



*G. Mann*

OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GERALD C. MANN  
ATTORNEY GENERAL

Honorable Geo. B. Sheppard  
Comptroller of Public Accounts  
Austin, Texas

Dear Sir:

Opinion No. O-1489

Re: Right of the Tax Assessor-Collector of Howard County to count cattle in pastures lying in his county and in county line pastures.

We are in receipt of your letter of September 21, 1939, in which you request an opinion of this Department as to what right Mr. J. F. Wolcott, Tax Assessor-Collector of Howard County, has to go on property in his county to count cattle and also to go on county line pastures for the same purpose.

Article 7189 of the Revised Civil Statutes, provides the method of assessment of personal property as well as real property:

"Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal, in his county and assess the value thereof in the manner following, to-wit: By calling upon the person, or by calling at the office, place of business or the residence of the person, and listing the property required by law in his name, and requiring such person to make a statement under said oath of such property in the form hereinafter prescribed."

In a case where a person refuses or neglects to list part of his property, Article 7192 of the Revised Civil Statutes applies, and reads as follows:

"In every case where any person whose duty it is to list any property for taxation has refused or neglected to list the same when called on for that purpose by the assessor of taxes, or has refused to subscribe to the oath in regard to the truth of his statement of property, or any part thereof, when required by the tax assessor, the

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assessor shall note in a book the name of such person who refused to list or to swear; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the tax assessor shall note in a book such fact, together with the name of such person."

Article 7193 of the Revised Civil Statutes makes it the duty of the Tax Assessor to ascertain the amount and value of property not assessed under the provisions of Article 7192:

"In all cases of failure to obtain a statement of real and personal property from any cause, the assessor of taxes shall ascertain the amount and value of such property and assess the same as he believes to be the true and full value thereof; and such assessment shall be as valid and binding as if such property had been rendered by the proper owner thereof."

From the above quoted statute, it is clear that the Legislature has made it the duty of the Tax Assessor to determine and ascertain the amount and value of all personal property in his county and to see that the same is assessed for taxes. It is a cardinal principle of law that where a duty is placed upon an officer, he is also given the power and authority to do that which is necessary for the performance of that duty. See the cases of Terrell v. Sparks, 135 S. W. 519; Spencer v. Galveston, 56 Tex. 384; Callaghan v. McGown, 90 S. W. 319.

It is necessary that the Tax Assessor have the power to go on pastures to count cattle in order for him to be able to ascertain the amount and value of said cattle. To hold otherwise, would be to force him to rely solely upon the word of the taxpayer. It is doubtful if under such a method taxes would be assessed equally and uniformly.

The duty of a Tax Assessor in assessing property was discussed in the case of Republic Insurance Company v. Highland Park Ind. Sch. Dist. of Dallas County, 57 S. W. (2d) 627. The court stated as follows:

"The quoted article (7193), and articles 7205 and 7218, give to the assessor the authority to list and value property not rendered by the owner and place the same upon the unrendered roll.

"In the event the list tendered by a taxpayer omits property which he owns, the assessor is by these articles authorized to list and value the omitted property and place the same upon the unrendered roll."

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Article 7155 concerns the taxing of livestock in county line pastures and provides as follows:

"All persons, companies and corporations owning pastures in this State which lie on county boundaries shall be required to list for assessment, all livestock of every kind owned by them in said pastures in the several counties in which such pastures are situated, listing in each county such portion of said stock as the land in such county is of the whole pasture. All persons, companies and corporations owning any kind of livestock in pasture not their own shall list said livestock in the several counties in which such pastures are situated in the same manner; and in both cases the tax upon such livestock shall be paid to the tax collector of the several counties in which such livestock is listed and assessed."

It is the opinion of this Department that the preferable procedure for the assessment of cattle in such county line pastures would be to have the collector of both of the counties in which said pasture is located or their deputies together enter upon said property for the purpose of counting the cattle located thereon.

Regardless of whether the above suggested procedure is followed or not, it is the opinion of this Department that a Tax Assessor has the right to count cattle situated on pastures which are either wholly or in part located in his county.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Billy Goldberg*  
Billy Goldberg  
Assistant

BG:N APPROVED OCT 27, 1939

*Gerard B. Mann*  
ATTORNEY GENERAL OF TEXAS

