

Horse Herd Districts—Creation—Petitions—Signers.

An owner of land within a proposed horse herd district in order to be eligible to sign the petition for the creation thereof must either be residing in the district or in actual possession of the land included therein.

Mr. Fred Lay,
County Attorney,
Bozeman, Montana.

June 25, 1932.

My dear Mr. Lay:

Several days ago citizens of your county called upon this office relative to the interpretation of the horse herd district act—particularly as to who is entitled to sign the petition.

I note that under date of May 4th an opinion was rendered you in which it was held that the legislature, in using the words "resident owners or possessors" intended to require that such owners or possessors must actually reside within the proposed district.

This entire question has again been reviewed by this office at considerable length. As the act, to say the least, is very indefinite in this regard, and the best that can be done is to apply the general rule of statutory construction and try to give effect to the legislative intent. Section 1 of said act provides that the petition may be signed by the resident owner or possessor of lands sought to be included within the district. By reason of the fact that the possessor is allowed to sign the petition it would appear that the legislature intended to fix the qualifications of a signer as being a user of the land rather than confine such signers to the legal owners. This is shown by the provision in said act allowing the legal owner to have the name of the lessee to be withdrawn from the petition.

Construing the act with this intent in mind it is my opinion that an owner entitled to sign the petition must either be an actual resident of the district or in actual possession of the land sought to be included therein; that is, if the owner is using the land himself he would be held to be a possessor within the meaning of the act but a person owning land sought to be included within the district who has leased the same and who is not residing thereon would not be entitled to sign.

Very truly yours,

L. A. FOOT,
Attorney General.