

AGRICULTURE:  
PAYMENT FOR NEAT CATTLE  
CONDEMNED ON ACCOUNT OF  
TUBERCULOSIS:  
IN WHAT COUNTY:

County court in the county in  
which the owner resides liable for  
the payment for neat cattle which  
are condemned on account of  
tuberculosis.

March 27, 1940

Honorable Carl F. Wymore  
Prosecuting Attorney  
Cole County  
Jefferson City, Missouri



Dear Sir:

This is in reply to yours of recent date where-  
in you request an opinion based on the following state-  
ment of facts:

"I would like to have an opinion on  
the following set of facts:

"A person claiming to be a resident  
of Cole County, owned a herd of  
cattle, kept in Boone County, dis-  
covered in November 1939 that part  
of said herd was infected with  
tuberculosis, and proceeded to  
dispose of the same under the pro-  
visions of Section 12530, R. S.  
Mo. 1929, and is now making claim  
of Cole County for 1/3 of the ap-  
praised value as made under said  
Section. The person has not paid  
taxes on the cattle in Cole County,  
but did, in December 1939, list  
the same on his 1940 assessment.  
Taxes for the year 1939 are claimed  
to have been paid in Boone County.  
The person in question formerly  
resided in Jackson County and voted  
there, but states that the last  
time he voted there was in 1938,  
and claims Jefferson City, Missouri  
as his residence, but has never  
voted here, but has recently register-  
ed here. The question is whether

or not Cole County is liable under Section 12530, R. S. Mo. 1929 for 1/3 of the value determined under said Section."

That part of Section 12530, Laws of Missouri 1939, page 233, which is applicable to your question, provides as follows:

"When neat cattle are condemned on account of tuberculosis in this State, in cases not under State and Federal co-operation, and when the owner thereof elects to have any such cattle appraised and killed, a (a) representative of said Department of Agriculture, or at the direction of said Commissioner, a member or representative of the County Court in which such neat cattle are located, acting (b) with the owner thereof shall constitute an appraising committee of two. In case of disagreement a disinterested third party shall be called in as a member of said appraising committee, and a majority vote of such committee as thus constituted shall determine the appraisement of such neat cattle. In making the appraisement each individual head of such cattle shall be appraised at its actual value, giving due consideration to breeding value, as well as to dairy or meat value. An itemized statement of the appraisement of such animal or animals in each lot so appraised shall be prepared in duplicate and signed by each member of the appraising committee on blanks furnished for this purpose by said Department of Agriculture, and one copy shall forthwith be forwarded to the Commissioner of Agriculture and one copy to the

County Clerk of the County in which the owner resides. Thereafter such diseased cattle shall be sent to slaughter and a report of the net sum of the salvage thereof resulting from the sale of such cattle shall be ascertained by said Commissioner and deducted from the appraisement of said cattle, and (a) the State and (b) the County, in which the owner of said condemned cattle is a resident, shall each pay a like amount which shall be not to exceed one-third of the difference between the appraised value of said condemned cattle and the salvage thereof: \* \* \* \* \*

This section plainly states that the county court in which the owner resides is the one to which the statement of the appraisement is to be presented and paid. The fact that the party to whom you refer in your request has paid taxes in other places would not necessarily control the place of his residence. Residence is a matter of intention and is generally shown by facts and circumstances, and the fact that a person votes at a certain place and pays taxes thereat is quite conclusive that that is his legal residence for all intents and purposes. A person may have a domicile in one place and a legal residence in another.

We think the rule which we have been trying to discuss is more fully stated in Volume 61 Corpus Juris, page 512, Section 624:

"While there is authority for the view that a person may be domiciled in one place and yet have a residence in another for purposes of taxation, ordinarily a person has only one domicile or residence for such purposes, and where a person has more than one place of abode, ordinarily the question as to which one is his domicile or residence for purposes of taxation depends on his bona fide intention, his

acts and conduct being the best evidence as to his selection. Thus, if the taxpayer has two residences in different taxing districts or in different states, as, for example, a summer and a winter home, or two homes kept open the year round, he is taxable at that place which was originally his domicile, provided the opening of the other home has not involved an abandonment of the original domicile and the acquisition of a new one, or at that place which he regards and claims as his domicile or his legal or permanent residence, as shown by his keeping the main part of his establishment there, holding office, voting, causing his property to be assessed for taxes there, or by similar conduct. \* \* \* \* \*

Section 623 of said Volume at page 511, lays down the rule on what constitutes a residence and the determination thereof in the following language:

"A person's domicile for purposes of taxation is his fixed and permanent home, to which he always has the intention of returning when absent from it, although he may take up a temporary or transient residence elsewhere; the term imports a legal relation between a person and a particular place, based on actual residence with intention to remain there. The question as to the meaning of the term 'residence,' where the construction of a taxing statute is involved, is to be determined in the light of the legislative purpose and the context. According to some cases, 'residence,' within the meaning of such a statute, is the place where the taxpayer lives and where he claims that his home or domicile is, a place of abode as distinguished

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from a temporary sojourn or from a temporary residence; and it has been held that an 'inhabitant' of a state means something more than a person who has a mere temporary residence. \* \* \* \* \*

Under Section 9756, as amended in Laws of Missouri 1937, page 570, it will be seen that the law imposes the duty upon the county assessor to call upon the taxpayer at his place of doing business, or residence, for the purpose of listing the property for taxation. So it would seem that if this person, to whom you refer in your request, at the time of the appraisal of his herd of cattle, was a resident of Cole County, then under said Section 12530 the obligation to pay one-third of the value determined by said appraiser would be upon Cole County.

CONCLUSION.

It is, therefore, the opinion of this department that if the person whose cattle were found infected with tuberculosis claimed Cole County as his residence at the time the cattle were appraised, then the obligation to pay one-third of the value of such cattle would be upon Cole County.

We are further of the opinion that the question of this party's residence may be determined by facts and circumstances, and since this opinion is only for the purpose of passing upon the law, the question of whether or not this person was a resident of Cole County at time aforesaid is not being determined by this opinion.

Respectfully submitted

APPROVED:

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