

**Opinion No. 259.****Livestock—Estrays—Taxation—  
County Assessor.**

HELD: If the facts warrant it, the county assessor should assess estrays. The facts must be determined by the county assessor who should not act arbitrarily.

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March 4, 1936.

Mr. Paul Raftery  
Secretary, Livestock Commission  
The Capitol

On January 29, 1936, the County Treasurer of Hill county, notified the State Brand Inspector in that county, that he had been instructed by the county assessor to place certain stray horses, about to be sold under the stray law, on the assessment list for 1935, and that the tax amounting to \$7.87, should be withheld from the proceeds of the sale by the inspector and paid to the county treasurer. The question is whether such

assessment should be made and such tax paid. I find nothing in the estray law dealing with the question.

It is the duty of the county assessor to assess all property (Section 2002 R. C. M. 1921). This duty includes that of assessment at any time of property which he "discovers" to have escaped assessment (Section 2034 R. C. M. 1921, compare Section 11, Chapter 3, Laws of 1923). If the name of an absent owner of property is unknown, the property must be assessed to "unknown owners" (Section 2009 R. C. M. 1921). Personal property liable to taxation, brought into the county at any time after the second Monday of July, not assessed for that year, must be assessed the same as if it had been in the county at the time of the regular assessment (Section 2035 R. C. M. 1921). Section 2034, supra, provides: "Any property discovered by the assessor to have escaped assessment may be assessed at any time, if such property is in the ownership or under the control of the same person who owned or controlled it at the time it should have been assessed." (Emphasis ours.)

If, therefore, the horses in question were in the county on the first Monday in March, or should have been assessed as provided for in Section 2035, supra, or if the county assessor discovers that they have previously escaped taxation and they are in the ownership and under the control of the same person who owned or controlled them at the time they should be assessed (3 Opinions of the Attorney General, page 402), the county assessor may assess them. There are no facts presented in your letter from which we can determine whether the county assessor should assess these particular horses. If the facts warrant it, the assessment should be made. The facts must be determined by the county assessor, who, of course, should not act arbitrarily.