

Reid Magdanz

To: Mills, Cori M (LAW)
Cc: Peterson, Darwin R (GOV)
Subject: RE: Subsistence Foods in Schools

From: Mills, Cori M (LAW) [<mailto:cori.mills@alaska.gov>]
Sent: Thursday, March 26, 2015 8:01 AM
To: Reid Magdanz
Cc: Peterson, Darwin R (GOV)
Subject: RE: Subsistence Foods in Schools

Reid,

You asked whether state law allows a school, hospital, long-term care facility, residential child care facility, or senior meal program to accept donations of non-commercially caught fish and game for use in a food service program. You asked us to address at a minimum:

- A case in which the entity in question charges the students, patients, children, or seniors for the meals provided (e.g., a school lunch program that charges students, as well as accepts federal school nutrition money), and
- A case where the meals are free to the recipient but paid for by a third party (e.g., where a regional corporation pays for preparation and delivery of meals to seniors in a village).

Our response follows.

The sale of non-commercially caught fish and game (i.e., fish and game harvested under subsistence, sport, or personal use regulations) is generally prohibited under current state law. *See* AS 16.05.920(a) (“Unless permitted by AS 16.05 — AS 16.40 or by regulation adopted under AS 16.05 — AS 16.40, a person may not ... sell, offer to sell, purchase, or offer to purchase fish, game, ... or any part of fish, game”); 5 AAC 01.010(d) (“Unless otherwise specified in this chapter, it is unlawful to buy or sell subsistence-taken fish”); AS 16.05.940(29) (defining “sport fishing” as taking “for personal use, and not for sale or barter”); AS 16.05.940(26) (defining “personal use fishing” as “taking, fishing for, or possession of finfish, shellfish, or other fishery resources, by Alaska residents for personal use and not for sale or barter”); 5 AAC 75.015 (“No person may buy, sell, or barter sport-caught fish or their parts”); 5 AAC 77.001 (stating that for personal use fisheries, “since the sale of fish is not appropriate or permissible, this fishery cannot be classified as commercial”); AS 16.05.940(29) (defining “subsistence uses” as “noncommercial, customary and traditional uses ... [including] for the customary trade, barter or sharing for personal or family consumption”; state regulations allow customary trade of fish in only two areas of the state: salmon in Norton Sound and herring roe on kelp in southeast Alaska); 5 AAC 92.200(b)(8) (prohibiting the sale of most game meat).

These statutes and regulations prohibit sales of non-commercially caught fish and game by the original taker of the resource as well as later transactions between persons or entities where the non-commercially caught fish and game is exchanged for payment. In your examples, where a school received payment from students or a third party for meals that included non-commercially harvested fish or game, or a meal provider received payment from anyone for meal delivery, those exchanges likely would be considered a prohibited sale or purchase of the fish or game.

In contrast to fish or game taken under sport or personal use regulations, which generally are for the personal use of the harvester, subsistence caught fish and game may be donated if the donation or sharing is a customary

and traditional use of the fish and game. However, as explained above, state law does not allow the recipient to exchange the subsistence caught fish or game for payment.

We hope this email answers your questions. Please do not hesitate to contact us with additional questions or concerns.

Thank you.

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