

Kansas Fence Law, Fact and Fiction

AGRI-VIEWS

by Chuck Otte, Geary County Extension Agent

Few topics in rural Kansas life are more filled with fact and fiction than Kansas Fence Law. Yes, we have a fence law in Kansas. We have had for a long time. It specifies who is and isn't responsible for building and maintaining a fence and it even gives specifics on what qualifies for a legal fence including stone walls and hedge fences!

Kansas is considered a fence in state. In other words, we are not "open range". The owner of the livestock is responsible for keeping them "fenced in." With that said, a public road MAY go through private property where the cattle are not restricted from access to the road, so be alert to this fact in the more rural areas of the state. But in general, livestock are to be kept behind a fence.

Kansas law states that adjoining property owners are equally responsible for maintaining a fence, or as the statute is written, "in equal shares". Contrary to what many landowners practice, the right-hand or left-hand rule is convention, not statute. What this means is that where two properties adjoin, the two property owners are responsible for building or maintaining that fence. What often happens is that the two owners will agree that if they meet at the middle of the fence, each will take the half of the fence to the right or left. This works fine when the entire length of the fence is on fairly level land. But if there is a big difference in the lay of the land (flat vs. hilly) then one property owner is being taken advantage of. For this reason, the law states that each owner is equally responsible so that the added cost of the adverse terrain is not wholly on just one owner. If a fence is along a county road though, the full cost of the fence is on the sole property owner. There is a special provision in the statutes however that pertain to fences along state highways.

Most partition fences, as these are called, are constructed of barbed wire. What constitutes a legal barbed wire partition fence is actually far less than what most cattle producers would ever consider building! A legal barbed wire partition fence must be at least three wires. The third wire from the ground must be 44 to 48 inches from the ground. The bottom wire must be between 18 and 24 inches from the ground. The center wire must be equidistant between the upper and lower wires. The wires must be securely fastened to the posts, be well stretched with barbs averaging not more than nine inches apart. Posts must not be more than two rods apart (a rod is an old surveyors measurement and is 16.5 feet in length so two rods is 33 feet) and not less than 20 inches in the ground. There are even requirements of size of wire, but that's too complex to include here!

I occasionally am asked by owners of small rural residential properties if an adjoining property owner can force them to pay for half of the fence. The answer to that is a gray area. There is a provision in the law that states that non-livestock owners who don't want their land enclosed cannot be forced to pay for an equal share of the partition fence. There are several conditions to that exception, it can get quite complex, and the statute has never been interpreted by an appellate court in Kansas. I do encourage adjoining landowners in these cases to share in the costs, if they can afford to do so, to maintain neighborly relations.

Good fences do make good neighbors. I believe totally in this. But make sure that you fully understand the fence law so that you are following legal statutes, not long standing tradition that may or may not be factual!