

Herd Districts—Creation Of—Territory in More Than One County.

It is doubtful if a herd district can be created, where its boundaries include territory in more than one county.

July 12th, 1919.

Hon. John S. Nyquist,
Froid, Montana.

Dear Sir:

I am in receipt of your letter of the 9th inst., asking that I advise you whether or not a herd district can be organized containing the area required by law, and being partly in one county and partly in another county.

I am very doubtful whether such a herd district can be created. The herd district law enacted by the last legislature, Chapter 167, Session Laws 1919, provides that a herd district may be created in any county to contain fifty-four square miles or more, lying not less than three miles in width, etc. No reference is made any place in the act to the creation of a district lying in more than one county. I am very much inclined to think that the courts would hold that in order to create a herd district there must be at least fifty-four square miles in one county, and that the law does not contemplate the creation of a herd district embracing territory situated in more than one county. And that they would further hold that if it is desired to place territory in more than one county in a herd district a district must be created in each county, and there must be at least fifty-four square miles in each district.

Some of our laws do contain provisions for joint action by counties in certain instances. For instance in constructing a bridge over a stream which is the dividing line between two counties, the statute authorizes joint action by the boards of county commissioners, and provides the manner in which such action may be exercised. So also a statute permits of the organization of a joint school district out of land lying partly in one county and partly in another county, and provides the manner in which such action may be taken. The herd district law, however, contains no such provisions, and in the absence thereof, and having in view the particular wording of the first section of such law, I doubt very much whether the commissioners of two counties could act in creating one herd district. This was a matter that probably was never called to the attention of the persons drafting the herd law, or to the legislature when the same was before it, or some provision would have been made for the creation of such a district.

Even if it is possible to create such a district I believe that it would be necessary to advertise in both counties. The advertising is simply for the purpose of giving those interested an opportunity to be heard either for or against the creation, and the people living in both counties would be equally interested and equally entitled to such notice.

Respectfully,

S. C. FORD,

Attorney General.