



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

AMENDED
NOTICE OF SUSPENSION

December 20, 2016

LEOMINSTER FITCHBURG LODGE OF ELKS B.P.O.E. #1237
134 NO. MAIN ST.
LEOMINSTER, MA 01453
LICENSE#: 060800031
VIOLATION DATE: 02/12/2016
HEARD: 12/14/2016

After a hearing on December 14, 2016, the Commission finds Leominster Fitchburg Lodge of Elks B.P.O.E. #1237 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 (1 count).

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, February 8, 2017 and terminate on Thursday, February 9, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, February 8, 2017 at 9:00 A.M. It will be returned to the Licensee Friday, February 10, 2017.

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Dennis Keefe, Investigator
Jan Kujawski, Investigator
Administration, File



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

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NOTICE OF SUSPENSION

December 19, 2016

LEOMINSTER FITCHBURG LODGE OF ELKS B.P.O.E. #1237
134 NO. MAIN ST.
LEOMINSTER, MA 01453
LICENSE#: 060800031
VIOLATION DATE: 02/12/2016
HEARD: 12/14/2016

After a hearing on December 14, 2016, the Commission finds Leominster Fitchburg Lodge of Elks B.P.O.E. #1237 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 (1 count).

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, February 11, 2017 and terminate on Thursday, February 12, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, February 11, 2017 at 9:00 A.M. It will be returned to the Licensee Friday, February 13, 2017.

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



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DECISION

LEOMINSTER FITCHBURG LODGE OF ELKS B.P.O.E. #1237
134 NO. MAIN ST.
LEOMINSTER, MA 01453
LICENSE#: 060800031
VIOLATION DATE: 02/12/2016
HEARD: 12/14/2016

Leominster Fitchburg Lodge of Elks B.P.O.E. #1237 (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 Wednesday, December 14, 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 (1 count).

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

The following documents are in evidence:

1. Investigator Kujawski's Investigative Report;
2. Licensee's Stipulation of Facts; and
3. Copy of Manager's driver's license.

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, February 12, 2016, at approximately 1:15 p.m., Investigators Keefe and Kujawski ("Investigators") investigated Leominster Fitchburg Lodge of Elks B.P.O.E. #1237 to determine the manner in which their business was being conducted.
2. Investigators entered the club and observed two electronic devices, one table top located on the bar and one free standing.
3. Investigators identified themselves to the manager on duty, Rocco Warren, and asked him if cash were paid out on the two electronic devices. Mr. Warren stated that if patrons accumulated points on the electronic devices, they would inform himself or the bartender on duty, and cash was paid out to them.
4. Warren explained that on the free standing device, a patron would press the print button to cash out. A ticket with the number of points accumulated would print and the points reset back to zero.
5. On the table top device, a patron would inform the bartender on duty about the accumulated points. The bartender would observe the number of points listed on the screen, then press a menu button and type in a code, AAA, in the pop-up window which would reset the points back to zero.
6. Warren stated payouts are made from a metal cash box located beneath the cash register at the bar. Points are worth five cents each. Investigators asked Mr. Warren to count the cash in the cash box. The box contained \$924.00 in U.S. currency.
7. Investigators found a sheet of paper, labelled "Massachusetts State Lottery Elks Daily Report Journal" located near the cash box. The sheet listed "machines" with the amount of \$924.00.
8. Investigators asked Mr. Warren who owned the devices and what was the split of profits. Warren stated the machines were owned by Monacuset Vending which split the winnings 50/50 with the club. He stated the club earns approximately \$150.00 every two weeks.
9. Warren stated Dave from Monacuset Vending comes every two weeks to split the winnings. Investigators asked Mr. Warren to open the devices for inspection but Mr. Warren stated only Dave has a key.
10. Investigator Kujawski inserted one U.S. dollar into the free standing electronic device and received 20 points. Investigators then played the device which deducted seven points from the total on the screen. Investigator Kujawski then pressed the print button which printed a receipt "You have won 13 points." The device reset the credits to zero.
11. Investigator Keefe inserted one U.S. dollar into the table top electronic device and received twenty credits. He played the device which deducted points the total on the screen. With the assistance of Mr. Warren, Investigator Keefe then pressed the menu button on the screen and entered the code which reset the credits to zero.
12. Investigators informed Mr. Rocco 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 (1 count).

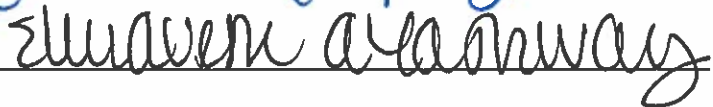
Therefore, the Commission **suspends the license for five (5) days of which two (2) days will be served and three (3) days will be held in abeyance for a period of two (2) years provided no further violations of Chapter 138 or Commission Regulations occur. In addition, the Licensee must not possess in 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: December 19, 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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