

Opinion No. 21-2828

February 14, 1921

BY: HARRY S. BOWMAN, Attorney General

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

Taxation of Improvements and Personal Property Upon Public Domain and of Transient Live Stock.

OPINION

{*26} I have before me a letter from Mr. J. E. Edgington, Assessor of Otero County, addressed to you, submitting two inquiries concerning which he desires an opinion from this office.

He first asks if improvements upon public domain consisting of well machinery, tanks, etc., are subject to taxation and asks for the rule in case of the establishment of these improvements, first, on patented lands, surveyed lands and unsurveyed public lands.

While, of course, public domain is not subject to taxation, improvements upon public lands are subject to taxation, whether the lands be surveyed or unsurveyed, and, of course, there is no question but that improvements upon patented lands are also subject to taxation.

The rule governing the subject is expressed in 37 Cyc. page 69, as follows:

"The exemption of public property from taxation does not extend to improvements upon public lands made by pre-emptioners, homestead and other claimants, or occupants, at their own expense, and these are taxable by the state."

The class of improvements mentioned in the letter fall within the definition of improvements in the statement above quoted.

The same rule applies to improvements on patented lands and surveyed or unsurveyed public lands.

The second inquiry relates to the taxation of transient live stock where they are taxed in one county and grazed in an adjoining county.

Under the present laws governing the subject, live stock is assessable in one county only and the tax is payable in that county.

A bill has been introduced at the present session of the legislature which provides for a pro rata division of the taxes collected on live stock where such live stock grazes in

more than one county during the year, and if this bill becomes a law it will solve the problem suggested by this correspondence.