

SAN JUAN COUNTY FENCING ORDINANCE

San Juan County has a
Fence In Ordinance

Opinion

MEMORANDUM

FROM: Craig C. Hallis, San Juan County Attorney
TO: San Juan County Sheriff and General Public
SUBJECT: FENCE LAW

QUESTION

Several property owners within San Juan County and the San Juan County Sheriff have contacted the San Juan County Attorney's Office for the purpose of determining the current status of the fencing statute within the State of Utah and San Juan County.

It seems that over the past several years there have been a number of incidents of animals straying upon the property of others and causing some damage. There has been some confusion as to what the current status of the fencing statute is within San Juan County.

DISCUSSION

Legislature has provided in two sections of the State code at Title 4, Chapter 25, Section 7 and 8, a State statute passed in 1979 which allows the county commissioners of these respective counties to pass fencing ordinances declaring the general policy of the county. They may by Ordinance determine whether it is the responsibility of the livestock owners to fence their animals in or to allow the domestic animals to graze without being subject to the statutes on trespass.

The State statutes states;

"the Board of County Commissioners of any County is authorized through ordinance to declare and enforce a general policy within the county for the fencing of farms, subdivisions or other private property, to allow domestic animals to graze without trespassing on farms, subdivisions or other private property. If such an ordinance is adopted the board of county commissioners shall through ordinance declare and specify what constitutes a lawful fence."

Utah Code Annotated, Section 4-25-7.

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Utah Code Annotated, Section 4-25-8, states;

"the owner of any neat cattle, horse, ass, mule, sheep, goat, or swine, trespasses upon the premises of another person, except in cases where the premises are not enclosed in a lawful fence in a county which has adopted a fence ordinance is liable in a civil action to the owner or occupant of such premises for any damage inflicted by the trespass."

San Juan County has not enacted a fence ordinance as authorized by Section 4-25-7, thus placing the burden on livestock owners to prevent their livestock from trespassing. Utah in two previous cases, has upheld the constitutionality of these fencing statutes in, Peterson vs. Patterson, 42 Utah 270, 130 Pac. 241, (1913), the supreme Court held that the laws were not an unconstitutional delegation to power to counties and that they did not operate non-uniformly in violation of Article 1, Section 24, of the Utah Constitution. In Nowers vs. Oakden, 110 Utah 25, 169 Pac.2nd. 108, (1946) the Court held that the Utah Statutes in effect at that time which were very similarly to the current statutes were not unconstitutionally vague.

The various counties may elect to enact a fencing ordinance which allows domestic animals to roam. Utah has adopted by Statute the common law rule. At common law, an owner of livestock is liable for damage caused when those animals trespassed onto the land of another, and the land owner had no duty to fence his land to keep trespassing livestock out. Several western states including Texas and Idaho have elected to enact statutes that have reversed the common law rule and require livestock to be fenced out of crop land. However, the Supreme Court stated in Bastian vs. King, 661 Pac 2nd, 953, (1983), page 956,

"it is clearly reasonable for the Legislature to allocate liability as it has by allowing the counties to enact fencing ordinances and in the absence of such an ordinance by providing that the owners of

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trespassing livestock should be liable."


The Court went on to state that the Defendant's argument in that case that the Plaintiff should have the duty to fence the livestock out should be made to the County or in lieu of that to the legislature.

"It is not the function of this court to evaluate the function or the practical necessity of legislative enactments. It is the power and responsibility of the legislature to enact laws to promote the public health, safety, moral and general welfare of society and this court will not substitute our judgment for that of the legislature with respect to what is best serves the public interests. The adjustment and accommodation of conflicting interest such as are involved in this case are for the legislature to resolve irrespective of the rules applied by other states."

Thus the current status of Utah law with regard to fencing statutes is: The County has not elected to adopt an ordinance reversing the common law duty placed upon the owner of livestock to keep trespassing livestock out. Utah recognizes the common law duty of the livestock owner to be liable for damage

caused by their roaming livestock. The action of trespass is available to the landowner and the livestock owner who allows the animals to roam can be required to answer for any damages to the landowner in a civil action for trespass.

DATED this 25th day of June, 1987.


 Craig C. Halls
 San Juan County Attorney

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661 P.2d 953 BASTIAN V. KING (Utah 1983)

George A. Bastian and Steven Barton, Plaintiffs and Respondents,

vs.

Jack King, Defendant and Appellant.

No. 17830

SUPREME COURT OF UTAH

661 P.2d 953

March 23, 1983, Filed

COUNSEL

Dwight L. King, Salt Lake City For Petitioner
 E. J. Skoen, Salt Lake City
 Stanley R. Smith, American Fork For Respondent

JUDGES

STEWART, Justice, wrote the opinion. WE CONCUR: Gordon R. Hall, Chief Justice, Dallen H. Oaks, Justice, Richard C. Howo, Justice, Christine M. Durham, Justice.

AUTHOR: STEWART

The Utah fencing statutes place liability for trespassing livestock on the owners of livestock unless the county enacts a fence law. Section 4-25-8 states:

The owner of any neat cattle, horse, ass, mule, sheep, goat, or swine that trespasses upon the premises of another person, except in cases where the premises are not inclosed by a lawful fence in a county which has adopted a fence ordinance, is liable in a civil action to the owner or occupant of such premises for any damage inflicted by the trespass.

Garfield County has not enacted a fence ordinance, as authorized by § 4-25-7,¹ thus placing the burden on livestock owners to prevent their livestock from trespassing.

Utah's fencing laws, § 4-25-7 and § 4-25-8, vary only slightly from a line of statutes beginning with Sections 1 and 4 of Chapter 55, Laws of the Territory of Utah, 1890,² and continuing through to the present.³ In two previous cases we have upheld the constitutionality of these fencing statutes against different challenges than are made here. In *Peterson v. Peterson*, 42 Utah 270, 130 P. 241 (1913), we held that the laws were not an unconstitutional delegation of power to counties, did not operate nonuniformly in violation of Art. 1 § 24, and were not an unconstitutional special law under Art. VI, § 26 of the Utah Constitution. In *Newens v. Oakden*, 110 Utah 25, 169 P.2d 108 (1946), we held that U.C.A., 1943, §§ 3-5-77 through 3-5-79, the fencing statutes then in effect, were not unconstitutionally vague.

Defendant's constitutional arguments are stated summarily. His contention seems to be that §

4-25-8 violates the due process provisions of the Federal and Utah constitutions, by imposing liability on him for not fencing, because it is contrary to the rule followed in some other states with regard to fencing and places an unreasonable burden on the owners of livestock by requiring them to fence the land where their cattle graze to prevent them from trespassing on land where

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crops have been planted. Defendant cites several cases from other states that require livestock to be fenced out and contends that that is the law in most western states. See *Lazarus v. Phelps*, 152 U.S. 81 (1894) (applying Texas statute requiring farmers to fence out cattle); *Magnire v. Ynake*, 99 Idaho 829, 831, 590 P.2d 85, 88 n.1 and accompanying text (1978) (citing statutes from six other western states). See also Scott, "The Range Cattle Industry: Its Effect on Western Land Law," 28 Mont. L. Rev. 155 (1967).

Utah has both open range land and large areas of crop land. Even though some other states have reversed the common law rule and require livestock to be fenced out of crop land, it is clearly reasonable for the Legislature to allocate liability as it has by allowing the counties to enact fencing ordinances and, in the absence of such an ordinance, by providing that the owners of trespassing livestock should be liable. Defendant's argument that the plaintiffs should have the duty to fence livestock out should be made to the county under § 4-25-7 or, in lieu of that, to the Legislature. "It is not the function of this Court to evaluate the wisdom or practical necessity of legislative enactments." *Redwood Gym v. Salt Lake County Commission*, Utah, 624 P.2d 1138, 1143 (1981). It is the power and responsibility of the Legislature to enact laws to promote the public health, safety, morals and general welfare of society, *Peck v. Dunn*, Utah, 574 P.2d 367, 368 (1978), and this Court will not substitute our judgment for that of the Legislature with respect to what best serves the public interest. The adjustment and accommodation of conflicting interests, such as are involved in this case, are for the Legislature to resolve, irrespective of the rules applied by other states.