

Approved February 11, 1986
Date

MINUTES OF THE Senate COMMITTEE ON Agriculture

The meeting was called to order by Senator Allen at
Chairperson

10:10 a.m. on February 4, 1986 in room 423-S of the Capitol.

All members were present except:

Committee staff present: Raney Gilliland, Research Department
Fred Carman, Revisor of Statutes Department

Conferees appearing before the committee:
Roy Irons, Minneola, Kansas
Representative Lee Hamm
Mike Beam, Kansas Livestock Association
Jerry Trausch, Bekart Steel Wire Corporation
Bill Fuller, Kansas Farm Bureau
Howard Tice, Kansas Association of Wheat Growers
Pat Hubbell, Kansas Railroad Association

Senator Allen called the Committee to order and announced the purpose of the meeting to be for the hearing of S.B. 403. The Chairman announced all conferees would be testifying as proponents. Copies of a memorandum prepared by Legislative Research Department concerning the necessity of revising Kansas Fence Laws was handed to each Committee member (attachment 1).

The Chairman called attention to the testimony given each Committee member from Roy Irons who could not be present to present his testimony (attachment 2).

Senator Allen welcomed Representative Hamm to the Committee to testify.

Representative Hamm gave copies of an opinion from the Attorney General's Office regarding, "Fences -- Legal Enclosures -- Legal and Sufficient Fences", and copies of Resolution 85-3 adopted by the Ford County, Kansas Board of County Commissioners which declares an electric fence built to specifications listed in the Resolution to be a legal fence in Ford County (attachment 3). Representative Hamm stressed a properly built and maintained electric fence should legally be a legal fence. He stated this bill allows any county to declare an electric fence not a legal fence if they desire. Representative Hamm stated he favored the bill as written and encouraged the Committee to recommend S.B. 403 for passage.

The Chairman thanked Representative Hamm and then called on Mike Beam to testify and welcomed the KLA membership present.

Mr. Beam gave copies of his testimony with proposed amendments attached to the Committee (attachment 4). Mr. Beam stated the Kansas Livestock Association supports S.B. 403 and especially supports electric fences being declared a legal fence with the county option provision.

Vice-Chairman Montgomery thanked Mr. Beam and called on Jerry Trausch to testify.

Mr. Trausch gave copies of his testimony to the Committee members (attachment 5) and testified in support of S.B. 403, especially line 76 which allows wires having not less than 950 pounds breaking strength in a fence to be declared a legal fence.

The Vice-Chairman thanked Mr. Trausch and called on Bill Fuller to testify.

Mr. Fuller gave copies of the booklet, "Kansas Farm Bureau, Resolutions 1986" (attachment 6) to the Committee and also copies of his testimony (attachment 7). Mr. Fuller expressed support for S.B. 403.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Agriculture,
room 423-S, Statehouse, at 10:10 a.m. ~~p.m.~~ on February 4, 1986

The Chairman thanked Mr. Fuller and called on Howard Tice to testify.

Mr. Tice gave copies of his testimony with suggested amendments to the Committee members (attachment 8). Mr. Tice expressed support for S.B. 403 and especially for declaring an electric fence to be a legal fence.

The Chairman thanked Mr. Tice and called on Mr. Hubbell to testify.

Mr. Hubbell gave copies of a proposed amendment to the Committee (attachment 9). Mr. Hubbell expressed nonsupport for an electric fence being a legal fence and nonsupport for railroads being required to provide electric fences along railroad right-of-ways.

The Chairman thanked Mr. Hubbell and then adjourned the Committee at 11:00 a.m.

GUEST LIST

COMMITTEE: SENATE AGRICULTURE

DATE: February 4, 1986

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Eldon B Fastig	KS Board of Agriculture	Topeka
Howard W. Tice	K FWS	Hutchinson
Bill ABLE	ILP	Manhattan
Mike Johnson	K.S.U.	"
Tom Paxon	Board of Regs	Topeka
John Paxon	Kansas Livestock Assoc.	Topeka
John Paxon	Kansas Livestock Assn.	Morganville
Steve Jock	Governors Office	Topeka
Jahn Blythe	Ks Farm Bureau	Manhattan
MIKE BEAM	Ks LIVESTOCK ASSN.	TOPEKA
Jack Frick	Ks. Livestock Assn.	Scott City
Wilbur G. Leman	✓	Topeka
Allan Gents	✓	Harrison
Donn Seale	"	Wheaton
Don Seale	"	Tulsa, ks.
Rich Fortner	"	Brookings, ks
Jerry R. Burnett	"	Delia, ks.
Tom Paxon	"	Winfield, ks
Gregg Holcomb	"	Plumona, ks
Pat Hubbell	Kansas Livestock Association	Topeka, ks.
Mr. Paxon	"	Topeka, ks
Dale Rosebrook	"	Lincoln, ks
Lynn Henson	"	Pawnee Rock, ks
Nike Trisik	KS Livestock ASSN	Cimarron, KS.

GUEST LIST

COMMITTEE: SENATE AGRICULTURE

DATE: February 4, 1986

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
Tad Damer	KLA	Topeka
Kurt McCane	KLA	Wichita
Joe Rickabaugh	KLA	Topeka
Bruce Comandy	KLA	Spray
Don Schuffel	K.L.A	Johnson County
Jim Colby	K.L.A	Gove Ks
MIKE BEAM	K.L.A.	
Calvin A. Carlson	K.L.A.	TOPEKA Smolen
Mickey J. McVain	KLA	Tebnow
Henry Eggert	KLA	Yates Center
John PENDLETON	KLA	LAURENCE
Garry Oltjen	KLA	
Betsy Taylor	KLA	Robinson function city
Pearl Hasselberg	KLA	Topeka
ED DE SOJNIE	KDOT	TOPEKA
Raymond Boring	KLA	MEDICINE LODGE
Brad Jorg	KLA	Morristown
Rich McKee	K.L.A.	Topeka
Jack Frick	K.L.A	Scott City
Craig Walkington	KLA	Hays

MEMORANDUM

September 24, 1985

TO: Special Committee on Agriculture and Livestock
FROM: Kansas Legislative Research Department
RE: Proposal No. 4 — Fence Laws

The charge to the 1985 Special Committee on Agriculture and Livestock is to:

determine the necessity of revising and recodifying the present Kansas fence laws with regard to fence types, property owner rights, and liability.

Background

The maintenance of livestock has always been and continues to be an integral part of the Kansas economy. However, it is impossible to discuss livestock production historically without mentioning some of the problems the livestock industry faced in separating livestock of various owners and separating livestock from grain fields and the property of others. The classic confrontation between the rancher and the farmer was over the herds of cattle that roamed freely and destroyed planted crops.

Before territorial or state statutes were in place, the common law doctrine prevailed with regard to fences. This doctrine generally held that the possessor of any domestic animal is strictly liable for his or her animal's trespass. This rule, in effect, imposed upon the animal owner or possessor a duty to keep the animal off the land of another. Clearly, in the early days of Kansas' development the common law doctrine was not a viable rule for the primary use of the land which was for running livestock at large. At that time, Kansas was literally a "Home on the Range," and cattle drives and the rancher prevailed in this early period.

Early Kansas Law — A Change From
Strict Liability

As stated by Robert Casad:

"In the case of the commonest forms of livestock the common-law rule of strict liability for trespass probably never has been the basic law in Kansas. The first edition of the Statutes of Kansas Territory contains "an act regulating enclosures" which rests upon a policy completely different from that of the common law. Actually, the law says nothing specifically about repealing the common-law rule of strict liability. In terms it merely imposes a duty upon someone — it does not say whom — to fence "all fields and enclosures," specifying how a lawful fence must be constructed. Sections three and five of the act prescribe a procedure for determining

attachment 1
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the lawfulness of a fence by a unique tribunal of disinterested "fence viewers." Sections four and six are the provisions of the act that are interpreted as abolishing the common-law principle of strict liability."¹

Section 4 and 6 are quoted below:

"Sec. 4. If any horse, cattle or other stock shall break into any inclosure, the fence being of the height and sufficiency aforesaid, or if any hog, shoat or pig shall break into the same, the owner of such animal shall, for the first trespass, make reparation to the party injured for the true value of the damages he shall sustain; and for the second offense the party so trespassed upon shall be entitled to recover from the owner of such animals double damages; and for the third or any subsequent trespass the party so injured shall be allowed treble damages for all losses sustained by such trespass, and be allowed to take into possession the animals so trespassing and be entitled to keep the same until damages with treble charges for keeping and feeding, and all costs of suit, be paid; to be recovered by action of debt before a justice of the peace."

"Sec. 6. If any person, damnified for want of such sufficient fence, shall hurt, wound, kill, lame or destroy, or cause the same to be done by shooting, worrying with dogs, or otherwise, any of the animals mentioned in this act, such person shall satisfy the owner of such animal or animals in double damages with costs."

With enactment of statutes such as the one above, the Kansas Fence Laws came into being. The Legislature created what has become known as a fence-out policy. That is, for a property owner to recover damages from an owner or possessor of livestock, the property had to be first enclosed by what the statutes determined to be a legal fence. Prescriptions for what is determined to be a legal fence are still contained in Kansas statutes (generally K.S.A. 29-101 through K.S.A. 29-105).

Kansas Fence Law — Fence-Out

Fences, according to the statutes, are to be composed of posts and rails, palings, planks, palisades, or wire; rails alone; turf, with ditches on each side; stone; or hedge (see K.S.A. 29-101 et seq.). Specific guidelines for a fence of most of these materials are prescribed in K.S.A. 29-102. Except for the statute prescribing the construction of a barbed-wire fence, these statutes were passed in 1868. The statute authorizing a barbed-wire fence was enacted in 1883. The guidelines for a legal barbed-wire fence are as follows:

- (1) not less than three wires;
- (2) the third wire from the ground not less than 44 inches nor more than 48 inches from the ground;

1) The Kansas Law of Livestock Trespass, Robert Casad, (1961) Vol. 10, K.L.R. 55.

- (3) the bottom wire not more than 24 inches nor less than 18 inches from the ground;
- (4) the center wire equi-distant, or nearly so, between upper and lower wires;
- (5) these wires to be well stretched and barbed;
- (6) barbs to average not more than nine inches apart;
- (7) the barbed wire to be composed of two wires not smaller than No. 13, or one wire not smaller than No. 9;
- (8) wires to be securely fastened to posts;
- (9) posts not more than two rods apart;
- (10) posts not less than 20 inches in the ground and set in a workmanlike manner; or
- (11) the posts may be not more than 48 feet apart, with slats placed perpendicularly, not more than 12 feet apart, between the posts and fastened to the wires.

Fence viewers, *i.e.*, county commissioners, are statutorily created to be arbitrators of fence disputes and to determine the legality and sufficiency of any particular fence (see K.S.A. 29-201 through K.S.A. 29-203).

Many of the controversies to be handled by fence viewers arise between adjoining landowners over what is called a partition fence (see K.S.A. 29-301 through K.S.A. 29-319). Statutes in this area address such things as maintenance of a partition fence, the authority of fence viewers to settle controversies between adjoining landowners regarding partition fences, and other requirements of landowners with regard to partition fences under certain circumstances.

The fence laws also address the liability of landowners for not maintaining their portion of a partition fence. The statutes also give authority to the fence viewers to assess the damages sustained by a landowner when "any horse, mule or ass, or any neat cattle, hogs or sheep, or other domestic animals shall break into any enclosure." Finally, authority is given to the owner of an enclosure to take into possession any trespassing animal and keep the animal until damage is recovered (see K.S.A. 29-401 through K.S.A. 29-409).

K.S.A. 29-410 through K.S.A. 29-418 establish the statutory provisions which permit the Osage orange (hedge) to be a lawful fence. These statutes were enacted in 1868. Voters of an individual county have an option whether or not to have these provisions apply in their county. Accompanying these provisions are additional statutes (K.S.A. 29-419 through K.S.A. 29-423) which deal with the maintenance of a hedge fence as well as the control of weeds along a public highway. These provisions are also subject to county voter approval.

Herd Laws — Fence-In

Additional statutes have been passed by the Legislature which related to exactly what the "Fence Laws" do, which is to restrain or confine domestic animals. Collectively, these statutes are called the Herd Laws (see K.S.A. 47-101 through 47-313). These laws have tended to restrict the statewide open range policy that existed in the state after enactment of the "Fence Laws." These enactments required owners or persons in possession of certain animals to keep such animals from running at large under certain circumstances. Examples of these enactments are the County Option Law, Township Option Law, Night Herd Law, Stallion-Jack Law, Bull-Boar Law, Stag Law, and the Ram Law (repealed in 1969). The most recent significant statewide legislation in this area, enacted in 1929, declared simply "that it shall be unlawful for any neat cattle, horses, mules, asses, swine or sheep to run at large" (K.S.A. 47-122). It should be noted that the Kansas Supreme Court has interpreted this provision as requiring negligence on the part of the livestock owner in order to hold the owner or possessor liable for damages caused by his livestock running at large. However, the enactment of these types of laws did modify the existing "fence-out" policy as manifested in the Fence Laws to more of a "fence-in" policy. As Robert Casad states:

"Since these statutes all have slightly different coverages, and provide somewhat different remedies, none can be said to repeal entirely any other, despite fundamentally different policy bases. Speaking figuratively, we could say that two different policy pictures have been painted at different times on the canvas that is our law of livestock trespass. The later one did not cover the earlier one completely, and so parts of both pictures are visible."²

It is likely that the increased influence of the farmer and less influence of the rancher led to enactments of this type. Thus, the enactment of these statutes placed more of a burden on owners or persons in possession of livestock to keep them from running at large.

Recent Legislative Actions

In 1978 the Special Committee on Agriculture and Livestock was given a charge similar to the charge directed to this Committee. The conclusion of that Committee was, in part: "The majority of the Committee believes that making extensive changes to the present fence laws would have the effect of disrupting precedents that have been established by previous court decisions. In addition, the Committee believes that any changes in the present philosophy of the law results in an increase of farmers' liability premiums."

In the 1985 Session of the Legislature two bills were introduced which would have modified current fence law. The first, H.B. 2240, received approval and became law. That bill requires that any agreement or modification of an existing agreement as to the division of responsibility for partition fences between adjoining owners of land, be recorded in the office of the register of deeds of the proper county. The requirements applied to agreements entered into after the effective date of the legislation.

2) Ibid.

The other bill, H.B. 2148, would have made electric fences legal and sufficient fences in the state. This bill remains in the House Agriculture and Small Business Committee. However, on May 17, 1985, the Attorney General issued an opinion (Opinion No. 85-54) which states, "When acting as fence viewers the board of county commissioners has the authority to declare legally sufficient all constructions which in their judgment are equivalent to sufficient fences as described by statute." The opinion allows county commissioners to include an electric fence as a legal fence under state statutes. From the information available, it appears that the boards of county commissioners in Ford and Clark counties have declared the electric fence to be a legal fence.

Conclusion

In summary, in the area of domestic animal trespass, Kansas initially relied on common law doctrine which held that owners or possessors of livestock were strictly liable for the damages by domestic animals. As Kansas became settled and in its early days as a state, the Legislature adopted a series of statutes called the Fence Laws which changed the basic policy of common law. Under these laws it was the duty of a person to build and maintain a statutorily sufficient fence in order to keep roaming livestock from damaging crops and trespassing generally. The Legislature passed additional statutes without repealing others, which added more liability to owners or possessors of livestock to keep them confined. This fence-in policy is generally contained in what is known as the Herd Laws. Therefore, Kansas has in place common law doctrine, which is a fence-in policy, where it still applies; Fence Laws, which is a fence-out policy; and Herd Laws, which moved the state back to more of a fence-in policy. As one might expect the difficult question is which body of law applies to a given situation. In Kansas, the courts have been left with this challenge.

Minneka, KS 67865
January 31, 1986

Senator Jim Allen
State Senate Agri Committee
Topeka, KS 66612

Dear Senator Allen:

In response to a call from your office today, I am sending copies of the testimony I gave before the intium last Oct. 1. I am requesting to repeat that testimony before your Senate Agriculture Committee February 4, 1986 in support of S.B. 403.

Very truly yours
Ray A. Irons

See Atch.
Testimony

attachment 2
2/4/86 Sen. Ag.

TESTIMONY BEFORE

SENATE AGRICULTURE AND SMALL BUSINESS COMMITTEE

FEBRUARY 4, 1986 CONCERNING LEGALITY OF ELECTRIC FENCES

WE WANT TO THANK THIS COMMITTEE FOR OUR BEING INVITED TO APPEAR TODAY TO PRESENT A PROBLEM AND A POSSIBLE SOLUTION THAT IS IMPORTANT TO MOST STOCKMAN IN THE STATE.

I AM ROY IRONS AND MY WIFE MARGARET FROM MINNEOLA. OUR FAMILY OWNS AND RENTS ABOUT 3800 ACRES IN CLARK AND FORD COUNTYS. ALL OF THIS FARM IS CROPLAND EXCEPT A FEW ACRES. A SON, DON, OPERATES THE FARM. OUR LIVESTOCK INTEREST IS FAIRLY TYPICAL OF NOT ONLY THE WESTERN PART OF THE STATE BUT MUCH OF THE STATE. THIS CONSISTS MAINLY OF A BACKGROUNDING PROGRAM RELYING MAINLY ON FALL, WINTER AND EARLY SPRING CROPLAND PASTURE. WE USUALLY HANDLE FROM 500 TO 2000 HEAD OR MORE, DEPENDING ON AVAILABLE PASTURE. ALL RUN BEHIND ELECTRIC FENCES. WE HAD ALWAYS CONSIDERED WE WERE WITHIN LEGAL BOUNDS USING ELECTRIC FENCES SINCE THEY WERE WIDESPREAD AND IN COMMON USAGE---SO LONG AS WE MADE AN HONEST EFFORT TO CONTROL OUR LIVESTOCK AND DID NOT MAKE A HABIT OF ALLOWING CATTLE TO RUN OUT OR NEGLECT THE FENCES. ABOUT TWO YEARS AGO A MATTER BEGAN TO DEVELOPE WITH THE RAILROAD THAT BROUGHT OUT A POSSIBILITY THAT ELECTRIC FENCES MAY NOT STAND A TEST OF LEGALITY IN THE COURTS.

THE RAILROADS RUNS THRU A SECTION OF OUR LAND. THE RCGK ISLAND DID A SATISFACTORY JOB OF MAINTAINING A FOUR WIRE PERMANENT FENCE ALONG OUR LAND UP UNTIL 1966. AT THAT TIME THEY CHANGED SECTION FOREMAN AND SINCE, NO FURTHER WORK WAS DONE TO MAINTAIN THE FENCE. AT THE SAME TIME WE WERE RENTING A LOCATION FROM THE RAILROAD IN MINNEOLA FOR GRAIN STORAGE AND LOADOUT FACILITIES.

WHEN THE RAILROAD STOPPED MAINTAINING THE FENCE WE STOPPED PAYING THE RENTAL. THEY WOULD SEND US A BILL FOR THE RENTAL WE WOULD COUNTER WITH A BILL FOR FENCING, IT WAS A STAND-OFF. THIS WAS NOT AN ENTIRELY SATISFACTORY ARRANGEMENT FOR EITHER THE RAILROAD OR US BUT NO REAL PROBLEMS DEVELOPED UNTIL ABOUT 1980 WHEN THE SOUTHERN PACIFIC TOOK OVER FROM ROCK ISLAND. SOUTHERN PACIFIC BEGAN PRESSING US TO PAY THE RENTAL OR ABANDONED OUR LEASE IN MINNEOLA. WE AGAIN COUNTERED THAT IF THEY WOULD FULFILL THEIR OBLIGATION UNDER THE LAW AND REBUILD THE PERMANENT FENCE ALONG THE RIGHT-OF-WAY OR PAY US FOR FENCING ALONG THE RIGHT-OF-WAY WE WOULD PAY THE RENTAL. THE RAILROAD CONTENDED THAT SINCE WE WERE FENCING THE OTHER THREE SIDES WITH A FENCE (ELECTRIC FENCE) THAT HAD EVER BEEN ESTABLISHED AS LEGAL, THEY WERE NOT OBLIGATED TO FENCE ALONG THE RIGHT-OF-WAY. WE STILL DIDNT TAKE THE MATTER VERY SERIOUSLY, SINCE THERE WAS ONLY ABOUT \$150 PER YEAR INVOLVED AND IT WAS SOME-WHAT OF A TRADE OUT. HOWEVER LATE IN 1983 THE RAILROAD SUED. THE LEGALITY OF THE ELECTRIC WAS AT ISSUE. THE COURT TURNED DOWN THE COMMON USAGE ARGUMENT AND RULED THE RAILROAD WAS RIGHT, SINCE WE WERE FENCING THE OTHER THREE SIDES WITH A NON-LEGAL FENCE, THE RAILROAD WAS NOT LIABLE TO FENCE ALONG THEIR RIGHT-OF-WAY. THIS RULING, IF CONSISTENT IN OTHER COURTS, WAS VERY SIGNIFICANT. OUR ATTORNEYS HAVE ADVISED US THAT WE WERE PROBABLY NEGLEGENT BY RUNNING CATTLE BEHIND A FENCE THAT IS NOT RULED LEGAL AND PROBABLY COULD BE HELD NOT ONLY FINANCIALLY LIABLE BUT ALSO CRIMINALLY LIABLE IN CASE OF A BAD ACCIDENT INVOLVING LIVESTOCK BEING RUN BEHIND AN ELECTRIC FENCE. ALTHOUGH NO ONE FELT SUCH A CHARGE WAS LIKELY TO STAND UP BEFORE A LOCAL JURY, WE WOULD BE IN A POSITION TO HAVE TO DEFEND OURSELVES AT CONSIDERABLE EXPENSE.

REALIZING OUR EXPOSURE, WE BEGAN SEEKING A SOLUTION TO THE PROBLEM. THE ANSWER SEEMED TO BE IN THE LEGISLATURE, WE PRESENTED THE MATTER TO SEVERAL OF THE LEGISLATURES OF OUR AREA. THE RESULTS WAS H.B. 2148. 2148 DID NOT MAKE IT THRU LAST SESSION, HOWEVER, WE ASSUME THAT IT OR SOMETHING SIMILAR WILL BE INTRODUCED NEXT SESSION. AFTER 2148 DID NOT GET ENACTED WE BEGAN STUDYING THE EXISTING LAW. OUR ATTORNEYS, BOB BAKER AND GEORGE VOSS, SUGGESTED THE PRESENT LAW WAS SUFFICIENT IF THE COUNTY COMMISSIONER AS FENCE VIEWERS WOULD PASS A RESOLUTION, ESTABLISHING AN ORDINANCE, RELATIVE TO WHAT CONSTITUTED A "SUFFICIENT" ELECTRIC FENCE. BOB BAKER DRAFTED SUCH A RESOLUTION AND THE COMMISSIONER IN BOTH CLARK AND FORD COUNTYS PASSED AND PUBLISHED THE RESOLUTION. THE COUNTY ATTORNEYS AS WELL AS THE ATTORNEY GENERAL RULED THE COMMISSIONER WERE WITHIN THEIR AUTHORITY IN ABSENCE OF FEDERAL OR STATE LAW COVERING THE MATTER..

WE BELIEVE BOB BAKER DID A VERY FINE JOB WHEN HE DRAFTED THIS RESOLUTION. POSSIBLY IT OR SOMETHING SIMILAR SHOULD BE ADDED TO THE EXISTING CHAPTER 29 LAW TO BRING ELECTRIC FENCES INTO A LEGAL STATUS WITH THE OTHER FENCES COVERED SPECIFICALLY BY CHAPTER 29. HAD 2148 PASSED IT SEEMS THAT SOME MINIMUM SPECIFICATION AS TO WHAT CONSTITUTED A SUFFICIENT ELECTRIC FENCE --- SIMILAR TO THE RESOLUTION--- WOULD HAVE BEEN NECESSARY, EITHER AT THE COUNTY OR STATE LEVEL.

WE FEEL THESE TWO COUNTIES HAVE THE ANSWER TO THE ELECTRIC FENCE LEGALITY PROBLEM. HOWEVER THE STRENGTH OF THE MOVE LIES IN A NUMBER OF COUNTIES MAKING A SIMILAR MOVE, WHICH IS A SLOW PROCESS. WE BELIEVE THIS WILL EVENTUALLY HAPPEN IF THE LEGISLATURE FAIL TO ACT. WE ALSO FEEL THE PRESENT LAW DOES NOT NEED MUCH TO BRING ELECTRIC FENCES INTO A LEGAL STATUS.

WE FEEL THAT OUR EXPERIENCE BRING TO LIGHT A POSSIBLE ATTEMPT BY THE RAILROADS TO GET AROUND THEIR OBLIGATION UNDER THE LAW TO FENCE ALONG THE RIGH-OF-WAY AND POSSIBLY ANY RESPONSIBILITY FOR LIVESTOCK KILLED OR INJURED BY THE TRAIN. THE RAILROAD HAVE ALWAYS SETTLED REASONABLY WELL FOR ANY CATTLE WE HAVE LOST ON THE RAILROAD. HOWEVER, WE DO NOT WANT TO SEE A CHANGE IN THE FENCE LAW THAT WOULD CHANGE THE RAILROADS RESPONSIBILITY UNDER CHAPTER 66. THIS WHOLE MATTER BOILS DOWN TO A LAW THAT RECOGNIZES AN ELECTRIC FENCE AS LEGAL WHEN BUILT TO MINIMUM REQUIREMENTS AS THE LAW HAS DONE FOR OTHER TYPE FENCES. IN OUR OPINION THERE IS NOT TOO MUCH WRONG WITH THE LAW. IT IS MUCH BETTER THAN WE THOUGHT WHEN WE FIRST STARTED STUDYING IT. HOPEFULLY WE WONT LOSE MORE THAN WE GAIN BY ANY CHANGE OR UP DATING THAT MAY BE ENACTED.

THANK YOU



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE 1913-296224
CONSUMER PROTECTION 291-0701
ANTITRUST 291-0255

May 17, 1985

ATTORNEY GENERAL OPINION NO. 85- 54

Gerald Woolwine
Clark County Attorney
120 West 7th Street
P.O. Box 565
Ashland, Kansas 67831

Re: Fences -- Legal Enclosures -- Legal and Sufficient
Fences

Synopsis: Kansas fence laws designate the board of county commissioners of each county as "fence viewers." When acting as fence viewers the board of county commissioners has the authority to declare legally sufficient all constructions which in their judgment are equivalent to sufficient fences as described by statute. The fence viewers possess the authority to deem electric fences legally sufficient if, in their judgment, the fence is equivalent to other legally sufficient fences. Cited herein: K.S.A. 29-101; 29-102; 29-104.

* * *

Dear Mr. Woolwine:

As Clark County Attorney, you have requested our opinion regarding the designation of legally sufficient fences under the Kansas statutes pertaining to fences, K.S.A. 29-101 et seq.

You inform us that the Board of Clark County Commissioners are considering adopting a resolution which would deem electric fences meeting certain specifications to be legally sufficient

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fences. You inquire as to the authority of the Board to adopt such a resolution, and ask whether an electric fence is of a type which may be deemed equivalent to the fences specified by statute as legally sufficient.

As you are aware, K.S.A. 29-102 contains certain specifications for sufficient fences and states that "all such fences shall be substantially built and sufficiently close to prevent stock from going through." It also provides that all hedge fences shall be of such height and thickness as will protect the field or enclosure, presumably from wandering livestock. The Kansas Court of Appeals has noted that one of the purpose of the fence laws is to prevent damage to property and crops by fencing animals out. See Lindsay v. Cobb, 6 Kan.App.2d 171, 173 (1981). The Kansas statute and the Lindsay case are in accord with the common law definition of a sufficient fence as one which will turn ordinary stock. See 36A C.J.S., Fences §14, 35 Am.Jur.2d, Fences §17.

The Kansas fence laws designate the county commissioners of each county as fence viewers. As fence viewers, the commissioners serve as a tribunal of limited jurisdiction within the confines of the statutes prescribing their functions. K.S.A. 29-104 addresses the role of the fence viewers in determining what is a legally sufficient fence and provides:

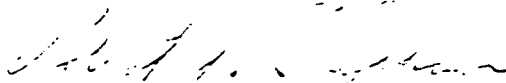
"Fences of the material and of the height and sufficiency aforesaid, and all brooks, rivers, creeks, ditches and constructions which shall be equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, shall be deemed legal and sufficient fences." (Emphasis added.)

In our opinion, this statute grants the discretionary authority to determine the factual question of whether a fence is sufficient "to prevent stock from going through" to a board of county commissioners, acting in their capacity as fence viewers. Thus, we can perceive no barrier to the board of county commissioners, acting as fence viewers, declaring that an electric fence of a prescribed type is an equivalent "construction" to those described in K.S.A. 29-102. In passing, we note that 1985 House Bill No. 2148 amends K.S.A. 29-104 to specifically grant fence viewers the authority to declare electric fences equivalent to sufficient fences. That bill, however, was not reported out of the House Committee on Agriculture and Small Business during the 1985 legislative session. Nevertheless, it appears that the authority to declare

electric fences as equivalent constructions exists in the statute as it presently reads.

We note, however, that the authority to declare certain constructions equivalent to statutorily prescribed "sufficient fences" belongs to the fence viewers. Thus, it appears that any exercise of that authority should be in the form of an order issued by the fence viewers and rather than an ordinary resolution of the board of county commissioners.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Mary F. Carson
Assistant Attorney General

RTS:JSS:MFC:crw

Source or prior law:

L. 1865, ch. 42, § 1.

Cross References to Related Sections:

Legal barbed-wire fence, see 29-105.

Research and Practice Aids:

Fences—19.

Hatcher's Digest, Fences §§ 8, 9; Railroads §§ 47, 116, 120.

C.J.S. Fences § 14.

CASE ANNOTATIONS

1. Railroad company not required to maintain a hog-tight fence. *A.T. & S.F. Rld. Co. v. Yates*, 21 K. 613, 621.

2. Company may not be liable even when no lawful fence. *A.T. & S.F. Rld. Co. v. Yates*, 21 K. 613, 621.

3. "Post and plank" fence insufficient unless four feet high. *Prather v. Reeve*, 23 K. 627, 631.

4. Lawful right-of-way fence is not required to be hog-tight. *L.T. & S.W. Rly. Co. v. Forbes*, 37 K. 445, 451, 15 P. 595.

5. Where lawful fence would not have excluded hogs, no liability. *Leebrick v. R.V. & S. Rld. Co.*, 41 K. 756, 757, 21 P. 796.

6. Nature of fence required where hogs lawfully run at large. *Mo. Pac. Rly. Co. v. Baxter*, 45 K. 520, 521, 522, 26 P. 49.

7. No fence and animal killed, railroad company prima facie liable. *Mo. Pac. Rly. Co. v. Baxter*, 45 K. 520, 522, 26 P. 49.

8. When bull not running at large; grazing on adjoining farm. *Mo. Pac. Rly. Co. v. Shumaker*, 46 K. 769, 771, 772, 27 P. 126.

9. Requirements of hedge fence to constitute legal fence considered. *Griffith v. Carrothers*, 86 K. 93, 94, 119 P. 548.

29-103. Fences composed of posts and wires. In fences composed of posts and wires, the posts shall be of ordinary size for fencing purposes, and set in the ground at least two feet deep and not more than twelve feet apart, with holes through the posts or staples on the side not more than fifteen inches apart, to admit four separate strands of fence wire not smaller than No. 9, and shall be provided with rollers and levers, at suitable distances, to strain and hold the wire straight and firm.

History: G.S. 1868, ch. 40, § 3; Oct. 31; R.S. 1923, 29-103.

29-104. What deemed legal and sufficient fences. Fences of the material and of the height and sufficiency aforesaid, and all brooks, rivers, creeks, ditches and constructions which shall be equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, shall be deemed legal and sufficient fences.

History: G.S. 1868, ch. 40, § 4; Oct. 31; R.S. 1923, 29-104.

Research and Practice Aids:

Hatcher's Digest, Fences §§ 1, 9.

CASE ANNOTATIONS

1. Stone wall is legal fence. *Bertram v. Burton*, 129 K. 31, 33, 281 P. 892.

29-105. Barbed-wire fence deemed legal fence; construction. That in addition to the fence now declared by law to be a legal fence, the following shall be a legal fence: A barbed-wire fence, of not less than three wires, with third wire from the ground not less than forty-four inches nor more than forty-eight inches from the ground, and bottom wire not more than twenty-four inches nor less than eighteen inches from the ground, with center wire equidistant, or nearly so, between upper and lower wires; said wires to be well stretched and barbed, barbs to average not more than nine inches apart; said barbed wire to be composed of two wires not smaller than No. 13, or one wire not smaller than No. 9, wires to be securely fastened to posts, which shall not be more than two rods apart and not less than twenty inches in the ground, and set in a workmanlike manner; or the posts may be not more than forty-eight feet apart, with slats placed perpendicularly, not more than twelve feet apart, between the posts and fastened to the wires by staples, or with holes in the slats: *Provided*, That in townships or counties where hogs are allowed to run at large, there shall be three additional barbed wires, the lower one of which shall not be more than four inches from the ground, the other two to be placed an equal distance apart, or nearly so, between this and the lower wire as required above.

History: L. 1883, ch. 113, § 1; April 5; R.S. 1923, 29-105.

Cross References to Related Sections:

Hog-tight partition fence, see 29-319.

Research and Practice Aids:

Hatcher's Digest, Fences §§ 1, 9; Railroads § 120.

CASE ANNOTATIONS

1. Gate on railroad right-of-way should conform to legal fence requirements. *Roman v. St. Louis-S.F. Rly. Co.*, 120 K. 585, 588, 245 P. 115.

2. Railroad liable for injuries to animals on tracks because of defective gate. *Roman v. St. Louis-S.F. Rly. Co.*, 120 K. 585, 245 P. 115.

3. Damage action; bull escaped through fence killing another; petition sufficient against demurrer. *Bates v. Alliston*, 186 K. 548, 550, 352 P.2d 16.

4. Damage action; automobile collision with cow; instructions and alleged trial errors considered; judgment upheld. *Clark v. Carson*, 188 K. 261, 266, 362 P.2d 71.

29-106. Fencing extensive tracts in

X

RESOLUTION NO. 85-3

WHEREAS electric fences have been used in Ford County, Kansas for many years with success, and,

WHEREAS K.S.A. 29-104 provides that "construction shall be equivalent. . . " to certain items stated in K.S.A. 29-104, and,


WHEREAS this Board of Commissioners finds that an electric fence of the following specifications is the equivalent of the obstacles described in K.S.A. 29-104,

NOW THEREFORE BE IT RESOLVED that in Ford County, Kansas the construction of an electric fence according to the following specifications, or the better, shall constitute a legal fence as per K.S.A. 29-101, et seq:


- (1) The posts shall either be of wood or metal equipped with an insulator between the wire bearing the electrical energy and the post, of sufficient insulation quality so as to prevent the grounding out of the wire bearing the electrical energy.
- (2) That the wire which bears the electrical energy shall be bare and at least No. 14 in size.
- (3) That the wire which bears the electrical energy shall be no less than twenty (20) inches above the ground.
- (4) That such fence shall at no time, while it is in use, carry electrical energy of less than five hundred (500) volts.

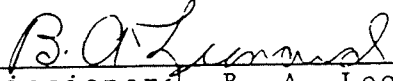
ADOPTED AT FORD COUNTY, KANSAS, this 25 day of March 1985.


ATTEST:


Deputy County Clerk - Gary Post

BOARD OF COUNTY COMMISSIONERS

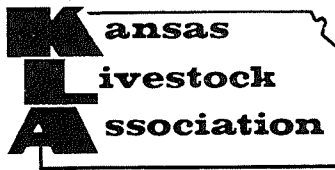

Chairman - Ed O. Gibb


Commissioner - B. A. Leonard


Commissioner - ~~Vern Birney~~

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Owns and Publishes The Kansas STOCKMAN magazine and KLA News & Market Report newsletter.

STATEMENT OF THE
KANSAS LIVESTOCK ASSOCIATION
TO THE
SENATE AGRICULTURAL COMMITTEE
SEN. JIM ALLEN, CHAIRMAN
RELATIVE TO
SB 403 - REVISION OF FENCE LAWS
PRESENTED BY
MIKE BEAM
EXECUTIVE SECRETARY, COW-CALF/STOCKER DIVISION

FEBRUARY 4, 1986

Mr. Chairman and members of the committee, I'm Mike Beam and I'm presenting testimony on behalf of the 9,500 members of the Kansas Livestock Association. Since our members are actively involved in livestock production, KLA has a deep interest in any proposal to change the fence law statutes. Monitoring the progress of SB 403 is a priority of our association and we look forward to working with this committee and the full legislature on this issue.

Since Kansas is predominantly an agricultural state it's important that we have workable fencing guidelines. Rangeland, pasture and forage production account for roughly 45% of the 48 million Kansas farm acres. As you know, fences are a major capitol expense and play a major role in farming and ranching operations.

I'll be the first to admit that our fence laws seem obsolete and outdated. There are some sections of the statute which date back to 1855. This situation is not uncommon in other states. I've briefly reviewed 10 other state's fence laws and found that most of them are as antiquated as Kansas fencing statutes. During my discussion with farmers and ranchers we've concluded that for the most part our fence laws are workable. In most areas the law is settled and fairly well understood. Even in those areas where it may seem unclear, it can be beneficial. If there is no clear cut "right" and "wrong", the parties involved are usually forced to work out their own problems instead of resorting to a legal battle. This seems to be the case in statutes pertaining to partition fences, fence viewers and others.

*attachment 4
2/4/86 Sen. Ag.*

The last significant amendment to the Kansas statutes relative to fence law and animal trespass was in 1929. Since that time there have been numerous legislative proposals and interim studies conducted which considered changing our fence laws. KLA has traditionally opposed changes or amendments because of two primary reasons. First, we are afraid that a substantial change or amendment could increase livestock producers' liability. Secondly, we are opposed to changes in fencing specifications which would add substantial fencing costs to Kansas producers. This basic policy was reaffirmed at KLA's convention last December. While we are not advocating a change, we support SB 403. In our best judgement our major concerns are addressed in the bill as introduced. KLA is proposing two amendments which I'll speak to in a few minutes.

Over the years there have been numerous court decisions which clarify the intent and interpretation of the Kansas fence laws. Several cases have held that livestock owners are not liable unless it can be shown they are guilty of negligence in allowing the animals to escape confinement. We've always considered this philosophy of requiring negligence to be a reasonable and equitable approach. Most Kansas farmers and ranchers, and Americans as well, believe in the age old custom of "innocent until proven guilty". We can all think of examples when livestock will "get out" through no fault of the livestock owner. We can't control acts of nature or be totally responsible for damages which can occur in cases of vandalism or similar situations.

During the interim committee hearings a representative of the insurance industry made several good points in his testimony concerning liability. They too "were reluctant to advocate any changes because such changes could result in higher insurance premiums, more lawsuits, more court costs, increased judgements, and perhaps even excessive judgements that would not be covered by a farmer's or rancher's insurance policy." It was reported that Nebraska has strict liability in regard to animal trespass and that state's farmers' and ranchers' liability insurance premiums are approximately three times greater than Kansas. Because of our concern for change in legislative intent and repealing case law we applaud the interim committee's language in New Section 1 which says, "In all such cases, the principles of ordinary negligence shall apply."

I mentioned earlier that KLA is cautious of changes which would increase fencing costs to livestock producers. There has been a lot of agricultural technological changes since some of the fence law statutes were adopted in 1855. SB 403 recognizes two areas where types of fences have changed in the last few years. The interim committee heard from a representative of the fence and wire industry which reported of wire which is not recognized in the fence law statutes but has comparable strength. Line 76 of page 2 would specify that it is legal to use the new type of barbed wire which is comparable to the conventional two strands of #13 gauge barbed wire.

We're also pleased that the interim committee recognized that today many farmers and ranchers use power or electric fences. It's difficult and practically impossible to find a consensus of what should constitute a legal electric fence. We strongly support the amendment which allows the use of electric fences on a county option.

We are proposing an amendment which would alter the new specifications for barbed wire fence as stated on lines 89 through 95 of page 3. This change would require all newly constructed barbed wire fences to have at least four wires and a post spacing of not more than one rod. Current law allows two rods of distance between posts. KLA proposes that this amendment be changed from one rod to 24 feet. (See attachment #1)

During the interim committee deliberations, several legislators asked about this bill's effect on how some counties recognize grazing areas as "open range". KSA 68-126 and KSA 68-128a outline how county commissioners can recognize certain areas as "open range" so that public roads will not have to be fenced through large range and pasture areas.

KSA 68-126 says that county commissioners are authorized to permit the construction and maintenance of fences across public highways. It is the responsibility of the fence owner to construct "sufficient" gates to allow traffic to enter.

KSA 68-128a specifically states the liability for travelers along public roads through "open range" areas. It says "any user of such a road shall be personally liable for any damages to livestock caused by him while travelling such road, and no liability shall be incurred by the county, township or landowner."

This system is in place in several counties of the state and we feel it is working satisfactorily. We'd ask that you adopt an amendment to clarify that this bill, in no way, changes fencing and liability policies in this area. (See attachment #2)

In summary, I'd like to re-emphasize that any change this legislature makes on fence laws will have a significant impact on this state's farmers and ranchers. I hope I've adequately outlined our thoughts in this area and recommendations for amendment to the bills. I look forward to working with members of this committee on this issue and I'll be happy to address any questions the committee may have. Thank you.

SB 403

3

0082 posts and fastened to the wires by staples, or with holes in the
 0083 slats. ~~Provided, That in townships or counties where hogs are~~
 0084 ~~allowed to run at large, there shall be three additional barbed~~
 0085 ~~wires, the lower one of which shall not be more than four inches~~
 0086 ~~from the ground, the other two to be placed an equal distance~~
 0087 ~~apart, or nearly so, between this and the lower wire as required~~
 0088 ~~above.~~

0089 (b) *On and after the effective date of this act, a newly*
 0090 *constructed barbed-wire fence to be deemed a legal fence under*
 0091 *this section, shall, in addition to all other requirements of*
 0092 *subsection (a), be constructed of four wires with a post for every*
 0093 *rod-of distance with the fourth wire from the ground being not* 24 feet
 0094 *less than 48 inches from the ground and the first wire from the*
 0095 *ground being not more than 18 inches from the ground.*

0096 New Sec. 5. In addition to fences otherwise declared by law
 0097 to be a legal fence, an electrically charged wire fence with at
 0098 least one 14 gauge wire or its equivalent and which is deemed by
 0099 the fence viewers in whose jurisdiction such fence is located, to
 0100 be equivalent to other legal fences, is hereby deemed a legal
 0101 fence. The board of county commissioners of any county may, by
 0102 enacting a resolution so providing, elect to declare that such
 0103 electrically charged wire fence shall not be a legal fence within
 0104 the jurisdiction of such board.

0105 Sec. 6. K.S.A. 47-122 is hereby amended to read as follows:
 0106 47-122. ~~That~~ It shall be unlawful for any ~~neat cattle, horses,~~
 0107 ~~mules, asses, swine or sheep,~~ *domestic animal, other than dogs*
 0108 *and cats*, to run at large.

0109 Sec. 7. K.S.A. 29-101, 29-102, 29-105, 29-410 to 29-423, in-
 0110 clusive, 47-101 to 47-103, inclusive, 47-105 to 47-110, inclusive,
 0111 47-112 to 47-119, 47-122 and 47-301 to 47-313, inclusive are
 0112 hereby repealed.

0113 Sec. 8. This act shall take effect and be in force from and
 0114 after its publication in the statute book.

SB 403

3

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 0111 47-112 to 47-119, 47-122 and 47-301 to 47-313, inclusive are
 0112 hereby repealed.

0113 Sec. 8. ~~9~~This act shall take effect and be in force from and
 0114 after its publication in the statute book.

Sec. 8. Nothing in this act shall be construed as relieving the liability of the user of highways constructed through pastures, pursuant to K.S.A. 68-126, et seq., or imposing any liability upon county commissioners, landowners or lessees of such lands.



BEKAERT
STEEL WIRE CORPORATION

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Suite 720
Irving, Texas 75062.
Telephone: 214/258-8054

February 4, 1986

STATEMENT OF
BEKAERT STEEL WIRE CORPORATION

TO THE

SENATE AGRICULTURE COMMITTEE

SEN. JIM ALLEN, CHAIRMAN

RELATIVE TO

SENATE BILL 403 -- FENCE LAWS REVISED

I am Jerry Trausch, Representative for Bekaert Steel Wire Corporation. I want to thank you for this opportunity to appear and present testimony before this committee.

Producers of Barb Wire are governed by American Society for Testing and Materials -- commonly abbreviated as ASTM.

Attached to this statement is a copy of ASTM -A-121-81, page 49. On this page, table 2 specifies minimum weights for Zinc coating, and, table 3 specifies minimum breaking strength of Zinc Coated Strands.

Bekaert Steel Wire produces a Gauchobarb wire, 15 $\frac{1}{2}$ gage strands which meets or exceeds the ASTM-A-121. This product has been on the market for at least 25 years, and is currently being produced in our Van Buren, Arkansas plant for over 10 years.

In table 2, of ASTM - A - 121, let us compare the commonly available Class 1 Zinc coated 12 $\frac{1}{2}$ gage barb wire with the 15 $\frac{1}{2}$ gage Gaucho. You will note our Gaucho 15 $\frac{1}{2}$ gage is produced only in the heavier Class 3 Zinc coating. In table 3, all

attachment 5
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gages of barb wire must meet a minimum breaking strength of 950 lbs. Not only is an 80 rod reel of 15½ gage Gaucho barb wire cheaper, but the extra Zinc coating gives longer fence life.

In Senate Bill 403 - Fence Laws Revised - Re-proposal number 4, We are supporting Line 76, an addition to Section 4, KSA 29-105 which reads "OR WIRES HAVING NOT LESS THAN 950 LBS. BREAKING STRENGTH" .

28 State Highway Departments have approved Gaucho Barb Wire for use on their road systems. Others approving Gaucho barb wire are: U.S. Forestry Service; Fish and Game Commissions, and Soil Conservation Commissions.

I will be happy to address any questions this committee may have.

Attachment: 1

TABLE 1 Standard Sizes and Construction of Barbed Wire

Size, Steel Wire Gage	Nominal Diameter of Zinc Coated Wire in Strand		Number of Points	Spacing of Barbs, in. (mm)	Diameter of Barbs, Steel Wire Gage ^a	Shape of Barbs
	in.	(mm)				
12½	0.099	(2.51)	2	4 (102)	14	round
12½	0.099	(2.51)	4	5 (127)	14	round
12½	0.099	(2.51)	4	5 (127)	14 ^a	half-round
12½	0.099	(2.51)	2	4 (102)	12½ ^a	flat
13½	0.086	(2.18)	2	4 (102)	14	round
13½	0.086	(2.18)	4	5 (127)	14	round
15½	0.067	(1.70)	2	4 (102)	13½ ^a	flat
15½	0.067	(1.70)	4	5 (127)	16½	round

^a The gage of the half-round and flat barbs is designated by the gage of the round wire from which the barbs are rolled.
^b The nominal diameter of wire used in making barbs shall be as follows:

12½ gage	0.099 in. (2.51 mm)
13½ gage	0.083 in. (2.11 mm)
14 gage	0.080 in. (2.03 mm)
16½ gage	0.058 in. (1.47 mm)

TABLE 2 Minimum Weight of Coating on Zinc Coated Barbed Wire

Size, Steel Wire Gage	Nominal Diameter of Zinc Coated Wire		Minimum Weight of Coating, oz./ft ² (g/m ²) of Uncoated Wire Surface		
	in.	(mm)	Class 1	Class 2	Class 3
12½	0.099	(2.51)	0.30 (90)	0.50 (155)	0.80 (245)
13½	0.086	(2.18)	0.25 (75)	0.45 (135)	0.65 (200)
15½	0.067	(1.70)			0.50 (155)

TABLE 3 Breaking Strength of Zinc Coated Strand

Note—Breaking strength values reflect both wires tested together.

Size, Steel Wire Gage	Wire Diameter		Minimum Strand Breaking Strength	
	in.	(mm)	lbf	(N)
12½	0.099	(2.51)	950	(4230)
13½	0.086	(2.18)	950	(4230)
15½	0.067	(1.70)	950	(4230)

The American Society for Testing and Materials takes no position respecting the validity of any patent rights asserted in connection with any item mentioned in this standard. Users of this standard are expressly advised that determination of the validity of any such patent rights, and the risk of infringement of such rights, are entirely their own responsibility.

This standard is subject to revision at any time by the responsible technical committee and must be reviewed every five years and if not revised, either reapproved or withdrawn. Your comments are invited either for revision of this standard or for additional standards and should be addressed to ASTM Headquarters. Your comments will receive careful consideration at a meeting of the responsible technical committee, which you may attend. If you feel that your comments have not received a fair hearing you should make your views known to the ASTM Committee on Standards, 1916 Race St., Philadelphia, Pa. 19103, which will schedule a further hearing regarding your comments. Failing satisfaction there, you may appeal to the ASTM Board of Directors.

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974

**Kansas
Farm Bureau**

**Resolutions
1986**

*attachment 6
2/4/86 Sen. Ag.*



Kansas Farm Bureau

Resolutions 1986

State Issues

Adopted by the Voting Delegates Representing 105 County Farm Bureaus at the 67th Annual Meeting of Kansas Farm Bureau in Wichita, November 26, 1985.

Status of Previous Resolutions

All Kansas Farm Bureau policies are subject to review at any meeting of the voting delegates. It is our policy to keep our resolutions as current as possible without specifically restating all details of continuing policies every year. To this end, the Resolutions Committee shall develop comprehensive policy statements on various subjects as the need arises, and shall present shorter statements for the consideration of the voting delegates in intervening years.

The resolutions adopted at the four previous Annual Meetings are hereby reaffirmed, except insofar as they have been modified or supplemented by later resolutions, including those adopted at this, the 67th Annual Meeting. All other resolutions shall be deemed to have lapsed except insofar as the Board of Directors may specifically find that such a prior resolution provides the only basis for action on a current problem. In any instance where the Board finds it necessary to reinstate a lapsed resolution, it shall bring this fact to the attention of the Resolutions Committee and the voting delegates for appropriate action at the next Annual Meeting.

AGRICULTURE

A Voice for Agriculture

The resolutions and policy guidelines of our organization are determined by farmers and ranchers. Farm Bureau will speak out for farmers and ranchers at every opportunity, giving voice to the concerns of agricultural producers.

Farmer Unity

We commend our President and Board of Directors for the efforts that have been made during the past year to promote understanding and cooperation with other farm organizations. We recognize that more than one organization is needed to give expression to the diverse opinions of individual farmers. However, on many basic principles most farmers can agree. We will give our full support to our President and Directors in seeking opportunities to meet with other farm organizations to determine areas of agreement and to work with other organizations in achieving common objectives. This effort should also be encouraged on a county level.

Agricultural Chemicals

We will support reasonable regulation of the use of agricultural chemicals to assure adequate standards of public health. We will oppose regulations which are proposed as a result of mass hysteria and are not based on sound judgment and scientific knowledge.

No governmental agency should have the authority to ban, or continue the ban on, the manufacture or use of any agricultural chemical unless there is conclusive scientific proof that such use is detrimental to society.

We believe procedures should be developed so that some chemicals now banned from regular use can, **in an emergency**, be used by registered, certified applicators to control agricultural pest infestations.

We urge continued funding for research programs which could lead to eradication of those insects and pests that are particularly damaging to agricultural production.

Agricultural Commodity Storage

We commend the Legislature for approving legislation requiring grain warehousemen to inform sellers that sales pursuant to deferred payment or delayed pricing provisions are not protected by the surety bond, thus creating a risk. We urge farmers to become informed as to the payment risk involved when delivering or contracting grain to feedlots since their grain business is not licensed, bonded or regulated.

We continue to support licensing and bonding of all commercial elevators and grain warehouses in Kansas. We recommend increasing inspections to a minimum of two each year of licensed warehouses.

We recommend and will support legislation to require grain dealers and grain brokerage firms to be bonded or otherwise provide proof of financial responsibility.

When a grain warehouse failure occurs, we believe that when a check has been issued for payment of grain within 14 days of the declared insolvency, and if the check has not cleared the bank, the party to whom the check was issued should be considered eligible for a share of the bond.

Agricultural Credit

Farmers and ranchers need a variety of credit facilities to finance operating and ownership expenses. In these difficult times neither farmers nor lenders will succeed by themselves if the other fails. We need credit programs that are mutually beneficial for farmers and lenders, programs that will assist farmers and ranchers to maintain viable operations, and programs that will give lenders sufficient latitude to work with producers who have credit or debt difficulties.

Special programs should be designed at federal and state levels to specifically deal with credit and financing problems of young farmers and ranchers who are trying to get established.

Commercial banks face difficulties in continuing to work with many agricultural borrowers. We support programs which will assist banks in providing service to rural communities in Kansas. We believe commercial banking institutions should have a longer time to write off agricultural loan losses. They should also be given incentives to participate in interest buy-down proposals.

In order to help maintain the viability and vitality of rural communities in Kansas, we support legislation to permit a bank in Kansas to operate a facility in a community with only one bank **if** that one bank is found to be insolvent, or outside support would keep it solvent and prevent a collapse. Preference to operate a facility in a one-bank town whose bank has failed or is in danger of failure should be given to a bank in the same county or geographic region.

Commodity Commissions and International Grains Program

The primary purpose of the wheat, corn, grain sorghum and soybean commissions is to promote the use of and to develop markets for those commodities. The commodity commissions are providing some assistance to Kansas State University for the financing and operation of the International Grains Program.

We most strongly urge all of the commodity commissions to voluntarily increase their financial contributions to the IGP. We further recommend the Kansas Legislature increase appropriations to the IGP from State General Fund monies to enhance the promotion, market development and utilization of our Kansas grains.

Commodity Pricing Legislation

Prices farmers receive for their grains and other commodities are too low. Legislated minimum commodity prices, if established by one state or several states, would not be practical and should not be promoted. One state placing a minimum price on a commodity that is grown worldwide and traded internationally will not be effective in raising the price of that commodity for Kansas farmers.

We will work through our organization and commodity groups to develop and enhance marketing strategies and opportunities.

Commodity Storage Security

The economic repercussions from grain elevator bankruptcies are devastating for the communities involved even though Kansas, when compared to other states, has experienced relatively few failures. It is projected that one recent grain elevator failure in northeast Kansas alone will result in total losses greater than the combined losses of all grain warehouse failures in Kansas since 1967. The Kansas Legislature and a Special Task Force have conducted extensive hearings and made numerous recommendations. In attempts to provide additional protection for grain producers, new laws were passed by the 1983 and 1985 Sessions of the Legislature.

If substantial additional protection is to be provided, a grain producer security fund (indemnity fund) should be established. In an effort to maximize effectiveness and acceptance of a fund, we recommend these features:

1. Grain producers and grain warehouse operators should contribute to the fund;
2. The fund should be in-addition-to the bond requirements for grain warehouses;
3. Federal and state warehouses should be required to participate;
4. Contributions shall be used to maintain the fund at \$10 million;
5. All interest earned on the balance in the fund should be credited to the fund;
6. The fund should cover not less than 75 percent nor more than 90 percent of the losses; and
7. The state should initially provide meaningful "start-up" funding to assure immediate protection for grain producers.

Corporate Farm Law

The Legislature rewrote the Kansas Corporate Farm Law in 1981. Attempts may be made to expand the law to permit livestock breeding operations and allow corporate buy-outs of land from farmers who are struggling with excessive debt loads. We oppose any additional exemptions to the current Kansas Corporate Farm Law.

Ethanol Production

Ethanol production has a promising future for grain consumption and grain pricing. We strongly support ethanol production and encourage:

1. Establishment of research projects on wet stillage feeding and feed trials, as well as utilization of other by-products of the ethanol production process;
2. Consumer promotion and education concerning ethanol use;
3. A federal tax credit, equal to the nine-cent federal motor fuel (gasoline) tax, for ethanol used in motor fuel; and
4. Continuation of the Kansas motor fuels tax exemption for ethanol until a federal tax credit program is in effect.

Fence Laws

There are inconsistencies and conflicting philosophies in the numerous fence laws scattered throughout the Kansas statute books. We believe there is a need for a thorough, careful analysis in order to update, clarify and consolidate our fence laws. We support the "fence-in" policy which requires farmers and ranchers to confine their livestock. We will support legislation which:

1. Prevents any increased liability for owners of land or livestock;
2. Avoids any burden of modifying existing fences or requiring construction of new fences; and
3. Continues the responsibility of the county commissioners in each county to serve as "fence viewers" for settling disputes regarding fences.

Foreign Ownership of Agricultural Land

Ownership or long-term lease of agricultural land and commercial feedlots by individual foreign nationals who are not in the process of becoming U.S. citizens should be prohibited. We will oppose ownership of agricultural land and commercial feedlots by foreign national corporations.

Federal tax laws, and provisions of treaties to which the United States is a party, should assure that tax treatment of landowners is uniformly applicable. We are opposed to preferential tax treatment for foreign landowners or those foreigners who lease, rent, or have in any manner invested in our agricultural land.

Grain Moisture Testers

We recommend and will support legislation to require the State Board of Agriculture to establish rules, regulations, specifications and standards for inspection of moisture testing devices used in commerce in the State of Kansas.

Kansas Brand Laws

We encourage all cattle owners to obtain and use registered brands, to keep a regular count of their livestock, and report all losses to local law enforcement officials.

For the protection of individual cattle owners we favor a statewide brand inspection system which makes it mandatory that cattle be inspected for brands at licensed public sales, feedlots and packing plants.

Theft of livestock should be considered a Class D felony.

Labeling

We support proper labeling of foods, fibers, and other agricultural products.

We oppose the use of the names of natural farm products on substitutes for such natural foods.

All products offered to the public in imitation of, or as a substitute for, or in the adulteration of, any farm product or any item processed from a farm product should be labeled to include the names of all ingredients and, where labeled "home grown" or "native," the point of origin.

Meat and Poultry Inspection Program

We support the state-administered Meat and Poultry Inspection Program.

We believe state-inspected meat should be allowed to move in interstate commerce. We support legislation to require labeling of imported meat and poultry, and the labeling of such imports in processed products, as to country of origin.

Noxious Weeds

Noxious weed eradication should have a high priority with state government and with each of our 105 counties. Enforcement should include increased penalties for violation of the law.

Governmental agencies should be prohibited from sowing any cover crop on public rights-of-way that contains any noxious weed seed or restricted weed seed in excess of tolerances allowed in the Kansas Seed Act. Mulching materials used on public rights-of-way should be free of noxious weeds and noxious weed seed.

Landowners and tenants should be authorized to conduct timely spraying and mowing to control noxious and other objectionable weeds and grasses on rights-of-way adjacent to their own land.

Predator Control

We believe livestock producers should have the option of using, on privately-owned land, all reasonable means of controlling all predators, including predatory dogs.

The coyote is a predatory animal and we are opposed to proposals to designate this predator as a fur bearing animal. Hunting, trapping, or otherwise taking coyotes should be allowed at all times other than by firearms during firearm deer season.

State Board of Agriculture

The present Kansas method of electing a State Board of Agriculture, which board employs the administrative head of the State Department of Agriculture, is unique among the states. We believe a close study of the history of the Department of Agriculture in Kansas will reveal that agriculture, and indeed the whole state,

has been well served because the Department has never been placed in a partisan political position. For that reason, we will support a continuation of the present system.

Weights and Measures

We commend the 1985 Legislature for passage of a comprehensive testing program for large-capacity scales.

We will support adequate state appropriations for the Weights and Measures Division of the State Board of Agriculture to ensure performance checks on scale service companies and spot checks of large-capacity scales across the state.

ASSESSMENT AND TAXATION

Industrial Revenue Bond Financing and In-Lieu-Of Taxes

We believe Industrial Revenue Bond financing is a positive step for economic, industrial and business, and community development.

We will support legislation to require an in-lieu-of tax payment on property that is developed through the use of Industrial Revenue Bond financing. In-lieu-of tax payment should be equal to the tax money required if the property was on the tax rolls. We further believe that the valuation of IRB-property should be included in the total valuation of the school district in which such property is situated, and counted as part of such district's wealth.

Local Sales Tax Situs

We will support an amendment to the local retailer's sales tax statute as it relates to motor vehicles. The local sales tax on motor vehicles should be collected by the county treasurer at the time of registration of the vehicle, and situs for the local sales tax should be the residence or business location of the registrant.

Mortgage Registration Tax

Farming is a very capital intensive business. Due to the critical financial conditions in agriculture, and the fact a great deal of refinancing is taking place, the mortgage registration tax can be a burdensome and often unexpected expense.

Borrowers should not be required to pay the mortgage registration tax a second time when they are refinancing the same real estate even though they are changing lenders.

Federal Land Banks and Farmers Home Administration borrowers should continue to be exempt from the tax.

Property Classification

The Kansas Legislature in 1985 adopted, by the required two-thirds majority, a proposal to amend the Finance and Taxation Article (Art. 11) of the Kansas Constitution to provide limited classification of real and personal property for assessment and taxation purposes. The proposed amendment was designed to ensure against an unfair shift of taxes, and to provide for equitable taxation within and among the various classes of property. We supported the development and adoption of this appropriate, limited classification proposal.

We **strongly urge** the voters in Kansas to **SUPPORT** and **vote YES** on the property classification amendment when it is submitted to electors at the general election in November, 1986.

Reappraisal, Assessment and Taxation

We commend the 1985 Legislature for the passage of legislation mandating a program of statewide reappraisal of real property.

Reappraisal began July 1, 1985, and is to be completed in all counties January 1, 1989. The reappraisal legislation has language to implement the 1976 constitutional amendment on use-value appraisal and provides that agricultural land shall be appraised on the basis of its agricultural income or productivity attributable to the capability of the land in its current usage under a degree of management reflecting median production levels.

We urge all county Farm Bureaus to work with the county appraiser to achieve a fair and equitable appraisal within the county and between counties.

We urge the Legislature to set definite rules and guidelines to administer the reappraisal and to provide adequate and equitable funds for its implementation.

State Budget, Spending and Taxation

State expenditures in a fiscal year should never exceed projected revenue receipts for that fiscal year.

Zero-base budgeting is essential to fiscal planning and should be required for all state agencies as well as all local units of government.

Across-the-board percentage reductions in state agency funding is appropriate when revenues and estimated receipts are low. The State General Fund should have adequate balances or reserves. Before any additional tax is imposed the Legislature and the Governor should closely examine all programs to eliminate unnecessary spending.

State and Local Fiscal Needs

It is time in Kansas to write a basic tax policy of taxing people for services to people and taxing property for services to property.

State Sales Tax

Because all citizens are consumers of food and are uniformly taxed on the food they purchase, we will oppose legislation to exempt food from the state sales tax.

COMMERCIAL AND FINANCIAL INSTITUTIONS

Investment Authority of Local Governments

The investment authority of local units of government is limited to those moneys not immediately required for the purposes for which they were collected. We support that limitation. We are opposed to permitting local unit public funds deposits in branches of savings and loan associations and detached auxiliary banking facilities.

CONSERVATION AND NATURAL RESOURCES

Acquired Mineral Interests

The practice by Federal Land Bank Associations of retaining one-half or **any** portion of the mineral rights of acquired properties when such properties are resold is not a sound or reasonable policy for the FLBA. This practice:

1. Diminishes the true value of land sold with mineral interests severed; and
2. Is speculative in nature.

We will support legislation to end this practice. We believe legislation should provide for an orderly divestiture of mineral interests by FLBAs.

Environmental Standards

We will oppose legislation which would permit harassment of agricultural producers because of unsubstantiated allegations regarding damage or probable damage to the land, water or air. We believe no legislation should be enacted, nor should an environmental regulation be promulgated, unless it is based on factual information and scientific knowledge.

We recommend to the State Legislature that chemical air toxic emission levels be established in the State of Kansas.

Hazardous Waste Disposal

Storage, identification, packaging, transportation, and disposal of hazardous waste materials must be adequately researched and developed to insure safety for Kansas citizens and the natural resources of this state.

We believe the Governor and the Kansas Legislature working cooperatively, in order to provide for safe storage and disposal of hazardous wastes, should assure that:

1. Kansas does not become a dumping ground for waste materials coming from other **states or nations**;
2. Only qualified, technically-competent persons, corporations, or entities are granted authority to develop a site or sites for disposal or storage of radioactive or other hazardous wastes, with

such entity being fully liable for safe operation such site or sites; and

3. There is adequate protection against escape, dispersion or erosion of hazardous waste into the soil and waters surrounding any disposal site.

Hunting and Fishing Regulations

We believe the hunting season for upland game birds should be reduced in length with the season ending the first week in January.

We urge enactment of legislation requiring those who hunt and fish to possess written permission, signed by the landowner or operator, stating the days hunting or fishing is permitted, and giving a description and location of land on which permission is granted. The landowner or operator should be exempt from liability for accidents regardless of written permission or not. All hunting and fishing licenses issued by the Fish and Game Commission should include the printed statement, "Written permission must be obtained from landowner, tenant or other agent."

We urge the Fish and Game Commission to increase the number of deer and antelope firearms and bow and arrow permits granted each year. We believe each farmer, whether landowner or tenant, who requests a deer or antelope permit should receive one for hunting on his own land or that on which he is tenant or operator, and such special "landowner" permit should be issued at no cost to the farmer in all 105 counties.

We ask that legislation be enacted that would require the Fish and Game Commission to conduct deer population control measures or pay for damages upon petition from landowners and/or operators.

We urge the Kansas Fish and Game Commission to establish a toll-free telephone number to be used by farmers and other citizens to report wildlife damage to crops and other property.

Land Use Planning

We oppose legislation which would authorize or permit federal agencies to direct management decisions in the field of land utilization. Those who own or operate land should have the major responsibility for its development.

We urge farmers to become involved in planning and development of zoning ordinances to prevent undesirable land use patterns. We favor voluntary land use authorities formed for specific periods of time, in which farming may be designated as the priority use and other users may remain in, or move into these zones without recourse to abate the practices which are common to farming.

Landowners' Rights

Landowners' rights must be safeguarded and protected. Equitable payment must be made for any land, in any "taking," or "partial taking" by eminent domain power. We believe eminent domain procedures should include development of an agricultural impact statement, complete with public hearing, appeal, and a determination of compensation for disruption of normal farming practices.

We believe safeguards should be developed for landowners to protect against costs involved in bringing an abstract up-to-date when these costs are the result of transactions generated or incurred by a gas or oil company.

Some groups have proposed that the public be given free public access to private property adjacent to river and stream beds. We will strongly oppose any such proposal and will likewise oppose the addition of any rivers or streams in the category of "navigable streams."

Natural Gas

We recognize the importance of natural gas to Kansas agriculture for fertilizer production, feed processing, grain drying, irrigation, and related agricultural industries.

There is a great deal of misinformation regarding the results of natural gas deregulation on agricultural producers and consumers.

We support legislation which promotes competition while recognizing the need to protect the agricultural consumer from monopolistic situations without rate review.

We oppose legislation which would result in dramatic price changes to agricultural producers.

Infill drilling, as proposed for the Hugoton Field, poses serious threats to irrigated agriculture with proper safeguards to insure reasonably priced supplies for agriculture.

Prairie National Park

We oppose creation of a Tallgrass Prairie National Park on privately-owned land. We recommend that the Kansas Legislature consider the practicability of giving to the appropriate state agency the authority to provide adequate rest areas, observation towers and other maintained facilities for the benefit and pleasure of travelers along the route that has been designated as the "Prairie Parkway," and along other highways which traverse our native grassland.

Soil and Water Conservation

We believe the owners and operators of agricultural land can best be served by a voluntary approach to soil conservation using federal and state cost-sharing funds as an incentive for developing and maintaining farm plans, and constructing and maintaining soil and water conservation structures. We ask the Kansas Legislature to adequately fund the state share of cost-sharing programs.

Pipeline companies, and electric and telephone utilities, should be required to preserve and replace top soil, and to reseed those portions of native grass pastures disturbed during construction of underground facility projects.

State Water Agencies

Water is one of our most precious and important natural resources. All segments of our population and all component parts of our economy require an adequate supply of water.

We will continue to oppose changes in Kansas water laws that would result in major reorganization of state water agencies. We believe that a separation of powers and a system of checks and balances in the administration of water programs gives Kansans a better result than any further consolidation would produce.

State Water Policy

We support development of a State Water Plan for Kansas. We believe the Kansas Water Authority should have responsibility for development of the State Water Plan. The Authority should be the agency for water management in Kansas.

The State Water Plan should promote conservation of water by all users. It should also contain far-sighted, well-conceived, and carefully controlled use of international, interstate, and intrastate transfers of water to benefit agricultural producers and all other Kansans.

We urge the KWA to incorporate into the State Water Plan a strong conservation ethic, and methodology for recycling water to extend the life of this limited resource.

Water Districts

We recognize the benefits of Rural Water Districts. Those benefits should be assured by legislation and regulations that guarantee and protect water rights for original rural water district patrons.

We will support legislation—both on a national and state level—that will make funds available for grants to be used in the construction of Rural Water Districts.

We will support legislation—both on a national and state level—that will finance, through federal funds (Farmers Home Administration), Rural Water Districts from watershed structures.

Water Management in Kansas

Kansas farmers and ranchers recognize the importance of securing a Kansas water right as provided by law.

We support the Kansas Ground Water Management District Act, as amended in the 1978 Session of the Kansas Legislature, which gives local water users a voice in determining the use of ground water. Irrigation wells within a GWMD should not be subject to “user fees.”

We encourage our members to participate in the organization and management of Ground Water Management Districts. Through participation they will be in a position to have an effective voice in calling for any needed changes, additions or deletions to the Ground Water Management District Act.

Water Quality Standards

We recognize the need for reasonable standards to protect and maintain the quality of our surface waters and ground water. We are not convinced that establishment of “minimum desirable streamflows” is the solution to water quality problems. We believe additional study of the economic and environmental impact of legislation or regulation requiring minimum streamflow is necessary. We oppose additional minimum streamflow designations until such studies are completed.

We urge the Legislature to make adequate appropriation of funds, to assure that the agency or agencies responsible for issuance of well drilling permits and the maintenance of water quality are enforcing existing statutes and regulations relating to salt water disposal and proper plugging of dry holes.

The Kansas Corporation Commission and the Department of Health and Environment should, prior to giving approval for disposal of salt brines, determine that the proposed method of disposal will assure that there will be no contamination of any fresh water. No well drilled on leased property should be used for disposal of salt water from wells on other property without consent from and compensation to the landowner. The power of eminent domain should NOT be granted for the purpose of salt brine disposal.

We ask that legislation be enacted to require that surface pipes shall be set to a depth sufficient to protect all fresh water formations from contamination.

Watershed Programs

There are many urgently needed watershed structures yet to be built in Kansas. We request that funding for those structures, furnished by the state and supervised by the State Conservation Commission, be increased to facilitate and encourage this statewide program.

In order to expedite planning and construction of watersheds, we urge the Kansas Legislature to consider permissive legislation authorizing the levy of one mill on the valuation of potential watershed areas for a period no longer than two years for the purpose of creating a trust fund, with the annual interest earned from such trust fund to be used for planning expenses involved in new watershed projects.

Zoning

We oppose any extension of the power of cities to zone beyond their borders until there has been a thorough legislative study of this subject. Specifically, we oppose any change in the present authority of city and county zoning commissions, with the exception that no county zoning shall be implemented without a referendum of the people affected.

EDUCATION

Agriculture in the Classroom

We believe today's young people, who will be tomorrow's decision makers, must have an opportunity to understand agriculture and its relationship to the total economy. We support the concept of teaching the importance of agriculture through the teaching of math, science, history, economics, and business courses within existing school curricula in Grades K-12.

We support "Ag. in the Classroom," and we commend the Kansas Foundation for Agriculture in the Classroom for its efforts on behalf of agriculture.

Basic Education Requirements

It is our belief that citizens of Kansas and the Kansas Legislature should conduct in-depth examinations of the operation, the goals and objectives of our public schools. In an effort to optimize educational opportunities for our children at an affordable cost, we propose:

- * Continuation of competency testing of students in Kansas schools;
- * An adequately increased salary for classroom teachers;
- * A more efficient use of classroom assistants and volunteers;
- * A reduction in the number of administrative personnel employed by USDs;
- * Stringent requirements for graduation from colleges and universities training our teachers;
- * Curtailing, or limiting to after the regular school day, extra-curricular activities;
- * More efficient use of classroom instructional hours within the present 180 days or 1,080 hours of school;

- * Encourage local public support for more effort by local school boards to control costs;
- * Spending and budget lids on USDs;
- * Examination of teachers certification requirements; and
- * An examination of the organizational structure, staffing patterns, budgeting and operation of Unified School Districts to determine opportunities for efficiency and economy.

CPR Training

Applying CPR—Cardiopulmonary Resuscitation—saves countless lives every year. We ask the State Board of Education to encourage all school districts to incorporate voluntary CPR training into the public high school curriculums.

Kansas State University

We believe that agriculture must be the highest priority at Kansas State University. We commend the Legislature and KSU for the vital contributions which have benefited all segments of society through teaching, research and the Cooperative Extension Service.

We encourage close cooperation between county Farm Bureaus and county Extension Councils in order that beneficial services to rural families, and the excellent relationships that have been established over the years, may be continued in a most effective way.

We request adequate funding for the farm assistance program operated cooperatively by the Extension Service and the State Board of Agriculture. Especially during this critical time in agriculture, we recognize the need for farm families to have access to meaningful management, counseling and support programs.

We urge higher priority and increased appropriations for both facilities and staffing for the Departments of Agronomy and Animal Sciences and Industry.

We strongly recommend expanding the International Grains Program to enhance market development and exports for Kansas grain producers.

We support establishment of an International Meats Research and Export Trade Center at Kansas State University which will enhance export opportunities.

believe the Kansas Board of Regents should reauthorize, and the Kansas Legislature should provide funding for, development at KSU of an intensive international marketing and export curriculum to train students in foreign trade.

Kansas has an outstanding College of Veterinary Medicine located at Kansas State University, Manhattan. In order to maintain the excellence of the College of Veterinary Medicine, and to provide for the stated needs of the College to enhance veterinary teaching, research and service, we urge the Governor and the Kansas Legislature to fully fund the budget of the College of Veterinary Medicine.

An opportunity exists to broaden and strengthen the research and teaching of the College of Veterinary Medicine in cooperation and partnership with the State of Nebraska, the University of Nebraska, Lincoln, and the Meat Animal Research Center at Clay Center, Nebraska. We encourage development of this partnership. We urge the Governor of Kansas, the Kansas Legislature and the Board of Regents to support and foster with their counterparts in Nebraska creation of a Regional College of Veterinary Medicine which we believe would be cost-effective and mutually beneficial to agricultural producers, the animal industries, and the citizens of both states.

Postsecondary Education

We believe educational and vocational-training needs have been unfulfilled for many in our state due to fragmented post-secondary programs. We believe there are many opportunities to coordinate vocational, occupational, academic and college-preparatory programs within our community colleges. These individual components of post-secondary education should have equal status.

We believe mergers, within reasonable geographic guidelines, of existing area vocational-technical schools and community junior colleges would be in the best interest of students and the taxpaying public. We would support implementing legislation to achieve such mergers. The resulting institutions should, we believe, be considered an integral part of our system of higher education. We believe the state should then assume responsibility for financing these institutions through non-property tax revenues.

School Finance

We believe the Kansas Legislature should develop a school finance formula to assist in the delivery of and funding for a "basic education" for every child enrolled in public schools in each unified school district in the state.

We continue to believe that there should be minimal reliance on the property tax for support of our elementary and secondary schools. As long as property is used as a measure of wealth, then intangible property should be a part of such measurement of wealth.

We support legislation to create a school district income tax to be collected by the state from every resident individual and returned by the state to the school district of residence of the individual taxpayer.

We will support legislation to increase the state sales tax by one cent, PROVIDED the revenues from such increase are used for financing elementary and secondary schools and to reduce property taxes now levied for school finance.

State General Fund revenues should be enhanced for school finance purposes by increasing the rates of income and privilege taxes imposed on corporations, financial institutions, insurance companies, and non-resident individuals.

We believe that federally and state-mandated programs should be fully funded by the federal or state government, whichever mandates a given program.

We have opposed in the past, and we will continue to oppose efforts to establish a statewide property tax levy.

Teacher-School Board Relations

We believe the authority of locally-elected boards of education should be recognized, supported and maintained. We cannot support legislation which would erode the legal authority of school boards. We will oppose legislation which requires a school board to yield its authority to a mediator, an arbitrator or disinterested third party. We are opposed to teacher-tenure.

Vocational Education

We will continue to give our strong support to vocational education programs which meet demonstrated needs and which lead to some employable skill. We believe it is the responsibility of the state, through assurance of course offerings and non-property tax financial support, to provide quality vocational education programs. We recommend the state provide additional financial support for vocational programs at the secondary level.

Agriculture is the firm foundation for the Kansas economy. We believe there continues to be a need for vocational training in agriculture, agri-business, and farm mechanics. We urge adequate vocational training programs to meet these needs.

The State Board of Education should be directed by the Legislature to maintain a strong program of vocational agricultural education in our secondary schools. We believe an Advisory Council for Vocational Agriculture Education should be created to examine and make recommendations to the State Board of Education on curriculum, course offerings, vocational-agriculture teacher qualifications and certification in order to more adequately meet the needs of Kansas agriculture.

Washburn University

On the basis of current information and the present financial condition of the State of Kansas, we oppose the admission of Washburn University to the Kansas Board of Regents System.

GOVERNMENT

Annexation

We commend the Legislature for undertaking a review and comprehensive study of annexation laws in Kansas. We believe enactment of appropriate legislation in the 1986 Session would correct many of the inequities which have become apparent under current statutes.

Indiscriminate annexation of agricultural areas into cities has proven to be most unfair to a great number of rural property owners engaged in agriculture.

We believe that amendments to our annex statutes should provide for:

1. Reduction from 55 acres to 10 acres the amount of agricultural land that may be annexed without the owner's consent;
2. Cities to hold public hearings within the area proposed to be annexed. At such hearings the cities shall have a land development plan, timetable, and cost estimate of proposed services such as water, sewer, electrical, and gas services;
3. City maintenance of all existing public facilities and services during the development stage;
4. Landowner-initiated deannexation of annexed land when the city fails to provide major municipal services or maintain existing facilities and services; and
5. The opportunity for residents of the proposed annexed area to present petitions to the city opposing their annexation into the city. If the petitions contain the names of 25% of the residents of the area, the city shall provide for a vote within the proposed annexed area to determine if the proposed annexation will become effective.

Capital Punishment

We believe capital punishment to be a deterrent to violent crime. Capital punishment should be reinstated in Kansas and the Kansas law should be in keeping with the U.S. Supreme Court ruling and guidelines for imposition of capital punishment. We support the right of Kansas citizens to vote on a constitutional amendment allowing capital punishment.

Citizen Participation

Citizen participation in government is the very foundation and strength of our form of government in this state and nation. The Kansas Legislature and the Congress of the United States should be composed of representatives from all walks of life. We deplore the trend toward a professional, full-time Legislature and Congress.

From time to time citizens are asked to serve on a board, committee, commission or task force created by the Legislature, the Governor, the Congress, or the President. Such service should carry with it for lay citizens the same rights to participation, discussion, deliberation and voting as with other elected or appointed members of such board, committee, commission or task force.

District of Columbia Representation

We will vigorously oppose ratification by the State of Kansas of the proposed constitutional amendment to provide House and Senate seats for the District of Columbia.

Drug Abuse and the Drinking Driver

We strongly support actions that will bring about a solution to the problems of drug abuse and the drinking driver in Kansas and across the nation.

There are no easy solutions to this problem, but three issues need to be addressed:

1. **Education.** All citizens need to be informed on the effects of alcohol and drug abuse in regard to the operation of a motor vehicle. Education for children should commence in Kindergarten and be continued through Grade 12. Funding for such alcohol and drug abuse education should be provided by the state or federal government from taxes on alcohol and related industries.
2. **Enforcement.** Kansas statutes need to be strengthened and enforced so violators will be subject to all provisions of the law if they are found guilty.
3. **Rehabilitation.** An effective rehabilitation program needs to be implemented so the alcohol or drug abuser may be treated and rehabilitated.

The operation of a motor vehicle on our streets, roads and highways carries a large responsibility. Driving is not a right but a privilege that must be continually earned.

Fish and Game Commission

We support the present statutory requirements for appointment to the Fish and Game Commission. We believe consideration should be given to appointments of bona fide farmers to the Commission.

We favor establishment of a land-leasing policy giving first-choice farm tenancy privileges to the original landowner. Should the original landowner not desire to lease Fish and Game property, a uniform procedure for bid-basis land leasing should prevail through all Fish and Game service regions.

We are opposed to the Fish and Game Commission having the authority to use the power of eminent domain.

We believe the Kansas Fish and Game Commission should pay property taxes, or make an in-lieu-of tax payment to the county and school districts in which Fish and Game property is located.

We recommend that the Fish and Game Commission conduct a study to determine if brucellosis, other livestock diseases, and noxious weeds are transmitted by deer, other wildlife, and livestock.

Political Campaign Financing

We are opposed to the use of public funds for financing political campaigns at any level of government.

We believe personal contributions to political campaigns should be encouraged. There should be reasonable limits placed on the amount of money any one person, business, corporation, labor union, association or political action committee may contribute to any one candidate.

We believe political campaigns have become far too costly and would, therefore, support a limitation on the time allowed for conducting campaigns in order to reduce the amount of money spent.

Regulatory Reform

We urge the legislative branch of government, at the state level and at the national level, to legislate clearly and to legislate by statute. We deplore legislation by administrative regulation.

Trespass and Vandalism

We believe that trespassing on and vandalism of private property is of growing concern to Kansas farmers. Under present laws, it is difficult to successfully prosecute individuals who intentionally trespass on privately-held ground. We recommend that the Legislature strengthen the statutes concerning trespass and vandalism and increase the penalties for these offenses.

We urge county Farm Bureaus to become actively involved in working with local law enforcement officials to aggressively enforce trespass laws.

Uniform Commercial Code

We believe the section of the Uniform Commercial Code (UCC) pertaining to the agricultural exemption should be amended to provide protection for the producer, the agricultural lender and the purchaser of agricultural products.

Voter Registration

We are strongly opposed to election-day voter registration. We are equally opposed to proposals which seek to give organizations the right to act for, or on behalf of, individuals in the registration process.

Voting

We believe that in local, state, or national elections, military personnel, and college students whose permanent address or home of record coincides with that of the student's parents, should vote in the community of such permanent address or home of record.

We are strongly opposed to any proposal to permit voting by mail in national or state elections, except for absentee ballots.

Electors in Kansas have an opportunity to vote in statewide elections for four constitutionally prescribed executive branch officers and for two statutorily prescribed officials. We support the right of Kansans to vote for candidates for all these offices. We will oppose legislation or executive action which would eliminate that voting opportunity.

Election laws regarding poll watchers should be strictly enforced.

LABOR AND INDUSTRY

Public Project Wages

The Kansas Farm Bureau supports repeal of the Davis-Bacon Act at the federal level of government. We also believe the Kansas statutes requiring payment of prevailing wages on public works projects are inflationary and should be repealed.

Right-to-Work

We reaffirm our strong support for the "right-to-work" concept. We will oppose the repeal of legislation implementing the "right-to-work" in Kansas, and we will vigorously oppose the repeal of Section 14(b) of the Taft-Hartley Act.

Unemployment Compensation

We favor an immediate update and increase in the threshold exemption for agriculture in the Unemployment Compensation Act. Additionally, we support a periodic update of the agricultural exemption to reflect the inflation that has occurred over recent years.

Workers' Compensation

We continue to support exemption for agriculture from the industrially-oriented Workers' Compensation Act. We will oppose removal of the exemption, or any attempt to bring agricultural workers under that Act.

An agricultural workers' compensation plan, if one is devised after adequate study, should provide a payroll threshold of \$50,000 or such amount as would cover full-time, nonfamily-member employees and the occasional part-time labor so necessary in the family farming operations of Kansas.

PUBLIC HEALTH AND WELFARE

Emergency Aid

We would encourage the Kansas Legislature to amend that portion of Kansas Statutes referred to as the Good Samaritan Law. It is important that every citizen making a good faith effort to render emergency care and assistance at the scene of an accident be exempt from civil damages.

Health Care Cost Control

Spiraling health care costs warrant serious consideration by private citizens and health care professionals alike. Government mandated cost-containment legislation will not provide the best answer to this dilemma. We continue to support voluntary leadership in the area of health care cost control. Additional cost control measures can and must be undertaken so that appropriate, affordable health care is available to all. We urge the development of more local Home Health Care organizations.

Health Care and Professional Liability

We believe there is a threat to health care in this state because of the cost and availability of professional liability insurance coverage for health care providers.

The increased incidence of medical malpractice claims has caused the cost of insurance coverage to soar, reduced the availability of coverage, and contributed to higher patient fees. We believe health care delivery would be improved and the medical malpractice insurance problem corrected by the enactment of state legislation which would:

1. Prohibit publication of the dollar amount sought in a medical malpractice suit;
2. Limit the amount of money which can be recovered in a medical malpractice suit;
3. Modify and restrict the use of the contingency fee system by the legal profession; and
4. Reduce the statute of limitations and time of discovery for an alleged act of negligence or omission.

Health Care for the Elderly

We urge citizen volunteers and paid health professionals to cooperatively work to meet the needs of the growing elderly population in Kansas. It is important that local programs for Kansas senior citizens maximize the independence of the elderly as long as possible.

For many of our elderly, however, nursing home care will become a necessity. We believe nursing home regulations should be limited to only those that protect quality of care.

Nutrition Education for Health Professionals

There is evidence that many health care professionals have not had sufficient educational course work in nutrition and its relation to the treatment of disease.

We believe nutrition training and courses should be required in medical and health-related education curricula.

Nutrition Education for School Children

Very little formal education is provided in Kansas schools to help our youth learn how to fit needed nutrition into the era of fast-food restaurants.

We urge county Farm Bureaus to support and encourage nutrition education and training programs in Kansas schools. School food personnel need nutrition education as well.

We strongly urge monitoring the use of federal funds for nutrition education in order to assure that students and food service personnel receive the benefits of such nutrition training programs.

TRANSPORTATION AND UTILITIES

Automobile Safety

We deplore the blackmail tactics of the federal government to bring about seat belt use laws. We should have a seat belt use law in Kansas, not because the federal government requires it, and not because our highway funds and user taxes are held hostage, but because the use of seat belts saves lives.

County Bridge Construction

We believe there should be county, state and federal government cost-sharing and financing so that bridge construction and bridge replacement may proceed without further delay. Specifications and standards for bridges should be determined cooperatively by state and local engineers to meet local needs. Where practicable, we would urge the use of pre-stressed, precast materials, as well as dirt fills in connection with conservation dams, for bridge construction, as opposed to costly "over-designed," over-built bridges. We further believe that in some cases, low-water bridges would be adequate.

County Highway Fund Distribution

The present Kansas law which distributes highway user revenues to counties uses a formula which gives excessive weight to motor vehicle registrations. This results in glaring inequities of fund distributions. We will support an amended formula with major weight given to miles of county federal-aid secondary, rural road and highway travel, plus consideration of miles of roads that must be maintained by county highway departments.

Emergency Telephone System

We urge the implementation of the 911 emergency phone system on the state level.

Highway Development and Funding

We believe upgrading and improving existing roads and highways is preferable to building additional free-ways, limited access highways, toll roads or turnpikes.

We urge that efficiencies be achieved in the operation of the Kansas Department of Transportation and that assurance be provided to protect against misuse of funds through bid-rigging or any other fraud.

We support the concept of highway users paying, through gallonage taxes and vehicle registration fees, for the construction and maintenance of highways, roads and bridges.

Toll road and turnpike construction in Kansas should not be contemplated unless a feasibility study on any such project shows the toll road or turnpike will pay its own way.

We are opposed to the use of any highway revenue or State General Fund revenue to guarantee toll or turnpike bonds.

Highway design and planning should avoid, where feasible, diagonal routing. Diagonal cuts are most disruptive to agricultural operations.

Highway Littering

We deplore the increasing abuse and disregard for state laws relating to littering roads and highways. Broken glass, metal containers and garbage found along our roadsides are a nuisance and a hazard.

We recommend that steps be taken for more vigorous enforcement of state litter laws. We support recycling and the use of reusable and biodegradable containers. Non-returnable glass soft drink and beer containers should be prohibited.

Rail Car Safety Markings

We believe all railroad cars operating in Kansas should be equipped with sufficient iridescent material in patterns so they will reflect the headlights of a motor vehicle at grade crossings. This requirement should apply to all new cars when placed in service and to all existing cars when returned to service after maintenance.

Trucking Deregulation

We believe trucking (motor carrier) regulations are counter-productive and without benefit to shippers. Economic deregulation could provide greater competition in transportation. Energy conservation could result from backhaul opportunities. It should not take an action by a regulatory body, at the national or state level, for entry into a private enterprise endeavor such as trucking.

We urge the Kansas Legislature to deregulate the trucking industry.



MISCELLANEOUS

Agricultural Hall of Fame and National Center Bonner Springs, Kansas

The Agricultural Hall of Fame and National Center at Bonner Springs, Kansas, is set up as a shrine to honor those who have contributed to our great agricultural industry, and to preserve and display agricultural machinery.

Since this is an Agricultural Shrine, we would ask every farmer and rancher in Kansas to make a financial contribution to the Agricultural Hall of Fame.

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PUBLIC POLICY STATEMENT

SENATE AGRICULTURE AND SMALL BUSINESS COMMITTEE
Senator Jim Allen, Chairman
February 4, 1986

RE: S.B. 403 - Updating Fence Laws (Interim Proposal No. 4)

Presented by:
Bill R. Fuller, Assistant Director
Public Affairs Division
KANSAS FARM BUREAU

* * * * *

Mr. Chairman and Members of the Committee:

I am Bill Fuller, Assistant Director of the Public Affairs Division of Kansas Farm Bureau. I am speaking on behalf of the farmers and ranchers who are members of Kansas Farm Bureau. We appreciate this opportunity to express our views on S.B. 403 ... a bill resulting from Interim Committee study which attempts to update fence laws through amendments and repealers.

First, we commend the Interim Committee for the courage to study and make recommendations on this complex issue which has been avoided for so many years. Our members share goals and concerns similar to yours. The delegates representing the 105 County Farm Bureaus at the 67th Annual Meeting of KFB adopted this resolution:

Fence Laws

There are inconsistencies and conflicting philosophies in the numerous fence laws scattered throughout the Kansas statute books. We believe there is a need for a thorough, careful analysis in order to

attachment 7
2/4/86 Sen. Ag.

update, clarify and consolidate our fence laws. We support the "fence-in" policy which requires farmers and ranchers to confine their livestock. We will support legislation which:

1. Prevents any increased liability for owners of land or livestock;
2. Avoids any burden of modifying existing fences or requiring construction of new fences; and
3. Continues the responsibility of the county commissioners in each county to serve as "fence viewers" for settling disputes regarding fences.

It is obvious S.B. 403 and KFB policy have a number of similarities:

1. The need to update and clarify the fence laws;
2. Kansas should adopt "fence-in" policy; and
3. Require only "new" fences to meet updated construction standards.

We believe it is appropriate to repeal the list of outdated and "fence-out" statutes. However, the case law, developed over the years by many court cases, will be lost. Therefore, we all must be prepared to accept the possibility of increased litigation for a period of time after these statute changes are made. Similar to your desire, our members insist any changes in the fence law should not increase liability to owners of land or livestock. We strongly urge this committee and your staff to carefully analyze the proposed changes to avoid such problems.

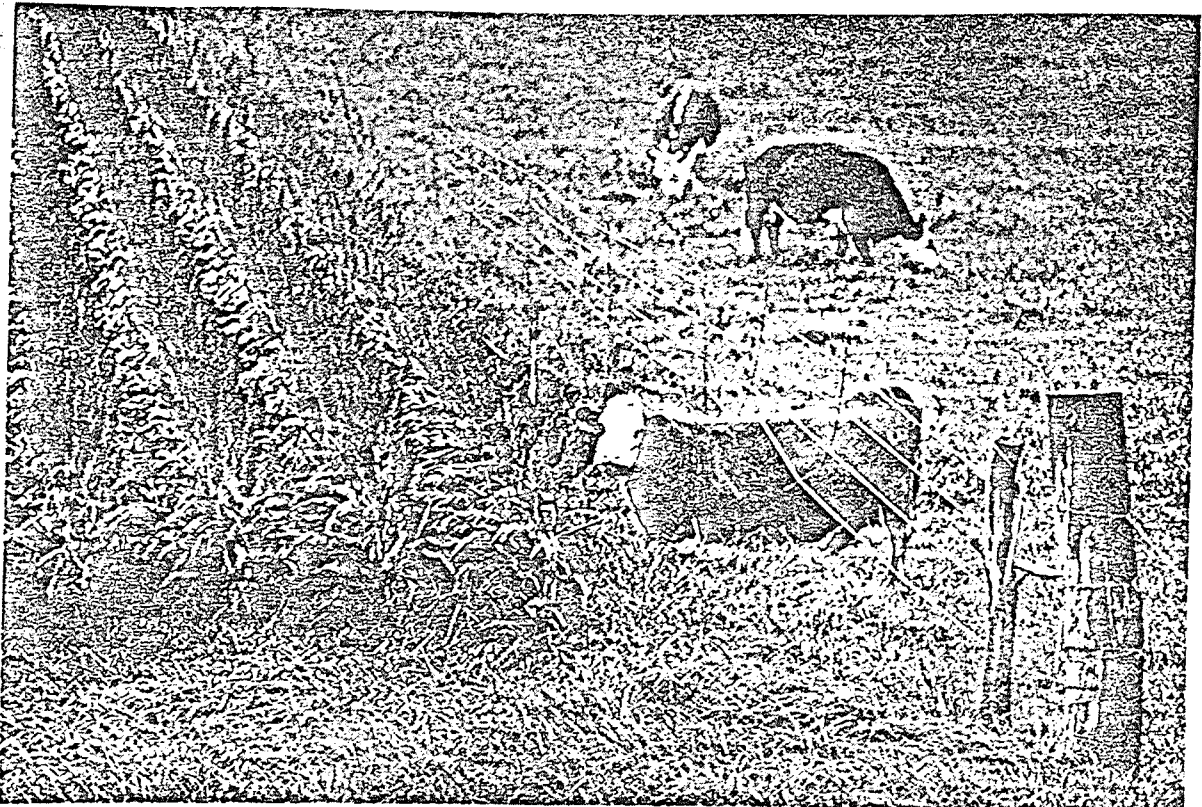
We have several questions concerning certain provisions of the bill:

1. If "fence-in" is adopted as the policy of the state, will the railroads challenge their current "fence-out"

responsibilities on a Constitutional question concerning equal treatment under the law???

2. "Newly constructed barbed-wire fence:" (lines 0089 to 0090) ...
 - a. Does this refer only to where **no** fence existed before???
 - b. Is this limited only to replacing an existing fence **with all new materials**???
 - c. Does it include replacing an existing fence using **some** posts and/or wire from the **old** fence???
 - d. How much materials from the **old** fence can be used in constructing the new fence (less than half or none - wire or posts)???
 - e. Adding 1 or 2 wires and/or adding steel posts to an existing line of hedge posts ... is this considered a newly constructed or only fence maintenance???
3. "Declaring an electric fence a legal fence" (lines 0099 to 00104) ... When a farmer erects an electric fence around 3 sides of his field, is the railroad required to construct an electric fence or a permanent 4-barbed wire fence along its right-of-way???

Thank you for this opportunity to express the views of the farmers and ranchers of Kansas Farm Bureau. I will attempt to respond to any questions you may have.



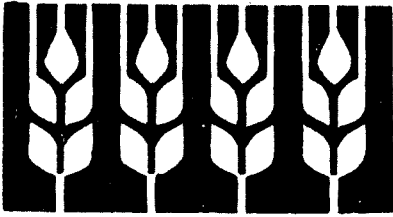
Grass isn't greener

AP Laserphoto

The lush green grass on the other side of the fence didn't interest this hereford cow which was caught sneaking under a barbed-wire

fence this morning south of Parsons. It was a tall field of milo that tempted this cow to stretch for a tasty meal.

KANSAS ASSOCIATION
OF WHEAT GROWERS



SENATE COMMITTEE ON AGRICULTURE & LIVESTOCK

Senator Jim Allen, Chairman

TESTIMONY CONCERNING SENATE BILL 403 - Kansas Fence Law

SUBMITTED Tuesday, February 4, 1986

Mr. Chairman and members of the committee, I am Howard Tice, Executive Director of the Kansas Association of Wheat Growers. I appreciate the opportunity to appear today and express the views of wheat producers in Kansas concerning the bill before you.

As I testified at the interim hearing on this issue, there are some serious flaws in the fence laws that are on the books presently. The language in several sections is confusing, misleading, and possibly contradictory. Senate Bill 403 attempts to clarify some aspects of the problem, by bringing the definition of a legal fence up to modern standards, and by declaring that domestic animals must be enclosed by a legal fence, thereby officially stating a "fence in" policy. However, by failing to make any changes in 29-301-319 and 29-401-409, the confusion still remains over who is responsible for maintenance of the required fences.

29-301 states that the owners of adjoining lands shall keep up and maintain in good repair, all partition fences between them, in equal shares, so long as both parties continue to occupy or improve such lands, unless otherwise agreed. Under the stated policy that animals must be enclosed by a legal fence, this section continues to mandate a policy that is one-half "fence-in" and one-half "fence-out." If Kansas is to have a "fence-in" policy, then the responsibility for building and maintaining fences must be clearly stated in the law, to be that of the livestock owner. So long as both adjoining landowners pasture livestock in the fields divided by the partition fence, this section is valid. When one landowner has no livestock on his side of the fence, this section is in contradiction to the "fence-in" policy stated in New Section 1.

29-304 directs fence viewers, in settling disputes, to assign each party his "equal share" of a partition fence for the purpose of maintenance. It also states that the determination of the fence viewer shall be final and binding upon all succeeding occupants of the land. The "equal shares" language is once again, contradictory to the "fence-in" policy, in the case of differing land use. It also forces new owners of land to adhere to previous decisions regardless of how circumstances may change.

29-306 also states that fence viewer assignments, or landowner agreements will be binding upon succeeding occupants of the land, a policy which is contradictory to 29-301.

29-309 is perhaps the most important section of this law, as regards the contradictory nature of present language versus the newly stated "fence-in" policy. This section was intended to allow one landowner to be exempted from responsibility for fence maintenance if that landowner does not use the fence. However, the language is so confusing as to imply that a landowner would be exempted under this provision, only if he uses the land on his side of the fence in the same manner as his neighbor. This confusion came to light in the case we presented at the interim hearing, when Mr. Gerald Persinger attempted to exercise his rights under this section to solve a dispute with a neighbor, only to have the Attorney General's office interpret this section in the manner I just described.

29-408 says that if animals break into an enclosure surrounded by a fence as described in this act, the owner of such enclosure may take possession of the animals and recover any costs of recovery and feeding, plus the cost of damage to his property. Clearer language is needed in this section to refer to the livestock owner's fence, rather than the neighbor's enclosure, which implies a responsibility on the part of the neighbor to enclose his land. That implication is clearly contradictory to the "fence-in" policy.

The resolution adopted by the KANSAS ASSOCIATION OF WHEAT GROWERS at our December convention states as follows:

Be it resolved that a land owner not wishing his land enclosed, should not be bound to build and maintain fences between himself and his neighbor, if he does not use the fences. There should be no requirement that property be protected from livestock owned by others.

The Herd Law should be applicable statewide.

I believe that New Section 1 of Senate Bill 403 adequately addresses the wishes of our members expressed in the statement that the Herd Law should be applied statewide.

I would like now, to propose some amendments to address the contradictions that I mentioned earlier. These amendments would properly be inserted between sections 6 and 7, with sections 7 & 8 being renumbered accordingly.

29-301 would be amended to state that - The owners of adjoining lands shall keep up and maintain in good repair all partition fences between them in equal shares, so long as both parties continue to occupy or improve such lands, ~~unless-otherwise-agreed~~ except in such cases where one adjoining landowner is using said partition fence to enclose livestock, and the adjoining landowner is not. In such cases, responsibility for building and maintaining said fence rests solely on the landowner enclosing livestock.

Since, we feel the amendment to 29-301 should cover the "equal shares" concerns we have with 29-304, I would propose amending 29-304 only by striking the words, "and upon all the succeeding occupants of the lands." This same amendment is necessary in 29-306.

I would propose the following amendment to 29-309: No person not wishing his land enclosed, and not ~~occupying-or-using-it-otherwise-than-in-common; shall-be-compelled-to contribute-to-erect-or-maintain-any-fence-dividing-between-his-land-and-that-of-an-adjacent owner;--but-when-he-encloses-or-uses-his-land-otherwise-than-in-common; he-shall-contribute to-the-partition-fence-as-in-this-act-is-provided.~~ using a partition fence to enclose livestock, shall be compelled to contribute to the cost of erecting or maintaining any fence dividing between his land and that of an adjacent land owner who is required by this act to enclose livestock. If said land owner, or any succeeding landowner, uses the land, previously unenclosed, to pasture or hold livestock for a period exceeding six months, said landowner shall then contribute to the maintenance of the partition fence as in this act provided. If the owner of said unenclosed land uses that land for temporary livestock pasture, he shall be required to enclose said livestock with a legal fence.

In response to a concern stated by one of the committee members, in reference to our testimony regarding 29-313, and in response to our concerns with that section, that it would allow one land owner to build a fence without agreement from his neighbor, and bill the neighbor for half the cost, I would propose the following amendment:

When land which has been unenclosed, is enclosed by one of the adjoining land owners, and the other adjoining land owner does not agree to the enclosure, nor use the fence for the purpose of enclosing livestock, the cost of building any new partition fence shall be the sole responsibility of the land owner building the fence. If the land owner who does not contribute to the building of the partition fence places livestock on his side of the fence within one year of the date of completion of the new fence, said land owner shall reimburse the other adjoining land owner for one half the cost of building the fence. If, after one year from the completion of a new partition fence, the land owner who does not contribute to the cost of building said partition fence places livestock on his side of the fence, the provisions of 29-309 shall apply.

Finally, I would propose the following amendment to 29-408:

If any of the animals mentioned in this act shall ~~break--into--an--enclosure~~
~~surrounded-by-a-fence-of-the-height-and-sufficiency-prescribed-by-this-act-[*]~~,--the-owner
~~of-the-enclosure~~ *break free of their enclosure, and trespass on someone else's property,*
the owner of said property may take into possession such animal trespassing, and keep the
same until damages, with reasonable charges for feeding and keeping, and all costs of suit,
be paid, to be recovered in any court of competent jurisdiction.

We appreciate the effort, and intent that resulted in the introduction of Senate
Bill 403. As times change, we must update laws to meet not only the different needs of
the people, but the changes in everyday language as well. Senate Bill 403, with the
suggested amendments, will do just that, in a manner which is fair to land owners who
own livestock, and those who do not.

CITATIONS

see *Bertram v. Burton*, 129 K.

wire fence deemed
tion. That in addition
clared by law to be a
wing shall be a legal
fence, of not less than
l wire from the ground
r inches nor more than
n the ground, and bot-
an twenty-four inches
een inches from the
wire equidistant, or
pper and lower wires;
stretched and barbed,
more than nine inches
re to be composed of
r than No. 13, or one
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eight feet apart, with
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vided, That in town-
re hogs are allowed to
all be three additional
er one of which shall
our inches from the
to be placed an equal
arly so, between this
required above.
ch. 113, § 1; April 5;

d Sections:

, see 29-319.

§§ 1, 9; Railroads § 120.

CITATIONS

of-way should conform to
oman v. St. Louis-S.F. Rly.
115.

uries to animals on tracks
oman v. St. Louis-S.F. Rly.

escaped through fence killing
against demurrer. *Bates v.*
52 P.2d 16.

obile collision with cow;
al errors considered; judg-
a, 188 K. 261, 266, 362 P.2d

extensive tracts in

certain counties; gates and hitching posts.
That whenever any person, persons or cor-
porations shall fence and enclose extensive
tracts of land of one hundred acres or over in
extent for grazing purposes in the counties
of Barber, Pratt, and Russell, and all coun-
ties west of range 15, west of the sixth prin-
cipal meridian, in the state of Kansas, such
person, persons or corporation shall provide
a suitable swinging or lifting gate, con-
structed in such manner that it may be easily
opened or closed, whenever said fence or
enclosure crosses any road established by
custom and usage but not a legally estab-
lished public highway. Said gate shall be so
constructed as to meet conveniently the re-
quirements of the traveling public; and in
addition to said gate, shall set posts on each
side of said gate, at suitable distances there-
from, and of not less than four inches in
diameter and not less than seven feet in
length, set not less than thirty inches in the
ground, and for the purpose of tying any
horse or team thereto, while any traveler is
engaged in opening or closing said gate.

History: L. 1901, ch. 225, § 1; March 22;
R.S. 1923, 29-106.

**29-107. Penalty for interfering with
such fence or leaving gates open.** Any per-
son who shall willfully molest or interfere
with said fence or enclosure described in
K.S.A. 29-106, by cutting wires or otherwise
mutilating or tearing down said fence, or
who shall willfully leave open any gate of
said fence or enclosure, shall be deemed to
have committed a misdemeanor, and shall
be liable to a fine not exceeding fifty dollars.

History: L. 1901, ch. 225, § 2; March 22;
R.S. 1923, 29-107.

Research and Practice Aids:

Hatcher's Digest, Fences §§ 2, 3.

Article 2.—FENCE VIEWERS

**29-201. County commissioners as
fence viewers.** The board of county com-
missioners in each county in this state shall
be fence viewers in each township of such
county, any two of whom shall be autho-
rized and empowered to act under the pro-
visions of this act [°].

History: G.S. 1868, ch. 40, § 5; R.S.
1923, 29-201; L. 1949, ch. 270, § 1; July 1.

° "Provisions of this act," see 29-101 to 29-104, 29-
201 to 29-203, 29-301 to 29-318, 29-401 to 29-409.

Research and Practice Aids:

Fences=13.

C.J.S. Fences §§ 10, 13(1) et seq.

Law Review and Bar Journal References:

"The Kansas Law of Livestock Trespass," Robert C.
Casal, 10 K.L.R. 55 (1961).

29-202. Penalty for neglect of duty.

Any fence viewer who shall, when re-
quested, unreasonably neglect to view any
fence or to perform any duty required of him
in this act, shall forfeit and pay the sum of
ten dollars, and shall also be liable to the
party injured for all damages consequent
upon such neglect.

History: G.S. 1868, ch. 40, § 6; Oct. 31;
R.S. 1923, 29-202.

Research and Practice Aids:

Fences=17.

C.J.S. Fences § 20.

29-203. Compensation and expenses.

Each fence viewer shall be entitled to re-
ceive seven dollars and fifty cents (\$7.50) as
full compensation for each fence viewed, to
be paid in the first instance by the party or
parties requiring the services; and all ex-
penses of the view shall be borne equally
between the parties interested, except in
case of a view to appraise damages for ne-
glect or refusal to make or maintain a just
proportion of a division fence, in which case
the costs of view shall be paid by the party
in default, to be recovered as a part of the
damages assessed.

History: G.S. 1868, ch. 40, § 7; R.S.
1923, 29-203; L. 1949, ch. 270, § 2; July 1.

Article 3.—PARTITION FENCES

Cross References to Related Sections:

Herd law, see ch. 47, art. 3.

29-301. Maintenance. The owners of
adjoining lands shall keep up and maintain
in good repair all partition fences between
them in equal shares, so long as both parties
continue to occupy or improve such lands,
unless otherwise agreed.

History: G.S. 1868, ch. 40, § 8; Oct. 31;
R.S. 1923, 29-301.

Cross References to Related Sections:

Rights and powers under herd law, see 47-305.

Research and Practice Aids:

Fences=12.

Hatcher's Digest, Fences § 5.

C.J.S. Fences § 10.

CASE ANNOTATIONS

1. Liability of landowners when fence not on line. *Conklin v. Dust*, 3 K.A. 211, 219, 43 P. 431.
2. Landowners fence lands together but build no partition fence; liability. *Baker v. Robbins*, 9 K. 303.
3. Essential elements of partition fence. *Markin v. Priddy*, 39 K. 462, 464, 18 P. 514. Modified: 40 K. 684, 689, 20 P. 474.
4. Fence defective; no recovery for trespass by cattle, when. *Markin v. Priddy*, 39 K. 462, 464, 465, 18 P. 514. Modified: 40 K. 684, 689, 20 P. 474.
5. Rights where landowners fence lands together and use in severalty. *Markin v. Priddy*, 39 K. 462, 465, 18 P. 514. Modified: 40 K. 684, 689, 20 P. 474.
6. Landowners fence lands together and use in severalty; rights. *Markin v. Priddy*, 40 K. 684, 20 P. 474.
7. Oral agreement that each maintain one-half division fence valid. *McAfee v. Walker*, 82 K. 182, 183, 184, 107 P. 637.
8. Bull escapes to neighbor's land; no action lies, when. *McAfee v. Walker*, 82 K. 182, 186, 187, 189, 107 P. 637.
9. Where fence needlessly expensive other party not liable for excess. *Griffith v. Carrothers*, 86 K. 93, 95, 119 P. 548.
10. Owner of animal trespassing on land protected by legal fence liable for damage without proof of fault; damage not limited to crops. *Lindsay v. Cobb*, 6 K.A.2d 171, 172, 627 P.2d 349.

29-302. Neglect to repair or rebuild. If any party neglect to repair or rebuild a partition fence, or the portion thereof which he ought to maintain, the aggrieved party may complain to the fence viewers, who, after due notice to each party, shall examine the same, and if they determine that the fence is insufficient, shall signify it, in writing, to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they may judge reasonable.

History: G.S. 1868, ch. 40, § 9; Oct. 31; R.S. 1923, 29-302.

Research and Practice Aids:

- Fences—17.
 Hatcher's Digest, Fences §§ 5 to 7.
 C.J.S. Fences § 20.
 Complaint to fence viewers, Vernon's Kansas Forms § 2341.
 Notice, Vernon's Kansas Forms § 2342.
 Order of viewers to repair or rebuild, Vernon's Kansas Forms § 2343.

29-303. Complainant may repair or rebuild, when; recovery; attorney's fee. If such fence be not repaired or rebuilt accordingly, the complainant may repair or rebuild it, and the same being adjudged sufficient by the fence viewers, and the value thereof, with their fees, being ascertained by them and certified under their hands, the complainant may demand of the owner of the land where the fence was deficient, the

sum so ascertained; and in case of neglect to pay the same for one month after written demand, may recover it, with interest at the rate of one percent per month, by action in any court of competent jurisdiction. In any such action the court shall allow the prevailing party a reasonable sum for attorney's fee.

History: G.S. 1868, ch. 40, § 10; R.S. 1923, 29-303; L. 1949, ch. 270, § 3; July 1.

Research and Practice Aids:

- Hatcher's Digest, Fences §§ 5 to 7.
 Complaint of failure to repair or rebuild, Vernon's Kansas Forms § 2344.
 Petition for recovery of amount spent for repair or rebuilding, Vernon's Kansas Forms § 2345.

Law Review and Bar Journal References:

- "Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 538, 547, 558 (1979).

29-304. Controversies; settlement by fence viewers. When any controversy shall arise about the rights of the respective owners in partition fences, or their obligations to keep up and maintain the same in good repair, and if they cannot agree among themselves, either party may apply to the fence viewers of the township in which such fence may be situated, who, after a reasonable notice to the other party, shall proceed, on application as aforesaid, to view such fence, and assign to each party, in writing, his equal share or part of such partition fence, to be by him kept up and maintained in good repair; which assignment shall be recorded by the register of deeds of the county in a book to be provided for that purpose, and shall be final, conclusive and binding upon the parties, and upon all the succeeding occupants of the lands, and they shall be obliged thereafter to maintain their respective portions of said fence.

History: G.S. 1868, ch. 40, § 11; Oct. 31; R.S. 1923, 29-304.

Research and Practice Aids:

- Hatcher's Digest, Fences §§ 6, 7.

CASE ANNOTATIONS

1. Award of fence viewers partly conclusive and partly prima facie. *Grey v. Edrington*, 29 K. 208, 209, 210.
2. An award obtained by fraud may be set aside. *Robertson v. Bell*, 36 K. 748, 754, 14 P. 160.
3. Duty of viewers in making assignment; basis of assignment. *Griffith v. Carrothers*, 86 K. 93, 119 P. 548.

29-305. Failure to erect or maintain assigned part; recovery of cost and attorney's fee. If a party neglect or refuse to erect or

maintain the part by the fence viewer maintained by that manner before entitled to recover thereof, with interest per month; fee to be fixed an action in any court; and the amount shall be a lien a with the same.

History: G.S. ch. 218, § 1; R.S. 270, § 4; July 1.

Research and Practice

- Hatcher's Digest,
 Law Review and Bar
 "Recovery of Attor
 Furney, 18 W.L.J. 53

29-306. Assi
 dation. All assign
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 shall contain a
 lands divided by
 the names of the
 agreement betwe
 land in relation
 fences between
 pertinent descri
 such agreement,
 conveyances of la
 office of the regi
 county in the san
 of fence viewers
 agreement, duly r
 article, shall be b
 all succeeding oc

History: G.S.
 R.S. 1923, 29-306

Research and Practice

- Hatcher's Digest, F
 Certificate of assign
 Kansas Forms § 2346.
 Partition fence agr
 § 2347.

CASE

1. Agreement that c
 enforceable. *McAfee*
 637.

29-307. Part
 share. When in
 owners of adjoin
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ch. 40, § 10; R.S.
ch. 270, § 3; July 1.

§ 5 to 7.

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Forms § 2345.

References:

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47, 558 (1979).

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maintain the part of the fence assigned him by the fence viewers, it may be erected and maintained by the aggrieved party in the manner before provided, and he shall be entitled to recover the ascertained cost thereof, with interest at the rate of one percent per month and a reasonable attorney's fee to be fixed and allowed by the court, by action in any court of competent jurisdiction; and the amount recovered, with costs, shall be a lien against the land chargeable with the same.

History: G.S. 1868, ch. 40, § 12; L. 1901, ch. 218, § 1; R.S. 1923, 29-305; L. 1949, ch. 270, § 4; July 1.

Research and Practice Aids:

Hatcher's Digest, Fences §§ 5 to 7.

Law Review and Bar Journal References:

"Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 538, 558 (1979).

29-306. Assignment of viewers; recodation. All assignments of the fence viewers shall be certified and signed by them, and shall contain a certain description of the lands divided by such partition fence and the names of the owners thereof; and any agreement between the owners of adjoining land in relation to the division of partition fences between them shall also contain a pertinent description of such lands; and such agreement, acknowledged or proved as conveyances of land, may be recorded in the office of the register of deeds of the proper county in the same manner as an assignment of fence viewers. Any such assignment or agreement, duly recorded as provided in this article, shall be binding upon the parties and all succeeding occupants of the lands.

History: G.S. 1868, ch. 40, § 13; Oct. 31; R.S. 1923, 29-306.

Research and Practice Aids:

Hatcher's Digest, Fences §§ 5, 7.

Certificate of assignment by viewers, Vernon's Kansas Forms § 2346.

Partition fence agreement, Vernon's Kansas Forms § 2347.

CASE ANNOTATIONS

1. Agreement that each maintain one-half of fence is enforceable. McAfee v. Walker, 82 K. 182, 184, 107 P. 637.

29-307. Party building more than his share. When in any controversy between owners of adjoining lands as to their respective rights in any partition fence, it shall appear to the fence viewers that either of the owners had, before any complaint made to

them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for so much as may be assigned to him to repair or maintain, the value of which shall be ascertained and recovered in the manner hereinbefore provided.

History: G.S. 1868, ch. 40, § 14; Oct. 31; R.S. 1923, 29-307.

Research and Practice Aids:

Hatcher's Digest, Fences §§ 5 to 7.

Award of viewers where one party has built fence, Vernon's Kansas Forms § 2349.

Complaint of owner who built more than his share, Vernon's Kansas Forms § 2348.

CASE ANNOTATIONS

1. Action upon award for fence viewers accrues when award made. Snyder v. Bell, 32 K. 230, 233, 4 P. 71.

29-308. Partition fences to be kept in good repair. All partition fences shall be kept in good repair throughout the year, unless the owners of the land on both sides otherwise agree.

History: G.S. 1868, ch. 40, § 15; Oct. 31; R.S. 1923, 29-308.

29-309. What occupants not required to contribute towards partition fence. No person not wishing his land enclosed, and not occupying or using it otherwise than in common, shall be compelled to contribute to erect or maintain any fence dividing between his land and that of an adjacent owner; but when he encloses or uses his land otherwise than in common, he shall contribute to the partition fence as in this act is provided.

History: G.S. 1868, ch. 40, § 16; Oct. 31; R.S. 1923, 29-309.

Research and Practice Aids:

Fences § 16.

Hatcher's Digest, Fences § 5.

C.J.S. Fences §§ 11, 13(1) et seq.

29-310. Proceedings when one common owner desires to occupy land in severalty. When lands owned in severalty have been enclosed in common without a partition fence, and one of the owners is desirous to occupy his land in severalty and the other refuses or neglects, on demand, to divide the line where the fence should be built, or to build a sufficient fence on his part of the line when divided, the party desiring it may notify the fence viewers who shall give written

notice to both owners that unless said owners agree on the erection of said fence, the viewers will, in not less than twenty nor more than 40 days, divide and assign said line and, in writing, assign a reasonable time (having regard to the season of the year) for making the fence; and if either party neglect to comply with the decision of the viewers within the time assigned, the other party, after making his own part, may make the other part, and recover the ascertained value thereof, with interest at the rate of one percent per month, together with the fees of the fence viewers as above provided and a reasonable attorney's fee to be fixed and allowed by the court.

History: G.S. 1868, ch. 40, § 17; R.S. 1923, 29-310; L. 1949, ch. 270, § 5; July 1.

Law Review and Bar Journal References:

Cited in "Recovery of Attorney Fees in Kansas," Mark A. Furney, 18 W.L.J. 535, 558 (1979).

29-311. Throwing land open. When one party shall desire to throw his land open and leave it unenclosed, he shall not take away any part of the partition fence belonging to him and adjoining the next enclosure, if the owner or occupant of such enclosure will, within two months after the same shall be ascertained, pay therefor such sum as the fence viewers shall, in writing, under their hands, determine to be the value of such partition fence belonging to such party.

History: G.S. 1868, ch. 40, § 18; Oct. 31; R.S. 1923, 29-311.

29-312. Rights of party not improving land adjoining partition fence. If any person shall determine not to improve any part of his land adjoining any partition fence that may have been divided according to the provisions of this act, and shall give six months' notice, in writing (provided such notice be served between the first day of July and the first of October), of such determination to all the adjoining owners or occupants of lands, he shall not be required to keep up or maintain any part of such fence during the time his lands shall lie open and unimproved; and he may thereafter remove his portion thereof, if the owner or occupant of the adjoining land will not pay therefor as provided in the preceding section.

History: G.S. 1868, ch. 40, § 19; Oct. 31; R.S. 1923, 29-312.

Research and Practice Aids:

Fences¹².

Hatcher's Digest, Fences §§ 2, 5.

C.J.S. Fences § 10.

Notice of intention to remove fence, Vernon's Kansas Forms § 2350.

29-313. Owner enclosing his unenclosed land shall pay for one half of partition fence. When land which has been unenclosed is enclosed, the owner thereof shall pay for one half of each partition fence between his land and the adjoining lands, the value to be ascertained and stated in writing, under their hands, by the fence viewers, in case the parties cannot agree; and if the owner enclosing as aforesaid shall neglect, for sixty days after the value has been so ascertained and demand made, to pay the same, the owners of such partition fences may recover, with interest, as hereinbefore provided; or the party enclosing may, at his election, rebuild and make half of each of such partition fences, and if he neglect so to do for sixty days after making such election, he shall be liable as before provided.

History: G.S. 1868, ch. 40, § 20; Oct. 31; R.S. 1923, 29-313.

Research and Practice Aids:

Fences¹².

Hatcher's Digest, Fences §§ 5 to 7.

C.J.S. Fences § 10.

29-314. Fence on boundary line between counties; viewers. In all cases where the line upon which a partition fence is to be made or to be divided is the boundary line between counties and in all cases where such line is partly in one county and partly in another, two of the fence viewers shall be the chairmen of the board of county commissioners of the respective counties and in case of their disagreement a third shall be chosen by them from the county fence viewers in the two counties, and their assignment, in order to be binding and effectual, must be recorded, as hereinbefore provided, in each of such counties.

History: G.S. 1868, ch. 40, § 21; R.S. 1923, 29-314; L. 1949, ch. 270, § 6; July 1.

Research and Practice Aids:

Fences¹³.

C.J.S. Fences §§ 10, 13(1) et seq.

29-315. Owner defined; notice; liability to tenant or occupant. The word "owner," under the provisions of this act, shall be held to include and apply to the occupant or tenant, when the owner does not reside within the county; and no proceed-

ings under this act unless he shall be liable to the occupant and expense of it under the provisions of this act, unless there is a contrary.

History: G.S. 1868, ch. 40, § 22; R.S. 1923, 29-315.

29-316. Fence on line; removal. A fence may be removed between his own land and the land of another, that the fence may be removed on such line and partition fence, if the owner shall have a right as if it were his own.

History: G.S. 1868, ch. 40, § 23; R.S. 1923, 29-316.

Research and Practice Aids:

Hatcher's Digest, Fences.

29-317. Partition fence on side of line. The fence viewers shall determine the location of partition fences standing on a side of a division line, and the location of such fences shall be ascertained by the fence viewers.

History: G.S. 1868, ch. 40, § 24; R.S. 1923, 29-317.

Research and Practice Aids:

Hatcher's Digest, Fences.

CASES:

1. Other party must fence. Conklin v. Du-

29-318. Fences where hogs are at large in one township. In all cases where hogs are at large in one township, the township lines, between which hogs are prohibited from running, shall be built in the first article of the township where from running at large of any hogs causes damage or inconvenience of such hogs to the township lines by way of trespass.

History: G.S. 1868, ch. 40, § 25; R.S. 1923, 29-318.

*First article of the

assessment, including services, they shall writing, subscribe deliver the same to ch damage; and all ll be borne equally erved, except in se damages for ne- or maintain a just ence, in which case e paid by the party ed as a part of the

h. 40, § 28; Oct. 31;

citations under 29-405.

by civil action of rney's fee. If any damages shall be as- vers under the pro- all fail or refuse to ssed, after the same ed, and after receiv- sment made by the d, the same may be on in any court of and in all such ac- the fence viewers, ll be received in all lence of the amount tained by the party l in all such actions ow to the prevailing ney's fee.

ch. 40, § 29; R.S. h. 270, § 7; July 1. e citations under 29-405.

References:

orney Fees in Kansas," 5, 558 (1979).

of proper height or viewers shall be of is not of the height l by this act [°], the em to examine the sts of such view and erved in a civil action fence viewers, with istrict court of the fendant may reside. ch. 40, § 30; R.S. h. 105, § 12; July 1. 29-101 to 29-104, 29-201 29-401 to 29-409.

Research and Practice Aids:

Hatcher's Digest, Animals §§ 16 to 18; Fences §§ 9, 10

29-406. Removal of fence built upon land of another by mistake; damages. When a person has made a fence on an enclosure which afterwards, on making division lines, is found to be on lands of another, and the same has occurred through mistake, such first person may enter upon the land of the other and remove his fence and material within six months after such line has been run, upon his first paying or offering to pay the other party for any damages to the soil which may be occasioned thereby; and when the parties cannot agree as to the damage, the fence viewers may determine it as in other cases.

History: G.S. 1868, ch. 40, § 31; Oct. 31; R.S. 1923, 29-406.

Research and Practice Aids:

Fences—27.
Hatcher's Digest, Fences § 2.
C.J.S. Fences § 17.

29-407. Limitations on removal. But such fence shall not be removed, if it was made of timber or other material taken from the land on which it is built, until the party pays to the owner of the land the value of the timber or other material, to be ascertained by the fence viewers; nor shall a fence be removed at a time when the removal will throw open or expose the crop of the other party, but it shall be removed within a reasonable time after the crop is secured, although the six months above specified have passed.

History: G.S. 1868, ch. 40, § 32; Oct. 31; R.S. 1923, 29-407.

29-408. Taking trespassing animals into possession. If any of the animals mentioned in this act [°] shall break into an enclosure surrounded by a fence of the height and sufficiency prescribed by this act [°], the owner of such enclosure may take into possession such animal trespassing, and keep the same until damages, with reasonable charges for feeding and keeping, and all costs of suit, be paid, to be recovered in any court of competent jurisdiction.

History: G.S. 1868, ch. 40, § 33; Oct. 31; R.S. 1923, 29-408.

* For sections of "this act" see citations under 29-405.

Revision note, 1923:

Edited by striking out "in the twenty-seventh section of this article described" and inserting in lieu thereof "mentioned in this act," to clarify reference.

Research and Practice Aids:

Animals—92.
Hatcher's Digest, Animals §§ 12, 15, 19, 29, 31; Fences §§ 9, 10; Replevin § 12.
C.J.S. Animals § 183 et seq.

Law Review and Bar Journal References:

Kansas annotations to Restatement of Torts, F. J. Moreau, 11 J.B.A.K. 291, 306 (1943).

CASE ANNOTATIONS

1. Injury must be consequence of voluntary act. *Maltby v. Dihel*, 5 K. 430, 432.
2. Detention of cattle by person damaged; owner's right of replevin. *Smith v. Woodleaf*, 21 K. 717, 719.
3. Landowner may waive lien claim and sue for damages. *Prather v. Reeve*, 23 K. 627, 629.
4. Colt killed by mule known to be vicious; owner liable. *Hill v. Applegate*, 40 K. 31, 19 P. 315.
5. Damage action; bull escaped through fence killing another; petition sufficient against demurrer. *Bates v. Alliston*, 186 K. 548, 550, 352 P.2d 16.

29-409. Cruelty to domestic animals; damages. If any person or corporation shall hurt, wound, kill, lame or destroy, or cause to be hurt, wounded, killed, lamed or destroyed, by running over or against, shooting, worrying with dogs, or otherwise, any of the animals mentioned in this act, when such animals are upon premises which are not enclosed with a sufficient fence as prescribed in this act, or when any such animals are upon the unenclosed premises of any such person or corporation, such person or corporation so offending shall satisfy and pay the owner of any such animal or animals full damages therefor, with costs.

History: G.S. 1868, ch. 40, § 34; Oct. 31; R.S. 1923, 29-409.

Revision note, 1923:

Edited by striking out "the twenty-seventh section of" so that the text shall read in part as follows: "animals mentioned in this act," to clarify reference.

Cross References to Related Sections:

Cruelty to animals, see 21-4310.

Research and Practice Aids:

Animals—40.
Hatcher's Digest, Animals §§ 11, 12, 15, 45.
C.J.S. Animals § 67 et seq.

CASE ANNOTATIONS

1. The injury must be the consequence of a voluntary act. *Maltby v. Dihel*, 5 K. 430, 432.
2. Colt killed by mule known to be vicious; owner liable. *Hill v. Applegate*, 40 K. 31, 19 P. 315.

HEDGES AS LEGAL FENCES

29-410. Osage orange plant deemed

2-11-86

Proposed Amendment

1986 Senate Bill No. 403

On page 3, following line 108, by inserting a new section to read as follows:

"Sec. 7. K.S.A. 66-308 is hereby amended to read as follows: 66-308. (a) Any person, persons or corporations owning land by or through which any railroad or any electric interurban line has been or may be constructed, who has enclosed or may enclose the same or any part thereof, and adjacent to the line of such railroad or interurban line, with either a lawful fence or a hog-tight fence, may demand of such railroad or interurban company that it enclose its line next thereto with a lawful fence or hog-tight fence corresponding in class of fence to that maintained by the owner, and maintain the same: Provided, That the following shall constitute a hog-tight fence for the purpose of this act: A woven-wire fence not less than twenty-six inches high with not less than seven cables and meshes not to exceed six inches in length. The bottom mesh shall not be more than three inches wide; the second not more than three and one half inches wide, the third not more than four inches wide, the fourth not more than four and one half inches wide, the fifth not more than five inches wide, and the sixth not more than six inches wide. The bottom wire of the said woven-wire fence shall be placed not to exceed two

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attachment 9

inches from the surface of the ground. And in addition to the woven wire already prescribed there shall be not less than three barbed wires placed above said woven wire. The first barbed wire above the woven wire shall be placed four inches above the top of the woven-wire fence. The second barbed wire shall be placed eight inches above the first barbed wire, and the third barbed wire to be placed eight inches above the second barbed wire; in all, forty-eight inches. The posts shall be of ordinary size for fence purposes and set in the ground at least two feet deep and not to exceed sixteen feet apart. The barbs on the barbed wire shall not exceed six inches apart, said wire to be of not less than No. 13 standard gauge.

"(b) For purposes of this section, an electrically charged wire fence described in section 5 of this act shall not be deemed a lawful fence."

Also on page 3, by renumbering sections 7 and 8 as sections 8 and 9, respectively; in line 111, by striking the word "and" and inserting in lieu thereof a comma; also in line 111, after the word "inclusive", by inserting: ", and 66-308";

On page 1, in the title, in line 19, by striking the word "and" where it first appears and inserting in lieu thereof a comma; also in line 19, after "47-122" by inserting the following: "and 66-308";