



“It is not unusual for American students to find their textbooks telling them that injustice was everywhere before the federal government, motivated by nothing but a deep commitment to the public good, intervened to save them from the wickedness of the free market. Alleged “monopolies” dictated prices to hapless consumers. Laborers were forced to accept ever-lower wages. And thanks to their superior economic position, giant corporations effortlessly parried the attempts of anyone foolish enough to try to compete with them.

Every single aspect of this story is false, though of course this version of our history continues to be peddled and believed. I don't blame people for believing it - it's the only rendition of events they're ever told, unless by some fluke they have learned where to look for the truth. **But there is an agenda behind this silly comic-book version of history: to make people terrified of the “unfettered” free market, and to condition them to accept the ever-growing burdens that the political class imposes on the private sector as an unchangeable aspect of life that exists for their own good.**”

-- Ron Paul



Our Mission: To promote and preserve unregulated direct farmer-to-consumer trade that fosters availability of locally grown or home-produced food products

VICFA

Virginia Independent Consumers and Farmers Association
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 Vice President, Richard Altice
 Treasurer, Jay Smith
 Secretary, Christine Solem
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Share this newsletter with a friend - encourage others to join VICFA!

Annual membership is \$25.00.

Please make check payable to VICFA and send to PO Box 6838, Charlottesville, VA 22906.

MEMBERSHIP FORM (please print clearly) * Required fields

*Date _____

*First Name _____ *Last Name _____

Company /Farm Name _____

*Address _____ *City _____ *State _____

*Zip _____ County _____ Congressional District _____

*Phone (_____) _____ - _____ E-mail _____

Website _____ Producers, please list the products that you sell: _____

*Do you want to be listed in the Membership Directory? Yes No
 Note. Your directory listing will contain all of the above information unless you indicate otherwise below.

How did you hear about VICFA?/Comments:

October 2013

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Conditioning Vendor Admittance To Local Farmers Markets Upon Submission To Inspections Not Authorized By Va. Code § 3.2-5130 Violates Dillon’s Rule

By Norman H. Lamson

Managers of local retail food markets in Virginia increasingly, on a state wide basis, are telling prospective vendors as a “regulation” that, in order to qualify as a vendor at the market, they must submit their private homes to inspection. And “inspection” here means warrantless searches of the home without so much as suspicion that the vendor is likely to offer unsanitary or otherwise harmful food produce. The purpose of this article is to demonstrate that such a “regulation,” whether it takes the form of a formal ordinance of the locality, a formal written rule devised by the locality’s manager, or simply a verbal rule of the manager can be in conflict with Va. Code § 3.2-5130, and hence must fall under Virginia’s Dillon’s Rule.

The Virginia Supreme Court has repeatedly expounded the so-called “Dillon’s Rule,” named after the federal court of appeals judge who authored the multi-volume legal text, *The Law of Municipal Corporations*. Under Dillon’s Rule, localities have only the powers granted to them by the General Assembly, and, when attempting to determine the scope of the grant of power, the power must be strictly construed. Specifically, Dillon’s Rule states,

[L]ocal governing bodies “have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.” *Marble Techs., Inc.*, 279 Va. at 417, 690 S.E.2d at 88 (quoting *Board of Zoning Appeals v. Board of Supervisors*, 276 Va. 550, 553–54, 666 S.E.2d 315, 317 (2008) (internal quotation marks omitted)) “If there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body.” *Board of Supervisors v. Reed’s Landing Corp.*, 250 Va. 397, 400, 463 S.E.2d 668, 670 (1995).

Sinclair v. New Cingular Wireless PCS, LLC, 283 Va. 567, 727 S.E.2d 40, 44 (2012).

Furthermore, it is axiomatic that a locality’s rules may not conflict with a state statute. Va. Code § 1-248 states,

The Constitution and laws of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth.

As stated in *King v. Arlington County*, 195 Va. 1084, 1091, 81 S.E.2d 587, 591 (1954), “It is, of course, fundamental that local ordinances must conform to and not be in conflict with the public policy of the State as embodied in its statutes. *McQuillin on Municipal Corporations*, 3d Ed., Vol. 6, § 23.07, p. 392 ff; 37 Am. Jur., *Municipal Corporations*, § 165, p. 787 ff.”

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Under Va. Code § 3.2-3502, “Any locality may establish, operate and maintain a local retail farmers market.” However, Va. Code § 3.2-5130 specifically states,

A. It is unlawful to operate a food manufacturing plant, food storage warehouse, or retail food store until it has been inspected by the Commissioner. This section shall not apply to:

3. Private homes where the resident processes and prepares candies, jams, and jellies not considered to be low-acid or acidified low-acid food products, dried fruits, dry herbs, dry seasonings, dry mixtures, coated and uncoated nuts, vinegars and flavored vinegars, popcorn, popcorn balls, cotton candy, dried pasta, dry baking mixes, roasted coffee, dried tea, cereals, trail mixes, granola, and baked goods that do not require time or temperature control after preparation if such products are: (i) sold to an individual for his own consumption and not for resale; (ii) sold at the private home or at farmers markets; (iii) not offered for sale to be used in or offered for consumption in retail food establishments; (iv) not offered for sale over the Internet or in interstate commerce; and (v) affixed with a label displaying the name, physical address, and telephone number of the person preparing the food product, the date the food product was processed, and the statement “NOT FOR RESALE - PROCESSED AND PREPARED WITHOUT STATE INSPECTION” shall be placed on the principal display panel. Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102;

4. Private homes where the resident processes and prepares pickles and other acidified vegetables that have an equilibrium pH value of 4.6 or lower if such products are (i) sold to an individual for his own consumption and not for resale; (ii) sold at the private home or at farmers markets; (iii) not offered for sale to be used in or offered for consumption in retail food establishments; (iv) not offered for sale over the Internet or in interstate commerce; (v) affixed with a label displaying the name, physical address, and telephone number of the person preparing the food product, the date the food product was processed, and the statement “NOT FOR RESALE - PROCESSED AND PREPARED WITHOUT STATE INSPECTION” shall be placed on the principal display panel; and (vi) not exceeding \$3,000 in gross sales in a calendar year. Nothing in this subdivision shall create or diminish the authority of the Commissioner under § 3.2-5102;

5. Private homes where the resident processes and prepares honey produced by his own hives, if: (i) the resident sells less than 250 gallons of honey annually; (ii) the resident does not process and sell other food products in addition to honey, except as allowed by subdivisions 3 and 4; (iii) the product complies with the other provisions of this chapter; and (iv) the product is labeled “PROCESSED AND PREPARED WITHOUT STATE INSPECTION. WARNING: Do Not Feed Honey to Infants Under One Year Old.” Nothing in this subdivision shall increase or diminish the authority of the Commissioner under § 3.2-5102;...

B. Nonprofit organizations, private homes, and retail establishments that qualify for an exception under subsection A shall be exempt from inspection and the inspection fees. Nothing in this section shall prevent the Department from inspecting any nonprofit organization, private home, or retail establishment if a consumer complaint is received....

Plainly, any person making food in a private home who meets the exemption, which includes those who sell at “farmers markets,” “shall be exempt from inspection.”

Hence, when a locality exercises its powers under Va. Code § 3.2-3502, it must do so consonant with § 3.2-5130. When the locality attempts to condition admittance to the market upon surrender of rights under § 3.2-5130, the locality is exceeding its powers under § 3.2-3502, and is acting in conflict with § 3.2-5130. ■

Norman H. Lamson has been a sole practitioner in Charlottesville continuously for 33 years where he has a general practice, including agency matters, primarily in representing small farmers caught in regulatory mazes intended primarily for large corporate food manufacturers. He holds a B.A. from the College of William and Mary and a JD from the University of Virginia School of Law.

2014 Virginia General Assembly Promises A Thrill A Minute

By Christine Solem

Come one, come all and witness the 2014 Virginia General Assembly! It promises to be a wild ride!

VICFA, of course, is putting in a proposed Constitutional Amendment, “That the people shall have the right to acquire, for their own consumption, farm produced food directly from the farmer who produced it.” Very lofty. Delegate Cline is working with us on this in the House and Senator Black in the Senate. Lobbying has already begun, and at least 75 new names have been added to our Action Alert.

You lose your rights a little at a time (they don’t want you to notice) until all of a sudden, the people wake up and say, “Hey, what has happened? We have lost so many rights!” Unfortunately, in such a predicament, you often have to get them back a little at a time as well, and it’s a fight all the way!

It is an interesting aspect of Virginia law that many farm products (raw milk for instance) are not illegal to buy; they are only illegal to sell. Our proposed Constitutional Amendment would give what intervene if the friendly farmer who is selling raw milk to them gets raided. Criminal courts you see just don’t give you the time of day unless you are illegal. But if the Constitution of Virginia says you have the right to acquire farm produced food, then you have an argument, as the Virginia Constitution is above state law, and you then have “standing” in court.

The Boneta Bill from last year, which provided a roller coaster ride of legislative excitement, will probably be back as two or maybe three different bills.

Also, not to be left out, Bernadette Barber is entertaining two other on-farm sales Bills sponsored by Delegates Pogge and Bell. You see us small farmers are everywhere, all over the state, and we’re all mad! Bernadette writes elsewhere in this Newsletter about her Bills.

I also have it on good authority that there may be a raw milk Bill lurking in the wings.

SO, don’t miss out on all the fun and games. Make sure your membership is up to date so you’re getting all the Newsletters. (*Then, too, we need the money!*) And also be sure your name is on the Action Alert list, and get your friends and neighbors to sign up too. This is going to be a hard fight! But then, as one professor I had in college said, with the greatest sarcasm, “Well, you wouldn’t want it to be *easy*, would you?!” ■

The Food Freedom Act

The Food Freedom Act is a bill that goes to the heart of the matter of freedom of food choice. Its purpose is to limit the government’s ability to interfere with private food sales. Pete Kennedy, president of Farm to Consumer Legal Defense, oversaw the entire drafting of this bill which will be introduced by Delegate Rob Bell.

The Farm Freedom Act, to be introduced by Brenda Pogge states twenty one simple words, “Farmers shall have the right to process and sell what they have produced on their own land without licensure or inspection.”, and will be its own section of code. It is very simple and clear. One does not need an attorney to interpret it. The processing and sale of what farmers have raised on their own land should be sacrosanct.

The Farm Freedom Act is farmer specific, but the Food freedom Act allows those in cities or suburbs to create foods purchased from any legal venue and process them further and sell them directly to end consumers.

On farm processing is what built this nation. We now get pink slime from the large processors, and the Chinese now own Smithfield. We cannot do any worse. It is time to free the farmers to do what they do best, bring good healthful foods to their neighbors. We need to rebuild our economies. It can be done by allowing farmers to sell raw milk to their neighbors, sell fresh sausage from a hog they raised themselves or sell a pumpkin pie from

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pumpkins they raised on their own land.

We need to get the federal government- the USDA and FDA- off the farm. We need more abattoirs. The state needs to adopt its own food safety regulations, not just unthinkingly adopt Federal regulations. Even if a steer was conceived, born, raised, slaughtered, butchered and eaten within the confines of VA (never crossed a state line) the USDA has to control the processing and sale of the meat. In order for me to get a steak to my neighbor, it must travel 800 miles. 200 up to the USDA inspected slaughterhouse and 200 miles back home, then approximately two weeks later, it gets picked up all “gift wrapped” at another 400 miles (and people wonder why local food is expensive.) I have a state inspected slaughterhouse within 7 minutes of my home, but I cannot use it if my neighbor wants to only buy 3 pounds of burger or 2 steaks from a steer that he watched grow in my fields. In order for me to sell, I must go to a USDA inspector. It is a market manipulation to deny access by small producers.

Details for both bills can be found at www.virginiafoodfreedom.org ■

VICFA Notes

November Meeting

We will not meet for the month of October

Our next meeting will be held in

Beaverdam, VA on November 10, 2013.

**** Daylight Savings Time In Effect ****

We will share in a potluck lunch at 12:00 pm, followed by our general business meeting from 1:00 - 3:00 pm. VICFA membership meetings are open to the public. Please bring a dish and a big helping of enthusiasm to share. Broaden our reach - invite a friend or neighbor to join you.

Sunday, November 10, 2013 at 12:00 pm

Hosted by Susan Verbeeck

17145 Katy Lane

Beaverdam, VA, 23015

DIRECTIONS: From the Richmond Area: 1. Start at I-95 N toward I-64 W/Charlottesville/Washington. (go 22.58 miles). Take the VA-30 W exit, EXIT 98, toward Doswell/US-1. (go 0.22 miles) Turn left onto VA-30 W/Kings Dominion Blvd. (go 0.76 miles). Turn right onto US-1. (go 1.02 miles). Turn left onto Doswell Rd. (go 3.43 miles). Turn slight right onto Old Ridge Rd. (go 4.24 miles) Turn left onto Katy Ln. (go 0.87 miles). 17145 KATY LN is on the right.

From Charlottesville Area: Merge onto I-64 E via the ramp on the left toward Richmond. (go 34.78 miles). Take the US-522 exit, EXIT 159, toward Gum Spring/Goochland. (go 0.3 miles). Turn left onto US-522/Cross County Rd. (go 2.54 miles). Turn sharp right onto Owens Creek Rd. (go 1.63 miles). Turn left onto Holly Grove Dr. (go 4.66 miles). Holly Grove Dr becomes Taylors Creek Rd. (go 2.28 miles). Turn left onto Clazemont Rd. (go 3.58 miles). Turn right onto US-33/Mountain Rd. Stay straight to go onto VA-54/W Patrick Henry Rd. (go 3.72 miles). Turn left onto Scotchtown Rd. (go 0.21 miles) Turn slight left onto Coatesville Rd. (go 3.8 miles). Turn right onto Old Ridge Rd. (go 2.4 miles) Turn right onto Katy Ln. (go 0.87 miles). 17145 KATY LN is on the right.

Last Call for the ON-FARM WORKING GROUP-Update

The last of three scheduled meetings was held last month and finalizes the talks that were brought about by the contended but popularly supported peoples, “Boneta Bill”. Public commentary and attendance to these meetings was high. The last meeting discussed four different versions of the bill which were discussed individually. What the final outcome will be remains to be seen in the 2014 General Assembly Session. Look for a more detailed accounting in the November Newsletter.

- Suzi Croes



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Remember to sign up for our VICFA ACTION ALERTS at www.vicfa.org

Current members: **Renew Your VICFA Membership**

Sign Up for VICFA's Action Alerts

JOIN NOW

(Free Updates Sent To Your Inbox)

Protect Your Food Freedoms!