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Pennsylvania Independent Consumers and Farmers Association

c/o P.O. Box 15
Rossville, Pennsylvania 17358

September 28, 2009

Russell C. Redding, Acting Secretary and
Bill Chirdon, Director, Bureau of Food Safety and Laboratory Services
Pennsylvania Department of Agriculture (PDA)
2301 North Cameron Street
Harrisburg, Pennsylvania 17110

RECEIVED
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RE: PDA's Existing and Proposed Rulemaking
[7 PA. CODE CHS. 59 AND 59a]
Milk Sanitation

PENNSYLVANIA BULLENTIN, VOL. 39, NO. 31, AUGUST 1, 2009

Dear Acting Secretary Reeding and Mr. Childon,

My name is William Taylor Reil. I am a 67 year old retired Electrical Engineer and Data Communications Systems Sales and Marketing Manager. Currently make my home in Elverson, County of Chester, Pennsylvania. However, the roots of my family tree on my mother's side, the Copes, reach back to a land-grant from William Penn in 1683 for property in today's Copesville, Pennsylvania which is located on Route 162 a few miles west of West Chester, Pennsylvania. After honorably serving for 8 years in the United States Air Force, I attended and graduated from VPI&SU in Blacksburg, Virginia with a BS in Electrical Engineering. While I am not an attorney, I have been studying and researching Constitutional Law, particularly Pennsylvania History and Law, for nearly 20 years.

I am sure that the PDA has received many comments about the referenced subject and government's alleged statutory authority over milk and "milk products" found in Purdom's Pennsylvania Statutes Annotated, Title 31 and the alleged concerns about public health and safety with respect to raw milk and other natural foods made with raw milk.

However, the Rules and the Statutes concerning the issue of "Raw Milk" now being considered by the Department of Agriculture is in reality, solely a matter of constitutional law. That is, if the Constitutions and the true "rule of law", as they lawfully must, control what those in the PDA and all others in the Pennsylvania government do in their official capacities.

The Statutes and the existing and proposed Rules now in question are found in Chapter 13, MILK AND CREAM, 31 P.S.A. Sections 511 through 700.5; and 7 PA Code, Chapters 59 and its replacement - 59a, respectively. Specifically, those in the Department of Agriculture demand that farmers selling or offering to sell raw milk obtain a "milk permit" allegedly required by section 646 of the law originally enacted as "1935, July 2, P L 589 (Act 210)", and prosecute farmers who do not have a "milk permit" under the alleged authority of sections 660c. through section 660f. in the same law.

While these Statutes and "Rules" may or may not be constitutional in whole or in part; **the application of, or any attempt to apply, these statutes and rules to a Pennsylvania farmer, his family or agent (private individuals); their farm, the structures, equipment, animals, etc. thereon (private property), and/or the direct sale or exchange, by contact or otherwise, of the foods produced by them (private business) to a consumer, his family or agent (private individuals) is clearly in direct violation of several provisions of the Pennsylvania and United States of America Constitutions, particularly those found in their Declaration of Rights and the Bill of Rights, respectively.**

Clear and concise statements that except private farmers, private property, private business and private contracts must be placed in the proposed PDA "Milk Sanitation" Rules. To not do this will be a direct violation of the Constitution of the Commonwealth of Pennsylvania and the "oath of office" of each and every government official, officer, employee, agent, etc. involved in this "Rulemaking" and the application of the existing or the proposed new "Milk Sanitation" Rules and "Milk Sanitation" Statutes.

Pennsylvania's history and law are rich with evidence to support this position. Simply consider the following limited evidence:

Start by answering the question: What is a "permit" and a "license"? Black's Law Dictionary, sixth edition defines these two words, in part, as:

"Permit: In general, any document which grants a person the right to do something. A license or grant of authority to do a thing. *Matter of Building Permit and Zoning*, 29 N.C. App. 749, 225 S.E. 2d 647, 549. **A written license or warrant, issued by a person in authority, empowering the grantee to do some act not forbidden by law, but not allowable without authority."**

"License. A personal privilege to do some particular act or series of acts on land without possessing any estate or interest therein, and is ordinarily revocable at the will of the licensor and is not assignable. *Lehman v. Williamson*, 35 Colo.App. 372, 533 P.2d 63,65. **The permission by competent authority to do an act which, without such permission, would be illegal, a trespass, a tort, or otherwise not allowable.** *People v. Henderson*, 391 Mich. 612, 218 N.W.2d 2,4. Certificate or the document itself which gives permission. Leave to do thing which licensor could prevent. *Western Electric Co. v. Patent Reproducer Corporation*, C.C.A.N.Y., 42 F.2d 116, 118. Permission to do a particular thing, to exercise a certain privilege or to carry on a particular business or to pursue a certain occupation. *Blate Brewing Co. v. Collins*, 88 Cal. App.2d 37, 39,40.

A permit, granted by an appropriate governmental body, generally for a consideration, to a person, firm, or corporation, to pursue some occupation or to carry on some business subject to regulation under the police power.

A license is not a contract between the state and the licensee, but is a mere personal permit. *Rosenblatt v. California State Board of Pharmacy*, 69 Cal. App.2d 69, 158 P.2d 199, 203. Neither is it property or a property right. *American State Water Service Co. of California v. Johnson*, 31 Cal.App. 606, 88 P.2d 770, 774."

Now that you understand these definitions, ask yourself **If an individual human, a natural person, has a God given and/or constitutionally secured, protected and guaranteed inherent and infeasible right, does he or she need a permit or a license**

to exercise that right? Clearly the correct answer to this question is: **NO!**

The Preamble and "Declaration of Rights" - Article I, sections 1, 2 and 25 of the Constitution of the Commonwealth of Pennsylvania state:

PREAMBLE

We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.

Article I

DECLARATION OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and unalterably established, WE DECLARE THAT -

Inherent Rights of Mankind

Section 1. All men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and pursuing their own happiness.

Political Powers

Section 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and inalienable right to alter, reform or abolish their government in such manner as they may think proper.

Reservation of Powers in People

Section 25. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

Black's Law Dictionary, sixth edition defines the words: "liberty", "inherent power" and "inalienable", in part, as:

"**Liberty.** Freedom from all restraint except such as are justly imposed by law. ...

The "liberty" guaranteed and protected by constitutional provisions denotes not only freedom from unauthorized physical restraint, but embraces also **the freedom of an individual to use and enjoy his faculties in all lawful ways, acquire useful knowledge, marry, establish a home, and bring up children, worship God according to the dictates of his own conscience, live and work where he chooses, engage in any of the common and lawful occupations of life, enter into all contracts which may be proper and essential to carrying out successfully the foregoing purposes, and generally to enjoy these privileges long recognized at common law as essential to the orderly pursuit of happiness by free people.**" ... (Bold print and underlining added for emphasis)

"**Inherent power.** An authority possessed without it being derived from another. A right, ability, or facility of doing a thing without receiving that right, ability or facility from another."

“Indefeasible. That which cannot be defeated, revoked, or made void This term is usually applied to an estate or right which can not be defeated ”

Article I, section 25 prohibits those in government from making “laws”, rules, regulations, etc. that would interfere with these secured, protected and guaranteed rights. **“Excepted out of”** and **“shall forever remain inviolate”** mean exactly what they state!

Consider the following applicable excerpts from the Pennsylvania Supreme Court’s opinion in **Erdman v. Michell**, 207 Pa. 79 (1903), which clearly explains the meaning of Article I, section 25:

Holding: “Under the declaration of rights of the constitution of Pennsylvania, the rights of a workman to the free use of his hands is a right which neither the legislature or a trade union can take from him, and one which it is the bounded duty of the courts to protect.”

Trade unions may cease to work for reasons satisfactory to their members, but if they combine to prevent others from obtaining work by threats of a strike, or combine to prevent an employer from employing others by treats of a strike, they combine to accomplish an unlawful purpose, a purpose as unlawful now as it ever was, though not punishable by indictment. Such combination is a despotic and tyrannical violation of the indefeasible right of labor to acquire property which courts are bound to restrain. It is utterly subversive of the letter and sprit of the declaration of rights. If such combination be in accord with the law of the trade union, then that law and the organic law of the people of a free commonwealth cannot stand together; one or the other must go down.”

[Erdmam v. Michell, supra, page 80] (Bold print added)

Court Opinion: ... “The first article of the constitution says: “That the general great and essential principles of liberty and free government may be recognized and unalterably established; we declare, that all men are born equally free and independent and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation and of pursuing their own happiness.” Then follows the conclusion of this section: “Everything in this article is excepted out of the general powers of the government and shall forever remain inviolate.” This clause, unlike many others in the constitution, needs no affirmative legislation, civil or criminal, for its enforcement in the civil courts. Where-ever a court of common pleas can be reached by the citizen, these great and essential principles of free government must be recognized and vindicated by that court, and the indefeasible right of liberty and the right to acquire property must be protected under the common-law judicial power of the court. Nor does it need statutory authority to frame its decrees or statutory process to enforce them against the violators of constitutional rights.

The right to the free use of his hands is the workman’s property as much as the rich man’s right to the undisturbed income from his factory, houses and lands; by his work he earns present subsistence for himself and family; his savings may result in accumulations which will make him as rich in houses and lands as his employer. **“This right of acquiring property is an inherent indefeasible right of the workman;** to exercise it he must have an unrestricted privilege of working for such employer as he chooses at such wages as he chooses to accept This is one of the rights guaranteed him by our **“Declaration of Rights;”** it is a right which the legislature cannot deprive him, one which the law of no

trades union can take from him, **and one which it is the bounden duty of the court to protect.** The one most concerned in jealously maintaining this freedom is the workman himself.

A conspiracy is the combination of two or more persons by some concerted action to accomplish an unlawful purpose. It is unlawful to deprive a mechanic or workmen of work by force, threats or intimidation of any kind; a combination of two or more to do the same thing by the same means is a conspiracy. That the legislature referred to such conspiracy is no longer criminal, does not render it lawful. At common law the courts held that such combination was so prejudicial to the public interest and so opposed to public policy as rendered it punishable criminally; but the legislature, which generally determines what is and is not public policy, has declared, that it is no longer a crime or misdemeanor. But this is as far as it has gone, it is as far as it could go without abolishing the Declaration of Rights; to do that the whole people of the commonwealth must be directly consulted and they must give assent. **For while the plain implication from the declaration is that the power to limit this indefeasible right rest solely with the people, yet when they adopted the constitution of 1874,** [note 1 below] **“with an extreme of caution they expressly said, “Everything in this article is excepted out of the general powers of government and shall forever remain inviolate.” That is, shall forever remain with the people; they will not trust their own legislature with power to minimize or fritter it away, much less a** trades union. If the legislature to-day abolished indictment for willful and malicious trespass, or abolished the writ of estrepement, to-morrow courts of equity would still be bound under the Declaration of Rights to protect the citizen in the peaceable possession and enjoyment of his land, even if to do so they were compelled to imprison the lawless trespasser who refused to obey their writ. So the same courts are still bound to protect the humblest mechanic or laborer in his right to acquire property.” ...

[Erdmam v. Michell, supra, pages 91 and 92] (Bold print added)

Note 1: This same provision is found in the 1776, “1790, 1834 and 1968” Constitutions

Clearly by simply understanding what has been presented herein, it should be obvious to an objective reader that the “Milk Sanitation Law” and the resulting PDA “Rules” could never constitutionally apply to a private individual, private property, a private business and/or to a private contract. Each sale directly between a farmer and a consumer no matter where it occurs is between two private individuals (natural persons), concerns private property, is private business and is a private contract.

Those in government and many others contend that a “permit” and/or “license” is required to insure “public safety and public health.” Today they often leave out the word “public” to intentionally confuse and mislead the people. To allegedly support this position, Article I, Section 2 of the Pennsylvania Constitution is often given as the government's authority for the Milk Sanitation Law and/or the PDA's “Rules”, Codes, regulations, etc. applying to private farmers. Or they say: “I would hate to find out that a child or a baby got sick, was hurt or died from drinking raw milk.”

First, when a farmer produces raw milk or other raw foods and sells them directly to a consumer anywhere, this is a private contact between two private individuals, concerning private property and private business. As you have read herein above, the State and federal Constitutions prohibits government interference in any of these areas of a natural person's life. **This is private not public!**

Secondly and most importantly, the understanding and application of Article I, Section 2 (and other provisions) of the Constitution of the Commonwealth of Pennsylvania and the Constitution for the United States of America are often incorrect and/or intentionally perverted.

As stated herein above, Article I, Section 2 states:

Political Powers

Section 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper. (Bold print added)

The first sentence of the 1776 Constitution of the Commonwealth of Pennsylvania, (as well as several commentaries concerning the Pennsylvania Constitution that I have read), explicitly clarify the true meaning of Article I, Section 2. This first sentence states the following.

“WHEREAS all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people have a right, by common consent to change it, and take such measures as to them may appear necessary to promote their safety and happiness.” (Bold print added)

Attorneys and others in government, obviously omit the true meaning of Article I, Section 2 intentionally in an attempt to justify the nearly complete control of the people by government. This is clearly unconstitutional and a violation of their “oath of office”.

Unfortunately, even though all of those in government must by their constitutional oath “support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth”, they continues to ignore the facts and the law concerning the constitutional prohibition of the Commonwealth requiring a dairy farmer to apply for and/or obtain a “permit to sell (anywhere) raw milk and other foods made with raw milk”.

~~Thirdly, it is tragic anytime a child or baby is injured or dies. We all pray that this will not happen. But it does happen and there is nothing government can do to stop it from happening short of demanding that all children, and for that matter all the people, live their entire lives in a bubble and that they do nothing. This is not freedom and liberty. It is not even life. And it will surely rapidly lead to death. It is the responsibility of the parents to do everything humanly possible to protect their children. Feeding them wholesome, nutrient rich, natural food like God’s gift of raw milk and other foods made from raw milk is a good start. How in the world did men, women and children survive drinking raw milk from the beginning of time until 1935? The facts prove that properly handled raw milk from healthy cows poses little or no risk to humans of any age. The early laws in America concerning problems with milk, starting in New York City in the 1850’s and continuing into the 1920’s, were written and passed to insure that whole raw milk and other food made from whole raw milk were not adulterated.~~

Today all pasteurized and/or homogenized milk and milk products made from this "milk" are adulterated. This is apparently done to achieve longer shipping and self life and to allow for mass production of milk and milk products often from less than sanitary milk supplies and/or from confined cows that are full of hormones, antibiotics and other chemicals to maximize milk production and reduce cost. **It all has to do with the corporate bottom line.**

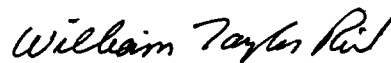
The "Milk Sanitation Law" does and should apply to corporate dairies, corporate milk production plants and other similar entities. However, this "Law" can in no way apply to private individuals, private property, private businesses and private contracts.

Finally, it is obvious to an objective reader of the proposed "Subchapter F. RAW MILK FOR HUMAN CONSUMPTION" that this document has been written to favor large corporate dairy farms and farmers and to prejudice small farms and farmers (private and those who have unknowingly incorporated). If implemented, these new "Rules" shall surely accelerate the failure and thus elimination of many Pennsylvania small dairy farms.

In conclusion, clear and concise statements must be placed in the proposed PDA "Milk Sanitation" Rules that except private farmers, private property, private business and private contracts from the PDA's jurisdiction/authority under these "Rules". Further, all those in the PDA must stop persecuting and prosecution private dairy farmers for exercising their constitutionally secured, protected and guaranteed rights, including but not limited to, selling raw milk and all other raw milk foods without a "Milk Sanitation" permit or permits". To not do these things shall be a direct violation of the Constitution of the Commonwealth of Pennsylvania and the "oath of office" of each and every government official, officer, employee, agent, etc. involved in this "Rulemaking" and the application of the "new" and/or the existing "Milk Sanitation" Rules and Statutes. **Ignorance of the law is no excuse!**

ALL RIGHTS EXPLICITLY RESERVED

Sincerely yours,



William Taylor Reil

William Taylor Reil
Vice-President of PICFA

cc: Paul Hoge, Bureau of Food Safety - Division of Milk Sanitation
Independent Regulatory Review Commission (IRRC)
PA Senate Agriculture and Rural Affairs Committee
PA House Agriculture and Rural Affairs Committee