

A county cannot be required to maintain a line fence. 38 Atty. Gen. 358.

A county owning tax delinquent land is not required to share the cost of maintaining partition fences adjacent to such land. 43 Atty. Gen. 67.

90.035 History: 1963 c. 200; Stats. 1963 s. 90.035.

Sec. 90.035, Stats. 1965, does not apply to highway rights of way. 55 Atty. Gen. 177.

90.04 History: R. S. 1849 c. 14 s. 1, 2; R. S. 1858 c. 17 s. 1, 2, 9; 1861 c. 133 s. 1; R. S. 1878 s. 1390, 1391; 1880 c. 107, 138, 158, 307; 1881 c. 119; 1882 c. 201; 1889 c. 278; Ann. Stats. 1889 s. 1390, 1390a, 1391; Stats. 1898 s. 1390, 1391; 1915 c. 618; 1923 c. 204 s. 6; Stats. 1923 s. 90.04.

If adjoining landowners maintain and keep in repair a lawful partition fence, they may recover for trespasses by the animals of each other over or through such fences. For building and maintaining such a fence no agreement in writing is required; nor is it required for maintaining and keeping in repair such fence "in equal shares." Taylor v. Young, 61 W 314, 21 NW 488.

In order to maintain trespass for the incursion of a neighbor's cattle a plaintiff is required to maintain a proper partition fence; and it is immaterial whether the proceedings of fence viewers to establish such a fence were taken according to the statute, or whether the blame for failure to have the fence completed should be placed on the plaintiff or defendant or both. Sec. 1391, Stats. 1919, applies to such trespasses only as are occasioned by the natural propensity of the animals themselves, and not to intentional acts of the owner or keeper, whereby the trespass is occasioned. As to such wilful trespass the common law rule of absolute liability is still in force. To constitute such wilful trespass there must be more than a mere turning of cattle loose from the owner's barnyard onto his own fields, even if he has reason to believe that they will wander into the unfenced field of a neighbor. Schmuldach v. Danner, 173 W 513, 181 NW 727.

90.05 History: R. S. 1849 c. 14 s. 7, 18; R. S. 1858 c. 17 s. 7, 18; R. S. 1878 s. 1392; 1880 c. 138 s. 2; Ann. Stats. 1889 s. 1392; Stats. 1898 s. 1392; 1915 c. 618; 1923 c. 204 s. 1a; Stats. 1923 s. 90.05.

A parol agreement for apportionment of a division fence may be good between the parties, but will not bind grantees or lessees who have not recognized or acted upon it. Pitzner v. Shinnick, 41 W 676.

In the absence of proof of legal division of a line fence the presumption is that it is the common property of adjoining owners. Sayles v. Bemis, 57 W 315, 15 NW 432.

90.06 History: 1883 c. 202; Ann. Stats. 1889 s. 1392a; Stats. 1898 s. 1392a; 1923 c. 204 s. 1a; Stats. 1923 s. 90.06; 1941 c. 26.

A line fence cannot lawfully be removed by either party except as provided by sec. 1400, R. S. 1878. Sayles v. Bemis, 57 W 315, 15 NW 432.

90.07 History: R. S. 1849 c. 14 s. 6, 12, 13;

R. S. 1858 c. 17 s. 5, 6, 12, 13; R. S. 1878 s. 1393; Stats. 1898 s. 1393; 1915 c. 618; 1919 c. 205; 1923 c. 204 s. 1a, 3; 1923 c. 303; 1923 c. 449 s. 37; Stats. 1923 s. 90.07; 1957 c. 112; 1963 c. 289.

The jurisdiction conferred upon fence viewers being in derogation of the common law, their determinations can embrace no matters other than are confided to them by statute. Butler v. Barlow, 2 W 10.

90.08 History: R. S. 1849 c. 14 s. 4; R. S. 1858 c. 17 s. 17; R. S. 1878 s. 1394; Stats. 1898 s. 1394; 1923 c. 204 s. 1a; Stats. 1923 s. 90.08.

90.09 History: R. S. 1858 c. 17 s. 10, 11; 1872 c. 57; R. S. 1878 s. 1395; Stats. 1898 s. 1395; 1915 c. 618; 1923 c. 204 s. 1a, 3; Stats. 1923 s. 90.09.

90.10 History: R. S. 1849 c. 14 s. 3; R. S. 1858 c. 17 s. 3; R. S. 1878 s. 1396; Stats. 1898 s. 1396; 1915 c. 618; 1923 c. 204 s. 1a, 3; Stats. 1923 s. 90.10.

90.11 History: R. S. 1858 c. 17 s. 4; R. S. 1878 s. 1397; Stats. 1898 s. 1397; 1915 c. 618; 1923 c. 204 s. 1a, 3; Stats. 1923 s. 90.11.

Sec. 1397, R. S. 1878, is highly penal and must be strictly complied with. A certificate which merely states the value of the rebuilding is a gross and material departure from the statute, and is void on its face. Voelz v. Breitenfield, 68 W 491, 32 NW 757.

90.12 History: R. S. 1849 c. 14 s. 8; R. S. 1858 c. 17 s. 8; R. S. 1878 s. 1398; Stats. 1898 s. 1398; 1923 c. 204 s. 1a; Stats. 1923 s. 90.12.

90.13 History: R. S. 1849 c. 14 s. 9, 15; R. S. 1858 c. 17 s. 15; R. S. 1878 s. 1399; Stats. 1898 s. 1399; 1923 c. 204 s. 1a, 3; Stats. 1923 s. 90.13.

90.14 History: R. S. 1849 c. 14 s. 16; R. S. 1858 c. 17 s. 16; R. S. 1878 s. 1401; Stats. 1898 s. 1401; 1923 c. 204 s. 1a; Stats. 1923 s. 90.14.

90.15 History: R. S. 1849 c. 14 s. 21, 22; R. S. 1858 c. 17 s. 21, 22; R. S. 1878 s. 1402; 1893 c. 155; Stats. 1898 s. 1402; 1923 c. 204 s. 7; 1923 c. 276 s. 2; 1923 c. 449 s. 35; Stats. 1923 s. 90.15; 1949 c. 162; 1961 c. 76.

90.16 History: R. S. 1878 s. 1403; Stats. 1898 s. 1403; 1923 c. 204 s. 1a; Stats. 1923 s. 90.16.

CHAPTER 92.

Soil and Water Conservation.

92.01 History: 1937 c. 341; Stats. 1937 s. 92.01; 1961 c. 40.

92.02 History: 1937 c. 341; Stats. 1937 s. 92.02; 1955 c. 334.

92.03 History: 1937 c. 341; Stats. 1937 s. 92.03; 1939 c. 323, 532; 1957 c. 672; 1961 c. 40; 1965 c. 252; 1969 c. 276.

92.04 History: 1937 c. 341; Stats. 1937 s. 92.04; 1939 c. 323; 1943 c. 303; 1949 c. 619; 1955 c. 10, 334; 1957 c. 158; 1961 c. 40; 1963 c. 476, 525; 1965 c. 163; 1967 c. 193; 1969 c. 276 ss. 352, 353, 603 (2), (7).

92.05 History: 1937 c. 341; Stats. 1937 s. 92.05; 1939 c. 323; 1961 c. 40.
See note to 66.34, citing 48 Atty. Gen. 263.

92.06 History: 1937 c. 341; Stats. 1937 s. 92.06; 1939 c. 323; 1945 c. 559; 1955 c. 652; 1957 c. 672; 1961 c. 40.

92.07 History: 1937 c. 341; Stats. 1937 s. 92.07; 1939 c. 323.

92.08 History: 1937 c. 341; Stats. 1937 s. 92.08; 1955 c. 334; 1957 c. 685; 1961 c. 40; 1963 c. 476; 1969 c. 276 s. 603 (7).

92.09 History: 1937 c. 341; Stats. 1937 s. 92.09; 1939 c. 323; 1961 c. 40; 1967 c. 193; 1969 c. 276 s. 603 (7).

92.10 History: 1937 c. 341; Stats. 1937 s. 92.10; 1939 c. 323.

92.11 History: 1937 c. 341; Stats. 1937 s. 92.11.

92.12 History: 1937 c. 341; Stats. 1937 s. 92.12; 1939 c. 323; 1961 c. 40; 1965 c. 252; 1967 c. 193; 1969 c. 276 s. 603 (7), (8).

92.13 History: 1937 c. 341; Stats. 1937 s. 92.13.

92.14 History: 1937 c. 341; Stats. 1937 s. 92.14; 1939 c. 323.

92.15 History: 1937 c. 341; Stats. 1937 s. 92.15; 1939 c. 323; 1961 c. 40; 1969 c. 276 s. 603 (7).

92.16 History: 1939 c. 323; Stats. 1939 s. 92.16; 1955 c. 334; 1961 c. 40.

92.17 History: 1937 c. 341; Stats. 1937 s. 92.16; 1939 c. 323; Stats. 1939 s. 92.17.

92.18 History: 1961 c. 427; Stats. 1961 s. 92.18; 1969 c. 353.

92.20 History: 1965 c. 511; Stats. 1965 s. 92.20; 1969 c. 276 s. 603 (7).

CHAPTER 93.

Department of Agriculture.

93.01 History: 1921 c. 571 s. 2; Stats. 1921 s. 1495—1; 1923 c. 152 s. 218; 1923 c. 366 s. 1; 1923 c. 449 s. 47; Stats. 1923 s. 99.01; 1935 c. 550 s. 2; Stats. 1935 s. 93.01; 1945 c. 446; 1955 c. 660; 1959 c. 516; 1961 c. 622; 1963 c. 172; 1965 c. 252; 1969 c. 276 ss. 355, 583 (1).

93.02 History: 1929 c. 479 s. 2; Stats. 1929 s. 99.02; 1931 c. 67 s. 167; 1935 c. 550 s. 3; Stats. 1935 c. 93.02; Spl. S. 1937 c. 9; 1939 c. 85, 124; 1939 c. 413 s. 2, 4; 1943 c. 229; 1947 c. 332; 1949 c. 405; 1951 c. 97; 1951 c. 247 s. 37; 1951 c. 319 s. 231; 1955 c. 221 s. 30; 1957 c. 35; 1969 c. 276.

93.03 History: 1929 c. 479 s. 2; Stats. 1929 s. 99.03; 1935 c. 550 s. 4; Stats. 1935 s. 93.03; 1943 c. 229; 1965 c. 249.

93.06 History: Stats. 1933 s. 96.61 (3), 99.07 to 99.09, 99.17, 99.18; 1935 c. 550 s. 7; Stats. 1935 s. 93.06; 1943 c. 401; 1951 c. 105, 516; 1955 c. 24, 377, 652; 1955 c. 696 s. 25A; 1959 c. 628, 658.

Administration of marketing laws of Wisconsin. Reis, 9 MLR 131.

93.07 History: 1935 c. 550 s. 8; 1935 c. 551; Stats. 1935 s. 93.07; 1939 c. 360; 1943 c. 179, 229, 385; 1945 c. 20, 446; 1947 c. 9 s. 31; 1947 c. 591; 1951 c. 279, 345, 516, 548; 1951 c. 713 s. 1, 2; 1955 c. 24, 109; 1955 c. 146 s. 16; 1955 c. 204; 1957 c. 161, 212; 1959 c. 659 s. 79; 1961 c. 33 s. 45; 1961 c. 149; 1963 c. 6, 112, 172, 343, 445, 572; 1965 c. 141, 583; 1969 c. 276 ss. 358, 359, 583 (2), 602 (1); 1969 c. 392, 459.

The state department of agriculture is an agency of the state, the duties of the commissioner being clearly defined by statute. In the expenditure of public moneys the commissioner is limited to the sums appropriated by the legislature for a given purpose; and every person transacting business with the department must take cognizance of these facts. *Clas v. State*, 196 W 430, 220 NW 185.

The question of whether the duty of the commissioners required them to circulate oleomargarine dealers' lists was within the jurisdiction of the circuit court to determine in a proceeding for punishment as a civil contempt the violation of the temporary injunction. *John F. Jelke Co. v. Beck*, 208 W 650, 242 NW 576.

There is no statute requiring separation of live stock transported in trucks. If nonseparation constitutes cruel treatment prosecution may be had under 343.47, Stats. 1935. 24 Atty. Gen. 501.

93.07 (1) and 97.34, Stats. 1949, delegate broad authority to the department in the field of dairy farm sanitation. The department may promulgate a regulation requiring a milk house under such delegation of authority. Whether the specific regulation in question is void for uncertainty may be determined by a declaratory ruling under 227.06, and subsequent review by the circuit court as one of several available methods. 42 Atty. Gen. 46.

93.08 History: Stats. 1933 s. 96.34 (2), 98.35 (2), 99.20 (3), (4), 352.15 (2) part; 1935 c. 550 s. 9; Stats. 1935 s. 93.08; 1943 c. 229; 1951 c. 309.

Supreme court decisions regarding the right of prohibition officers to search private automobiles are not applicable to the statutes conferring on entomologists and deputies the right to inspect orchards, etc. 12 Atty. Gen. 275.

93.09 History: 1921 c. 571 s. 2; Stats. 1921 s. 1495—10; 1923 c. 152 s. 227; 1923 c. 366 s. 1; 1923 c. 449 s. 47; Stats. 1923 s. 99.10; 1935 c. 550 s. 10; Stats. 1935 s. 93.09; 1943 c. 229; 1955 c. 221 s. 31; 1955 c. 606; 1969 c. 276 s. 583 (1).

See note to 140.05, regarding cooperation with the state board of health as to its regulations concerning sanitary production of milk, cream, etc., citing 27 Atty. Gen. 516.

93.10 History: 1921 c. 571 s. 2; Stats. 1921 s. 1495—11; 1923 c. 152 s. 228; 1923 c. 366 s. 1; 1923 c. 449 s. 47; Stats. 1923 s. 99.11; 1935 c. 550 s. 11; Stats. 1935 s. 93.10.

93.11 History: 1921 c. 571 s. 2; Stats. 1921 s. 1495—12; 1923 c. 152 s. 229; 1923 c. 366 s. 1, 2;