

## Department of Commerce, Community, and Economic Development

ALCOHOL AND MARIJUANA CONTROL OFFICE

550 West 7th Ave, Suite 1600 Anchorage, AK 99501 Main: 907.269.0350

## **MEMORANDUM**

TO: Bob Klein, Chair, and Members of the

Alcoholic Beverage Control Board

DATE: January 23, 2018

FROM: Erika McConnell, Director RE: 368 BPO Elks Lodge #2425

**Requested Action:** Reinstate and renew club license

Statutory and Regulatory Authority:

AS 04.06.090(b): "The board shall review all applications for licenses made under this title and may order the director to issue, renew, revoke, transfer, or suspend licenses and permits authorized under this title."

3 AAC 304.160(e): "For the purposes of AS 04.11.540, if a license has expired for failure to file a complete application for renewal by February 28 or for failure to pay the required fees and penalty fees by that date, the board will consider a written request to reinstate the license if the request is accompanied by

- (1) a complete application;
- (2) all required fees and penalty fees; and
- (3) proof of good cause for the failure to file and pay by February 28."
- 3 AAC 304.160(f): "The board will deny a request for reinstatement submitted under (e) of this section if the board finds that the failure to timely file or pay was caused by
- (1) the licensee's failure to notify the board of a change of the licensee's mailing address;
- (2) a transfer of ownership of the business for which the license was issued without written approval of the board in violation of AS 04.11.040;
- (3) a lease of the licensed business to another person in violation of AS 04.11.450(c); or
- (4) any other action of the licensee whether active or tacit that the board finds constitutes a failure to lawfully operate the business for which the license was issued."

Staff Recommendation: Deny request for reinstatement and renewal for lack of good cause for

failure to file and pay by February 28 (3 AAC 304.160(e)(3))

368 BPO Elks Lodge #2425 ABC Board January 23, 2018 Page 2

**Background:** The Kenai Elks Lodge did not complete their renewal during the 2016 renewal period but continued to sell alcohol at their lodge until December 12, 2017.

While they did submit a renewal application on December 15, 2016, it was never completed. AMCO contacted the applicant multiple times as follows:

- An incomplete letter, along with a clean copy of the application for corrections, was sent on December 29, 2016, to the email address on file, which is <a href="mailto:kenaielks@alaska.net">kenaielks@alaska.net</a>.
- A second copy of the incomplete letter was sent by mail on January 6, 2017, to 205 Barnack Way, Kenai, AK, 99611. NOTE—the address on file is 205 <u>Barnacle</u>. However, this letter was not returned to AMCO.
- An expiration warning letter was sent by mail on February 15, 2017, to 205 Barnacle, Kenai, AK, 99611, which is the address on file. (While the license technically expired at midnight on February 28, it was not expired in our licensing system until July 31, 2017.)
- Investigator Whiteman called the lodge on August 2, 2017, and spoke to a secretary—the director was not available. Investigator Whiteman informed the secretary that the liquor license had expired and they needed to stop selling or offering alcohol immediately. Mike Dimmick, the lodge director, did call the office on or before August 8 but Investigator Whiteman and Mr. Dimmick never spoke for some unknown reason.

Investigator Hamilton happened to stop at the Kenai Elks Lodge on December 12, 2017, during a trip on the peninsula, when it was discovered that they were still selling alcohol despite having no license.

AMCO did not file criminal charges for sales without a license.

The City of Kenai has an available club license so the Elks Lodge can apply for a new license should the board deny this request.

Attachments: Request for reinstatement and associated correspondence

Renewal application

From: konrad jackson

To: McConnell, Erika B (CED)

Cc: Fowler, Micaela R (CED); Kris O"Neil; Mary Jackson; Kenai Elks Lodge #2425; Alcohol Licensing, CED ABC (CED

sponsored); Oates, Sarah D (CED); Navarre, Mike S (CED)

Subject: Re: Reinstatement of license #368

**Date:** Thursday, December 21, 2017 11:57:47 AM

## Director McConnell,

Thank you for responding to my email regarding the Kenai Elks Lodge club liquor license #368.

In your response, you ask for further clarification regarding the actions, or lack thereof, by the Lodge, please see below.

You asked about the assertion that our incomplete application was corrected and resubmitted. This is information I was given via a phone call while on vacation. I have since returned home and am looking into this. I have been unable to find a USPS receipt for anything but the original application, but will continue to look.

As to the actions following the August phone call to the Lodge, frankly, I can't explain why the message wasn't passed along to the proper individual. It makes no sense that a message of this nature would go undelivered or unanswered. I can tell you, however, that the person who took that call is no longer employed by us.

I would like to have better answers to your questions but this appears to have been a series of clerical screw-ups of the greatest order.

We are working diligently to gather the required information and complete the renewal application. I expect all documents will be on the way to you shortly after lunch, today. My plan is to have them scanned and emailed to you as well as putting a hard copy in the mail. We may be sending a few more documents than needed, but I want to error on the side of excess, this time around.

For payment of the late filing (\$500.00) and background check fees (3 @ \$47 ea.), we will be enclosing a check in the amount of \$641.00. I will attach a scanned copy of the check to the email.

Thank you and your staff for all your time and attention to this matter.

Sincerely,

Konrad Jackson

From: McConnell, Erika B (CED) <erika.mcconnell@alaska.gov>

Sent: Wednesday, December 20, 2017 4:22 PM

To: konrad jackson

Cc: Fowler, Micaela R (CED); Kris O'Neil; Mary Jackson; Kenai Elks Lodge #2425; Alcohol Licensing,

CED ABC (CED sponsored); Oates, Sarah D (CED); Navarre, Mike S (CED)

Subject: RE: Reinstatement of license #368

Dear Mr. Jackson,

Thank you for your email. I have a couple of follow-up questions.

You state that a revised application was resubmitted. Can you tell me how that was resubmitted (mail, email, drop-off to office)? We have no record of that resubmittal. One of your required corrections was to bring your non-profit into compliance with the Division of Corporations, which was not done until about a month ago. We have no record of a payment of a late fee, or of a submittal of fingerprints and fees for new officers.

Additionally, AMCO Investigator Whiteman called your lodge on August 2, 2017, and spoke with a secretary. He informed the secretary that the liquor license was not renewed and that the lodge had to stop selling/serving alcohol immediately. He was referred to Mike Dimmick—it appears they never managed to speak, but the lodge was informed that they did not have a valid license and needed to cease alcohol service. Can you tell me why the lodge did not cease selling/serving alcohol at that time?

You are correct in your assumption that this matter must go before the ABC Board. They can consider reinstatement and renewal under 3 AAC 304.160(e) and (f). Your email is a request for reinstatement, but in order to go before the board, I will need a complete renewal application and late fees. You may wish to review that section of regulation and let me know if you wish to provide any additional information/explanation to the board.

Our deadline for the January 23 meeting agenda is January 5—that means your application must be reviewed and determined to be complete by January 5. Therefore, I recommend you submit your renewal application as soon as possible so that we have sufficient time to review it for completeness and there is time for you to make any corrections, if any are necessary. We do process applications in the order in which they are received. I've attached the incomplete letter and clean renewal form from last December, in case you need those.

Unfortunately I do not have the authority to issue you a temporary license in this situation.

Please let me know if you have any questions.

Thank you, Erika McConnell

## Erika McConnell

Director Alcohol & Marijuana Control Office State of Alaska

**From:** konrad jackson [mailto:kgjack@hotmail.com]

Sent: Thursday, December 14, 2017 3:55 PM

To: McConnell, Erika B (CED) <erika.mcconnell@alaska.gov>

**Cc:** Fowler, Micaela R (CED) <micaela.fowler@alaska.gov>; Kris O'Neil

<cheerioproductions@yahoo.com>; Mary Jackson <majack99669@hotmail.com>; Kenai Elks Lodge

#2425 <kenaielks@alaska.net>

**Subject:** Reinstatement of license #368

**Importance:** High

Dear Ms. McConnell,

I am writing you on behalf of the Kenai Elks Lodge #2425 regarding the expiration of our club liquor license #368. I recently took on the duties of the Treasurer of the Lodge and have taken on the task of trying to resolve this issue.

Below is a bit of background on our situation.

The Lodge filed for renewal of its liquor license in mid-December with an accompanying payment.

A notice was received by the Lodge stating that the application was incomplete.

The revised application was resubmitted.

At that point, the office staff felt confident we were on track and no longer concerned themselves with the issue; in no small part due to the fact that the check for the renewal fee had cleared the bank.

In late September or early October, it came to my attention that we did not have a liquor license posted. At that time, I went online to check the status of our license. I found a report that showed, as of mid-May, the license was valid. I made contact with Legislative Liaison Micaela Fowler to ask about the process of getting a copy of the license. I take responsibility for not following up more diligently in this process but as I said, since we were on the "valid license" list, I felt we were at least operating with a valid license.

On Tuesday of this week, AMCO Investigator Joe Hamilton stopped by the lodge. At that time, it became clear that our license was no longer valid. We immediately ceased liquor operations.

In speaking with Micaela this afternoon, she gave me the history of AMCO's actions regarding the renewal. It certainly appears that we have dropped the ball.

Our organization has a fiscal year beginning April 1st and members in charge change

regularly. I don't offer this as an excuse, merely as an explanation.

We are a small club who are very diligent in our adherence to liquor service laws under our club license requirements. Unfortunately, we fell very short on the clerical side of the process this year.

My reasons for writing today are two-fold. First is to respectfully ask that the issue of our license reinstatement be added to the agenda for the ABC Board meeting in Juneau on January 23<sup>rd</sup>. This, of course, assumes that the issue cannot be handled administratively and that the Board must take up this issue. Second is to inquire whether a temporary license can be issued in the interim, if Board action is in fact required.

We recognize that we have made a serious error in this case and are prepared to do what needs to be done to remedy the situation.

To my knowledge, as an active eighteen-year member of the Kenai Lodge, we have not had any infractions regarding our license. While I recognize this history does not excuse our inattention to clerical details, I hope that you can take that history into consideration.

Finally, I want to impress upon you the value of the Kenai Lodge #2425 to the local community. As a lodge of some 250 members, we have a documented history of service and monetary contributions to veterans, students and needy families. Our building serves as a gathering place for other organizations and is used for fundraisers to benefit many in times of dire need. In fact, over the last seven years our members have been responsible for contributions in excess of \$750,000.

Thank you for your time and consideration of this matter. Please feel free to contact me at this email address. I am happy to talk on the phone via my cell number, 907-cell service. I am currently vacationing out of the country but have some cell service available.

Sincerely,

Konrad Jackson Treasurer Kenai Lodge #2425

CC:

Micaela Fowler, Legislative Liaison, DCCED Kris O'Neal, Lodge Exalted Ruler Mary Jackson, Lodge Board of Directors, Chair Kenai Lodge-email account