

Approved Mar. 1, 1989
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Representative Susan Roenbaugh at
Chairperson

9:04 a.m./~~p.m.~~ on February 22, 1989 in room 423-S of the Capitol.

All members were present ~~except~~:

Committee staff present: Norman Furse, Revisor of Statutes Office
Raney Gilliland, Legislative Research Department
Marjorie Brownlee, Committee Secretary

Conferees appearing before the committee:

PROPOSERS:

Representative Jim Lowther, co-sponsor
Richard Paul, Council Grove, owner of Hayes
House Restaurant.
Helen Judd, Council Grove, former owner of
Hays House Restaurant, member of Governor's
Council on Tourism
George Puckett, Kansas Restaurant Association
Representative Steve Wiard, in behalf of his
constituents

OPPOSERS:

Robert Thiessen, President, Jackson Ice Cream
Company, Hutchinson, Kansas
Stephen N. Paige, Director, Bureau of Food, Drug
and Lodging, Kansas Department of Health and
Environment.
Melvin Brose, Dairy Commissioner, Division of
Inspections - Dairy, State Board of Agricul-
ture.

Chairman Roenbaugh declared the hearings to be open for **House Bill 2293**, a bill concerning ice cream prepared and sold by food service establishments.

The first proponent was Representative Jim Lowther. Representative Lowther co-sponsored the bill and supports the concept permitting food service establishments to make and serve "homemade" ice cream.

The Chair recognized Richard Paul, Council Grove, Kansas, owner of the Hays House Restaurant. He stated that ice cream is nutritious and contains ingredients which are regularly included in all types of cooking ---real cream, sugar, country fresh eggs, fresh fruits, and juices. (Attachment 1) All foods prepared in their kitchens are subject to the rules of sanitation and safety as prescribed by governmental regulations.

Ms. Helen Judd, Council Grove, former owner of the Hays House Restaurant, testified in behalf of the bill. (Attachment 2) She stressed her appeal for tourism and gourmet notoriety. In her travels with her husband throughout the United States, she noted a large number of famous eateries that list "homemade" ice creams as a specialty food. She also emphasized that in preparation of pancakes, cream sauces, cream pies, and ice cream it is necessary to use the same care. "Safety is paramount in restaurants and we want to keep it that way."

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,
room 423-S, Statehouse, at 9:04 a.m./~~XXXX~~ on February 22, 19 89

The next conferee to address the Committee was George Puckett who represented the Kansas Restaurant Association. (Attachment 3) The Restaurant Association believes that "homemade" specialty ice creams should be allowed providing: (1) customary sanitation requirements are strictly adhered to as required by the Kansas Department of Health and Environment; and (2) the preparation of the ice cream mix is made in compliance with the requirements as set forth in the proposed measure.

Representative Steve Wiard spoke in favor of the proposed legislation. In respect for the wishes of many of his constituents, he requested the Committee to consider favorably the passage of the bill.

Chairman Roenbaugh called for testimony from opponents of the bill. Robert Thiessen, President of Jackson Ice Cream Company, Hutchinson, Kansas, spoke to the Committee first. (Attachment 4) His concerns centered not on wholesale competition but in the butterfat and milk solids requirements and regulations concerning "pasteurization" which govern their industry. He said their opposition to this bill lies mostly in the safety of the consumers of the product.

The Chair recognized the next conferee, Stephen N. Paige, Director, Bureau of Food, Drug, and Lodging, Kansas Department of Health and Environment. (Attachment 5) He submitted that the Kansas Department of Health and Environment recommends close adherence to the pasteurized milk ordinance as a means of providing the greatest assurance for the public's health and welfare.

Melvin Brose, Dairy Commissioner of the State Board of Agriculture, spoke of concerns with regard to dairy inspection to insure the quality and safety of dairy products in accordance with existing laws and regulations and thus insure wholesome products which are consumed by the public: and pasteurization which kills harmful pathogens. (Attachment 6)

Upon conclusion of Mr. Brose's remarks and questions by members of the Committee, the Chairman pronounced the hearings for House Bill 2293 to be closed.

The meeting was adjourned by the Chairman at 10:00 a.m.

The next meeting of the House Agriculture and Small Business Committee will be on February 27, 1989, at 9:00 a.m. in Room 423-S.

Feb. 22, 1984

Rep. Rocrbaugh, chairperson, and members of the Agriculture and Small Business Committee:

I am here to testify in regard to HB 2293.

People are coming to Kansas from all 50 states and in the Hays Hall we have a guest book we have signatures from over 20 countries, also.

We find their image of Kansas is warm, friendly, wholesome - the wheel state

cattle country

a dairy state - the dairy industry now has a big promotion going for "real" cheese, "real" whipping cream.

People expect good bread
five KC strips
skillet fried chicken
and they loved our smooth, creamy
homemade ice cream

Our ice cream was so popular:

1. groups often started planning their menus with one of our varieties of ice cream
2. the day after we stopped serving it 40 customers asked for homemade ice cream

Ice cream is nutritious and delicious. The ingredients are all those used daily in our regular cooking: real cream, sugar, country fresh eggs, fresh fruits and juices, flavorings

Ag SB
203-22-89

ATTACHMENT 1

Kansas restaurants are inspected regularly for cleanliness and safe storage and preparation. When we made ice cream our custard mix was always cooked according to the high temperature short time standard.

Fast foods and quick foods are here to stay but the trend even there is to up-grade buildings and menus.

Restaurants that choose to start with fresh ingredients and use labor intensive recipes to produce special dishes should be allowed to do so as long as they do so safely.

Ice cream can be made the delicious old-fashioned way safely and restaurants in Kansas should be permitted to do so, if they choose.

We want to be able to offer the best products we can - to make the Hays House a place to return to - Kansas a destination for good food.

Testimony delivered to Agriculture and Small Business
Committee Feb. 22, 1987

Rick Paul
Owner Hays House Restaurant

Feb. 22, 1988

Rep. Roenbaugh, chairperson, and members of the
Agriculture and Small Business Committee.

I am here to testify regarding HB 2293.

Charlie and I have been involved in trying to
promote Tourism in Kansas - to Kansans and tourists
from all over the U.S. and other countries for the past
15 years when we owned and operated the Haystack,
a restaurant in Council Grove.

On the first of March in 1988 we signed a
contract to sell the Haystack to our chef, Rick Paul,
and his wife. We continue to work for them
and for Tourism in Council Grove and Kansas.

We have done a lot of traveling and wherever
we go we always ask directions to the best food
in town.

We have eaten at the Culinary Institute of
America in Hyde Park, Johnson and Wales Culinary
School restaurant in Rhode Island, the California
Culinary Institute in San Francisco, Oregon's
Culinary Institute in Portland.

And at the Four Seasons and Windows of
the World in N.Y. City, Spagos in L.A., the Adolphus
in Dallas, Stanford Court in S.F. and many of
the fine restaurants in K.C.

Ag & Sm. B.
02-22-89

ATTACHMENT 2

I tell you. It's because our goal in operating the Hays House, was to serve the best foods representative of Kansas.

We make rolls, muffins, breads from scratch, a grass beef for 28 days before cutting our steaks, fry chicken in cast iron skillets, squeeze fresh lemons to make lemonade.

We want to be able to make ice cream from scratch.

Every good meal served in Kansas helps our whole state. We want people to look forward to eating in Kansas, for out of states to say "Let's drive on into Kansas for that good cooking".

15 years ago when I came back to Kansas I could count on one hand the "good" restaurants known over the state. Those weren't the only good places to eat, they were the known ones. People were not as interested in talking about food and restaurants as they are now, even though we were called "the bread basket" and were one of the chief beef producers in the U.S.

About 1 1/2 years ago we got in touch with owners of historic buildings having restaurants and together put out a brochure. All of these brochures are out of our garage now and it is time to do another. But one has closed.

One is now in the hands of a 'rube'.
Restaurant business is hard. Especially
independents.

We feel that to succeed we must serve
the best products we can. We want to serve
our own ice cream, made from real cream.
We will be just as careful with the ingredients
as we are when we make pancakes, cream sauces
and cream pies. We will use the same
thermometers we use to test milk for making
bread.

Safety is paramount in restaurants and
we want to keep it that way.

We have brought a few of our cook books
to show some of the fine restaurants in other
states where homemade ice cream is served.

Testimony given by Helen Judd



KANSAS RESTAURANT ASSOCIATION

359 SOUTH HYDRAULIC • P.O. BOX 235 • WICHITA, KANSAS 67201 • (316) 267-8383

MY NAME IS GEORGE PUCKETT, AND I REPRESENT THE KANSAS RESTAURANT ASSOCIATION, A STATEWIDE GROUP OF APPROXIMATELY 950 KANSAS FOODSERVICE AND HOSPITALITY INDUSTRY BUSINESSES.

THE KANSAS RESTAURANT ASSOCIATION SUPPORTS HB 2293, AND BELIEVES THAT HOMEMADE SPECIALTY ICE CREAMS SHOULD BE ALLOWED TO BE PREPARED IN KANSAS FOODSERVICE OPERATIONS, PROVIDING: #1) THAT CUSTOMARY SANITATION REQUIREMENTS ARE STRICTLY ADHERED TO AS REQUIRED BY THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT; AND, #2) THE PREPARATION OF THE ICE CREAM MIX IS MADE IN COMPLIANCE WITH THE REQUIREMENTS AS SET FORTH IN THE PROPOSED MEASURE.

A RESTAURATEUR RECENTLY CONTACTED THE KRA HEADQUARTERS IN SUPPORT OF HB 2293 AND STATED, "WHY SHOULDN'T I BE ALLOWED TO MAKE MY OWN SPECIALTY ICE CREAM, AS LONG AS I ADHERE TO THE STRICT SANITATION AND HEALTH REQUIREMENTS SET FORTH IN THIS MEASURE?... AFTER ALL, NO ONE QUESTIONS MY ABILITY TO PREPARE OTHER SENSITIVE DISHES SUCH AS COLE SLAW,... COMBINING CABBAGE WITH MAYONNAISE AND OTHER DELICATE INGREDIENTS REQUIRING EXTRA CARE TO ASSURE QUALITY, FRESHNESS, AND SAFETY FOR MY CUSTOMERS." I PERSONALLY BELIEVE THIS OPERATOR HAD A VALID POINT.

THE KANSAS RESTAURANT ASSOCIATION REQUESTS THE COMMITTEE'S SUPPORT OF HB 2293. KRA CONTENDS THAT KANSAS FOODSERVICE OPERATIONS, WHO SO DESIRE, SHOULD BE GIVEN THE ADDITIONAL MARKETING OPPORTUNITY OF PROMOTING KANSAS TOURISM, AND HOPEFULLY INCREASING BUSINESS, THROUGH PREPARATION OF HOMEMADE SPECIALTY ICE CREAMS. I REITERATE THAT KRA SUPPORTS THIS MEASURE PROVIDING THE REQUIRED PREPARATION AND SANITATION REQUIREMENTS AS SET FORTH IN HB 2293 ARE STRICTLY ENFORCED.

"...Promoting Excellence in the Foodservice and Hospitality Industry Since 1933"

*Ag. SM
02-22-89*

My name is Robert Thiessen. I am President of Jackson Ice Cream Co., Hutchinson, Kansas.

I also serve as a member of the Milk Advisory Committee as established by the Kansas legislature.

I would like to go on record as also saying that I'm not in the ice cream mix wholesale business.

My concern and opposition to this bill is with paragraph d of Section I.

We have legal definition under the state and federal laws that specifically define some of the terminology used in this paragraph.

The first is "ice cream." Our definition is a minimum of 10% Butterfat and 10% Milk Solids Non Fat. Most soft serve mixes and mix for use in places similar to what this bill proposes are ice milk. These establishments may find it difficult to use an "ice cream" mix in this manner. It will also be an economic burden to the regulatory agency to make sure that these "ice creams" contain the proper butterfat and solids content. You may need to raise the permit fees to allow for this testing. In this day, the idea of raising fees is generally not acceptable.

The second and most important is the word "pasteurized." Our regulations have numerous pages written on this process, defining it and telling the regulatory people how to insure that it's accomplished. I find it difficult to believe that we are considering moving backwards in our technology to the pre 1950's on this matter. The health of the customers, you and me, are at stake, as well as, the reputation of the ice cream industry.

Ag 2 SB
02-22-89

The Food & Drug administration has spent millions of dollars in the last two years to make sure that dairy products were properly pasteurized since the outbreaks in numerous parts of the country of an illness believed traceable to listeria in dairy products. Listeria bacteria can be killed by proper pasteurization, not simply heating a "mixture".

It would also be economically unfair to my colleagues in this business to allow others to "pasteurize" by this method when they invest thousands of dollars as required by the Food & Drug.

I hope that you will first and foremost consider the health dangers this bill could cause and will not allow that to happen.

If I may be of further help to any of you, I would be glad to answer any of your questions today or later.

Thank you for your time and consideration.

Robert Thiessen
Jackson Ice Cream Co., Inc.

STATE OF KANSAS



DEPARTMENT OF HEALTH AND ENVIRONMENT

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Mike Hayden, *Governor*

Stanley C. Grant, Ph.D., *Secretary*

Gary K. Hulett, Ph.D., *Under Secretary*

TESTIMONY PRESENTED TO
HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

BY

THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

House Bill 2293

House Bill 2293 amends K.S.A. 65-720(a) pertaining to the manufacture of ice cream. This law is enforced by the Kansas State Board of Agriculture. House Bill 2293 would allow the manufacture of ice cream from a co-mingling of pasteurized ingredients rather than from a mix pasteurized as a whole. Such mixes may contain raw eggs that can be a source of pathogenic bacteria.

The KDHE recommends close adherence to the Pasteurized Milk Ordinance as a means of providing the greatest assurance for the public's health.

Presented by

Stephen N. Paige, Director
Bureau of Food, Drug and Lodging
February 22, 1989

*Ag SB
02-22-89*

HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

Good morning Madame Chairperson and members of the House Committee on Agriculture and Small Business. My name is Melvin Brose, Dairy Commissioner of the Board of Agriculture.

There are a couple of concerns that I wish to raise relative to H.B. 2293.

One of the primary objectives in dairy inspection is to insure the quality and safety of dairy products in accordance with existing laws and regulations and thus insure a wholesome product is consumed by the public.

Kansas adopted by reference the Code of Federal Register which requires the entire mix to be pasteurized prior to freezing. A survey of surrounding states shows that all of these states have also adopted this regulation. I believe that the requirement that all ingredients be pasteurized at the last possible point in the manufacturing process aids in maintaining the safety of the final product by avoiding the possibility of mishandling, abuse or cross contamination of the product.

Pasteurization is a process of heating a product to a defined temperature and for a prescribed time which kills harmful pathogens. The bill, as written, allows for the mix to be cooked as apposed to pasteurization. It does state that all dairy products used in the mixture be pasteurized. Eggs are not considered a dairy product but eggs are a potential source of salmonella.

Ag. SB
02-22-87

ATTACHMENT 6

If the mixture is cooked, what does that entail? A definition of cooked would be necessary.

Under the present laws for Kansas a restaurant that serves a softserve ice cream or milk are required to purchase a \$40.00 license. Dairy inspectors inspect the restaurant 2 - 4 times per year for bacteria and coliform standards. This law would classify the restaurants that formulate their own mix as a manufacturer, requiring a \$70.00 license fee and a sampling of product once a month. If a number of restaurants license as manufacturers this would increase the work load of the Dairy Inspection Department.

As a manufacturer, other regulations are required to be followed; equipment standards and building standards, which are in our present laws.

For health reasons. the Board of Agriculture feels that the requirements to pasteurize the final mix and have the product maintained under conditions that best serve the public concerns.

While we acknowledge the consumers perception of "home made ice cream" as being superior, we wish to maintain a safe uniform, quality product and protect the health of the consumer.

Thank you. We will attempt to answer any questions that you may have.