

Opinion No. 86.**Bottling Works—Creameries—
Orangeade—Manufacturer.**

HELD: 1. The term "bottling works", under Sec. 2589, R. C. M. 1921, does not include creameries or other establishments where milk is put up in ordinary milk bottles.

2. A room where milk or cream is stored should not be used for bottling orangeade or similar drinks, and milk bottles may not be used as receptacles for other drinks.

3. A creamery which prepares soft drinks, such as orangeade or other orange drinks, is a manufacturer under Section 2436, R. C. M. 1921.

April 23, 1935.

Mr. Jacob W. Forbes
Director, Division of Food and Drugs
State Board of Health
The Capitol

1. You ask first whether or not, under the terms of Section 2589, R. C. M. 1921, "bottling works" include creameries and other establishments where milk is bottled. This law should not be extended beyond the intent of same at the time of its enactment. In the case of United States

v. Ninety Demijohns, 8 Fed. 485, a demijohn was defined as: "A glass vessel with a large body and a small neck enclosed in wickerwork." It was held not to be a bottle. A bottling works is generally considered a place where soft drinks or other liquids are bottled in a sealed or permanently corked receptacle. I would not consider that the term "bottling works" included creameries or other establishments where milk is put up in ordinary milk bottles, or horseradish, catsup and similar preparations are prepared. Where an establishment sells liquids in bottles, with the customary equipment of bottle washers, etc., for the refilling of bottles as is done with pop bottles, it might well be considered a bottling works. It will be necessary to determine each case on its own conditions.

2. In answer to your second question as to the interpretation of dairy regulations, it would appear from paragraph 4 of Section 3 of the dairy regulations that the room where milk or cream is stored should not be used for bottling orangeade or similar drinks. It appears from other provisions of your regulations referred to that milk bottles are not to be used as receptacles for other drinks. This regulation should be enforced or repealed.

3. As to whether one who performs the acts of diluting concentrated beverage or flavoring materials with water, adding sugar, bottling, capping and labeling is a manufacturer under the terms of Section 2436, R. C. M. 1921, would advise you that such section, which refers primarily to the preparation of non-intoxicating beverages such as pop, is sufficiently broad in its terms so that the proprietor thereof would be classed as a manufacturer. In the case of *State v. Hennessy* (71 Mont. 301), a baker was declared a manufacturer.

4. For the same reason I would conclude that if a creamery prepares soft drinks, such as orangeade or other orange drinks, the same would be classed as a manufacturer under Section 2436, R. C. M. 1921.