

Jean M. Lorizio, Esq.  
Chairman

Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, MA 02114  
Telephone: 617-727-3040  
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NOTICE OF SUSPENSION

May 18, 2017

**REVERE LODGE #1171 OF THE B.P.O.E. OF U.S.A.  
198 SHIRLEY AVE.  
REVERE, MA 02151  
LICENSE#: 102200047  
VIOLATION DATE: 08/19/2016  
HEARD: 04/18/2017**

After a hearing on April 18, 2017, the Commission finds Revere Lodge #1171 of the B.P.O.E. of U.S.A. violated 204 CMR 2.05(1) - Permitting Gambling.

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 Commission reminds the Licensee that any automatic amusement devices or video poker machines on the licensed premises MAY NOT BE USED FOR ILLEGAL GAMING PURPOSES.

The suspension shall commence on Wednesday, July 12, 2017 and terminate on Thursday, July 13, 2017. The license will be delivered to the Local Licensing Board or its designee on Wednesday, July 12, 2017 at 9:00 A.M. It will be returned to the Licensee Friday, July 14, 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.

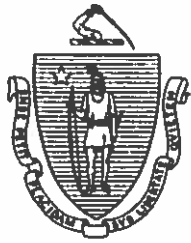
**ALCOHOLIC BEVERAGES CONTROL COMMISSION**

A handwritten signature in cursive script, reading "Jean M. Lorizio".

Jean M. Lorizio  
Chairman

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cc: Local Licensing Board  
Frederick G. Mahony, Chief Investigator  
Christopher Temple, Investigator  
James J. Cipoletta, Esq. via facsimile 781-289-9468  
Administration, File



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## **DECISION**

**REVERE LODGE #1171 OF THE B.P.O.E. OF U.S.A.  
198 SHIRLEY AVE.  
REVERE, MA 02151  
LICENSE#: 102200047  
VIOLATION DATE: 08/19/2016  
HEARD: 04/18/2017**

Revere Lodge #1171 of the B.P.O.E. of U.S.A. (the "Licensee") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Alcoholic Beverages Control Commission (the "Commission" or "ABCC") held a hearing on Tuesday, April 18, 2017, regarding an alleged violation of 204 CMR 2.05 (1) - Permitting Gambling. The above mentioned occurred on August 19, 2016, according to Investigator Temple's Report.

The following documents are in evidence:

1. Investigator Temple's Investigative Report; and
2. Photocopies of Slips with Members' Names and Number.

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, August 19, 2016, at approximately 8:00 p.m., Investigator Temple and Chief Investigator Mahony ("Investigators") investigated Revere Lodge #1171 of the B.P.O.E. of U.S.A. to determine the manner in which its business was being conducted.
2. Investigators entered the licensed premises and observed four electronic video devices in a back room. Device #1 was labeled Lucky 8 Line; device #2 named Platinum Touch I, II, III; device #3, Platinum III; and device #4, Platinum Touch I, II, III.
3. Investigators observed that the electronic video devices had the following characteristics which, based on their training and experience, indicated these electronic video machines were being used as gambling devices:
  - Each device was marked "for amusement only";
  - Each device accepted U. S. Currency in bills ranging from \$1, \$5, \$10, \$20;

- Each device had a “double up” option to win additional credits;
  - Each device had a “knock off” mechanism to reset the credits earned to zero.
4. Investigator Temple inserted one U.S. dollar into electronic video device #1 and received four credits, which indicated that the value of one credit or point was twenty-five cents. He selected 1 credit to play and the device registered the bet, showing 3 credits remaining. Temple then pressed the play button and the device indicated a loss. Investigator Temple placed a key on the two bolts, the “knock off” switch, which then reset the remaining credits to zero.
  5. Investigators asked the bartender on duty, Kelly O’Leary, if she paid off on the machines. Ms. O’Leary replied no and stated the machines were for entertainment only.
  6. Investigators observed a clip board holding several pieces of paper, sized 8 ½ by 11 inches. Each piece of paper had four columns. The first and third columns listed a name and the second and fourth columns listed a number.
  7. Investigators asked Ms. O’Leary to explain the meaning of these papers. O’Leary stated that the club had a daily pool in which numbers were pulled at 6:00 p.m. The second and fourth column numbers were the member numbers of the individual members who were listed in first and third columns.
  8. Investigators informed Ms. O’Leary of the violation and that a report would be submitted to the Commission for review.

### 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.’” Rico’s of the Berkshires, Inc. v. Alcoholic Beverages Control Comm’n., 19 Mass. App. Ct. 1026, 1027 (1985) (quoting Commonwealth v. Gould, 158 Mass. 499, 507, (1893)).

The Licensee is charged with a violation of 204 CMR 2.05(1), which provides that:

[s]lot machines or any other devices which furnish anything besides merchandise of a quantity and quality commensurate with the price deposited therein are prohibited on licensed premises. Gambling of any sort, except those games of chance authorized by the Legislature and/or local licensing authorities, shall not be permitted on any license premises. 204 CMR 2.05(1).

There must be substantial evidence that a violation of 204 CMR 2.05(1) has occurred. "Substantial evidence of a violation is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Consol. Edison Co. of New York v. N.L.R.B., 305 U.S. 197, 229 (1938); accord Charlesbank Rest. Inc. v. Alcoholic Beverages Control Comm'n, 12 Mass. App. Ct. 879 (1981). The evidence in this case passes the substantial evidence test. Not only is there more than a mere scintilla of evidence that this violation occurred, there is overwhelming evidence that the Licensee permitted gambling on the licensed premises. The Licensee admitted to operating a daily numbers pool, which is a violation in and of itself of the regulation. Falmouth Post 70 Inc., AmVets, Falmouth (ABCC Decision December 16, 2014); Falmouth Lodge #2380, B.P.O.E. of USA, Inc., Falmouth (ABCC Decision November 20, 2012).

Considering the evidence introduced before the Commission, it is indisputable that the daily numbers pool was a game of chance which constitutes gambling in violation of 204 CMR 2.05(1). See, e.g., Columbians Inc. of Gardner, d/b/a Knights of Columbus, Gardner (ABCC Decision April 10, 2015); Portuguese American Center Inc., Lowell (ABCC Decision March 24, 2015).

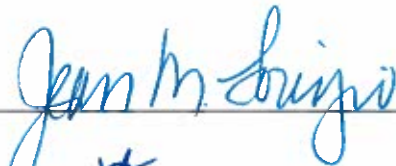
#### CONCLUSION

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 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 Commission reminds the Licensee that any automatic amusement devices or video poker machines on the licensed premises MAY NOT BE USED FOR ILLEGAL GAMING PURPOSES.**

#### **ALCOHOLIC BEVERAGES CONTROL COMMISSION**

Jean M. Lorizio, Chairman



Kathleen McNally, Commissioner



Dated: May 18, 2017

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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