

No. 381

HERD DISTRICTS—LIVESTOCK

Held: When owners or possessors of lands lying adjoining any herd district petition that such lands be included in the herd district, it must be shown twenty-five per centum (25%) or more of the land sought to be included is in actual cultivation, the same as is required when a herd district is established.

March 21, 1942.

Mr. John D. Stafford
County Attorney
Cascade County
Great Falls, Montana:

Attention: Mr. Cleveland Hall,
Chief Deputy

Dear Mr. Stafford:

You have pointed out that many years ago Herd District No. 4 was created by the County Commissioners of Cascade County. Recently owners of contiguous and adjoining land have petitioned to have such land become part of the herd district. Although the district, as created, included twenty-five per centum (25%) of cultivated land, the acreage now sought to be included does not contain this proportion of cultivated land—and will reduce the cultivated area of the entire herd district below the required twenty-five per centum (25%). The question is whether land may be added to an existing herd district under these circumstances.

The provision for adding land to existing herd districts is this sentence of paragraph (a) of Section 3384 of the Revised Codes of Montana, 1935:

“Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created, and upon like hearing and notice as hereinabove provided for, such lands shall be included in said herd district and become a part thereof.”

No mention is made of any requirement whatsoever with respect to any proportion of such land being under cultivation. Resort must therefore be had to rules of statutory construction to determine the intention of the legislature when the statute was enacted. Every part of a statute must be construed with reference to the whole so as to make it harmonious and sensible. (State ex rel. Bitter Root Irr. Co. v. District Court, 51 Mont. 305, 307, 152 Pac. 745; State ex rel. Wallace v. Callow, 78 Mont. 308, 325, 254 Pac. 187.) Every word, phrase, clause or sentence employed must be considered in construing a statute. (State ex rel. Nagle v. Sullivan, 98 Mont. 425, 440, 40 Pac. (2nd) 995, 99 A. L. R. 321.)

There is no question but that—in order to create a district—twenty-five per centum (25%) of the land to be included must be in actual cultivation. It is not entirely sensible to infer that to such a district may be added lands no part of which are in cultivation. If such practice were followed, the proportion of cultivated land in a herd district, with the additions, would fall far below the required twenty-five per centum (25%). It may be argued, of course, such practice is contemplated, in which case the district is subject to abandonment under proper petition and subsequent proceedings as prescribed in paragraph (b) of Section 3384 of the Revised Codes of Montana, 1935. However, construing the statute as a whole, it appears more logical to suppose the legislature did not contemplate the herd district would be made subject to dissolution by adding lands thereto which were not cultivated in any proportion, but rather the provision for dissolution contemplated a natural diminishing of cultivated land by abandonment of cultivation within the district voluntarily to such an extent the district no longer served any good purpose.

It is my opinion that, when owners or possessors of lands lying adjoining to any herd district petition such lands be included in the herd district, it must be shown twenty-five per centum (25%) or more of the land sought to be included is in actual cultivation, the same as is required when a herd district is established.

Sincerely yours,

JOHN W. BONNER
Attorney General