

PUCKETT
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May 14, 1955
Opinion No. 55-112

REQUESTED BY: W. T. Mendenhall, State Entomologist
Arizona Commission of Agriculture and
Horticulture, P. O. Box 6246, Phoenix, Arizona

OPINION BY: ROBERT MORRISON, The Attorney General
Harmon S. Puckett, Assistant Attorney General

- QUESTIONS:
1. Is a written permit required for the removal of plants from private land which plants are protected under the provisions of Chapter 49, Article 4?
 2. Can a fee of \$5.00 be collected by the Commission on permits issued by a private landowner for removal of protected plants from privately owned land and approved by the Commissioner of Agriculture under the provisions of Chapter 49, Article 4?
 3. Is a permit required to remove protected plants from one location to another within the same county?
 4. Is a permit required, whether the plants are transported by private carrier or common carrier?

- CONCLUSION:
1. A written permit is not required for the mere removal of plants of the protected group from private land, but a written permit is necessary, if such plants are transported beyond the boundaries of the private land from which they are removed.
 2. Yes.
 3. A permit is required to remove protected plants from one location to another location in the same county, if it is necessary to transport the plants beyond the boundaries of the private lands from which the plants are removed.
 4. Yes.

The following are applicable to the questions:

"49-402. Removal of plants - Permits - Clearing highways and ditches. - (a) Except as in this act provided, no person shall destroy, mutilate, or re-

move or employ any person to destroy, mutilate, or remove, any living plant, except seeds, of the protected group from any public, state, or private land without first obtaining a written permit from the owner except as to private lands, and the approval upon the said permit of the Arizona Commission of agriculture and horticulture, and filing a verified copy thereof with the county recorder of the county wherein said plants grow.

(b) The Arizona commission of agriculture and horticulture may permit, in writing, a person to take a definite number of specified plants in the protected group, from areas specified by the commission, for scientific or educational purposes.

(c) No permit as provided by subsections (a) and (b) shall be issued for more than one (1) shipment of plants nor good for more than thirty (30) days.

(d) The Arizona commission of agriculture and horticulture may permit, in writing, the removal by the permittee of leaves of the Yucca Bacatta or Yucca Elata, or both, for the obtaining of the fibre therefrom for commercial purposes. Such permits shall only be issued to persons maintaining within the State of Arizona plants for the manufacture of Yucca fibre. The commission shall prescribe the compensation to be paid to the state for leaves taken from state lands, and no removal of leaves shall be permitted within 200 yards of any state highway.

(e) Nothing herein shall be construed to prevent the clearing, cleaning, or removal of plants from any canal, lateral (,) ditch, survey line or public road or highway, when necessary to the full and proper use thereof, or land being cleared from homes or for agricultural purposes by the owners of said land; not to prohibit the use of dead cacti for business or other purposes."

"49-403. Fee for permits.--The Arizona commission of agriculture and horticulture shall collect a fee of five dollars (\$5.00) for each permit issued, except permits for scientific and educational purposes."

"49-404. Carrier not to transport unless permit and certificate attached.--No person or common carrier shall transport any plant, or any part thereof, belonging to the protected group, nor receive or possess the same for transportation within or without the state, unless the person offering the same for shipment exhibits to the person or to the common carrier a valid, written permit for the taking of said plant or part thereof, and has securely attached thereto a valid shipping permit issued by the commission, or a coupon detached from such permit, and if for transport without the state, must also bear a certificate of inspection by the commission of agriculture and horticulture."

"49-405. Permits for transportation. - Enforcement of act.--The Arizona commission of agriculture and horticulture is empowered to issue permits for the transportation of plants belonging to the protected group, to points within or without the state, and to make all necessary rules and regulations, not in conflict with this act, for the enforcement of the provisions thereof."

"49-406. Arrests and confiscation.--Any peace officer or any officer or employee of the Arizona commission of agriculture and horticulture shall have power, in the enforcement of this act, to make arrest without warrant for any violation of this law which he may witness, and to confiscate any plants or parts thereof belonging to the protected group, unlawfully cut or removed."

The purpose of the act, as established by its title, is to protect native Arizona plants. All sections of the act should be given equal force and effect. Section 49-402 includes public, state, and private lands within the act and then, by the words "except as to private lands", the necessity of obtaining a permit from the owner of private land is excluded. However, this does not mean that a permit is not required when plants of the protected group are transported beyond the boundaries of the private land from which they are removed. Section 49-404 provides that "no person or common carrier shall transport . . ." without a permit. This requirement is clearly reasonable and necessary for the enforcement of the act and accomplishment of its purposes. Enforcement officials would be unable to determine the source of origin of plants being transported upon roads and highways beyond the boundaries of private lands, unless transporters and persons, regardless of ownership

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of land, are required to have a permit. A fee of \$5.00 is provided in Section 49-403 for each such permit issued.

It is, therefore, the opinion of this office:

1. That a written permit is not required for the mere removal of plants of the protected group from private land, but a written permit is necessary if such plants are transported beyond the boundaries of the private land from which they are removed.
2. That the commission must collect a fee of five dollars (\$5.00) for each of the foregoing permits issued.
3. That a permit is required to remove protected plants from one location to another location in the same county, if it is necessary to transport the plants beyond the boundaries of the private lands from which the plants are removed.
4. That a permit is required, regardless of whether the plants are transported by private carrier or common carrier.

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