

FOOD AND DRUGS - Inspection of, applicability of Article 8 of Chapter 93 of R. S. Missouri 1929 to malted milk beverage.

10-1
September 21, 1934.

W. F. Schlicht, M. D.
Food and Drugs Division,
The State Board of Health of Missouri,
Kansas, Missouri.



Dear Sir:

A request for an opinion has been received from you under date of September 10, 1934, such request being in the following terms:

"I wish to ask you for a ruling on Malted Milk that is being made all over the state by the Dairy and Creamery Companies. They ship in flavored malt, mix it with milk by aid of a bottling machine, cap it, and sell it in pint bottles. It is being sold at soda fountains, Ten Cent Stores and all soft drink stands. I wish to ask you if it would come under this beverage law, Sec. 13116 where it reads as follows;

All non-intoxicating beverages and flavored beverages as it must be according to the ingredients in the malt syrup, a flavored beverage. If it is a flavored beverage we should therefore collect nine tenth's cent per case of 12 sixteen ounce bottles.

The Dairy Co's have refused to pay until I receive an official opinion from your office."

Revised Statutes of Missouri 1929, Section 13116 provides as follows:

"The food and drug commissioner of this state shall cause to be inspected by chemical analysis samples of all non-intoxicating liquors or beverages or so-called 'soft drinks' of every kind manufactured or sold in this state, which shall be understood to include those containing

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less than one-half of one per cent. of or no alcohol, including ginger ale, ginger beer, hop ale, soda water, bevo, unfermented grape juice, cider, carbonated beverages, coca-cola, unfermented cereal or malt beverages, all non-intoxicating beverages and flavored beverages, seltzer, water, mineral waters and all other waters used and sold for beverage purposes, and also all fountain syrups, flavors and extracts intended for use in the preparation and concoction of so-called 'soft drinks.'

From this Section, and especially the underlined parts thereof, and the fact that these plain words have not been altered by judicial construction, we are unable to see why there is any doubt about the applicability of this Section to the malted milk beverage referred to in your letter.

In conclusion, it is our opinion that Article 8 of Chapter 93 of Revised Statutes Missouri, 1929, relating to the inspection of beverages, applies to the malted milk beverage referred to in your letter.

Very truly yours,

EDWARD H. MILLER

ASSISTANT ATTORNEY-GENERAL

APPROVED:

ATTORNEY-GENERAL