

S B

384

MEMORANDUM

TO: JOE
FROM: NANCY
RE: TODAY'S MEETING

WE HAVE THREE BILLS SCHEDULED FOR TODAY, AND THE TWO BILLS HELD OVER FROM WEDNESDAY FROM THE CODE REVISION COMMISSION (SB 514-515). THE BILLS SCHEDULED FOR TODAY ARE:

SB 384 - AN ACT RELATING TO FOOD BANKS

A SIMILAR BILL WAS PASSED BY THE ¹¹12TH LEGISLATURE, AND WAS VETOED BY THE GOVERNOR BECAUSE THE STANDARD OF NEGLIGENCE WAS NOT SUFFICIENT TO OFFER PUBLIC PROTECTION FROM RETAIL GROCERS WHO MIGHT DONATE INFERIOR GOODS FOR THE TAX CREDIT. SB 384, AS DRAFTED IS NOT ADEQUATE TO ADDRESS THIS TASK.

THERE IS A COMMITTEE SUBSTITUTE IN YOUR FOLDER WHICH WILL:

LIMIT THE LIABILITY OF FOOD DONORS.

THE CARE STANDARD FOR DONORS IS GROSS NEGLIGENCE, AND FOR THE FOOD BANK, IT IS SIMPLE NEGLIGENCE.

IN THE DEFINITION SECTION, A SLAUGHTER HOUSE UNDER STATE INSPECTION HAS BEEN ADDED TO "DONOR": AND THE EXCLUSION IN SUBSECTION (B) IS LIMITED TO "PRIMARY ACTIVITY"

SB 424 - AN ACT RELATING TO RECOVERY OF MEDICAL ASSISTANCE EXPENSES; EFD.

THE BILL WILL GIVE DH&SS A STATUTORY BASIS TO COLLECT THIRD PARTY INSURANCE PAYMENTS FOR MEDICAL EXPENDITURES UNDER MEDICAID AND GRM. CURRENTLY, THE STATE MUST LITIGATE EACH CASE TO RECOVER FUNDS.

THE BILL ALSO PROVIDES THAT THE DEPARTMENT WILL REIMBURSE A RECIPIENT OF MEDICAL ASSISTANCE FOR ATTORNEY FEES INCURRED IN ESTABLISHING THIRD PARTY LIABILITY.

THE FISCAL NOTE ESTIMATES A \$250.0 REVENUE INCREASE FOR FY 85.

SB 528 - AN ACT RELATING TO THE SPOUSAL DEFENSE IN SEXUAL ASSAULT.

CURRENT ALASKA LAW DICTATES THAT IT IS AN AFFIRMATIVE DEFENSE THAT, AT THE TIME OF THE OFFENSE, THE VICTIM WAS THE SPOUSE OF THE DEFENDANT UNLESS THE SPOUSES WERE LIVING APART OR PHYSICAL INJURY WAS CAUSED TO THE VICTIM IN CASES OF RAPE AND SEXUAL ASSAULT.

CONSENT IS THE KEY ISSUE UNDER THE BILL, AS SECTION 1 STATES THAT IN CASES OF FIRST AND SECOND DEGREE SEXUAL ASSAULT IT IS NOT A DEFENSE THAT THE VICTIM WAS THE SPOUSE OF THE DEFENDANT.

SECTION 2 INTENDS TO EXEMPT CASES WHERE MINORS ARE LEGALLY MARRIED FROM PROSECUTION UNDER THE SEXUAL ASSAULT OF A MINOR STATUTES AS LONG AS THERE IS CONSENT. SENATE HESS CONSIDERED THIS ISSUE LAST YEAR IN CONJUNCTION WITH SB 74 - SEXUAL ASSAULT OF MINORS.

Alaska State Legislature

Representative Niilo Koponen

FAIRBANKS
Box 252
Fairbanks, Alaska 99707
479-6782

JUNEAU
Pouch V
Juneau, Alaska 99811
465-4992

MEMORANDUM

TO: Representative Niilo Koponen
FROM: Deborah Niedermeyer, Legislative Aide *DMN*
DATE: January 27, 1984
RE: HB 496 "An Act Relating to Foodbanks"

HB 496 is "Good Samaritan" legislation which has two main purposes:

- 1) To release donors to foodbanks from liability if the food which they, after careful inspection and with no knowledge of adulteration, contribute in good faith, nevertheless turns out to be unfit for human consumption, and
- 2) To release foodbanks themselves from liability if they, after careful inspection and with no knowledge of adulteration nevertheless give away food unfit for human consumption.

As of October 1983 Alaska was one of only three states which had not passed legislation similar to HB 496. The other two states which still hold foodbanks and donors to them liable are New Hampshire and Vermont. (Source: Second Harvest National Organization of Foodbanks)

History

In May of 1980 the Eleventh Alaska State Legislature passed HB 686, a bill releasing donors to foodbanks from civil and criminal liability. The measure was vetoed by Governor Hammond. The governor's veto message expressed concern because the bill included manufacturers, packers, and bottlers in the release from liability. He said "It could permit a manufacturer to donate food of marginal fitness and then obtain a tax credit."

Comparison

There are significant differences between HB 496 and the bill passed by the Eleventh Legislature:

- A) HB 496 specifically excludes commercial manufacturers, processors, and bottlers. The previous legislation did not.
- B) Where HB 496 describes in detail the conditions a foodbank or a donor must meet in order to be released from liability, the 1980

legislation said only that adulteration could not result from "intentional or grossly negligent conduct by the donor".

C) HB 496 releases both foodbanks and donors from liability and imposes conditions for that release on both. The vetoed bill dealt only with donors.

This session's legislation is a more specific, more tightly written bill. It would appear that it could answer Governor Hammond's concerns.

Position of the Department

The Department of Environmental Conservation has responsibility for regulating food manufacture and storage in Alaska. The Department supports this bill and has given it a zero fiscal note. Joe Cladouhos, D.E.C. Director of Environmental Quality Management feels, in fact, that HB 496 could go farther than it does and still not endanger the health or safety of Alaskans.

Mr. Cladouhos oversees D.E.C.'s regulation of food manufacture, processing, packing and storage. Though he may not be able to make it to Saturday's committee meeting, Mr. Cladouhos explained to me today that D.E.C.'s regulation of food industries in Alaska already provides safeguards that would allow manufacturers, packers and processors to be included in the HB 496 release from liability.

Possible Amendments

Foodbanks would like to be able to receive fresh meat, produce, and bakery good from major grocery stores. However, it is not clear whether a grocery store meat counter would be considered a "packer" and a grocery store bakery a "producer". To classify them as such would exclude them from the protections in HB 496, and make it more difficult for foodbanks to receive donations from these sources. Mr. Cladcuhos suggests that language specifically including retail food outlets in HB 496 would be both safe and appropriate.

A red meat slaughterhouse and packing facility will soon be built in Fairbanks. Foodbanks in Interior Alaska would prefer to have surplus meat from that facility go into their freezers rather than into the garbage. Mr. Cladouhos feels that it would be safe for such a facility, which will be under D.E.C. supervision, to be released from liability within the conditions established by HB 496.

Attachments: Senate CS for CS for HB 686 am S (5/19/80)
Gov. Hammond's veto letter (7/1/80)
"Waste Not, Want Not" (The Economist, 11/19/83)

PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

465-3603

February 6, 1984

The Honorable Mae Tischer
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Tischer:

On February 2, 1984, I met with Representative Niilo Koponen; Deborah Neidermeyer, Administrative Assistant; and Russ Josephson, Legislative Affairs Attorney. We discussed HB 496. We focused on the concern which this office had that the legislation did not change the law but merely restated law as it stands now.

Although I have not seen the wording of a sponsor substitute for this house bill, I believe that language will be offered which will limit the liability on donors of food. The care standard for food donors will be gross negligence. The care standard for food banks, however, will be negligence.

I would like to note that included among donors are retailers which would include food markets. It is also our understanding that there will be language changes which will allow slaughter houses which are inspected by the state to be included as food donors. Also a change may be made in the wording of proposed AS 17.20.347(1)(B) which will state that certain persons that work in commercial capacities will be excluded from the definition of donor only if their primary activity is being a manufacturer, packer, processor, or bottler. These language changes bring the definition closer and closer to the problem identified in the legislation in 1980 ... that commercial business will be treated the same as non-business donors.

The Honorable Mae Tischer
Representative
Re: HB 496

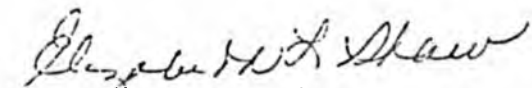
February 6, 1984
Page 2

If you have any further questions regarding this bill,
please feel free to let me know.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:



Elizabeth L. Shaw
Assistant Attorney General

ELS:bap

Enclosure

cc: Honorable Niilo Koponen
Representative

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

January 26, 1984

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
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JUNEAU, ALASKA 99811
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465-3603

JAN 1984
RECEIVED

The Honorable Mae Tischer
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Tischer:

This office has reviewed HB 496 as you requested in your January 24, 1984, letter to the Attorney General. You have asked that this office concentrate on the legal questions raised in 1980 when Governor Hammond vetoed SCS CSHB 686 am (limiting liability of donors of food). For your information I have included a copy of a letter drafted by the Department of Law which was sent to Governor Hammond regarding the 1980 bill. You will note that the "fatal flaw" was the fact that manufacturers, bottlers, and packers of food were included in the definition of donors thereby excluding them from a well established principle of law that they are liable for damages resulting from a failure to exercise that degree of care required to insure that the product that they produce is fit for use and is free from taint.

HB 496 excludes manufacturers, processors, bottlers or other similar entities from the definition of donor. In that respect this bill is different from the 1980 bill. However, HB 496 does not appear to change the law as it now exists.

Under HB 496 a donor of food will not be subject to civil or criminal liability arising from an injury or death attributable to the condition of the donated food if

1. the donor inspects the food and finds it apparently fit for human consumption;
2. the donor has no actual or constructive knowledge that there is anything wrong with the food or that it is harmful to health; and,
3. the injury or death is not a result of the negligence, recklessness, or intentional misconduct of the donor.

The Honorable Mae Tischer
Representative
Re: HB 496

January 26, 1984
Page 2

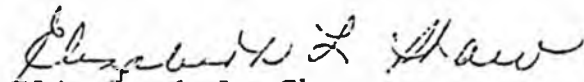
In essence the donor will be liable if he or she is negligent. ~~Such would be the case without this bill.~~ This office assumes that HB 496 is an attempt to encourage food donations by limiting the liability of food donors. In fact, however, the bill does not limit liability but merely provides that if a food donor is negligent, he or she will be liable. If he or she is not negligent, he or she will not be liable. The same analysis would hold true for the second part of the bill regarding a food bank.

If you have any further questions regarding this bill, please feel free to let me know.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By:


Elizabeth L. Shaw
Assistant Attorney General

ELS:bap

Enclosure

**PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.**

REQUEST

Bill/Resolution No.: CSHB 496(HESS)
 Title: An Act relating to food banks

Sponsor: Koponen, M.M. Miller
 Requestor: and Davis
 Date of Request: 2/10/84

FISCAL DETAIL

Agency Affected: Environmental Conservation
 Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Environmental Quality Mgmt.

EXPENDITURES/REVENUES: (Thousands of Dollars)

| | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 | FY 89 |
|------------------------|-------|-------|-------|-------|-------|-------|
| OPERATING | | | | | | |
| 100 PERSONAL SERVICES | | 0 | 0 | 0 | | |
| 200 TRAVEL | | 0 | 0 | 0 | | |
| 300 CONTRACTUAL | | 0 | 0 | 0 | | |
| 400 SUPPLIES | | 0 | 0 | 0 | | |
| 500 EQUIPMENT | | 0 | 0 | 0 | | |
| 600 LAND & STRUCTURES | | 0 | 0 | 0 | | |
| 700 GRANTS, CLAIMS | | 0 | 0 | 0 | | |
| 800 MISCELLANEOUS | | 0 | 0 | 0 | | |
| TOTAL OPERATING | | 0 | 0 | 0 | | |
| CAPITAL | | 0 | 0 | 0 | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | |
|---------------|---|---|---|--|--|
| GENERAL FUND | 0 | 0 | 0 | | |
| FEDERAL FUNDS | 0 | 0 | 0 | | |
| OTHER | 0 | 0 | 0 | | |
| TOTAL | 0 | 0 | 0 | | |

POSITIONS:

| | | | | | |
|-----------|---|---|---|--|--|
| FULL-TIME | 0 | 0 | 0 | | |
| PART-TIME | 0 | 0 | 0 | | |
| TEMPORARY | 0 | 0 | 0 | | |

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Joe Cladouhos, Director Phone: 465-2640
 Division: Environmental Quality Management Date: 2/15/84

Approved by Commissioner: Richard Al Neve Date: 2/15/84
 Agency: Environmental Conservation

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Alaska State Legislature

Representative Niilo Koponen

FAIRBANKS
Box 252
Fairbanks, Alaska 99707
479-6782

JUNEAU
Pouch V
Juneau, Alaska 99811
465-4992

MEMORANDUM

TO: Representative Niilo Koponen

FROM: Deborah Niedermeyer, Legislative Aide *DNN*

DATE: 6 February, 1984

RE: Foodstamp Program

The foodstamp program does not adequately cover the needs of Alaska's poor. An income low enough to meet foodstamp eligibility standards only barely meets other basic monthly costs. Applicants with no income at all must wait at least 5 days before receiving assistance. This memorandum details foodstamp waiting periods and eligibility requirements which force many Alaskans to turn to foodbanks for help.

Eligibility

In December, 1983 5% of Alaskans (22,000 people) were using the foodstamp program.

To be eligible for benefits, a person who lives alone must make less than \$659.00 per month. At that income level, a person receives \$10.00 per month in foodstamps. A single person with no income receives the maximum assistance level of \$112.00 in foodstamps per month.

A household of four must make no more than \$1,342 per month to receive receive the minimum of \$30.00 in foodstamp assistance. At zero monthly income, the four person household receives \$374 per month in foodstamps.

Waiting Period

There is a maximum waiting period of 30 days between application for foodstamps and determination of eligibility. The Division of Public Assistance says, however, that due to the caseload, the thirty day legal maximum waiting period is also the minimum. Public Assistance admits that in some cases applicants wait even longer to find out if they will be eligible. Foodstamps must be in the mail to an applicant within 10 days of having been found eligible. Thus, the total waiting period is at least 40 days.

Households of any size which demonstrate that the household income for the previous month was less than \$150.00 and that the household has less than \$100.00 in liquid resources, qualify for "expedited determination". A quarter of Alaska's foodstamps applicants do qualify. In this case the foodstamps must be in the mail within 5 days of application. All those who are eligible for expedited determination are supposed to get the service automatically, however the Fairbanks office of the Alaska Legal Services Corporation routinely deals with cases where this has not happened.

NEWS MINER 2/7/84

State suing to get food stamp boost

JUNEAU—Failure by the federal government to enact a food stamp differential for rural Alaskans reportedly facing grocery prices amounting to 222 percent of the national average has prompted the state to sue the U.S. Secretary of Agriculture, an official said Monday.

Dr. Robert L. Smith, commissioner of the Alaska Department of Health and Social Services, said the suit was filed Friday in U.S. District Court in Washington, D.C.

Congress amended the Food Stamp Act in December of 1981 by directing the Secretary of Agriculture to adjust the amount of food stamps available to households in Alaska and Hawaii, based on their higher food costs.

But that differential has not been implemented by the Agriculture De-

partment, which administers the Food Stamp program.

A November 1983 market basket survey by the Cooperative Extension Services showed that food costs in some rural communities were as much as 222 percent of the national average, Smith said. The lowest cost community surveyed in Alaska was Anchorage, which showed prices at 109 percent of the national average.

MY NAME IS CARL LARSEN. I AM THE GENERAL MANAGER ^{OF} ~~FOR~~ THE FOOD BANK OF ALASKA. I WOULD LIKE TO THANK YOU FOR ALLWOING ME TO TESTIFY ON BEHALF OF HOUSE BILL 496.

BILLS SIMILAR TO HB 496, OR GOOD SAMARITAN LAWS, HAVE BEEN PASSED IN ALL FIFTY STATES SAVE THREE, NEEDLESS TO SAY, ALASKA IS ONE OF THESE THREE. ALTHOUGH MOST OTHER STATES DON'T EXEMPT MANUFACTURERS IN GOOD SAMARITAN LEGISLATION, HB 496 IS ^{STILL} NECESSARY FOR SEVERAL REASONS. FIRST AND FORMOST, MANY ORGANIZATIONS RELY ON FOOD DONATIONS TO HELP STRETCH THEIR BUDGETS. THE FOOD BANK SERVES OVER THIRTY FIVE SUCH AGENCIES. WE DON'T PROVIDE ALL OF THEIR FOOD AND THERE ARE MANY AGENCIES THAT WE DONT SERVE. BUT THE ONES WE DO SERVE SAVE A SUBSTANTIAL AMOUNT OF MONEY THAT NOW GOES TOWARD DIRECT PROGRAMS THAT, WITHOUT FOOD DONATIONS, WOULD HAVE TO BE SPENT ON FOOD.

DURING 1983 WE DISTRIBUTED TO OUR AGENCIES 323,985 POUNDS OF FOOD. THIS DOES NOT COUNT THE FOOD DONATED DIRECTLY TO THESE AGENCIES THAT ~~WILL~~ SOLICIT THEIR OWN DONATIONS. FOOD DONATIONS HAVE BEEN VERY SPARCE IN SOME AREAS, THIS BILL WOULD HELP ALLEVIATE ONE PROBLEM: POTENTIAL DONORS HAVE WITH DONATING: FEAR OF LIABILITY. REMOVE THAT FEAR AND IT WOULD, IN TURN CREATE FURTHER SAVINGS FOR MANY AGENCY'S FOOD BUDGETS. BY INCREASING DONATIONS.

MANY POTENTIAL DONORS DON'T DONATE FROM THEIR FEAR OF CRIMINAL OR CIVIL LIABILITY. ALTHOUGH IN THE TWENTY SOME YEARS THE FOOD BANKING INDUSTRY HAS BEEN IN ACTION THERE HAS NOT BEEN ONE LAWSUIT RESULTING FROM DONATED PRODUCT, THE POTENTIAL HARM THAT COULD RESULT FROM SUCH A SUIT IS STAGGERING. THIS FEAR OF LIABILITY EXPRESSES ITSELF MAINLY IN REDUCED DONATIONS

OR DONATIONS OF LIMITED ITEMS. DAIRY, PROTEIN AND FROZEN ITEMS OFTEN, ALTHOUGH NOT SPOILED, GO TO WASTE ^{From} FOR FEAR OF LIABILITY. MEAT IMPROPERLY WRAPPED, VEGETABLES PARTIALLY THAWED AND REFROZEN AND MINOR FREEZER BURN, ALTHOUGH MAKING FOOD UNMARKETABLE, DO NOT DETRACT FROM THE FOODS EDIBILITY.

THIS BILL WOULD ADDRESS THIS FEAR IN TWO WAYS. ONE, THE WORDING OF THE BILL ITSELF RELEASES THE DONOR FROM LIABILITY, AND SECOND THE ACT OF DONATING TO A FOOD BANK WITH PAID, TRAINED STAFF WOULD PROVIDE ANOTHER INSPECTION POINT IN THE LINE FROM DONOR TO CONSUMER. RATHER THAN GIVING DIRECTLY TO AN AGENCY THAT SERVES PEOPLE, AN AGENCY WITH LIMITED STAFF AND RESOURCES, THAT MAY OR MAY NOT BE CAPABLE OF PROPERLY HANDLING THE QUANTITY OF FOOD DONATED, THE FOOD BANK WOULD PICKUP, SORT AND SALVAGE THE FOOD. DISPOSING OF ANY UNSUITABLE OR UNEDIBLE FOOD. THE AGENCY STAFF WOULD THEN HAVE MORE TIME TO PREPARE AND PLAN MEALS AND DO OTHER DIRECT SERVICE TO THEIR CLIENTS WITH LESS TIME SPENT SOLICITING AND SORTING DONATED PRODUCT. SAVINGS OF TIME AND MONEY FOR AGENCIES AND RELEASING A DONOR FROM LIABILITY THAT IN TURN ENABLES HIM TO GIVE EVEN MORE, ^{thus} ESCALATING ^{Agency} THOSE SAVINGS IS WHY THE LEGISLATURE SHOULD WHOLEHEARTEDLY SUPPORT HOUSE BILL 496.

thank you.

First Reading

Gleaners fight hunger, salvage food in 11 states

In produce fields and fruit groves scattered across America, hard-pressed Americans are increasingly using a concept as old as the Bible to fight hunger. It is gleaning, the salvaging of food that otherwise would rot in the fields, whether inadvertently left behind or discarded because of blemishes, bruises, or low prices.

Gleaners are gathering some of that food through privately organized efforts in at least 11 states: Arizona, California, Colorado, Florida, Kansas, Maryland, Michigan, Missouri, Oregon, Texas, and Washington. They help fill what Congress' General Accounting Office calls "an unmet need" for food assistance among those not qualifying for government food programs, and GAO says states can help increase the amount of gleaned food.

California and Oregon, for example, give state tax deductions to farmers for the value of food gleaned from their fields. First passed in 1977, California's A.B. 120 this year was extended through 1984.

"It's an incentive for churches and other groups to go out and get the produce and say to a store or grower that he can get a tax deduction," says California Assemblyman David Kelly, who sponsored the renewal. Stores and growers can claim a charitable deduction — in addition to the business expense — for the value of gleaned or discarded food. A study is underway to determine the amount of lost taxes on such food.

In addition, the Food Marketing Institute says that 34 states have passed "Good Samaritan" laws limiting the liability of food donors. Ohio's is illustrative: "No person who in good faith donates perishable food to an agency is liable in civil damages for injury, death, or loss to persons or property that arises because that perishable food . . . is not fit for human consumption," if the food was

reasonably considered safe at the time it was donated.

Tax deductions and Good Samaritan laws, the GAO said, are "positively affecting the amount of food being donated."

Gleaning takes its cue from Leviticus 19:9-10: "When you harvest the produce of your field, do not completely mow the edge of your field or gather the gleanings of your harvest . . . leave them for the poor." Today food is also gleaned from supermarket waste.

Gleaners are the needy or volunteers gathering food for others. The needy keep what they can use with the excess going to such places as food banks. "It's not a freebie program — you work for what you get," says Judi Amos, of Everett, Wash., who has labored as a gleaner among potatoes and peaches.

"The program's really helped out my budget," adds Rachel Brown, who supports three children on welfare and food stamps. After years of dependence on others, she says with pride, "I'm helping myself and helping others."

—Bill Curry



Los Angeles Times photo by Bob Greiser

GLEANING HARVEST — Rachel Brown and her nephew, Anthony Miller, stand next to boxes of pears and vegetables that were her share for a day's work of gleaning in Washington state.

In-state preference laws enacted to govern public contract awards

One sidelight of the recent recession is that several legislatures are worried about state and local government contracts being awarded to out-of-state firms. As a consequence, at least 21 legislatures have enacted in-state preference laws.

The "Buy Minnesota" law passed last May, for example, has received nationwide publicity reflecting the generic pros and cons of implementing such protectionist legislation. (These laws differ from "Buy American" laws requiring the purchase of American-made goods and services over those from foreign countries — which don't

specify whether they must come from in-state firms.)

According to the author of the Minnesota legislation, State Representative Pat Beard, the law was intended to improve in-state employment and thus increase state tax revenues.

Beard found that 13 other states exercise in-state preference laws that include a 2-15 percent break in bidding on public works jobs against out-of-state contractors. States exercising preference are Alaska, Arizona, Arkansas, Hawaii, Louisiana, Maine, Montana, New Mexico, Oklahoma, South Carolina, Washington, West

Virginia, and Wyoming. Among them, the preference law may apply only to state agencies or extend also to municipalities and school districts.

The Minnesota law includes a provision that says any contract awarded by a state agency for engineering services, erection, construction, alteration or repair of any public building or structure, or for any public work improvement, when competitive bidding is not required, must be awarded to a Minnesota resident.

"If competitive bidding is required by law," the statute continues, "the contract must be

TO: HOUSE HESS COMMITTEE
FROM: REPRESENTATIVE NIILLO KOPONEN
DATE: January 27, 1984

Waste not, want not

WASHINGTON, DC

How are America's poor to eat when their unemployment pay runs out, or when they can no longer make do on food stamps and welfare? The recession has provided an answer: a jerry-built, but enviably efficient, system of emergency food centres. This network stretches across the nation, using food that would otherwise go to waste, and shunts it quickly and in large quantities from grower or manufacturer to the various centres that feed the hungry. It is a charitable operation which employs only a few hundred people and is completely decentralised. It has grown with such speed that it has already left the agriculture department's much criticised surplus commodity programme, ensnared in red tape, far behind.

The emergency food system has its origins in the soup kitchens of the depression and before, but its growth in the past few years has been startling. Although all involved would like to consider it a temporary institution, there is a growing belief that it is here to stay and, if anything, will grow much larger.

Sixty-one regional food banks are the system's backbone. Each consists of a large warehouse equipped with freezers and usually manned by a small, paid staff supplemented by volunteers. These food banks are connected through Second Harvest, a non-profit-seeking organisation, which acts as a food broker. From its base in Phoenix, Arizona, Second Harvest approaches farmers and food manufacturers for donations and then shunts this food through three regional offices out to its members. The member food banks, either individually or through pools, pay the cost of transport, which is also sometimes donated. Once the food reaches a food bank, it is then given out to hundreds of the bank's members: churches, day centres for infants and the elderly, soup kitchens and various other organisations.

The member groups, which would previously have bought food on the open market, now support their food bank by paying a tax of between five and 12.5 cents a pound for the food they take. In this way the budget of the food bank,

usually running anywhere from \$100,000-250,000 a year, is covered. In some instances food banks are paid for by small donations. In Oklahoma, 600 people send in cheques of from \$5 to \$25 a month to keep the major local food banks going.

The entire system is private and non-profit seeking. To make sure it stays that way for tax purposes, Second Harvest certifies its member banks, inspects their operations, ensures that they charge no



No shortage of takers

more than 12.5 cents a pound in taxes, and satisfies itself that the bank members in turn are charitable organisations as defined under the tax laws.

Second Harvest began as an experimental arm of the now defunct Community Services Administration in the Carter era. Last year it handled 60m lb of food. This year the volume is expected to exceed 100m lb. Much of the food consists of products that would otherwise be thrown out by the manufacturer, not because they are bad, but because they cannot be sold for other reasons:

for example, discolouration or misspelled labels. When a Middle Eastern food broker went out of business, a trailer of macaroni with Arabic labelling was given to a food bank in New Jersey. Second Harvest dispensed 32 train carloads of a cereal which its manufacturer thought too oddly-flavoured to sell. The companies can deduct cost and half the unrealised profit from their taxes when they make such donations.

Some food banks rely heavily on farm surpluses. In northern California, where there are five large food banks, the banks collaborate to find out what crops are in surplus and to carry out exchanges between different areas. The bank in Watsonville, for example, supplies tons of artichokes and lettuce and gets, in exchange, peaches from the bank in Santa Clara and tomatoes from the bank in Sacramento. Farmers give food that would otherwise go to waste. What is left in the fields after harvest is also, in many cases, gathered in by teams of volunteer gleaners who take their pickings to the banks for sorting, cleaning and packing.

A report by a research group in Washington noted a dramatic increase in people coming to programmes served by the food banks. More than half the 181 programmes surveyed said that provision of free meals or food baskets had increased by more than half between February, 1982, and February, 1983. The Community Food Bank of New Jersey in Newark provides a good indication of the trend. Last autumn the bank was handling 10,000 lb of food a month. Now it distributes 200,000 lb a month across the state to 300 different groups which provide food to 30,000 people every day.

Some food banks in the Second Harvest system also distribute federal surplus foods under the government's programme. For the most part these consist of butter, cheese and non-fat dry milk from the government's huge surplus. But some food banks refuse to handle federal foods on the ground that it involves too much paper work. In certain states food banks say they have been deliberately denied federal food shipments, which instead have been handed out through local politicians as patronage.

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

July 1, 1980

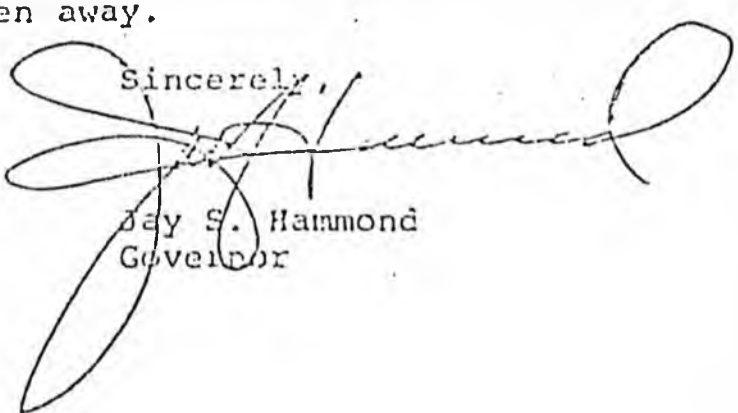
The Honorable Clem Tillion
President of the Senate
The Honorable Terry Gardiner
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President and Mr. Speaker:

The legal review of Senate Committee Substitute for Committee Substitute for House Bill 686 amended Senate has convinced me to veto the measure. While on the surface it appears worthy to make it more appealing for persons to donate food to non-profit organizations by relieving them of liability due to adulteration or misbranding of the food they are donating, the failure of the bill to distinguish between donors who are manufacturers, packers or bottlers and those who are not is a fatal flaw. It could permit a manufacturer to donate food of marginal fitness and then obtain a tax credit. People receiving donated food are entitled to the same protection as persons that might buy food from the same donor.

The class of persons who manufacture food should be held to a uniform standard of care regardless of whether the food is sold or given away.

Sincerely,



Jay S. Hammond
Governor

465-3600

June 30, 1980

The Honorable Jay S. Hammond
Governor
State of Alaska
Pouch A
Juneau, Alaska 99811

Re: SCS CSHB 626 am S
(limiting liability of
donors of food)
Our File: J-88-146-80

Dear Governor Hammond:

This office has reviewed SCS CSHB 626 am S, the principal thrust of which relieves a person donating food to a nonprofit organization of any civil or criminal liability flowing from any adulteration or misbranding of the food, unless the alteration is the result of intentional or grossly negligent conduct on the part of the donor.

"Grossly negligent conduct" is defined as "the intentional failure to perform a duty with reckless disregard of consequences that affect the life or property of another." (The legislature forgot the comma after "duty," thus changing the literal meaning, but we assume that we know what was intended.) A donee may ask the commissioner of health and social services to inspect the food to determine if it is adulterated or misbranded.

The commissioner may delegate this inspection duty, and a broad range of other enforcement and inspection duties, to the Department of Environmental Conservation.

This bill is apparently well intentioned; it is designed to encourage the donation of food to nonprofit

organizations for their use or distribution--presumably to needy persons. However, it exacts too great a price from prospective donees as a reward for the eleemosynary conduct.

The bill's failure to distinguish between donors who are manufacturers, packers, or bottlers and those who are not is, we think, a fatal flaw. It is a well-established principle of law that manufacturers, bottlers, and packers are liable for damages resulting from a failure to exercise that degree of care required to insure that the product is fit for use and is free from taint. See 32A C.J.S. Food, sections 59-60. This bill would relieve those manufacturers from liability for negligence for illness caused by unfit food when they give away rather than sell their products. While it is admirable to encourage the donation of food to needy causes, it is unwise to eliminate the ordinary standard of care and its attendant liability. [We can, for example, imagine a manufacturer whose warehouse is laden with food of marginal fitness who would like to donate it for a tax deduction.] We do not think it proper to eliminate this person's liability for negligence should one of the donees become ill from adulterated or unfit food. Poor people receiving donated food should have no less protection than people who buy food from the donor.

IS THIS
"GROSS"
NEGLIGENCE
CAN IT HAPP.

The class of persons who manufacture food should be held to a uniform standard of care regardless of whether the food is sold or given away. To do otherwise would be to encourage socially irresponsible conduct disguised as beneficent bounty. We would suggest that you veto this bill.

Sincerely,

Wilson L. Condon
Attorney General

WLC:ml:MRL

