

Opinion No. 20-2538

April 8, 1920

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

Referring to the conversation of the chairman of your Commission with the writer, in regard to the levy and collection of a tax upon livestock which is in the state on the first of January, but is removed therefrom prior to the first Monday in October, at which time the tax levies are determined upon and certified, we would advise you as follows:

Taxes are levied upon livestock, with the exception of sheep and goats, as of the first day of January of each year and become a lien upon the property as of that date after the levy is made and certified to the county assessors. While it is impossible to ascertain the exact amount of the tax or assessment prior to the date that the levy is made, there is no doubt what there is an obligation upon the part of the taxpayer to pay such tax when the levy is made, and in our opinion this obligation constitutes a sufficient ground for legal action in the event that the tax officials are satisfied that the livestock will be removed from the state for the purpose of evading the payment of the tax, or that the tax will not be collected because the property is being removed into a foreign state, even though there be no specific intent to defraud the state and counties upon the part of the owner when the removal of the property takes place.

In view of the fact that there is such an obligation upon the part of the owner of the livestock to pay the tax when it is levied, we are of the opinion that a restraining order would lie to prevent the removal of the livestock from the state until such time as some proper agreement was reached whereby the owner would secure the state for the payment of the tax, which would be subsequently levied. We, therefore, suggest that in those cases where assessors or other tax officials are satisfied that the owners are contemplating the removal of the livestock for the purpose of evading the payment of the tax to be levied, or that it will require action of some nature in a foreign state in order to attempt to enforce the payment, the result of which might be doubtful, that injunction proceedings be instituted for the purpose of preventing the removal of the stock until the state and counties can be secured for the payment of the tax to be subsequently levied, and we wish to advise that we will be glad to co-operate with you, or any other of the state or county officials, in presenting the matter properly to those courts in which the suits may be brought.

H. S. BOWMAN,

Assistant Attorney General.