

Opinion No. 69-121

October 23, 1969

BY: OPINION OF JAMES A. MALONEY, Attorney General James V. Noble, Assistant Attorney General

TO: Mr. Ray Bell, State Forester, State Forestry Office, P.O. Box 2167, Santa Fe, New Mexico

QUESTIONS

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Must all out of state trees being transported for sale or being offered for sale in the State of New Mexico for the purpose of Christmas decorations bear tags from the time of entry into the state until removed by the ultimate consumer or user?

CONCLUSION

Yes.

OPINION

{*195} ANALYSIS

The question arises because some shippers of trees for the purposes stated in the question load them for shipment at more than one point of origin. Until the bill of lading is prepared, based upon demand of various areas of various states, the shipper does not know the destination of the trees being so shipped. The shipper is aware of such destination shortly before the shipment commences and the destination is shown on the bill of lading.

Section 62-1-13 B, N.M.S.A., 1953 Compilation (P.S.) provides in pertinent part:

"B. Each evergreen or coniferous tree cut or removed from public or private land in New Mexico and being transported for the purposes of sale or being offered for sale in {*196} the state for the purpose of Christmas decoration; and all other trees **being transported** for the purpose of Christmas decoration shall bear a tag purchased from the department of state forestry. The tag shall be attached to the main stem of the tree and shall not be removed except by the ultimate consumer or user. * * *" (Emphasis added.)

Other sections of the act here being construed provide for penalties for violations and for the **stopping of any vehicle** (including common carriers) for the purpose of investigation and inspection.

The language of the statute in question is clear and unambiguous. There is no room for construction. **Giomi v. Chase**, 47 N.M. 22, 137 P.2d 715 (1942). Whenever the particular trees described in the act are being transported in this state for sale herein or are to be offered for sale herein such trees must bear the requisite tag.

Some hardship may be worked because the shipper, after determining that the destination of the particular shipment is a point in New Mexico must then, or at some time prior to entry into the state, properly affix the required tags. This may, and probably will, require the maintenance of a supply of such tags at each of the various points of origin and may, and probably will, consume extra time in expediting the shipment. Statutory requirements are not met by a bulk shipment of separate tags. The desirability of this is not a matter of legal concern but one of legislative policy. The law is clear and unambiguous and must be followed as written.