



*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**

September 14, 2016

**FRATERNAL ORDER OF EAGLES #747**  
**71 CITY HALL AVE.**  
**GARDNER, MA 01440**  
**LICENSE#: 043600006**  
**VIOLATION DATE: 02/04/2015**  
**HEARD: 09/13/2016**

After a hearing on September 13, 2016, the Commission finds Fraternal Order of Eagles #747 violated:

- 1) 204 CMR 2.05 (1) - Permitting Gambling (1 count);
- 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.

Therefore, 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. 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, November 9, 2016 and terminate on Thursday, November 10, 2016.** The license will be delivered to the Local Licensing Board or its designee on Wednesday, November 9, 2016 at 9:00 A.M. It will be returned to the Licensee Friday, November 11, 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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Questo documento è importante e dovrebbe essere tradotto immediatamente.  
Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.  
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Dennis Keefe, Investigator  
Mark Kenny, Investigator  
Christopher G. Fallon, Esq. via facsimile 781-322-1663  
Administration, File



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**DECISION**

**FRATERNAL ORDER OF EAGLES #747**  
**71 CITY HALL AVE.**  
**GARDNER, MA 01440**  
**LICENSE#: 043600006**  
**VIOLATION DATE: 02/04/2015**  
**HEARD: 09/13/2016**

Fraternal Order of Eagles #747 (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 13, 2016, regarding alleged violations of:

- 1) 204 CMR 2.05 (1) - Permitting Gambling (1 count);
- 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.

Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Investigative Report dated February 4, 2016; and
2. Licensee's Stipulation of Facts.

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

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

## FINDING OF FACTS

1. On Thursday, February 4, 2016, at approximately 2:00 p.m., Investigators Kenny and Keefe ("Investigators") investigated the business operation of Fraternal Order of Eagles #747 to determine the manner in which their business was being conducted.
2. Investigators entered the licensed premises, identified themselves to the bartender on duty, and informed her of the inspection.
3. Investigators observed four electronic devices, located in a back room of the establishment.
4. Investigators asked the bartender for information about these devices. The bartender stated that she could call someone who knew about the electronic devices to come meet with the Investigators.
5. Shortly thereafter, Rick Smith who stated he was a trustee of the club, and James Davis, who stated he was the treasurer and manager of the club, entered the premises.
6. Mr. Davis stated that the club pays cash if patrons win on the four electronic devices, and Mr. Smith confirmed this statement.
7. In response to Investigators' inquiry, Mr. Davis stated A-Z Vending owns the electronic devices, and Mark was their contact person. Davis stated the club gets 65% of the cash earning and A-Z Vending gets 35%. Mark comes every Wednesday to collect the money and split it.
8. Davis stated A-Z Vending told club members that if ABCC Investigators came, they should say there are no pay outs and that devices are for amusement only.
9. Mr. Davis stated if a patron wins on the electronic devices, they are told to find club members Mike or Rick, who have the cash to pay out. Once a patron wins, a magnet located behind the bar is used to reset the electronic devices. The magnet is swiped on the top left hand corner of the device, which resets it.
10. Davis further stated that if there are slips to keep track of the pay outs, the slips are discarded after the transaction. \$1.00 is equal to 4 points, which is twenty-five cents per point.
11. Investigators observed the following characteristics which, based on their training and experience, indicated these electronic devices were being used as gambling devices:
  - Device accepted dollar bills;
  - Device had the capability to select the number of points (the amount to bet);
  - Device "registered" the bet by displaying the number of credits selected;
  - Device had the capability to double up the bet by selecting a double-up button.
12. Investigator Kenny played the electronic devices, and Mr. Davis used the magnet to reset the electronic devices back to zero.
13. Investigators informed Mr. Davis and Smith of the violation and that a report would be submitted to the Chief Investigator for review.

### CONCLUSION

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

- 1) 204 CMR 2.05 (1) - Permitting Gambling (1 count);
- 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.

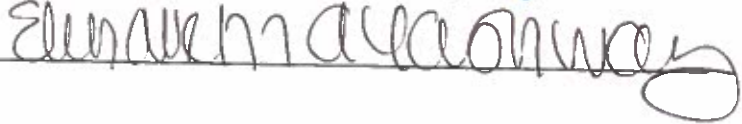
Therefore, the Commission **suspends the license for five (5) days of which two (2) days will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. In addition, the Licensee must not possess in or on the licensed premises any automatic amusement devices or video poker machines.**

### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: September 14, 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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