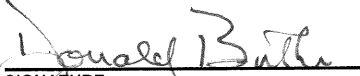


ARIZONA DEPARTMENT OF AGRICULTURE <u>SUBSTANTIVE POLICY STATEMENT</u> Application of A.R.S. §§ 3-561 to 3-563	<u>DIVISION/</u> <u>PROGRAM</u> OOD
	<u>SP 13-01</u>
	 SIGNATURE
	3/11/13 DATE

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

BACKGROUND

This substantive policy statement serves to inform the general public and other government agencies of the Department’s current opinion of A.R.S. §§ 3-561 to 3-563, which relates to the sale of food products by producers. The Department has received a number of inquiries about the application of these statutes from both members of the public and representatives of government entities, primarily due to the increase in popularity of Farmers’ Markets and the fact that these statutes are codified with the statutes governing the Department’s powers. Notably, the Department has no authority to enforce these statutes, so this substantive policy statement only provides advisory guidance.

OPINION OF A.R.S. §§ 3-561 TO 3-563

Producers Only

These statutes apply to “producers.” Under these statutes, “‘producer’ includes owners, proprietors or tenants of agricultural lands, orchards, farms and gardens whereon food products are grown, raised or prepared for market.” A.R.S. § 3-561(1). In other words, producer is synonymous with grower and refers someone selling food that came from the land that person owns or leases. Producer does not refer to a person who obtained the food by purchasing it or by gathering it from other property.

For example, a producer (i.e., grower) would include someone who wants to sell fresh fruit or vegetables that the person has grown as well as someone who wants to sell chicken prepared from hens that the person raised. However, a person who wants to sell items such as sandwiches, pastries, and burritos is unlikely to qualify as a producer (i.e., grower) because the food probably was not grown on land owned or leased by that person.

Inspections

Food products offered for sale by producers remain subject to inspection.¹ The Department believes that the authority of health officials to inspect food products includes the power to inspect the premises where the food products are prepared. A governmental body with inspection authority may prevent the sale of food products that fail inspection if the inspection applies in the same manner and terms as for similar food products prepared by non-producers.²

Charges

One of the benefits for producers is that no tax, license, fee or penalty can be imposed on a producer for selling the producer's covered food products, with an exception for penalties for violations of inspection laws.³ This means *cities* and *counties* cannot charge a "producer" a license fee for the right to sell covered food products at a Farmers' Market.

However, while cities and counties cannot enact laws that conflict with state law, the State Legislature may pass new laws that limit the effect of A.R.S. §§ 3-561 to 3-563. For example, the Arizona Supreme Court ruled that a state sales tax on producers' sale of milk and milk products was permissible, despite A.R.S. §§ 3-561 to 3-563.⁴ So, producers are subject to taxes, licenses, fees and penalties imposed under *state law*.

Assistance

If a person feels that a city or county is taking action prohibited by A.R.S. §§ 3-561 to 3-563, the person may provide the city or county with a copy of this Substantive Policy Statement. If that does not resolve the issue, the person may wish to seek legal advice from a private attorney.

If a city or county has an ordinance or practice that may conflict with A.R.S. §§ 3-561 to 3-563, the government program manager may wish to seek legal advice from the city or county's legal counsel.

The Department itself does not have authority to require cities and counties to change policies or practices that do not comply with A.R.S. §§ 3-561 to 3-563.

¹ See A.R.S. § 3-562(A) ("subject to inspection"); A.R.S. § 3-563(A) ("violation of laws providing for inspection"); A.R.S. § 3-563(B) ("subject to inspection").

² See A.R.S. § 3-562(A) ("uniform"); A.R.S. § 3-563(B) ("same manner and terms").

³ See A.R.S. § 3-563(A) (no charges); A.R.S. § 3-563(B) ("A municipal ordinance which seeks to impose or subject a producer to a tax, license or fee shall be void").

⁴ See *Arizona Tax Commission v. Dairy & Consumers Cooperative Association*, 70 Ariz. 7 (1950).

3-561. Definitions

In this article, unless the context otherwise requires:

1. "Producer" includes owners, proprietors or tenants of agricultural lands, orchards, farms and gardens whereon food products are grown, raised or prepared for market.
2. "Food product" includes:
 - (a) Every product of the soil in its natural or manufactured state.
 - (b) Beef and beef products.
 - (c) Swine and pork products.
 - (d) Fowls and poultry products.
 - (e) Eggs and egg products.
 - (f) Milk and milk products.
 - (g) Lamb and sheep products.

3-562. Restrictions on sales by food producers prohibited

A. The producers of food products on agricultural lands, farms and gardens shall never under any pretext be denied or restricted the right to sell and dispose of their products, except in the manner and to the extent provided in this article, and subject to inspection by lawful authority when the inspection is uniform as to the same product and without cost to the producer.

B. The right to sell and dispose of food products shall extend to the producer in person, members of his family, his agents and all persons in his service, when the products are sold or disposed of on his behalf and for his benefit.

3-563. Tax, license or fee against producers prohibited

A. No tax, license or fee shall be imposed, levied upon, demanded or collected from a producer for a sale of a food product as defined in this article, and no penalty or punishment shall be imposed on account of the sale, except for violation of laws providing for inspection.

B. A municipal ordinance which seeks to impose or subject a producer to a tax, license or fee shall be void, except that all such products in common with similar products offered for sale by persons not the producers thereof shall be subject to inspection. A municipal ordinance providing for inspection shall not be valid unless it applies in the same manner and terms to other persons offering similar products for sale.