Fruit, Point of Inspection. Inspector of Fruits, Authority of. Horticulture, Points of Inspection of Fruit.

The inspector of fruits in this state has authority to require all fruit to be inspected at the point of origin of shipment.

Helena, Montana, May 7, 1910.

Mr. M. L. Dean,
Inspector at Large,
Missoula, Montana.

Dear Sir—

I am in receipt of your letter of May 6, 1910, regarding the point for the inspection of fruit shipped from points within the state, in which you ask for an opinion as to your authority as to designation of point of

inspection. You also call my attention to section 12 of the rules of the Montana State Board of Horticulture, which provide that:

> "All shipments of fruit must be inspected at point of destination, except where there is no inspector at such point, in which event inspection may be made at any other point."

In an opinion given to you on January 31, 1910, we construed sections 1929 and 1936, revised codes, (which are sections 13 and 21, as found in the pamphlet containing the regulations and laws of the Montana State Board of Horticulture.) In this opinion we said:

> "By these two sections the law expressly declares that it is unlawful for any person to deliver or turn over to any other person, or persons, corporation or corporations, any nursery stock or fruit without first having the inspector's ceritficate attached thereto."

The above quotation seems as clear as we can make it.

If it is unlawful for any person to deliver or turn over nursery stock or fruit without first being inspected, it necessarily follows that you have authority, as inspector, to require it to be inspected before being turned over, and it also follows, as a matter of course, that any regulation of the board in violation of the law creating the board, and enacting provisions regarding nursery stock and fruit, would be void, for the board can only adopt rules and regulations which are not in conflict with the law, as expressed by the legislature.

Very truly yours,

ALBERT J. GALEN,

Attorney General.