1984 S.C. Op. Atty. Gen. 243 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-104, 1984 WL 159911

Office of the Attorney General

State of South Carolina
Opinion No. 84-104
August 27, 1984

***1** Nicholas P. Sipe
Executive Director
South Carolina Alcoholic Beverage Control Commission
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Nick:
You have asked whether the marketing in South Carolina of a product popularly known as a 'wine cooler' violates § 61–9–630, Code of Laws of South Carolina, 1976. After analysis, we do not believe that the marketing of this product contravenes the stated provision. [1]

A 'wine cooler' generally is a beverage composed of: white wine, carbonated water; fruit juice[s] [either lemon juice, pineapple or grapefruit juice, or a combination thereof]; fructose; citric acid; and natural flavors. The beverage usually contains approximately 5.5% to 6.5% alcohol by volume and ordinarily is marketed in containers of 375 milliliters. The nomination of such beverage as a 'wine cooler' has obtained at least some popular acceptance, although we doubt that the term has such widespread usage to be considered as having universal significance in the alcoholic beverage industry.

The applicability of § 61–9–630 to the product is contingent upon such beverage being determined to be a 'wine' as that term is used in South Carolina's regulatory scheme for alcoholic beverages. Section 61–3–20(1) provides:
The words 'alcoholic liquors' means any spirituous malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors or any compound or mixture thereof by whatever name called or known which contains alcohol and is used as a beverage, ...

Section 61–3–20(1)(b) further provides that '[a]ny beverage declared by statute to be nonalcoholic or nonintoxicating' is excluded from South Carolina's definition of alcoholic beverages as that term is used in the Alcoholic Beverage Control Act. Pursuant to § 61–9–10, 'all wines containing not in excess of twenty-one per cent of alcohol by volume are hereby declared to be nonalcoholic and nonintoxicating beverages.' This rather strange legislative definition exists for the sole purpose of providing a dual system of regulation and taxation of such beverages. State v. Turner, 198 S.C. 499, 18 S.E.2d 376 (1942); Title 61, Chapter 9, South Carolina Code of Laws, 1976 (1983 Cum.Supp.). Thus, although declared by statute to be 'nonalcoholic and nonintoxicating' wine is highly regulated in South Carolina.

We conclude that a 'wine cooler' constitutes a 'wine' as that term is used in § 61–9–90 and accordingly, such beverage is subject to § 61–9–630. First, the description of the contents of the beverage lists white wine as the major component of a 'wine cooler'. Moreover, since wine is not statutorily defined, we must apply the term in its popular significance to ascertain legislative intent. See, cases compiled at 17 West's S.C. Digest, 'Statutes' Key No. 188. 'Wine' is commonly known as a vinous liquor which generally is produced from the juice of a grape by the process of fermentation; however, the meaning of the term has been extended to include liquors made from fruit or berries by a similar process. 48 C.J.S. 'Intoxicating Liquors', §§ 5, 14; 45 AM.JUR.2d 'Intoxicating Liquors', § 13. The beverage in question, although adulterated with the addition of nonalcoholic products, is most clearly 'wine' as that term is used within the Alcoholic Beverage Control Act. [2]

***2** Having concluded that a 'wine cooler' constitutes a 'wine' under South Carolina's regulatory scheme, § 61–9–630 is identified as being applicable. This provision reads:

The importation into, offering for sale or sale in this State of any product as 'wine' to which any substance shall have been added, except as permitted by Federal law and regulations and except pure fruit or vegetable products derived from the same kind of fruit or vegetable from the juice of which the wine was fermented, is hereby prohibited and declared to be a misdemeanor.

This statute prohibits the importation of any wine adulterated by the adding of any substance; however, two exceptions to this prohibition dominate the statute. Since it is clear that a 'wine cooler' generally contains substance in addition to the wine, the relevant inquiry presented is whether one of the exceptions is applicable to this product; otherwise, the statute would prohibit the importation of a 'wine cooler'.

The first exception stated within § 61–9–630 exempts adulterated wines from the prohibitive scope of the provision if the added substances are 'permitted by Federal law and regulations.' This exception adopts by express reference the applicable federal law and essentially permits these adulterated wines to be imported if they are approved by the federal government. The statutory drafting process used herein, that of adoption of another provision by reference, is widely recognized.

When a statute adopts the general law on a given subject, the reference is construed to mean that the law is as it reads thereafter at any given time including amendments subsequent to the time of adoption. This is to be contrasted with adoption by reference of limited and particular provisions of another statute, in which case that reference does not include subsequent amendments.

2A Sutherland Statutory Construction, § 51.07, at 322 (4th Ed. 1973). [3] Here, since the exception adopts the general federal law we must look to the federal law as it currently exists and question whether the federal law permits the addition of the various ingredients found in a 'wine cooler' to wine. 26 U.S.C. § 5381, et seq. provides several federal statutes relating to the amelioration of wine. 27 C.F.R. Part 240 constitutes the implementing regulations promulgated by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury, the agency charged with the administration of the statutory provisions. Pursuant to 27 C.F.R. § 240.482 any formula for a wine other than a standard wine must be approved by the Bureau. The formula is approved on what is designated as a form 698. The Bureau classifies 'wine cooler' as a wine other than a standard wine and as such places it within the preview of 27 C.F.R. § 240.482. [4] If the particular formula for a brand of 'wine cooler' is approved by the federal authorities, then § 61–9–630 would not prohibit its importation into South Carolina.

As a practical approach, since the Alcoholic Beverage Control Commission registers wines imported into South Carolina pursuant to § 61–9–625 of the amended Code, it could require the producer of a 'wine cooler' to verify the approval of the formula by the Bureau prior to registering the brand.

***3** Since a 'wine cooler' generally consists of adding various fruit juices to grape wine, it is clear that generally a 'wine cooler' could not gain exemption through the second avenue provided in § 61–9–630. That exemption excepts wine that has been altered by the addition of pure fruit or vegetable products 'derived from the same kind of fruit or vegetable from the juice of which the wine was fermented.' However, we do not construe § 61–9–630 as requiring that the conditions of both exceptions listed therein be met in order that a beverage be excluded from the prohibitory scope of the Act. If a product is exempt pursuant to either listed exemption, the product is not prohibited by § 61–9–630. The wording used within the provision supports this conclusion, as each phrase is preceded by the word 'except'. Moreover, the original Act [Act No. 908 of 1940] uses the conjunction 'or' without restatement of the word 'except'. The grammatical change was the result of codification of this provision in the 1952 Code, rather than a legislative amendment to the provision; accordingly, we do not believe the legislature intended to change the meaning of the statute.

In conclusion, we believe that if the formula for a particular brand of 'wine cooler' is approved by the Bureau of Alcohol, Tobacco and Firearms, the importation of that particular brand into South Carolina would not be prohibited by § 61–9–630.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

1 The inquiry and this response are expressly limited to whether § 61–9–630 is violated by the marketing of a product known as ‘wine cooler’. We do not address whether the marketing of this product violates any other statutory provisions.

2 We note parenthetically that if ‘wine coolers' were determined not to be a wine beverage they would have to be regulated as an alcoholic beverage [§ 61–3–20] as contrasted with a ‘nonalcoholic or nonintoxicating beverage’. If they were so regulated they would be subject to a much more comprehensive and complex regulatory scheme. See, e.g., §§ 61–5–20; 61–3–990.

3 For examples of South Carolina cases see: Lyles v. McCown, 82 S.C. 127, 63 S.E. 355 (1908); Santee Mills v. Query, 122 S.C. 158, 115 S.E. 202 (1922); Roper v. S.C. Tax Commission, 231 S.C. 587, 99 S.E.2d 377 (1957); University of South Carolina v. Mehlman, 245 S.C. 180, 139 S.E.2d 771 (1964).

4 See, ‘Industry Memorandum Ser. 84–10 (Dec. 21, 1983),’ Dept. of Treasury, Bureau of Alcohol, Tobacco & Firearms.

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