



Farm-to-Consumer
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Minnesota: MDA Considering Criminal Prosecution of Consumer By Pete Kennedy, Esq. - December 28, 2010

On December 10 Rae Lynn Sandvig, a Bloomington raw milk and local food consumer, received a letter from the Minnesota Department of Agriculture (MDA) informing her that MDA had “scheduled an administrative meeting concerning your sales of food, your actions assisting in the sale of raw milk from your home in Bloomington, Minnesota, and the sale of food from the Traditional Foods Warehouse (TFW)...” TFW is a private buyers club located in Minneapolis.

The letter, dated December 6 goes on to state, “This administrative meeting is your opportunity to be heard before the Department decides what, if any, enforcement action it will take against you for operating a food business without a license, selling raw milk, and selling food from unapproved sources....The meeting is to allow you due process before the Department proceeds with further enforcement action. This could consist of criminal prosecution or administrative penalties.”

State statute requires that before the MDA commissioner reports any violation of the Minnesota Food Law to a city or county attorney for the institution of criminal proceedings, “the person against whom such proceeding is contemplated shall be given an opportunity to present views” before the department.

This case shows consumers that not only should they not take for granted their access to local nutrient-dense food but that future government enforcement actions could include them as well.

...the Bloomington Police Department executed a criminal search warrant at the residence of Rae Lynn and her husband Greg.

With all the enforcement actions taken the past five years by state and federal agencies against those selling and distributing locally produced foods, criminally prosecuting a consumer would be a first. This would not be the only first for Rae Lynn Sandvig. On June 10 of this year, officials from MDA, the Bloomington Environmental Health Division, and the City of Bloomington Local Board of Health as well as three plain-clothed officers from the Bloomington Police Department executed a criminal

search warrant at the residence of Rae Lynn and her husband Greg.

Even though the incident was publicized, accounts of the raid did not mention the Sandvigs by name. It was only after receiving the December 6 letter from MDA that Rae Lynn decided to go on record with the media about her residence being subjected to the search by MDA and Bloomington officials. [David Gumpert has posted a story about Rae Lynn on *Grist*, see “[Helpful raw-milk-mom-threatened with prosecution](#)”]

The Sandvigs were long-time customers of Gibbon farmer Michael Hartmann and had allowed Hartmann to use their residence as a distribution point for the pick-up of raw milk and other food products by Hartmann’s customers. When MDA suspected Hartmann of being responsible for an outbreak of foodborne illness, officials executed a criminal search warrant at the Hartmann farm on May 26. They obtained a list of drop sites for the distribution of the farm’s products that included the Sandvigs. [During the execution of the warrant, MDA embargoed thousands of dollars of food at the farm. In ruling on a petition for condemnation MDA had filed against the Hartmann farm in June, a judge ordered on December 20 that the embargoed products

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be destroyed—see “Food Freedom Under Attack in Minnesota” for background on the Hartmann case.]

John Mitterholzer, Food Standards Compliance Officer for the Dairy and Food Inspection Division of MDA, subsequently conducted interviews with neighbors of the Sandvigs. According to the application for the search warrant filed with the Hennepin County District Court, “Mr. Mitterholzer in his role as investigator for the MDA received the information regarding sale and/or distribution of the raw, unpasteurized milk and other food items including, but not limited to, custom processed meats, frozen fish, frozen vegetables, nut products and tea, from interviews and signed statements he conducted with individuals in the neighborhood who reported receiving the food products from Rae Lynn Sandvig”.

Coercing neighbors through intrusion on their privacy to give up information on other neighbors in a case like this is a hallmark of totalitarian governments.

The neighbors Mitterholzer interviewed were friends of Rae Lynn who participated in the food drop off at the Sandvig residence. As David Gumpert reported, Mitterholzer threatened the neighbors with subpoenas that would require them to testify against Rae Lynn “unless they allowed him into their homes to answer questions and look into their refrigerators, and then sign a statement listing foods they had acquired via Sandvig.” Coercing neighbors through intrusion on their privacy to give up information on other neighbors in a case like this is a hallmark of totalitarian governments.

Products mentioned in the search warrant application (and in the search warrant itself) such as frozen fish, frozen vegetables and nut products are commonly purchased in bulk throughout the country by co-ops, buyers clubs and other consumer groups to save money and then redistributed to individuals. There is usually no business motive in distributing these products to members of a buyers club; the products are made available as a service. To require licensing for these activities is an intrusion on people’s private lives that is not warranted by any public health justification.

Much of Mitterholzer’s investigation into Sandvig centered on her redistribution of meat obtained from a custom house to other people in the drop site group. Those obtaining meat from a custom house must do so by the quarter, half or whole animal and can’t resell the meat since a USDA inspector is not present when the animal is being slaughtered. If MDA is contemplating bringing charges against Sandvig, they would do better forgetting about it. USDA regulations allow for multiple buyers on a quarter, half or whole animal; all Rae Lynn was doing was to redistribute the meat to other people that had gone in on the purchase of the animal.

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Any charge that Rae Lynn assisted in the illegal sale of raw milk would bring a constitutional question before the court. Under the Minnesota State Constitution, **“any person may sell or peddle the products of the farm or garden occupied and cultivated by him without obtaining a license therefor.”** This provision covers any farm produced food that is legal to sell. The Minnesota Supreme Court has defined a peddler as a person who “travels from place to place; carries with him the wares he offers for sale;...sells them at the time he offers them; delivers them then and



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there;...makes sales to consumers and not exclusively to dealers....” With this definition, a farmer distributing the products of the farm at a customer’s residence would clearly be legal.

MDA raided another Hartmann drop site on December 6 embargoing over one hundred gallons of milk

In contrast to the Minnesota constitutional provision, Minnesota also has a statute providing that raw milk and cream can only be “occasionally secured or purchased for personal use by any consumer at the place or farm where the milk is produced.” The statute is written from the standpoint of the consumer, not the farmer. MDA claims that the statute limits the farmer to making only occasional sales on the farm; but if that was the

legislature’s intent, why didn’t it word the statute that way? With raw milk sales being legal in Minnesota, a court should rule that the constitutional provision controls over the statute.

The reason for MDA going after Rae Lynn Sandvig is its desire to put the Hartmanns out of business. The Hartmann farm is located about ninety miles from the Twin Cities, where most of the farm’s customers reside. The Sandvigs are one of a number of drop sites the Hartmanns use to distribute their products in the Twin Cities area; MDA raided another Hartmann drop site on December 6 embargoing over one hundred gallons of milk it found in Roger Hartmann’s truck at the site. If MDA is able to shut down the distribution points, it would be much more difficult for the Hartmann farm to remain in business; many of the farm’s customers could not or would not drive to the farm to pick up food. Prosecuting Sandvig could create a chilling effect on the other drop sites to make this happen.

The Sandvig case could mark a new phase in the struggle for food freedom of choice in this country. This case shows consumers that not only should they not take for granted their access to local nutrient-dense food but that future government enforcement actions could include them as well. The right to be left alone in making food choices needs to be established; the holding in the Michael Schmidt case in Canada that an informed consumer should have the right to waive the protection of the public health laws should be adopted in this country. Success in upholding the right to obtain the food of your choice from the source of your choice will ultimately rest on the level of consumer involvement.

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HYPERLINKS for PDF version:

Helpful raw-milk-drinking mom threatened with prosecution - *Grist* article by Gumpert, 20 December 2010 =

<http://www.grist.org/article/food-2010-12-19-raw-milk-mom-threatened-with-criminal-prosecution>

Food Freedom Under Attack in Minnesota – FTCLDF article by Kennedy, 28 December 2010 =

<http://www.ftclfd.org/food-freedom-under-attack-mn-kennedy.htm>

December 6 – Video clip, “Driveway Seizure of Raw Milk from Shocked Children and Parents” =

<http://www.farmtoconsumer.org/news/Driveway-Seizure-of-Raw-Milk.htm>

case in Canada – News, “Ontario Court of Justice Decision – Regina v. Schmidt” (link to document) =

<http://www.farmtoconsumer.org/news/news-19feb2010.html#1>