

# High court hints at leeway on selling food as 'kosher'

## Justices also deny Oken's death appeal

By Lyle Denniston  
Washington Bureau

WASHINGTON — Food stores in Baltimore and across the state wishing to sell items as "kosher" without strictly obeying Orthodox Jewish law got a hint yesterday that the U.S. Constitution might be on their side.

A New Jersey Supreme Court decision, nullifying state kosher regulations similar to those now enforced under Baltimore and Maryland law, was left intact by the U.S. Supreme Court.

The New Jersey court said it violates the Constitution's demand for separation of government and religion for states to use their official authority to enforce Orthodox Jewish standards for what is or is not "kosher."

A claim along those same lines is now being considered in Baltimore by U.S. District Judge Benson E. Legg, in a case challenging the city's kosher ordinance. The challenge is by George Barghout, operator of a Yogurt Plus store in a Baltimore mall, who has been fined \$400 for selling "kosher" hot dogs cooked near grease from Polish sausage.

About 21 states now have laws seeking to protect buyers of "kosher" food against deception about the "kosher" nature of those items. Before the New Jersey Supreme Court ruling last July, kosher laws regularly have been upheld in court. The Baltimore ordinance, for example, was upheld under the Maryland Constitution early last year by the Maryland Court of Appeals, in another facet of the Barghout case.

The Supreme Court order was one of a series in which it bypassed new appeals involving Maryland cases or issues.

Without comment, the court refused to hear the first appeal by death row inmate Stephen Howard Oken, who was sentenced to die for the 1987 slaying of Dawn Marie Garvin at her White Marsh apartment in Baltimore County.

After that murder, Oken also killed the sister of his former wife and, after fleeing to Maine, murdered a motel clerk in Kittery. He has been convicted of those murders, too.

Although the Supreme Court order yesterday would free Maryland to set an execution date for Oken, he still may pursue other legal challenges in federal court.

In another order, the court turned down a constitutional challenge to a 1988 ordinance in Hagerstown, barring adult bookstores and movies from the city's central business district. The operators of an adult bookstore at 25 W. Washington St. failed in a constitutional challenge to the ordinance in lower courts.

Two other orders yesterday may have brought an end to lingering legal disputes growing out of the scandal that engulfed former Maryland Gov. Marvin Mandel and his associates two decades ago. The court was

asked to rule on two cases involving ownership of stock in the Marlboro race track, but it declined. The track figured prominently in the federal government's fraud and racketeering case against the governor while he was in office.

In one case, the 4th U.S. Circuit Court of Appeals ruled in September that Baltimore businessman Irving T. Schwartz was not entitled to regain ownership of tens of thousands of shares of stock in the Marlboro track.

In the second case, the Maryland Court of Special Appeals ruled last May that state courts could not examine why Mr. Mandel, as governor, had vetoed a bill transferring 18 horse-racing days to the Marlboro track from the track in Hagerstown. Thus, that court threw out a damages lawsuit by the family of Josephine M. O'Hara, who had sold stock in the Marlboro track to Mr. Mandel's associates.

Ms. O'Hara's family contends that she was induced to sell the stock as part of the plot to drive down the stock's value through the governor's veto of the racing days bill, only to have its value go back up when the General Assembly overrode the governor's veto, making the Marlboro track a more valuable property.

Sum 23 Feb 1993