

The Attorney General of Texas

July 5, 1978

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Honorable Reagan V. Brown
Commissioner
Texas Department of Agriculture
P. O. Box 12847
Austin, Texas 78711

Opinion No. H-1202

Re: Whether the Texas Department of Agriculture may issue a nursery inspection certificate based on inspection of premises when no nursery stock is present.

Dear Commissioner Brown:

You inquire about your duty to inspect nurseries under articles 119-135.1, V.T.C.S. You ask whether you may issue a nursery inspection certificate based on the inspection of premises at a time when no nursery stock is present.

Article 126a states in part:

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.

"Nursery" is defined to mean "any grounds or premises on which nursery stock is grown, or exposed for sale." V.T.C.S. art. 135.1. Article 126 describes the inspection process as follows:

The Commissioner shall inspect or cause to be inspected at least once each year each and every place offering items of nursery products or stock ... to

ascertain whether or not said item or premises are infected with disease or insect pests injurious to human, animal or plant life.

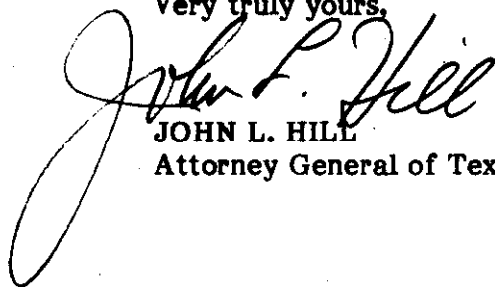
Article 119 also requires the inspection of all nurseries and other places offering items of plant life for sale. These provisions expressly require the inspection of nursery stock. They define the premises to be inspected as a place where nursery stock is grown or offered for sale. We believe the legislature has clearly expressed its intent that the inspection take place when nursery stock is present. The Commission may not issue the inspection certificate described in article 126a based on an inspection of premises alone. See Teacher Retirement System v. Duckworth, 260 S.W.2d 632 (Tex. Civ. App. — Fort Worth 1953), opinion adopted, 264 S.W.2d 98 (Tex. 1954); see also V.T.C.S. art. 126b.

You state that in some cases it is impractical to inspect nursery stock prior to issuing the certificate. However, any inconvenience that results from the statute as written must be remedied by legislation. See Cullinan v. McColgan, 183 P.2d 115 (Cal. App. 1947); Layman v. State Unemployment Compensation Comm., 117 P.2d 974 (Ore. 1941).

S U M M A R Y

The Texas Department of Agriculture may not issue a nursery inspection certificate based on the inspection of premises when no nursery stock is present.

Very truly yours,



JOHN L. HILL
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee

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