

## Opinion No. 13-1017

April 15, 1913

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. E. W. Howe, Wagon Mound, N. M.

### **TAXATION.**

Unpatented homesteads not subject to tax.

### **OPINION**

{\*181} I have just received your letter of the 14th inst. in which you say that you made final proof on 160 acres of land in August, 1911, but have not yet received the patent therefor, and the assessor tells you you must pay taxes on it.

The assessor probably has not had his attention called to a provision in the last act of the legislature on the subject of assessment of property, the substance of which is, that land entered under the public land laws shall not be assessed for purposes of taxation until patent has issued, unless the delay in obtaining patent is due to the fault or negligence of the entryman. Several years ago, my attention was called to this question and I found that, unless the legislature made an exception, such land was taxable as soon as final proof was made and, having this in mind, I succeeded in getting the change made by the legislature. I drafted several different bills, including {\*182} in them them provision, and the act which was passed just before the legislature closed was based upon one of my bills and this section was preserved and included in it.

It appeared to me to be an injustice to a person, who had made such an entry, to tax his land until he received the patent, because, although he had a lawful right to sell or mortgage his land after making final proof, yet, as a matter of fact, we know that he cannot get as good a price for his land before his patent is actually received as he can afterward, and the practice of the Land Department of the Government is such that there is always some uncertainty about what may happen until the patent is issued.