

4. Each individual store in a chain store system must hold a separate license in order to deal in nursery stock.

July 24, 1939

Mr. Geo. L. Knight, Chief
Division of Horticulture
Missoula, Montana

Dear Mr. Knight:

You have asked,

1. If Section 3619, Revised Codes of Montana, 1935, requires dealers in bedding plants, flowering plants, and cut flowers to be licensed.

Section 3619 is in part as follows:

"It shall be unlawful for any person, firm, or corporation to engage in, conduct or carry on the business of selling, dealing in or importing into this state for sale or distribution, any nursery stock, or to act as agent, salesman, or solicitor for any nurseryman or dealer in nursery stock, or to solicit orders for the purchase of nursery stock, without first obtaining from the commissioner of agriculture and having in force a license to do so, * * * *. The license fee shall be twenty-five dollars per annum for nurserymen and dealers in nursery stock, and all agents, salesmen and solicitors for licensed nurseries shall be granted salesmen's certificates free of charge. All licenses shall be in the name of the person, firm, or corporation licensed, and shall show the purpose for which issued, the name and location of the nursery or place of business of the nurseryman or dealer licensed or represented by the agent, salesman or solicitor."

Opinion No. 104

Licenses—Nurserymen and Nursery Stock.

HELD: 1. The term "nursery stock," is defined by Section 3614, RCM, 1935, as amended by Chapter 112, Laws, 1939.

2. Nurserymen and dealers in nursery stock must pay the license specified by Section 3619, R. C. M., 1935.

3. Cut flowers are not included in the statutory definition of nursery stock.

Section 3614, Revised Codes of Montana, 1935, provides for inspection of "trees, grafts, scions, plants, vines," and prior to the enactment of Chapter 112, Laws, 1939, contained this proviso:

"Provided that the provisions of this act shall not apply to any plants known as greenhouse plants and grown under glass."

Section 3614 was amended by Chapter 112, Laws, 1939 and the quoted portion was stricken.

Sections 3614 and 3619 were enacted as Sections 42 and 47 respectively of Chapter 216, Laws, 1921, and are in *pari materia* and are to be construed together. "When two sections are part of the same legislative enactment and treat the same subject matter, they are to be construed together." (*Edwards v. Lewis and Clark County*, 53 Mont. 359; *State v. State Board of Equalization*, 56 Mont. 413; Section 6935, Revised Codes of Montana, 1935.) Then, despite the fact that Section 3614 relates to inspection of nursery stock and Section 3619 deals with the licensing of nurserymen and dealers in nursery stock, the enumeration of "trees, plants, vines, scions or grafts," in Section 3614 can be taken to be a definition of nursery stock in all places where it was used in Chapter 216, Laws, 1921. Then in order to determine what is meant by "nursery stock" in Section 3619, we must turn to Section 3614. Prior to March 3, 1939, the term "nursery stock" would not include greenhouse plants and other plants grown for what is commonly known as the florists trade, but when the legislature eliminated that exemption by the passage of Chapter 112, Laws, 1939, which went into effect March 3, 1939, those exempted plants would be included within the definition of nursery stock. "If it can be gathered from a subsequent statute, in *pari materia*, what meaning the legislature attached to condition of a former statute, it will amount to a legislative declaration of its meaning and will govern construction of first statute." (*Fergus Motor Co. v. Sorenson*, 73 Mont. 122.) The amendment to Section 3614 by Chapter 112, Laws, 1939, is in effect a declaration of a legislative intent to include greenhouse plants in the class requiring inspection and in amending Section 3614 all statutes in *pari materia* relying on the definition of nursery stock set forth in Section 3614 were also amended.

My opinion is that the enactment of Chapter 112, Laws, 1939, changes the definition of "nursery stock" as that term is used in Section 3614 and authorizes and requires the licensing of dealers in "greenhouse plants" as well as "trees, plants, vines, scions or grafts." However, the amendment is not so broad as to include dealers in cut flowers. Cut flowers are not included in either the statutory definition

of nursery stock or in the common understanding of the term and dealers in cut flowers only are not subject to the license imposed by Section 3619. (See *Hill v. Georgia Casualty Co.*, (Tex.) 45 S. W. 2d, 566, 567; *Atty. Gen. v. State Board of Judges*, 38 Calif. 291, 295.)

2. "When chain stores deal in nursery stock must they take out a license for each separate store or may they take out a single license covering the operations of all their stores?"

I am of the opinion that the statute indicates a legislative intent to require each separate establishment to secure a nurseryman's license in order to deal in nursery stock. Therefore, each unit of a chain store system should be licensed in order to sell nursery stock.