

City of Mason Incorporated. Vol 33 p. 443

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CLERK AND COUNTY CLERK

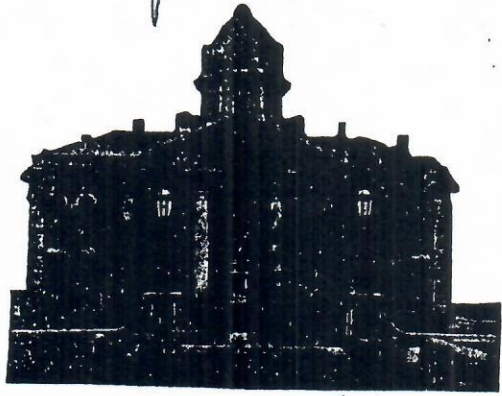
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COUNTY SURVEYOR



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F. H. HAMMOND, ATTORNEY

COMMISSIONERS
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T. C. POYNOR
N. D. WESTBROOK
D. A. JORDAN

R. B. TATE
COUNTY FARM AGENT
LEAH COX
HOME DEMONSTRATION AGENT

MASON COUNTY
MASON, TEXAS

COUNTY JUDGE'S PROCLAMATION

State of Texas)
County of Mason)

Pursuant^{to} and in accordance with an election held in Mason County Texas, on the 6th day of November, A.D. 1934, on the question of whether the following stock shall be permitted to run at large in said county, Horses, Mules Jacks, Jennets, and cattle, said election being held in strict conformity with the law, and due returns made as required by law, said ballots canvassed by the Commissioners Court of Mason County, and the results declared as follows.

For the Stock Law. 572
Against the Stock Law. 173

Therefore by authority vested in me under the law, I Otis Shearer County Judge of Mason County Texas, declare that thirty days after date of this proclamation it shall be unlawful for any of the above ^{named} stock to run at large in Mason County.

Dated this the 8th day of November, A.D. 1934, and given under my hand and seal of office, at Mason Texas.

Otis Shearer
County Judge Mason County Texas.

**COMMON QUESTIONS REGARDING
OPEN/CLOSED RANGE OPTIONS
UNDER THE TEXAS AGRICULTURE CODE**

Chapter 143 of the Texas Agriculture Code provides a mechanism for Texas Counties to adopt a statutory alternative to the common law "Open Range". Unless a County has held an election to "Close" the range as provided by this Chapter, domestic farm animals are free to roam at large. Individuals living in an "open range county" wishing to protect their crops, gardens or property from free ranging domestic animals are obligated to "fence out" such animals.

Subchapter B of Chapter 143 provides for referendum elections to regulate several classes of animals: (1) §143.021 regulates horses, mules, jacks, jennets, donkeys, hogs, sheep or goats; (2) §143.051 regulates a limited free range for hogs between November 15 and February 15 of the following year, and (3) §143.071 regulates cattle or domestic turkeys. Each regulatory provision has slightly different statutory language regarding the method and manner by which the election may be triggered by petition and the manner of implementation following the adoption of the regulatory structure. Care must be given in drafting the petition, and holding the election, to insure a valid outcome.

COMMON LAW: OPEN RANGE

In the absence of a referendum election to "close" the range, domesticated farm animals are permitted to roam at large under the common law. Should an animal permitted to range freely under the common law "open range" enter upon another property owner's premises, that landowner is not permitted to allow damage to be inflicted upon that animal by the acts of the landowner, those acting under his direction, or even the landowner's animals (dogs). To protect themselves against such claims, the property owner in an "open range county" is obligated by statute to demonstrate that his fences are "sufficient" as defined by §143.028 of the Agriculture Code, to protect against animals of "ordinary disposition".

In an Open Range County, the owner of free ranging animals had no liability for damages caused by the free ranging animals. In fact, an animal on the open range was excused from "trespassing" by the common law, and anyone wishing to avoid conflict with that animal was required to "fence out" such animals. Motorists traveling through an Open Range county do so at their own risk, and the animal's owner is not liable for damages caused by their animal in a collision with an automobile. *Gibbs v. Jackson*, 990 S.W.2d 745 (Tex. 1999).

CLOSED RANGE:

Adoption of "the Stock Law" pertaining to various classes of domesticated farm animals changes the common law. Once a county has adopted a "closed range", the burden of fencing shifts to the animal owner, who is henceforth required to "fence in" the classes of animals covered by the election. After the adoption of "the Stock Law", persons living within that portion of the county that has been closed is no longer required to fence against stock, who are

no longer permitted to roam at large. *Missouri K&T Ry. Co. v. Tolbert*, 90 S.W. 508, (Tex. Civ. App. 1906). Instead, the owners of domestic livestock are required to “fence in” their animals to prevent the animals from roaming at large. The fencing standards contained in the Agriculture Code, however, do not establish minimum requirements for enclosures to confine livestock in a county in which a stock law has been adopted, and thus did not apply in a passenger’s action against horse owners for damages after a horse broke free of an enclosure that did not satisfy the fence standards of §143.028. *Harlow v. Hayes*, 991 S.W.2 24 (Tex.App. 1998).

← §143.034 and §143.082 provides for a Class C misdemeanor for any person who “knowingly” permits an animal prohibited from running at large to enter upon land that does not belong to that person, or who otherwise fails to keep a prohibited animal from running at large.

“Knowingly” is defined by §6.03(b) of the Texas Penal Code as follows:

“A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.”

Therefore, to successfully prosecute an individual for violation of the “Stock Law”, it would be necessary to prove that the person had actual knowledge that his fences were down, and thereafter the person took little or no action to prevent his animals from running at large.

ANIMALS ON HIGHWAYS:

Under either an Open or Closed range, an animal owner is required to prevent his farm animals from roaming at large upon the right-of-way of a U.S. or State Highway. The term “highway” however, does not include a numbered “farm to market” road or other roadways that are not legislatively defined as a U.S. or State highway. The rationale for this law appears to be the anticipated speed at which vehicles travel on U.S. or State highways. In practical terms, this distinction is antiquated, but is still law.

Under a Closed Range, an animal owner may be liable to anyone injured by an animal the owner knowingly permitted to escape from a mandatory enclosure. Again, the elements of proof are sometimes difficult to establish by the required standard.