

Memorandum ! MICHIGAN DEPARTMENT OF AGRICULTURE

TO: Katherine Fedder, Director
Food and Dairy Division

DATE: May 22, 2001

FROM: Neal Fortin, Manager
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Food and Dairy Division

SUBJECT: **Need for MDA to Specify the Exemptions from the Education Fund Fees**

At the MALEHA meeting that you recently attended, the question was asked: What is MDA's interpretation of exemption from the Food Safety Education Fund fees? In a follow-up e-mail to you, I summarized the local health departments' three interpretations of the exemption. Since this falls outside of my program area, I await your decision on MDA's interpretation.

The Timeliness of the Need for MDA to Specify the Exemptions from the Education Fund Fees

The local health departments are charging these fees now (or not charging). Therefore, it is important we inform them as soon as possible what our interpretation of exemption is.

Our interpretation is not binding on the local health departments, but they will be invoiced by MDA for these fees according to our interpretation. The sooner we provide notification, the less dissatisfaction there will be.

The Three Interpretations

Under § 4117 of the Food Law of 2000, "fee exempt food establishments" are exempt from payment of the education fund fees. Local health departments are applying three interpretations:

- (1) Fee exempt means only those establishments expressly exempt from *all* license fees by the statute in sec. 3119(4). These are schools and educational institutions.
- (2) Fee exempt means those establishments in (1) plus any establishment exempt from the state license surcharges (e.g., nonprofit organizations).
- (3) Fee exempt means those establishments in (1) plus any establishment that the LHD exempts from local fees that is also exempt from the state license surcharge.

My Recommendation

Each interpretation has pros and cons. Interpretation 1 is the most uniform. Interpretation 2 will exempt the most establishments (and presumably make them happy, but some local health departments will have excess fees to refund). Interpretation 3 will appease the nonprofit organizations that are accustomed to paying no fees (but it is non-uniform and may offend similar organizations in neighboring communities where they have to pay these Education Fund fees). Interpretation 3 also prevents putting local health departments in the awkward position of having to collect Education Fund fees from nonprofit organizations that pay no other fees.

I recommend MDA apply interpretation 3.

In the long run, we should revise the statute to clarify the exemption. However, since the LHDs are charging these fees now and will be invoiced by MDA for these fees according to our interpretation, we should clarify and inform LHDs how we plan to bill them.

If you have any questions, please let me know.

NDF:khg