

*Commonwealth of Massachusetts
Department of the State Treasurer
Alcoholic Beverages Control Commission
239 Causeway Street
Boston, MA 02114
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Jean M. Lorizio, Esq.
Chairman

NOTICE OF REVOCATION

January 26, 2018

**STOUGHTON POST #89 INC. D/B/A THE AMERICAN LEGION
398 PROSPECT ST.
STOUGHTON, MA 02072
LICENSE#: 1244-00010
VIOLATION DATE: January 1, 1955 to Present
HEARD: 12/12/2017**

After a hearing on December 12, 2017, the Commission finds Stoughton Post #89 Inc. d/b/a The American Legion violated:

- 1) M.G.L. Ch. 138, § 64, to wit: M.G.L. Ch. 156 D, § 16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division;
- 2) M.G.L. Ch. 138 § 15A Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license;
- 3) M.G.L. Ch. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter;
- 4) M.G.L. Ch. 138, § 64 Failure to Comply with a Commission Order and Terms of Suspension;
- 5) 204 CMR 2.05 (1) Permitting Gambling; and
- 6) M.G.L. Ch. 138, § 23 Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22a.

Violation date: January 1, 1955 to Present.

On the charge, M.G.L. Ch. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter, the Commission **REVOKES the license of Stoughton Post #89 Inc. d/b/a The American Legion EFFECTIVE FORTHWITH.**

Since the Commission REVOKES the license based on the statutory requirements under M.G.L. c. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter, it need not impose a penalty for the other violations found.

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.

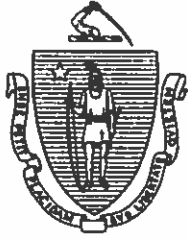
ALCOHOLIC BEVERAGES CONTROL COMMISSION



Jean M. Lorizio
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Το έγγραφο αυτό είναι σημαντικό και θα πρέπει να μεταφραστούν αμέσως.
这份文件是重要的，应立即进行翻译。

cc: Local Licensing Board
Frederick G. Mahony, Chief Investigator
Christopher Temple, Investigator
Lisa Lordan, Investigator
Barry R. Crimmins, Esq.
Detective John Hartford, Stoughton Police Department
Administration, File



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DECISION

**STOUGHTON POST #89 INC. D/B/A THE AMERICAN LEGION
398 PROSPECT ST.
STOUGHTON, MA 02072
LICENSE#: 1244-00010
VIOLATION DATE: January 1, 1955 to Present
HEARD: 12/12/2017**

Stoughton Post #89 Inc. d/b/a The American Legion (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, December 12, 2017, regarding alleged violations of:

- 1) M.G.L. Ch. 138, § 64, to wit: M.G.L. Ch. 156 D, § 16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division;
- 2) M.G.L. Ch. 138 § 15A Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license;
- 3) M.G.L. Ch. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter;
- 4) M.G.L. Ch. 138, § 64 Failure to Comply with a Commission Order and Terms of Suspension;
- 5) 204 CMR 2.05 (1) Permitting Gambling; and
- 6) M.G.L. Ch. 138, § 23 Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22a.

Violation date: January 1, 1955 to Present.

Prior to the commencement of the hearing, the Licensee stipulated to the violations alleged in Investigator Temple's Report. On said stipulation, the licensee indicated that the only facts in dispute were the date of organization of the corporation, and the date of revocation of the corporation.

The following documents are in evidence:

1. Investigator Temple's Investigative Report;
 2. Licensee's Stipulation of Facts;¹
 3. Stoughton Post # 89 Inc., the American Legion Business Entity Summary from Secretary of the Commonwealth's Corporations Division website;
 4. Licensee's Change of Manager Application, 2/21/1984;
 5. Photo of Sign, in Licensed Premises, Listing Officers and Director of Club;
 6. Licensee's Renewal Applications, 1994 to 2016;
 7. Photos of Electronic Gaming Devices;
 8. Photo of Envelopes and Cash; and
 9. Photos of Boxes with Labels identifying Alcoholic Beverages purchased from a § 15 Package Store.
- A. American Legion Post No. 89 Inc. Business Entity Summary from Secretary of the Commonwealth's Corporations Division website.

The Commission took Administrative Notice of the Licensee's Commission files.

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

FINDINGS OF FACT

M.G.L. Ch. 138, § 64, to wit: M.G.L. Ch. 156 D, § 16.22; 950 CMR 113.57; M.G.L. Ch.138 § 15A

1. Stoughton Post #89 Inc. d/b/a The American Legion ("Licensee" or "Stoughton Post #89") holds an alcohol license issued pursuant to M.G.L. c. 138, § 12. The Commission's licensee file does not identify the original officers and directors. (Exhibit 1)
2. A review of the Secretary of the Commonwealth's website, Corporations Division, indicates the Stoughton Post #89 was a Massachusetts nonprofit corporation organized on December 10, 1954 and filed under M.G.L. c. 156D. No annual report filings were found on the website from 1954 to the present. The Corporations Divisions indicates the Licensee's corporation was involuntarily revoked on November 17, 1986. (Exhibit 1)
3. On February 21, 1984, Stoughton Post #89 filed a change of manager application to appoint Edgar Foster as the manager of record. That application listed officers, directors and employees as: (Exhibit 1)
 - President – Donald Greene;
 - Vice President – Edgar Foster;
 - Secretary – Theodore Sprissier;
 - Treasurer – Richard Polvinen;
 - Employee – Dianne Donnely.

¹ On said stipulation, the licensee indicated that the only facts in dispute were the date of organization of the corporation, and the date of revocation of the corporation.

4. The Commission approved the change of manager application on April 26, 1984. (Exhibit 1)
5. The officers listed within the above-referenced change of manager application are the last approved officers. (Commission file)
6. The Commission file indicates that in 2010, the Licensee listed the following officers:
 - President – Mary Trombley;
 - Vice President – Bob Sprissler;
 - Secretary – Charles Large;
 - Treasurer – Thomas Hunt.

No application was filed to request Commission approval of the above officers. (Commission file)

7. Information posted in the licensed premises lists the current officers and directors as: (Exhibit 5)
 - Commander – John Gomes;
 - Sr. Vice – James Martins;
 - Adjutant – Mary Trombley
 - Aux. President – Denise Black
8. Administrative review of the Licensee's file indicates no applications have been filed with the ABCC to approve any of the above-mentioned officers and directors of the Stoughton Post #89. (Commission file)
9. A review of Exhibit A, business entity summary for American Legion Post. No. 89, Inc., from the Secretary of the Commonwealth's website, Corporations Division, indicates the American Legion Post. No. 89, Inc. was a Massachusetts nonprofit corporation organized on April 5, 2004 and filed under M.G.L. c. 156D. No annual report filings were found on the website. The Corporations Divisions indicates this corporation was involuntarily revoked on June 18, 2012. (Exhibit A)

M.G.L. Ch. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A

10. Administrative review of the Licensee's renewal applications indicates several different people have signed the renewal applications since 1986. From 1986 to 1992, renewal applications were signed by Donald Greene. In 1993, the renewal application was signed by Donald Greene and Thomas K. Hunt. From 1994 to 2013, the renewal applications were signed by Thomas K. Hunt who identified himself as Commander and Finance Officer. The renewal application for 2014 appears to have been signed by Denise Black. The renewal application for 2016 appears to have been signed by Thomas K. Hunt. Neither Thomas K. Hunt nor Denise Black were an approved corporate officer, a director, a shareholder, a license manager, or an individual owner corporate officer authorized to sign the renewal applications. (Commission file, Exhibit 6)

M.G.L. Ch. 138, § 64 Failure to Comply with a Commission Order and Terms of Suspension

11. By Decision dated May 3, 2016, the ABCC found Stoughton Post #89 violated 204 CMR 2.05 (1) - Permitting Gambling. The Commission suspended the license for five (5) days with two (2) days to be served and three (3) 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 automatic amusement devices or video poker machines. In the conclusion, "The Commission refers the matter regarding the Licensee's failure to submit applications for new officers and/or directors, to the Investigative Unit for further action forthwith." (Commission file)
12. On Thursday, September 21, 2017, at approximately 8:50 p.m., Investigators Lordan and Temple ("Investigators") along with Stoughton Police and Norwood Police Detectives as well as members of the Norfolk County State Police Drug Unit and State Police Gaming Unit, investigated the Stoughton Post #89 Inc. d/b/a The American Legion to determine the manner in which their business was being conducted. (Exhibit 1)
13. Stoughton Police Detective John Hartford entered the kitchen and observed a male individual, Timothy Cruise, playing an electronic video device. ABCC Investigators observed one blue electronic video device in a large cabinet with two open doors which contained a lock latch. (Exhibits 1 & 7)
14. Investigators observed that the electronic video device had the following characteristics which, based on their training and experience, indicated the electronic video device was being used as gambling device: (Exhibit 1)
 - Device had a "knock off" mechanism in the form a redeem button, which reset the credits earned to zero;
 - Device had two meters which recorded currency deposited and credits paid out.
15. Investigator Temple selected the game "Sizzlin' 7's" from the game choices and inserted one U.S. dollar into electronic video device. The machine registered \$1.00 in the "Bank" row. Investigator Temple selected 0.15 as the amount to bet and pressed the Spin button. The device indicated a loss. (Exhibit 1)
16. Investigator Temple then pressed the Max Bet button which the device registered as 3.20 in the row labeled Bet. When Temple pressed the Spin button, the device indicated a "Win" with the "Bank" row now showing 20.00. Temple then pressed the "Redeem" button. A pop up screen with Yes, No, or Cancel appeared. Temple selected "Yes." The "Bank" amount was now labeled as "Dollars" with the word "clear" and buttons Yes or No. Temple selected Yes again and heard a ticking sound from a meter with the device. (Exhibit 1)

204 CMR 2.05 (1) Permitting Gambling

17. Investigators observed several 8 ½" x 11" pieces of paper located behind the bar with markings to record wagers on football games and an envelope with hand written notations, PATS N.O. 9/17 SUN 1:00, in a gray can behind the bar. The envelope also had markings for first, second, third, and final scores. Next to the scores were names that had been

crossed out with an annotation, PD next to each name. Investigators also found an envelope containing \$50.00 in U.S. Currency with a piece of paper marked Cloud Computing, No. 2, 12-1. (Exhibits 1 & 8)

18. Investigators interviewed the bartender, Sal Di Gregorio, who stated that he has worked at the club for 10 years. Di Gregorio stated the first envelope was for football squares, with the crossed-out names indicating who won. The letters "PD" next to each name indicated the person was paid. Di Gregorio stated the second envelope was for a horse racing pool but the person who had won the pool had not yet picked up his winnings. (Exhibit 1)

M.G.L. Ch. 138, § 23 Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22a

19. On September 10, 2017, Stoughton Police Detectives Farwell and Hartford conducted a trash inspection at the licensed premises. Detectives observed a blue "McNamara" dumpster located in the parking lot near the front of the building. In one bag were found miscellaneous gambling paperwork – football squares, football cards, American Legion receipt dated 9/7/2017 and a large empty bottle of Seagram's VO whiskey. Another trash bag contained 9 large empty liquor bottles. The bottles had retail stickers affixed to them. (Exhibit 1)
20. On Thursday, September 21, 2017, Investigators found a box labeled Tito's Vodka which contained a shipping label addressed to Douglas W&S (Stoughton) at 676 Washington Street, Stoughton, MA. Investigators found another box labeled Three Olives with a shipping label addressed to Supper Discount Liquors at 672 Washington Street, Stoughton, MA. (Exhibits 1 & 9)
21. Investigators asked the bartender, Sal Di Gregorio from where the liquor for the bar was purchased. Di Gregorio stated that he did not know. Investigators asked if the Post purchased its liquor from a package store to which Di Gregorio replied he did not know. (Exhibit 1)
22. Mr. Di Gregorio stated that the bar manager, Denise Black, purchases the alcohol for the bar. When Investigators asked who were the Post's officers and directors, Di Gregorio directed them to a list posted on a board near the entrance. Investigators observed the following: Commander – John Gomes; Sr. Vice – James Martins; Adjutant – Mary Trombley; and Aux. President – Denise Black. (Exhibit 1)
23. Denise Black has not been approved by the ABCC or the Local Licensing Authority. Further, Black was arrested by an undercover Stoughton Police Officer who made three (3) purchases of cocaine from a bartender who identified herself as Denise Black. (Exhibit 1)
24. Investigator Temple advised Di Gregorio of the violations and that a report would be submitted to the Chief Investigator for further action. (Exhibit 1)

DISCUSSION

Under the pertinent provisions of M.G.L. Ch.138, § 16A, a license “shall be automatically renewed for the next annual license period upon application by the holder thereof during the month of November and shall be automatically renewed...provided that said license is of the same type as the expiring license and covers the same licensed premises. If the application does not meet the conditions hereunder it shall be treated as an application for a new license and all the procedures set forth under section 15A shall be applicable thereto.” If “it appears to the commission that a license has been issued under this chapter by the local licensing authorities...in violation of section sixteen A or any other provision of this chapter, the commission *shall*, after notice to said authorities and to the holder of such license and after reasonable opportunity for them to be heard by it, revoke such license, whereupon such license shall be surrendered to said authorities, and the decision of the commission shall be final and conclusive.” M.G.L. Ch. 138, § 64

The Commission has a longstanding administrative practice under M.G.L. Ch. 138, § 15A allowing “all persons who have a direct or indirect beneficial interest in said license” to sign the application for renewal. A corporate officer, a director, a shareholder, a license manager, or an individual owner, who has been previously disclosed to and approved by both the LLA and the Commission, must sign the renewal form.

The last approved officers of the licensee are as follows: Donald Greene, President, Edgar Foster, Vice President and Manager of Record, Theodore Sprissier, Secretary and Richard Polvinen, Treasurer. Only these individuals were authorized to sign a renewal application. Because this was a “club” type of license under M.G.L. Ch.138, § 12, no individual was a shareholder or held in such a capacity a lawful direct or indirect beneficial interest. A review of the signature on the renewal applications for the years 1994 through 2014, and for 2016 revealed that the signature is not that of Mr. Greene, Mr. Foster, Mr. Sprissier or Mr. Polvinen. In fact, from 1994 to 2013 it appears that Thomas Hunt signed the renewal applications, listing his titles as Commander and Finance Officer. The renewal application for 2014 appears to be signed by Denise Black. The 2016 renewal application appears to be signed by Thomas Hunt.² Neither Thomas Hunt nor Denise Black were the license manager, or a corporate officer or director that had been disclosed and approved in writing by both the LLA and the Commission. The LLA approved the Licensee’s renewal applications for 1994 through 2014, and 2016 despite the fact that the Licensee did not comply with the renewal requirements expressly set forth in M.G.L. Ch.138, § 16A. Consequently, the license was renewed by the LLA contrary to the requirements of, and in violation of, M.G.L. Ch.138, § 16A.

Notwithstanding the fact that the LLA approved this Licensee’s twenty-two annual renewals with an unauthorized person’s signature, the Commission cannot let stand an action of the LLA that it could not lawfully authorize in the first place. See Hastings Associates, Inc. v. Local 369 Building Fund, Inc., 42 Mass.App.Ct. 162, 178 (1997) (there is a “strong public policy favoring enforcement of our licensing laws regarding the selling of alcoholic beverages”); Beacon Hill Civic Assn. v. Ristorante Toscano, Inc., 422 Mass. 318, 320-324 (1996) (private contract purporting to transfer control of license held to be illegal and unenforceable under public policy expressed in the Liquor Control Act, chapter 138); Zelman v. ABCC, 335 Mass 515 (1957). The Commission finds that

² The Commission file does not contain a renewal application for 2015.

renewal of the license of Stoughton Post #89 Inc., dba The American Legion for calendar years 1994 through 2014, and 2016 violated M.G.L. Ch.138, § 64.

The specific language of this chapter mandates that the Commission revoke the license. Rigali v. Cahill, Hampden Superior Court C.A. No. 2008-00362, Memorandum and Order Dated July 22, 2009 (Veils, J.) (where renewal of license was “in clear violation of the plain language of M.G.L. Ch.138, § 16A, the Commission was obligated to revoke the license pursuant to M.G.L. Ch.138, § 64.”); see In Re: Margaret’s Restaurant, Inc., dba Hokey’s, Oxford, MA (ABCC Decision dated October 18, 2005); In re: Pop’s Cafe, Inc., Holyoke, MA (ABCC Decision dated March 12, 2008). As the Commission acknowledged in Margaret’s, no other sanction is available for the Commission to consider given the express language of the statute. Id. But for the mandatory language, the Commission could indefinitely suspend the license, but the Commission has no discretion here and must revoke the license forthwith.

The Commission finds that the renewal of the license of Stoughton Post #89 Inc. dba The American Legion for calendar years 1994 through 2014, and 2016 violated Ch.138 §64 – License issued under this chapter by the LLA in violation of section 16A or any other provision of this chapter.

CONCLUSION

Based on the evidence, the Commission finds the Licensee violated:

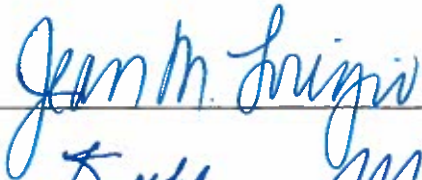
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- 6) M.G.L. Ch. 138, § 23 Sale of alcoholic beverages other than those purchased under §18 or §19 or from a holder of a special permit under §22a.

On the charge, M.G.L. Ch. 138, § 64 License issued under this chapter by the Local Licensing Authorities in violation of § 16A or any other provision of this chapter, the Commission **REVOKES the license of Stoughton Post #89 Inc. d/b/a The American Legion effective forthwith.**

Since the Commission REVOKES the license based on the statutory requirements under M.G.L. c. 138, § 64, the Commission does not address, and leaves for another day, the question of a penalty for violations of: M.G.L. c. 156D, §16.22; 950 CMR 113.57 Failure to file Annual Reports with the Secretary of the Commonwealth, Corporations Division; M.G.L. c. 138 §15A Failure to disclose all persons who have a direct or indirect beneficial or financial interest in said license; M.G.L. c. 138 §64 Failure to Comply with a Commission Order and Terms of Suspension; 204 CMR2.05(1) Permitting Gambling; and M.G.L. Ch. 138, § 23 Sale of alcoholic beverages other than those purchased under § 18 or § 19 or from a holder of a special permit under § 22.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Kathleen McNally, Commissioner



Elizabeth A. Lashway, Commissioner



Dated: January 26, 2018

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