Opinion No. 14-1310

September 2, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. Alexander Ballantyne, Taiban, New Mexico.

TAXATION.

Assessment for taxation in 1912 of unpatented land legal.

OPINION

*{*167}* I have received your letter of the first instant asking, in substance, as to the validity of assessment of land in 1912 for which the final certificate had been issued to a homesteader, while the patent was not issued until October 24, 1913.

My attention was first called to this question in November, *{*168}* 1910, and upon examination of the decisions of the Supreme Court of the United States I found that the validity of the taxation of lands, after final proof was made, and before the issuance of patent, was upheld by the courts. The federal courts have repeatedly held that when the settler has made his final proof and received his certificate, the ownership of the land changes, and that he could then sell and convey the land with perfectly good title. This being so, it logically follows that the land would then be taxable.

Practically, however, we all know that until the patent has been actually issued, the entryman is at a disadvantage and cannot sell or mortgage the property on as good terms as he can after he actually has the patent. This so impressed my mind that I saw to it that the tax law of 1913 contained a provision that land entered under the public land laws should not be taxable until after the patent had issued. This law, however, which was approved March 18, 1913, had no retroactive effect, and would not invalidate a legal assessment which had been made in the year 1912, although it might prevent the same property from being assessed in 1913 until after the patent had been issued.