

Opinion No. 42-4126

July 23, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. R. F. Crawford Biologist and Deputy Inspector for the Regents of New Mexico College of Agriculture State College, New Mexico

{*223} We acknowledged receipt of your letter of July 20, 1942, wherein you have requested an opinion of this office relative to certain problems which have arisen in connection with the administration of the state nursery inspection act, Chapter 118, Laws of 1937.

1. Are cut flowers nursery stock within the meaning of the act?

Section 1, Chapter 118, Laws of 1937, provides:

"For the purposes of this act, the term 'nursery stock' shall include all field grown **florist stock**, fruit, shade, or ornamental trees, shrubs, vines, **cuttings**, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees, or shrubs, herbaceous plants, bulbs, and roots, and other products for propagation except field, vegetable, and flower seeds, and shall include such ornamental trees, shrubs, plants, **flowers**, cuttings, bulbs and roots grown in green houses or under glass. The term 'nursery' as used in this act shall include any place where such nursery stock or any part thereof is grown or raised for the purpose of sale, whether grown or propagated in the open or under glass, or anyone offering such stock for sale."

If the legislature had seen fit to omit from the act a definition of the word "nursery" or "nursery {*224} stock", we would have had no difficulty in finding a limited definition for that word. Numerous courts have held that nursery, as used in respect to horticulture, means a place where young trees are propagated for the purpose of being transplanted. See Story vs. Cristin, 95 P (2d) 926, 929; 14 Cal. (2d) 592, 125 A.L.R. 1402. However, our legislature did not intend that such a limited definition be placed upon the word, and hence define nursery stock as including field grown "florist stock" and green or hot house "flowers", "cuttings". It is, therefore, our opinion that nursery stock includes cut flowers.

2. Must agents or representatives of an out-of-state nursery pay the \$ 25.00 fee for a dealer's certificate, as set forth by Section 5, Chapter 118, Laws of 1937?

Section 5, Chapter 118, Laws of 1937, provides as follows:

"Every person, firm, corporation soliciting or taking orders for nursery stock, importing into the state, or offering for sale, nursery stock imported into the state, storing, or selling nursery stock shall annually between July 1 and October 1 of each year, and

before engaging in the business of soliciting, taking orders, selling, storing or delivering nursery stock, apply to the Regents of the Agricultural College of New Mexico, their agents or deputies, for a nursery salesman's certificate. Application for such certificate shall designate the place of business of the person applying for such dealer's certificate, shall specify the name of the nursery or nurseries whether within the state or outside of the State of New Mexico from which nursery stock is to be ordered, shipped, or transported, and further agreeing that the person so applying for the certificate will comply strictly with all the provisions of this act. Such application shall be accompanied by a certificate fee of \$ 25.00. Upon proper application and fee, the Regents of the Agricultural College shall issue such certificate providing that certificate so issued shall be for one fiscal year only. That is, from July 1 to June 30 of the fiscal year during which the certificate is issued, and provided further that if the person or firm so certificated shall have been found to have violated any of the provisions of this act, then the certificate may be revoked, and in the discretion of the Regents of the Agricultural College of New Mexico, such person or firm may be refused a certificate in the state. Provided further that no certificate for the selling of nursery stock within the State shall be issued to any person, dealer, firm, or corporation until the nursery from which such agent, dealer, firm, or corporation expects to order nursery stock shall have been properly registered and certificated to sell or ship nursery stock into the State of New Mexico, and provided further that nothing in this act shall be construed to require the owner, manager, or operator of a nursery located within the State of New Mexico, if said nursery has been properly certificated, to register for and pay an additional fee for an agent's or dealer's license."

There can be no doubt about the meaning to be given to the foregoing section. It is my opinion that agents of out-of-state nurseries must obtain the nursery salesman's certificate and pay the \$ 25.00 fee.

3. If a state nurseryman or dealer operates more than one place of business, is he required to pay an inspection fee for each place?

In view of the provisions of the latter part of Section 5, hereinabove quoted, it is my opinion {*225} that a resident nurseryman need only pay the single annual inspection fee, regardless of the number of establishments he may have in this State.

Trusting that the foregoing sufficiently answers your inquiries, I am,