

**Opinion No. 330****Fences—Legal Fences—Livestock—  
Trespass—Herd Districts.**

**HELD:** The law in relation to division or partition fences is exactly the same either within or without herd districts.

So far as the question of trespassing stock within a herd district is concerned, it is not necessary for the owner of the land or crop to fence same before he may have his civil remedy for such trespass.

September 8, 1933.

You ask whether or not it is necessary for co-terminus land owners to maintain line or division fences within herd districts.

The law in connection with division fences is contained in Revised Codes of Montana 6677 to 6732. I do not understand that this law was repealed, either expressly or impliedly, by the law in relation to herd districts, Revised Codes 3384 to 3389, and amendments. Therefore the law in relation to division or partition fences is exactly the same either within or without herd districts.

Your second question appears to involve the matter as to whether or not it is necessary that lands upon which livestock are held should be fenced or whether some duty exists upon the owners of other lands to keep same fenced in order to prevent the trespass of stock where the stock is within a herd district.

According to the law within herd districts, section 3385, Revised Codes, amended by Chapter 45, Laws of 1925, the duty is upon the owner of stock within such district to see that his stock does not trespass upon the lands of another. So far as the question of trespassing stock within a herd district is concerned, it is not necessary for the owner of lands or a crop to fence same. If his lands or crops are injured by the livestock of another he is given a remedy which does not depend upon the question of whether or not he has a partition fence or a legal fence.

It may be that I don't exactly understand your questions but as I understand it the two questions are separate and distinct and each must be examined from the standpoint of the question to be determined. The law as to whether one is required to build a division fence is not necessarily determinative of his right to collect damages for trespassing stock. This, however, is largely a question of civil rights and these rights, arriving in different manners, may not be included within the discussion covered by this opinion.