

STOCK LAW:
FOREST CROP LANDS:

In a township or county in which it is lawful for domestic animals to run at large, a person who wishes to keep such animals off of his premises must fence against them.



October 15, 1954

Honorable William E. Seay
Prosecuting Attorney
Dent County
Salem, Missouri

Dear Sir:

Your recent request for an official opinion reads as follows:

"By virtue of Chapter 270 of the 1949 Revised Statutes of Missouri, certain townships may restrain livestock from running at large, if the required majority of voters vote for such restraint. Chapter 254 of the 1949 Revised Statutes of Missouri deals with creating forest crop land and sub-section 2 of 254-200 specifically forbids the use of land designated as forest crop land for pasture, therefore, I should like to submit the following question:

"As a land owner who has land in a township which has not voted to restrain animals from running at large also has the same land designated as forest crop land is it incumbent on that land holder to fence out free-roaming animals in order that his land continue to be classified as forest crop land?"

Section 270.010 RSMo 1949, states that it shall be unlawful for the owner of any horse, mule, ass, cattle, swine, sheep or goat to allow such animals to run at large outside the enclosure of the owner.

However, Section 270.080 RSMo 1949, reads:

"The provisions of this chapter are hereby suspended in the several counties in this state, until a majority of the legal voters of any county voting at any general or special election called for that purpose shall decide to enforce the same in such county; provided, that

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only a majority of the legal voters voting on said question shall be necessary to decide its adoption or rejection."

Your situation is one where such an election as is mentioned in the above section has not been called, and it is, therefore, lawful for stock to run at large in the area in which is located the forest crop land mentioned by you.

We here direct attention to the case of Leach v. Lynch, 114 Mo. App. 391, which at l.c. 394 states:

"* * * In determining this question we note first that in this State domestic animals are commoners and have a right to run at large and the party who wishes to keep them off his premises must fence against them. (Bradford v. Floyd, 80 M. 207, l.c. 211; Woods v. Carty, 110 Mo. App. 416, l.c. 423, 85 S.W. 124; McClean v. Berkabile, 123 Mo. App. l.c. 652, 100 S.W. 1109.) By our statute, which provides for elections to determine whether domestic animals shall be restrained from running at large, we find goats included in the same category with horses, cattle, hogs and sheep, sections 4777, 4783, Revised Statutes 1899.

"Under the law in this State, where there has been no vote of the people ordering goats restrained, they have the right to run at large, and defendant, having conceded that his fence was bad, the goat in question was not a trespasser when he was found upon his premises.* * *"

In addition to holding that where, as in your situation, an election has not been had, favorable to restricting animals from running at large, that animals may run at large, the above case holds that "a party who wishes to keep them off his premises must fence against them". This would seem to be applicable in your case.

As you state, according to Section 254.200, RSMo 1949, use of lands for pasture, which lands have been classified as forest crop lands, subjects the lands to being taken out of that classification.

It would appear that a person who had land classified as forest crop land in the area where domestic animals could lawfully run at

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large, would have the responsibility of keeping domestic animals off of his land if he did not want the land to be subject to losing its classification. We believe that the fundamental point here is that the classified lands not be used as pasture land, and that so long as they are not so used, they would not lose their classification merely because they were not fenced. For example, these lands might be in an area where domestic animals did not graze; or they might be entirely surrounded by natural barriers which domestic animals could not pass, or the owner of the land might provide watchers to keep domestic animals off of it. So long as it was not used for pasture, we do not believe that it would be subject to losing its classification.

CONCLUSION

It is the opinion of this department that in a township or county in which it is lawful for domestic animals to run at large, that a person who has land classified as forest crop land has the responsibility of keeping that land from being used as pasture by domestic animals, which is to say that he has the responsibility of keeping domestic animals off of it. This he may do by fencing or by any other effective method. If the land is in an area where domestic animals do not graze, the land would not be subject to losing its classification because it was not fenced.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Very truly yours,

JOHN M. DALTON
Attorney General

HPW/lld