

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

November 8, 2018

SUBJECT: Legality of a herd share program that distributes dairy products other than milk to herd share owners (Work Order No. 31-LS0115)

TO: Representative Geran Tarr
Attn: Diana Rhoades

FROM: Alpheus Bullard *TLAB*
Legislative Counsel

Ms. Rhoades asked whether, under a hypothetical herd share program in the state,¹ a herd share owner may distribute raw milk dairy products other than milk to other share holders. The short answer appears to be no. Note that the subject of your inquiry is not directly addressed by state statute but is governed by regulations adopted and enforced by the Department of Environmental Conservation (department).² Accordingly, while I've addressed the subject of your inquiry below, the department, as the agency charged with interpreting and enforcing the relevant regulations, is the best source for an answer to the question.

Discussion

The sale of raw milk for human consumption is prohibited by 18 AAC 32.060.³ However, 18 AAC 32.010(c) provides that the regulatory provisions of 18 AAC 32.010 -

¹ I understand a "herd share" to be a partial ownership interest in a milk-producing cow or goat purchased by a person who wishes to obtain raw milk or raw milk products. A partial ownership allows each owner to avoid application of the rule prohibiting the sale of raw milk for human consumption to any entity other than a milk processor and meet the exception that allows livestock owners to remove raw milk from the dairy for personal use. 18 AAC 32.010(c).

² The relevant regulations are adopted by the Department of Environmental Conservation under general grants of authority provided by AS 03.05.011, AS 17.20.340, and AS 44.46.020. Of course, you may introduce legislation to restrict or expand the department's authority.

³ That regulation reads:

18 AAC 32.060. Raw milk and raw milk products

18 AAC 32.060 (milk products) "do not apply to a person who owns a cow, goat, or sheep and uses the milk from the animal for that person's personal use." While the relevant regulations do not clarify how the department construes "ownership" of a cow, goat, or sheep, the exception provided by 18 AAC 32.010(c) is clearly limited to the use of milk from the animal for the owner's personal use. If one herd share owner makes cheese from an owned animal's raw milk and provides it to another herd share owner, this would not likely be construed as "use [of] the milk from the animal for *that* person's personal use." [Emphasis added.]

This interpretation is supported by a fact sheet currently provided by the State Veterinarian and available from the Department of Natural Resources describing the legal bounds of cow, goat, or sheep "shares" in Alaska.⁴ The fact sheet describes the 18 AAC 32.010(c) exception to include herd share owners, and provides that raw milk may be distributed to herd share owners, but states that

. . . a single share owner cannot produce milk products and give or sell them to other share holders or other consumers [because] [t]his would constitute a processing of a raw food into a formulated ready to eat food for distribution and the allowance of a share program for raw milk does not extend to other milk products.⁵

Except as provided in 18 AAC 32.010(c), a milk producer may not allow raw milk or a raw milk product, including cream from raw milk, to be removed from the dairy farm unless

(1) the product is being transported directly to a milk processing plant with a permit issued under 18 AAC 32.030 or by another state; or (

2) the product has been decharacterized with an approved denaturant and labeled "FOR ANIMAL FOOD NOT FOR HUMAN CONSUMPTION" in letters at least three inches high on each container; for purposes of this paragraph, "approved denaturant" means

(A) finely powdered charcoal;

(B) FD & C Blue No. 1, FD, & C Blue No. 2, Ultramarine Blue; or

(C) FD & C Green No. 3, FD & C Red. No. 3, or FD & C Red No. 40.

⁴ The fact sheet is dated May 12, 2010, but was available on November 1, 2018, at <http://dnr.alaska.gov/ag/FMM/028AppZDECRawMilkFactSheet.pdf>. Note that the relevant regulation, 18 AAC 32.010(c), was last amended in 1998.

⁵ The fact sheet goes on to provide:

The processing of dairy products (18 AAC 32.010 - 18 AAC 32.990) and other food products (18 AAC 31.010 - 18 AAC 31.990) is regulated by the State of Alaska to ensure that when given or sold as part of commerce; and intended for human consumption; the products are manufactured, sold and delivered in a safe and wholesome condition. The processing activity

Representative Geran Tarr
November 8, 2018
Page 3

If you have further questions, please do not hesitate to contact me.

TLAB:med
18-310.med

cannot be done without meeting the state food processing regulations and being issued a valid permit. *Share owners may not legally make milk products and distribute them without a valid permitted facility.*
[Emphasis added.]