

Assessment of Migratory Sheep — Sheep — Migratory, How Assessed.

Construction of statutes providing for assessment of migratory sheep.

May 20, 1920.

Mr. I. S. Crawford,
County Attorney,
Forsyth, Montana.

Dear Sir:

I am in receipt of your letter submitting for my opinion the following:

“During November and December of 1919, large numbers of sheep were shipped from Rosebud County, Montana, to Sweet Grass County, Montana, for winter feeding. The owners of the sheep resided in Rosebud County, Montana, and own large tracts of grazing land within the boundaries of said Rosebud County. These stockmen own no land within Sweet Grass County, and they do not graze their sheep during the summer in any County but Rosebud County, Montana. Because of the severe and early winter it became necessary for these stockmen to buy a large quantity of hay for their sheep, which hay was bought in Sweet Grass County. The sheep were moved

from Rosebud County to Sweet Grass County and fed in pens and enclosures during the winter months. They were not allowed to run at large and graze in Sweet Grass County.

On the first Monday of March 1920, a great number of sheep were still in Sweet Grass County and had not been returned to their home in Rosebud County. These sheep were assessed by the assessor of Sweet Grass County and the entire tax for the year 1920 collected before the stockmen were allowed to remove their sheep and return them to their home in Rosebud County.

I would like to have your opinion on the following questions:

1. Would the sheep in question be classified as 'Migratory live stock' and come within the provisions of Chapter 125 of the laws of 1909.

2. If so, should the sheep be assessed in Rosebud County, Montana, or should they be assessed only in Sweet Grass County, Montana.

3. Because the sheep were found in Sweet Grass County on the first Monday of March, is Rosebud County to loose about \$300,000.00 of its assessed valuation.

4. Would not Section 2530 of the Revised Codes of Montana apply to our case, and should we not be governed by the rules laid down in *Flowerree Company v. Lewis & Clark County*, 33 Mont. 39; *Coborn Cattle Company v. Small*, 35 Mont. 294."

If it was not for Chapter 125, Session Laws of 1909, the decisions of our Supreme Court in the cases of *Flowerree Company v. Lewis & Clark County*, 33 Mont. 39, and *Coburn Cattle Co. v. Small*, 35 Mont. 294, would control, and the sheep in question would be assessed in Rosebud County and not in Sweet Grass County. However, reading those decisions and then reading Chap. 125, Session Laws of 1909, it is at once apparent that Chapter 125 was enacted to meet the very conditions disclosed by those decisions.

Section 1 of Chapter 125, Session Laws of 1909, provides that when live stock is kept, etc., in more than one county during any year, they shall be assessed in the county in which found at the time fixed by law for the assessment of property (the first Monday in March), and such county shall be known as the home county. Under your statement of facts, while the sheep in question were owned and usually kept in Rosebud County, they were taken to Sweet Grass County for the purpose of being fed through the winter, and were in Sweet Grass County on the first Monday in March, 1920, so that, under section 1 of Chapter 125 they were properly assessable in Sweet Grass County, and that county must be considered, for the purpose of taxation for the year 1920, as the home county.

Under Section 1 it was the duty of the owners of these sheep on the first Monday in March, to deliver written statements to the assessor of Sweet Grass County, showing, among other things, the length of time or portion of the year 1920 such live stock has been and will be within Sweet Grass County, while under Section 2 when these sheep

were removed to Rosebud County it was the duty of the owners of the sheep to file with the assessor of Sweet Grass County, and also to the assessor of Rosebud County statements similar to the one required by Section 1.

These statements are required for the purpose of providing a basis for the apportionment of the tax collected by Sweet Grass County, and under the remaining sections of Chapter 125, Session Laws of 1909, the taxes collected by Sweet Grass County should be apportioned between the two counties, in proportion to the time the sheep have been and will be in each county during the year 1920, and Sweet Grass County must pay over to Rosebud County the proportion of the tax to which Rosebud County is entitled.

I am, therefore, of the opinion that these sheep were properly assessed in Sweet Grass County, and that it was proper for the county treasurer of Sweet Grass County to collect the taxes thereon for the year 1920, and that the taxes so collected should be apportioned between Rosebud and Sweet Grass Counties, as provided in Chapter 125, Session Laws of 1909, and that Sweet Grass County must pay over to Rosebud County the portion of such taxes to which Rosebud County is entitled.

Now, so far as reducing the valuation of Rosebud County is concerned, I do not see that the assessment of the sheep in Sweet Grass County can operate to reduce the valuation in Rosebud County. Before the county treasurer of Rosebud County can receive any portion of the taxes from Sweet Grass County the sheep must be entered on the tax rolls of Rosebud County, otherwise there would be no property on such rolls against which the taxes can be applied.

When the sheep have been taken back from Sweet Grass County to Rosebud County, and the owners have filed with the assessor of Rosebud County the statement required by Section 1 of Chapter 125, the assessor should immediately enter the same on the tax rolls of his county, with a proper description, valuation, etc., and then when the treasurer of Rosebud County receives the portion of the taxes from Sweet Grass County, he will enter such payment against these assessments, making such an entry as will show the reason why the particular amounts were received instead of the amount which would have been received if the sheep had been originally assessed in Rosebud County.

If the owners have not filed the proper statements required by Chapter 125, the assessor of Rosebud County should immediately procure the same, enter the proper assessments on his books, and the matter of apportioning the taxes collected by Sweet Grass County should then be taken up with the officers of that county.

Truly yours,

S. C. FORD,

Attorney General.