

Constitutional Law, Horticulture. Railroads, Shipment of Fruit.

There is no constitutional objection to the enactment of a law whereby various fruit growing counties may by local option provide a fund to be raised from taxation to be expended in aid of horticulture.

Common Carriers should not receive fruit for shipment without the state where the same is not accompanied by an inspector's certificate as required by law.

October 17th, 1912.

Hon. M. L. Dean,
State Horticulturist,
Missoula, Montana.

Dear Sir:

I acknowledge receipt of your favor of October 2nd wherein you ask my opinion of this office upon two questions presented. I should have answered your communication before now but for the pressure of other business and the fact that I have already discussed these questions with you in person.

The first question you present is as to whether or not there is any constitutional objection to the enactment of a law whereby the various fruit growing counties may by local option provide a fund to be raised from taxation to be expended in aid of horticulture. In answer to this question you are advised that there would be no objection to the enactment of such a law, provided, of course, that the funds were to be collected and expended by each county so that the money so collected would go for the use and benefit of the county wherein the same was collected. A law can be enacted providing for such funds based upon a system of taxation, either of orchard lands or general tax. Such fund would then be used and expended for the purposes for which it is collected, the same as is done with the poor, road fund and the like.

The second question by you presented, is as to whether or not it is lawful for common carriers to receive fruit for shipment without the state, where the same is not first inspected in accordance with the law and the regulations of the State Board of Horticulture.

You are advised that by the provisions of Chap. 121, Session Laws of 1911, no person or common carrier is permitted to ship fruit unless the same has been first inspected and the inspection certificate attached thereto as required by said law. This in my opinion

applies to shipments within the state as well as to shipments without the state.

Yours very truly,

ALBERT J. GALEN,

Attorney General.