

## Opinion No. 38-1926

April 1, 1938

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. R. F. Crawford Biologist and Deputy Inspector State College, New Mexico

{\*226} In your letter of March 29 you request an opinion as to whether "variety stores" in the state selling bulbs and other plants are required to pay the \$ 5.00 fee or the \$ 25.00 fee provided by Chapter 118, Laws of 1937, if the nursery from which they derive their stock, whether within or without the state, has already procured the proper inspection tag.

I agree with you that the purpose of the act is to provide a system of inspection for the protection of the people in the state. In my opinion variety stores are required to pay only the \$ 5.00 inspection fee. I think this is clear when the act as a whole is considered. Every statute is to be given that interpretation, if possible, which would render it constitutional and which would more nearly accomplish its purpose and be in accord with reason.

Section 1 of the act provides that the term "nursery" shall include "any place" where nursery stock is raised for the purpose of sale, "or **anyone** offering such stock for sale." This last phrase necessarily means any establishment where stock is offered for sale rather than any person offering the stock for sale; otherwise Section 3 would require a person selling nursery stock to be inspected for "insect pests" and other diseases therein named.

So interpreted Section 2 clearly means that every establishment engaged in the sale of nursery stock shall pay the fee of \$ 5.00, and Section 5 means that every "person, firm or corporation," engaged in "the business of soliciting, taking orders, selling, storing, or delivering nursery stock," except the owner, manager, or operator of an establishment certified under Section 2 and who has paid the \$ 5.00 fee, shall pay the \$ 25.00 fee for a "salesman's certificate" or "dealer's certificate."

By: A. M. FERNANDEZ,

Asst. Atty. Gen.