

Answer by letter-Wood

October 19, 1970

OPINION LETTER NO. 442

Mr. Joseph B. Reichart
Assistant Director of Health
Missouri Division of Health
Broadway State Office Building
Jefferson City, Missouri 65101



Dear Mr. Reichart:

You have requested my opinion on the proper interpretation of the Soft Drink and Beverage Law (Sections 196.365-196.445) with regard to the following questions:

- "1. Must the beverage inspection fee be determined on the gallonage with a maximum established by the 'rated capacity' of the bottling equipment?
- "2. May the 'rated capacity' maximum fee be elected by the bottlers as an alternative method of determining the fee?
- "3. For those companies that export beverages into another state, will we be complying with Section 196.380 if we bill the bottler at three-tenths cent per gallon for that portion sold in Missouri or the maximum fee as determined by the rated capacity, whichever is less?"

The pertinent statutes read as follows:

"A license fee of one dollar shall be paid by each manufacturer of soft drinks or beverages required to be licensed under the provisions of sections 196.365 to 196.445; and in addition thereto an inspection fee shall be paid

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by wholesale manufacturers of soft drinks or beverages of three-tenths cent for each gallon of such beverage manufactured or sold in this state, but the fees for inspection shall not exceed four cents per month per case of twenty-four bottles of such manufacturer's bottling capacity, as determined by the rated capacity of the machines therein for an eight hour day as rated by the manufacturer of such machines; . . ." (Emphasis added) (Section 196.375, RSMo)

"All beverages, soft drinks, sirups, flavors or extracts as in sections 196.365 to 196.445 described, which are manufactured, prepared or bottled in this state and exported outside of this state for sale, shall be inspected as other beverages, soft drinks, sirups, flavors or extracts designated in said sections, but such inspection shall be free of cost to the manufacturer or bottler." (Section 196.380, RSMo)

"No such bottled soft drinks or beverages that are manufactured out of the state of Missouri shall be sold or offered for sale within the state unless the same is first inspected and analyzed and approved by the division of health which shall be upon a like application as provided in section 196.365 and a license fee of one dollar shall be paid therefor; and in addition thereto an inspection fee of three-tenths cent for each gallon of such beverages sold in this state by such manufacturer shall be paid by such manufacturer. Like samples for such inspection and analysis shall be furnished as herein provided for Missouri manufacturers. Such license shall be renewed annually upon the same terms and conditions as required for the original license." (Section 196.385, RSMo)

"All manufacturers, wholesalers and dealers in bottling soft drinks, beverages, sirups, flavors or extracts shall keep an accurate account of their sales and make a report under oath at the end of each month to the division

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of health with a remittance to cover all sales for the month, unless such manufacturer or bottler pays the maximum inspection fee based on the bottling capacity of such manufacturer's or bottler's plant pursuant to section 196.375. The books of such manufacturers, bottlers, wholesalers or dealers shall at all times be open to examination and inspection by the division of health and its officers and agents." (Section 196.405, RSMo)

"The division of health shall record on books kept for that purpose the names and places of business of all persons, firms and corporations engaged in the manufacture, preparation or bottling of all nonintoxicating beverages or soft drinks or sirups, flavors or extracts as described in section 196.365. The division shall keep a record of all nonintoxicating beverages or soft drinks manufactured, prepared or bottled and the amount produced by each manufacturer or bottler or sold by dealer, or in the case of manufacturers in this state, of the bottling capacity of such manufacturer's plant and shall keep a record of all inspections made. The division shall keep a record of all fees collected and all expenditures incurred and shall make a full and complete report of the same to the governor upon the first day of each year." (Section 196.425, RSMo)

In our opinion, the legislature intended that all soft drinks sold in this state are to be inspected. We further believe that the legislature intended that the fee for such inspection shall be based upon the number of gallons sold in Missouri or the manufacturer's rated bottling capacity. However, the latter basis for the inspection fee, is, as stated by the law, a "maximum inspection fee" (Section 196.405, RSMo) and not an independent basis for computing the inspection fee. This is equally evident from the language of the statute providing for the rated bottling capacity, viz., ". . . but the fees for inspection shall not exceed . . . [the manufacturer's bottling capacity] . . ." (Emphasis added) (Section 196.375, RSMo).

All soft drink manufacturers are required to keep an accurate account of their sales and to make a report each month to the Division of Health of all their sales for the month unless the manufacturer pays the maximum inspection fee based on his bottling capacity (Section 196.405, RSMo). The Division of Health must keep a

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record of (1) all soft drinks manufactured or sold in the state or (2) the bottling capacity of each Missouri plant (Section 196.425, RSMo). From these two statutes, we conclude that a given company must report its total sales in Missouri for any particular month, and pay an inspection fee based upon the number of gallons sold, unless the company pays the full fee based upon its plant rated capacity. We can see no justification in these statutes for the company under any circumstances paying a percentage of the inspection fee based upon rated bottling capacity.

We are of the opinion that ample effect is given to the exemption from inspection fee for soft drinks sold outside Missouri (Section 196.380, RSMo) by deducting the out-of-state sales from the total sales reported to the Division of Health each month, and applying the multiplier of three-tenths cent to the gallons sold in Missouri. If the product does not exceed an inspection fee based on the company's rated bottling capacity, then this amount is due. If the product exceeds an inspection fee based on rated capacity, the rated capacity fee is due.

Yours very truly,

JOHN C. DANFORTH
Attorney General