

**Right-of-Way, Fencing Of. Railroad, Right-of-Way. Fence,
Railroad Right-of-Way.**

Railroad company not compelled to fence right-of-way. Has option to fence or to become liable for stock killed. Owner of crop required to construct his own fence to prevent stock from getting on his ground.

June 5, 1911.

The Railroad Commission of Montana,
Helena, Montana.

Gentlemen:

I am in receipt of your letter 2nd inst., in which you submit the question as to whether under the provisions of Section 4308 of the Revised Codes, a railroad company is compelled to fence its right of way, or whether it is optional to leave it unfenced, thereby subjecting itself to the liability for damages by stock killed or maimed upon its line of road. You also cite a case wherein stock passing over an unfenced portion of the railway's right of way, caused serious damage to crops growing upon adjacent lands.

Said Section 4308 provides its own penalty, and gives to the railroad company, the option of protecting itself against liability by maintaining the fences as provided by law, or by neglecting or refusing to construct the fence, thereby rendering itself liable as provided in that section. The object of the law in requiring the right of way to be fenced, is to prevent cattle from getting upon the railroad track, and not for the purpose of protecting adjacent crops. The owner of the crop may protect it by the construction of a fence as provided in Section 2082 et seq. Revised Codes.

Yours very truly,
ALBERT J. GALEN,
Attorney General.