

Fences, Down or Broken. Criminal Action, When May Be Commenced Against Owner of Fence.

The full period of forty days must elapse before a criminal prosecution may be commenced.

Before the offender can be charged with criminal responsibility the wire must be down for thirty days and any notice given before that period had elapsed would not be effective.

December 13th, 1913.

Hon. J. A. Slattery,
County Attorney,
Glendive, Montana.

Dear Sir:

I am in receipt of your communication of the 8th instant, asking for my interpretation of Sec. 8868 of the Revised Codes of Montana, 1907, in which the questions submitted are:

"Is it necessary under Sec. 6888 of the Revised Codes that a period of forty days elapse before a criminal action can be instituted against a person who shall permit barbed wire to remain down or broken in such condition as to be dangerous to livestock?"

"Is the crime complete after the barbed wire has been permitted to remain down for a period of thirty days without the personal service upon him of a notice to repair the same?"

"Can a prosecution be properly instituted where, after being notified in writing, a person fails to repair a fence within a period of ten days after such notice, regardless of the length of time the fence had been down prior to the service upon him in order to obtain a successful prosecution?"

I note that as you interpret the law, the full period of forty days must elapse before criminal prosecution can be commenced, under the terms of this statute, and I think your interpretation is correct.

It must be admitted that such an interpretation gives to the offender a consideration which such conduct in no way deserves. The law would come much nearer being sensible and effective if it made the leaving of a wire fence down for thirty days a misdemeanor in any event, with the further provision that the leaving of it for ten days after notice in writing would also be criminal, but as the law reads:

"For the period of thirty days, and the further period of ten days after personal service upon him of a notice in writing,"

I am of the opinion that no prosecution could lie before forty days had elapsed. This, I think, answers your first question.

As to the second question, I am of the opinion that the statute requires the wire to be down for the full period of thirty days before any notice would be effective to charge the offender with criminal responsibility.

In answer to your third question, I will say that any notice given before thirty days has expired from the time the fence became dangerous to livestock would not be effective as a foundation for a criminal action.

Yours very truly,

D. M. KELLY,
Attorney General.