

**School Districts, Changing Boundaries Of.—Special Tax, Apportionment Of.—Butchers' License, Place of Business Of.
State Lands, Changing Highway Over.**

Where the territory is transferred from one school district to another after trustees of each district have certified to county commissioners the amount of special tax to be levied, and after the transfer of such territory the county commissioners make levies pursuant to such certificates, the taxes collected on the territory transferred should be credited to the district to which such territory was transferred.

A man's ranch or slaughterhouse may be his fixed place of business for wholesaling or retailing meat and he would be required to procure a regular butchers' license. He should keep a record of brands and descriptions of all cattle killed by him the same as a butcher with his place of business in town. A man killing cattle raised only by himself may sell the meat without procuring a license. He must exhibit the hide to the purchaser of the meat and keep the hide in his possession for at least ten days. Butchers having a regular butchers' license may sell and distribute their meat in wagons or in any other manner without procuring a peddler's license.

Where a public highway is to be run across State Lands, or the location thereof changed, the power to grant a right of way rests with the State Board of Land Commissioners, who are given jurisdiction over such matters.

Helena, Montana, May 3rd, 1906.

Hon. W. T. McKeown, County Attorney, Kalispell, Montana.

Dear Sir: Your letter of the 24th ult., received, in which you submit three questions and ask the opinion of this office thereon.

The first question relates to the special tax levied for the year 1905 in School Districts Nos. 11 and 51.

It appears from the facts stated in your letter that on the 12th of August, 1905, a portion of District No. 11, by order of the board of county commissioners, was cut off and made a part of District No. 51, and the question arises as to whether the special tax collected pursuant to the special tax levy upon the property situated in this strip of territory should be credited to District No. 11, or to District No. 51.

There is a serious question in our minds as to whether territory can be legally taken from one district and added to another at any time between the first day of March and the first day of September following, as Section 1760 of the Political Code provides that "no school district shall be created between the first day of March and the first day of September following of each year."

It is true that this section only mentions the creation of districts, but the reason why no new district should be created between such dates applies with equal force to the transferring of territory from one district to another between such dates.

However, assuming that the action of the board was legal, and that the territory was properly transferred from No. 11 to No. 51, we are then confronted with the following state of facts:

Pursuant to Section 1940 B, laws of 1901, page 13, the trustees of School District No. 11 sometime during the month of July, 1905, certified to the county commissioners the number of mills per dollar which they wished the commissioners to levy as a special school tax on the taxable property for their district. Thereafter, on the 5th day of August, 1905, the trustees of District No. 51 certified to the county commissioners the number of mills per dollar which they wished the county commissioners to levy on the taxable property of their district. On August 12th, 1905, the county commissioners made an order transferring the strip of territory in question from District No. 11 to District No. 51. Thereafter, in accordance with Section 3825 of the Political Code, the county commissioners on the second Monday in August, which was the 14th day of August in the year 1905, levied a special school tax in each of said districts in accordance with the certificates theretofore received from the trustees of each district. It is apparent from the above statement of facts that at the time the county commissioners made the special school levy for Districts 51 and 11, that the territory in question was a part of District No. 51, as it was made a part of that district at least two days before the time fixed by law for the commissioners to make the levy.

The taxes raised from the levy made on the second Monday of August are not paid, until sometime in the fall, and such money is used to pay the salary of teachers and other expenses of the school district for the fiscal year of 1906.

The children of the taxpayers residing upon the strip of territory in question, from and after August 12, 1905, would be required to attend the school in District 51 and, therefore, the special tax paid by the taxpayers residing in the territory transferred should go to the district in which their children attend school.

From the facts stated in your letter it does not appear whether the taxes in the strip of territory transferred were collected under the levy made pursuant to the certificate of the trustees in District 11 or the certificate of the trustees in District No. 51, but in our opinion, the money received belongs to District No. 51 in either event.

On the other hand, if we treated this transfer of territory from one district to another in the same manner as is provided by law where a new district is created out of one or more old ones, we would obtain the same result as stated above, for, under Section 1754 of the Political Code it is provided that "when there are unpaid special taxes on the county taxbook belonging to a district at the rate of its division, the county treasurer upon being notified of such division by the county superintendent shall retain all moneys received in payment of such special taxes until

the same shall be apportioned by the county superintendent, whose duty it shall be to apportion said money quarterly between the fractions of the divided district according to the location of the property upon which said tax was levied.

The second question submitted is whether a man residing on a farm and who has a slaughter house and wholesales, retails and peddles beef throughout his county is required to take out a peddlers license, or may he conduct such business under a regular butchers license. In an opinion given by this office to Hon. J. A. Matthews, County Attorney of Broadwater County, On November 18th, 1905, it was held that "if a man has a slaughterhouse or other suitable place for killing his beef and from which he sells the same, either at retail at that place or by distributing it to his customers by means of a wagon, and has paid the butchers license required by Sec. 4064 as amended, laws of 1901, page 144, that he has complied with the law." It is further held in such opinion that where a rancher has taken out a regular butchers license to sell meats which he kills at his ranch house or slaughterhouse, that he may haul such meat by wagon through the county, making sale and delivering at once under his regular butchers license, and is not required to procure in addition to such butchers license a peddlers license, as it is provided in Sec. 4065 as amended by laws of 1897, page 199 that "no further or other license is required of any butchers by reason of any wagon used in connection with his business." In other words, where a butcher's fixed place of business is his ranch or slaughterhouse, and he sells all his meat or distributes it for sale from such place, he is governed by the same rules as a butcher who has a fixed place of business at a butcher shop in a town, and in either case a regular butchers license is sufficient, and no peddlers license is required where they distribute the meat throughout the county in wagons or by other means.

However, such license does not authorize them to distribute meat outside of the boundaries of the county in which it was issued without procuring a license from another or different county in which they may distribute meat.

We further held in an opinion given to Mr. Matthews on November 21st, 1905, that a person has a right to sell stock raised by himself, either alive or dead, without procuring a license. However, in such a case he is limited to the sale of stock raised by himself, and if he engages in the business of buying cattle for the purpose of killing and selling the meat he must then procure a regular butchers license. Of course, a man who is engaged in the butchers business and has his place of business at his ranch or slaughterhouse, must keep a record of the marks and brands of the cattle slaughtered by him in a book, subject at all times to the inspection of public, and must, on or before the first day of each month make copies of such record and swear to and file the same as provided in Sec. 2945 of the Political Code, and every person who only slaughters or kills stock raised by himself, and is therefore not required to procure a license, must exhibit to the purchaser of the meat the hide of the animal to be sold and must keep such hide for ten days after

selling at his place of residence, etc., as provided by Section 1188 of the Penal Code.

Your third question asks what proceeding must be had to change a county road that runs across state lands. This is a matter that the board of county commissioners should take up with the state board of land commissioners. Section 3507 of House Bill No. 45, laws of 1899, page 67, gives the state board of land commissioners jurisdiction over the matter of granting rights of way for public roads across state lands, so the county authorities should have the county surveyor make a map showing the proposed changes, which should be forwarded to the board of land commissioners together with the reasons for the proposed change, whereupon the board will, no doubt, take whatever action is necessary.

Very truly yours,

ALBERT J. GALEN,

Attorney General.