

2533

1. SOFT DRINK—DEFINED IN SECTION 1089-17 G. C.—DOES NOT INCLUDE EITHER FRUIT JUICES OR BEVERAGES COMMONLY KNOWN AS FRUIT NECTARS.
2. CONCENTRATED FRUIT JUICE—NOT A SOFT DRINK SYRUP—SECTION 1089-18, PARAGRAPH d, G. C.

SYLLABUS:

1. The term “soft drink” as defined in Section 1089-17, General Code, does not include either fruit juices or the beverages commonly known as “fruit nectars.”
2. Concentrated fruit juice is not a “soft drink syrup” as that term is used in paragraph (d) of Section 1089-18, General Code.

Columbus, Ohio, November 22, 1950

Hon. H. S. Foust, Director, Department of Agriculture
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“Senate Bill No. 190 was passed April 20, 1949 and approved by the Governor of Ohio April 29, 1949. The bill as passed was to regulate the manufacture and sale of soft drinks and non-alcoholic beverages in containers.

“Under Section 1089-17 (a) soft drink is defined as follows: ‘The term “soft drink” as used in this act shall mean and include any non-alcoholic carbonated beverage, soda or soda water, fruit-ade, any non-alcoholic flavored still beverage, artificial waters, whether carbonated or not, and bottled table waters, seltzer or club soda.’

“Based on this section of the law, the Division of Food and Dairies, under the Department of Agriculture, has attempted to license canning plants, as soft drink plants, particularly in the citrus fruit areas, who are canning fruit juices, fruitades and fruit nectars.

“The department has met considerable opposition from the various plants who have in turn consulted their legal representatives and the attached letter states their views on the subject.

“We are now turning to you as legal representative for the State of Ohio, and ask that you render an opinion on the various phases of the act which may or may not affect the canners of these so-called fruit juices, fruit-ades and fruit nectars.

“Using the attached letter as a guide :

Page 1, paragraph 1 :

“What are ‘fruit nectars?’

“Does the term ‘soft drink’ apply to the use of fruit nectars and fruit juices?

Page 1, paragraph 2 :

“Is a soft drink a luxury item?

“During World War II sugar was allocated to soft drink plants. Practically all industrial plants now have soft drink dispensers or it is sold from lunch stands at recess or break time periods and most schools serve drinks with school lunches.

Page 1, paragraph 3 :

“Does fruit juice or nectar, when diluted with water and to which sugar and citric acid have been added become an ade or non-alcoholic flavored still beverage?

Page 2, paragraph 2:

"No comment.

Page 2, paragraph 3:

"Practically all types of soft drinks are now sold in grocery stores. I understand there is now a move on foot to install dispensers to serve cold fruit juices in cans.

Page 3, paragraph 1:

"Sugar was allotted to soft drink plants under OPA regulations during World War II.

Page 3, paragraph 2:

"Soft drinks contain 8% to 15% solids (sugar).

Page 3, paragraph 3:

"Mention is made of products packed by Richmond-Chase Company. The name of this product is 'Heart's Delight Apricot Nectar.' The label on the can states that it contains water, apricot pulp, juice, sugar and citric acid. Is this a fruit juice, fruit nectar or a fruit-ade?"

Page 4, paragraph 1:

"Soft drinks are foods. The margin of profit is not within the jurisdiction of the Department of Agriculture. The department does require a license for bakeries, milk and ice cream plants, milk and cream testers, canners, cold storage warehouses and locker plants, which in fact is a tax on bread, meat, milk and other dairy products and canned goods.

Page 4, paragraph 2:

"Was it the intent of the Legislature to exclude this type of product, namely, fruit-ades and fruit nectars?"

"Section 1089-19 (a) defines still beverages, which in part reads as follows: 'All non-alcoholic flavored, still beverages and fruit-ades shall be prepared from sweetening syrup, flavoring, potable water, with or without harmless color, and with or without acidulation by the use of harmless organic acids or pure phosphoric acid.'

"We would like for you to render an opinion further regarding concentrated juices which are usually sold in 5 oz. or 6 oz. cans, frozen, and to which water must be added to make a non-carbonated beverage. There are several such products on the market, such as Snow Crop Brand, etc.

"Section 1089-18 (d), provides for the licensing of any person manufacturing a syrup or extract to be used in the making of any soft drinks. This section further provides for the payment of a \$5 license fee for any such person.

"Do you believe these products should be registered with the Department of Agriculture and a license fee collected for the same?"

I deem the several inquiries in your letter to be essentially as follows:

1. Does the term "soft drink" as defined by Section 1089-17, General Code, include fruit juices and fruit nectars?

2. Is concentrated fruit juice a "soft drink syrup" within the meaning of paragraph (d), Section 1089-18, General Code?

Paragraph (a) of Section 1089-17, General Code, defines the term "soft drink" as follows:

"The term 'soft drink' as used in this act shall mean and include any non-alcoholic flavored carbonated beverage, soda or soda water, fruit-ade, any non-alcoholic flavored still beverage, artificial waters whether carbonated or not, and bottled table waters, seltzer or club soda."

It is an elementary rule of statutory construction that words used in a statute are to be given their usual and ordinary meaning unless the context otherwise indicates.

Definitions of certain of the terms used in the statutory definition quoted above are given in Webster's New International Dictionary, Second Edition, as follows:

Beverage:

"Liquid for drinking; drink; * * *"

Flavored: (as an adjective)

"Having a distinct flavor; * * *"

Flavor: (noun)

"That which imparts to anything a peculiar odor or taste * * *"

Flavor: (flavored) (transitive verb)

"To give flavor to; to add something (as salt, or spice) to, * * *"

Ade:

"A drink made from the juice of (usually citrus) fruit mixed with water and sweetened; as, lime or grape ade."

Nectar: (Bot.)

"A sweet liquid secreted by the nectaries of a plant. It is the chief source of the honey of bees."

Syrup:

"* * * a concentrated solution of sugar with juices, etc. * * *"

Having in mind these definitions we may consider first whether fruit

juices may be considered soft drinks. I assume that you have in mind only the pure juice extracted from fruits to which nothing; except possibly preservative materials, has been added. Such juices certainly are beverages and certainly possess flavor as those terms are defined above. Whether they are "flavored" is distinctly another matter.

If the word "flavored," as used in the statute, is used as an adjective we should certainly be compelled to say that such juices do come within the statutory definition, since they do have "a distinct flavor."

If, on the other hand, the word "flavored" in the statutory definition of soft drink is used as a form of the transitive verb, indicating that the flavor has been added artificially, we should be compelled to conclude that such juices do not fall within the statutory definition of "soft drinks."

The sense in which this word is used in the statutory definition is readily apparent from the language of paragraph (a) of Section 1089-19, General Code. That paragraph reads as follows:

"(a) For the purpose of this act all non-alcoholic flavored carbonated beverages or soda waters shall be prepared from sweetening syrup, flavoring, potable carbonated water, with or without harmless color, and with or without acidulation by the use of harmless organic acids, or pure phosphoric acid; all non-alcoholic flavored, still beverages and fruitades shall be prepared from sweetening syrup, flavoring, potable water, with or without harmless color, and with or without acidulation by the use of harmless organic acids or pure phosphoric acid."

From this language it becomes abundantly clear that the beverages with which this statute, Section 1089-17, et seq., General Code, is concerned are synthetic beverages, in the preparation of which the flavor is added artificially. Fruit juices, which attain their flavor by natural means, cannot, therefore, be included within this category of beverages.

It remains to determine whether fruit juices could be included in the category of "fruit-ades." The word fruit-ade does not appear in any of the standard dictionaries and is obviously a coined word. Nonetheless it is possible to arrive at its meaning from the definition of the word "ade." It seems clear that this coined word is designed to include any "ade" made from the juice of any fruit.

As we have noted above an ade is "a drink made from the juice of (usually citrus) fruit mixed with water and sweetened; as, lime or grape ade." It is a matter of common knowledge that in making ades, such as

lemonade, orangeade, and the like, that the fruit juice is used in small quantities as a flavor; and that the principal ingredient, as to volume, is water. They are synthetic, i. e., artificially concocted. Obviously, therefore, fruit juices could not be included in the category of fruit ades.

Nor would the rule be different, in my opinion, in the case of those fruits and juices to which some amount of water is added in cooking in the preparation of those beverages known as "fruit nectars."

In a letter addressed to you by counsel for the National Canners Association I note the following statement describing the preparation of fruit nectars:

"(1) In packing the ordinary fruit juice, the canner finds no need for the addition of water. Oranges, pineapples, and grapefruit all are sufficiently liquid in form to permit the canner to extract fully the food content of the fruit and can it in its natural form. Some fruits, however, lack sufficient juice content to permit their being packed in a palatable form without the addition of water. Apricots, peaches and pears fall within this latter category. To extract the full food content of these fruits, it is necessary to prepare a puree of the apricots, peaches, or pears which contains substantially the entire substance of the fruit, with only the pits, seeds, skins, and coarser fibre eliminated. A light syrup is added solely to give the product a consistency comparable to that of other fruit juices. * * *

Assuming this statement correctly describes this type of beverage, it is obvious that they cannot be classed either as a "flavored beverage" or as a "fruit-ade." The reason for this is that it is not a synthetic beverage concocted by the addition of a small amount of fruit flavor to a large quantity of water, as in the case of a fruit-ade or other "non-alcoholic flavored still beverage;" but rather consists largely of fruit pulp and natural fruit juice thinned, by the addition of water, to the consistency of citrus fruit juices.

As to your third question, the inclusion of concentrated fruit juices in the category of "soft drink syrups," the answer is apparent, in my opinion, in the definition of "syrup" as noted above. Such concentrated juices are not, in the words of the definition, "a concentrated solution of sugar with juices" but rather they are a concentration of juices with or without added sugar. I have no difficulty, therefore, in concluding that concentrated fruit juices do not constitute "soft drink syrup" within the meaning of paragraph (d) of Section 1089-18, General Code.

Accordingly, in specific answer to your inquiries, it is my opinion that:

1. The term "soft drink" as defined in Section 1089-17, General Code, does not include either fruit juices or the beverages commonly known as "fruit nectars."

2. Concentrated fruit juice is not a "soft drink syrup" as that term is used in paragraph (d) of Section 1089-18, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.