

Opinion No. 19-2231

April 2, 1919

BY: O. O. ASKREN, Attorney General

TO: State Tax Commission, Santa Fe, New Mexico.

Collection of Taxes Upon Live Stock Being Removed from State.

OPINION

Owing to rush of business requiring the attention of the members of the force in this office, and to our desire to give the matter a thorough investigation, your letter of the 13th ultimo, in regard to the right of a county assessor to attempt to collect taxes upon live stock which had been returned for assessment as of January 1, but would be taken from the state prior to the levy of the assessment for the current year, has not received a more prompt reply.

The telegram from Mr. T. J. Molinari to you under date of the 31st ultimo in regard to the same subject has induced us to make hasty search for authority upon this question, and we therefore state our conclusions herewith:

Your letter of the 13th enclosed one under date of March 7, from E. M. Smith, assessor of Lea County, stating that 850 head of 2-year-old steers and heifers had been returned to him for taxing purposes by Kelly & Bridges of Post City, Texas, and stating that the stock had come into the county sometime in November, 1918, and that it would probably be taken out during April or May of this year, and requesting advice as to how to proceed to collect taxes thereon.

By virtue of the provisions of Chapter 66, Laws of 1915, cattle, horses, and other live stock, except sheep and goats, are to be assessed as of January 1st of each year.

Our laws provide for the determination of a rate for taxation purposes by the Board of County Commissioners at its meeting held on the first Monday in October, and levying the taxes for that year.

It is apparent, therefore, that no levy of taxes can be made prior to the date last above mentioned, as no rate has been determined upon and no order has been entered by the Board of County Commissioners determining what the rate of taxation for the year should be.

One of the essential requisites for a valid tax levy is that there should be an assessment and a levy in accordance with the provisions of law, and where no such assessment or levy has been made, there is, in contemplation of law, no tax that can be collected.

We are, therefore, of the opinion that no assessment of the live stock mentioned in the letter of the Lea County assessor, or the telegram of Mr. Molinari, can be made at this time.

The tax to be levied in accordance with the provisions of law above mentioned will become a lien upon the live stock in question after the levy as of January 1, 1919, and the same can then be collected from the owners of the stock as of that date under any of the delinquent tax laws of the state in the event that the taxes should not be paid at the time prescribed by the statutes.

If the taxes on these cattle are not paid and should become delinquent, a suit could be instituted against the owners if service can be had upon them in New Mexico or in the State of Texas for the recovery of the amount of taxes due at such a time.

We are returning to you herewith the telegram of Mr. Molinari.

Trusting that the foregoing answers the inquiries contained in your letter of the 13th, we are,

HARRY S. BOWMAN,

Assistant Attorney General.