

Selling Baked Goods Easy as Pie

By Reg P. Wydeven
January 7, 2018

My family and I were blessed to have a wonderful Christmas. Lots of family time, great food, and some treats under the tree. I was also very fortunate to have some generous clients bring me some delicious home-baked goodies.

I was very touched to receive homemade cookies, pistachio pudding cake, and lots of candies. Each one was more delicious than the last. Some were so yummy, their bakers could make a fortune selling them.

Thanks to a court ruling last fall, they now can.

Prior to the ruling, Wisconsin and New Jersey were the only states in the U.S. that had a ban on the sale of home-baked goods directly to consumers. Only those with a food processing plant license were allowed to sell baked goods. As part of the licensing process, applicants were required to submit to inspections and pay fees, which prevented many home bakers from getting one.

In January of 2016, three bakers, Lisa Kivirist, Kriss Marion and Dela Ends, who along with the Institute for Justice, a libertarian law firm, challenged Wisconsin's ban in state court. On May 31, 2017, Lafayette Circuit Court Judge Duane Jorgenson held that the ban was unconstitutional.

Wisconsin officials, however, argued that Jorgenson's ruling was specifically limited to Kivirist, Marion and Ends. The Wisconsin attorney general's office was still enforcing the ban against everyone except the three of them. So the plaintiffs informed Judge Jorgenson and on October 5, he clarified his ruling by stating it not only applied to the three plaintiffs, but to all home bakers. As a result, home bakers are now allowed to sell safe baked goods that do not require refrigeration directly to consumers.

Judge Jorgenson's initial ruling held that the ban had "no real or substantial connection" to protecting the public, because there was no instance of anyone ever becoming sick from an improperly baked good despite home-baked goods being legally sold within the U.S. He decided that only special interest groups, such as the Wisconsin Bakers Association, benefited from the ban because it outlawed competing home bakers.

So now only New Jersey is the last holdout against selling home baked goods. But that may change soon, as a group of home bakers recently sued the government over the law ban. The suit was filed against the New Jersey Department of Health, and like Wisconsin, the New Jersey bakers claim the ban violates the state's constitution.

New Jersey currently also mandates that bakers have a commercial license, which requires the use of a commercial-grade kitchen outside of a home. Because the cost of renting a kitchen is so high, New Jersey's ban makes it even harder for bakers to sell their goods. As a result, they have been lobbying the state legislature for nearly a decade to lift the ban.

Things were so desperate, apparently one baker in New Jersey resorted to robbing a bank in order to make ends meet. Apparently he kneaded the dough.

This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc. © 2018 McCarty Law LLP. All rights reserved.