

Opinion No. 12-923

July 22, 1912

BY: FRANK W. CLANCY, Attorney General

TO: Hon. W. G. Sargent, State Auditor, Santa Fe, N. M.

CATTLE.

No double tax to be imposed upon cattle.

OPINION

{*64} On Saturday last I wrote to you on the subject of the special tax of 3 1/2 mills imposed by Section 9 of Chapter 9 of the Laws of 1909, as to which in July, 1909, I had written to District Attorney Studley that it must have been the intention that the tax should extend to cattle, and ought not to be limited to equine animals, although this was not in accordance with the letter of the statute. I wrote to you as stated in my letter because you had called my attention to an earlier statutory provision which appears on page 204 of the Session Laws of 1909, and had suggested that my construction of the act of 1909 might have the effect of imposing a double tax upon cattle and only one tax on the other animals, the statute of 1907 imposing a tax at the same rate upon the value of cattle. In substance, I disclaimed any intention that my opinion should have such effect and made it plain that I did not believe that there should be any double tax on cattle, and I took the view that the act of 1909 was intended fully to cover the subject of the prevention and eradication of disease among such animals, and could properly be considered as displacing all earlier legislation.

Today you have informed me that the practical construction during the last three years has been different and that there has been collected a tax of 3 1/2 mills on each dollar of the value of cattle under the act of 1907, the proceeds of that tax being known as the Cattle Indemnity Fund, and that under the act of 1909 a tax at the same rate levied upon each dollar of the value of all horses, mules and asses has been collected and kept in a different fund which is called in the statute, a fund for the eradication and extermination of contagious and infectious diseases among cattle, horses, mules and asses, and to be used for that purpose. Without necessarily determining whether the practical construction of these acts or the one which I suggested to you in my letter of last Saturday is the correct one, I am of opinion that it would be better to continue to collect these taxes as two separate and distinct existing taxes creating two different funds. There is some language in the act of 1909 which has but little or no meaning if the construction given in my letter to you of July 20th is not correct, and yet I must admit that there is much to be said in favor of the other construction. The principal idea which I have had in mind was to avoid anything which would double the tax upon cattle, and as that result is reached by the course heretofore pursued, I think it is advisable to continue that course to avoid any possible confusion or mistake.