

Opinion No. 14-1199

April 22, 1914

BY: FRANK W. CLANCY, Attorney General

TO: Mr. S. A. Snaveley, Nara Visa, New Mexico.

CATTLE. ROADS.

As to destruction of crops by cattle running at large. Obstruction of roads by means of gates. Roads on township and section lines.

OPINION

{*59} I have today received your letter of the 20th inst., in which you ask two questions, the first of which is as to owners of cattle allowing them to run loose so that they eat up your crops, as to which you would like to know what you can do, and if there is any protection you want to know how to go about it to protect your crops.

In Quay, Roosevelt and Curry Counties, under the provisions of Chapter 94 of the Laws of 1909, the people of any precinct can prevent the running of cattle at large by an election in the manner provided under that chapter, but those provisions do not extend to Union County, and I understand from your letter that you are asking about that county.

Section 98 of the Compiled Laws of 1897 forbids the running at large of cattle from March until October, but I am informed that the judge of your district has held that that section was repealed by implication. I have asked the District Attorney to try to get up another case under that section and appeal it to the Supreme Court to obtain a review, as I am not at all satisfied that the holding of the court that the section had been repealed is sound. A violation of that section is made a misdemeanor, punishable by fine or imprisonment, or both.

By Chapter 70 of the Laws of 1909, farmers are allowed to recover damages caused by trespassing animals upon his land only if he has the land fenced with a lawful fence, and what is a lawful fence is described by Chapter 13 of the laws of the same year. Notwithstanding this statutory provision, it is my opinion, based upon a decision of the Supreme Court of the United States, that where a cattle owner turns them loose under circumstances which show that he expects and intends that they would go upon cultivated land of farmers to graze, the farmer injured can successfully maintain a suit for damages even if his land is unfenced. It is obvious, however, that any one settler acting alone could hardly afford to assume the burden of bringing such a suit or suits, as there would be too much expense connected with it for one man. Only a combination of a number of farmers, each contributing to a common fund for expenses, could any remedy be found.

The other matter about which you ask is as to obstructions on public roads and as to whether section lines are necessarily public highways.

As to the removal of gates or other obstructions on public roads, you should make application to your county road board. That board {60} by the act which created it is given all the power and authority of road supervisors, and one of the duties of road supervisors, as shown by Section 1839 of the Compiled Laws, was to remove obstructions on the public highways caused by fences or otherwise. In addition to this, by Section 2 of Chapter 58 of the Laws of 1903, it is declared unlawful for any person in any manner to obstruct any public road and upon conviction he may be punished by a fine not exceeding \$ 50.00 or imprisonment not exceeding thirty days, or both.

You say that the matters of which you complain have interfered with the passage of the United States mail. The same Chapter 58, above referred to, of the laws of 1903, declares all mail routes to be public roads and open to the people of the Territory, but any obstruction of the mail is an offence against the United States and the attention of the United States District Attorney should be called to anything of that kind. The contractor who carries the mail can complain through a postmaster to the postoffice inspector, who will undoubtedly make investigation and take proper action, but it could do no harm for you to write to the United States District Attorney, Mr. Summers Burkhart, directing a letter either to Santa Fe or Albuquerque.

As to the question of section lines it is clear that they are not, by the mere fact of being such lines, public highways. The only statute on the subject is Section 1829 of the Compiled Laws of 1897, which provides that when practicable the county commissioners shall declare all township and section lines public highways of not less than forty feet in width, but a later statute of 1905 makes all highways sixty feet in width, unless otherwise ordered by the county commissioners. In your county the county commissioners may have made some such order, but if, as seems certain must be the case, in order to have such highways on the section lines, it is necessary to make use of private property, it would be necessary to have the land condemned and the compensation fixed and paid in the manner provided in Chapter 97 of the Laws of 1905.