

**Horticulture, State Board of. Apples, Sale of When Infested,
or From Infested Orchards.**

There is nothing in the provisions of Section 1944, as amended by Chapter 113, Laws of 1913, which sanctions the sale of fruit from infested or infected orchards where such sales or shipments have been forbidden by the state board of horticulture.

January 6th, 1914.

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

Dear Sir:

I am in receipt of your letters of December 23rd and 30th respectively, with enclosures. As you will note, I have only made one or two changes in the language of the proposed regulation by your board. I think that in this form it will be sufficient for your purpose. As to the other question submitted by you,

"As to whether there is anything in the law regulating the standard size of apple box passed at the last session of the legislature, in any way rescinding or annulling any portion

of the former general law relating to the protection of the fruit industry."

Section 1944 of the Revised Codes, as amended by Chapter 121 of the Laws of the Twelfth Legislative Assembly, gives to the state board of horticulture power to quarantine orchards which are infested and prohibit the shipment of fruit therefrom. Under such power the board has by regulations (XVII, XX) prohibited the shipment of fruit from such orchards. The provision of Chap. 113, Laws of 1913, Sec. 7, providing:

"All apples offered for sale in this state in any other manner than in the standard box provided for in this act shall be marked and sold as cull apples,"

Does not sanction the sale of fruit from infested or infected orchards. And there is no implication therein that any and all apples may be sold, regardless as to whether they are from infested or infected orchards or not. To give this section such an interpretation would be virtually a repeal of Sec. 1944 as amended. It is to be noted that Chap. 113 of the Laws of the Thirteenth Legislative Assembly contains no express repealing clause doubtless for the very good reason that it was dealing with a subject concerning which there was no prior legislation. The subject of this act, as stated in the title thereof, is "Apple Boxes." Not even the most liberal construction could twist Sec. 7 into an implied repeal of the laws for the protection of the industry from contagious, infectious or dangerous diseases. It cannot be fairly construed to mean that any or all apples may be marketed by simply marking the packages in which such fruit is contained as cull apples.

You are, therefore, advised that nothing contained in Chap. 113 of the Laws of the Thirteenth Legislative Assembly has repealed or abrogated or in any manner modified the power of your board over infected or infested orchards, as laid down in Sec. 1944, as amended by Chap. 121 of the Laws of the Twelfth Legislative Assembly.

Very truly yours,

D. M. KELLY,

Attorney General.