

1980 WL 120711 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 12, 1980

***1 RE: Opinion Request**

Mr. Dale Schaufelberger.
General Manager
Mid-American Farms
P. O. Box 1837 S.S.S.
Springfield, Missouri 65805

Dear Mr. Schaufelberger:

You have asked this Office for an opinion on the question of whether your 'Sport Shake' product may be lawfully sold after the July 1, 1980 implementation of Section 20 of Act No. 496 of 1978?

Section 20 of Act No. 496, which has been codified as [Section 39-17-410, S. C. Code](#) of Laws (1979 Cum. Supp.), prohibits the sale or offering for sale of 'any carbonated soft drink or malt beverage in a metal beverage container which includes a part which must be detached to open the container.' Your inquiry is based upon the facts that (1) 'Sport Shake' is prepared and sold in a metal container (can) and (2) in order to open the can, the metal 'pull-tab' opener or 'pop-top' must be detached.

The phrase 'malt beverage' is not defined by statute in this state. Nevertheless, on the basis of the product information and the Affidavit of Exemption from the Soft Drinks License Tax submitted as supporting documents, it is our conclusion that your sport shake product is not a malt beverage, either spirituous or otherwise.

The term 'soft drink' is defined in the Rules and Regulations of the S. C. Department of Health and Environmental Control at R 61-32(1)(a) and reads in pertinent part as follows:

'... all 'carbonated beverage', 'soda', 'sodawater', 'still drinks', 'fruit juices', 'perishable fruit drinks', 'root beers', and similar non-alcoholic beverages, carbonated or otherwise, . . . ' (Emphasis added).

Analyzing the product information submitted in light of the definition set forth above, it appears that 'Sport Shake' could likewise not be included into the category of 'soft drinks' since 'Sport Shake' is composed mainly of milk (87.72%).

Whether it was the intent of the legislature in passing Act No. 496 to encompass within the definition of 'soft drinks' other beverages not within the scope of R 61-32(1)(a) is irrelevant for the purposes of this reply due to the fact that Section 20 clearly seeks to control litter from the metal containers of malt beverages and carbonated soft drinks and 'Sport Shake' is non-carbonated.

Being clear and otherwise unambiguous, this statute demands no elaborate interpretation, and, therefore, based on the foregoing analysis it is the opinion of this Office that Mid-American Farms' 'Sport Shake' may continue to be lawfully sold in this state after June 30, 1980 despite the fact that the metal pull-top or opening tab must be detached in order to open the products' metal container.

Very truly yours,

Reddick A. Bowman, Jr.

Assistant Attorney General

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