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Chairman

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
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DECISION

**AMERICAN LEGION AKROYD-HOUE POST #132
90 MAPLE STREET
MARLBOROUGH, MA 01752
LICENSE# 0662-00037
VIOLATION DATE: 2/07/2018
HEARD: 5/08/2018**

American Legion Akroyd-Houde Post #132 (the "Licensee" or "Akroyd-Houde American Legion") 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, May 8, 2018, regarding an alleged violation of 204 CMR 2.05 (1) Permitting Gambling. Prior to the commencement of the hearing, the Licensee stipulated to the facts alleged in Investigator Teehan's Report.

The following documents are in evidence:

1. Investigator Teehan's Investigative Report;
2. Licensee's Stipulation of Facts; and
3. Photos of Machines.

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 Wednesday, February 7, 2018, at approximately 12:15 p.m., Investigators Kenny and Teehan ("Investigators"), conducted an investigation of the business operation of American Legion Akroyd-Houde Post #132 to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and observed five (5) electronic video devices located in a room near the bar area. Investigators identified themselves to the bartender on duty, Mary.
3. Investigators interviewed Mary who stated that the bar does pay out in U.S. Currency to individuals who win on the electronic video devices. Mary stated that when an individual finished playing, he would inform the bartender on duty. The bartender then resets the video device and pays the winner with U.S. Currency from a cash bag kept in a drawer

beneath the cash register. Mary stated that A & Z Vending owns the electronic video devices.

4. Investigators observed that the electronic video devices had the following characteristics which, based on their training and experience, indicated the devices were being used for illegal gambling:
 - Each device accepted U.S. Currency in bills ranging from \$1, \$5, \$10 and \$20;
 - Each device had the capability to select the number of points (the amount to bet);
 - Each device registered the bet by displaying the number of points selected;
 - Each device had the capability to double up the bet by selecting a double-up button;
 - Each device had a “knock off” button in the form of a push button underneath the front console which, when pressed, reset the credits earned to zero.
5. Investigator Kenny placed \$1.00 in U.S. currency into a video poker device and proceeded to register a bet. Then Investigator Teehan then pressed the “knock off” button which reset the credits to zero.
6. On February 8, 2018, Investigator Teehan spoke by telephone with the club’s Financial Officer, Dick who confirmed to Investigator Teehan that the club does make payouts to individuals who win on the electronic video devices. Dick stated that the club splits the profits with A & Z Vending, with 65% to the club and 35% to the vendor.
7. Investigators informed Mary and Dick of the violation and that a report would be filed with the Chief Investigator for further review.
8. Administrative review of the Licensee’s file indicates Akroyd-Houde American Legion Post has held its license more than 50 years (since 1967) and has had no prior violations.

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 five (5) days which 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, any automatic amusement devices or video poker machines which the Licensee possesses shall not be used for gaming purposes.**

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Kathleen McNally, Commissioner

Kathleen McNally

Jean M. Lorizio, Chairman

Jean M. Lorizio

Elizabeth A. Lashway, Commissioner

Elizabeth A. Lashway

Dated: May 9, 2018

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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cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Michael Teehan, Investigator
Mark Kenny, Investigator
James F. McGrail, Esq. via facsimile 781-455-1424
Administration, File