

License, for a Nurseryman or Horticulturist.

A license must be procured by every person engaging in the business of selling nursery-stock within the state of Montana.

Helena, Montana, April 7, 1910.

Montana State Board of Horticulture,

Butte, Montana.

Gentlemen:

I am in receipt of a letter from Joseph W. Wallisch, secretary of your board, dated March 30, 1910, wherein my opinion is asked as to whether a nurseryman who is not licensed to do business in Montana can transact business through a licensed firm qualified to do business in this state.

You are advised that section 1937, revised codes, provides that no person, firm or corporation shall engage or continue in the business of selling or importing fruit trees or nursery stock into this state without first having obtained a license therefor.

Section 1938 provides the method of obtaining a license, and the sum to be paid the secretary of the board of horticulture, and requiring that a bond in the sum of \$1,000.00, be filed to insure the faithful obedience of the licensee to the laws of the state of Montana ;and, further, that he will pay such proper costs and charges as may accrue from the fumigation or destruction of defective stock.

Section 1939 provides that all persons engaged in shipping nursery stock into this state, or from point to point within the state, shall, at least five days prior to the date of shipment, notify the inspector of the board. And section 1943 makes the violation of any of the provisions of the chapter concerning the protection of horticulture a misdemeanor, and provides penalties therefor. Any person, firm or corporation shipping nursery stock into this state without a license would be violating the provisions of section 1937. If an unlicensed foreign dealer in nursery stock should receive orders for delivery in Montana, he could, of course, turn the order over to any nursery licensed to do business in this state to be filled and delivered. However, the consignment of his own stock to a nursery licensed to do business in this state, for the purpose of having such licensed nursery make delivery would be an evasion of the law and could not be countenanced by your board.

It is my opinion that under the provisions of the law providing for the protection of the industry of horticulture, no person, firm or corporation can deliver nursery stock within the state of Montana, either to the orchardist or to other jobbers or dealers in nursery stock, without first having obtained a license, as required by section 1938, revised codes.

Very truly yours,

ALBERT J. GALEN,

Attorney General.