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MEMORANDUM

To: Michael Moore and staff of the Food Protection Program

From: Priscilla Fox, Deputy General Counsel

Date: April 27, 2012

Re: Regulation of Pot Luck Meals and Temporary Food Events; Effect of Good Samaritan Food Law

Introduction

Questions have recently arisen with respect to local board of health regulation of community "pot luck" meals, the extent to which these meals should be considered temporary food events, and the effect of M.G.L. c. 94, s. 328 (known as the Good Samaritan food law) on such regulation. Pot luck meals are events for which food is prepared in private homes and brought to a central location (for example, a church or community center), from which the food is served to people attending the event. In addition, a Massachusetts resident has recently questioned the ability of state or local authorities to impose any requirements on pot luck meals, in light of the Good Samaritan food law. As you have requested, this memo will serve to clarify these issues.

The Good Samaritan Food Law

M.G.L. c. 94, s. 328 states in relevant part:

....

No nonprofit corporation shall distribute or serve food from any establishment unless that corporation has been inspected and *is in compliance with all inspection or permit requirements of the department [of public health] and board of health* in the city or town

in which food is to be distributed or served; provided, however, that no fee shall be charged for any such permit issued to such corporation [emphasis added].

....

The preparation of food in private homes for donation to a nonprofit corporation for distribution or serving by such corporation without charge or at a charge sufficient to cover the cost of handling such food shall not be subject to licensure or regulation. The department of public health shall provide advisory guidelines and interpretations for the safe and sanitary preparation of such food [emphasis added].

The key to interpreting this statute is to give effect to all of its provisions in a consistent manner. The second paragraph quoted above clearly states that the preparation of food in private homes (*i.e., the act of preparing food*) for donation is not subject to licensure or regulation. This does *not* mean that the nonprofit corporation *itself* cannot be regulated in its distribution of the food. In fact, the first above-quoted paragraph makes clear that it *is* subject to regulation, by stating that it may not distribute or serve food from any establishment unless the corporation is in compliance with all inspection or permit requirements of the Department of Public Health and the board of health. Therefore, while the homes where the food is prepared are not subject to licensure or regulation, the venue from which the food is served is subject to government oversight.

The Regulatory Scheme

As is well known, the Department of Public Health (DPH) promulgates regulations governing retail food sales and service, and the regulations are enforced at the local level by local boards of health. The regulations are found at 105 CMR 590.000: State Sanitary Code Chapter X: Minimum Sanitation Standards for Food Establishments (hereafter referred to as “the regulations”).

As described above, while DPH has legal authority over pot luck meals, DPH has chosen to distinguish between pot luck meals to which the public is invited, and those which are limited to the members of the group that sponsors the meal. An example of the former is a fundraising event for a local charity, which is held in a community center and is advertised in local media. An example of the latter is a church meal that is open only to church members. Members-only pot luck meals are not regulated in any way.

On the other hand, pot luck meals that are open to the public are considered temporary food establishments. A “temporary food establishment” is defined in the regulations as “a food establishment that operates for no more than 14 consecutive days in conjunction with a single event or celebration.” 105 CMR 590.002(B)(87). Temporary food establishments require a permit from the local board of health. 105 CMR 590.012(D).

The term “food establishment” is also defined in the regulations. Specifically *exempted* from the definition of “food establishment” under 105 CMR 590.002(B)(3) are (among others) the following: