

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HEALTH

In the Matter of the Administrative Penalty  
Order Issued to F-N-R Pork Roasting

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

This matter came before Administrative Law Judge Eric L. Lipman for an evidentiary hearing on December 15, 2014. The hearing record closed at the conclusion of the hearing.

Lindsay K. Strauss, Assistant Attorney General, appeared on behalf of the Minnesota Department of Health (Department). Roy Goodin, doing business as F-N-R Pork Roasting, appeared on his own behalf and without counsel.

**STATEMENT OF THE ISSUE**

Whether the Department's assessment of a \$10,000 administrative penalty is unreasonable?

**SUMMARY OF CONCLUSION**

The Administrative Law Judge concludes that because of the illnesses and distress that followed from Mr. Goodin's food preparation practices, the Department's assessment of the \$10,000 administrative monetary penalty is reasonable.

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Roy Goodin, a former restaurateur, lives in Monticello, Minnesota. As charitable works, Mr. Goodin, from his home, provides catering services to local service organizations in Wright and Sherburne Counties.<sup>1</sup>

2. To support the work of the service organizations that he favors, Mr. Goodin provides prepared foods to the organizations in return for reimbursement of the amounts he pays to purchase the ingredients. Mr. Goodin does not charge these organizations any markup for the value of his time or the use of his cooking equipment.<sup>2</sup>

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<sup>1</sup> Testimony of Roy Goodin.

<sup>2</sup> *Id.*

3. While Mr. Goodin has completed the training course work to be a food safety manager, neither he nor F-N-R Pork Roasting has ever held a food and beverage service establishment license.<sup>3</sup>

4. Mr. Goodin is a pensioner with a modest income.<sup>4</sup>

5. In January and February of 2014, the Department was not aware of Mr. Goodin's food service operations or the work that F-N-R Pork Roasting was undertaking from Mr. Goodin's home.<sup>5</sup>

6. In early 2014, Mr. Goodin was asked by an acquaintance to provide a dinner meal of barbeque pork and side dishes for a Cub Scout event scheduled for March 2, 2014. The event would be hosted at the Lion's Club in Elk River, Minnesota.<sup>6</sup>

7. Mr. Goodin agreed to cater the event and provide the meal to the scout troop in return for the amounts he paid to purchase the ingredients.<sup>7</sup>

8. Mr. Goodin bought the meat that would be served at the event from a local store. On Saturday, March 1, 2014, he prepared this meat in a smoker at his home in Monticello, Minnesota. He placed the meat into roasting pans and transported the roasting pans and other items to the Lion's Club the next afternoon.<sup>8</sup>

9. Mr. Goodin arrived at the Lion's Club with the prepared food at approximately 4:00 p.m. on Sunday, March 2, 2014.<sup>9</sup>

10. The dinner was served at 5:30 p.m. and all of the food was consumed by shortly after 7:00 p.m.<sup>10</sup>

11. Food that is appropriately prepared may sit out at room temperature for a period of about four hours before developing sufficient amounts of harmful bacteria.<sup>11</sup>

12. On March 3, 2014, the Department's foodborne illness hotline received a complaint of gastrointestinal illnesses among those who attended the event. The

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<sup>3</sup> Ex. 3; Test. of R. Goodin; Test. of Nicole Koktavy.

<sup>4</sup> Test. of R. Goodin.

<sup>5</sup> Test. of N. Koktavy.

<sup>6</sup> Ex. 4; Test. of R. Goodin.

<sup>7</sup> Test. of R. Goodin.

<sup>8</sup> Ex. 12; Test. of N. Koktavy; Test. of R. Goodin.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Ex. 12; Test. of N. Koktavy.

complainant reported that approximately 30 of 90 attendees became ill after eating the food provided at the event.<sup>12</sup>

13. Department staff interviewed 39 attendees in order to obtain additional information on the food that was consumed by various guests and the illnesses, if any, that followed this meal. As part of its inquiries, the Department obtained stool specimens from three attendees. It submitted these samples to the Department's Public Health Laboratory for bacterial and viral testing.<sup>13</sup>

14. The Public Health Laboratory tests on the samples returned positive for *clostridium perfringens*. *Clostridium perfringens* is a bacterium that is commonly associated with poorly prepared meat or food that is left to stand too long in inappropriate conditions. If ingested, *clostridium perfringens* creates a toxin in the intestine that results in sickness and significant distress.<sup>14</sup>

15. Twenty-five of the 39 persons interviewed had eaten at the Cub Scout event on March 2 and subsequently suffered vomiting, diarrhea or both. Significantly, 24 of the 25 attendees who had become ill ate the plain pulled pork without sauerkraut.<sup>15</sup>

16. According to the statistical analysis undertaken by the Department, no other food items were significantly associated with later illness.<sup>16</sup>

17. On March 4, 2014, the Department's supervising sanitarian, Peter Lindell, sent an e-mail message to Mr. Goodin. Mr. Lindell asked Mr. Goodin about the food served at the event, the preparation and handling methods for the food, and the timeline for preparing and transporting of the food. Mr. Lindell also placed calls to Mr. Goodin.<sup>17</sup>

18. Mr. Goodin did not respond to either Mr. Lindell's electronic mail or telephone inquiries.<sup>18</sup>

19. On March 13, 2014, the Department sent by certified mail a "ten day letter" to Mr. Goodin. The letter asserted that Mr. Goodin operated a food and beverage service establishment without a license. The letter further stated that any response

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<sup>12</sup> Ex. 5.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*; Ex. 8; Ex. 12; Test. of Kirk Smith.

<sup>15</sup> Ex. 5; Test. of N. Kuktavy.

<sup>16</sup> Ex. 12.

<sup>17</sup> Ex. 7.

<sup>18</sup> *Id.*

received by the Department within the 10 days would be considered before the Department took any further enforcement action.<sup>19</sup>

20. On March 19, 2014, Mr. Goodin submitted a response to the Department. He stated that he would not operate F-N-R Pork Roasting until the Department informed him he could do so. Additionally, he submitted a copy of a certificate from the National Registry of Food Safety Professionals showing that he had satisfied the requirements for certification as a food safety manager.<sup>20</sup>

21. On April 3, 2014, a multi-disciplinary team of Department officials, meeting in its "Forum," calculated the penalty for Mr. Goodin's violation. Under the Forum's ordinary practice, the Department regards food service operations prior to obtaining a license a "serious" violation. In this case, Mr. Goodin's unlicensed activities resulted in later illnesses to those who ate his prepared foods. Additionally, because the Department was unaware of F-N-R Pork Roasting's activities, state sanitarians could not inspect the pork roasting operations to ensure Mr. Goodin's compliance with the Food Code.<sup>21</sup>

22. On May 20, 2014, the Department issued an Administrative Penalty Order to Mr. Goodin for violations of state law. The Order assessed a nonforgivable administrative penalty of \$10,000.<sup>22</sup>

23. On June 5, 2014, Mr. Goodin submitted a written request for a contested case hearing to review the Department's assessment of the Nonforgivable Administrative Penalty Order.<sup>23</sup>

Based on these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS OF LAW**

1. The Administrative Law Judge and the Department have jurisdiction in this matter.<sup>24</sup>

2. The Notice and Order for Hearing is proper and the Department has complied with all procedural requirements of statute and rule.<sup>25</sup>

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<sup>19</sup> Ex. 3; see also, Minn. Stat. § 157.16, subd. 1 (2014); Minn. R. 4626.1755 (2013).

<sup>20</sup> Ex. 3.

<sup>21</sup> Ex. 10; Test. of Mark Peloquin.

<sup>22</sup> Ex. 4.

<sup>23</sup> Ex. 11.

<sup>24</sup> Minn. Stat. §§ 14.50 and 144.991, subd. 5 (2014).

<sup>25</sup> Minn. Stat. § 14.58 (2014).

3. The Department is responsible for adopting and enforcing rules establishing standards for food and beverage service establishments, hotels, motels, lodging establishments, and resorts.<sup>26</sup>

4. A “food and beverage service establishment” is defined as a “building, structure, enclosure, or any part of a building, structure, or enclosure used as, maintained as, advertised as, or held out to be an operation that prepares, serves, or otherwise provides food or beverages, or both, for human consumption.”<sup>27</sup>

5. Minnesota Rules Chapter 4626 (Food Code) adopted by the Department outlines requirements and standards for food and beverage service establishments.<sup>28</sup>

6. To be licensed, a food and beverage service establishment must comply with the standards and requirements set forth in the Food Code.<sup>29</sup>

7. A person without a valid license must not operate a food and beverage service establishment.<sup>30</sup>

8. While Mr. Goodin has completed the training course work to be a food safety manager, neither he nor F-N-R Pork Roasting has ever held a food and beverage service establishment license.<sup>31</sup>

9. Mr. Goodin’s food service activities did not fall under any applicable licensure exclusion.<sup>32</sup>

10. The Health Enforcement Consolidation Act of 1993 authorizes the Commissioner of Health (Commissioner) to issue administrative penalty orders for violations of the Food Code.<sup>33</sup>

11. An administrative penalty order can have two components: a correction order and assessment of a monetary penalty.<sup>34</sup> The Department has adopted the “Plan for Use of Administrative Penalty Order, Cease and Desist Authority, and other

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<sup>26</sup> Minn. Stat. § 157.011 (2014).

<sup>27</sup> Minn. Stat. § 157.15, subd. 5 (2014).

<sup>28</sup> Minn. R. Ch. 4626 (2013).

<sup>29</sup> Minn. R. 4626.1770.

<sup>30</sup> Minn. R. 4626.1755.

<sup>31</sup> Ex. 3; Test. of L. Koktavy; Test. of R. Goodin.

<sup>32</sup> See *generally*, Minn. R. 4626.1830 – .1870.

<sup>33</sup> Minn. Stat. § 144.99, subd. 4 (2014).

<sup>34</sup> *Id.*

Enforcement Tools" (Penalty Plan) to utilize when enforcing the Food Code via administrative penalty orders.<sup>35</sup>

12. The Department has the burden of proving by a preponderance of the evidence that its enforcement action against Mr. Goodin is warranted.<sup>36</sup>

13. Based on the record in this case, the Administrative Law Judge concludes that Mr. Goodin failed to fully comply with the APO issued by the Department on December 12, 2013.

14. In administratively assessing a monetary penalty for Food Code violations, the Commissioner may consider the following factors:

- (1) the willfulness of the violation;
- (2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state;
- (3) the history of past violations;
- (4) the number of violations;
- (5) the economic benefit gained by the person by allowing or committing the violation; and
- (6) other factors as justice may require, if the commissioner specifically identifies the additional factors in the commissioner's order.<sup>37</sup>

15. If the violation is not "serious" or "repeated," the penalty "must be forgiven" if, within 30 days of receipt of the APO, the person to whom the order was issued demonstrates in writing to the Department either that the violation was corrected or that the person has developed a corrective plan acceptable to the Commissioner. For serious or repeat violations, the Commissioner may assess a penalty which will not be forgiven even if timely corrective action is taken.<sup>38</sup>

16. The Administrative Law Judge may not recommend a change in the proposed administrative penalty amount unless the amount of the penalty is unreasonable.<sup>39</sup>

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<sup>35</sup> Minn. Stat. § 144.99, subp. 7 (2014).

<sup>36</sup> Minn. Stat. § 144.99, subp. 10 (2014); Minn. R. 1400.7300, subp. 5 (2013).

<sup>37</sup> Minn. Stat. § 144.991, subd. 1 (2014).

<sup>38</sup> Minn. Stat. § 144.991, subd. 4 (2014).

<sup>39</sup> Minn. Stat. § 144.991, subd. 5(c).

17. Based on the record in this case, the Administrative Law Judge concludes that the \$10,000 monetary administrative penalty assessed to Mr. Goodin is reasonable.

18. Based on the record in this case, the Administrative Law Judge concludes that Mr. Goodin had a good faith basis to challenge the amount of the penalty. His request for a hearing was not solely for purposes of delay or frivolous, as those terms are used in Minn. Stat. 144.991, subd. 5(d) (2014).

Based upon these Conclusions of Law, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATIONS**

The Administrative Law Judge recommends that the Commissioner **AFFIRM** the Department's assessment of the \$10,000 administrative penalty.

Given Mr. Goodin's modest financial resources, and the ordinary timelines to remit penalties under Minn. Stat. § 144.991 subd. 5(f), a just result would be for the Department to structure, to the extent practicable, a payment plan for Mr. Goodin.

Dated: January 23, 2015

s/Eric L. Lipman

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ERIC L. LIPMAN  
Administrative Law Judge

## NOTICE

This Report is a recommendation, not a final decision. The Commissioner of the Department of Health will make the final decision after a review of the record. Under Minn. Stat. § 14.61 (2014), the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten (10) calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact the Office of the Commissioner of Health, 85 East Seventh Place, Suite 400, St. Paul, Minnesota 55101, telephone (651) 201-5000, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a (2014).

Under Minn. Stat. § 14.62, subd. 1 (2014), the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## MEMORANDUM

Mr. Goodin does not dispute that he had a duty to obtain licensure before undertaking catering services or that some penalty should be applied in this case. He maintains that he believed, in good faith, that completion of food manager coursework amounted to licensure to enter the catering business. He likewise argues that a \$10,000 administrative penalty is beyond his ability to pay.

Mr. Goodin's failure to appreciate the applicable food service requirements led directly to the harm suffered by those who attended the March 2, 2014 event, making application of the administrative penalty reasonable.

Given Mr. Goodin's modest financial resources, and the timelines to remit penalties under Minn. Stat. § 144.991 subd. 5(f), however, a just result would be for the Department to structure, to the extent practicable, a payment plan for Mr. Goodin.

**E. L. L.**