



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Department of Agriculture
Austin
Texas

Gentlemen: Attention: Mr. Charles E. Baughman

Opinion No. 0-2150

Re: Are trees, plants and shrubs
taken from the forest and sold
or offered for sale subject to
the provisions of the General
Nursery Stock Law of the State?

Your letter of March 29, 1940, requesting an
opinion of this Department on the above stated question
has been received.

Your letter reads, in part, as follows:

"We are confronted with the proposition
where in some instances local authorities claim
that trees, plants and shrubs taken from the for-
est and sold, or offered for sale, are not sub-
ject to the provisions of the General Nursery
Stock Law of the State. . . .

"We wish to have you advise this department
whether or not an individual, partnership, or cor-
poration, entering the forests and taking there-
from any manner of nursery stock as defined herein-
before, and sells same or offers same for sale is
subject to the provisions of the General Nursery
Stock Law?

"Please advise if such individual, partner-
ship, or corporation does not have in his or their
possession copy of the certificate as provided for

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in Article 1693 (719-) Chapter 10, Revised Criminal Statutes of the State of Texas of 1925, may be prosecuted under the provisions of the above act."

Articles 1692, 1693, and 1698, of the Penal Code read as follows:

Article 1692:

"The Commissioner of Agriculture shall cause to be made at least once each year an examination of each nursery or other place where nursery stock is exposed for sale. If such stock so examined is apparently free in all respects from any contagious or infectious disease or dangerously injurious insect pests, the Commissioner shall issue to the owner or proprietor of such stock a certificate reciting that such stock so examined was at the time of such examination apparently free from any such disease or pest. No such certificate shall be negotiable or transferable, and shall be void if sold or transferred. Any such sale or transference shall be punishable as provided by the succeeding article."

Article 1693:

"All nursery stock consigned for shipment, or shipped by freight, express or other means of transportation shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. When said box, bale, bundle or package contains nursery stock to be delivered to more than one person, partnership or corporation, each portion of such nursery stock to be so delivered shall also bear a copy of such certificate of inspection. Whoever sends out or delivers within this State, trees, vines, shrubs, plants, buds or cuttings, commonly known as nursery stock, which are subject to the attacks of insects and diseases enumerated herein, unless he has in his possession a copy of said certificate, dated within a year thereof; or shall deface or destroy such certificate, or wrongfully be in possession of such certificate, or fail to attach proper tags on each shipment, such tags bearing a copy of said certificate, shall be fined not less than one

hundred nor more than two hundred dollars."

Article 1698:

"The term 'Nursery Stock' within the meaning of this law, shall include all fruit trees and vines, shade trees and forest trees, whether such shade or forest trees be especially grown for sale in a nursery, or taken from the forests and offered for sale; all scions, seedlings, roses, evergreens, shrubbery or ornamentals, also such greenhouse plants or propagation stock, all classes of berry plants, cut flowers taken from plants, bushes, shrubs, or other trees growing in this State, which may be a medium for disseminating injurious insect pests and contagious diseases.

"The term 'nursery' shall be construed to mean any grounds or premises on which nursery stock is grown, or exposed for sale. 'Being in the nursery business' applies to any individual, partnership, or corporation which may either sell or grow, or both grow and sell, nursery stock, regardless of the variety or quantity of nursery stock sold or grown.

"The term 'dealer' shall be construed to apply to any individual, partnership or corporation not growers of nursery stock, but who buy and sell nursery stock for the purpose of reselling and reshipping under their own name or title, independently of any control of those from whom they purchase. An 'agent of a nursery or dealer' shall be construed to apply to any individual, partnership or corporation selling nursery stock, either as being entirely under the control of the nursery or dealer, with whom the nursery stock offered for barter and traffic originates, or some cooperative basis for handling nursery stock with the grower or dealer, as specified in this article. Any such agent shall have proper credentials from the dealer he represents or cooperates with, and failing in that, any such agent shall be classed as a dealer, and subject to such rules and regulations as may be adopted relative to them, and shall be amenable to the same penalties for violations of any provisions of this law."

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Article 1698, supra, specifically provides that the term "nursery stock" within the meaning of the General Nursery Stock Law, shall include all fruit trees and vines, shade trees and forest trees, whether such shade or forest trees be especially grown for sale in a nursery or taken from the forest and offered for sale. This Article further provides that the term "nursery" shall be construed to mean any grounds or premises on which nursery stock is grown, or exposed for sale.

Article 1692, supra, provides for an examination of each nursery or other place where nursery stock is exposed for sale and if such stock so examined is apparently free in all respects from any contagious and infectious disease or dangerously injurious insect pests, the commissioner shall issue to the owner or proprietor of such stock a certificate reciting that such stock so examined was at the time of such examination apparently free from any such disease or pests.

Article 1693, supra, provides that all nursery stock consigned for shipment, or shipped by freight, express, or other means of transportation shall be accompanied by a copy of such certificate attached to each car, box, bale, bundle, or package, and when such box, bale, bundle, or package contains nursery stock to be delivered to more than one person, partnership, or corporation, each portion of such nursery stock to be so delivered shall also bear a copy of such certificate of inspection.

In view of the foregoing statutes, you are respectfully advised that it is the opinion of this Department that trees, plants, and shrubs taken from the forest and sold or offered for sale are subject to the provisions of the General Nursery Stock Law of this State, and that any individual, partnership, or corporation refusing, or failing to comply with the provisions of the Nursery Stock Law, Chapter 10, Title 19, Articles 1691 to 1700 of the Penal Code inclusive, is subject to prosecution under the provisions of the Nursery Stock Law.

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Trusting that the foregoing fully answers your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

Ardell Williams

By

Ardell Williams
Assistant

AW:BBB

APPROVED APR 8, 1940

Gerald Mann
ATTORNEY GENERAL OF TEXAS

