

**State Board of Horticulture, Inspection by. Inspection, of Fruits. Fruits, Inspection of. Horticultural Board, Inspection by. Constitutionality, of Horticultural Law.**

1. The law relating to the regulation and protection of the industry of horticulture will be sustained by this office as constitutional until the same shall be decided otherwise by some court of competent jurisdiction.

2. All fruits in the State of Montana, whether native or foreign, are subject to inspection.

3. The legal fees for inspection is two cents per box or package, not exceeding, however, the sum of \$5.00 for each inspection.

4. Violations of the law are declared to be a misdemeanor, and punishment is provided for in the act itself. The procedure is the same as for other misdemeanors.

Helena, Montana, December 29, 1909.

Hon. M. L. Dean,  
State Horticultural Inspector at Large,  
Missoula, Montana.

Dear Sir:

I am in receipt of your letter of the 28th instant, submitting for the

consideration of this office the following questions, relating to laws for the regulation and protection of the industry of horticulture, section 1917, et seq., revised codes:

"1. Is the law, as it now appears upon the statute, constitutional?"

"2. Is all fruit in the state of Montana, wherever found, subject to inspection, whether raised in Montana or shipped from another state or country?"

"3. What is the legal fee for inspection, and by whom paid?"

"4. What course should be pursued by the board in case any fruit owner, shipper, common carrier or dealer refuses to obey the provisions of the law?"

You further call attention to certain errors in the printing of the revised codes of 1907, where the phrase "fruit trees," as the same appears in the latter part of section 1923 and in section 1936, should read "fruits."

These questions submitted will be answered in their order.

1. It is the function of this office to sustain the constitutionality of all legislative enactments, and not to hold any statute unconstitutional unless the same is so directly at variance with the plain mandates of the constitution that no other conclusion can be reached. We shall, therefore, maintain that the law in question is constitutional, at least until some court of competent jurisdiction has held otherwise.

2. Section 1936, revised codes, prohibits any person, whether acting for himself or as the agent of another, or as the agent of a transportation company or common carrier, from delivering or turning over to any other person or persons, corporation or corporations any fruits without first having attached the inspector's certificate. This section is a direct command that all fruits shall be inspected, and its provisions are not limited to fruits grown or raised in the state of Montana, but it applies indiscriminately to all fruits; and this construction is strengthened by the provisions of the latter part of section 1925, which fixes the charges for such inspection.

3. The legal fee for inspection of fruits is provided for in the last part of section 1925, which provides for the inspection of fruits a fee of two cents per box or package, with a maximum fee of five dollars for each separate lot or car and the inspector is prohibited from giving his certificate of inspection until the fees are paid.

4. The penalty for a violation of the various provisions of the horticultural law is fixed by different sections of the act, which will be seen by reference to sections 1926, 1936, 1941, 1943 and 1945. Section 1926, which prohibits the delivering of any fruit without the certificate having been attached declares the violations of its provisions to be a misdemeanor, while section 1943 fixes the penalty for such misdemeanor at not less than \$25.00 nor more than \$300.00.

The method of procedure in case of violation of any of the provisions of the law is the same as that for any other misdemeanor; simply the filing of a complaint with some justice of the peace, the arrest of the parties accused and the trial of the case.

It may also be proper to call specific attention herein to the errors in printing mentioned in your letter, and to say that upon investigation of the records in the office of the secretary of state we find that the phrase "inspection of fruit trees, a fee of two cents," etc., appearing in the latter part of said section 1925, should read, "inspection of fruits, a fee of two cents," etc., and that in section 1936 the phrase "fruit trees," as used therein, should read, "fruits."

These corrections in the law make it operative as to fruits, otherwise the entire act would be confined to the inspection of nursery stock; that is, fruit trees, vines, etc., and, as you suggest, these errors in the printing of the codes may have occasioned the difference in opinion relative to the meaning and construction of the act, for they are errors that reach the substance of the act itself, and, in effect, change its meaning.

Very truly yours,

ALBERT J. GALEN,

Attorney General.