

NURSERIES: Municipally owned nurseries subject to inspection under Mo. Plant Act; municipally owned nurseries subject to pay inspection fees.

5-23

May 21, 1934.



Mr. J. Carl Dawson,  
State Plant Officer,  
Department of Agriculture,  
Jefferson City, Mo.

Dear Sir:

This department acknowledges receipt of your letter of May 9, 1934, which for the purpose of the record, is herewith quoted in full:

"From time to time during the last few years the question has been raised as to whether or not municipally-owned nurseries are required to be inspected under the Missouri Plant Act, Chapter 86, Article 3, R.S. 1929, and as to whether or not we had a legal right to charge fees for this work. Such nurseries move stock to all parts of the municipality and may trade stock with other municipalities and commercial nurseries.

"I have already consulted Assistant Attorney General Oliver W. Nolen and have familiarized him with the facts. I would be very grateful if you could refer this opinion to him.

"A letter received by this Department regarding this matter is attached. Please return same with the opinion."

Your letter presents two questions, namely: (1) whether or not municipally owned nurseries are within the jurisdiction of the Missouri Plant Law; and (2) can the fees for inspection be exacted from a municipally owned nursery under Sec. 12376, R.S. Mo. 1929.

I.

Municipally owned nurseries are  
subject to inspection under the  
Missouri Plant Act.

Sec. 12369, R.S. Mo. 1929 is as follows:

"The Missouri State Board of Agriculture is hereby authorized to administer the provisions of this article. It shall have authority to make such regulations and promulgate and enforce such quarantines as may in its judgment be necessary for the protection of all plants growing in the State of Missouri. In the administration of the provisions of this article, the board is authorized and empowered to cooperate with every state department, agency, commission and institution, and also particularly with the United States department of agriculture in so far as such cooperation may be beneficially in carrying out the provisions of this article."

In the above section you will note the phrase "as may in its judgment be necessary for the protection of all plants growing in the State of Missouri". There is no statute exempting any firm, corporation or association from the provisions of the Act.

Under Sec. 12368, R.S. Mo. 1929, sub-division (d), the following definition is given of "persons":

"Individuals, associations, partnerships and corporations. Words used in this article shall be construed to import either the plural or the singular, as the case demands."

The principal section in controversy is Sec. 12376, R.S. Mo. 1929, which is as follows:

"It shall be unlawful for any person to sell, give away, carry, ship, or deliver for carriage or shipment, within this state, any plants or plant products listed, as required by section 12372, in the rules and regulations made pursuant to this article, unless such plants or plant products have been officially inspected and a certificate issued by an inspector of the board stating that the said plants or plant

products have been inspected and found free from insect pests and diseases, and any other facts provided for in the rules and regulations made pursuant to this article. For the issuance of such certificate, the board may require the payment of a reasonable fee to cover the expense of such inspection and certification: Provided, however, that if such plants or plant products were brought into this state in compliance with the requirements of section 12375, the certificate required by that section may be accepted in lieu of the inspection and certificate required by this section, in such cases as shall be provided for in the rules and regulations made pursuant to this article. If it shall be found at any time that a certificate of inspection, issued or accepted pursuant to the provisions of this section, is being used in connection with plants and plant products which are infested or infected with insect pests or diseases, its further use may be prohibited, subject to such inspection and other disposition of the plants and plant products involved as may be provided for by the board. All moneys collected by the board under this section or under section 12374 or 12381 shall be retained by the board as a fund for necessary traveling, postage, equipment, and other proper expenses incident to the duties and activities of the board and its employes. Bi-annually a detailed and itemized statement of all receipts and disbursements of said fund shall be submitted by said board to the general assembly on or before the third Monday of the session."

The Park Department of Kansas City, according to the enclosed letter, does not sell, give away, ship or deliver, for carriage or shipment within this state, any plants or plant products listed as required by Sec. 372, but the statute also uses the verb "carry" in addition. By the statements in the enclosed letter we are led to believe that this nursery transplants or "carries" its products to the various parks in the city, and regardless of the fact that it is not conducted for profit, it is the opinion of this department that it was the intention of the Legislature in passing the Missouri Plant Act to protect all plants and plant products in the State of Missouri from pests and diseases regardless of where or how located. Under Sec. 12373, the Board has power to make the

rules, and we think its powers are comprehensive enough to include the nursery in the East Park District of Kansas City.

II.

Municipally owned nurseries are  
subject to pay inspection fees

Having held in the preceding question that municipally owned nurseries are subject to the provisions of the Missouri Plant Act under Sec. 12376, supra, they would consequently be subject to inspection and the usual fee could be charged therefor.

We think we are not unreasonable in concluding that the Legislature intended the Act for the protection of all plants and plant products of the State and recognized that diseases and pests can infest municipally owned, as well as private or commercially owned nurseries, and that municipally owned nurseries should be protected, as well as all others.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General

APPROVED:

---

ROY MCKITTRICK

OWN:AH