

Opinion No. 15-1540

June 3, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Hon. K. K. Scott, District Attorney, Roswell, N. M.

Cattle brought into the state between January 1 and September 1 must be taxed.

OPINION

{*120} I have before me your letter of the 29th ult. in which you say that you have been requested to give an opinion by Mr. Ambrose Ivy, Assessor of Curry County, as to the provisions of House Substitute {*121} for House Bill No. 263, which is "An Act to Provide for the Assessment and Taxation of Live Stock," and while you have reached a conclusion as to the meaning of the act, yet you submit the question to me for my opinion and construction.

It appears from what the assessor has told you, that there is soon to come into Curry County, 2500 to 3000 head of cattle, one year old and over, from Arizona and Texas, to be sold in Curry County for stock purposes, and he desires to know whether or not these cattle coming into the county before the first day of September are subject to taxation in that county when the same have been assessed and taxes paid thereon for the year 1915 in Arizona or in Texas.

The statute, after providing for the assessment of live stock, except sheep and goats, for purposes of taxation in the county where the same are found on the first day of January of each year, and for the assessment of sheep and goats in the county where they are found on the 15th day of March of each year, has the following language:

"Any cattle, horses or other live stock one year old and over brought into the State, or that may be found in any county thereof, after the first day of January and before the first day of September, and any sheep or goats one year old and over brought into the state, or that may be found in any county thereof, after the fifteenth day of March and before the first day of September, of each year, and which shall not have been so assessed for such year, shall be assessed and taxed in the county where found."

You say that if such live stock as the assessor asks about are to be assessed and taxed in Curry County, it will work a hardship on those who have contracted to sell cattle in that county which receives a large portion of its live stock from the State of Texas, and that this may prohibit the stocking of the range, especially by the small homesteaders in Curry and Roosevelt Counties, and perhaps be a detriment in the long run to New Mexico, as you are informed that shippers will not bring in any more cattle for sale in Curry County, but I, like you, am forced to the conclusion that all live stock brought into the county between the first of January and the first of September, one year old and

over, must be assessed and taxed in that county unless already assessed elsewhere in the state. You will notice that in the act there are to be found provisions for the ordinary assessment of live stock in the counties where found, either on the first of January or the 15th of March, and then follows the provision hereinbefore quoted, and in that quotation you will see that the live stock brought in before the first day of September of each year, in order to be assessable and taxable in the county where found must "not have been so assessed for such year;" and the word "so" clearly refers back to the assessment provided for in the first part of the section, of stock where it may be found on the first of January or the 15th of March. I am unable to see that the assessment of such stock in another state and the payment of taxes in that other state could, under these provisions, have {^{*}122} the effect of exempting animals from taxation after they come in to New Mexico.

It is needless to say that I would prefer to reach a different conclusion if it were possible so to do, consistently with the language of the statute, but the legislature has made the law for us and we cannot change or modify it.