

SOFT DRINKS AND BEVERAGES:
LICENSES:



A manufacturer of syrups and concentrates used in the concoction of soft drinks and beverages is not required to secure a license from the Division of Health. Such products, however, and the place of their manufacture, and or processing, are not exempt from the operation of the General Food Inspection and Sanitation Law of this state.

April 7, 1958

Honorable H. M. Hardwicke
Acting Director, Division of Health
State Office Building
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"We have recently received a letter from Mr. B. R. Murphy, President, Nesbitt Fruit Products, Inc., 2946 East Eleventh Street, Los Angeles 23, California. In his letter Mr. Murphy requests that clarification be made as to whether or not their proposed food manufacturing establishment in Kansas City would be subject to the Beverage Inspection Act of Missouri (Chapter 196, Sections 196.365 to 196.445). Mr. Murphy contends that the concentrates and syrups which they intend to manufacture in Kansas City, Missouri, are not beverages and the Beverage Inspection Act of Missouri should not apply to his proposed operation. These concentrates and syrups are not in a form for consumption; but are to be used as constituents of finished beverages.

"We would appreciate an official opinion concerning the following:

"1. Does this type of operation require a Beverage License from the State of Missouri?"

Honorable H. M. Hardwicke

Your first question is: Whether the type of operation set forth by you above requires a beverage license from the state of Missouri.

Section 196.365, RSMo 1949, reads as follows:

"1. It shall be unlawful to make, manufacture, or in any manner produce any soft drinks or beverages, excepting malt beverages, without first obtaining a license from the division of health, as in sections 196.365 to 196.445 required.

"2. The term 'soft drinks' as used in sections 196.365 to 196.445 shall be held to mean and include all beverages of every kind manufactured or sold in this state, which shall be understood to include those containing less than one-half of one per cent of or no alcohol, including carbonated beverages, still drinks, seltzer water, artificial or natural mineral waters and all other waters used and sold for beverage purposes.

"3. Application for such license shall be made to the division of health on a blank prescribed by the division for that purpose. Such license shall expire on the thirtieth day of June next following the day of issuance thereof."

For a definition of "beverage" we turn to the case of *United States v. Robason*, 38 Fed. Supp., 991. At l.c. 992, the court states:

"Webster's New International Dictionary, Second Edition, (1940), defines the word 'beverage' as:

"'Liquid for drinking; drink; usually, drink artificially prepared, and of an agreeable flavor; as, an intoxicating beverage.

Honorable H. M. Hardwicke

"2. Specif., any of various drinks, such as weak beer, or the diluted juice of fruit, sugar cane, ginger, etc."

From the definition of "soft drinks," as used in Section 196.365, supra, and the definition of "beverages," as defined in the Robason case, it seems clear that the license which is required by Section 196.365, is as to products which are ready for consumption. From your letter of inquiry it is clear that the products which you have in mind, to wit, concentrates and syrups, are not ready for human consumption at the time they leave the manufacturing plant, but are simply products which will be sent elsewhere where, when properly compounded with other ingredients, will be sold at retail for human consumption. For this reason it seems clear to us that the type of operation contemplated by you does not require a beverage license.

The food products here under consideration, and the place of their manufacture and/or processing, are not exempt from the operation of the General Food Inspection and Sanitation Law of this state.

CONCLUSION

A manufacturer of syrups and concentrates used in the concoction of soft drinks and beverages is not required to secure a license from the Division of Health. Such products, however, and the place of their manufacture, and or processing, are not exempt from the operation of the General Food Inspection and Sanitation Law of this state.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton
Attorney General

HPW:lc,vlw