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GEORGE DEUKMEJIAN  
Attorney General

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OPINION	:	No. 79-419
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of	:	<u>August 9, 1979</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Victor D. Sonenberg	:	
Deputy Attorney General	:	
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SUBJECT: DEFINITION OF “FOOD”—The term “food” as used in section 28522 of the Health and Safety Code, which defines “restaurant” in the California Restaurant Act, includes “beverages.”

The Honorable Beverlee A. Myers, Director, Department of Health Services, has requested an opinion on the following question:

Does the term “food” as used in section 28522 of the Health and Safety Code, which defines “restaurant” in the California Restaurant Act, include “beverages”?

CONCLUSION

The term “food” as used in section 28522 of the Health and Safety Code, which defines “restaurant” in the California Restaurant Act, includes “beverages.”

## ANALYSIS

In the statute which establishes sanitation standards for restaurants, the California Restaurant Act (ch. 11 (§§ 28520–28697) div. 22 of the Health and Safety Code),<sup>1</sup> the term “restaurant” is defined as follows:

“‘Restaurant’ means any coffee shop, cafeteria, short-order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, implant or employee eating establishment, and any other eating establishment, organization, club, including veterans’ club, boardinghouse, guesthouse, or political subdivision, which gives, sells, or offers for sale, food to the public, guests, patrons, or employees as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions. The term restaurant’ shall not include itinerant restaurants, vending machines, vehicles, co-operative arrangements by employees who purchase food or beverages for their own consumption and where no employee is assigned full time to care for or operate equipment used in such arrangement, or private homes; nor shall the term ‘restaurant’ include churches, church societies, private clubs or other nonprofit associations of a religious, philanthropic, civic improvement, social, political, or educational nature, which purchase food, food products, or beverages or which receive donations of food, food products, or beverages, for service without charge to their members, or for service or sale at a reasonable charge to their members or to the general public at occasional fund-raising events, for consumption on or off the premises at which the food, food products, or beverages are served or sold, if the service or sale of such food, food products or beverages does not constitute a primary purpose or function of the club or association, and if no employee or member is assigned full time to care for or operate equipment used in such arrangement.” (§ 28522.)

A question as to the applicability of the Restaurant Act has arisen in the situation where a facility in a shopping mall in which fresh lemons were squeezed to make lemonade failed to comply with that Act. The specific issue is whether a facility serving beverages only, such as lemonade or fruit juice, is serving “food” as that term is used in the Act’s definition of “restaurant.”

The California Restaurant Act was first enacted by chapter 394, Statutes of 1947. The establishments to which the Act applied were specified in section 28602 which

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<sup>1</sup> Hereafter all section references are to the Health and Safety Code unless otherwise specified.

provided:

“‘Restaurant’ means any coffee shop, cafeteria, short order cafe, luncheonette, tavern, sandwich stand, soda fountain, and any other eating or drinking establishment which sells or offers for sale food to the public, as well as kitchens in which food or drink is prepared on the premises for sale or distribution elsewhere.”

Thus the Act applied to the designated establishments if they sold or offered for sale “food” to the public. Since the word “food” was critical to the definition of restaurant, it too was defined by section 28603 of the former Act as follows:

“‘Food’ and beverage includes all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof for human consumption, but does not include foods or beverages enclosed in hermetically sealed containers.”

It is clear under the Act as originally enacted that the word “food” as used to define restaurant embraced drink as well as solid food.

The entire Act was rewritten by chapter 633, Statutes of 1961. Section 28522 defined “restaurant” in the same manner by designating certain establishments (adding some) “which gives, sells, or offers for sale, food to the public. However, a change in the definition of food was introduced causing the uncertainty which prompted the present question. The single word “food” was not defined. Instead the compound term “food or beverage” was defined in section 28527 as follows:

“‘Food or beverage’ includes all articles used for food, drink, confectionery or condiment, whether simple or compound, and all substances and ingredients used in the preparation thereof for human consumption.”  
(§ 28527.)

The question is whether these changes in the definitions changed the meaning of the word “food” as it is used to define restaurant in the Act. We conclude they did not.

By placing the quotes around the words “food or beverage” the Legislature indicated the definition of section 28527 was applicable only when the quoted words were found together in the text. This left the word “food” when not followed by “or beverage” undefined in the Act. Webster’s Third New International Dictionary (at p. 884) defines “food” both as: 1a. “material . . . taken . . . into the body . . . to sustain growth . . .” and 2a.

“nutriment in solid form—opposed to *drink*.” Thus “food” can mean specifically, nutriment in solid form or generically, nutriment in both solid and liquid form. Which meaning did the Legislature intend in the 1961 definition of “restaurant”?

The report issued by the Assembly Interim Committee on Public Health immediately preceding this 1961 reenactment of the Restaurant Act affords confirmation for the conclusion that in the new version of the Act, the word “food” was used in its generic sense to include liquids as well as solids. In that report it was stated:

“There is general agreement that the present definition of ‘restaurant’ is inadequate because it excludes a number of different types of eating establishments. . . .

“The committee has found that the definition should be far more inclusive than it now is . . . .” (Assem. Int. Com. on Public Health, 1959–1961, vol. 9, No. 20, pp. 31–32, vol. 1 of appendix to Jour. of Assem., Reg. Sess., 1961.) Therefore to construe the term “food” in a manner that excludes “drink” would have the effect of constricting rather than making “more inclusive” the Act’s definition of “restaurant.” This would be contrary to the intent expressed in the committee report. “It will be presumed that the Legislature adopted the proposed legislation with the intent and meaning expressed in committee reports.” (*In re Marriage of Paddock* (1971) 18 Cal. App. 3d 355, 359; see also Ops. Cal. Atty. Gen. I.L. 70–20 (1970 unpub.) noting that the amendments to the Restaurant Act throughout the years reflect a continual expansion of the scope of the definition of “restaurant.”)

It is also of significance with respect to construing the term “food” as used in the Restaurant Act that in each of the companion statutes in the Health and Safety Code directed to preventing food contamination, where the term “food” is defined, it is defined broadly to include “drink.” (See §§ 26012, 28280, 28700(a), 28801.) “When seeking legislative intent as to a statute, it is useful to consider language and legislative construction of another statute enacted for a similar purpose and containing similar language. . . .” (*Hill v. Hill* (1972) 23 Cal. App. 3d 760, 764; see also *Friends of Mammoth v. Board of Supervisors* (1970) 8 Cal. 3d 247, 260–261.) Thus by virtue of those definitions in the related statutes a broad construction of the term “food” in the Restaurant Act is indicated.<sup>2</sup>

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<sup>2</sup> It is also noted that traditionally the term “food,” when used in pure food legislation generally, has usually been broadly defined to include “drink.” (See 17 A.L.R. 1282–1283; Webster’s New Int. Dictionary (2d ed. unab.) p. 982.) And of some pertinence to the particular factual context in which the present question arises is the definition of lemonade in the federal Food and Drug regulations. This definition refers to lemonade as a “beverage food.” (21 C.F.R. § 146.115; emphasis added.)

Further support for the conclusion that the term “food” should be construed to comprehend beverages is found in an examination of the purposes and objectives of the Restaurant Act. (“[A]n important consideration in the interpretation of a statute is the objective or purpose of the statute. . . .” *Great Lakes Properties Inc. v. City of El Segundo* (1977)19 Cal. 3d 152, 156, 157.)

The provisions in the Act requiring cleanliness of the premises (§§ 28540–28542), a sanitary water supply (§ 28546), sanitization of eating and drinking utensils (§§ 28556–28560), sanitary storage and waste disposal (§§ 28565–28568), the use of pure unspoiled unadulterated food (§ 28571), and the protection of food from contamination by proper storage and display (§§ 28572–28574), clearly manifests the Act’s purpose of protecting the edible products served in commercial eating establishments from noxious contamination.

In the effectuation of this purpose the Legislature afforded abundant indication in the Restaurant Act that it was just as concerned with protection of edible products served by restaurants in beverage form as it was with those served in solid form.

Thus section 28545 requires ventilation to “be provided for dissipation of disagreeable odors and condensation in all rooms of a restaurant where food or *beverages* are prepared, stored or served . . . .” (Emphasis added.) Likewise in section 28561, it is provided that “[a]ll multiuse kitchen utensils used in the preparation or serving of food or *beverage* shall be thoroughly cleaned . . . .” (Emphasis added.) In section 28571 it is required that “[i]ngredients used in the preparation of foods or *beverages*, and all foods or beverages . . . shall be . . . prepared . . . stored . . . and served so as to be pure, free from adulteration and spoilage . . . [and] shall otherwise be fully fit for human consumption . . . .” (Emphasis added.) Additionally this same section provides that “[n]o food or *beverage* prepared in a private home shall be used in the preparation of foods or *beverages* offered for sale, sold, or given away in a restaurant.” (Emphasis added.) Section 28579 also applies to the serving of “beverages” by a restaurant. That section provides that “[n]o article of food or *any beverage* which has been previously served to any person or returned from any table shall be used in the preparation of other foods or *beverages* for human consumption.” (Emphasis added.)

Further regulations in the Restaurant Act relating to beverages provided by restaurants are found in sections 28540, 28544, 28572, 28575 and 28578.

This pervasive reference in the Restaurant Act to the manner in which restaurants prepare, store and serve “beverages” strongly militates against a construction of the term “food,” as used in the Act’s definition of “restaurant,” which would have the effect of excusing an establishment from complying with the sanitation requirements of that Act

merely because it served its fare in beverage form only. “Words of a statute must be given such interpretation as will promote rather than defeat the general purpose and policy of the law.” (*Rushing v. Powell* (1976) 61 Cal. App. 3d 597, 604; see also Civ. Code § 3541.) Such purpose requires that the term “food,” as it is used in that Act’s definition of “restaurant” (§ 28522), be construed to include “beverages.”

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