

## Opinion No. 14-1221

May 5, 1914

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

**TO:** Mrs. Agnes M. Moore, Lockney, New Mexico.

### **FENCES.**

Definition of a legal fence, and damages to crops by trespassing animals.

### **OPINION**

{\*81} I have just received your letter of the 29th ult. in which you ask me to send you laws on fencing in Quay and Union Counties.

There are not statutes on that subject specially applicable to those counties, but there are two acts of the legislature which are printed as Chapters 13 and 70 of the Laws of 1909 which are applicable to the whole state, and you can undoubtedly see a copy of the laws of that year in the office of your justice of the peace.

The earlier one of these is the one defining a lawful fence in New Mexico and is to the effect that when a fence is of barbed wire and posts there must be not less than four wires, well stretched and firmly fastened to the posts, the top one at least four feet from the ground and the bottom one not more than one foot from the ground, the wires not to be over twelve inches apart; the posts to be not more than twenty-four feet apart, firmly set in the ground to a depth of at least two feet and to be not less than three inches in diameter at the smaller end, and when they are more than sixteen feet apart, there must be stays four feet long and at least one inch thick firmly fastened to the wires not more than eight feet apart.

{\*82} When the fence is constructed of lumber and posts, the boards must be at least one inch thick and six inches wide, with posts as described in the previous section, not over eight feet apart, boards to be firmly nailed to the posts and the space between the boards not to be more than six inches.

When the fence is constructed of poles and posts, the posts shall be not more than twelve feet apart and of the same size and set in the ground as described in the first section, the poles to be at least two inches in diameter at the smaller end and at least four in number firmly fastened to the posts with nails or wire, the top pole at least four feet from the ground, the bottom pole not more than one foot from the ground and the poles not more than one foot apart.

When the fence is constructed of stone, adobe, woven wire or other material, it must be at least four feet in height and equal in strength to the fence described in the first section.

Chapter 70 of the Laws of 1909 is to the effect that damages to lands or crops by trespassing animals cannot be recovered unless the lands are inclosed by a legal fence. It is probable, however, that under some circumstances where the owner of stock turns it loose in such places that it is certain to go upon cultivated lands, the owner of the land might recover damages notwithstanding this statute.

I return your letter with the adhering postage stamps minus one.