



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

*Deborah B. Goldberg*  
*Treasurer and Receiver General*

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

NOTICE OF SUSPENSION

February 13, 2015

**MALDEN POST #69 THE AMERICAN LEGION INC.**  
**368 PLEASANT ST.**  
**MALDEN, MA 02148**  
**LICENSE#: 064600042**  
**VIOLATION DATE: 06/12/2014**  
**HEARD: 12/17/2014**

After a hearing on December 17, 2014, the Commission finds Malden Post #69 The American Legion Inc. in violation of 204 CMR 2.05 (1) - Permitting Gambling.

The Commission suspends the licensee's license for a total of three (3) days to be served. The suspension shall commence on Wednesday, April 8, 2015, and terminate on day, Friday, April 10, 2015. The license will be delivered to the Local Licensing Board or its designee on Wednesday, April 8, 2015 at 9:00 A.M. It will be returned to the licensee Saturday, April 11, 2015.

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. All checks must be certified and accompanied by the enclosed form, which must be signed by 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

cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Michael Teehan, Investigator  
Christopher Temple, Investigator  
Christopher G. Fallon, Esq. via facsimile 781-322-1663  
Administration, File

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**DECISION**

**MALDEN POST #69 THE AMERICAN LEGION INC.**  
**368 PLEASANT ST.**  
**MALDEN, MA 02148**  
**LICENSE#: 064600042**  
**VIOLATION DATE: 06/12/2014**  
**HEARD: 12/17/2014**

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 Wednesday, December 17, 2014, regarding an alleged violation of 204 CMR 2.05 (1) - Permitting Gambling. Prior to the commencement of the hearing, the licensee stipulated to the violation alleged in Investigator Teehan's Report.

The following documents are in evidence:

1. Licensee's Stipulation of Facts; and
2. Investigator Keefe's Investigative Report dated; and
3. Copy of paper with winnings.

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

**FACTS**

1. On Thursday, June 12, 2014, at approximately 7:00 p.m., Investigators Temple and Teehan investigated the business operation of Malden Post #69 The American Legion Inc. to determine the manner in which their business was being conducted.
2. Investigators entered the bar and observed three electronic video devices, which were numbered 1 through 3, located across from the bar area.
3. Investigators identified themselves to the bartender on duty, Steve Kelleher, informed him that they would be conducting an inspection of the licensed premises.
4. Investigators observed three meters in plain view behind the bar. The meters, which were numbered 1 through 3, appeared to be hard wired into the devices.
5. Investigators observed a box which contained \$505 dollars in U.S. Currency, gift cards, and a piece of paper with markings indicating the date, name, and amount owed.

6. Based on their training and experience, investigators concluded that these electronic video devices were being utilized as illegal gambling devices.
7. During the interview with investigators, Mr. Kelleher stated that the Licensee does pay off for winnings on the electronic video devices with gift cards and tickets to Boston Bruins [hockey] and Boston Red Sox [baseball] games.
8. Mr. Kelleher also stated that once an individual has finished playing, that person informs the bartender on duty, and the bartender records the points won on a piece of paper. The bartender then resets the device from the meter behind the bar.
9. Mr. Kelleher stated that the person with the most points at the end of each month wins a prize or has the option to take the dollar amount in a gift card.
10. Mr. Kelleher stated to investigators that the vendor for the electronic video devices is Able Vending, and the split of net revenue is 50% for the club and 50% for Able Vending.
11. Investigators continued their inspection of the electronic devices and made the following observations which, based on their training and experience, indicated that these devices were being utilized as illegal gambling devices.
  - Each device accepted dollar bills ranging from \$1, \$5, \$10, and \$20.
  - Each device had two meters within it to record credits in and credits out.
  - After inserting US currency into the device, an investigator selected the number of credits (the amount to bet). The device "registered" the bet by displaying the number of credits selected.
  - Each device had the capability to double up the bet.
  - Each device had a "knock off" mechanism hard wired to a meter behind the bar.
12. The meter for Machine 1 displayed credits in: 698692 and credits out: 730555.
13. The meter for Machine 2 displayed credits in: 486302 and credits out: 091460.
14. The meter for Machine 3 displayed credits in: 220815 and credits out: 657912.
15. Investigators informed Mr. Kelleher of the violation and that a report would be filed with the Chief Investigator for further action.

### CONCLUSION

Based on the evidence, the Commission finds the licensee violated 204 CMR 2.05 (1) - Permitting Gambling. Therefore the Commission **suspends the license for a period of five (5) days with three (3) days to be served, and two (2) days to 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 video poker machines, nor any automatic amusement devices used for gaming purposes.**

The Licensee may petition the Commission, pursuant to a Motion for Reconsideration, to request specific machines on the licensed premises.<sup>1</sup>

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<sup>1</sup> East Side Athletic Association of Malden Inc., ABCC Memorandum and Order dated January 6, 2015, in which the Commission allowed the Licensee to possess four devices (Buck Hunting, Trivia, Pinball, and Jukebox) for entertainment purposes only.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Susan Corcoran, Commissioner

*Susan Corcoran*

Kathleen McNally, Commissioner

*Kathleen McNally*

DATE: February 13, 2015

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  
Michael Teehan, Investigator  
Christopher Temple, Investigator  
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