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RE: Installation of fences on property lines.

Dear Trustees:

I have been asked for some advice on questions regarding installing a fence on a property line. First, I want to state the law on property line fences has been amended on September 30, 2008. The September 30th 2008 amendments were a massive overhaul from the previous laws that were on the books at that time and all the fence law statutes were amended at that time. The laws on the fences lines are statutorily codified under Chapter 971 of the Ohio Revised Code.

The first question asked was: Is it true that the adjoining land owner, choosing to not participate in the fence placement, [who] has no livestock or an existing fence in place has any legal obligation to pay for the fence? It is true. The adjoining landowner does not have any legal obligation to pay under the current law.

The second question: Reading the ORC Chapter 971 on fencing, I do not see any stipulation on where the landowner installing the fence is legally allowed to place the fence, if the adjoining landowner does not agree to the fence? Please clarify for us the law on the landowner's legal rights to where a fence can be placed up to or on the property line when the adjoining landowner is not in favor or participating in the fence install. I will give an overview of the current law then answer your second question.

A "partition fence" is "a fence that is located on the division line between the adjoining properties of two owners." R.C. 971.01(E). Statutes governing "partition fences have long been part of Ohio law." 2002 Op. Att'y Gen. No. 2002-018, at 2-108. These statutes require certain landowners to build and maintain partition fences on the boundaries between their adjoining properties and set forth how each landowner shares in the cost of building or maintaining the fence. However, the fence law statutes were amended September 30th 2008.

Presently R.C. 971.02(A) provides that "all fields and enclosures **in which livestock are kept or placed** and that are bordered by a division line between the adjoining properties of different owners shall be enclosed by a preferred partition fence." However, R.C. 971.02(A) does not apply to partition fences that were constructed prior to September 30, 2008, the date on which the amendments in Sub. H.B. 323 became effective. R.C. 971.02(C)(2); see also Sub. H.B. 323. R.C. 971.02(A) also does not apply to owners who agree, in writing, to forgo the construction of a partition fence or to construct a fence with different specifications. R.C. 971.02(C)(1); R.C. 971.04 ("[n]othing in this chapter prevents the owners of adjoining properties from entering into a written agreement that states that no fence is needed ... [or] a fence other than a preferred partition fence may be built and maintained").

The responsibility of each owner to share in **building** or **maintaining** a [existing] partition fence **depends**, in part, **upon the time** at which the fence was **originally built**. But see R.C. 971.071 (recognizing that an owner of land as defined in R.C. 971.01(D)(2), notwithstanding any other provision in R.C. Chapter 971, "is responsible for fifty per cent of the total cost of building and maintaining in good repair a partition fence [under the current law] between that owner and the owner of adjoining property unless a written agreement has been entered into under [R.C. 971.04]"). If an existing partition fence was constructed prior to September 30, 2008, the owners are required to "maintain the fence in good repair in equitable shares." R.C. 971.06(A). If owners decide to replace an existing fence, the owners must do so in equitable shares. *Id.* Similarly, if no partition fence currently exists, but there is evidence a fence existed prior to September 30, 2008, the owners shall build and maintain a partition fence in equitable shares. R.C. 971.06(B). **If a partition fence does**

not exist and there is no evidence that a partition fence existed prior to September 30, 2008, an owner who desires to build a partition fence shall bear the total cost of the fence's construction and maintenance. R.C. 971.07(A); see also R.C. 971.05; R.C. 971.06(C)(3). Only if an adjoining owner subsequently uses the fence to keep livestock enclosed may the owner who built the fence seek reimbursement for a proportionate share of the total cost of the fence's construction and maintenance. R.C. 971.07(B)-(D).

The following is some **enforcement procedures** for owners and the board of trustees to be aware that are in the statutes. When an owner fails to maintain or build a partition fence or portion thereof for which he is responsible, the aggrieved owner may file an action in a court of common pleas or file a complaint with the board of township trustees in whose township the fence or division line is located. See R.C. 971.09(A)(1)(a)-(b); R.C. 971.16. Upon receiving a complaint from an aggrieved owner under R.C. 971.09(A)(1)(b), a board of township trustees is required to, among other things, provide "written notice to all adjoining owners of the time and place" that the board will meet to view the fence or premises in question. R.C. 971.09(B). During this viewing, the board shall determine whether a partition fence exists or whether "there is evidence that a partition fence previously existed."

At its next regularly scheduled meeting after viewing the partition fence or division line, the board of township trustees shall determine whether "a partition fence is required to be built or maintained." R.C. 971.09(D)(1). Upon concluding that the construction or maintenance of a partition fence is required, the board assigns responsibility for the fence's construction or maintenance to the responsible owners. If the owners of both properties are responsible for building or maintaining the fence, the board equitably assigns each owner's share of the responsibility pursuant to R.C. 971.09(D)(2). A board of township trustees may require each owner to construct or maintain a specific portion of the partition fence or may assign to each owner a portion of the total cost of building or maintaining the partition fence "if the owners have submitted to the board an estimate from a contractor of the necessary cost to perform the applicable work." R.C. 971.09(D)(2). A board of township trustees is required to consider several factors when making an equitable assignment under R.C. 971.09(D)(2), including, but not limited to, the topography of the property, the presence of water, and the type of livestock that may be contained by the fence. R.C. 971.09(E)(1)-(6).

If a board of township trustees finds that only one owner is responsible for building or maintaining a partition fence, the board shall require the owner to pay the total cost of the fence's construction and maintenance. R.C. 971.09(D)(3). If a board of township trustees finds that a partition fence does not need to be built or maintained, the board notifies each owner of its

determination in writing. R.C. 971.09(D)(4). The costs due to the township fiscal officer and board of township trustees for making a determination and assignment under R.C. 971.09 are taxed equally against each of the owners. R.C. 971.10.

If an owner does not comply with an assignment by a board of township trustees, “the board of township trustees, upon the application of the aggrieved owner,” contracts with an outside contractor to complete the neglected work. R.C. 971.12(A). The costs incurred from employing an outside contractor under R.C. 971.12 are certified to the township fiscal officer and, if not paid within thirty days, certified to the county auditor for collection by the county treasurer. R.C. 971.13-.14.

Therefore to answer your second question I don’t see how an adjoining land owner can stop an owner from installing a fence on his property on the property line. The installing land owner will do so at 100% cost to himself. However, as previously stated only if the adjoining owner subsequently uses the fence to keep livestock enclosed may the owner who built the fence seek reimbursement for a proportionate share of the total cost of the fence’s construction and maintenance. R.C. 971.07(B)-(D).

Hopefully this answers your concerns regarding fence law and if you need anything further feel free to contact me.

Sincerely,

Bradford W. Bailey
Hardin County Prosecuting Attorney

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