

2. Assessments on livestock which range in more than one school district of a county may not be pro rated according to the proportionate areas of land in each district.

May 5, 1954.

Mr. Leo H. Murphy
County Attorney
Teton County
Choteau, Montana

Dear Mr. Murphy:

You have requested my opinion upon the following question:

"May the owner of livestock, who owns land in two school districts, designate in which school district he wishes to have the livestock assessed, when his home is situated in one of the school districts in question?"

You have supplied these additional facts: The land owned by this taxpayer is situated in three adjoining school districts; the greater amount of the property is situated in the home school district in which the taxpayer lives; the cattle in question range in all three school districts at various times of the year, although all of the cattle would never be in the same school district at one time, with the possible exception of the home district.

You have also asked whether it would be proper to pro rate the tax to be paid according to the proportionate areas of land in each school district.

The general rule as to the taxation of personal property is, of course, that property which has not acquired a tax situs in any other place is taxable at the residence of the owner. (See 84 C. J. S. 224, Sec. 115.) This rule has been applied to cattle. (People v. Holiday, 25 Cal. 300; Barnes v. Woodbury, 17 Nev. 383, 30 Pac. 1068; 61 C. J. 523, Sec. 636.) Whether or not personal property has acquired a situs separate from the residence of the owner is a question of fact to be determined by an examination of all the relevant circumstances.

Opinion No. 75.

Taxation—Situs of Personal Property—Livestock.

HELD: 1. Livestock which range in more than one school district in the same county must be assessed in the district in which the home ranch is located unless it can be shown that they have, as a matter of fact, acquired a tax situs in another district.

While no Montana cases have raised the question of proper situs as between two or more school districts in the same county, the general rules have been stated in cases involving two or more counties.

An early landmark decision in Montana is *Flowerree v. Lewis and Clark County*, 33 Mont. 32, 81 Pac. 398, where it was stated:

"While in some instances the meaning of the lawmakers may be somewhat obscure, we are of the opinion that what was intended was this: That all property shall be assessed in the county which is its home. If the property be real estate, its actual situs determines the question of its home. If personal property belonging to a merchant, the county where the merchant's business is conducted determines the home of such property; and likewise, if the property be range stock, its home is its accustomed range. . . ."

In the case of *Peterson v. Granite County* 76 Mont. 214, 245 Pac. 946, which also presented a question of assessment of livestock in two counties, it was held that sheep which were kept in pens in Granite county for feeding during the winter months, and were in that county on tax day were not assessable in Granite county, but should be assessed in the county of the owner's residence, Powell county.

A previous opinion of this office, 4 Opinions of the Attorney General, page 225, issued by Attorney General Galen, dealt with the problem of taxation of sheep which ranged in more than one school district. In that opinion Attorney General Galen held that:

"Sheep ranging in two or more school districts in the same county should be assessed for taxation in the district where the home ranch is located."

This holding is in accord with the general principles of law, and with the Montana statutes and decided cases.

It is, therefore my opinion that livestock which range in more than one school district in the same county must be assessed in the district in which the home ranch is located unless it can

be shown that they have as a matter of fact, acquired a tax situs in another district.

There is no authority in our statutes for apportionment of stock between school districts for assessment purposes. Provision for apportionment of assessments on cattle is made in Chapter 52, Title 84 R. C. M. 1947 but those provisions apply only between counties, and are not applicable to livestock ranging in more than one district. (See *Peterson v. Granite county*, supra.)

It is further my opinion that assessments on livestock which range in more than one school district of a county may not be pro rated according to the proportionate areas of land in each district.