

No. 451

**LIVESTOCK—MIGRATORY LIVESTOCK—TAXATION—
COUNTIES—COUNTY COMMISSIONERS**

Held: Where an owner of livestock resides in A County, has his livestock in A County on the first Monday in March, pays to A County the taxes thereon after said livestock have been assessed and thereafter removes to and establishes his residence in B County—where he buys and leases lands to which he removes his livestock from A County—such livestock is not “migratory livestock” within the meaning of the Montana Statutes. No apportionment of the tax so levied and collected by A County may be made. Neither may it be placed in the “migratory stock fund,” nor distributed by the board of county commissioners of A County. A County is entitled to the whole of said tax.

July 24, 1942.

Mr. Denzil R. Young
County Attorney
Fallon County
Baker, Montana

Dear Mr. Young:

You have submitted the following question for my opinion:

"Where a person was a resident of Fallon County and owned livestock therein on the first Monday in March, 1942, and where such livestock was assessed for general taxation therein for said year, and the person paid said tax to Fallon County, and within a short time thereafter said person removed from Fallon County, moving said livestock with him to Garfield County, and established his residence in said Garfield County, should said livestock be considered migratory livestock and said tax so paid be apportioned between Fallon County and Garfield County, or should Fallon County retain all the said tax?"

From the facts you have given me, it is apparent that—at the time of the assessment of the livestock and at the time of paying the taxes thereon for the year 1942—the owner was a resident of Fallon County and the livestock was and had been at all times in said county. Fallon County was the "home county."

It is also conceded thereafter the owner became and now is a resident of Garfield County and the livestock is now in Garfield County, where the owner has bought and leased range lands. Garfield County is now the "home county" of said livestock.

What are the intent and meaning of our statutes dealing with "migratory livestock?" Webster's New International Dictionary, 2nd Edition, defines migratory: moving habitually from one region or climate to another; to pass periodically from one region or climate to another for feeding or breeding, as various birds and animals.

The California Court, in defining the term "migratory," stated it thus:

"The descriptive term 'migratory' applies especially to animals whose instincts prompt them to make seasonal changes of habitat. Such animals often move, as does livestock, from place to place during recurring seasons, in search of their natural means of subsistence." *Di Guiliony v. Rice, et al.*, 70 Pac. (2nd) 717.

We are told the buffalo moved north in the early spring following the greening grass and then returned southward in the fall. So do the water fowl and other migratory birds. In other words, the term "migratory" means to go and come.

It appears to me the intent and purpose of the legislation relative to "migratory livestock" applies to livestock taken from the "home county," that is, the county in which they are usually kept, and the owner resides, to some other county for the purpose of grazing and running in the other county and then returning the said livestock to the "home county." Such is not the condition here.

The question here involved is the anomalous situation of the present "home county" demanding an apportionment of taxes from the former "home county." This demand we do not believe is authorized by the statutes.

The statute authorizes the apportionment of the tax only when the livestock has been removed from its "home county" to another county to be ranged and grazed and to be returned to the "home county" or elsewhere; but here the livestock was removed from their then home county

to their new home county where the owner has established his residence and has bought land and leased land.

Flowerree Cattle Co. v. Lewis & Clark County 33 Mont. 32, 8 Am. Cas. 624, 81 Pac. 398.

Peterson v. Granite County, 76 Mont. 214, 245 Pac. 946.

It is therefore my opinion that, where an owner of livestock resides in Fallon County, has his livestock in Fallon County on the first Monday in March, pays to Fallon County the taxes thereon after said livestock have been assessed and thereafter removes to and establishes his residence in Garfield County, where he buys and leases lands and to which he removes his livestock from Fallon County, such livestock is not "migratory livestock" within the meaning of the Montana statutes. Since such livestock is not "migratory livestock," it necessarily follows no apportionment of the tax so levied and collected by Fallon County may be made. Neither may it be placed in the "migratory stock fund," nor distributed by the board of county commissioners of Fallon County. Fallon County is entitled to the whole of said tax.

Sincerely yours,

HOWARD M. GULLICKSON
Attorney General