

March 5, 1962 (OPINION)

ALCOHOLIC BEVERAGES

RE: Food and Liquor Divorcement - Sale of Cooking Wine in Grocery St

Your letter of February 15, 1962, has been received. You desire an opinion from our office to determine if cooking wine may be sold in grocery stores as a food or if the laws pertaining to liquor and beverages would apply. You state that it has recently come to the attention of your department that a number of grocery stores are selling cooking wine which contains an amount of alcohol from 12 percent to 20 percent by volume. The label on the bottle states that the contents are cooking wine and generally indicate the addition of contents such as salts and seasonings which would appear to make them unpalatable as a beverage.

Title 5 of the North Dakota Century Code deals with alcoholic beverages. Section 5-01-02 of this law reads as follows:

EXCEPTIONS. Nothing contained in this title shall be construed to apply to the following articles, when they are unfit for beverage purposes:

1. Denatured alcohol produced and used pursuant to acts of Congress, and the regulations thereunder;
2. Patent, proprietary, medical, pharmaceutical, antiseptic, and toilet preparations;
3. Flavoring extracts, syrups, and food products;
4. Scientific, chemical, and industrial products, nor to the sale of said articles containing alcohol. This title shall not apply to wines delivered to priests, rabbis, and ministers for sacramental use. The exceptions provided by this section shall not apply, however, when a person knowingly shall sell any of the articles enumerated in subsections 1, 2, 3, and 4 for beverage purposes, or shall sell any of the same under circumstances under which the seller might reasonably deduce the intention of the purchaser to use them for such purposes." (Emphasis supplied.)

Consequently, we see that if cooking wine is unfit for beverage purposes, the laws pertaining to alcoholic beverages would not apply to the sale and distribution of this product. However, as the underlined portion points out, although it may be unfit for beverage purposes, the alcoholic beverage laws would apply if the seller knew or should have known the purchaser intended to use the product for beverage purposes, chapter 19-08 of the North Dakota Century Code, the law applicable to all beverages, would not apply.

While it is quite clear that cooking wine could be classified as a food product, the main question to be determined is whether cooking

wine is also a beverage. This boils down to a question of fact, a question our office is not in a position to determine. Also, the label on the bottle would not be conclusive in determining whether the liquid would qualify as a beverage. The fact the label said in bold print that the contents were cooking wine with salts and seasonings added would not necessarily mean the contents would be unpalatable. It might be that wine labeled cooking wine is just as palatable as ordinary wine, the cooking label tag being a method to gain more outlets for the product, thereby making it available to more persons. Perhaps it might be that the labeling of this product should be looked into to determine if it is misbranded according to sections 19-02-06 and 19-02-07 of the North Dakota Century Code. Consequently, the different brands of this product should be tested to determine if they are reasonably fit for beverage purposes.

It is our opinion that if cooking wine is reasonably fit for beverage purposes, it could not be sold by any persons who did not have a liquor license. If it is not reasonably fit for beverage purposes, as it might possibly be, the product could continue to be sold in grocery stores.

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Attorney General