

The State of Texas
House of Representatives

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Representing
Hunt, Hopkins, and
Van Zandt Counties

Dan Flynn
State Representative • District 2

*OK for
Distribution*
✓

August 18, 2016

Dear colleagues,

As you all know, I have championed a bill to expand access to raw milk in past sessions, and I am looking forward to bringing that bill back in 2017. This letter is not about that, however.

Rather, I am writing you now because the Department of State Health Services is creating new problems for raw milk farmer and consumers through an unprecedented interpretation of the current law and very aggressive approach to enforcement. The actions have included having law enforcement present at inspections, interrogating customers, and interfering with individuals' ability to take possession of food that they had already paid for.

While the agency has tried to disclaim responsibility by saying that local health departments conducted the raids, internal documents show that it was in fact DSHS instigating the actions, with the local health departments following DSHS' directions.

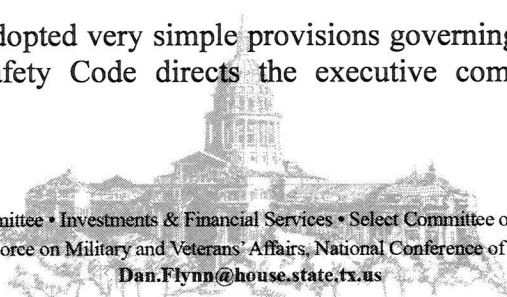
Not one illness has been reported from raw milk in our state in more than four years. A total of six illnesses have occurred in the last 20 years.

The agency has stated that the inspections have been triggered by complaints filed by the farm's competitors. To my knowledge, not a single customer has complained about this farm or **any** of the licensed raw milk farms in our state.

There is no public health development that would justify DSHS' hostility towards these small businesses and the consumers who seek out their products. Rather, based on my conversation with Commissioner Hellerstedt, it appears that the agency is taking these actions because of personal views on raw milk.

We are a government of laws, not men. The Legislature sets the law, and the agency is supposed to carry that law out, not set policy based on personal biases.

The Texas Legislature has adopted very simple provisions governing raw milk. Section 435.003 of the Texas Health & Safety Code directs the executive commissioner to "define what



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constitutes Grade A raw milk” and other milk and dairy products, and “provide specifications for the production and handling of [these products] according to the safety and food value of the milk or milk products and the sanitary conditions under which they are produced and handled.” The next section authorizes the agency to inspect, sample, and test the products that are offered for sale.

These provisions direct the agency to focus on the health and safety of the products, and contain no directive to restrict customers’ access. Indeed, raw milk was legal to sell in grocery stores as recently as the mid-1980’s. At that time, however, the agency adopted a regulation that requires that licensed raw milk farms sell their products directly to consumers at the point of production.

This regulation has created not only a significant barrier for raw milk farmers and consumers, but also a lot of confusion as to what it actually required. In December 2013, a DSHS manager sent the following email to a raw milk customer:

“It is not a violation of state regulations for a dairy customer to purchase raw milk from a farmer at the farm for themselves and for others as you indicate you are doing for your COOP (and other members may do for you). It also is not a violation of state regulations for you to deliver that milk to other COOP members or to have them pick it up from you. ... As long as the dairy is not delivering raw milk to you, then the dairy is not in violation of their state permit.”

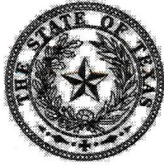
The email was shared with legislators and members of the public, as the official agency interpretation of its regulations.

This email is clear: the regulation does **not** require each individual customer to drive to the farm each and every time they want milk. The regulation prohibits farmers from doing delivery, but does not restrict the ability of consumers to make group arrangements.

And that is what consumers have done. Yet they are now being harassed, and the farmers’ business is being threatened, because the agency has chosen to change its enforcement policy – even though nothing has changed in the actual regulations, nor has there been a single reported health problem since this email was written.



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At a minimum, before the agency takes enforcement action that contradicts its 2013 written statement, it should go through the normal procedures for rulemaking, including public notice and the opportunity to comment.

Please join me in urging Commissioner Hellerstedt and Commissioner Smith to focus on real public health issues and to stop targeting legal businesses distributing a legal product to willing consumers.

May God Bless You and May God Bless the Great State of Texas!

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Flynn", followed by a horizontal line.

Representative Dan Flynn

House District 2

A detailed black and white illustration of the Texas State Capitol building, showing its iconic dome and classical architecture.

Committees: Chairman, Pensions Committee • Investments & Financial Services • Select Committee on Emerging Issues in Law Enforcement
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