

New York Department of Agriculture and Markets
Kosher Enforcement Bureau Hearings
November 17, 1988

Testimony of Governor Cuomo's Kosher Food Advisory Council
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On behalf of the Governor's Kosher Food Advisory Council and its two co-chiarmen, Richard Kessel, executive director of the Consumer Protection Board and Rabbi Mowshowitz of the Governor's staff, we would like to congratulate the Department and all concerned for calling these hearings to review kosher legislation and kosher enforcement. This certainly represents a positive and rapid response to comments made by participants at the Governor's first Kosher Food Marketing Conference which the Department of Agriculture and Markets carried out so well under the direction of Felise Gross.

Our kosher food advisory council is quite concerned about the effectiveness of kosher supervision and kosher enforcement in New York State. The council with the cooperation of the Consumer Protection Board recently published a booklet, "A Shopping Guide for the Kosher Consumer" to help the consumers of New York become better consumers. (Copies are available gratis from the Consumer Protection Board.) Many issues of concern to the kosher consumer in New York State are addressed in this publication. But in an area as complex as kosher foods, some assistance from the state through the prevention of consumer fraud is both necessary and appropriate. Our remarks are aimed at suggestions that we hope would improve the process. Our organization has always cooperated with Rabbi Rubin and the excellent organization that he runs, and we look forward to continuing to do so in the future. We have appreciated both his and Mr. Papa's active participation in our council.

We feel that the success of the kosher enforcement bureau has been hampered by a lack of some appropriate administrative power that has resulted in a failure of the state to pursue with due diligence those who perpetrate fraud against the kosher consumer. The following are offered as potential changes in either kosher legislation or the regulations (administration) of the Kosher Enforcement Bureau concerning enforcement that we believe would strengthen the effectiveness of kosher enforcement in New York.

A. Permit the department more discretion to develop appropriate administrative procedures to deal with problems rather than requiring that all policy issues be decided through legislation. Although the strong support of the legislature for kosher food enforcement is readily acknowledged, the speed at which matters are dealt with by this approach is too slow to be effective when problems arise.

B. The state must be prepared to provide sufficient inspection manpower and the courage to take on all violators--not just the smaller operations. Enforcement seems to fail most when the violations are most serious--again because those who perpetrate the most outrageous frauds are able to hire the best lawyers, who are clever enough to find the loopholes. They are also aware that the Attorney General's Office has been less than aggressive in assisting the kosher enforcement bureau in stopping these fraudulent activities. And without the necessary policy development authority in the Kosher Enforcement Bureau's operations, the bureau is often unable to close these loopholes until legislation is passed, often many years later.

C. Require that all products sold as kosher in this state be so attested to by an Orthodox rabbi and that such products be in keeping with Orthodox Jewish law. The absence of a requirement that an Orthodox rabbi be responsible for the supervision of kosher products has led to problems with some companies who claim to be kosher but rely on their own supervision, which is not in keeping with the spirit of the kosher laws and is an open invitation for malpractice. (Supervision by an Orthodox rabbi having a financial interest in the company being supervised is also inappropriate.)

D. In this context, it is important that the information obtained about the name of the kosher supervisor by the Kosher Enforcement Bureau not be buried in many large notebooks that basically make the information unusable, but that the information be placed on a computer and be accessible to the entire Jewish community of the State of New York by various computer search strategies so that citizens may determine who is responsible for the kosher status of a particular product and so they might also bring inconsistencies with the official record to the attention of the Bureau for further investigation. A listing of other violations and a bulletin board of items identified as currently mislabeled would strengthen the benefits of such a system. The kosher food advisory council has been pushing for this system for over two years now and sees little progress. In addition, the Department of Agriculture and Markets should be making a hard copy of the computer print-out available to synagogues and interested individuals on a subscription basis, probably quarterly.

E. Give the state the power to act in the case of misuse of hechshers by companies. Unfortunately many of the certifying agencies are not prepared to take appropriate action--particularly in cases of companies that have other products under their supervision and for which they do not have the courage or the legal resources to require a recall. (This power has been provided to the kosher enforcement effort in the State of New Jersey.)

F. The state needs to make it clear that it will enforce federal regulations that impact on kosher consumers (and other

consumers) even when the federal government is unable or unwilling to enforce these laws. The continuing controversy over the waxing of fruits and vegetables illustrates this dilemma. The Governor's Kosher Food Advisory Council has even gone so far as to submit a Citizen's Petition to the Food and Drug Administration (FDA)--but they have stonewalled this request for over a year now. A copy of the documentation of these actions is available upon request from Professor Regenstein. (A copy of this material has been submitted to Gerald Feldhamer, the head of the Kosher Enforcement Bureau's Advisory Council.)

G. The state should consider funding for development of the appropriate analytical services necessary to support kosher enforcement. (Such an opportunity with respect to detecting adulteration by grape products is currently being explored by Professor Regenstein with a company in France. More testing of salt levels in meat and poultry products is also desirable.)

H. The misuse of advertisements, i.e., mixing of kosher food and non-kosher food information in ads targeted at the Jewish population, particularly around holidays, must be addressed. Again some administrative flexibility in drawing up appropriate regulations is desired.

I. The laws requiring the separation of kosher and non-kosher food products at retail must be clarified. A great deal of the problem ought to be solved by education, rather than enforcement. Retail outlets should be encouraged to create and properly maintain kosher sections that will be a positive reflection on the supermarket and which will earn the respect of the kosher consumer.

The problem is that there is now a sufficient proliferation of kosher foods that it is not practical to put all kosher foods in one section, nor do most companies that make these products desire to have their products placed in such a section, instead of in their "normal" place; most supermarkets would not want to have the same item stocked in two places. On the other hand, there is a great deal of consumer confusion when two products with a definite "Jewish" image are marketed next to each other and one is kosher and one is non-kosher. Also the Jewish consumer expects to see meat products, in particular, separated from non-kosher meat products. Other products that might require active separation of kosher and non-kosher products include dairy and bakery products. Details of the necessary procedures to enforce the appropriate separation would be most effective if developed by the Kosher Enforcement Bureau after consultation with the food marketing industry, the food production industry, and the various rabbinical supervisors.

A standardized system of marking products for the kosher consumer as described in the Shopping Guide would help to minimize confusion. For example, the use of the letter "P" for both pareve and Passover is a continuous source of confusion.

Better identification of dairy products and products produced on dairy equipment is also needed. These would be in addition to the individual hechsher of the certifying rabbi and would appear in close proximity to such a hechsher. Kosher consumers would have to be educated to always look for such a marking on products.

J. Stores selling and handling open products (especially if they advertise that they sell kosher and non-kosher foods) that are manufactured kosher, but which are not be handled as kosher by the store, i.e., using common equipment for handling both kosher and non-kosher product should be required to post a big sign. For example, if they sell a product like kosher salami or kosher lox in the deli case, but make no effort to use separate knives or slicing machines, they should have to prominently label this information. A similar sign should be required if any other on-premise activities (i.e., bakery, fish counter, salad bar etc.) also mingles kosher and non-kosher products. (In many cases the store is using such products because of consumer taste preferences (not because it is kosher) and may not even realize that slicing the kosher salami on a regular slicer might render it non-kosher for the kosher consumer.) Again appropriate regulations should be drawn up by the Kosher Enforcement Bureau after consulting with interested parties.

Thus we believe that the state does need to readdress the operation of kosher food enforcement in New York State so that the integrity of the process is beyond question and that the consumers "need to know" rights are honored. We again thank the Department and its Kosher Enforcement Bureau for beginning this process. Governor Cuomo's Kosher Food Advisory Council looks forward to working with you on this exciting challenge.