

1661.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENT IN
PORTAGE COUNTY, OHIO.

COLUMBUS, OHIO, November 24, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

1662.

AGRICULTURE—AUTHORITY OF SECRETARY OF AGRICULTURE TO
PRESCRIBE AND ENFORCE MEASURES TO PREVENT OUTBREAKS
OF DANGEROUS INSECTS OR PLANT DISEASES—EXERCISE OF
POLICE POWER—INSPECTORS SHOULD BE FURNISHED WITH
BADGES—SEE SECTION 1124 G. C.

1. *Section 1128 G. C. authorizes the secretary of agriculture, in cases of outbreaks of dangerous insects or plant diseases, to prescribe and enforce such remedial and preventive measures as he deems necessary. It is a valid exercise of the police power and not in conflict with the constitution.*

2. *Under the provisions of section 1124 G. C., the inspectors and deputy inspectors should be furnished with badges indicative of their authority which they should carry while on duty.*

COLUMBUS, OHIO, November 26, 1920.

The Department of Agriculture, Bureau of Plant Industry, Columbus, Ohio.

GENTLEMEN:—Your communication of recent date is as follows:

“Am enclosing copy of an order which we are contemplating sending out. There is some question in my mind whether we have authority to issue such an order. Section 1132 G. C. unquestionably grants to this bureau the authority to issue an order of like nature calling for the destruction of plants that are known to be infested or infected with dangerous insect pests or plant diseases. However, the case in hand is a little different for the plants do not always show external evidence of the disease at the time of inspection.

The common barberry plant serves as an alternate host for the black stem rust of wheat and other grains. It is a necessary part of the cycle of this disease, spores being produced on the leaves of the barberry in the spring, infection having come to this plant from wheat stubble of previous year's growth. From the barberry plant the spores are carried by the wind to grasses and grains where the disease multiplies very rapidly. There are sections in Ohio where wheat growing has been abandoned because of the presence of this disease. The plants, therefore, constitute a potential menace that may become real at any time.

Are the broad powers granted to the secretary of agriculture in section 1128 which gives him authority ‘to prescribe and enforce such preventative and remedial measures as he may deem necessary to the control or eradication of such outbreaks,’ in contravention of the property rights guaranteed to the citizens of this state under the constitution?