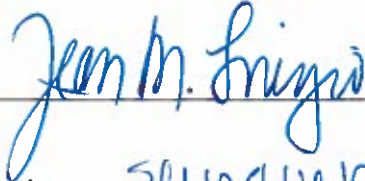
Based on the evidence, the Commission finds the Licensee violated 204 CMR 2.05 (2), to wit: M.G.L. c. 140 §177A (5) Automatic devices under this section shall be so installed on the premises described in the license as to be in open view at all times while in operation, and shall at all times be available for inspection. As the Licensee has been in business for over 10 years with no prior violations, the Commission issues a **WARNING**.

The Licensee is reminded that gambling is unlawful, and every precaution should be taken to ensure that such unlawful activity does not take place on the licensed premise.

**In addition, any automatic amusement devices or video poker machines which the Licensee possesses shall not be used for gaming purposes.**

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Elizabeth A. Lashway, Commissioner



Dated: October 22, 2018

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  
John T. Cox, Esq.  
Administration, File