

CHICORY * May not be used in coffee as it constitutes an adulteration of food

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Mr. Harry F. Parker
State Health Commissioner
Jefferson City, Missouri

Dear Sir:

This is to acknowledge your request of recent date, relating to whether or not "chicory" may be used in coffee. Appending to your request, is an original letter directed to H. H. Harnsberger of your department from B. H. St. John, Chemist, enclosing a letter from the Ronnoco Coffee Co. and circular relating to "chicory", which letter reads in part:

"I am enclosing in duplicate a letter from the Ronnoco Coffee Company of this city which is in part self explanatory. These people wish to sell prepared chicory to be added to coffee when prepared. This addition adds a flavor to the prepared beverage which many people, myself included consider a definite improvement in the beverage. Chefs generally object to making a statement that they are offering for coffee, coffee with chicory, for two reasons, first that this would be far from easy to do in the restaurant itself, and second that such a statement might be misconstrued by some among their patrons.

I am inclined in this discussion to take the attitude that cookery is in itself an art and that in this the chef is entitled to a certain leeway in preparing palatable products, and that in this case the addition of chicory is in fact not adulteration but the addition of a flavoring constituent to affect the taste and palatability of the product."

At the outset, your attention is directed to Section 13017, R. S. Mo. 1929 reading in part as follows:

" * * * * The term "food," as used in this article, shall include all articles used for food, drink, confectionery or condiment by man or animal, whether simple, mixed or compound."

Ordinarily, words in a statute are to be construed in their common apperception, in view of arriving at the intent of the legislature. Cummins vs. K. C. Public Service Company, 66SW (2) 920. In view of this principle of law, it is believed that when the legislature used the term "food" so as to include drink, that "coffee" would be considered as being a drink. It is a well known fact that coffee is used as a drink with or without food.

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Since drink/included within the term "food" and drink may be construed as being coffee, in view of our above observation, can it be said that coffee may be adulterated within the meaning of Section 13019 R. S. Mo. 1929? We think so. Section 13019 reads in part as follows:

"Food shall be deemed to be adulterated; * *
if any substance or substances have been substituted wholly or in part for the article *
* * * *"

The above part of the statute is clear and needs no interpretation, therefore, we don't consider whether or not "chicory" is included within the word substance. Suffice it to say, the sample package submitted is of a powdered substance to be used with coffee for certain purposes.

A diligent search has disclosed but one case wherein "chicory" has ever met the judicial view. In the case of U. S. vs. Rosenstein, 60 Fed. 74, the U. S. Circuit Court of Appeals, Second Circuit, considered whether or not "Seelig's Coffee" a substance containing about 68 per cent in weight, and 44 per cent in value, of chicory and used as a substitute and adulterant of, coffee was dutiable as a substitute or as being chicory root. The court held that the compound was

dutiabable as a substitute and not as chicory root because the article had a distinctive place of its own and not merely as "chicory". The facts in this case disclose that:

" * * * * The merchandise is a well-known article, composed of chicory or chicory root, (which are commercially convertible terms,) beet root, olive oil, and syrup. It is manufactured in Germany by grinding these ingredients together, and, when imported, is in the form of rolls or cylindrical sticks, each of which is inclosed in a wrapper, upon which the following directions are printed: 'Use one part of this preparation to two or three parts of coffee. Pour boiling water over the mixture. Let it draw five minutes, and strain.' Chicory is about 68 per cent, of the weight, and about 44 per cent of the value, of the compound article. It, like at least two other similar compounds made by other manufacturers, is used to some extent to flavor coffee, and more largely, both in Germany and in this country, to mix with coffee, or as a substitute for coffee, for purposes of economy. It is sold for about six cents per pound. Chicory is also used by dealers, as an adulterant, to mix with ground coffee, and by consumers to mix with, or as a substitute for, coffee * * * *"

Gould's Medical Dictionary defines "chicory" as:

"a composite plant of Europe and Asia, naturalized, and growing in the United States. Its ground root is used to adulterate coffee."

Websters New International Dictionary defines "chicory" as being:

"a common European perennial plant, cultivated for its root and as a salad plant; also, its root, roasted for mixing with coffee."

From these definitions, it is evident that "chicory" is used principally as an adulterant to mix with coffee for the purposes of economy and as a substitute therefor. This conclusion is fortified by a reference to the printed matter contained on the sample package reading:

"Because 'chicory' strengthens coffee, you will obtain more cups per pound. Use a little less coffee to brew the strength to which you are accustomed."

Then again, the company recognizes that "chicory" is an adulterant, when the printed matter reads further:

"Properly blended, Chicory is no adulterant"

Note the allusion to "chicory" being an adulterant by the use of the phrase and comma at the beginning of the sentence.

To further illustrate that "chicory" is an adulterant or substitute for coffee, attention is directed to the circular heretofore referred to, wherein it is said:

"For the additional cost of just a fraction more than 1 cent you can obtain from 8 to 15 extra cups of better coffee from each pound."

Without attempting to further detail matters appearing on the advertisement and sample package, which but further supports our conclusion, it is sufficient that "chicory" is a substance which is used wholly or in part for coffee. When so used in coffee, such use violates Section 13019 Supra.

It is to be further observed, that if any person or corporation in this state shall manufacture or produce, offer or expose for sale, or shall have within their possession with the intent to sell any food which is adulterated shall be guilty of a misdemeanor under the provisions of Section 13029 R. S. Mo. 1929.

CONCLUSION

In view of the above, it is our opinion that "chicory" may not be used in coffee, because so to do, is to adulterate a drink which is included within the term "food".

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

(Acting) Attorney General

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