

Migratory Cattle—Livestock—Taxation—Counties.

Livestock is taxable at the place of residence of the owner, even though they are fed in pens in another county. When taxes are collected in the county where the cattle are fed, the county of the residence of the owner has a right of action against the other county and may bring an action thereon in court.

C. L. Harris, Esq.,
County Attorney,
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My dear Mr. Harris:

You have submitted the following statement of facts:

“A lives in B county, where his land is located, where his livestock is kept, and where he pays his taxes—that being his home county. A shipped livestock to C county, where they were being fed in pens, and such livestock was not returned to the home county, but on the contrary was sold in pens at the place of feeding. This property was assessed by C county,

and the tax collected in 1921 and 1922. The tax was not paid under protest. C county has distributed the tax to the various funds of the county and refuses to pay such tax to B county. A was taxed in B county but refuses to pay the same."

And in connection with such statement of facts you submit the following questions:

"1. Is B county entitled to such tax money?

"2. Who has the right of action, the owner of the livestock or B county?

"3. If the tax should be paid to B county and C county refuses to do so, would it be necessary for B county to file a written demand on C county for the payment of the money before commencement of legal proceedings?

"4. In your opinion, would you advise the commencement of an action to recover the money by B county from C county, or would mandamus lie to compel the payment aforesaid?

"5. In case claim was filed with the Board of County Commissioners of C county, and such Board rejected such claim, would you suggest an action by B county against C county to recover such money, or would an appeal from the decision of the Board be sufficient to afford the relief desired?"

The laws of this state covering the assessment and taxation of migratory livestock are found in Sections 2068 to 2075, inclusive, Revised Codes of 1921. Section 2069, after providing that taxes on livestock pastured, ranged or grazed in any county other than the county wherein the said livestock is usually kept by the owner thereof on lands claimed by him, to be known as the home county, shall be assessed for taxation, and the taxes collected in the county in which it is found, which taxes shall be apportioned between the home county and such other county, then contains the following proviso:

"Provided, however, that the tax on all livestock fed in feeding pens or other inclosures in any county or counties than the home county of such livestock, shall not be apportioned as provided herein, but shall be paid in full to the County Treasurer of the home county of such livestock."

From the provisions of such sections it is clear that livestock was intended to be divided into two classes: First, livestock pastured, ranged or grazed in a county other than the home county, and, second, livestock fed in feeding pens or other enclosures in a county other than the home county. On the first class taxes are to be collected in the county in which the livestock is found at the time fixed by law for assessment of property, and apportioned between the home county and the county in which pastured, ranged or grazed; if collected by the home county such county must remit a portion of the

tax collected to the county in which the livestock have been pastured, ranged or grazed, while if collected by the county in which pastured, ranged or grazed, such county must remit a portion of the tax to the home county.

As to the second class it is stated very definitely and certainly that the home county is to receive all of the tax and the county in which the livestock is fed is to receive no part of it, and it seems to be equally certain that it is made the duty of the officers of the county in which the livestock may be found at the time fixed by law for the assessment of property to collect the tax; if at that time the livestock be found in the home county such county collects the tax and retains the whole thereof, while if at that time the livestock be found in a county in which fed, it is the duty of the officers of that county to collect the tax and to remit the whole thereof to the home county. Your questions, therefore, are answered as follows:

Question 1. B county is entitled to the whole of such tax money, and it is the duty of the officers of C county to remit the same to the County Treasurer of B county.

Question 2. The taxes were properly collected by the officers of C county, consequently the owner of the livestock has no complaint, but as the taxes belong to B county and are retained by C county B county has a right of action against C county.

Question 3. If C county refuses to pay the taxes over to B county an itemized claim, verified by the County Treasurer of B county, should be presented to C county.

Question 4. If the claim is disallowed mandamus is not the proper remedy, but a direct action on the claim should be instituted by B county.

Question 5. If the claim is disallowed either a direct action on the claim may be instituted or an appeal may be taken from the action of the Board of County Commissioners of C county in disallowing the claim (*Greeley v. Cascade County*, 22 Mont. 580, 57 Pac. 274). However, under your statement of facts, I am of the opinion that should the claim be rejected it would be advisable to institute an action to recover thereon, instead of appealing from the action of the Board in disallowing the claim, as by so doing you can set out fully all of the facts in connection with the whole matter.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.