

OFFICIAL OPINION NO. 41

July 18, 1950.

General Robinson Hitchcock,
The Adjutant General,
State of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

We have your request for an official opinion which reads as follows:

"1. A request has been made through this office for you to furnish an official opinion to Major Anderson, Post Engineer, Fort Benjamin Harrison, Indiana, regarding the following situation.

"a. A land owner who owns ground adjoining Fort Harrison has asked the officials of Fort Harrison to share their legal part of erecting a new stock fence between their properties. Both parties wish to know the type and height that this fence must be to meet State requirements and the legal proportion of the cost.

"2. It is requested that this office be furnished a copy of your opinion."

Due to the fact that this office can render official opinions only to elected officials and state departmental heads, his opinion is accordingly addressed to you. You may in turn advise the Army Officials at Fort Benjamin Harrison.

The law pertaining to partition fences is found in Sections 30-201 to 30-212, Burns Indiana Statutes 1950 Replacement. Section 30-201 provides as follows:

"All fences now constructed and used by adjoining landowners as a partition fence or fences, unless specially agreed upon by such landowners, shall be deemed partition fences and shall be repaired, maintained and paid for as herein provided."

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Section 30-203 reads in part as follows:

“All partition fences shall be built, rebuilt, kept in repair at the cost of the several landowners whose lands are inclosed or separated by such fences equally according to the number of rods or proportion thereof such landowner may have along such line of fence, whether his, her or their title be in fee simple or a life estate. * * *”

This section also provides the definition for a “lawful partition fence”, in the following language:

“ * * That a lawful partition fence shall be a straight board and wire fence or a straight wire or a straight board fence or a picket fence four (4) feet high, a straight rail fence four and one-half (4½) feet high, a worn rail fence five (5) feet high, and all fences of every structure to be sufficiently tight and strong to hold hogs, sheep, cattle, mules and horses: * * * (Our emphasis.)”*

Section 30-202 sets forth in detail the portion or part of the partition fence that each landowner shall construct. I refer you to this rather lengthy section for the details of the legal requirements but as a practical rule for the Army officials to follow, they should face the property at the adjoining landowner and build that half which is to the right.

I believe the above answers all of your questions and I believe any further questions could be answered by a reference to the above quoted sections. However, I do wish to call your attention to Section 30-211 which reads as follows:

“Adjoining landowners who elect to erect, repair, maintain or pay for fences separating their lands in a manner other than that provided by law, shall do so by written agreement and when signed by the parties to be charged, said agreement shall be recorded in the office of the recorder in the county or counties in which such lands are situated.”