

Sale of native plants

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Subject:

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CRIMINAL LAW--SALE OR TRANSPORT OF LAWFULLY OBTAINED NATIVE PLANTS BY OTHER THAN ORIGINAL COLLECTOR NOT UNLAWFUL

To: Doyle Conner, Commissioner of Agriculture, Tallahassee

Prepared by: Bruce M. Singer, Assistant Attorney General

QUESTION:

Is the sale or transport of legally obtained native plants by anyone other than the original collector legal?

SUMMARY:

The sale or resale of legally obtained wild or native plants listed in s. 865.06(1)(b), F. S., by any person other than the original lawful collector thereof is not prohibited by the state native plant law (s. 865.06, F. S.).

Section 865.06(1)(a), F. S., makes it unlawful for any person to pick, pull up, or dig up the wild plants or trees therein designated growing upon the land of another without having previously obtained permission from the owner or lawful occupant of such land or his representative. Section 865.06(1)(b) provides that it is unlawful for any person to "[t]ransport, carry, or convey on any public highway, or sell or offer for sale in any place, the [wild and native plants listed herein] which have been gathered, picked, pulled up, torn up, dug up, cut or broken *in violation of this law.*" (Emphasis supplied.)

Persons who legally obtain, cultivate, or import such wild and native plants cannot be successfully prosecuted for the transportation, conveyance, or sale of such wild or native plants. See s. 865.06(2)(a), F. S.; *cf.* s. 865.06(4), F. S. Furthermore, paragraph (b) of subsection (2) specifically permits the sale of commercially grown native plants by licensed, certified nurserymen, as "it is the intent of the law to preserve and encourage the growth of these native plants."

An examination of s. 865.06, F. S., fails to indicate any restriction against the original lawful collector which would prohibit the sale of legally obtained wild and native plants to nurserymen or any other individual for resale. Section 865.06(1)(b) proscribes only the sale and conveyance of the named plants gathered in violation of s. 865.06. Wild and native plants gathered in compliance with the law -- with the permission of the owner of the land from which taken or the

lawful occupant thereof or his representative, s. 865.06(1), or taken from a person's own land or land leased by him, or legally imported, s. 865.06(2)(a) -- are *not* gathered or taken in violation of the native plant law. It is an elemental rule of statutory construction that when a statute enumerates the things on which it is to operate or forbids certain things, it must be construed as excluding from its operation all things not expressly mentioned therein. *Ideal Farms Drainage District v. Certain Lands*, 19 So.2d 234 (Fla. 1944).

In view of the above, I agree with the Division of Plant Industry's interpretation of this law that when the original collector obtains the wild or native plants in compliance with the law, such plants in effect become legal nursery stock and may be sold by either the original collector, a stock dealer receiving such lawfully gathered wild or native plants, or by any person other than the original lawful collector or who has purchased or received such plants from the collector.

Your question is answered in the affirmative.