

Opinion No. 12-880

April 21, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Messrs. Hawkins & Franklin, El Paso, Texas.

TAXING OUTPUT OF COAL MINES.

As to pending legislation providing for the taxing of output of coal mines.

OPINION

{*24} I have today received your letter of the 19th inst. My brother prepared a bill at the request of a member of the Legislature on the subject of taxing the out-put of coal mines, which I afterwards re-drafted with some slight changes and with one important addition which I think would meet the objection which you suggest as to double taxation. My attention was called to it just before I gave the bill to the member who asked for it. It appeared to me that to tax the land upon which the mine is situate and to tax the out-put also might be considered double taxation, as the coal taken is a part of the land itself. I can imagine the possibility of making an argument to show that this is not double taxation, but in the nature of a taxation upon the amount of business done; but I would not have much confidence in that. In the bill as I finally gave it to the member who introduced it, I provided that any operator of a coal mine at the time of payment of the tax upon the out-put should be allowed to deduct any amount of tax paid upon the land from which coal is produced.

As to the other objection which you suggest, referring to a Minnesota case, I do not see that it is applicable. You say that the Minnesota Constitution provides that all taxes should be as nearly equal {*25} as might be and that all property should have a cash value and be equalized and uniform throughout the State. The great difference between fifty cents a ton on copper and one cent a ton on iron ore evinces a disposition to discriminate against copper mining, but our constitutional provision merely is that "the rate of taxation shall be equal and uniform upon all subjects of taxation." I do not understand this to mean that there may not be special taxes upon different classes of subjects of taxation, especially in view of the language of the next section which provides for a great variety of specific taxes, including taxes upon the out-put of mines. If there is anything in your suggestion it would be that the Legislature could not tax the out-put of coal mines without at the same time taxing the out-put of all other mines and at the same rate. To tax them all at the same rate would be obviously impossible, or at least very complicated and difficult; but I cannot believe that it would be unconstitutional to tax the out-put of one class of mines, even though other classes of mines were not so taxed. I think it could as well be argued with reference to the enumeration of subjects in Section 2 in Article VIII of the Constitution that the Legislature could not impose a part of those specific taxes without imposing all of them, and at the same rate.

I shall be glad to hear from you further on this subject as possibly members of the Legislature may ask my opinion and I would rather be right than to try to get something which seemed merely desirable. At present, however, I incline to the belief that this bill would not be in violation of the Constitution and that to hold against its validity would be practically to nullify the constitutional provision as to taxing the out-put of mines, and would make it practically impossible for the Legislature to exercise that power at all.