

Horticultural Inspector, Powers of. Powers, of Horticultural Inspector.

The question as to the disposition of diseased fruit, and the powers of Horticultural Inspectors in regard thereto, answer by *Colvill v. Fox*, 149 Pac. 496. Under the provisions of the law, such inspectors have statutory authority to enter premises in enforcing the rules of the state board.

December 28, 1915.

Hon. M. L. Dean, State Horticulturalist,
Missoula, Mont.

Dear Sir:

I am in receipt of your communication under date the 24th inst., enquiring as to the power of the State Horticultural Inspectors to enter premises for the purpose of seizing fruit subject to inspection, and further, as to the authority of such inspectors in the disposition of diseased fruit after the same has been seized.

The question as to the disposition of seized fruit has been practically answered in the recent case of *Colvill v. Fox*, 149 Pac. 496, in which the Supreme Court upheld the power of horticultural commissioners, in proper cases, to destroy infected or diseased fruit.

As to the question of the right to enter premises: This is almost necessarily a part of the police power, even in the absence of special statutory authority. In this state, however, the legislature has given direct authority for such entry.

Sec. 1923, Revised Codes of 1907 as amended by Chap 121, Laws of 1911, is, in part, as follows.

"Said inspectors shall have free access, at all times, to all premises where any trees, plants, fruits or horticultural products or supplies are kept or handled, and shall have full power to enforce the rules and regulations of the State Horticultural Board, and to order the destruction and disinfection of any or all trees, plants, fruits or horticultural products or supplies found to be infected with any disease as prescribed or designated by said board."

The contention made by the party mentioned in your letter that his fruit is not subject to inspection or seizure for the reason that he purchased the same in good faith, is untenable. The innocence of a purchaser of diseased fruit is not a protection against the inspection laws of the State. The sale or distribution of diseased fruit is condemned by the statute and one cannot escape by saying he did not know it was diseased. To allow this as a defense would nullify all inspection laws.

Yours very truly,

J. B. POINDEXTER,

Attorney General.