

NURSERY STOCK -- Subject to inspection, when.

November 4, 1937

11-22

Honorable Wayne V. Slankard
Prosecuting Attorney
Newton County
Neosho, Missouri



Dear Sir:

We acknowledge receipt of your request for an opinion dated October 26, 1937, which reads as follows:

"A dealer in Nursery stock who operates a nursery at Neosho, loads a truck with nursery stock and goes to surrounding towns and there sells the stock from the truck.

"All of the stock sold is either grown by the nursery or is purchased by him from legitimate growers and passed through his plant, here at Neosho. He has a registration-inspection certificate for his plant here in Neosho.

"Under paragraph (3) of Section 12371 Mo. Stat. Anno. Page 384, (as amended, Laws 1933, p. 170, Section one (1); Laws 1937 p. 177, Section two (2), would this nursery man be required to secure an additional registration-inspection certificate for each place where he parked his truck and sold nursery stock."

Section 12368, R. S. Mo. 1929 defines the particular premises, which come under the State's inspecting jurisdiction of nursery stock, as follows:

"For the purposes of this article, the following terms shall be construed, respectively, to mean:

(c) Places: Vessels, cars and other vehicles, buildings, docks, nurseries, orchards and other premises, where plants and plant products are grown, kept or handled. ***** "

The Laws Mo. 1933, page 170, Section 12371 do not change the definition of premises subject to plant inspection as above set out in Section 12368, supra.

The Laws Mo. 1937, page 177, provide for the appointment of an entomologist to administer the Missouri Insect Pest and Plant Disease Law, and Section 12371, page 179, provides:

"(1) The fees for inspection hereunder shall be as follows; a nursery shall be required to pay as a fee per annum for the regular inspection of the nursery stock and premises the actual cost of such inspection and which cost in any event shall not exceed five (\$5.00) dollars for the first acre or fraction thereof and fifty (50¢) cents for each additional acre or fraction thereof inspected. Fees for inspections of other than nursery stock and premises shall not exceed the actual cost of inspection, such inspections to be made annually or more often as may be necessary in the judgment of the State Entomologist for the safeguarding and protection of agriculture and horticulture against dangerous and destructive insect pests and plant diseases. The term "Nursery", when used in this section, shall be construed to mean any land, ground or premises, within this state on or in which nursery stock is propagated or grown for sale, or any land, ground or premises within this state on or in which nursery stock is being fumigated, packed or stored.

"(2) Whenever the term, "Nursery Dealer", is used in this chapter, as distinguished from nursery or nursery agent, it shall be construed to mean and include any person not a grower of nursery stock, who (a) buys nursery stock for the purpose of reselling or reshipping within the State of Missouri, (b) who both makes landscape plans and plants wild trees, shrubs or vines (which must be certified prior to planting) or other nursery stock or negotiates in the purchase of same for his clients, or (c) who transplants or moves trees, shrubs or other nursery stock, regardless of where or how grown, from place to place within this State for other persons for a consideration in payment of the nursery stock, for the planting of same, or for both nursery stock and planting.

"(3) Each nursery dealer, before selling or offering for sale or otherwise distributing nursery stock within this state, must annually obtain a nursery dealer's registration-inspection certificate for each individual location from which the said dealer sells or offers for sale nursery stock. Each nursery dealer shall make application on forms to be provided by the State Entomologist for each individual location, which shall include (a) the name and complete address of nursery dealer's place of business for which such certificate is requested, (b) a declaration that applicant will obtain and distribute only inspected and certified nursery stock, (c) that applicant will maintain with the State Entomologist an up-to-date confidential listing of all sources from which he secures nursery stock, (d) make affidavit before an officer with a seal or certify in writing before the State

Entomologist or his agent that the statements in said application are complete and correct, and (e) each nursery dealer shall pay at the time of making application the annual registration inspection fee of ten (\$10.00) dollars. The State Entomologist shall inspect or cause to be inspected the premises, including any sales yard, packing-shed, nursery stock on hand or equipment, for the presence of dangerous and destructive insect pests and plant diseases which may be disseminated on nursery stock.

"(4) All moneys received for inspection fees or other receipts under Article 3, of Chapter 87, Revised Statutes of Missouri, 1929, as amended, shall be deposited in the State Treasury to the credit of the agricultural fees fund, subject to appropriation by the General Assembly; all checks and drafts remitted to the State Entomologist shall be made out to the order of the state treasurer, subject to deposit as herein directed."

Section 655, R. S. Mo. 1929, provides in part as follows:

"The construction of all statutes of this state shall be by the following additional rules, unless such construction be plainly repugnant to the intent of the legislature, or of the context of the same statute: First, words and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import; *** "

CONCLUSION

Construing Section 12368, supra, we are of the opinion that where nursery stock is sold from a truck, said truck is subject to inspection against diseased plant life of said nursery stock offered for distribution from said truck, as said truck falls within the premises described by the statute as subject to inspection.

The intention of the Legislature, as shown by the quoted law, is to establish an intelligent and thorough scheme of nursery plant inspection in this state, to the end that nursery plants growing, kept and handled in nurseries, and nursery plants kept and handled at other premises, be inspected in a sincere effort to eradicate and control plant diseases and plant insects. When we consider the purpose of such legislation, there is no reason to narrowly construe the statutes to the end that nursery growers, who should have a vital interest in seeing that plant diseases and insects are eradicated and controlled, be given special privileges from inspection when they become also nursery dealers in plant life from vessels, cars, buildings, docks, orchards and premises away from the nursery proper.

Under the technical import in the above statutory definition of "nursery dealer", we are of the opinion that the operator of an inspected and approved nursery may become, at premises away from the nursery proper, while keeping nursery plants in his truck for distribution, including nursery plants from other nurseries, a spreader of plant disease and plant insects. It was not intended that a certificate of nursery inspection was to operate as a license to spread disease from premises described as proper places for inspection.

We are of the opinion that the nursery plants in the truck of the nurseryman from Neosho, away from the nursery proper, are subject to inspection wherever he parks his truck to sell and distribute nursery stock to the public, and that before selling or offering for sale or otherwise distributing nursery plants from his truck he must annually obtain a nursery dealers' inspection certificate for each individual location of said truck, where said truck is located in the towns surrounding Neosho where the dealer intends to sell or

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offer for sale nursery stock from said truck.

Respectfully submitted,

WM. ORR SAWYERS
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APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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