

Herd Districts — Non - Contiguous Land — Inclusion of Land Without Petition of Owner—Inclusion of Land Without Any Petition.

Lands lying contiguous and adjacent to a herd district may be included within the district providing the lands comprise a continuous area or block.

The possessor of lands who is not the owner thereof may take steps to have the same included within a herd district.

Lands may not be embraced within a herd district except upon the petition of the owner or possessor. They may not be included without any petition.

Dean King, Esq.,
County Attorney,
Kalispell, Montana.

My dear Mr. King:

You have submitted for my opinion the following questions:

1.. "Where a herd district has been lawfully created and the owners of territory adjoining the herd district petition to be included in said district, is the property which may be included strictly limited to that lying contiguous to the old district, or may lands be included which though not themselves contiguous to the district, are contiguous to other lands which are contiguous to the herd district?"

2. "May lands, without a petition of the owner thereof, be included within a herd district already created?"

Regarding your second question and distinguishing between a petition of an owner and a petition of a possessor of lands, from the statement of facts submitted it appears also that the question arises whether lands that are not petitioned to be included at all but which lie within the block of territory comprising the lands of the entire number of petitioners, may be included within or added to the district already created.

The language of the Act that must be relied upon for the authority to add territory to a herd district already formed is found in Section 2 of Chapter 167 of the Laws of 1919, reading as follows:

"Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created,
* * * such lands shall be included in said Herd District and become a part thereof."

It was held by this office under a former Attorney General that only lands lying contiguous to the territory comprising the original district may be added to the district after its creation (Vol. 8, Opinions of Attorney General, 244). I am not disposed to subscribe fully to the conclusions therein reached. While by strict construction of the language of Section 2, above, the conclusion can be reached that only lands actually touching original territory may be added thereto, the language employed does not necessarily lead to that conclusion. It would seem strange if the Legislature intended that only owners of lands immediately adjacent to the district, as originally created, could ever include their lands within the district; that a farmer owning 40 acres touching the original territory could join the district and secure the protection provided by the law from foraging live stock, while his neighbor owning the land adjoining his but on the side away from the district should be forever barred. I believe that the intention of the Legislature was that lands to be added to the district must merely lie in a block or continuous area in order to be added, and while this intention is not accurately expressed by the language employed, it would be difficult to describe the neighboring lands in any other way than with the words employed, and the description used in the words "contiguous and adjoining" is that which would naturally be adopted in designating the lands intended in as brief a manner as possible. The intention was merely to include the adjacent lands provided that such lands comprised a continuous area or block.

It seems also to have been the intention of the Legislature that a possessor of lands who is not the owner may take steps to have the same included within the district. The terms "owner or possessor" are used each time in connection with the provisions for creating and abolishing herd districts, and the last paragraph of Section 2 of Chapter 167, *supra*, confirms this view, the section reading as follows:

"Herd Districts may be created in any county in the State of Montana to contain fifty-four square miles or more, lying not less than three miles in width, outside of the incorporated cities, upon petition of *owners or possessors* of fifty-five per cent of the land in such district, and providing twenty-five per cent or more of the land in such district is in actual cultivation, and such petition shall designate the months of the year when herd district is effective, and upon presentation and filing of such petition properly signed giving outside boundaries and description of proposed district and the post-office address of the signers thereto, with the Clerk and Recorder in the county in which the said district is being created, the County Commissioners of such county, upon receipt therefor, shall set a date for hearing protests, and verifying the signatures thereto, and shall give not less than twenty days' notice of the same by three publications in a newspaper of general circulation in the county of the proposed district, and should it appear to such county commissioners after such hearing, that the signatures attached to such petition were genuine, they shall immediately declare such herd district created and established; after which the County Commissioners must give notice by four weekly publications in some newspaper nearest the district of the creation of such districts, also stating period such districts will be in effect and such district shall not be in effect until thirty days have expired after the order, provided that such herd districts may be abolished at any time upon proceedings as hereinbefore set forth for the establishment of such herd districts.

"Upon petition of any *owner or possessor* of lands lying contiguous and adjoining any herd district theretofore created, and upon like hearing and notice any provision as hereinabove provided for, such lands shall be included in said Herd District and become a part thereof.

"Should the Signature of Lessee appear on the petition creating or abolishing any herd district, the owner or owners of said land may appear either in person or agent and enter their protest. And the Board of County Commissioners shall remove the name of lessee from said petition, and no person shall be permitted to withdraw his name after the hour set for hearing same."

From this it is apparent that it was intended that lessees could include lands leased unless the protest of the owners is entered.

As to the third question, the only provision made for adding lands after the district is once created is upon petition of the owner or possessor. While for the purpose of forming the district in the first instance, it is not required that the owners of all of the area to be

included shall sign the petition, no similar provision is made for adding territory to the district, and it follows that additions can be made only upon petition of the owner or possessor.

I am, therefore, of the opinion that any lands lying adjacent to a herd district may be added thereto upon proper petition, provided that such lands constitute a continuous block or area so that the addition as a whole is "contiguous and adjoining" the district already in existence, and by this is meant contiguous to a district as originally formed or contiguous to lands that have been later included therein; that the petition may be signed by either the owner or possessor of such lands; and that lands may not be added to a district already created except upon petition of the owner or possessor thereof. The lands may not, however, under the paragraph of Section 2, last quoted, be included over the protest of the owner.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.