

Orchards—Department of Agriculture — Spraying — Horticulture—Tax.

The department of agriculture possesses authority under section 3628 R. C. M. 1921 to spray diseased orchards located within the limits of incorporated cities and towns and to enforce payment of the cost as a tax.

A. H. Bowman, Esq.,
Commissioner of Agriculture,
Helena, Montana.

Nov. 30, 1926.

My dear Mr. Bowman:

You have referred to me for an opinion a letter from Mr. Edward Dickey, chief of the division of horticulture of your department, asking whether the horticultural division of your department possesses authority to spray orchards located within the limits of incorporated cities or towns and to charge the cost up to the owners thereof, under the provisions of section 3628 R. C. M. 1921, and to enforce payment thereof as a tax, in accordance with said section.

You are advised that in my opinion your department possesses such authority. The section referred to uses the words "orchard or other place where fruits are grown or kept." It makes no distinction between orchards located within or without the limits of an incorporated city. In this connection, however, you are referred to the opinion of this office, and authorities therein cited, at page 38 of volume 9, Opinions of the Attorney General, for advice upon the necessity that regulations of the character referred to must be reasonable. Assuming, however, that money is necessarily expended by your department in the enforcement of reasonable regulations for the purpose of eradicating diseases or insect pests from orchards within the limits of a city or town, I am of the opinion that a repayment of such money can be enforced by compliance with the provisions of section 3628 R. C. M. 1921.

Incidental to the main question submitted, I notice a statement in Mr. Dickey's letter to the effect that moneys expended by your department in eradicating diseases or insect pests from orchards could be paid out of the revolving fund of the division of horticulture and when the taxes are paid such money could be returned to the same fund. Permit me to suggest that under section 3629 of the code any money collected by the county treasurer as a tax under section 3628 is required by law to be deposited to the credit of the general fund of the state.

Very truly yours,

L. A. FOOT,
Attorney General.