



*Commonwealth of Massachusetts
Alcoholic Beverages Control Commission
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Chelsea, Massachusetts 02150-2358*

Jean M. Lorizio, Esq.
Chairman

**WAMESIT ENTERTAINMENT CENTER INC.
434 MAIN STREET
TEWKSBURY, MA 01876
LICENSE#: 00187-RS-0166
HEARD: 4/3/2024**

**MEMORANDUM & ORDER ON THE LICENSEE'S
MOTION FOR REQUIRED FINDING OF NO VIOLATION**

Wamesit Entertainment Center Inc. ("Licensee") is appealing the action of the Town of Tewksbury Select Board ("Local Board" or "Tewksbury") in suspending their M.G.L. c. 138, § 12 All-Alcoholic Beverages Restaurant License for three (3) days, with one (1) day to be served and two (2) days to be held in abeyance for twelve (12) months for violating of M.G.L. c. 138, § 34.

The Licensee timely appealed the Local Board's action to the Alcoholic Beverages Control Commission (the "Commission" or "ABCC"), and a remote hearing via Microsoft Teams was held on April 3, 2024.

At the close of the Local Board's case in-chief, the Licensee moved orally for a required finding of no violation.

Pursuant to 801 C.M.R. 1.02(7)(c), a party "may request rulings or relief . . . orally during a hearing." This includes orally moving for a directed verdict. Where the Informal Rules are silent as to a directed verdict, the Commission looks to the Formal Rules, 801 C.M.R. 1.01, and the Massachusetts Rules of Civil Procedure to promote regularity and efficiency with its procedures. Since the Formal Rules rely on the courts' interpretation of Mass. R. Civ. P. 50, so too does the Commission. See, e.g., Widen v. Oxford Hous. Auth., 1994 WL 902905 at *2 (Mass. Super. Ct., Oct. 20, 1994) ("Much like entry of a directed verdict in the trial courts, in a state administrative agency proceeding, the judge may, upon motion, dismiss a case at the close of the plaintiff's direct case for failure to sustain his case"); 45 Rice Street Realty Trust v. Bd. Of Assessors of City of Cambridge, No. F258865, 2007 WL 4157669 at *21 (Mass. Appellate Tax Bd., Nov. 20, 2007) (formal rules look to Mass. R. Civ. P. 50 for evaluating motions for directed verdicts); Pepin v. Div. of Fisheries and Wildlife, 467 Mass. 210, 214, 227-228 (2014) (agency properly considered motion for directed verdict).

Mass. R. Civ. P. 50(a) states, in relevant part: "A party may move for a directed verdict at the close of the evidence offered by an opponent A motion for a directed verdict shall state the specific grounds therefor."

"The standard applied to a motion for a directed verdict is identical to that applied to a motion for summary judgment for most purposes." Donaldson v. Farrakhan, 436 Mass. 94, 96 (2002). The Commission "must determine on viewing the evidence in the light most favorable to the nonmoving party, whether a reasonable inference could be drawn in favor of the nonmoving party, or if the moving party is entitled to a judgment as a matter of law." Id. "The mere existence of a scintilla of evidence" to support the Local Board's position is insufficient. Id. "[T]he evidence must contain facts from which reasonable inferences based on probabilities rather than possibilities may be drawn And the evidence must be sufficiently concrete to remove any inference which [the Commission] might draw from it from the realm of mere speculation and conjecture." Alholm v. Wareham, 371 Mass. 621, 527 (1976) (citations omitted).

The Licensee raised three specific grounds in support of their motion:

1. Tewksbury's compliance check guidelines are inadequate and therefore do not ensure compliance check operations are conducted fairly;
2. Tewksbury failed to follow its own compliance check guidelines; and
3. Tewksbury did not present substantial evidence that the Licensee sold an alcoholic beverage to the underage operative.

The legality of using an underage operative to conduct compliance checks was established in Fran's Lunch, Inc. v. Alcoholic Beverages Control Commission, 45 Mass. App. Ct. 663 (1998). The Appeals Court held that "[a]bsent entrapment or other abuses violative of fundamental fairness, government involvement in criminal activity for purpose of investigating possible violations of law is permissible, even if technical violations of law occur." Id. at 664. The Appeals Court further held that where a "sting operation was conducted in accordance with published guidelines designed to ensure that such operations were conducted fairly, the commission could properly rely on this evidence." Id. at 665.

The compliance check guidelines followed by the Tewksbury Police Department read as follows:

1. Underaged person sent into establishments;
2. If the bartender or clerk doesn't ask for ID, the underaged person will make the purchase and alert detectives; and
3. If they are asked for ID, they will walk out. (Exhibit 6)

Viewing the evidence introduced in the light most favorable to the Local Board, the Commission finds that while the Tewksbury Police Department does have published compliance check guidelines, said guidelines are inadequate to ensure compliance check operations are conducted fairly. For example, Commission Compliance Check Guidelines include, among other things, information concerning notice of compliance checks, direct that the underage operative should reasonably look their age¹ and should be photographed prior to the compliance check and specify items the underage operative is allowed to possess while conducting compliance checks. Even though the Local Board is not required to follow the Commission's compliance check guidelines and may promulgate their own, the Tewksbury Police Department's compliance check "guidelines" are silent on many issues and fall significantly short of being adequate.

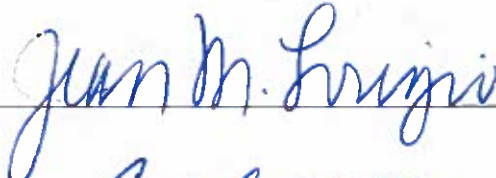
Given the Commission's finding that the Tewksbury Police Department's compliance check "guidelines" are inadequate to ensure compliance check operations are conducted fairly is dispositive in this appeal, the Commission need not determine the merits of the Licensee's second and third grounds for its motion. The Commission, however, takes this opportunity to warn the Licensee that violations of M.G.L. c. 138, § 34 occur when an alcoholic beverage is sold or delivered to an individual under twenty-one years of age.

For the foregoing reasons, the Licensee's motion is **ALLOWED**.

The Commission **REMANDS** the matter to the Local Board with the recommendation that no further action be taken against the Licensee, as any penalty would be discrepant with this decision.

ALCOHOLIC BEVERAGES CONTROL COMMISSION

Jean M. Lorizio, Chairman



Crystal Matthews, Commissioner



Deborah Baglio, Commissioner



Dated: October 21, 2025

¹ The Commission notes reference made at the Tewksbury Police Department's May 25, 2023, meeting with licensees to the use of an underage operative who, among other things, had a beard and appeared to be twenty-seven years old. The Commission would find that conducting a compliance check with such an operative is unfair. However, because Tewksbury's "guidelines" do not speak to the operative's appearance, using such an operative may not be a violation thereof, but arguably creates an issue of entrapment.

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: David H. Abbott, Esq.
Kevin P. Feeley Jr., Esq.
Local Licensing Board
Frederick G. Mahony, Chief Investigator
Administration, File