

Rabbinic Supervision of Jewish Owned Businesses Operating on Shabbat

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This paper was adopted by the CJLS on February 26, 1986 with a vote of thirteen in favor, one opposed, and one abstaining (13-1-1). The names of voting members are unavailable.

שאלה

May members of the Rabbinical Assembly extend rabbinic supervision to food prepared in Jewish owned and/or operated businesses which are open on Shabbat?¹

תשובה

In answering this question, there are three issues with which we must deal. First, what is the status of food cooked on Shabbat? Secondly, what is the status of a person who is מחילל שבת (who transgresses Shabbat) with regard to trustworthiness for kashrut?² Finally, how would granting השגחה (supervision) to such establishments as those described above affect our congregants' perceptions of the importance of Shabbat?

Food Cooked on Shabbat

It is forbidden for a Jew to cook on Shabbat³ or to ask a non-Jew to cook for him.⁴ Food that a Jew cooks on Shabbat במזיד, i.e., knowing that it is Shabbat and that cooking on Shabbat is forbidden, may be eaten by other Jews only after Shabbat.⁵ If food is cooked by a non-Jew on Shabbat, it may be eaten by Jews after Shabbat only after the time required to cook such food has elapsed.⁶

The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

Food cooked by a Jew or by a non-Jew may be eaten after Shabbat. Therefore, food baked in a wholesale or retail establishment may be purchased and eaten on any day other than Shabbat, even if there is a possibility that it was made on Shabbat itself.

Trustworthiness

An important concern in granting השגחה to any establishment is the נאמנות, trustworthiness, of the proprietor. Since the משגיח employed will be a יוצא ונכנס (occasional supervisor) and not a משגיח חמידי (full time supervisor), we will rely on the owner to ensure the kashrut of his business on a day to day basis. Can we consider trustworthy a person who is known to be a public violator of a Shabbat law?

There is precedent for determining a person's trustworthiness by his observance of mitzvot.⁷ That is, this has certainly been the case in matters of testimony concerned with קיום דבר the establishment of a fact. However, this is not a monolithic principle. In regard to matters of clarification of reality (כירור), the halakhah is less stringent as to the qualifications of witnesses. Maimonides states:

One witness is acceptable in matters of prohibition, even if he is disqualified from other types of testimony. The *shehitah* of a sinner is acceptable, and he is believed when he says, "I slaughtered the animal in accordance with halakhah."⁸

Thus it appears that a Jew, even if he does not observe all mitzvot, may be considered trustworthy in those things which he does observe. If a person observes kashrut, we may accept his word about matters of kashrut, even if he does not observe Shabbat.

There are other grounds for accepting the owner of a business requesting השגחה as trustworthy. The *Shulhan Arukh*⁹ states that in certain questions of forbidden mixtures of food we employ the services of a non-Jew to taste the food. On what grounds do we trust the non-Jew's judgment in a matter of kashrut? The Taz writes,

It is decided in the Beit Yosef that we rely on a non-Jew who is not a professional cook when he makes a statement in ignorance of its legal bearing. We rely on a professional cook even when he is aware of the legal bearing of his statement because he would not lie lest he lose his job.¹⁰

Certainly our Jewish owner is in a situation similar to that of the non-Jewish professional cook. He presumably feels that having השגחה is an asset to his business and wishes to retain that השגחה. It is in his best interest to act in good faith.

When we give השגחה to any business, owned by Jews or gentiles,

opened on Shabbat or closed, we rely on the owners to uphold the kashrut of the establishment – we do not require a full-time, on-site משגיח. While observance of Shabbat on the part of Jews is both desirable and laudable, it is not a guarantee of trustworthiness in our day, nor is non-observance of Shabbat a sign of general lack of credibility. Therefore we conclude that the intention of a Jew to keep his business open on Shabbat, while in the legal sense determining him to be לא נאמן, does not render him untrustworthy with regard to kashrut.¹¹

Shabbat Observance

Our dilemma in answering this question arises from the conflict between two of our ideals. On the one hand, we want to encourage people to observe kashrut. On the other hand, we also want them to observe Shabbat. An establishment such as described in our question may meet our requirements for granting השגחה as regards ingredients and manner of preparation, but the operator's business practices clearly include חלול שבת. Ideally, we would like our communities to have access to establishments where food is prepared under rabbinic supervision and which are closed on Shabbat.

Impact on Community

Unfortunately, we cannot always realize our ideals. There is a shortage of bakeries and other establishments under rabbinic supervision. Observance of kashrut is often made more difficult by this shortage and by our uneasiness about relying on lists of ingredients on labels to determine the kashrut of a product. Under such circumstances, we may decide to give השגחה to establishments even if their owners not only fail to live up to our ideals of Shabbat observance, but in fact desecrate Shabbat publicly by keeping their businesses open.

CONCLUSION

We therefore propose the following solution. Rabbinical Assembly members may extend supervision to Jewish-owned and/or operated establishments which bake and/or remain open on Shabbat. At the same time, rabbis should emphasize that acknowledging the kashrut of the food made in such establishments does not endorse חלול שבת. We are giving our approval to the baked goods, not the baker. We should discourage our congregants from patronizing these – or any other – businesses on Shabbat.

We recognize that this proposal is a compromise of our ideals. In communities where kosher baked goods are available from a bakery

which is closed on Shabbat or where baked goods with a הכשר are readily available in stores, a rabbi may decide to refuse השגחה to a bakery that would remain open on Shabbat.

The granting of השגחה is a highly politicized issue in many communities and a decision to give Conservative השגחה to a business open on Shabbat would be unwise in certain communities. Individual rabbis or local Rabbinical Assembly branches know the nature of their own communities and must use their discretion. We do feel that given the existence of communities where food prepared under rabbinic supervision is difficult to obtain, we should do everything in our power to make such food more readily available. At the same time, we must make it clear that we are also committed to the observance of other mitzvot, in this case Shabbat.

NOTES

1. This תשובה is written in response to questions sent to the Law committee by the Philadelphia Region of the Rabbinical Assembly on January 10, 1986.

To date, the CJLS has no policies or guidelines for granting השגחה.

2. The authors wish to acknowledge the assistance of Rabbi Alan Yuter whose paper "Testimony in Jewish Law" (submitted to the CJLS on June 18, 1979) and subsequent discussion of the issues involved provided most of the background material necessary to write the section on נאמנות found in this paper.

3. *Mishnah Shabbat* 7:2.

4. *Shulhan Arukh, Orah Hayyim* 307:2.

5. *Op. cit.* 318:1.

6. *Op. cit.* 307:20. When work is done on Shabbat in public by a non-Jew for a specific Jew, that Jew may never benefit from it. Jews for whom the work was not directly intended may benefit from it. In our case, the baked goods are not intended for a specific Jew; indeed they may not be intended for a Jew at all. See *Orah Hayyim* 325:14.

7. *Iggrot Moshe*, Moshe Feinstein, *Yoreh De'ah*, Part Two, Section 43. *Shulhan Arukh, Yoreh De'ah* 119:1, 7.

8. Maimonides, *Hilkhot Eduh* 11:7.

9. *Shulhan Arukh, Yoreh De'ah* 98:1.

10. Taz on Tur, *Yoreh De'ah* 98.

11. See *Iggrot Moshe, Yoreh De'ah*, Part Two, sections 43 and 44. Feinstein writes that even if a person is not נאמן (trustworthy) in the classical sense, we depend upon him with regard to *kashrut* if he is known to be an honest person. The circumstances under which this applies are detailed in Section 43.