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Legal Foundation corrals first major win

Railroad opts to obey state statute regarding right-of-way fences

By Mike Nichols

The Oklahoma Agricultural Legal Foundation has assisted in obtaining a favorable outcome for a state rancher in his skirmish with a railroad over livestock fences.

The foundation was organized by Oklahoma Farm Bureau in March 2001 to promote and protect the rights and freedoms of farmers and ranchers.

The successful resolution of the fencing dispute with the railroad marked the foundation's first major victory for agriculture, and was secured without a court action being filed.

Foundation Director Harlan Hentges became involved with the cause when Noble County Farm Bureau Director Bill Hafner contacted Oklahoma Farm Bureau. Hafner was concerned about possible liability when his cattle got off his property onto highways due to dilapidated fences on Burlington Northern Santa Fe (BNSF) Railroad right-of-way going through his property.

"He had been having the problem with the fences for years," said Hentges, intimating the railroad preferred paying for possible cattle losses instead of replacing fences.

After researching state law, Hentges said he discovered a statute was in place stating that the railroad is responsible for constructing and maintaining a fence along its right-of-way.

"Oklahoma statutes state that is the duty of each railroad to fence its road with a good and lawful fence," he said. "The Corporation Commission is vested with the power to order that a railroad install a fence and maintain it in good repair."

Hentges said the railroad informed the landowner that it was its practice to provide the landowner the materials to build or repair a fence, not to do the work.

"The law says the railroad must erect and maintain the fences. I contacted them and explained that we knew what the law was. We said we know the law and our rights."

Both the Union Pacific and BNSF Railroads had appealed Corporation Commission orders to rebuild and replace fences on their rights-of-way, according to Hentges. In both cases, he said the Oklahoma Supreme Court upheld the state statute and the Corporation Commission's authority to enforce it.

He said that recently the Corporation Commission has been enforcing the law and has been pursuing enforcement



Noble County Farm Bureau Director Bill Hafner stands in front of a new section of fence on his property. The fence and its construction were paid for by the Burlington Northern and Santa Fe Railroad after the Oklahoma Agricultural Legal Foundation provided assistance, causing the railroad to obey state statutes regarding construction and maintenance of fencing along rights of way.

of the existing state statute.

"The railroads had fought the order of the Corporation Commission and appealed it to the Oklahoma Supreme Court and lost," said Hentges. "The question was would the railroads continue to fight and not abide by the law."

Hentges said while no court action was filed against the railroad by the Legal Foundation to secure the desired results, he felt the fact that the rancher had an attorney on his side to push the issue helped get action.

"In the prior cases they (the railroads) were willing to pay lawyers to get them out of their obligation," he explained.

"Having a law on the books is not always enough. We have to make sure they abide by those laws.

"We have as much opportunity to impact the law as our opposition. Farmers and ranchers typically haven't invested the money necessary to enforce their rights. Unless we're in the arena, we can't win the victories that protect farmers' and ranchers' rights and freedoms."

For Hafner, the successful resolution of the issue means he now has about a mile of new fencing along the BNSF right-of-way through his property. Hentges said since both

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Legal Foundation corrals fencing woes

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the fence and fence line were in such dilapidated condition, replacement was a massive undertaking.

Bulldozers and other heavy equipment had to be used to clear the path for the fence. When the clearing and fence were finished, Hentges said the price tag totaled about \$30,000 to the railroad.

“They (the railroads) were just acting like business people, saying if we don’t have to spend the money we won’t,” he added.

“This is one reason the Legal Foundation was formed. We simply want to tell people what rights they have and make sure those rights are enforced.”

Hentges said he hopes other landowners experiencing a similar problem with railroads now will see the law is on their side and take steps to secure repairs or replacement for fences.

Buddy Combs, a staff member of the Transportation Division of the Corporation Commission, is the lone state employee assigned to work the railroad fencing issue.

He said there are procedures landowners must follow to involve the Commission.

Combs said the landowner first must write a letter to the railroad indicating that existing fence will no longer hold livestock. A copy of that letter needs to be filed with the Corporation Commission.

“After the time requirements, if the landowner hasn’t heard from the railroad we will send an application to the landowner. We will send it to the railroad along with our own letter advising the railroad of the rule.

“If the railroad doesn’t respond,” said Combs, “we will go to a court action requiring the railroad to build a fence.”

He said if the railroad chooses to ignore the Commission’s order, it can be found in contempt and fined \$500 for each day it fails to take action.

“We would do the same for a landowner without the attorneys,” Combs said, but conceded that “sometimes landowners really don’t understand that.”

Combs said landowners who are hav-



Hafner purchased the land where the railroad crossed in the 1950s. He said the railroad had not made any repairs to the fences since he originally purchased the land. This picture shows the fence before it was replaced. Hafner said the old fences were in such poor shape that even his efforts to patch them were futile. For Hafner, the new fencing should mean he won’t experience more cattle losses. His biggest loss was a 20-head, one-occurrence loss to a rumbling freight train.

ing problems with railroad right-of-way fences to contain livestock should contact him at 405-521-2965. He said the state

law does not cover chain link fences or privacy fences.

