

MINUTES OF THE SENATE AGRICULTURE COMMITTEE

The meeting was called to order by Chairman Derek Schmidt at 8:30 a.m. on January 20, 2004 in Room 423-S of the Capitol.

All members were present.

Committee staff present:

Raney Gilliland, Legislative Research  
Amy VanHouse, Legislative Research  
Lisa Montgomery, Office of the Revisor of Statutes  
Robert Myers, Committee Secretary

Conferees appearing before the committee:

Justin Holstin - Propane Marketers Association of Kansas  
Amy VanHouse - Legislative Research Department  
Stephen Paige - former Kansas Department of Health & Environment employee  
Joe Connor - President, Kansas Association of Local Health Departments  
Sally Finney - Executive Director, Kansas Public Health Association, Inc.

Others attending:

See Attached List.

Justin Holstin appeared before the committee in order to request the introduction of a bill that would create the Kansas propane safety and registration act.

Senator Taddiken moved to introduce a bill that would create the Kansas propane safety and registration act as requested by Justin Holstin, seconded by Senator Umbarger. The motion carried.

Amy VanHouse presented to the committee a briefing on the differences between the approaches of **SB 296** and **ERO 32** with regard to the consolidation of food safety programs in Kansas. The main difference that she noted between the two was that the ERO does not call for the transfer of food service establishment regulation from KDHE, whereas the bill asks for the transfer of all food safety programs from KDHE to a newly-named Department of Agriculture and Food Safety. Another difference that she noted between the two was that the ERO calls for an effective date of October 1, 2004, whereas the bill formally creates a working group that would report back to the legislature by February 1, 2005, having composed an outline of specific duties. Furthermore, per the bill, the transfer of food safety programs would take place on July 1, 2005 (i.e., the beginning of fiscal year 2006). She concluded with a series of conclusions and recommendations made by the Special Committee on Agriculture (Attachment 1).

Stephen Paige expressed opposition to **ERO 32** by way of emphasizing the need to base food safety decisions on consumer health as opposed to economic interests. He stated that food safety programs should be housed solely in KDHE. His suggested alternative to the ERO was the establishment of a memorandum of understanding between KDHE and KDA (Attachment 2). He further mentioned the presence of strained communication between KDHE and KDA, as well as shortcomings in the food safety programs under KDA. He declined to state any specific examples of such claimed shortcomings.

Joe Connor expressed opposition to **ERO 32**, on behalf of KALHD (Kansas Association of Local Health Departments), by supporting the consolidation of food safety programs within KDHE, a department whose emphasis is on public health (Attachment 3). He further mentioned the possibility for poor communication, and thus poor response to local food safety issues, upon requiring the food safety programs of KDHE and KDA to coordinate.

Sally Finney testified before the committee in opposition to **ERO 32**. She noted the need to maintain the focus of KDA on production, while aligning food safety with KDHE, an agency whose focus is on public health (Attachment 4). She further stated the following as suggested options according to KPHA (Kansas Public Health Association):

- 1) Consolidate food safety programs under KDHE
- 2) Consolidate food safety programs under a separate agency with a public health mission
- 3) Remove the focus on production from the mission statement of KDA

The next meeting is scheduled for Wednesday, January 21, 2004.

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 1-20-2004

NAME	REPRESENTING
Carolyn Muddendong	Ks St No Assn
Doug Wardham	KGFA/KARA
Joe Connor	KS Assn of Local Health Depts
Susan King	Kdhe
Lesia Roberts	KDHE
Doug Farnore	KDHE
Sally Tring	Ks. Public Health Assn.
Steve Fargie	Self
Jim Sheehan	Kansas Food Reulom Assn.
Twila Drybread	DOB
Dennis Kriesel	Kansas Association of Counties
Sarah Bowker	Intern
GREG A. Foley	KDA
Carole Jordan	KDA
Diane Linn	KS Coop Council
Bessie Kaufman	Ks Coop Council
Vickilyn Helser	Budget
Pat Hubbell	Tyson
Jodd Johnson	KLA

# SENATE AGRICULTURE COMMITTEE GUEST LIST

DATE: 1.20.04

NAME	REPRESENTING
BIZAD HARRELSON	KFB
Jerry Dudley	KDOC - ag mkt. Div.
Charlie Keller	Hein Law Firm
Cynthia Blackack	KDHE

# Special Committee on Agriculture

## CONSOLIDATION OF FOOD SAFETY FUNCTIONS

### CONCLUSIONS AND RECOMMENDATIONS

The following general recommendations were made by the Special Committee on Agriculture.

- Divide food safety inspections functions into the three areas recommended by Legislative Post Audit—dairy inspections; food processing inspections; and retail sales inspections.
- The issue of some areas being inspected too many times and some not being inspected at all needs to be addressed.
- Juice processing facilities should be inspected just as milk processing facilities.
- Conflicts between industry and regulators should be addressed by having a mediator.
- Reorganization and transfer of programs should be a year or more away so that needed changes can be made.
- Assuming that the transfer of programs is made to the Department of Agriculture, communication with the Bureau of Epidemiology and Disease Prevention is imperative.
- The agency name should be changed to the Department of Agriculture and Food Safety.
- The Legislature should make certain that all food processing plants are completely inspected (some are no longer fully inspected due to a statutory change in 2002).

The members of the Special Committee on Agriculture recommend that legislation be introduced, in the Senate first, with the following components:

- The bill would transfer food safety programs from the Kansas Department of Health and Environment (KDHE) to a newly-named Department of Agriculture and Food Safety.
- The bill would formally create a working group composed of the Secretary of Health and Environment; the Secretary of Agriculture; industry officials; Kansas State University officials; Legislative representatives; the Livestock Commissioner; Federal Food and Drug Administration officials; Food Safety Inspection Service (USDA) officials; representatives of the Kansas Restaurant and Hospitality Association; representatives of the Kansas Public Health Association; local health departments; and others as deemed necessary by the Secretaries of Health and Environment and Agriculture. The working group would review a variety of issues relating to food safety and report to the Legislature by February 1, 2005.
- The third component of the bill would make necessary statutory changes to bring all "food processing plants" back under state licensing and inspection. This action would correct 2002 legislative action.
- The final major component of the bill would require communication between the newly-named Department of Agriculture and Food Safety and the Bureau of Epidemiology and Disease Prevention in KDHE with regard to food safety issues. The Committee believes this ongoing communication is imperative.

**Proposed Legislation:** The Committee recommends the introduction of one bill on this topic.

## BACKGROUND

The formal charge to the Special Committee on Agriculture was to:

Review and study the possibility of consolidation of the food safety functions of the Department of Health and Environment and the Department of Agriculture. The study was to include the possibility of improving food safety (particularly in light of homeland security concerns) as well as the elimination of any duplication of services. (A Legislative Post Audit study has been authorized. The Special Agriculture Committee will meet following receipt of the audit).

This study was requested by Senator Derek Schmidt, the Chairperson of the Senate Agriculture Committee. The issue of possible consolidation of food safety functions among agencies of the state was raised in Senate Agriculture Committee during the 2003 Session when hearings were held on 2003 SB 124. The Senate Committee on Agriculture did remove the provisions of the bill which had proposed to transfer food safety programs from the Department of Education (DOE) to the Department of Agriculture (KDA). Provisions remaining included those proposing to transfer food safety programs from the Kansas Department of Health and Environment (KDHE) to KDA. The Senate Agriculture Committee did vote to ask for an interim study on the issue. In addition, the Chairperson of the Committee asked the Legislative Division of Post Audit to study the feasibility of consolidating food safety programs at the state level.

The Special Committee on Agriculture did not meet until Post Audit had completed its study.

### Post Audit Report

Based upon the request of the Chairperson of the Senate Agriculture Committee and the action of the Legislative Post Audit Committee, staff of Post Audit developed a scope

statement for the audit it was to conduct.

The scope statement reiterates the fact that three different State agencies provide food service inspection programs in Kansas—the Departments of Health and Environment, Education, and Agriculture. The Department of Health and Environment (KDHE) inspects restaurants, grocery stores, licensed childcare facilities, health facilities, school kitchens, and other local agencies. The Department of Education has the School Food Service Program, which administers school food programs across the state. The KDA inspects meat and poultry processing plants, dairy operations (including counter freezer operations), and eggs to ensure they are properly graded and stored at appropriate temperatures. The KDA also checks labeling and commercial net weights on food products.

Also included in the scope statement is an observation that legislators have questioned whether these food safety programs could be performed in a more cost effective manner if they were the responsibility of a single agency. The scope statement also indicates that similar concerns have been raised in several other states and at the federal level in recent years, especially since the events of September 11, 2001. In addition, the scope statement restates the fact that 2003 SB 124 was introduced in an effort to conserve scarce resources and improve food safety. The bill, in its original form, would have combined the programs from KDHE and DOE into one at KDA. The primary focus of the audit request was to consider the potential merger of the food safety programs of KDHE with those of KDA.

The Post Audit performance audit of this topic proposed to answer the following question:

Could food service inspection programs in Kansas be consolidated to streamline operations, save money, and improve food safety?

To answer this question, staff of Post Audit looked at the statutory requirements imposed on KDA and KDHE to inspect food services. As part of its analysis, Post Audit staff considered such things as the types of businesses or facilities each agency inspects, whether some of those same businesses or facilities are inspected by both agencies, how similar the inspection protocols are for each type of inspection, how many inspectors are involved in each type of inspection, how long each type of inspection takes, and whether drive time, staffing, and administrative costs could be reduced by combining some inspections or by cross-training staff. In addition, Post Audit staff worked with agency officials to try to develop reasonable estimates of the additional costs of merging the programs, such as the extent and cost of cross-training that would be required. Staff of Post Audit also looked at what steps other states have taken to consolidate their food service inspection processes, and through interviews with officials from those states, attempted to determine how well consolidated inspections have worked. Further, Post Audit interviewed or surveyed Kansas inspectors and agency officials to get their opinions about the potential advantages and disadvantages of combining inspection functions. Finally, Post Audit indicated it would look at the relationship between Kansas food safety agencies and federal programs performing similar functions, and review recent studies recommending consolidation of food safety programs at the federal level.

After completing its review, the staff of Post Audit developed the following recommendations for Kansas legislators to consider. The following is an excerpt from the Post Audit Report.

- To ensure that Kansas' food safety inspection resources are used in the most efficient manner, the Legislature should pass Senate Bill 124 or a bill similar to it, transferring responsibility for all food safety-related inspections into a single agency, whether that agency is the De-

partment of Agriculture or the Kansas Department of Health and Environment (KDHE).

- If a decision is made to place all programs within the Department of Agriculture, that Department should establish a system for regularly communicating with KDHE's Bureau of Epidemiology and Disease Prevention to ensure that this Bureau has the information it needs to assist with food-borne illness outbreak investigations.
- To better promote food safety within the State's available resources, the food safety inspection program should become risk-based, whether or not it is combined into a single agency. To accomplish this, the agencies responsible for food safety-related inspections should convene a task force of representatives from the Departments of Agriculture, Animal Health, Health and Environment, Kansas State University, private industry, and federal agencies. This task force should work together to develop comprehensive inspection frequencies that are based on food safety health risks, and should develop and propose the regulatory and statutory changes needed to accomplish those frequencies. In determining these frequencies, the task force should develop a hierarchy of health risks posed by food-related businesses, regardless of which regulatory agency or program currently is responsible for regulating those businesses, and should restructure inspection frequencies and staff inspection duties as needed to implement those frequencies. In addition, the compliance history of businesses should be used as a factor in determining inspection frequencies.
- If the State's food-safety inspection programs are not combined in one agency, the Departments of Agriculture and Health and Environment should do the following:

- develop and implement plans on how they will communicate and coordinate information with each other. Such plans should include strategies on routinely sharing records to help identify food-related businesses that should be regulated. In addition, the plans should include steps that each agency will take to coordinate their efforts when both have jurisdictional authority in a situation.
- enter into a Memorandum of Understanding or seek legislation as needed to realign inspection duties so that responsibilities within each broad functional area — dairy inspections, food processing inspections, and retail establishment inspections — are not split among two different agencies. To accomplish this, the following actions should be taken:
  - transfer responsibility and resources for inspecting juice processing/bottling plant inspections from KDHE to the Department of Agriculture;
  - transfer responsibility and resources for inspecting food processing plants and food warehouses from KDHE to the Department of Agriculture;
  - transfer responsibility and resources for inspecting eggs and dairy products in grocery stores from the Department of Agriculture to KDHE.
- to eliminate the need for two or more food safety inspectors to visit one facility, inspection staff should be cross-trained and should be assigned to perform all the regular inspections for the facilities they are assigned to cover.
- to promote better food safety and ensure that legislative intent is followed, KDHE should work with the Department of Agriculture to make certain that adequate and complete

inspections are conducted at the 42 food manufacturers both agencies used to inspect—but that KDHE quit inspecting—after the 2002 Legislature changed the licensing laws to eliminate duplicate licensing fees. The Department of Agriculture still inspects these same food manufacturers, but only those areas that involve meat processing. It is our understanding that the Legislature intended for these facilities to be inspected to the same degree they were before the licensing change.

- To ensure they have the information they need to manage the Food Protection Program properly, KDHE officials should develop an efficient system for extracting this information from the agency's licensing and enforcement databases. This is a repeat recommendation from the April 2002 performance audit, *Regulation of Food Service Establishments: Determining Whether the Department of Health and Environment is Providing Sufficient Regulatory Oversight*. The Food Protection Program continues to rely on inefficient methods—for example hand-counting—to gather some of the data it needs to manage the Program.

#### COMMITTEE ACTIVITIES

The Special Committee on Agriculture was granted one day to consider the issue of consolidating food safety programs from KDHE and KDA. The Committee began its consideration by hearing a background on the issue from staff. Staff also reviewed the contents of 2003 SB 124 since not all members of the interim Committee had been present for the hearings on the bill during the 2003 Legislative Session.

The Committee also heard a thorough review of the Legislative Post Audit Report by a staff member of Legislative Post Audit. This conferee noted that there were several factors which suggest that Kansas' current

food safety system needs to be improved. Inefficiencies outlined for the members of the Committee included:

- Inspectors from more than one agency or program inspect the same business;
- Inspection territories currently overlap even when inspectors aren't going to the same business; and
- Some types of establishments are inspected more often than seems necessary causing inefficient use of inspection staff.

Post Audit staff also noted that coordination can be improved in situations where regulatory authority overlaps:

- KDHE and KDA do not routinely share records;
- Overlapping regulator authority can delay response times; and
- Many inspectors say coordination should be improved.

The members of the Committee learned that according to the findings by Post Audit, Kansas food safety inspection requirements are sometimes inconsistent. Examples included:

- Some high-risk establishments are not required to be inspected regularly;
- Kansas laws require similar businesses to be regulated differently; and
- A 2002 change to the licensing laws has resulted in portions of several large food manufacturers being uninspected.

The Committee members heard from Post Audit that a single agency housing all programs could provide the incentive to regulate similar food businesses and processes more

consistently and that communication should improve because information could be shared more easily. It was noted that Kansas could realize cost savings and improvement in food safety if inspections were combined and changed to a risk-based approach. In addition, it was suggested that inspection activities could be grouped into three functional areas: dairy inspection, food processing inspection and retail sales inspections. Under this scenario, inspectors assigned to each group would be cross-trained to handle all types of inspections within that group.

Also appearing before the Committee was the Director of the Bureau of Consumer Health, KDHE, who gave a review of food safety programs administered by the agency. The members of the Committee heard about the risk-assessment codes used by KDHE in its various inspections across the state. The conferee noted that the risk-assessment codes that KDHE are using are not regulatory codes, only internal guidelines. The Committee learned that interaction among USDA, KDA and Animal Health Department occurs mainly in regard to bio-terrorism. The members of the Committee heard that the agency is looking at how it can do a better job in the future and that food safety and security are both being addressed in the inspection system.

In response to a Committee inquiry about inspections conducted at schools, the members of the Committee were told in a communication from the agency after the Committee meeting that schools are licensed food service establishments and are under the regulatory authority of KDHE. Of the 1,454 schools licensed, 908 are full-service kitchens and 946 are satellite sites. The correspondence indicated that there were 1,305 inspections conducted in fiscal year 2002 and 1,699 in fiscal year 2003.

The KDHE conferee stated that the agency differs on some of the recommendations made by the Post Audit Committee. In addition, the Committee was told that the Governor's Office has not taken a position or



stand on the issue of consolidation of food safety programs.

The Secretary and Assistant Secretary of Agriculture reviewed food safety programs administered by the KDA. The Committee learned that KDA is working on applying regulations consistently across the State. The Secretary also indicated that there may be a problem with the issue of grouping all proposed inspections, since it might jeopardize some Federal funds. The Secretary told the Committee on the issue of cross-training of inspectors, that it would be possible.

A representative of the US Food and Drug Administration (USFDA) testified that the agency can help states with their food safety programs. The conferee noted that the USFDA does not have a position on the issue from which department the Kansas programs should be operated.

Representatives of the Kansas Farm Bureau, the Kansas Public Health Association (KPHA), the Kansas Restaurant and Hospitality Association, and the Kansas Food Dealers appeared before the Committee.

The Executive Director of the Kansas Public Health Association (KPHA), testified in opposition to the consolidation of food safety inspections from KDHE to KDA because members of the organization thought it would be a conflict of interest and that food safety is a core public health function.

A representative of the Kansas Restaurant and Hospitality Association stated that members of the Association believed it was inappropriate to advise who should be the industry regulator and that the organization does not have any position on the transfer of programs from one department to another. The Executive Director of the Kansas Food Dealers Association testified that members of the Association would appreciate anything that could be done that would lower the cost to the membership and to the State for inspections.

## CONCLUSIONS AND RECOMMENDATIONS

The following general recommendations were made by the Committee.

- Divide food safety inspections functions into the three areas recommended by Legislative Post Audit—dairy inspections; food processing inspections; and retail sales inspections.
- The issue of some areas being inspected too many times and some not being inspected at all needs to be addressed (this also was raised as an issue in the report from Legislative Post Audit).
- The pasteurized juice issue should be addressed, and juice processing facilities should be inspected just as milk processing facilities.
- Conflicts between industry and regulators should be addressed by having a mediator.
- Reorganization and transfer of programs should be a year or more away so that needed changes can be made.
- Assuming that the transfer of programs is made to the Department of Agriculture, it is extremely important that communication be kept open with the KDHE and especially the Bureau of Epidemiology and Disease Prevention within KDHE.
- The agency name should be changed to the Department of Agriculture and Food Safety. *(to emphasize that aspect of agency's mission)*
- The Legislature should make certain that all food processing plants are completely inspected (some are no longer fully inspected due to a statutory change in 2002 which redefined "food processing plant").

The members of the Special Committee on Agriculture recommend that legislation be introduced with the following compo-

nents:

- The bill would transfer food safety programs from KDHE to a newly-named Department of Agriculture and Food Safety;
- The bill would formally create a working group composed of the following:
  - Secretary of Health and Environment;
  - Secretary of Agriculture;
  - Industry officials;
  - Kansas State University officials;
  - Legislative representatives;
  - Livestock Commissioner;
  - Federal Food and Drug Administration officials;
  - Food Safety Inspection Service (USDA) officials;
  - Kansas Restaurant and Hospitality Association;
  - Kansas Public Health Association;
  - Local health departments;
  - Others as deemed necessary by the Secretaries of Health and Environment and Agriculture.

The following is a list of items which the working group would review during its

meetings:

- Proposing necessary statutory changes;
- Insuring agency cooperation;
- Developing a risk-based assessment system;
- Identifying changes needed;
- Recommending action on the issue of bio-terrorism in food security;
- Making recommendations for a mediator between regulators and those being regulated;
- Reporting to Legislature by February 1, 2005; and
- Sunsetting the working group on June 30, 2005.

The third component of the bill would make necessary statutory changes to bring all "food processing plants" back under state licensing and inspection. This action would correct the 2002 legislative action.

The final major component of the bill would require communication between the newly named Department of Agriculture and Food Safety and the Bureau of Epidemiology and Disease Prevention in KDHE with regard to food safety issues. The Committee believes this ongoing communication is imperative.

The Committee recommends that the new bill be assigned to the Senate first.

Testimony Presented to  
The Senate Committee on Agriculture  
By Stephen N. Paige  
January 20, 2004

Chairman Schmidt and members of the committee, I appear today as a concerned consumer and the retired director of the Kansas Department of Health and Environment's food protection program. I appear today in opposition to Executive Reorganization Order 32.

During my years at the KDHE, there were many times decisions needed to be made in favor of consumer health and at the expense of industry. For example: Tough decisions had to be made regarding pesticide contaminated wheat, floodwater contaminated raw and processed commodities, grain elevator disasters and transportation accidents. Tough decisions had to be made regarding private water supplies impacting food manufacturing and food service facilities. Tough decisions had to be made regarding the Americold cave fire involving an estimated \$1 billion in food products and impacting 700 jobs. In addition to these examples, many tough decisions had to be made regarding control of foodborne outbreaks and food recalls. In each instance it was public health that served as the firewall to protect consumer interests from industry influence.

In the above examples, making decisions in favor of economic interests would have been detrimental to the consumer's health. Making decisions in favor of short-term economic interests would have had long-term detrimental effects on the Kansas economy. Decisions were not made in a vacuum, but included the expertise and advice of many agencies including the Dept. of Agriculture, Dept. of Commerce, Dept. of Animal Health, KSU, local health departments, federal agencies and the Office of the Governor. The KDHE having the lead role among these agencies utilized in-house resources including epidemiology, public water supply, laboratory services, air and radiation, waste management, and local and rural health. As the State's public health agency, the KDHE could make informed decisions in the interest of consumers.

During my tenure with KDHE I appeared before Legislative committees on issues including AIDS, child care licensing, private water supply, radiation control, food protection, immunizations, disease reporting, bottled water, childhood lead poisoning prevention, community right to know, infectious disease control and others. Each of these above topics maintains their own identity. However, they do share a commonality in that they are all public health programs. Food protection is a public health program and the responsibility for food protection should be housed in the State's public health agency.

Recognizing the need for efficiencies in the State's food protection program isn't new. In the interest of reducing duplication of services by the KDHE and the Department of Agriculture, memorandums of understanding have been proposed. Two Secretaries of the Department of Agriculture have rejected these proposed MOUs that would have streamlined inspection services. I suggest a MOU between the agencies as an alternative to ERO 32.

In summary, I would encourage you to house responsibility for the state's food protection program in the Kansas Department of Health and Environment.

I thank you for the opportunity to appear today.

Senate Agriculture  
January 20, 2004  
Attachment 2

## TESTIMONY PRESENTED TO:

SENATE COMMITTEE ON AGRICULTURE

By: Joe Connor, President

Kansas Association of Local Health Departments

January 20, 2004

Chairman Schmidt and members of the committee, my name is Joe Connor and I am the President of the Kansas Association of Local Health Departments (KALHD). KALHD's membership consists of 98 local public health departments in Kansas. KALHD is encouraged that the issue of food safety has become a priority with this committee as it is recognized nationally as one of the most significant health achievements of the 20<sup>th</sup> century.

Executive Reorganization Order 32 proposes to consolidate the state-level food safety programs. KALHD supports the consolidation of these services under an agency with a public health mission and focus. Enforcement of laws and regulations that protect health and ensure safety is one of the ten (10) essential public health services as developed by the Centers for Disease Control and Prevention. We agree that this protection needs to be achieved in an efficient manner but it cannot compromise the public's safety. The mission of the Kansas Department of Health and Environment is clear and does not advocate for any industry. The full protection of the public's health can be realized by consolidating these services at the Kansas Department of Health and Environment (KDHE).

At the local level, considerable planning is being undertaken to respond more quickly to emerging public health threats. This planning is enhancing the coordination and information sharing between KDHE and local health departments thus making for a more complete public health system. Coordination with state public health epidemiology is key to assuring proper investigation and control of foodborne illness. KALHD is concerned that the public health system may be compromised if state-level food safety programs are not consolidated at KDHE.

A copy of an issue paper developed jointly by KALHD and the Kansas Public Health Association has been provided that elaborates on our position.

On behalf of KALHD, I want to thank you for the opportunity to present our position on this important public health issue.

Senate Agriculture  
January 20, 2004  
Attachment 3

**KANSAS  
PUBLIC  
HEALTH  
ASSOCIATION, INC.**

**Kansas Public Health Association, Inc.**

*AFFILIATED WITH THE AMERICAN PUBLIC HEALTH ASSOCIATION*

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Testimony presented to  
Senate Committee on Agriculture  
by Sally Finney, CAE, M.Ed.  
Executive Director  
January 20, 2004

Chairman Schmidt and members of the committee, I am here today on behalf of the members of the Kansas Public Health Association to discuss our position on consolidation of state-level food safety programs. We support consolidation so long as it improves the system. Our first concern is the protection of the men, women, and children throughout the world who consume food produced, processed, or prepared in Kansas. If consolidation is to occur, it should be under the auspices of an agency with a public health focus. This is why we oppose Executive Reorganization Order 32.

Our system of government is based on the concept that the people will be protected by "checks and balances" aimed at assuring that everyone has a voice in developing public policy. We believe that maintaining these safeguards is critical to making certain that balance exists in formulating policies that affect both producers of food and consumers of food. We believe that ERO 32 runs afoul of this concept.

According to the Kansas Department of Agriculture, its role is to, "...advocate and educate on behalf of Kansas agriculture." Agriculture is about production; food safety is about public health. Certainly, Kansas farmers and ranchers deserve such an advocate. If we agree they do, and if we can also agree that consumers deserve to know that someone will serve as a voice for their protection, then the fundamental question here becomes: can the state agency that says it is an advocate for producers also effectively protect the public? We believe the answer is, "No," and we ask that you oppose legislation needed to implement ERO 32.

Regarding consolidation of state-level food safety programs in general, KPHA supports consolidation under a state agency whose mission is to protect the public's health. At the present time, that agency exists as the Kansas Department of Health and Environment. We also support measures that would reduce costs to operate programs and increase efficiency, so long as such steps do not compromise the quality of food safety activities.

I have attached a copy of an issue paper which KPHA and the Kansas Association of Local Health Departments has developed jointly. It elaborates on the points I have made here today.

In closing, I would like to say that KPHA applauds your interest in what CDC recognizes as one of the top 10 health advances of the 20<sup>th</sup> century, food safety. I thank you for allowing me to appear before you to present our views.

Senate Agriculture  
January 20, 2004  
Attachment 4

# **Consolidation of Food Safety: The Public Health Perspective**

January 2004

A Joint Issue Paper of  
the Kansas Association of Local Health Departments  
and  
the Kansas Public Health Association, Inc.



## Introduction:

In October of 2003, the Legislative Division of Post Audit ("Post Audit") released the results of its performance audit titled, "Food Safety Programs in Kansas: Evaluating Possible Costs and Efficiencies of Combining Them." Because food safety is a significant public health concern, the state's two major public health associations, the Kansas Association of Local Health Departments and the Kansas Public Health Association, jointly set out to review Post Audit's findings and formulate recommendations concerning their implementation.

At issue is whether or not to transfer most or all food safety activities currently conducted by the Kansas Department of Health and Environment to the Kansas Department of Agriculture. This document outlines concerns which we believe the Kansas Legislature and Governor should consider in the event they decide to act on the Post Audit's findings.

## Overview:

Before moving to consolidate food safety inspection activities, we ask state lawmakers to consider that:

1. food safety is a *core public health function*;
2. it would create a *conflict of interest* if the state agency charged with promoting the state's food production industry were also charged with overseeing the safety of food production;
3. consolidating activities to *improve efficiency and reduce expenditures* is important and must be achieved *without compromising the public's safety*; and
4. the consolidation efficiencies cited by Post Audit may be realized with full protection of the public's health by *shifting food safety to KDHE*.

## Major Policy Considerations:

### Food safety is a public health function.

The Centers for Disease Control and Prevention recognize food safety as one of the 10 most significant health achievements of the 20<sup>th</sup> century. The public health system has a proven record of assuring food safety in Kansas, in part because it is able to maintain two essential components: 1) coordination with public health epidemiology to assure proper investigation and control of outbreaks of foodborne illness; and 2) the use of inspectors who have the public health education and training needed to understand the science that connects risk of foodborne illness with improper food preparation.

It is important to note that the overwhelming majority of states (38) continue to rely on public health to protect food. Many agricultural states, like Nebraska, still rely on local public health departments to conduct inspections.

Consolidating all food safety activities under the Kansas Department of Agriculture would create a conflict of interest.

The central question here is whether or not the same state agency charged with promoting Kansas' agricultural interests can also effectively regulate the industry, protecting the health of consumers of the industry's products. In other words, can the Kansas Department of Agriculture serve two masters? We believe they cannot and cite as an example the current situation in this country concerning Bovine Spongiform Encephalopathy, or BSE, also known as "mad cow disease."

In recent years, various consumer groups like the Consumers Union have urged the U.S. Department of Agriculture to enact more aggressive policies concerning "downer" animals. These are animals that are obviously impaired, possibly due to illness. The USDA has resisted this notion, largely because of pressure from producers fearful of lost profits. In short, the agency has been caught in a conflict of interest between its two charges – protecting the industry and protecting the public.

Concern over conflicts at USDA is shared by *former USDA secretary Dan Glickman*. In an article published in the *Philadelphia Enquirer* in July, 2003, *Glickman expressed concerns about conflicts between ties to agriculture for high-level administrators at USDA and the agency's ability to enforce food safety regulations.*

Also of note are examples from other nations. The outbreak of BSE in Great Britain prompted a change there. Public opinion was that the *agriculture ministry reacted slowly in dealing with the outbreak because its dual functions (promoting agriculture and the food industry versus regulating food safety) conflicted* and the ministry thus acted slowly in order to protect the cattle industry. In the late 1990's, *Great Britain consolidated food safety activities under an independent agency, represented by the minister of health.*

In Ireland, a succession of high-profile foodborne illnesses worldwide (such as Britain's BSE outbreak and Scotland's *E. coli* outbreak) shook consumer confidence. In 1998, roughly 80 head of Irish cattle (out of a nationwide herd of approximately 7 million) were found to have BSE. This was not only a public health concern, but a major economic one, as Ireland exports about 90 percent of its meat produced. *Irish food safety officials felt these developments highlighted the difficulties its Department of Agriculture and Food faced in trying to carry out the dual mission of protecting consumers and promoting the food industry.* In July, 1998, Ireland enacted legislation that created the Food Safety Authority of Ireland. The Authority oversees food safety activities and reports to the Minister of Health and Children.

Consolidating food safety activities under Kansas' agricultural agency would create a conflict between the promotion of agricultural interests and the protection of the public's health.



Improving efficiency and reducing costs is worthwhile.

Post Audit has identified several areas where food safety might be enhanced and where the state could realize cost savings. *We endorse those measures that would improve efficiency in the system so long as they are done without diminishing the quality of the food safety system.* For reasons mentioned previously, we support consolidation so long as it moves food safety activities to the state public health agency, KDHE.

Post Audit suggests using a risk-based approach to scheduling inspections. The U.S. Food and Drug Administration has developed a risk-based approach which we endorse for use in Kansas.

Additional comments concerning Legislative Post Audit's findings:

- One cost-saving measure contained in the body of the performance audit on consolidation is missing from Post Audit's final recommendations. The auditors correctly note that the State of Kansas spends state revenue to continue the meat inspection program at the Kansas Department of Agriculture, despite the fact that this activity is the responsibility of the U.S. Department of Agriculture. Kansas could discontinue state funding for the program, and the USDA would carry out inspections and realize an annual savings of between \$750,000 and \$1.5 million. For reasons which they fail to mention, Post Audit does not address this in its final recommendations.
- The auditors point out that in a 1999 report the U.S. General Accounting Office recommended combining federal food safety functions into a single agency. While this is true, the Kansas audit on consolidation incorrectly gives the impression that the GAO recommends consolidation under an existing agency. This is not the case. Rather, the GAO urges consolidation under a brand-new, food-exclusive agency.
- The Kansas audit also mentions that four nations have consolidated their food safety functions but fails to note that in Great Britain and Ireland, as noted above, public concern about conflict of interest and safety of the food supply drove consolidation under the ministers of health. Canada and Denmark consolidated under the ministers of agriculture. All four countries appear to hold similar views about the costs and benefits of consolidation.