

2021

SHORT ANSWERS TO COMMON QUESTIONS

TEXAS ASSOCIATION OF COUNTIES

1210 San Antonio Street, Austin, Texas 78701

Honorable Renee Couch

Comal County Treasurer & Association President

Susan M. Redford

Executive Director

PREPARED BY ASSOCIATION LEGAL DEPARTMENT

Michael Pichinson

General Counsel

Laura V. Garcia

Associate General Counsel

Katherine Howard

Associate General Counsel

Paul Miles

Associate General Counsel

Mike Thompson, Jr.

Associate General Counsel

Drew Williams

Associate General Counsel

Jamie Chandler

Operations Manager

Abbie Jamison

Paralegal



LEGAL RESEARCH

Toll Free Helpline: (888) 275-8224 • Direct Fax: (512) 478-3573


or visit our website at www.county.org

Helping counties with legal research for 30 years.

THIS PUBLICATION IS A RESEARCH TOOL AND NOT THE COUNSEL OF AN ATTORNEY. THIS PUBLICATION IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. It is provided without warranty of any kind and, as with any research tool, should be double checked against relevant statutes, case law, attorney general opinions and advice of legal counsel e.g., your county attorney. Each public officer is responsible for determining duties of the office or position held. Any question regarding such duties should be directed to competent legal counsel for a written opinion.

STOCK LAW

THIS PUBLICATION IS A RESEARCH TOOL AND NOT THE COUNSEL OF AN ATTORNEY. THIS PUBLICATION IS NOT A SUBSTITUTE FOR THE ADVICE OF AN ATTORNEY. It is provided without warranty of any kind and, as with any research tool, should be double checked against relevant statutes, case law, attorney general opinions and advice of legal counsel e.g., your county attorney. Any question should be directed to competent legal counsel for a written opinion.

The  symbol indicates sections that have been updated since the previous publication.

INTRODUCTION

Throughout Texas history, ranging constraints on domesticated animals have been a source of argument and debate, even to the point of violence in the 19th century cattle range wars. Ranchers who had been used to allowing their livestock to freely graze over wide areas were confronted by farmers or smaller ranchers fencing off their property. Over the years, laws have been developed to provide local control over these restrictions and to create a process for dealing with stray animals.

GENERAL PROVISIONS

1. In the absence of locally determined range provisions, what is the general rule on animals roaming or running at large?

Texas is by default a free range (or “run at large”) state. In the absence of locally determined (generally by petition and election) range restrictions or statutory prohibitions, livestock is not required to be fenced in and may range freely.

2. What is the process for enacting range restrictions?

Texas law authorizes a petition and election process that provides for local control on the issue of whether certain animals will be permitted to run at large in the county or an area within the county. The Texas Agriculture Code (“Code”) contains four types of authorized local option elections: (1) limited free range for hogs; (2) prohibition against cattle running at large; (3) prohibition against domestic turkeys from running

at large; and (4) local option to prevent “certain animals” from running at large (horses, mules, jacks, jennets, donkeys, hogs, sheep, or goats).¹

3. What is the petition process for an election to determine whether horses, mules, jacks, jennets, donkeys, hogs, sheep, or goats may be permitted to run at large in the county or an area of the county?

Landowners wanting to prohibit certain animals from running at large must submit a petition to the commissioners court that clearly states each class of animal the petitioners seek to prohibit from running at large, describe the boundaries of the area in which the election is to be held if it is less than countywide, and complies with other Election Code petition requirements.² The Code sets out ballot language for the election, allowing voters to vote for or against “Letting ___ run at large,” with the county including the name of each animal designated in the election order in the blank space.³ To vote in the election, the Code requires a person to be a freeholder and qualified voter. After the commissioners court canvasses the election, the county judge posts a proclamation at the courthouse door declaring the result.⁴ If a majority of votes cast in the election were cast against the proposition, then a person may not permit any animal of the class mentioned to run at large in the county or area in which the election was held 30 days after the canvass.⁵

4. What is a “freeholder”?

A “freeholder” is generally defined as a person who has title to real property.⁶ For purposes of the local option petitions authorized under Chapter 143 of the Code, there is a strong inference that the “freeholder” definition also includes residence within the applicable county or area.

As far as voting in a local option stock election is concerned, while there are no cases or opinions directly addressing the land ownership question, we note that other provisions requiring property ownership in order to vote generally have been held unenforceable.⁷

¹ Tex. Ag. Code §143.021

² Tex. Ag. Code §143.021

³ Tex. Ag. Code §143.023(d)

⁴ Tex. Ag. Code §143.023(e)

⁵ Tex. Ag. Code §143.024

⁶ *Atkins v. Davis*, 291 S.W. 2d 968 (Tex. Civ. App.-Amarillo 1927, writ dismissed w.o.j.)

⁷ *Hill v. Stone* 421 U.S. 289, 95 S. Ct. 1637 (1975)

5. How do I know if my county or part of the county has enacted a stock law?

There is no centralized database listing each county or part of a county that has adopted a local stock law. The best way to find out whether your county or a part of your county is covered by a stock law is to ask the county clerk to check the election records and commissioners court minutes or to ask your local sheriff for information. Many stock law elections in Texas occurred prior to 1950.

6. My county adopted a stock law almost a century before the Texas Legislature enacted the Texas Agriculture Code containing the current provisions of the stock laws. Is the stock law in my county still valid?

Yes. Per statutes authorizing local option stock laws date back to 1876. In 1981, the Legislature enacted the Agriculture Code, consolidating the local option stock law statutes, subchapters B through D, of the Agriculture Code and repealing prior statutes. A local option stock law, regardless of when it occurred, is still valid.⁸

7. May multiple petitions for stock law elections be combined into one?

Yes, so long as the petition language is clear that it applies to two separate propositions and the county properly orders the election with separate propositions on the ballot.⁹

8. May multiple free range propositions be combined into a single ballot statement?

No. Chapter 143 provides specific ballot language which may not be altered by the county in ordering the election. However, an election on multiple issues may take place to allow voters to vote on both free range cattle and free range horses, for example.¹⁰

9. May hogs be free range during the fall-winter season?

Chapter 143, Subchapter C, authorizes a local option election on limited free range of hogs in a county that has already adopted the provisions of Subchapter B, either countywide or for areas within the county, to prohibit hogs from running at large. Upon receipt of a petition signed by at least 50 freeholders (for a countywide election)

⁸ Tex. Att’y Gen. Op. No. KP-0164 (2017)

⁹ *Lock v. Morris* 287 S.W.2d 500 Tex. (1956)

¹⁰ Tex. Att’y Gen. Op. No. GA-0093 (2003)

or at least 20 freeholders in a less than countywide area (if the area has less than 50 freeholders total, the petition instead may be signed by a majority of the freeholders in the area), the county must order an election on the limited free range of hogs, which if approved will allow the hogs to run free at large during certain times of the year.¹¹

For example, freeholders of a less than countywide area wish to adopt the same limited free range of hogs for their part of the county. There are 20 freeholders in the area. The petition would need to be signed by a majority of 11 freeholders. On the other hand, if there were 40 or more freeholders in the designated area, the petitioners presumably would submit a petition with 20 signatures since the simple majority would be greater than 20.

The provisions for ordering the election are set forth in the Code.¹² Please note that the local election provisions must be read in conjunction with requirements set out in the Texas Election Code regarding the deadline to order an election and the period for publishing notice of an election.

If a majority of votes cast in the election are in favor of the limited period of free range for hogs, a person may permit hogs to run at large in the county or the area in which the election was held during the period beginning on November 15 of each year through February 15 of the following year.

10. May cattle be prevented from running at large?

Freeholders of a county (or a designated area within the county) may petition the commissioners court for an election on the issue of whether cattle may be prevented from running at large in the county (or in the designated area).

If the petition is for a countywide election, at least 35 freeholders must sign.¹³ If the petition is to hold the election within a designated area of the county, generally at least 15 freeholders must sign.

The petition for an election in a designated area of the county may be signed by a simple majority of freeholders of the area rather than the 15 freeholders if the area: (1) has fewer than 50 freeholders and (2) is between two areas of the county that have

¹¹ Tex. Ag. Code §143.051

¹² Tex. Ag. Code §§143.052, 143.053

¹³ Tex. Ag. Code §143.071(c)

previously adopted the restrictions. For example, freeholders of an area that lies between two parts of the county that previously adopted the cattle restrictions wish to adopt the same restriction for their part of the county. There are 16 freeholders in the area. The petition would need to be signed by a majority of 9 freeholders. On the other hand, if there were 30 or more freeholders in the designated area, the petitioners presumably would submit a petition with 15 signatures since the simple majority would be greater than 15.¹⁴

If the majority of votes cast at the election are for the proposition, after the 30th day following the date of the canvass, a person may not permit cattle to run at large in the county or area in which the election was held.¹⁵

Note that certain counties may not hold a countywide election on cattle running at large.¹⁶

11. May domestic turkeys run at large?

Generally, yes. However, freeholders of political subdivisions of ten specific counties may petition the commissioners court to hold an election on the question of whether domestic turkeys will be permitted to run at large within the political subdivision. The counties are: Bastrop, Blanco, Clay, Collin, DeWitt, Gonzales, Gillespie, Guadalupe, Parker and Wise. The petition must be signed by at least 25 freeholders.¹⁷

If the majority of votes cast at the election are for the proposition, after the 30th day following the date of the canvass, a person may not permit domestic turkeys to run at large within the political subdivision of the county for which the election was held.¹⁸

12. May the prohibition against animals running at large be repealed after it has been adopted in an election?

Yes. The commissioners court may be petitioned to repeal the prohibition against animals running at large. A repeal election may not be held earlier than two years after the date of the last election in the applicable county or area. The procedure for

¹⁴ Tex. Ag. Code §143.071(d)

¹⁵ Tex. Ag. Code §143.074

¹⁶ These counties are: Andrews, Coke, Culberson, Hardin, Hemphill, Hudspeth, Jasper, Jefferson, Kenedy, Kinney, LaSalle, Loving, Motley, Newton, Presidio, Roberts, Schleicher, Terry, Tyler, Upton, Wharton, and Yoakum.

¹⁷ Tex. Ag. Code §143.071

¹⁸ Tex. Ag. Code §143.074

ordering the election and election notice is the same as for the adoption election. If a majority of votes cast at the election are in favor of repeal, the prohibition is repealed 180 days after the canvass.¹⁹

13. May the prohibitions against cattle or domestic turkeys running at large be repealed?

Yes. Under Code §143.076, the freeholders of the county or area in which the prohibition has been adopted may petition the commissioners court to hold a repeal election. A petition for a countywide repeal election must be signed by at least 200 freeholders, which must include 24 signatures from each justice precinct. A petition for repeal in an area within the county must be signed by at least 50 freeholders of the area. If the prohibition has been adopted countywide, it may not be repealed for an area within the county unless two-thirds of the votes cast at the countywide election within the area favor repeal.

14. May the free range of hogs be repealed?

Yes. After adoption, an election for the purpose of repealing the limited period of free range for hogs may not be held countywide or in an area within the county for two years after the date of the election. If a majority of votes cast at a subsequent election are cast against limited free range, the limited period of free range is repealed, effective the 11th day after the commissioners court canvasses the election and posts the required proclamation.²⁰

15. Is there a way for an area adjacent to an area that has adopted the prohibition against animals running at large to extend the prohibition without going through the petition/election process?

Yes. If there are fewer than 20 freeholders in the adjacent area and a majority of them petition the commissioners court to extend the prohibition against animals running at large to their area; or (2) there are no freeholders in the adjacent area (here “freeholder” appears to refer to “residents”) but the landowners in the adjacent area petition the commissioners court to extend the prohibition; or (3) there is an individual landowner whose property abuts territory in which the prohibition has been adopted and he or she petitions the commissioners court to extend the

¹⁹ Tex. Ag. Code §143.026

²⁰ Tex. Ag. Code §143.055

prohibition, the court may extend the prohibition against animals running at large to include the landowner's property.²¹

16. If elections have been held both countywide and in an area of the county on the same issue to contrary results, which prevails?

The more specific provision would prevail. For example, if a countywide election on the limited free range period for hogs failed, a petition could be circulated and election held within an area of the county on the same issue. If voters then voted in favor of the limited free range for hogs, it would go into effect within the specified area.

ENFORCEMENT

1. What is the penalty for allowing a prohibited animal to run at large?

It is a Class C misdemeanor to knowingly allow an animal to trespass on another person's land in a county or area in which the animal is prohibited from running at large.²²

2. Is an animal owner liable for damage caused to a vehicle by an accident on a farm-to-market road in an area where running at large prohibitions have not been adopted?

No. On a farm-to-market road, in the absence of the adoption of a local stock law, there is no statutory or common-law duty for a person who owns or is responsible for livestock to prevent it from roaming on the farm-to-market road.²³

3. Is an animal owner liable for damage caused to a vehicle on a state or federal highway?

It depends. The animal owner's liability would likely hinge on whether the owner consciously allowed the animal to traverse the highway.²⁴ The law provides that a person who owns or has responsibility for control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat, may not *knowingly* allow the animal to cross or roam at large

²¹ Tex. Ag. Code §143.027

²² Tex. Ag. Code §§143.034, 143.082, 143.108

²³ *Gibbs v. Jackson*, 990 S.W. 2d 745 (Tex. 1999)

²⁴ Tex. Ag. Code §143.102

on the right of way of a highway. A violation is a Class C misdemeanor with a separate offense for each day the animal is allowed to roam at large.²⁵

4. Is a driver responsible for damage to an animal the driver injures or kills on a highway?

Generally not. A person whose vehicle strikes an unattended animal on a highway is not liable for damages absent a finding of gross negligence in the operation of the vehicle or willful intent to strike, kill, injure, or damage the animal.²⁶

5. How is the prohibition against animals running at large on the highway enforced?

State highway patrolmen and county or local law enforcement enforce the at large restrictions and may do so without the use of a written warrant.²⁷

6. Does a county have the duty to enforce stock law prohibitions within the boundaries of a home-rule municipality?

Yes. The attorney general has determined that the county's enforcement power is not limited to areas outside municipal boundaries.²⁸

FENCING

1. Is a landowner required to fence property against animals that are not permitted to run at large?

No. A person is not required to fence against animals that are not permitted to run at large.²⁹

²⁵ Tex. Ag. Code §143.108(c)

²⁶ Tex. Ag. Code §143.103

²⁷ Tex. Ag. Code §143.106

²⁸ Tex. Att'y Gen. Op. No. MW-0588 (1982)

²⁹ Tex. Ag. Code §143.028

2. Is a landowner required to fence property against animals that are permitted to run at large?

A landowner is required to fence his or her property in a sufficient manner to keep out ordinary livestock that are permitted to run at large in order to preserve the landowner's ability to recover for damage to property or crops.³⁰

3. In a county or an area in which a prohibition against an animal running at large is in effect, does the owner of an affected animal have a duty to prevent the animal from running at large?

Yes. While there is not an explicit fencing requirement, the owner of the designated class of livestock is required to prevent the livestock from running at large in the county.³¹

4. What is a "sufficient" fence in general?

Except in areas in which a stock law has been adopted, generally a sufficient fence is one that is at least five feet high and will prevent hogs from passing through.³²

5. What is considered a sufficient fence in a county or an area within a county that has adopted a prohibition against horses, mules, jacks, jennets, donkeys, hogs, sheep, or goats running at large?

A "sufficient" fence is defined as being at least 4 feet high. If the fence is barbed wire, it must consist of 3 wires on posts no more than 30 feet apart with one or more stays (vertical wires mounted between posts to help hold the horizontal barbed wires in place) between every two posts. If the fence is a picket fence, the pickets must be no more than 6 inches apart. If the fence is a board fence, the boards must consist of three boards not less than 5 inches wide and one inch thick. A rail fence must have at least 4 rails.³³ The list of types of fences deemed "sufficient" under the Agriculture Code in a county or part of the county that has adopted a local stock law is not exclusive.³⁴

³⁰ Tex. Ag. Code §143.028

³¹ Tex. Att'y Gen. LO-92-31 (1992)

³² Tex. Ag. Code §143.001

³³ Tex. Ag. Code §143.028

³⁴ *Harlow v. Hayes*, 991 S.W.2d 24 (Tex. App. – Amarillo 1998), pet. denied

An election may be held on the issue of whether three barbed wires without a board constitute a sufficient fence in the county or designated area.³⁵

A person whose fence is “insufficient” is liable to the owner of a mule, jack, jennet, horse, or head of cattle for damages if the person maims, wounds, or kills or procures the maiming, wounding, or killing of the animal.³⁶

ESTRAYS

1. What is an “estray”?

An “estray” is stray livestock, stray exotic livestock, or stray exotic fowl. Exotic livestock is defined as either non-indigenous grass-eating or plant-eating, single or cloven-hoofed mammals that are not considered game or fur-bearing animals under the Parks and Wildlife Code or indigenous mammals regulated by the Parks and Wildlife Department as endangered or threatened species. Buffalo is an example of exotic livestock. Exotic fowl is defined as either non-indigenous avian species that are not considered game birds as defined under the Parks and Wildlife Code or indigenous birds regulated by the Parks and Wildlife Department as endangered or threatened species. Ostriches and peacocks are examples of exotic fowl.³⁷

2. Which county officer is responsible for estrays?

The sheriff. After receiving a report from a private property owner or a custodian of public property, the sheriff shall notify the estray’s owner, if known, that the animal’s location has been reported. If the estray’s owner does not immediately remove the animal, the sheriff may then capture and impound the animal. If the sheriff determines the animal is dangerous, the sheriff may immediately capture and impound the animal without notifying the owner.³⁸ The sheriff’s duty to impound estrays includes territory within municipal boundaries.³⁹

3. What are the impoundment procedures for estrays?

The sheriff or sheriff’s designee shall impound an estray if the owner is unknown, cannot be contacted, or the estray is dangerous to the public. After impounding the

³⁵ Tex. Ag. Code §143.028(c)

³⁶ Tex. Ag. Code §143.033

³⁷ Tex. Ag. Code §142.001

³⁸ Tex. Ag. Code §142.003

³⁹ Tex. Att’y Gen. Op. No. MW-0588 (1982)

estrays, the sheriff shall prepare a notice of estray with the name and address of the person who reported the estray, the location at which it was captured, the location at which the animal will be held until disposition, and a detailed description of the animal. The notice is filed with the county clerk.

The sheriff is required to make “a diligent search” for the identity of the owner if not known, which includes a search of the county register of recorded brands if the animal is branded. The register is maintained by the county clerk and consists of a brand book containing the marks, brands, or tattoos filed by owners of cattle, hogs, sheep, or goats.⁴⁰ The brand book has historically been a physical document in the clerk’s office, though the legislature has recently authorized counties to accept electronic registrations and record the brands electronically.

If the search is unsuccessful, the sheriff posts an impoundment notice on the county’s bulletin board and publishes notice either in a newspaper of general circulation in the county at least twice during the 15 days after the date of impoundment or on the county’s website for at least 15 days after the date the estray was impounded.⁴¹

4. Is the sheriff entitled to a fee?

Yes. The sheriff is entitled to a collection fee in an amount not to exceed \$25 if the sheriff or sheriff’s designee is present at the time the estray is collected. A dispute of the fee by the estray’s owner is resolved in justice court.⁴²

5. Is the owner on whose property the estray was found entitled to a fee or payment?

Yes. A property owner is entitled to payment of a reasonable amount for damages and maintenance if the sheriff was notified of the estray not later than the fifth day after the date the estray was discovered. The property owner may accept payment from the owner of the estray in an agreed amount. If they cannot agree, the dispute may be resolved in the appropriate justice court.⁴³

⁴⁰ Tex. Ag. Code §144.041

⁴¹ Tex. Ag. Code §142.009

⁴² Tex. Ag. Code §142.005

⁴³ Tex. Ag. Code §142.006

6. How does the county dispose of unclaimed estrays?

The county gains title to an estray if ownership is not determined before the third day after the final advertisement (see Question 2, this section) or the estray is not redeemed before the 18th day after the date of impoundment. The sheriff may then sell the estray at auction unless a determination is made that the animal's sale is unlikely to cover expenses, in which case the sheriff may donate it to a nonprofit organization or retain the estray and use it for county purposes.

If the estray is sold at auction, the proceeds are allocated to cover the expenses of the sale, the sheriff's impoundment fee and other charges, and maintenance expenses or damages due the owners of the property from which the estray was impounded. Any leftover balance from the sale is paid to the estray's owner, if known. If the owner is unknown, the balance is placed in the county's jury fund, subject to claim from the estray's original owner, not later than 180 days after the date of sale. Finally, the sheriff files a report of the estray sale with the county clerk.⁴⁴

⁴⁴ Tex. Ag. Code §§142.013, 142.014