

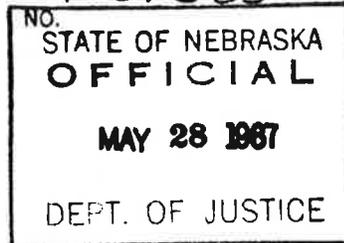
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: May 27, 1987

SUBJECT: Liqueur-filled Chocolates and Cooking Wines

REQUESTED BY: Forrest D. Chapman
Executive Director
Nebraska Liquor Control Commission

WRITTEN BY: Robert M. Spire
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QUESTION: Are "liqueur-filled chocolates" (or similar liquid liqueur-filled candies) and/or "cooking wines" subject to the jurisdiction of the Nebraska Liquor Control Act?

ANSWER: No.

The Nebraska Liquor Control Act gives the Nebraska Liquor Control Commission the "power to regulate all phases of the control of the manufacture, distribution, sale and traffic in alcoholic liquors" Neb.Rev.Stat. §53-116 (Reissue 1984).

Alcoholic liquors are defined by Neb.Rev.Stat. §53-103(6) (1986 Cum. Supp.) as the four varieties of liquor-"alcohol, spirits, wine, and beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine, or beer, and capable of being consumed as a beverage by a human being. The provisions of this act shall not apply to . . . (b) . . . food products unfit for beverage purposes". Alcoholic liquors are clearly defined as those liquors which may be consumed as beverages.

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Beverage is defined by Webster's Ninth New Collegiate Dictionary 146 (1986), as "a drinkable liquid." Black's Law Dictionary 204 (4th rev.ed. 1968) further defines beverage as "[a] liquor or liquid for drinking. Burnstein v. U.S., C.C.A. Cal., 55 F.2d 599, 603. Especially pleasant or refreshing drink, or a habitual one. Tennant v. F.C. Whitney & Sons, 133 Wash. 581, 234 P. 666, 670. This term is properly used to distinguish a sale of liquors to be drunk for the pleasure of drinking, from liquors to be drunk in obedience to a physician's advice, Falstaff Corporation v. Allen, D.C. Mo., 278 F.643, 645; or from a liquid which it is possible to swallow, but which is not reasonably palatable or fit for drinking, Tennant v. F.C. Whitney & Sons, 133 Wash. 581, 234 P. 666. Thus, it is held that pure alcohol is not a beverage but a violent irritant. Chas L. Joy & Co. v. Carlson, 28 Idaho 445, 154 P.640, 641."

The implication is that only items which are palatable and suitable for drinking as a beverage are controlled by the Nebraska Liquor Control Act. Liqueur-filled chocolates are not in this category as they are consumed as a food item, not as a beverage. They are not a liquid which can be drunk.

Cooking wines are also not within the province of the Nebraska Liquor Control Act. As per the State Patrol laboratory analysis attached to the opinion request, cooking wines contain 1½% salt, rendering the wines non-potable. They would more properly be defined under Neb.Rev.Stat. §53-103(6)(b) (1986 Cum. Supp.) as "flavoring extracts, syrups, . . . or food products unfit for beverage purposes."

Very truly yours,

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APPROVED:


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