



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

*Steven Grossman*  
*Treasurer and Receiver General*

*Kim S. Gainsboro, Esq.*  
*Chairman*

**DECISION**

**MALDEN POST #69 THE AMERICAN LEGION INC.**  
**368 PLEASANT ST.**  
**MALDEN, MA 02148**  
**LICENSE#: 064600042**  
**VIOLATION DATE: 06/07/2013**  
**HEARD: 09/24/2013**

Malden Post #69 The American Legion Inc. (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 24, 2013, regarding an alleged violation of 204 CMR 2.05 (2) – Permitting an illegality on the licensed premises, to wit: A) M.G.L. c.64C §34 – Sale, Offering for sale, Possession with intent to sell Cigarettes without a Massachusetts stamp. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Keefe's Report.

The following documents are in evidence:

1. Investigator Keefe's Investigative Report dated June 7, 2013; and
2. Licensee's Stipulation of Facts.

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

FACTS

1. On Friday, June 7, 2013, at approximately 7:10 p.m., Investigators Temple and Keefe investigated the business operation of Malden Post #69 The American Legion Inc. to determine the manner in which their business was being conducted, and to investigate a complaint filed with this Commission.
2. Investigators identified themselves to a male bartender, Steve Kelleher, informed him of the anonymous complaint, and that they would be conducting an inspection of the licensed premises.
3. Investigators asked Mr. Kelleher if he sold cigarette on the premises.
4. Mr. Kelleher stated he does, so investigators asked him from where he purchased the cigarettes.
5. Mr. Kelleher stated that he purchased the cigarettes in New Hampshire because they were cheaper, and the money he made off of [selling] the cigarettes went back into supporting the club.
6. Investigators informed Mr. Kelleher of that purchasing cigarette outside of Massachusetts for sale in the establishment was against the law.
7. Investigators asked Mr. Kelleher where the cigarettes were kept.
8. Mr. Kelleher led investigators behind the bar and pointed to a cabinet beneath the cash register.

9. Investigators observed 12 full boxes of assorted brands of cigarettes as well as 73 individual packs of cigarettes. All the cigarette packs had the seal of New Hampshire posted on them, indicating that they were purchased in New Hampshire.
10. Investigators informed Mr. Kelleher of the violation and that a report would be filed with the Chief Investigator for further review.

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: A) M.G.L. c.64C §34 – Sale, Offering for sale, Possession with intent to sell Cigarettes without a Massachusetts stamp. As the licensee has been in business for business for thirty (30) years and has had no previous violations, the Commission issues a **WARNING**.

**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Kim S. Gainsboro, Chairman \_\_\_\_\_

Susan Corcoran, Commissioner \_\_\_\_\_

DATE: September 24, 2013

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.

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