

**Taxes—Migratory Live Stock—Statement—Penalty.**

The provisions of section 2075, R.C.M. 1921, providing for a penalty for refusing to make the statement or statements, as provided in section 2069 of the code, permit prosecutions only of those persons who, under the circumstances mentioned in said section 2069, are required to make the statements, and that section 2075 provides no penalty for failure to make the statement or statements under the circumstances mentioned in section 2070.

Mr. Frank Arnold,  
County Attorney,  
Livingston, Montana.

November 23, 1932.

My dear Mr. Arnold:

I have your request for an opinion relative to sections 2069, 2070 and 2075 concerning the taxation of migratory livestock.

It appears that on the first Monday in March, 1932, several persons who are residents of Sweet Grass county, were the owners of livestock which on that date were in Sweet Grass county; that the said livestock was assessed in said county; that thereafter the livestock was moved into Park county for grazing purposes; that the owners of said livestock did not deliver to the assessors of Sweet Grass county and Park county, any written statement under oath as provided for in said sections 2069 and 2070 and your inquiry concerns prosecutions for failure to file the statements which prosecutions are provided for in section 2075.

Section 2068 requires livestock which is running at large in the county other than the one in which the owner resides to be listed and assessed in the county where it runs at large. Section 2069 provides that when the livestock is pastured, ranged or grazed in any county or counties of the state other than the county wherein the said livestock is usually kept by the owner thereof upon lands claimed by him, must be assessed and taxed in the county in which it is found on the first Monday in March of each year at the rate of levy of the home county and it is the duty of the owner or his agent at the time of assessment to make and deliver to the assessor of the county where the livestock is found and to the assessor of the home county, a written statement under oath showing the different kinds of such livestock within such county belonging to him or under his charge, their marks and brands, and showing the full time during the current year that such livestock has been and will be within any county, other than the home county, and that the taxes shall be apportioned between the home county and such other county or counties; "provided, however, that the tax on all livestock fed in feeding pens or other enclosures in any county or counties other 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."

Owing to the above quoted proviso, the supreme court of Montana in the case of Peterson vs. Granite county, 76 Mont. 214, 245 Pac. 946, held that livestock which is fed in pens rather than ranged in a county other than the home county, is not migratory stock and therefore is assessable and taxable in the home county even if the said livestock be in some other county at the time fixed by law for the assessment thereof. If the livestock is in the home county on the first Monday in March, it is assessable in that county and cannot be assessed in another county to which it is subsequently removed. (Williams vs. Harvey, 6 Pac.-2nd-418.) Where, however, the livestock is ranging or grazing in a county other than the home county on the first Monday in March then the provisions of section 2069 apply and it is taxable in the county where the livestock is located at the rate of levy of the home county and the owner or agent must deliver the statement provided for in said section.

In your case the livestock was in the home county, to-wit, Sweet Grass county, on the first Monday in March, and hence it was assessable and taxable in that county and there was no duty imposed upon the owners or agents to furnish the statement mentioned in 2069 as that statement is only required when the livestock is in a county other than the home county on the first Monday in March. As there was no duty upon the owners of the livestock in question, or their agents, to make and deliver the statement mentioned in 2069, it is apparent that they cannot be prosecuted for a failure to make and deliver said statements. The provisions of section 2075 providing for prosecutions for refusing to make the statements required in 2069 can only be invoked when there is a duty upon the owner or agent to make the statements mentioned in said section 2069.

Section 2070 provides that whenever such livestock is removed, kept, fed or pastured or permitted to range or graze in any county other than the home county, the owner thereof, or the person in charge, or his agent, must, within fifteen days from the time such livestock enters the other county, deliver to the assessor of such county and to the assessor of the home county, a written statement under oath similar in all respects as far as practicable to the statement required at the time of the assessment, and section 2071 provides for an apportionment of the taxes. In the Granite county case, above mentioned, the court held that the provisions of said section 2070 also only apply to what is in fact migratory stock, that is, stock that ranges or grazes in two or more counties and it has no application to livestock that is within the exception contained in section 2069, that is, livestock that is fed in feeding pens or other enclosures in counties other than the home county.

In your case the livestock was migratory stock for the reason that it was not fed in pens or enclosures in Park county but was permitted to range and graze in said county. The livestock entered Park county after the first Monday in March and therefore under section 2070 the statement provided for therein was required to be made and delivered to the assessors of both Sweet Grass and Park counties. This statement was not made by any of the owners of the livestock or their agents. The question therefore is, will a prosecution lie for failure to make and deliver

these statements. The only section of the law which authorizes a prosecution is said section 2075 R. C. M. 1921 and the prosecution authorized is of a person "who refuses to make the statement or statements as provided in section 2069 of this code." If the last quoted part of the section is held to refer only to that part of section 2069 which prescribes the form of the statement, excluding the circumstances under which it is to be filed, then section 2075 would permit a prosecution of any owner of livestock who failed to file the statement regardless of whether or not his livestock ever left the home county unless by interpretation the provisions of section 2075 were restricted to those owners who, under the terms of the whole act, are required to make the statement. By such an interpretation the penal features of section 2075 would be extended to the failure to make and deliver the statement under both sections 2069 and 2070. If, however, the words found in section 2075, namely: "as provided in section 2069 of this code" are held to refer not only to the statement mentioned in 2069 but to the circumstances provided therein under which it must be filed, then section 2075 would provide a prosecution only for the failure to file the statement when it is required under the terms of section 2069 and no construction or interpretation would be necessary to exclude from the penal features of section 2075 those owners of livestock which always remain in the home county.

It is one of the axioms of statutory construction that penal statutes must be strictly construed and that no offense shall be created by interpretation or construction. A person, before he is liable to prosecution, must be able to determine from the law what is denounced as an offense.

"An offense is not punishable unless it falls within the condemnation of some penal statute. If it is not plainly and specifically within the Act, it is not against law, and no conviction can be had thereunder. Its provisions are not to be extended by implication, and the act charged as an offense must be unmistakably within the letter as well as the spirit of the law. \* \* \* Penal statutes are not to be extended by implication beyond the legitimate import of the words used in them, so as to embrace cases or acts not clearly described by such words."

State vs. Lutey Bros., 55 Mont. 545, 179 Pac. 457.

It is therefore my opinion that the provisions of section 2075 providing a penalty for refusing to make the statement or statements as provided in section 2069 of the code, permit prosecutions only of those persons, who, under the circumstances mentioned in said section 2069, are required to make the statements and that said section 2075 provides no penalty for failure to make the statement or statements under the circumstances mentioned in section 2070.

Very truly yours,

L. A. FOOT,

Attorney General.