

the farm, and all livestock actually held on feed for purposes of slaughter and sold and removed from the county on or before the fifteenth day of April of the year in which the tax levy is made, seven per centum (7%) of the true and full value shall be taken."

Livestock actually held on feed for purposes of slaughter and sold and removed from the county on or after the sixteenth of April; livestock actually held on feed for purposes of slaughter and sold on or before the fifteenth of April, but not removed from the county until after that day; livestock actually held on feed for purposes of slaughter and sold on or before the fifteenth, or on or after the sixteenth of April, but not removed or intended to be removed from the county; livestock grazed for purposes of slaughter and sold and removed from the county on or before the fifteenth or on or after the sixteenth of April; livestock grazed for purposes of slaughter and sold on or before the fifteenth or on or after the sixteenth of April, but not removed or intended to be removed from the county; livestock actually held on feed for purposes other than slaughter and sold and removed from the county on or before the fifteenth or on or after the sixteenth of April; livestock actually held on feed for purposes other than slaughter and sold on or before the fifteenth or on or after the sixteenth of April but not removed or intended to be removed from the county; livestock grazed for purposes other than slaughter and sold and removed from the county on or before the fifteenth or on or after the sixteenth of April, and livestock grazed for purposes other than slaughter and sold on or before the fifteenth or on or after the sixteenth of April of the year in which the tax levy is made, but not removed or intended to be removed from the county at all, and livestock retained for future disposition or domestic use do not come within its purview. The provisions of Section 2000 Revised Codes 1921, still apply so far as such livestock is concerned. Consequently, taxes must be levied upon it not on the basis of seven per cent of its true and full value but on the basis of thirty-three and one-third per cent of its true and full value.

#### Opinion No. 132

#### Constitutional Law—Taxation—Agricultural Products—Livestock.

HELD: Section 1 of Chapter 191, Laws of 1933, violates Sections 1 and 11 of Article XII of the Constitution and is invalid.

March 27, 1933.

You have asked us whether or not in our opinion Section 1 of Chapter 191, Laws of 1933, is a valid enactment. It reads as follows: "As a basis for the imposition of taxes upon agricultural products in storage or held on

Sections 1 and 11 of Article XII of the Constitution are as follows:

"Section 1. The necessary revenue for the support and maintenance of the state shall be provided by the legislative assembly, which shall levy a uniform rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, except that specially provided for in this article. The legislative assembly may also impose a license tax, both upon persons and upon corporations doing business in the state."

"Section 11. Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax".

The command to the legislature then, as found in these sections, "is that it shall prescribe such uniform mode of assessment as shall secure a just valuation of all taxable property, that all taxes shall be levied and collected by general laws and for public purposes only, and that they shall be uniform upon the same class of property within the territorial limits of the authority levying the tax". *Hilger v. Moore*, 56 Mont. 146.

Is there any justification in the Constitution for taxing livestock covered by the section in question and classified as other livestock is classified under the provisions of Section 1999, Revised Codes 1921, differently from livestock actually held on feed for purposes of slaughter and sold on or before the fifteenth of April, but not removed from the county until after that day, or from livestock actually held on feed for purposes of slaughter and sold and removed from the county on or after the sixteenth of April, or from livestock actually held on feed for purposes of slaughter and sold on or before the fifteenth or on or after the sixteenth of April, but not removed from the county, or from livestock actually held on feed for purposes other than slaughter and sold and removed from the county on or before the fif-

teenth or on or after the sixteenth of April, or from livestock actually held on feed for purposes other than slaughter and sold on or before the fifteenth or on or after the sixteenth of April, but not removed from the county, or, for that matter, from livestock in general? The answer must be in the negative. Can it be doubted that if the legislature required that taxes be levied on "livestock actually held on feed for purposes of slaughter and sold and removed from the county on or before the fifteenth day of April of the year in which the tax levy is made" on a basis of forty, fifty or sixty per cent of its true and full value, the owner thereof would have just cause for complaint and be entitled to relief in a court of law? The effect of it all, of course, is that the owner of livestock not within the statute must pay almost five times as much in the way of taxes levied thereon as the owner of livestock of equal value covered by the statute must pay. It is clear, then, that Section 1 of Chapter 191, Laws of 1933, discriminates in favor of livestock within its provisions and flouts that equality of taxation which the Constitution demands. *Hayes v. Smith*, 58 Mont. 306; *Northern Pac. Ry. Co. v. Sanders County*, 66 Mont. 608; *State ex rel. N. P. Ry. Co. v. Duncan*, 68 Mont. 420; *Chicago, etc., Ry. Co. v. Powell County*, 76 Mont. 596; *Hale v. County Treasurer*, 82 Mont. 98; *State ex rel. Conrad, etc., v. Mady*, 83 Mont. 418; *San Francisco, etc., v. Johnson*, 291 Pac. 197; *Voran v. Wright*, 281 Pac. 938; *Columbia Terminals Co. v. Koeln*, 3 S. W. (2d) 1021; *Woco Pep Co. v. City of Montgomery*, 105 So. 214; *Re Harkness*, 204 Pac. 911, 42 A. L. R. 399; 61 C. J. 101-204.

What we have said about livestock favored by Section 1 of Chapter 191, Laws of 1933, in the matter of taxation, applies with equal force to such agricultural products as are favored in the same way by the same section.

We think the statute disobeys the plain mandate of the Constitution and for that reason is invalid and should not be followed.