

Opinion No. 48-5165

August 25, 1948

BY: C. C. McCULLOH, Attorney General

TO: Mr. Johnston Jeffries, Assistant District Attorney, Aztec, New Mexico.

{*159} In your letter of August 21, 1948 you inquiry as to whether the San Juan County Board of Horticultural Commissioners, through its inspector, has the power to order destroyed fruit-trees infected with a disease which is known as "peach mosaic", which is a virus disease.

The controlling statute is Section 48-202 of the 1941 Compilation, the first paragraph of which makes it the duty of the Board of Horticultural Commissioners, through its inspector, to inspect orchards, etc. to determine whether the same are infested with "* * * any insects, fungus, or plant or fruit disease, or the eggs or larvae thereof, * * *"

In the second paragraph of the above cited statute the Board is given the power to order its inspector to have destroyed orchards, etc. which are infested with said "insects, fungus disease, **pests**, or the eggs or larvae thereof, * * *" Therefore, the question submitted is whether or not the power of the Board extends to the destruction of orchards infected with a virus disease. The phrase "or fruit disease," in the first paragraph, would certainly allow inspection of any such orchard, and I believe it would be contrary to the legislative intent to provide for inspection, with no remedy, should an injurious disease of any nature be found upon such inspection.

Further, Webster's Unabridged Dictionary defines a virus disease as a "pathogenic microorganism which is present in the juices of an organism having an infectious disease, and by which, through introduction into another organism, the disease is transmitted."

A pest is defined as "anything resembling a pest in destructiveness, noxiousness, etc.; plague; bane; nuisance."

A peach mosaic might well be included in the classification of pests in the latter paragraph of Sec. 48-202, 1941 Compilation, according to the definition of Pests and Virus given in the dictionary.

In view of the foregoing, it is my opinion that the power of the Board {*160} of Horticultural Commissioners extends to condemnation of orchards infected with peach mosaic, providing of course that the disease cannot be eradicated by spraying or other proper treatment, as provided in the Act.

By W. R. KEGEL,

Asst. Atty. General