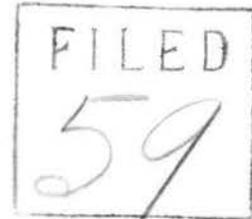


FOOD AND DRUGS: Whether coloring added to "orange drinks" adulterates such is question of fact -- color added to "orange drinks" unless stated on container in which sold, is misbranded.

June 19, 1936.

6-27



Honorable E. T. McGaugh, M. D.
State Health Commissioner
State Board of Health
Jefferson City, Missouri

Dear Dr. McGaugh:

This is to acknowledge your letter as follows:

"I am requesting an opinion as to the sale of orange drinks within the State as regards color, that is whether or not artificial coloring can be added to orange drinks."

At the outset of this opinion we desire to call your attention to the fact that we do not know what you mean by the term "orange drinks." We assume that it is a drink which is represented as being made solely from the juice of oranges and not the drink "orangeade" as commonly known. Thus, assuming the premise that orange drinks are composed solely from the juice of oranges, we proceed with your inquiry.

The regulating of food and drugs in the State of Missouri as to adulteration and misbranding is an exercise of the police power and solely an inspection law. Coca Cola Bottling Co. et al. v. Mosby, 233 S. W. 446; State v. Leif, 248 Mo. 722.

Article 2, Chapter 93, R. S. Mo. 1929, pertains to adulteration and misbranding of food and drugs. Section 13017, of said article and chapter defines "food" as follows:

"The term 'food,' as used in this article, shall include all articles used for food,

drink, confectionery or condiment by man or animal, whether simple, mixed or compound."

Section 13019, R. S. Mo. 1929, provides when food is deemed to be adulterated, and in part provides as follows:

"Food shall be deemed to be adulterated:
1. If any substance or substances have been mixed with it so as to lower or depreciate or injuriously affect its strength, quality or purity. * * * * * 4. If it is mixed, colored, coated, polished, powdered or stained in a manner whereby damage or inferiority is concealed; or if, by any means, it is made to appear to be better or of greater value than it really is."

Section 13020, R. S. Mo. 1929, defines the term "misbranded."

Section 13022, R. S. Mo. 1929, provides when food is deemed to be misbranded and provides in part as follows:

"In the case of food as herein defined, an article shall also be deemed to be misbranded: 1. If it is an imitation of, or is offered for sale or sold under the distinctive name of another article.
2. If it be labeled or branded, tagged, stenciled or marked so as to deceive the purchaser, or purport to be a foreign product when not so.

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6. * * * Provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed misbranded in the following cases, viz.: * * *(2) In the case of articles labeled, branded, stenciled, or tagged so as to plainly indicate that they are mixtures,

compounds, imitations or blends, and the word 'mixture,' 'compound,' 'imitation,' or 'blend,' as the case may be, is plainly stated on the package or container in which they are offered for sale: Provided, that the term 'blend,' as used herein, shall be construed to be a mixture of like substances, not excluding harmless coloring and flavoring ingredients used for the purpose of coloring and flavoring only; * * * *"

Sections 13030, 13031, 13032 and 13033, R. S. Mo. 1929, relate to non-alcoholic drinks such as ginger ale, soda water, lemonade, orangeade etc. However, as we have assumed that orange drinks mean those drinks made solely from the juice of oranges and not a non-alcoholic drink as defined in the above Sections 13030-33, inclusive, we do not in this opinion quote from those sections as they do not relate to orange drinks.

From the above and foregoing it is our opinion that if coloring is added to orange drinks and such lowers or depreciates or injuriously affects its strength, quality or purity, or by adding the coloring damage or inferiority of the drink is concealed or it is a means by which said drink appears to be better or of greater value than it really is, then such would amount to an adulteration of the orange drink and would be violative of Section 13019, R. S. Mo. 1929. Whether or not coloring added to orange drinks makes said drinks adulterated would be a question of fact which your Department will have to determine. This Department does not know whether the coloring added to orange drinks would, in fact, affect its quality or purity or conceal its inferiority. However, if you determine as a fact, that coloring added to orange drinks does not adulterate such, yet said orange drinks must be plainly labeled or branded, tagged, stenciled or marked so as to not deceive the purchaser.

June 19, 1936

It is our further opinion that orange drinks that have artificial coloring added to same would be misbranded unless such fact was stated on the container or the package in which such are sold or offered for sale.

Yours very truly,

James L. HornBostel
Assistant Attorney-General

APPROVED:

ROY McKITTRICK,
Attorney-General

JLH:EG