

## Opinion No. 72-65

November 20, 1972

**BY:** OPINION OF DAVID L. NORVELL, Attorney General Ronald Van Amberg,  
Assistant Attorney General

**TO:** J. Lee Cathey, District Attorney, Fifth Judicial District, P.O. Box 875, Carlsbad, New  
Mexico 88220

### QUESTIONS

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Are livestock owned by an out of state party subject to assessment and taxation by New Mexico if the livestock are in New Mexico solely for the purpose of being fed and are to be shipped back to the out of state owner?

#### CONCLUSION

Yes, if the livestock remain in the State for at least 20 days and are over six months old.

### OPINION

#### {\*106} ANALYSIS

This question arose because of the apparent conflict between the provisions of Section 72-2-45.1, N.M.S.A., 1953 Comp. (1971 P.S.) and Section 72-2-1.1, N.M.S.A., 1953 Comp. (1971 P.S.).

Section 72-2-45.1, **supra**, provides in part:

"A. All livestock over six [6] months old, brought into or kept within the state for more than twenty [20] days, whether for seasonal grazing or any other purpose, shall be rendered for assessment purposes to the county assessor of the county in which they are located. All such livestock shall be assessed in accordance with sections 72-2-1 through 72-2-54, N.M.S.A., 1953."

Section 72-2-1.1, **supra**, provides:

"Personal property which is moving {\*107} in interstate commerce through or over the territory of New Mexico, or which was consigned to a warehouse or factory within New Mexico from outside the state, for storage, manufacturing, processing, or fabricating in transit to a final destination, whether specified when transportation begins or afterwards, which is also outside the state, shall be deemed not to have acquired a situs in New Mexico for purposes of ad valorem taxation."

Section 72-2-1.1, **supra**, addresses itself to the situation where personal property traveling in interstate commerce temporarily comes to rest in the State of New Mexico before reaching its final destination. Commerce consists of the **exchange** of goods or property ( **In re Simms**, 202 F. Supp. 911 (1962)), or the **buying and selling of commodities** [**Sanders v. Keenan**, 426 S.W.2d 399 (1968)]. See also Webster's Unabridged International Dictionary, Second Edition, 1954. In the present situation, the livestock are shipped from the out of state owner to New Mexico and back to the owner. The owner is not engaging in commerce with himself; thus the temporary stay in New Mexico is not an interruption of commerce. Accordingly, Section 72-2-1.1, **supra**, does not apply and the livestock would be taxable.