

### Taxation, Situs of Live Stock for Purpose Of.

The situs of live stock for the purposes of assessment and taxation is the county wherein the owner thereof is conducting such business.

Helena, Mont., Dec. 6, 1905.

Mr. John W. Duffy, Chairman Board of County Commissioners, Philipsburg, Mont.

Dear Sir:—I am in receipt of your favor of the 5th, asking opinion of my office in relation to the taxation of certain cattle.

The facts, as you present them, are substantially as follows: Rupp & Greenheck, cattle raisers, residents of your county, took a bunch of cattle into Beaverhead County in November, 1904, for purposes of feeding them, and in the spring of 1905 shipped them out of Beaverhead County. It is not stated whether they were shipped back to Granite County or whether to market, but we presume that they were shipped to market rather than returned to Granite County. It appears that they were assessed in Beaverhead County and the taxes paid there under protest, and that they were likewise assessed in Granite County and the taxes there paid under protest. •

The question upon which you now desire an opinion is: Which county is entitled to the taxes?

Notwithstanding the recent holding of our Supreme Court in the case of Flowerree Cattle Company, versus Lewis and Clark County, 81 Pac. 398, this question is repeatedly submitted to us for consideration and official opinion. We think the case above referred to, when applied to the facts you present, controlling and a conclusive answer thereto. Under the doctrine laid down in that case, if the cattle were moved from Granite County for purposes of feeding, were returned in the Spring, there could

be no question but what the taxes would be properly due to and collectable by Granite County. But the question arises, is the doctrine of that case to be distinguished where live stock are removed from the county wherein the owner resides and has his place of business for the conduct of live stock raising, to another county for purposes of temporary feeding only, if it is not the owner's intention to return them to his home range? We think not. Under the doctrine paid down in the case above cited as we see it, the situs of such property for the purposes of taxation is the county wherein the owner has his fixed place of business for stock raising purposes. And even if the owner upon removing his cattle to another county for purposes of feeding, intended at the time of so removing them to ship them to foreign market in the Spring, and he actually did so ship them, their situs for purposes of taxation would still remain the same. In the case you present, the cattle were essentially property belonging to Granite County for purposes of assessment and taxation. It is perfectly clear from the reading of the Flowerree case that there should be no distinction made where it is the owners intention to ship them on to market from the place of temporary feeding, for, it is clear, from the reading of the case cited, that were the cattle returned to Granite County, he could ship from there or dispose of them as he pleased and he would not be liable for the payment of any taxes thereon other than that fixed and assessed by Granite County. In our opinion, if the cattle in question were shipped out of Beaverhead County to foreign market, as we take it they were, they were, in contemplation of law, to be considered as Granite County property in transit for the purposes of assessment and taxation.

Respectfully submitted,

ALBERT J. GALEN,  
Attorney General.