



IDAHO DEPARTMENT OF HEALTH & WELFARE
DIVISION OF PUBLIC HEALTH

Cottage Food Public Meeting Transcript

H = Division of Public Health Employee

A = Meeting Attendee

H1, H2, etc = Health District Employee

May 13th – Pocatello

H: So again, I ask, does anyone have any opinions, thoughts, or suggestions? It's an open discussion at this point.

A: I have several questions. The situation where the Health Department does not have any power or control over the districts, this seems to be very strange, is this the way it is in other states?

H: No, we are very unique in how we are structured. We are the only state that is structured this way, to my knowledge. The Health Districts were established, and (Health District staff person) might be able to help me out, I want to say 1971 legislative session.

H2: 1971

H: So the Health Districts have been structured this way since 1971. That is our structure. They are accountable to their own Board of Health.

A: That's crazy!

H: The Boards of Health generally consists of; each county is represented in the Board of Health. If I misspeak, please feel free to correct me. But generally speaking, there is a county commissioner who either serves on the Board of Health or appoints someone to serve on the Board of Health. And, by Idaho law, each Health District is required to retain at least one medical practitioner at the board level.

A: So what power do you have over them? Only talking? That's crazy!

H: That's our structure.

A: Why are you up there? Why do you bother?

H: That's our structure. You are asking a good question and I don't have a good answer for it for you. We do have a memorandum of agreement with the Health Districts. There is some

accountability that way. But I do not have supervisory authority, per se over the Health Districts. Now, by and large, the Health Districts and I, collectively, do work very closely together. And the Health Districts work very closely together amongst themselves. Although it is possible that you can have some inconsistencies across the board, we don't generally ever see that happening, because there is a fair amount of peer pressure, if you will. When Southeastern Idaho Public Health does something or establishes a policy, some of the other Health Districts will look at that and say, 'yeah, okay, we can see that and maybe we'll do the same thing.'

I can also tell you that I do an audit every couple of years of the Health Districts. And the purpose of that audit is to ensure that they are compliant with State policy. And, as I find things, that are inconsistent with State policy, I certainly do let them know. And I bring up the fact that the MOA requires them to be consistent with State policy and that. We can generally get things corrected that way. I know that is not a direct answer to your question. But that is our structure.

H2: Just to follow-up. In Idaho there are seven Health Districts. That means there are seven Health Directors. We all work together and I am part of that group. Our goal is to be as consistent as we can. Patrick mentioned the audits. We take the audits seriously. If he finds something that we are doing inconsistent, we make the change to make that happen. The advantage is, in Idaho, there are only seven of us. In other states, there might be every county that has a department, maybe 40-50 different Health Departments. It is our goal to be consistent, to keep everything the same and work closely with Patrick to get there. It seems like he doesn't have oversight, but we take him seriously.

H: I will speak, just to follow up with that too. As (Health District staff) mentioned there are some states that have multiple local agencies. When I speak with my counterpart in the State of Washington, they always kind of give me a hard time, because they say, 'we have 35 public health jurisdictions in Washington.' We have seven in Idaho. You said you have other questions, do you want to continue?

A: Well, somewhat about not knowing what tomatoes used to taste like. How about the heirloom tomatoes that people are still growing? Don't they tell you what it used to be?

H: That's just my opinion when I say that. I'm expressing only my opinion there. I'm looking specifically at Roma tomatoes. It seems that Roma tomatoes are a milder flavor of tomato than some of the other tomatoes. And we believe, from the food safety perspective, we believe that that is a change in the pH over the last several years. We also believe that that is, perhaps, in response to consumer demand for a milder tasting tomato. I'm speaking in very general terms, you know.

A: I know a lot of people care a lot about tomatoes and do a lot to preserve them. Okay, back to what happened in the legislature. From the information I got, it was like a lump on the head when you came out opposing that bill. Had you communicated with any of the people you had been working with since before the legislative session began?

H: I didn't have a chance. To be very frank about this, remember I receive, ultimately, and from a State agency perspective, it is the Directors of our agencies that give us the "green light", if you will, on what we are going to do with a particular piece of legislation. The hearing on 187 took place on a Wednesday at like 8:30 in the morning. I was given my instruction Tuesday around 4:57pm that, 'you are testifying tomorrow and you are testifying in opposition.' I didn't have much of a chance.

A: Tell me then, why you couldn't support it.

H: Because we saw it as effectively creating or mandating a sub-program and we would be given no extra resources on how to do it. We were told that 'well, you can do the registration online.' That's true. That website has not been developed or built. When we asked for resources, we were told, 'you will not be given any extra money to build this website.' So, we didn't know how else to respond. We were told directly that, 'yeah, we want you to build a website, but we are not going to give you money to build that.'

A: So do we need to start with JFAC and say, 'Give them more money?'

H: I can't tell you to do that. Ethically, as a state employee, I cannot tell you to do that. I appreciate the question. Ultimately, that is up for other people to decide. I have said for years, to my agency, I would love an extra person. If I could just have one person, I think we could do a tremendous job.

A: Did they put it in the budget for you?

H: No.

A: So, we need to go to your department before we go to the legislature.

H: I've been asking the question of my department for 11 years.

H3: You're talking about putting some information together as a point source for people to go to. This is kind of a loaded question, because you can't have an exhaustive list of what's not potentially hazardous or non-TCS. Would there be some kind of list that at least gives people the idea of what is commonly used? I know when someone calls me, I'm usually calling her and she's talking to him and then they talk to you. It would be nice to go to one point.

H: Let me tell you, and I didn't want to tell you this before I got some of your opinions. But let me tell you about some of the things I am hearing around the state. Predominately, what I am hearing so far from these meeting from around the state is a combination of these first two bullet points. If we do anything with rules, the thing that is being said to me is, 'define it in rules. Put a definition out there and include that sample list, with the caveat that this list is not exhaustive, if your item does not fall in this list or regardless whether your item falls in this list, you should still contact the local Health District for clarification.' And we're not doing that to say we don't want you to make your decision, what we are saying is that we want to be able to

ensure that the food you are making does fall in this non-TCS category. So that is predominately what I am hearing so far. So with that information in hand , it appears most likely that what I would do is include that definition in the updated Idaho Food Code with information that 'if your item is not on this list, contact your local Health District or contact the Farmers Market for clarification on what the policies or rules of what that market might be. That's kind of where I am going with the information that I am getting.

H3: So this is including some of the more common things that people are asking about versus brownies and cookies, when you get into some of these things like cakes, depending on what your frosting is.

H2: That's one thing I have had people ask me, is there a list or something?' It would be nice.

H: Yeah, I know. And historically, we haven't published this list. I don't know why, we just haven't. I will say, from my perspective, one of the things that greatly benefits me is when folks come to me with a problem and say. 'We see this as a problem', because by and large, I have the disadvantage of sitting in my office in Boise and I don't know what is going on most of the time, throughout all of the areas of our State. We've had other issues that have been presented to me where it works for one region in the State but not another region of the State.

We were talking about water pollution earlier. This is way off the topic, but just as an example, someone came to me several years ago, a small-scale poultry processor, and they proposed a plan to compost the waste from their processing operation. And it looked like a good plan; it was probably going to work. It was about two miles outside of Coeur d'Alene where the water table is about two feet below the ground. So I was like, wait a minute, we've got to back up and rethink this. Because is the compost, going to effectively, going to digest itself fast enough so that the water is not polluted now, because they were proposing to bury it a couple of feet deep, and I go, 'wait a minute here, your water table is a couple of feet deep.' So that's the kind of thing when we look at the different regions we think, 'okay, I can come up with something in Boise, but it might not work for all the different regions of the State.' So I do appreciate people bringing concerns to me and saying, 'we think this is a problem and we want to see it fixed.' I mean, we are willing to fix it. I've just got to know what the problems are, sometimes. Anyway, I know that's a round-about way to go back to your question about publishing the list. And that's the kind of information that could be published on the website and also included in the rules. Some kind of a rough definition of, 'a cottage food is a food sold direct to a consumer, and examples include, and list out things like that.'

A: Don't you think it would be an advantage to having something that every cottage food producer could have that says, 'I have checked with the Health Department and what I am selling is safe.'

H: That is another thing that we are looking at. A couple of the Health Districts use what we call a low-risk exemption form. This is part of that information that I am trying to compile right now, and see what is in use by the different Health Districts. And not to single out any one particular Health District, but District 2, the Lewiston area, and Moscow, has a very good relationship

between their Farmers Market in Moscow and the Health Department. She calls her form a risk-assessment form. And the way it works is the food vendor goes initially to the Farmers Market Manager and says, 'I want to rent a booth.' The manager says, 'you have to go get this risk-assessment form from the Health District.' The Environmental Health Specialist in the Moscow area, looks at the food, looks at the proposed recipe and the proposed menu and that, and signs off on a form, and that person takes that form back to the Farmers Market. Then the Manager of the Farmers Market says, 'okay, I see you've done that. Here is your booth space.' We are absolutely willing to look at that, and that's in the works.

A: All of this cottage food business is not going through Farmers Markets. People are wanting to sell out of their homes.

H: And that's a fair point and so we would have to clarify that too. What I am talking about with the risk-assessment form is specific to the Farmers Markets.

A: Why couldn't it be given to a person who is selling out of their home?

H: It could be. It could be if they are willing to come in and present their stuff.

A: Why aren't they required to?

H: That's a different question. You would think the answer is very easy, but where we don't require anything else from these folks, we don't regulate them, per se, we get into a little bit of a sticky situation where we would require that. We can certainly request them to come in and do that form, but unless there is a rule behind it that says they absolutely must have that form, we don't have the ability to go out and legally enforce that. It's that question of legally enforceable versus legally defensible. We can certainly come up with a policy that is legally defensible and request people to come in and bring that information to us, but unless we have a rule behind it, we cannot legally enforce it.

H4: I have a relationship the same with my Farmers Market. But we have lots of people that work out of their homes that come in and fill out that exact same form and give us information about what they are doing, and they sell cookies out of their home, they sell wedding cakes out of their home, they sell all kinds of stuff out of their homes. And all I ask is, let us know who they are, and what they are selling.

A: But they are not required to do it. That is the point.

H4: And neither are the Farmers Market people, necessarily. The Farmers Market lady asks them to do it. It is not a requirement on my part; it is a requirement by the Farmers Market person.

A: So what we need is a requirement at the State level. That's what we are after.

H: You can certainly ask for that. I think the Health Districts in general are opposed to that requirement because again, it is something we've never required in the past. And I understand

the consistency, sure. I see it as a work in progress, what we are doing right now with trying to compile the information. Will it solve every question? No, ultimately it probably won't. But we are trying to take the steps in the right direction too. Other comments or questions?

A: So, if you promulgate rules, whose rules would they be and who would they affect?

H: The rules come from my office, so they would be part of the Idaho Food Code. All of the Health Districts are required to follow the Idaho Food Code. They don't have authority to write rules in addition to the Idaho Food Code. They are not supposed to relax the Food Code. There might sometimes where an individual inspector comes across a situation where he may temporarily relax something based on the circumstances that he is seeing. But that is just a professional judgment issues there. To answer your question directly, the rules do come out of my office for the Idaho Food Code and all Health Districts are required to use the Idaho Food Code.

A: When do you plan to do that?

H: With the updates to the Food Code, I am planning on bringing those in January 2016. In fact, this next line – we are accepting comments on this and the Food Code until July 24th. The reason for this, I have it in my other presentation about the Idaho Food Code that I have to work backwards from the deadline. So to meet in the January 2016 session, which usually all agency rules are heard in January. To hear those in January, our Board of Health and Welfare has to hear the rules, and the latest that they can hear them is at their November 19th meeting – that date is set in stone – so to back up a little bit, that means I have to have a draft for public comment around the first part of September. The middle of September I would have public hearings on the draft. So sometime in the middle of September I will be back out here or might just have someone from the Health District manage the meeting that way. Working backwards from that first of September date, I have to have time to incorporate the comments into the draft and compile that draft. So we have identified July 24th should give us enough time. That gives us about six weeks to be able to review the comments and include them.

And I'm just letting people know, I know there is a glare on the slide right now. There are several different ways you can submit comments. That first email goes right to my desk. The food protection email address is a general email address. We try to monitor it daily. There are sometimes that we don't necessarily get to it every day but we do try to monitor it frequently. 5938 phone number goes right to Barb's desk. 5936 goes right to mine. People can mail in comments to us as well. If you want to mail something in, we do require that 4th floor designation on there.

H3 As you are putting guidance together, I'm going to say, for the website, because that's where it sounds like it may be headed.

H: Yeah, once the guidance material is done, it will be posted on the web and also available to the Health Districts. We are trying to make it available in multiple formats.

- H3: Will there be items within that to inform individuals that as long as you are doing the sales directly to the consumer then it falls into this low-risk category. But if they decide to all of a sudden sell somewhere else or randomly have someone come and say, 'I really like your stuff. I want 20 cases of it!'
- H: Okay, let me address the first one. Yeah, we are going to specify that it is direct to consumer. The answer to the second one, I know where you are going with this, but if it is one person showing up and wanting 20 cases, we still have to look at that legally, as direct to consumer unless you can provide evidence to me that those 20 cases are being distributed further out. Without that evidence it is direct to consume sales. I'm speaking in legal terms here.
- H3: I understand that. I was wondering if there would be any kind of warning in there that, to warn people, you might be aware, and just think about it.
- H: So the way that I would propose the wording is to explain that we are talking about direct to consumer sales, any third party transactions, which include auction, consignments, wholesale transactions and things like then, then you are subject to licensure and inspection.
- A: And that is the cottage market that we are talking about?
- H: Yeah. We need to look into that a little bit more.
- A: Well, thank you.
- H: Thank you for attending. I really appreciate your attendance today. I can't do my job without input from folks like you around the State. So I really do appreciate your time today.