



State of West Virginia  
Office of the Attorney General

Patrick Morrissey  
Attorney General

(304) 558-2021  
Fax (304) 558-0140

July 8, 2021

The Honorable John L. Bord  
Taylor County Prosecuting Attorney  
214 West Main Street  
Grafton, WV 26345

Dear Prosecutor Bord:

You have asked for an Opinion of the Attorney General about legal responsibilities to keep one landowner's cattle from moving onto the property of another. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General "shall give written opinions . . . upon questions of law . . . whenever required to do so, in writing, by . . . any . . . state officer, board or commission." To the extent this Opinion relies on facts, it depends solely on the factual assertions set forth in your correspondence with the Office of the Attorney General.

Your request asks if a business that is not engaged in agriculture, specifically a coal company, is required to build a fence on its property to keep out the cattle of another landowner. The request also asks if the landowner whose cattle are crossing property lines is required to build a fence. Your letter represents that currently there is no fence between the business and the landowner in question.

This raises the following legal question:

*What duties does West Virginia law impose on landowners with respect to keeping their livestock off the property of other, nearby landowners?*

We conclude that under the plain language of the West Virginia Code it is unlawful for a landowner to allow their livestock to run at large and trespass on the property of other

landowners. In doing so the landowner risks not only civil liability for negligence but also criminal penalties for injuries or destruction of property that their livestock cause.

First, West Virginia Code § 19-18-1 establishes civil liability for a landowner whose livestock trespass on the property of others. Subsection (a) reads that “[i]f livestock enters the property of a landowner without that landowner’s consent, the owner of the livestock is liable for damages for personal injury or property damage in a civil action in magistrate or circuit court.” The statute further prescribes the process that the party trespassed upon must take when livestock are present on their property: Subsection (b) requires the offended party to “attempt to contact the owner of the trespassing livestock within forty-eight hours of the trespass,” and to notify the county sheriff if the landowner cannot be reached during that time. Following this, subsections (c) and (d) allow the party trespassed upon to contain the trespassing livestock if they wish and to receive fair cost for that containment.

Second, West Virginia Code § 19-18-3 sets out the potential criminal penalties for the owners of trespassing livestock. Subsection (a) provides that “[w]hile livestock may escape enclosures due to accident or unforeseen circumstances, it is unlawful for the owner of livestock to negligently permit livestock to run at large and trespass on the property of landowners.” Subsection (b) lays out penalties for violations, including warnings, fines, and conviction of a misdemeanor.

Under these sections of the West Virginia Code, the issues of civil liability and criminal penalties hinge on questions of negligence and damages. These are fact-specific inquiries with regard to whether and how much a landowner may be at fault under circumstances you describe in your letter. We are aware of no authority, however, indicating that the coal company is the party required to take measures to keep out the livestock of an adjacent landowner. To the contrary, any landowners who choose not to build a fence to contain their livestock, and whose livestock then trespass on the property of another, open themselves to both potential civil and criminal consequences.

Sincerely,



Patrick Morrissey  
Attorney General

Lindsay See  
Solicitor General

Caleb A. Seckman  
Assistant Solicitor General