

Licenses, Revocation of. Nurserymen, Revocation of License. State Board of Horticulture, Powers of to Revoke License.

Under the provisions of Section 1936, Revised Codes of Montana, 1907, the power to revoke licenses of nurserymen upon a violation of the provisions of the law concerning the horticulture business in this state, is delegated to the state board of horticulture.

March 30th, 1914.

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

Dear Sir:

I am in receipt of your communication under date of the 24th instant, submitting for my consideration the question as to the proper interpretation of Sec. 1936, Revised Codes of Montana, 1907, the last clause of which provides as follows:

“Provided however, that such license may be revoked at any time for any violation of this act, at the discretion of the board.”

“A mere occupation or privilege license granted by a state is always revokable, the corollative power to revoke the license being a necessary consequence of the main power to grant it.”
25 Cyc. 625.

Under a provision of the charter of the city of Chicago, the council of that city passed an ordinance providing in part as follows:

“Any license so granted may be revoked upon written notice by the mayor whenever it shall appear to his satisfaction that the party licensed shall have violated any provision of any ordinance of the common council relating to spirituous liquor.”

It was held by the supreme court of that state that the person obtaining a license and accepting it, took it with the condition that it might be revoked in the manner provided by the ordinance.

Schwuchow vs. Chicago, 68 Ill. 444.

In the case at hand the legislature has provided certain rules and regulations concerning the nursery business, and it is provided that a license shall be obtained for carrying on that business. By Sec. 1936, Revised Codes of Montana, 1907, it is provided that such license may be revoked for a violation of any of the provisions relating to the nursery business, at the discretion of the board.

I am, therefore, of the opinion that the power to revoke licenses is delegated to the state board of horticulture.

As to the further question of whether a member of the board upon complaint of an inspector, could revoke a license, I am of the opinion that Sec. 1936 contemplates that the revocation must be the act of the board. The usual rule is that where a power is granted to a board that that any exercise of that power must be by the board as a body, and not by the individual members thereof.

Yours very truly,

D. M. KELLY,
Attorney General.