

**OPINION**  
**54-84**

April 7, 1954           (OPINION)

NURSERY STOCK

RE:   When License Required

Yours of April 6th with letter of the State Entomologist, of April 1st has been received.

We will answer the questions submitted as follows:

(1)   It has come to our attention that a certain out-of-state nursery, presently operating in North Dakota under the reciprocal agreement section of the North Dakota Nursery Law, has agents representing this firm who solicit nursery stock orders for future delivery. In several instances we have found that the agent who solicited the original order also acts as the distributing agent and on occasion will plant the material for the customer. Under either or both of these situations is the agent in fact a dealer?

It is our opinion that a bona fide agent of the nursery who solicits orders for the nursery who also delivers the stock and on occasion actually plants the stock for the customers does not become a dealer requiring a license as such by reason of delivering the stock ordered or by planting same for the customer.

(2)   This same nursery in filling orders for nursery stock, hauls the plant material sold by their agents into North Dakota in their own company trucks to several distribution centers. At the distribution points individuals are employed to distribute the nursery stock to the various customers. The persons delivering the stock from distribution points do not take orders or provide service other than delivery. Should this delivery system be considered comparable to delivery by public carrier, or should the distribution centers be considered sale sites in which case the nursery would be obliged to obtain a dealer's license for each distribution center?

It is our opinion that this method of delivery is not comparable to delivery by a public carrier. And the nursery must secure a license for each distribution center as required by Section 4-2005, 1953 Supplement.

(3)   It is our understanding that the several North Dakota Soil Conservation Districts obtain nursery stock (tree stock) each year for the purpose of sale or distribution within their respective districts (most of the trees being used in farm shelterbelt plantings) that they operate individually and independently of the State Soil Conservation Nurseries located at Oakes, N. D., and Bismarck, N. D.

It is our opinion that the Soil Conservation Districts do not become dealers subject to state regulation by securing nursery stock for the farmers in their districts. The stock so acquired, however, should

bear certificate of inspection as required by Section 4-2007, 1953  
Supplement.

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