

3. That the board exceeded its authority in holding that the applicant must necessarily pass the examination as a condition precedent to being granted a certificate of registration, inasmuch as he might have presented other evidence which would have satisfied the board of his qualifications.

CONSERVATION, DIVISION OF: Certification of seeds and plant parts, whether authority under the act extends to the certification of plants.

August 17, 1937.

Hon. Frank N. Wallace,
State Entomologist,
Department of Conservation,
Indianapolis, Indiana.

Dear Sir:

I have before me your letter requesting an official interpretation of certain parts of chapter 248 of the Acts of 1935, page 1257. As a basis for your questions you make the following statement:

“Two distinct situations have arisen under this statute. The first, a plant grower complies in all respects with the statute referred to above and receives from the proper officials a certification of his seed or plants, and he labels his plants that he sells ‘Indiana State Certified’ or just ‘Certified.’ Now, the second situation is where a plant grower simply produces a number of plants or seeds and makes no attempt to comply in any respect with the statute above referred to, and then attaches to the plants he sells or offers for sale a similar tag as is done in the first situation, but on this tag there appears only the word ‘certified,’ usually in large type, with the manifest intention of beguiling the public into purchasing his plants.”

You submit the following questions:

“1. In the first situation, is the State of Indiana through its proper officials, under this Act, authorized to certify the plants?

“2. In the second situation, is the plant grower violating the Act above referred to by labelling his

plants 'certified' when he has not complied with his statute in all respects?

"3. Whether or not the words 'plant parts' used in the aforementioned Act should be construed to mean a plant as a whole or should it be construed to mean a piece of a plant, or can it be construed to mean both?"

Chapter 248 of the Acts of 1935 is entitled:

"An Act providing for state certification of seeds, *plants* or plant parts intended for propagation or sale or offered for sale; to authorize certification of such seeds or *plants* or plant parts through the Purdue University Agricultural Experiment Station, or by producer associations or other agencies designated by said agricultural experiment station; to regulate the relations of said agricultural experiment station to its certifying agents and its financial responsibility for certification work done by its agents; to provide such certification shall be on a self-supporting basis; to provide for the manner and form of certification; and to provide penalties for violations of the Act." (Our italics.)

Acts of 1935, page 1257.

I have italicized the word "plants" where it occurs in the above quotation to emphasize the fact that while the title of the Act is broad enough to include the certification of plants, nowhere in the body of the Act is the word "plants" used with respect to authority for certification as the term is therein defined. An example of this omission is found in the opening sentence of section 1 where the language is "seeds or plant parts intended for propagation or sale." The same omission is apparent in the following further language of section 1: "Expressly or impliedly stating or representing that such seeds or plant parts comply with or conform to the standards or requirements for certification." The same omission is noted in section 6 where the language used is "seeds or plant parts."

Section 8 of chapter 248 provides that any person violating any of the provisions of the Act pertaining to certification shall be deemed guilty of a misdemeanor and upon convic-

tion thereof shall be fined in any sum not less than twenty-five dollars nor exceeding two hundred fifty dollars for each offense.

In construing this statute the rule applicable to the construction of criminal statutes governs. That rule provides that such statutes are strictly construed. I quote from *State v. Lowry*, 166 Ind. 372, at p. 393:

“The fact must be remembered that the statute we are called on to construe is a criminal statute, and that the rule applicable to such statutes is that of strict construction; that is, the case must be within the spirit, as well as within the letter, of the statute. This rule, said Chief Justice Marshal, in *United States v. Wiltberger* (1820), 5 Wheat. *76, *95, 5 L. Ed. 37, ‘is founded on the tenderness of the law for the rights of individuals; and on the plain principle, that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime, and ordain its punishment.’ Mr. Endlich states that the rule of strict construction ‘requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment. To determine that a case is within the intention of a statute, its language must authorize the court to say so; but it is not admissible to carry the principle that a case which is within the mischief of a statute is within its provisions, so far as to punish a crime not specified in the statute, because it is of equal atrocity or of a kindred character with those which are enumerated. In this characteristic, the difference between liberal and strict constructions is clearly presented. Whilst the letter of a remedial statute may be extended to cases clearly within the same reason and within the mischief the Act was designed to cure, unless such construction does violence to the language, a consideration of the old law, the mischief and the remedy, though proper in the construction of criminal as well as other statutes, is not in itself enough to bring a case within the operation

of the former class of statutes; their language, properly given its full meaning, must, at least by that meaning, expressly include the case; and in ascertaining that meaning the court cannot go beyond the plain meaning of the words and phraseology employed in search of an intention not certainly implied in them.' Endlich, *Interp. of Stat.*, Sec. 329."

Applying the foregoing rule of statutory construction, it seems to me that the court would not be authorized to read into the language, repeated so often in the body of the Act, "seeds or plant parts"—the word "plants." I think "plants" and "plant parts" refer to two different things.

Accordingly, your first question is answered in the negative.

Your second question is likewise answered in the negative. If, however, he uses the term "certify" with respect to seeds, such a use would be a violation if done without complying with the Act.

Your third question has already been answered earlier in the opinion.

DENTAL EXAMINERS, STATE BOARD OF: Dentists—advertising, legality of advertising by car cards.

August 18, 1937.

Dr. J. M. Hale, Secretary-Treasurer,
Indiana State Board of Dental Examiners,
Mt. Vernon, Indiana.

Dear Dr. Hale:

I have before me your request for an official opinion concerning the legality of the use of car cards in street cars, trackless trolleys and buses in the various cities of Indiana, by dentists; also whether or not they may use their photographs on such cards.

Although you do not say so, I am assuming that those cards are being used for advertising purposes.

Your attention is called to section 7, chapter 90, Acts of 1935, which reads in part as follows: