

Opinion No. 37-1821

November 19, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. Benj. D. Luchini Chief Tax Commissioner Santa Fe, New Mexico

{*193} You inquire whether levies authorized by the Cattle Sanitary Board Act, Ch. 205, L. '37, the Hog Cholera Act, Sec. 4-1213, 1929 Comp., and the Sheep Sanitary Board Act, Sec. 4-1640, 1929 Comp., are to be extended and assessed on livestock, notwithstanding such livestock may be otherwise non-taxable by reason of the owner's soldier and head of the family exemptions, in view of the fact they are considered by the commission as special levies on specific classes of property.

Article VIII, Section 5, states that "the legislature may exempt **from taxation**" property of each head of a family to the extent of \$ 200, and of each soldier to the extent of \$ 2,000. Sections 141-104 and 141-1403 exempt property of soldiers and heads of family "from taxation."

"A general grant of exemption from 'taxation' . . . relieves the person or corporation affected from the payment of county or municipal taxes as well as from those levied for state purposes . . .; and also such a grant exempts from special or local taxes which are properly taxes as distinguished from assessments, . . . but not from local assessments for public improvements . . ." -- 61 C. J. 397, 398, Sec. 398.

Cooley on Taxation, Vol. 2, p. 1445-1446, Sec. 689 says:

"So a general exemption ordinarily applies to a special tax which is in reality a tax rather than an assessment for a public improvement . . ."

In *Lake Arthur Drainage District v. Field*, 27 N.M. 183, 199 P. 112, it was decided that "a specific assessment on property for improvements, based on benefits, cost of which is assessed against the property, is not a tax within the constitutional sense." See also the later cases of *In re Proposed Rio Grande Conservancy District*, 31 N.M. 200, 242 P. 688, and *Gutierrez v. Middle Rio Grande Cons. Dist.*, 34 N.M. 346, 282 P. 1.

I do not think it can be said that the taxes about which you inquire are based on benefits, and that the cost is assessed against the property benefited. The tax is on the livestock, but against the owner and not against the property.

Cooley's definition of taxes is:

"Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs."

-- Cooley on Taxation, 4th Ed., Sec. 1.

He also says, Section 31:

"A special assessment is in the nature of a tax upon property levied **according to benefits conferred on the property**. The whole theory of a special assessment is based on the doctrine that the property against which it is levied derives some special benefit from the improvement . . ."

{*194} "The difference between a special assessment and a tax are that (1) a special assessment **can be levied only on land**; (2) a special assessment cannot (at least in most states) be made a personal liability of the person assessed; (3) a special assessment **is based wholly on benefits . . .**"

The cases seem to hold that a charge made by the sovereign is either a tax or a special assessment as above defined. Louisiana etc. R. Co. v. Shaw, 46 So. 994, 121 La. 997, affirmed by the Supreme Court of the United States in 218 U.S. 41, 54 L. ed. 1097; State v. City of Newark, 27 N. J. Law 185. There seems to be no middle class -- the tax is either one or the other. The tax on cattle, etc., more nearly fits the first definition above given as a special additional tax for public use in safeguarding the health of livestock. It certainly does not fit the latter definition of a special assessment.

It is my opinion, therefore, that the livestock exempt under the law from other taxes is not subject to the special taxes on livestock.

Further, the owner has the right to specify the property to be exempt in cases where he has property of greater assessed value than the amount of the exemption he may be entitled to.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.