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STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
LANSING

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DATE: September 24, 2004

TO: All Local Health Departments (LHD's)
Attn: Health Officer/Director of Environmental Health/Chief Sanitarian
Michigan Department of Agriculture (MDA)
Attn: Food and Dairy Division Managers

FROM: Thomas Crook, Manager
Food Service Sanitation Section
Food and Dairy Division

SUBJECT: Licensed Food Service Establishments in Buildings Operated by Nonprofit Organizations

Issue:

Recently, some local health departments have asked for clarification regarding the limitations, restrictions, and impact a food service establishment license has upon the overall flexibility and use of licensed kitchen facilities located in a building operated by a nonprofit organization. I will use a church as an example of a nonprofit organization to discuss some common scenarios.

This memo replaces Mike Farnsworth's, Food Service Sanitation Section, MDPH, memo dated August 21, 1984 titled "Changes in Powell Amendment per Act 199 of 1984." And Neal Fortin's, Food Service Sanitation Section, MDA, memo dated June 5, 2000 titled "Exemption for Home Prepared Food and Nonprofit Organizations".

1. Can a licensed church kitchen prepare food for a pot luck dinner that is being held in conjunction with a fund raiser or meeting?

A licensed food service establishment is not prevented from preparing food for meetings or fund raising events sponsored by nonprofit organizations. Any licensed food establishment can provide food either directly or indirectly for a meeting or fund raising event where home-prepared food is served. The church, for example, could legally order a cold-cut platter from a local grocery store. A participant can legally bring fried chicken from a local fast food establishment for their dish-to-pass.

A church kitchen licensed as a food service establishment, like any other licensed food establishment, can legally provide food for a meeting or fund raising event where home-prepared food is served.

A charitable, religious, fraternal, and other nonprofit organizations operating a home-prepared baked goods sale or serving only home-prepared food in conjunction with its meetings or as a part of a fund raising event is not a food establishment, is not subject to licensure, and is not

required to comply with the Michigan Food Law and the 1999 Food Code (Food Law, Section 1107(i)).

A church, for example, could have two food related activities occurring within the building (on the grounds) at the same time. A church can have a meeting or fund raising event at which home-prepared food is served. The church's licensed kitchen may prepare food to be served at the meeting or fund raising event. The important thing to remember is that the licensed food establishment in which food or drink is prepared must operate as an independent separate entity in compliance with law including obtaining food from approved sources and restricting unauthorized personnel.

Once the food from the licensed kitchen is delivered to the meeting or fund raising event, separation of the home-prepared food from food prepared in the licensed kitchen is not regulated by law.

What Defines the Limits of the Licensed Food Service Establishment Area within a Building Like a Church? Where does the Food Code apply?

Defining the limits of a free-standing restaurant is relatively easy. The 1999 Food Code defines "Premises" to mean the physical facility, its contents, and the contiguous land and property under the control of the permit holder.

However a church is a building that may happen to have a kitchen; not a kitchen that happens to have a church. Section 2-103.11(B) of the 1999 Food Code states "The person in charge shall ensure that persons unnecessary to the food establishment operation are not allowed in the food preparation, food storage, or warewashing areas." Consider these areas plus required facilities such as the well, septic tank, toilet rooms, storage areas for linens and single service items, and garbage storage areas to define the practical working limits of the licensed establishment within the building. The picnic grounds or multi-purpose room where food may be eaten during its meetings and fund raising events may be considered outside the scope of the license unless food preparation activities are occurring.

2. Once the kitchen is licensed as a food service establishment, can it be used for private functions?

Many churches tend to use their kitchens to prepare and serve food to the public at scheduled events such as the Sunday morning breakfast, Lenten fish fry, monthly chicken dinner, Christmas party, etc for which a license is required. Between events, many kitchens remove all perishable food items and allow members to use the facilities for various private functions that would not require licensure. I see no need to interfere with this practice provided the equipment and utensils are properly cleaned and sanitized prior to preparing and serving food to the public. This is already common practice for churches that obtain temporary food service establishment licenses for each event. An understanding should be reached with those churches that operate under annual regular or limited licenses.

How can I tell if an event is public or private?

The definition of a food service establishment includes the phrase "...and any other eating or drinking establishment or operation where food is served or provided for the public". The word "public" is key. If an operation does not serve the public, it is not a food service establishment and is not subject to licensure or compliance with law. The following is a summary of points made by Phil Kirkwood, Chief of the Food Service Sanitation Section, Michigan Department of Public Health in a letter dated April 21, 1992. We have consistently followed Phil's advice and it remains to be our position today.

Examples of public events involving the preparation and service of food requiring licensure:

- Events sponsored by the church for the congregation as a whole are considered licensable since any guests or visitors who are not members of the church can typically attend.
- Events sponsored by the church inviting the general public.
- Church prepares food for a wedding, funeral, or other gathering
- Church prepares food for groups such as the elderly, indigent, homeless, etc.

Examples of private events involving food that do not require licensure:

- A specific group within the congregation such as the choir, church elders, Sunday school teachers, etc. prepares a meal for themselves.
- The family members use the church kitchen to prepare a meal for their invited guests at a wedding, funeral, party, or other similar celebration.

4. Can a church allow others to use their kitchen to prepare and serve food for the public?

A church can allow others to use the kitchen. However, a food service establishment license is not transferable from person to person. The church cannot include the license along with the rental of the facilities unless a knowledgeable person in charge is designated by the licensee and is onsite during the event. Otherwise, a temporary food service license for the event is required.

5. A church school has an athletic concession stand that buys pizza from a local restaurant and sells it by the slice. At the same time the school sells home-prepared cookies and brownies. Is this permissible?

Yes. A food service establishment license is needed to serve the pizza slices. The baked goods sale can be operated as a separate fund raising event and is exempt from licensure.