

**VIRGINIA RESTAURANT INSPECTION LAWS
REPORT OF THE
THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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Department of Purchases and Supply
Richmond
1975**

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TABLE OF CONTENTS

Introduction.....	4
History.....	5
Findings.....	5
Recommendations.....	7
Conclusion.....	10
Appendix.....	12

VIRGINIA RESTAURANT INSPECTION LAWS

Report of The

Virginia Advisory Legislative Council

Richmond, Virginia

January 15, 1975

TO: Honorable Mills E. Godwin, Jr., Governor of Virginia

And

The General Assembly of Virginia

INTRODUCTION

This report is made pursuant to Senate Joint Resolution No. 71 of the 1974 Session of the General Assembly of Virginia.

SENATE JOINT RESOLUTION NO. 71

Directing the Virginia Advisory Legislative Council to conduct a study of the inspection of restaurants and other eating establishments and the health of the employees of such establishments.

Whereas, local health departments have the responsibility for inspecting and granting permits to restaurants and other establishments serving food; and

Whereas, this activity includes inspection of the physical condition of the premises of such establishments as well as certain personal habits of their employees; and

Whereas, there is a need to review the present law and administrative procedures concerning the inspection and regulation of the sanitary condition of restaurants and other eating establishments to determine if such laws and procedures are protecting the general health and safety of the citizens of this Commonwealth; now, therefore, be it

Resolved by the Senate, the House of Delegates concurring, That the Virginia Advisory Legislative Council is hereby directed to make a study of the present law and administrative procedures concerning the inspection of the sanitary and physical condition of restaurants and other eating establishments and the personal habits of the employees of such establishments. The study shall include the changes which may be needed in the law or administrative procedures which will improve the protection of the health of the

general public within this Commonwealth.

The Council shall conclude its study and make its report to the Governor and General Assembly no later than December thirty-one, nineteen hundred seventy-four.

HISTORY

The Virginia Advisory Legislative Council appointed Delegate Edward E. Lane of Richmond to chair the Committee to conduct the study directed by Senate Joint Resolution No. 71. With the approval of the Council, Mr. Lane appointed the following persons to serve as members of his Committee: Senator George S. Aldhizer, II, of Broadway; Senator Charles Waddell of Fairfax; Delegate Howard H. Carwile of Richmond; Delegate Evelyn M. Hailey of Norfolk; Delegate W. Ward Teel of Christiansburg; Fleetwood M. Frias of Norfolk; James R. Gregory of Richmond; John Pattillo of Richmond; Glenn Shoemaker of Alexandria; George Shuflat of Virginia Beach; and Steven Yates of Norfolk.

The Committee held its organizational meeting in the spring of this year. It held one public hearing to receive the comments of interested persons on the restaurant inspection laws of the Commonwealth. The Committee met on a monthly basis to consider the subjects under study and to prepare this final report.

The Council would like to acknowledge the assistance given by the Virginia Restaurant Association, the Food Service Division of the Food and Drug Administration of the United States Department of Health, Education and Welfare, and the State Department of Health. The Council offers a special thanks to Mr. J. W. Moschler and Dr. Robert Jackson of the State Department of Health and Dr. Fred J. Spencer of the Medical College of Virginia for their time and thought in assisting the Committee in its deliberations.

FINDINGS

Finding: The present Virginia law on the inspection of restaurants with some modification is more than adequate to protect the health of the citizens of this Commonwealth.

The Council has carefully and meticulously reviewed the present law of this Commonwealth relating to the inspection of restaurants and the rules and regulations of the State Department of Health which enforce these laws. This review was undertaken in light of the laws of other states and the food service code recommended by the federal Food and Drug Administration.

Although the law of Virginia may not be as comprehensive as the laws of some other states, Virginia's law does provide the same protection for the public as the most comprehensive of other laws. The Council did find that there were certain areas in Virginia's law

which need some modification and, at times, strengthening.

In addition, the Council reviewed the regulations of the State Department of Health which interpret the laws of Virginia and found that, in the light of the best sanitary practices of the food service industry, the Department's regulations provided more than adequate regulation of the food service industry and its sanitary practices.

The administration of the law and regulation by the State Department of Health through its local departments was found to be commendable. Of course, some concern was expressed that there are a few local sanitarians who are not able to be food service specialists because of their other duties. However, the Council recognizes that there is very little need in most localities in this State to have such specialists as the present sanitarians are doing the job well.

Finding: There is no need to require annual physical examinations for restaurant food preparation and service personnel.

The Council studied the need for mandatory annual physical examinations for restaurant employees in great detail. The general consensus of public health experts is that the diseases which are food-borne would probably go undetected in an annual physical examination. The better public health practice is to keep employees informed of the symptoms of such diseases so they can remove themselves from the eating establishment. The present Virginia law places this burden on the manager and employees of a restaurant.

In the past, the United States Public Health Service and other public health agencies have explored the feasibility and benefits of examination requirements for certain occupational groups as they relate to the protection of the public health. Some local health jurisdictions and some states have enacted legal requirements for annual physical examinations, skin tests and/or chest x-ray examination. When these regulations were first enacted they were felt to be in the best interest of public health. Reexamination of these requirements, in view of modern knowledge and application of modern epidemiologic principles, has shown these requirements to be unnecessary, in fact, useless for food handlers for the following reasons:

1. It was believed that transmission of tuberculosis from one person to another could and did occur through the physical handling of food by a person with tuberculosis. As our knowledge of the disease has expanded, we have learned that transmission of the disease occurs through the inhalation of tiny droplet nuclei, not through physical contact or ingestion of food handled by someone with the disease.
2. Transmission of tuberculosis occurs most commonly in crowded, poor households after prolonged contact with an actively infected individual.
3. In those localities which have enacted such regulations, there

has been little or no yield in terms of cases found, and the requirements impose an unnecessary and unjust expense and inconvenience on those involved.

No clearcut risk of the transmission of tuberculosis has been demonstrated from food handlers nor have the proposed measures been shown to prevent spread of disease.

For the above stated reasons we firmly recommend that such measures not be enacted.

RECOMMENDATIONS

Recommendation 1: The term “food service establishment” should be substituted for the term “restaurant” in the present law.

For many years, the Code of Virginia has used the term “restaurant” to designate every establishment which provides food and drink to the public. The Council believes this term is too restrictive to be truly descriptive of the numerous different types of eating and drinking establishments which are regulated pursuant to the pertinent provisions of the Code of Virginia. It is therefore recommended that the term “restaurant” be removed from the Code as descriptive of such establishments and that the term “food service establishment” be substituted therefor. The Council feels that the term “food service establishment” provides a much clearer description of the types of businesses which are intended to be regulated by the State Department of Health.

In conjunction with this recommendation, the Council recommends that language be added to the definition found in § 35-25 of the Code of Virginia to assure the people of Virginia that all establishments which prepare and serve food in the Commonwealth meet the sanitary standards which are necessary to protect their health and well-being.

Recommendation 2: The authorization to provide for the posting of sanitary ratings and gradings should be removed from the law.

At present, § 35-28 of the Code of Virginia allows the Commissioner of Health to adopt a plan of grading sanitation in food service establishments. Virginia does have a permissive grading plan which is used in a few localities. However, many localities have abandoned the practice of sanitary grading as ineffective.

The Council questions the benefits of the sanitation grading plan for the following reasons:

—The public is not fully informed of the meanings of the gradings and thinks that such a grading denotes the quality of the food or the quality of the service.

—A food service establishment may be inspected on one day by

a sanitarian and receive the highest sanitary rating and, one week later, may digress to the lowest rating but the sanitarian will probably not inspect the premises for another sixty to ninety days.

—If a food service establishment does not maintain acceptable standards of sanitation, then such establishment should have its permit revoked.

The Council therefore recommends that the sanitary grading of food service establishments be discontinued in this State and that the authority for such a plan be removed from the Code of Virginia.

Recommendation 3: The State Board of Health should be permitted to prescribe minimum educational instruction in food protection and handling for managers of food service establishments who fail to comply with food service establishment regulations.

Modern public health experts in the field of food service sanitation advocate the education of persons providing food service in proper sanitation and food handling techniques in order to provide protection from food-borne diseases and illnesses. Due to the nature of the food service industry, it would be impossible to require all employees to have such instruction as the turnover of such employees is very high. Instruction in good sanitation and food handling practices for managers of food service establishments who fail to comply with regulations of the Board of Health would, however, be advisable.

The State Department of Health in cooperation with the Virginia Restaurant Association has conducted several hundred seminars and classes on this subject throughout the Commonwealth in the past ten to fifteen years. It is the understanding of the Council that the State Department of Health is developing an educational program, with funds from the federal government. The Council commends those efforts and recommends that the Board of Health be authorized to adopt regulations requiring such instruction for the managers of food service establishments who fail to comply with food service establishment regulations. Realizing the instructional program will need additional time for development and implementation and additional funding, the Council further recommends that the State Board of Health not be allowed to require instruction unless the instruction is reasonably available to the managers.

Recommendation 4: The requirement for adequate handwashing and toilet facilities for patrons of food service establishments should be more stringent.

For many years, operators of food service establishments which serve “short orders,” i.e., food which is not prepared in advance of the patron’s order, have been exempt from the statutory requirement that adequate handwashing and toilet facilities be provided for patrons. The Council has heard numerous complaints that the food service establishments which began as short order operations have expanded their menus, to include full meals, and their seating capacities. With this expansion, these establishments

have not been required to provide such sanitary facilities as other food service establishments offering full meals. Numerous examples were cited to the Council of nonexistent, inaccessible or inadequate toilet facilities at establishments which serve full meals for lunch.

The Council, therefore, recommends that the application of the requirement of sanitary facilities be extended to food service establishments which serve short orders for consumption inside the premises of such establishment. The Council realizes that this new requirement will place an undue burden on food service establishments which are already constructed and operating under this exemption, therefore, it recommends further that those establishments already under the exemption be allowed to maintain such status unless the establishment substantially alters its menu to provide increased service or its premises to provide additional seating capacity.

Recommendation 5: Cafeterias at industrial plants should no longer be exempted from the requirement of a permit for operation as a food service establishment.

The purpose of the food service establishment inspection law is to protect the public from disease and illness as a result of poor and inadequate sanitation and food handling in such establishments. There is good reason why the employees at an industrial plant should be provided the same protection as they receive when they go to such an establishment after work for a meal. The Council therefore recommends that the exemption for cafeterias at industrial plants found in § 35-38 of the Code of Virginia be deleted entirely. The Council does realize that there may be instances where an employer will provide facilities for making hot beverages and heating food prepared at home for his employees and it is the intention of the Council that these facilities remain exempt from the State law.

Recommendation 6: Any rule or regulation concerning animals in a food service establishment should exempt a police officer with a police dog during the course of such officer's duties.

At present, blind persons accompanied by "seeing-eye" dogs are allowed to enter the dining area of a restaurant with such dogs. The Council sees no reason why a policeman accompanied by a police dog should not be extended this same courtesy by law if he is accompanied by such dog during the course of his duties. The Council makes the recommendation that a policeman be allowed in the dining area of a food establishment with his police dog as long as such policeman is in the course of his duty.

Recommendation 7: Soft ice cream, frozen custard and thick milkshake machines in food service establishments should be removed from regulation by the Department of Agriculture and Commerce in inspecting the manufacture of ice cream and similar products.

For many years, the Department of Agriculture and Commerce has regulated the manufacture of ice cream and similar products. By

a ruling of the Attorney General in 1956, the food service establishments operating a soft ice cream, frozen custard, or thick milkshake machine were required to obtain a permit from the Department of Agriculture and Commerce to operate such machines. Many of these establishments evolved to a point where they became subject to inspection by the Department of Health. Therefore, in many instances, the food service establishment is subject to a dual licensure.

At the present time, if a food service establishment has a soft ice cream, frozen custard, or thick milkshake machine, it must obtain a permit therefor from the Department of Agriculture and Commerce. In actual practice, the inspection is conducted by the local health department sanitarian. If the local sanitarian finds the machine meets the standards, it certifies the machine to the Department of Agriculture and Commerce. Agriculture prepares a permit and sends it to the Department of Health. The Department of Health, in turn, delivers the permit to the food service establishment. As one can readily see, this is a cumbersome and wasteful administrative process.

In order to remedy the above situation, the Council recommends that this procedure be deleted by exempting such machines from regulation by the Department of Agriculture and Commerce. The machines can be inspected by the health department sanitarian as an integral part of the inspection of the food service establishment.

CONCLUSION

The Council concludes that, with the few suggested changes made by it, Virginia's restaurant inspection laws are adequate to protect the public from illness and disease. The suggested recommendations will strengthen these laws for better administration and better regulation of the food service industry. The legislation needed to enact these changes can be found in the appendix to this report.

Respectfully submitted,

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APPENDIX

A BILL to amend and reenact §§ 3.1-562.6, 35-25, 35-26, 35-28 through 35-34, 35-37 through 35-40, 35-42, and 35-42.1, as severally amended, of the Code of Virginia, relating to permits for manufacture of ice cream and similar products and to licensing and regulation of restaurants.

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.1-562.6, 35-25, 35-26, 35-28 through 35-34, 35-37 through 35-40, 35-42 and 35-42.1, as severally amended, of the Code of Virginia are amended and reenacted as follows:

§ 3.1-562.6. Permits.—Within thirty days after the adoption of initial regulations by the State Board of Agriculture and Commerce, every person, firm or corporation engaged in the manufacture within this State of any of the foods covered by this article shall make application to the Commissioner of Agriculture and Commerce on a form prescribed by him for a permit to manufacture such foods or any of them ; *provided, however, no permit shall be required for a soft ice cream, a thick milkshake or frozen custard machine when it is operated as a part of a food service establishment as defined in § 35-25(1).*

A separate application shall be made for each establishment where such foods are manufactured or are to be manufactured.

The Commissioner, upon receipt and approval of such application properly executed, shall issue a permit authorizing the applicant to engage in the manufacture of such foods as are described in the application, provided, however, the Commissioner may, after a full hearing, refuse to issue a permit or renew a permit or may suspend or revoke a permit in the case of any establishment which does not meet the requirements of this article or of any regulation adopted for its administration and enforcement. Such permit shall be renewable on July one of each year. All applications for permits and renewals thereof shall be accompanied by a payment of a ten dollar fee.

§ 35-25. Definitions.—For the purpose of this chapter the following terms shall have the meanings respectively indicated unless another meaning is clearly intended or required by the context:

(1) “~~Restaurant~~” “*Food service establishment*” includes restaurant, coffee shop, ~~cafeteria~~, short order cafe, luncheonette, hotel dining room, tavern, sandwich shop, soda fountain, vending machines and all other public eating and drinking establishments or food service areas or stands by whatever name called, including catering services, the dining accommodations of clubs, all State institutions, and schools and colleges both public and private , *or any other similar place in which food or drink is prepared for sale or for service on the premises or*

elsewhere; and any other eating and drinking establishment or operation where food is served to or provided for the public with or without charge ; provided however, this chapter shall not be construed to include facilities of public service corporations under the jurisdiction of the State Corporation Commission;

(2) "Employee" includes any person who handles food or drink during preparation or serving, or who comes in contact with any eating or cooking utensils or who is employed at any time in a room in which food or drink is stored, prepared or served;

(3) "Eating, drinking and cooking utensils" or "utensils" includes any kitchenware, tableware, cutlery, containers, or other equipment with which food or drink comes in contact during storage, preparation or serving;

(4) "Commissioner" includes the chief executive officer of the State Board of Health and his duly authorized agents;

(5) "Unwholesome food" includes any food or drink not fit for human consumption;

(6) "Board" means the State Board of Health;

(7) "Vending machine" means any self-service device used to dispense readily perishable food or drink for human consumption.

§ 35-26. Permit required; display; State institutions excepted. It shall be unlawful for any person to operate a ~~restaurant~~ *food service establishment* in this State without an ~~unrevoked~~ *a valid* permit from the Commissioner which permit shall be prominently displayed in the ~~restaurant~~ *food service establishment* operated. State institutions, however, shall not be required to secure a permit or post such a permit.

§ 35-28. Enforcement of chapter; rules and regulations; permits; inspection.—The Board shall enforce the provisions of this chapter. In order to protect the public health, the Board is authorized to make all necessary rules and regulations governing sanitary conditions in and about, and food in, ~~restaurants~~ *restaurants food service establishments* subject to this chapter and to provide for the inspection thereof and the issuance ~~,suspension~~ *and revocation* of permits. ~~The Board is authorized to adopt regulations that may require a manager of a food service establishment to complete certain prescribed minimum educational instruction in food protection and handling where such manager has failed to comply with food service establishment regulations provided, however, such instruction must be reasonably available in a locality before the Board may enforce such regulations in such locality. The Commissioner is authorized to provide for the posting of sanitary ratings and grades of such restaurants. The Commissioner shall designate such assistants and restaurant inspectors food service establishment sanitarians as may be required, and inspections shall be made as frequently as deemed necessary by him. One copy of the inspection report shall be retained by the establishment and another copy shall be filed with the records of the State Health Department. The Commissioner may accept the certificate of inspection of any city as to any restaurant food service establishment therein and issue a~~

permit thereon without requirement of inspection under this chapter.

§ 35-29. County and municipal regulation of sanitary conditions.—Nothing contained in this chapter shall in any way limit the power of any county, city or town to prescribe by ordinance for the regulation of sanitary conditions in ~~restaurants~~ *food service establishments* located therein ; *provided, however, such conditions shall not be less stringent than those conditions prescribed pursuant to this chapter.*

§ 35-30. Access to food service establishments .—The Commissioner and his assistants shall have police power to enter any ~~restaurant~~ *food service establishment* at reasonable hours to determine whether the provisions of this chapter and the rules and regulations promulgated hereunder are being complied with.

§ 35-31. Closing of food service establishments.—The Commissioner and any of his agents, acting under his direction, may close any ~~restaurant~~ *food service establishment* if the owner, manager or operator thereof has been guilty of flagrant or continued violation of this chapter or of rules and regulations of the Board governing the operations of ~~restaurants~~ *food service establishments*; and in the event of such violation, it shall be his duty to take such action. The sheriff of the county or city wherein the ~~restaurant~~ *food service establishment* affected is located shall enforce such closure until the closing order is revoked in writing. *For the purposes of this section, the term "agent" shall mean any local health director, or his duly designated acting director in his absence, regional medical directors, medical program directors and the State Epidemiologist only.*

§ 35-32. Maintenance in clean and orderly manner.—Every ~~restaurant~~ *food service establishment*, including the premises, all facilities, furnishings and equipment, shall be maintained in a clean and orderly manner, and effective rodent, insect and vermin control shall be maintained.

§ 35-33. Sewage disposal, handwashing facilities and toilets.—Every ~~restaurant~~ *food service establishment* shall be provided with an approved method of sewage disposal and an adequate number of handwashing facilities and toilets for the accommodations of patrons and employees; provided, that establishments serving only beverages, ice cream and short orders *for consumption outside the building where such short orders are prepared* shall not be required to provide handwashing and toilet facilities for their patrons, but this exception shall not apply to places serving beer for on-premises consumption. *Any food service establishment not required by law to provide suitable handwashing and toilet facilities prior to the effective date of this section shall not be required to provide such facilities unless the premises or menu are substantially altered to provide food service which includes food other than short orders or increases the seating capacity of such establishment.*

§ 35-34. Water supply.—Every ~~restaurant~~ *food service establishment* shall be provided with an adequate, properly located, constructed and operated water supply of a safe, sanitary quality.

§ 35-37. Lighting and ventilation.—All ~~restaurants~~ *food service establishments* shall be adequately lighted and ventilated.

§ 35-38. Certain boardinghouses, cafeterias, dinners and bazaars exempt.—This chapter shall not apply to boardinghouses that do not accommodate transients and to cafeterias operated by industrial plants, *where food and drink are not prepared or sold*, for employees only; nor shall it apply to churches, fraternal and social organizations and volunteer fire departments and rescue squads which hold occasional dinners and bazaars - such as Christmas, Easter and Thanksgiving bazaars—of one or two days duration, at which small quantities of foods, candy, baked goods and similar delicacies made in the homes of members or in the kitchen of the church or organization are offered for sale.

§ 35-39. Notice of disease, etc., to be given.—Notice shall be sent to the Commissioner, or to his nearest agent, immediately by the owner or manager of the ~~restaurant~~ *food service establishment*, or by the employee concerned, if the manager or any employee or any member of his or her respective household contracts any infectious, contagious or communicable disease, or has a fever, a skin lesion or eruption, a cough lasting more than three weeks, or any other suspicious symptom. It shall be the duty of any such employee to notify the owner or manager of the ~~restaurant~~ *food service establishment* immediately when any of such conditions exist, and if neither the manager nor the employee concerned notifies the Commissioner immediately when any of such conditions occur, they shall be held jointly and severally to have violated this chapter.

§ 35-40. Measures to prevent transmission of infection.—When the Commissioner has reason to believe the possibility of transmission of infection from a ~~restaurant~~ *food service establishment* employee to the public exists, the Commissioner is authorized to require any or all of the following measures:

(1) The immediate exclusion of the employee from all ~~restaurants~~ *food service establishments*;

(2) The immediate closing of the ~~restaurant~~ *food service establishment* concerned until no further danger of disease out-break exists, in the opinion of the Commissioner;

(3) Adequate medical examinations of the employee and of his associates, with such laboratory examinations as may be indicated.

§ 35-42. Judicial review.—Any person aggrieved by the refusal to grant, *suspension of*, or revocation of, a permit, *or by closure of a food service establishment pursuant to § 35-31*, or by any rule or regulation of the Board or Commissioner shall have the right of appeal therefrom. Notwithstanding the provisions of Chapter 1.1 (§ 9-6.1 et seq.) of Title 9, any appeal shall be to the circuit court of the county or ~~corporation court of the city~~ wherein the ~~restaurant~~ *food service establishment* affected is located.

§ 35-42.1. Blind persons and “seeing eye” dogs.—Notwithstanding any law or regulation pursuant thereto in conflict herewith, it shall be lawful for a blind person accompanied by a “seeing eye” dog to take such dog with him within the dining area of any ~~restaurant~~ *food service establishment* or other eating place. *It shall also be*

lawful for a police officer to be accompanied by a police dog into such dining area during the course of the police officer's duty.