

## Opinion No. 15-1455

March 3, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. F. A. McCasland, Plain, New Mexico.

**A section line cannot be kept open for road purposes unless it has been established by county commissioners.**

### OPINION

{\*43} I have today received your letter of the 26th ult. in which you say that your improvements and water are on one side of a road and 320 acres of your grass are a half mile distant, and that you let your stock travel on a section line in taking them to and fro, but that parties having the land leased between the water and grass are closing up the road, and you ask if there is any way you can force your neighbors to leave the section line open.

There is nothing in the fact of its being a section line that imposes {\*44} any obligation on anyone to keep it open unless there has been a road established by the county commissioners, or by general usage before any right was acquired to the land on each side of the section line. If there were such a road in existence when your neighbors took the land, as a general proposition they would not have a right to close it up, but by Section 51 of the state land act, which is Chapter 82 of the Laws of 1912, it is provided that every lessee of state lands who shall fence the land, must erect and maintain gates at all intersections of public highways, and failure to do so is a misdemeanor. This appears to imply that wherever there is a road crossing leased land, the lessee may put gates on the roads. If there is such a road in your case running through your neighbors' leased land, it would seem that they have a right to put gates at the intersection of the road.