



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

Jean M. Lorizio, Esq.
Chair

DECISION

**GOSHEN GENERAL STORE INC.
31 MAIN STREET, ROUTE 9
GOSHEN, MA 01032
LICENSE#: 00003-PK-0452
VIOLATION DATE: 6/04/2024
HEARD: 9/10/2024**

Goshen General Store 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 10, 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 which occurred on June 4, 2024.

The following documents are in evidence:

1. Investigators Guarino & Fleming's Minimum Purchase Age Compliance Check Field Report, 6/4/2024;
2. ABCC Form 43, Transfer of License Approval, 2/16/2007.

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

FINDINGS OF FACT

1. On Thursday, June 4, 2024, at approximately 6:47 p.m., Investigators Fleming and Guarino ("Investigators"), conducted a compliance check at Goshen General Store Inc. (Testimony, Exhibit 1)
2. An underage operative working under the supervision of Investigators entered the licensed premises and purchased an alcoholic beverage, one 25-ounce can of Natty Daddy beer, for two dollars and fifty-five cents (\$2.55). The underage operative was not asked for identification. Id.
3. Mr. John Chandler, Licensee, appeared at the Commission hearing and testified he was the clerk who made the sale to the underage operative. He stated he was wearing an Air Force shirt at the time of the compliance check. He acknowledged the underage operative entered the store and he noticed he looked young. However, the underage operative initiated a conversation by commenting on Mr. Chandler's Air Force shirt and mentioned his plans to

enter the Air Force. The underage operative asked Mr. Chandler about his experience in the Air Force. (Testimony)

4. The Licensee has held a license under M.G.L. c. 138, § 15 since 2007 with no previous violations. (Commission Records, Exhibit 2)

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. General Laws chapter 138, §34 provides, in part, that “[w]hoever makes a sale or delivery of any alcoholic beverage or alcohol to any person under 21 years of age, either for his own use or for the use of his parent or any other person, ... shall be punished...” 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).

The legality of the use of a minor to conduct sting operations was decided in Fran's Lunch, Inc. v. Alcoholic Beverages Control Comm'n, 45 Mass. App. Ct. 663 (1998). The Appeals Court held that in permitting a person under twenty-one (21) years of age to purchase alcoholic beverages in a “sting” operation at a licensed premises, neither the Alcoholic Beverages Control Commission nor a municipal police department, violated M.G.L. c. 138, § 34A, the statute prohibiting a person under the age of twenty-one (21) years old from purchasing alcoholic beverages. The Court's rationale was that the purchase of alcoholic beverages by the under-age operative was made to ferret out violators of the Liquor Control Act, M.G.L. c. 138, and as a result promoted the purpose of the statute. 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.” Fran’s Lunch, 45 Mass. App. Ct. at 665.

In this matter, direct evidence was presented through the investigator’s testimony as to the compliance check conducted on June 4, 2024 wherein an underage operative, a person under the age of twenty-one, working under the supervision of the investigator, was sold an alcoholic beverage at the licensed premises.

Evidence was also presented through eye-witness testimony of the Licensee as to the underage operative’s initiation of conversation about the Licensee’s Air Force shirt and his own plans to enter the military. The underage operative went so far as to ask questions about the Licensee’s experience in the Air Force. (Testimony)

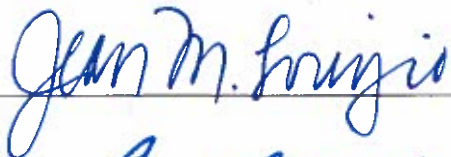
The Commission recognizes the elements of entrapment as laid out in Sorrells v. United States, 287 U.S. 435 (1932). Underage operatives may not use “persuasion, deceitful representation, or inducement” to lure a licensee into a violation of M.G.L. c. 138, § 34. See Id. at 445. Entrapment occurs when a Licensee violates M.G.L. c. 138, § 34 during a compliance check but would not have done so “except for the trickery, persuasion, or fraud” of the underage operative. See Id. at 454. Here, the underage operative tricked the Licensee into selling him a 25-ounce can of Natty Daddy beer by distracting the Licensee and initiating a conversation about the Licensee’s United States Air Force shirt and his service in the United States Air Force. As a result, the Commission finds that the Licensee was entrapped during the compliance check conducted on June 4, 2024.

CONCLUSION

Based on the evidence, the Commission finds no 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.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah A. Baglio, Commissioner



Dated: February 10, 2025

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’

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2024-000127-ad-enf

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Katherine McCormick, Esq., Associate General Counsel
Caroline Guarino, Investigator
Sean Fleming, Investigator
Administration, File