



**THE ATTORNEY GENERAL
OF TEXAS**

GERALD C. MANN

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Department of Agriculture
Austin, Texas

Attention: Mr. Charles E. Baughman

Gentlemen:

Opinion No. 0-3273

Re: Requirements for the sale of nursery
stock.

Your letter of March 11, 1941, requesting an opinion of this department regarding the sale of nursery stocks, floral stocks and cut flowers has had our attention.

You state that:

"In the conduct of the nursery and floral business, growers of nursery stock, floral stock and producers of cut flowers send their trucks and/or other vehicles to parts of the State removed from their place of business for the purpose of 'peddling' such stocks and cut flowers.

"Will you please advise this Department where the owners of such nurseries and floral plants have complied with the provisions of the Nursery Inspection Law, by obtaining the required Inspection Certificate, and where proper agents credentials have been issued covering their producing place, if the owners of such places of business would be required to obtain any kind of additional certificate from this Department in order to peddle nursery stock, floral stocks and/or cut flowers produced by them."

We have carefully examined the provisions of Chapter 7 of Title 4 of the Revised Civil Statutes, and Chapter 10 of Title 19 of the Penal Code of Texas, dealing with the subject of nursery stocks and the regulation thereof by the Commissioner of Agriculture.

Articles 135 of the Revised Civil Statutes and 1689 of the Penal Code define "nursery stock," "nursery," "dealer," and "agent of a nursery or dealer." Article 119 of the Revised Civil Statutes places nursery and floral stocks, cut flowers, etc., under the supervision and control of the Commissioner of Agriculture. Article 120 of the Revised Civil

Statutes and Article 1691 of the Penal Code make it unlawful for any person under the circumstances set forth to keep or keep for sale certain stocks infested with disease or pests. Article 126 of the Revised Civil Statutes and Article 1692 of the Penal Code provide for a yearly examination by the Commissioner of each nursery or other place where nursery stock is exposed for sale. The Commissioner is required to issue a certificate that such nursery stock is apparently free from disease or pests, if he so determines. Article 121 of the Revised Civil Statutes declares that an infected or diseased tree, shrub or plant is a public nuisance and the Commissioner is authorized to abate it. Articles 122, 123, 124 and 125, Revised Civil Statutes, set forth the procedure for such abatement.

Under Article 127, Revised Civil Statutes, and Article 1693 of the Penal Code it is required that the Commissioner's certificate of freedom of disease or pests accompany any shipment or delivery of nursery stock. It is made unlawful to send out or deliver nursery stock without this certificate. Article 131 of the Revised Civil Statutes authorizes the Commissioner to inspect all shipments of nursery stock. Article 129 of the Revised Civil Statutes gives the Commissioner authority to revoke a certificate of inspection for false representations of for violation of law or the rules and regulations of the Commission. Article 1696 of the Penal Code declares it a crime to make false representations to the Commissioner for the purpose of obtaining a certificate. Article 133 of the Revised Civil Statutes provides for reasonable inspection fees.

Articles 127 and 130 of the Revised Civil Statutes deal with nursery stock shipped into this State. Article 1694 of the Penal Code and 130 of the Revised Civil Statutes deal with the rights and liabilities of transportation companies and common carriers.

Article 1699 of the Penal Code deals with the liability of an agent or a dealer or nursery man; and Article 1670 makes unlawful fraudulent sales.

We have thus reviewed the pertinent provisions of the Revised Civil Statutes and the Penal Code relating to nursery stock. It is our opinion that the certificate of inspection required by Article 126 of the Revised Civil Statutes and Article 1692 of the Penal Code is the only certificate required for the sale or delivery of nursery stock by Chapter 7 of Title 4 of the Revised Civil Statutes and Chapter 10 of Title 19 of the Penal Code of Texas

Very truly yours

APPROVED APR. 16, 1941
s/ GROVER SELLERS
FIRST ASSISTANT
ATTORNEY GENERAL
APPROVED OPINION COMMITTEE
BY B. W. B. CHAIRMAN
JDS:db/law

ATTORNEY GENERAL OF TEXAS

s/ James D. Smullen

By
James D. Smullen
Assistant