

Department of Agriculture
State Plant Officer

Reciprocal arrangement between states whereby filing fees for Nursery Permit Certificates are to be the same in one state as are charged by the other state for similar certificates is permissible under Article 3, Chapter 87, of Revised Statutes of Missouri, 1929.

8-13
August 2nd, 1934.



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

Dear Sir:-

We have your letter of June 27, 1934, in which is contained a request for an opinion as follows:

"It has been the practice in the past for a number of state plant inspection departments, including Missouri, to issue a certificate under the plant law known as a 'Nursery Permit Certificate'. This certificate is issued to nurserymen not residing or growing nursery stock in the State of Missouri. Upon their filing a copy of their state inspection certificate and the enclosed affidavit properly filled out and paying a filing fee of \$5.00, they are issued this Nursery Permit Certificate. When this certificate has been obtained by the nurseryman he is then allowed to ship his nursery stock into this State. If the certificate has not been obtained it is the practice to have any shipments found moving through express or freight returned to the shipper who does not possess the said certificate.

"Several states are now making an effort to place a reciprocal regulation into effect as to the fee on this certificate whereby nurserymen in outside states are charged a fee for filing that is identical with the fee charged by that state to local nurserymen obtaining a similar certificate from that state. Nurserymen in states charging no fee are, of course, charged no fee for filing their State inspection certificate and obtaining the Permit Certificate.

"I would appreciate your opinion as to whether this regulation as it now stands is legal under the Missouri Plant Act, Chapter 87, Article 3, Sections 12,367 to 12,384, R.S. Mo. 1929, and if a reciprocal regulation as stated in the preceding paragraph would be lawful.

Yours very truly,

(Signed) J. Carl Dawson, Plant Officer."

J. Carl Dawson--#2

August 2nd, 1934.

Section 12369, Article 3, Chapter 87, Revised Statutes of Missouri, 1929, provides as follows:

"Sec. 12369. BOARD OF AGRICULTURE TO ADMINISTER PROVISIONS OF LAW.-- 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 co-operate with every state department, agency, commission and institution, and also particularly with the United States department of agriculture in so far as such co-operation may be beneficial in carrying out the provisions of this article."

Section 12373, Article 3, Chapter 87, Revised Statutes of Missouri, 1929, provides in part as follows:

"Sec. 12373. BOARD TO MAKE RULES AND REGULATIONS.--- The Board shall, from time to time, make rules and regulations for carrying out the provisions and requirements of this article, including rules and regulations under which its inspectors and other employes shall (a) inspect places, plants and plant products, and things and substances used or connected therewith."

In Section 12348 as re-enacted, Laws 1933, page 167, it is provided, among other things, that whenever any law refers to the Board of Agriculture, it shall be construed as referring to and meaning the State Department of Agriculture and the Commissioner of Agriculture.

Section 12371, Article 3, Chapter 87, Revised Statutes of Missouri, 1929, as re-enacted in Laws 1933, page 170-171, provides as follows:

"Sec. 12371. ASSIGNING DUTIES.--COOPERATION--FEES. For the purpose of carrying out the provisions of this Article the commissioner of agriculture may assign such duties to his employees as he may require and incur such expense as may be necessary, within the limits of appropriations made by law. Such commissioner shall cooperate with other departments, boards and officers of this state and of the United States as far as practicable. Provided, that the Commissioner of Agriculture shall prescribe the fees to be charged and collected from those inspected, and he shall cause such fees to be paid into a fund known as the Plant fund."

J. Carl Dawson--#3

August 2nd, 1934.

From a reading of the above quoted applicable sections, it will be seen that the Commissioner and Department of Agriculture are given considerably broad discretionary powers in the matter of inspections and fees therefor. In view of this we find nothing in the present regulation referred to in your letter that militates against any of the provisions of The Missouri Plant Law (Sections 12367-12384, Revised Statutes of Missouri, 1929). The procedure, as a matter of fact, seems to follow, at least in practical operation, that provided in Section 12375.

With reference to the possibility of the reciprocal regulation between the various states, we are of the opinion that such is lawful. It will be noticed, in this connection, that in Section 12369, as well as in Section 12371, the Commissioner is empowered to cooperate with the departments of other states. Furthermore, Section 12371 provides that the Commissioner shall prescribe inspection fees. This being so, he is empowered to use the reciprocal basis as a measure. The discretion granted the Commissioner and the legislative intent of cooperation with departments of other states seems ample authority for the reciprocal regulation.

Very truly yours,

CHARLES M. HOWELL, Jr.
Assistant Attorney-General.

CMHjr-MB

APPROVED:

Attorney-General.