

License Tax—Livestock—Grazing—Refund—Taxes.

By chapter 101, laws of 1927, a tax is not imposed on livestock coming into the state for permanent grazing upon a change of ownership, and any taxes paid under such circumstances may be refunded.

January 6, 1928.

Horace W. Judson, Esq.,
County Attorney,
Cut Bank, Montana.

My dear Mr. Judson:

Your letter was received regarding my interpretation of chapter 101, laws of 1927. You have submitted to me the following statement of facts and request for opinion:

“The Frye Cattle Co. run a large number of cattle in this county, and from time to time during the year purchase a considerable number of cattle from outside of the state (mostly from Canada) and bring them into this county where they are kept and grazed the same as other cattle.

“During the year 1927, under the chapter above mentioned, they paid to this county something over nine hundred dollars as a license on cattle. They now contend that inasmuch as the cattle are brought here and retained here permanently and not merely for grazing temporarily, that they are not subject to the payment of that license. Presumably, taxes were paid upon the cattle in Canada before being brought into this county. No annual tax was assessed against them here. Do you interpret this statute to cover cases such as this?”

By chapter 101, *supra*, a license is imposed “upon all such livestock coming into this state to graze for any length of time whatsoever, provided, however, that no livestock on which the regular annual tax is levied by any county of the state shall pay said license tax.”

By section 2 it is made the duty of owners of such livestock bringing them into the state “for grazing purposes” to notify the county treasurer of the county in which the livestock is being grazed.

By section 3 it is made the duty of the county treasurer to ascertain if there is any livestock from without this state “temporarily grazing within his county.”

It seems to me that from a reading of the entire chapter it was the intention of the legislature that this license tax should be imposed only upon such livestock as is brought into this state "for grazing purposes." I do not believe it was intended to affect cattle brought here to remain permanently and where the ownership of the livestock has changed as in this case.

It is therefore my opinion that the statute was not intended to cover a situation such as you have stated.

You have also asked whether this license fee may be refunded since it was paid without protest. It is my opinion that since the taxing authorities had no jurisdiction to impose this license fee, that the tax or fee was illegally collected within the meaning of section 2222 R. C. M. 1921, and may be refunded. See in this connection Opinions of Attorney General, vol. 9, p. 376 and vol. 10, p. 17.

Very truly yours,

L. A. FOOT,
Attorney General.