



ALAN WILSON  
ATTORNEY GENERAL

November 23, 2015

The Honorable Bill Herbkersman  
896 May River Road  
Bluffton, SC 29910

Dear Representative Herbkersman:

This Office received your request for an opinion. You are asking for clarification of Department of Revenue Regulation 7-701.5, entitled Natural Wines Defined. Each of your questions and its response follows.

**LAW/ANALYSIS:**

- I. Can a natural wine produced by fermentation of an agricultural product such as carrots, beets, tomatoes or honey be permitted under this regulation, as long as the alcohol content does not exceed the sixteen percent (16%) by weight? TTB<sup>1</sup> has recognized honey wine in its permitting and regulations.**

Department of Revenue Regulation 7-701 restricts the sale and delivery of beer and wine. Regulation 7-701.5 provides that “[n]atural wines are defined as those wines produced by fermentation without any distilled alcohol being added thereto; provided the alcoholic content thereof shall not exceed sixteen percent (16%) by weight.” S.C. Code Ann. Regs. 7-701.5. This corresponds with Regulation 7-701.4, which states that “wine not exceeding sixteen percent (16%) by volume may be sold to licensed retail beer and wine dealers.” S.C. Code Ann. Regs. 7-701.4.

We believe you are asking whether wine produced by the fermentation of carrots, beets, tomatoes, or honey which does not contain an alcoholic content exceeding sixteen percent by weight is a “natural wine” which can be sold to licensed retail beer and wine dealers. We can not find any South Carolina law directly on point but we will look to other provisions of law for guidance. In a prior opinion, we determined that the rules of statutory construction apply when interpreting a regulation and we stated:

the same general rules of statutory construction and interpretation apply to rules and regulations of State administrative agencies. Those rules include a predisposition to uphold the validity of a regulation,

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<sup>1</sup> United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau. TTB protects the public by enforcing the provisions of the Federal Alcohol Administration Act (FAA Act) to ensure that only qualified persons engage in the alcohol beverage industry. TTB is responsible for enforcing the laws regulating alcohol production, importation, and wholesale businesses; tobacco manufacturing and importing businesses; and alcohol labeling and advertising. See TTB.gov, <http://www.ttb.gov/consumer/responsibilities.shtml> (last visited November 19, 2015).

November 23, 2015

ascertainment of the legislative intent and purpose, harmonization of provisions in the same sections, interpretation according to the natural and plain meaning of the words, partiality of more specific provisions over more general ones, liberal construction of remedial provisions while giving a more strict construction for exemptions or conduct for which sanctions are imposed, and other such customs of statutory interpretation. Op. S.C. Atty. Gen., 2011 WL 3346431 (July 22, 2011); 2006 WL 981700 (March 17, 2006); 1989 WL 406124 (March 24, 1989).

Op. S.C. Atty. Gen., Oct. 29, 2013 (2013 WL 6162676).

As the regulations are not helpful when attempting to determine the legislative intent and purpose of Regulation 7-701.5, we will examine the South Carolina Code of Laws as beer, ale, porter, and wine are regulated in Chapter 4 of Title 61. Section 61-4-710 provides for the labels, standards, and identity of wine to be in conformity with federal law and it states:

[i]t is unlawful for a person to import, sell, or offer for sale in this State wines of which the labels, standards, or identity do not conform to the provisions of 27 Code of Federal Regulations part 4. Imitation, concentrate, and substandard wines, as defined in 27 Code of Federal Regulations part 4, are prohibited from sale in this State.

S.C. Code Ann. § 61-4-710 (1976 Code, as amended).

As required by section 61-4-710, we now look at 27 Code of Federal Regulations part 4. 27 C.F.R. § 4.21 grants standards of identity<sup>2</sup> for several classes and types of wine. Under the standards of identity, there

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<sup>2</sup> Standards of identity for food are mandatory requirements which are set by a governing body that determine what a food product must contain to be marketed under a certain name in allowable commerce. Mandatory standards (which differ from voluntary grades and standards applied to agricultural commodities) protect the consumer by ensuring a label accurately reflects what is inside (for example, that mayonnaise is not an imitation spread, or that ice cream is not a similar, but different, frozen dessert).

A US trade organization defines the term as follows:

A standard of identity sets out what ingredients a product must contain, which ingredients it may contain, and any requirements of manufacturing. For example, 'Whisky' is defined as 'a potable alcoholic distillate obtained from a mash of cereal grain saccharified by diastase of malt or by other enzymes and fermented by the action of yeast.' It may contain caramel and flavouring. No other ingredients are allowed. If someone were to produce a whisky containing a dye, they would not be permitted to call the product 'whisky,' since dye is not a permitted additive. Standards of identity are set out in the Food and Drug Regulations. They may be identified by the symbol '[S]' following the product name in boldface type. As such, they are official common names for products and no other name can be substituted.

Standards of Identity for Food, Wikipedia, [https://en.wikipedia.org/wiki/Standards\\_of\\_identity\\_for\\_food](https://en.wikipedia.org/wiki/Standards_of_identity_for_food) (last visited November 19, 2015) (quoting *Why Standards of Identity Matter*, Nunes, Keith, in "Food Business News", 16 June 2014).

are several different classes of wine: grape wine, sparkling grape wine, carbonated grape wine, citrus wine, fruit wine, wine from other agricultural products, aperitif wine, imitation and substandard or other than standard wine, and retsina wine. A reading of the classes indicates that wine produced from carrots, beets, tomatoes or honey falls in the wine from other agricultural products class. “Wine from other agricultural products” is:

(1)(i) [w]ine of this class is wine (~~other than grape wine, citrus wine, or fruit wine~~) made by the normal alcoholic fermentation of sound fermentable agricultural products, either fresh or dried, or of the restored or unrestored pure condensed must thereof, with the addition before or during fermentation of a volume of water not greater than the minimum necessary to correct natural moisture deficiencies in such products, with or without the addition, after fermentation, of pure condensed must, and with or without added alcohol or such other spirits as will not alter the character of the product, but without other addition or abstraction except as may occur in cellar treatment. . .

(iii) [w]ine of this class containing no added alcohol or other spirits may be further designated as “natural”. . . .

27 C.F.R. § 4.21(f) (emphasis added).

Descriptions of agricultural wine support this conclusion. “[A]gricultural wine” is defined as “[w]ine made from suitable agricultural products other than the juice of grapes, berries, or other fruits.” See 27 C.F.R. § 24.10. And “agricultural wine is made from the fermentation of an agricultural product other than the juice of fruit.” See United States Alcohol and Tobacco Tax Trade Bureau [TTB], FAQ’s at [http://www.ttb.gov/faqs/alcohol\\_faqs.shtml](http://www.ttb.gov/faqs/alcohol_faqs.shtml) (quoting 27 C.F.R. §§ 24.200, 24.203).

Since agricultural wines are in conformity with the federal standards of identity and are considered “natural” under federal law, we believe that wine produced by the fermentation of carrots, beets, tomatoes, or honey which does not contain an alcoholic content exceeding sixteen percent by weight could be a “natural wine” which can be sold to licensed retail beer and wine dealers, as long as the labeling conforms with federal law as required by section 61-4-710.<sup>3</sup> This is supported by State law, which suggests that wine can be made from vegetable products. Section 61-4-750 states the following:

[t]he importation into, offering for sale, or sale in this State of a product as “wine” to which any substance has been added, except as authorized 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 prohibited and is a misdemeanor.

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<sup>3</sup>It should be noted that there are some limitations under federal law to the production of agricultural wine. See 27 C.F.R. §§ 24.200 (“[a]gricultural wine may be produced on bonded wine premises. . .”); 27 C.F.R. §§ 24.201 (“[b]efore producing any agricultural wine, the proprietor shall obtain an approval of the formula and process by which it is to be made. . .”); 16 U.S.C.A. § 5387 (“[w]ines made from agricultural products other than the juice of fruit shall be made in accordance with good commercial practice as may be prescribed by the Secretary by regulations. . .”).

S.C. Code Ann. § 61-4-750 (1976 Code, as amended) (emphasis added). However, the Legislature may wish to provide clarification of this issue.

**II. Will production of an agricultural product such as carrots, beets, tomatoes or honey be allowed under current regulations regarding in state wine production as long as it remains under 16% alcohol content by weight?**

We have reviewed South Carolina law regarding the production of wine and have not found any law which prohibits the production of agricultural wine which is under sixteen percent alcohol content by weight. As stated above, section 61-4-750 indicates that “vegetable products” can be used to make wine. Additionally, many of the laws do not mention the ingredients composing the wine. See S.C. Code Ann. § 61-4-300 (1976 Code, as amended) and S.C. Code Ann. § 12-21-1010 (1976 Code, as amended) (a “producer” of wine and beer is “a brewery or winery or a manufacturer, bottler, or importer of beer or wine into the United States”); S.C. Code Ann. § 61-4-1500 (1976 Code, as amended) (“[a] person may construct, maintain, or operate a brewery or winery in this State for the production of any beverage lawful under this chapter”); and S.C. Code Ann. § 61-4-1500 (1976 Code, as amended) (“[a] producer must apply to the department [South Carolina Department of Revenue] on forms the department prescribes for a certificate of registration, which must be approved and issued before the shipment of beer or wine by the producer to a point within the State”).

However, what could be problematic is the sale of agricultural wine. Section 61-4-730, which deals with sales by wineries, provides:

- (A) [p]ermitted wineries that produce and sell wine produced on its premises with at least sixty percent of the juice from fruit and berries that are grown in this State may sell the wine at retail, wholesale, or both, and deliver or ship the wine to licensed retailers in this State or to consumer homes in and outside the State. Wine must be delivered between 7:00 a.m. and 7:00 p.m.
- (B) Permitted wineries that produce and sell wine produced on their premises with less than sixty percent of the juice from fruit and berries that are grown in this State may retail from the winery and ship the wine directly to consumer homes in and outside the State, but these wineries are not wholesalers of the wine. These wineries shall use a licensed South Carolina wholesaler to deliver or ship the wine to licensed retailers in this State.
- (C) The South Carolina Department of Agriculture shall periodically inspect the records of permitted wineries for verification of the percentage of juice from fruit and berries grown in this State used in the manufacturing of the wineries' products. Within ten days of conducting an inspection, the South Carolina Department of Agriculture shall report its findings to the South Carolina Department of Revenue. If a winery is found to be in violation of this statute, the owner of the winery is subject to penalties pursuant to Section 61-4-780.

November 23, 2015

S.C. Code Ann. § 61-4-730 (1976 Code, as amended).

Since the wine would be derived from agricultural products and not from fruit and berries, producers of agricultural wine would only be able to sell their wine on the winery premises and ship the wine to consumer homes under section 61-4-730(B). They could not be wholesalers and would have to use wholesalers to deliver or ship the wine to retailers. This corresponds with section 61-4-720, which does not specify the type of wine produced and allows licensed wineries to sell wine on the winery premises and ship to consumer homes "so long as the wine is produced on its premises and contains an alcoholic content of sixteen percent or less." S.C. Code Ann. § 61-4-720 (1976 Code, as amended).

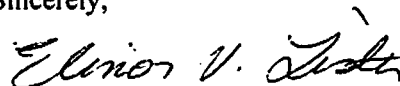
### CONCLUSION

In conclusion, this Office believes that the law is as follows:

1. Since agricultural wines are in conformity with the federal standards of identity and are considered "natural" under federal law, we believe that wine produced by the fermentation of carrots, beets, tomatoes, or honey which does not contain an alcoholic content exceeding sixteen percent by weight could be a "natural wine" which can be sold to licensed retail beer and wine dealers, as long as the labeling conforms with federal law. However, the Legislature may wish to provide clarification of this issue.
2. While the production of wine made of agricultural products does not appear to be prohibited, what could be problematic is the sale of agricultural wine, since producers could not be wholesalers and would have to use wholesalers to deliver or ship the wine to retailers.

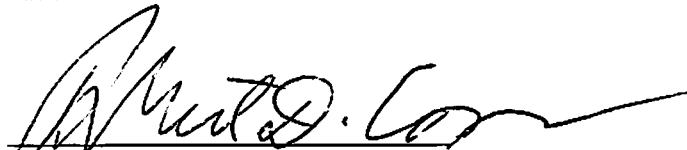
Please be aware that this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General