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## House of Representatives

COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

October 26, 2009

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FINANCE COMMITTEE, REPUBLICAN CHAIRMAN  
AGRICULTURE AND RURAL AFFAIRS COMMITTEE  
POLICY

### CAUCUSES

EAST CENTRAL CAUCUS  
PA LEGISLATIVE SPORTSMEN

Mr. Paul Hoge  
Pennsylvania Department of Agriculture  
Bureau of Food Safety  
Division of Milk Sanitation  
2301 North Cameron Street  
Harrisburg, PA 17110-9408

RECEIVED  
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INDEPENDENT REGULATORY  
REVENUE COMMISSION

Dear Mr. Hoge,

As a member of the Commonwealth of Pennsylvania's House Agriculture and Rural Affairs Committee, I would like to take the time to offer my comments on the proposed changes to the Pennsylvania Department of Agriculture's (PDA) Milk Regulations. While I appreciate, both as a legislator and a personal consumer, the PDA's desire to improve the quality of the milk products produced in the Commonwealth, I am particularly concerned with the regulations pertaining to raw milk. I think it would be in the best interest of the citizens of the Commonwealth to add an exemption for direct-to-consumer, on-farm sales.

It is not my intention to dispute the purpose of PDA, which is to be a helping hand to agriculture by addressing issues of safety, by collecting and analyzing data and conducting research to bring beneficial improvements to the industry. However, we must always keep in mind that while government is constitutionally established to protect the public's "health, safety, and happiness", it does not grant government the authorization to infringe on an individual's civil and natural rights. Unfortunately, as currently written, §59a.415 and §59a.416 (included below) both violate the constitutionally protected rights of private contract and search and seizure, respectively.

**"§59a.415. Enforcement: Injunctions.**

The Department may ask the Attorney General to initiate legal action to enjoin a person from selling raw milk without the required raw milk permit or from violating the Act or this chapter. Violations of an injunction can result in fines, imprisonment, or both.

**§59a.416. Enforcement: Seizure, condemnation, denaturing or destruction of raw milk; Exclusion from sale.**

(a) *Seizure, condemnation, denaturing or destruction of raw milk.* Whenever, in the opinion of the Secretary, a given supply of raw milk or illegally-produced raw milk products is considered unsafe or a menace to public health, the secretary may seize, condemn, denature, or destroy the milk or milk products, without compensation to the owner of the milk or milk products.

(b) *Excluding Milk from Sale.* The Department may exclude raw milk or illegally-produced raw milk products from sale in either of the following circumstances:

(1) The Secretary considers the raw milk or illegally-produced milk products to be unsafe.

(2) If a raw milk permit holder violates a provision of the Act or this chapter.”

The fundamental right to enter into private contracts, particularly regarding direct farmer-to-consumer sales, is not only constitutionally protected, but also is part of the foundation on which civilization was built. Traditionally, the ability to utilize the land in order to produce agricultural products, and then to offer those items directly to consumers, did not stem from any magisterial law. This ability is granted through nature, and therefore is a natural right and is protected by the Commonwealth’s Constitution. When considering the right to contract, a distinction must be made between the rights of an individual and the rights of a corporation and the role that the state plays in regards to both. In the case of *Hale v. Henkel*, 201 U.S. 43, 26 S.Ct. 370 (1906), the United States Supreme Court gave the following opinion, and while other aspects of the case have been disputed, this stance remains inviolate (emphasis added):

*“...we are of the opinion that there is a clear distinction in this particular between an individual and a corporation ... The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way. **His power to contract is unlimited.** He owes no duty to the state or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the state, since he receives nothing therefrom, beyond the protection of his life and property. **His rights are such as existed by the law of the land long antecedent to the organization of the state, and can only be taken from him by due process of law, and in accordance with the Constitution.** Among his rights are a refusal to incriminate himself, and **the immunity of himself and his property from arrest or seizure except under a warrant of the law.** He owes nothing to the public so long as he does not trespass upon their rights.*

*Upon the other hand, the **corporation is a creature of the state.** It is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises, and **holds them subject to the laws** of the state and the limitations of its charter. Its powers are limited by law. It can make no contract not authorized by its charter. Its rights to act as a corporation are only preserved to it so long as it obeys the laws of its creation.”*

Therefore, while a corporation’s powers to contract are limited to that given to them by the state in law, the power to contract for an individual is unlimited and cannot be infringed upon by the state.

PDA is often assumed to have the statutory right to regulate and require permits for raw milk, and products produced from raw milk, in order to protect the public’s health and safety. For raw milk that is produced with the intent of widespread distribution to the general public via mainstream commerce, then yes, I would agree. Direct farmer- to-consumer sales, however, are constitutionally protected private transactions that have no affect on the health of the general public and pose no liability to the Commonwealth. A distinction must be made that the raw milk, or raw milk products, in direct farmer-to-consumer transactions has not entered into mainstream commerce. These are on farm sales, where interested consumers, exercising their constitutional and natural right of liberty, make a clear and distinct effort to contact the farmer for the express purpose of purchasing the raw milk or raw milk product. When approached, the farmer has the option to exercise his constitutionally protected natural right of property, and offer through gift or trade that which he has produced via his own labor. This is an instance of two private individuals, entering into a private contract for the private property of one of the parties. The attempt of §59a.415 in the proposed regulations to label these private contracts as “illegal” is a direct violation of both the state and federal Constitutions.

The natural law theory of “the labor of property” states that a person owns themselves and therefore owns their own labor. When a person exerts their labor onto their own property, the fruits of that labor become the property of that person. The Constitution of the Commonwealth of Pennsylvania clearly upholds a person’s right to property and protects such property from illegal seizure and seizure without just compensation (Article 1, §8 and §10). Section 59a.416 of the proposed regulations violates these constitutional articles by stating that the Secretary of Agriculture, at his discretion, may seize and destroy any raw milk, or raw milk product, that he deems a menace to the public’s health without providing compensation. As currently written, this would apply not only to raw milk intended for general distribution into commerce, but also to raw milk produced for personal use or for private direct sales. I personally find the idea of anyone having the arbitrary ability to seize and destroy any citizen’s personal property, based on nothing further than an opinion, both deeply disturbing and highly unconstitutional.

Within the proposed regulations, the statement is made that ingesting raw milk “may significantly increase the risk of food borne illness.” The operative word that is used in that assertion is “may.” The bacteria that cause such concerns are all the result of unsanitary conditions. However, an individual who has made the personal decision to drink milk in its pure and unaltered form, and has sought to enter into a private transaction, would be able to assess the risk when purchasing from the farmer. In exercising their right to liberty, the individual is using their own judgment and assumes responsibility for their actions.

Therefore, I urge you to consider following a similar path to that of Kansas, Missouri, Nebraska, and Oklahoma. All of these states, among others, have thriving agricultural industries and all of which allow direct, on-farm transactions for raw milk without a permit. By placing an exemption for direct, on-farm sales in the proposed regulations, the PDA can maintain their oversight on raw milk sales in mainstream commerce, while upholding the citizen’s constitutional and natural rights to enter into direct, private sales.

Sincerely,

A handwritten signature in black ink that reads "Samuel E. Rohrer". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Samuel E. Rohrer  
State Representative  
128<sup>th</sup> Legislative District

cc: Mr. Arthur Coccodrilli, Chairman, Independent Regulatory Review Commission  
Rep. Mike Hanna, Majority Chairman, House Agriculture and Rural Affairs Committee  
Rep. John Maher, Republican Chairman, House Agriculture and Rural Affairs Committee  
Sen. Mike Brubaker, Majority Chairman, Senate Agriculture and Rural Affairs Committee  
Sen. Mike O’Pake, Democratic Chairman, Senate Agriculture and Rural Affairs Committee