

HEDGE FENCES - Form of Petition; Form of Instruction and Form of Verdict, to be used in a proceeding under Section 8578 R. S. Missouri, 1939.

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January 3, 1942

Hon. Clyde E. Combs  
Prosecuting Attorney  
Barton County  
Lamar, Missouri



Dear Sir:

We are in receipt of your request for an opinion, dated December 11, 1941, which reads as follows:

"I would like the aid of your office in the following matter:

"Barton County is a county of some 14,000 inhabitants operating under township organization.

"Information has reached me that at least two of the township boards have decided to enforce Sec. 8578 R. S. Mo. 1939 regarding regulation of hedge fences, one township board having sent a notice to all the property owners whose hedge fences have been untrimmed this year, a copy of which is hereto attached. The other township, I understand has had the county highway engineer send the owners notice.

"I have been unable to find anything concerning this section as to the procedure, whether or not the section has been upheld in the higher courts and the form of petition necessary if any action is taken by me. I would like the opinion of your office as to the probability of enforcing this sec-

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tion and if so, whether or not there are any necessary steps to be taken by the township boards or county highway engineer inasmuch as neither of these townships have a road overseer, and a citation of any Missouri cases which would throw any light on the matter.

"Also please send me a form of petition to be used and instructions as to the procedure in the same. From all information I can gather this is the first time there was ever any attempt to enforce this section in this county."

We are enclosing a copy of an opinion rendered by W. J. Burke, of this office, on July 19, 1939, to Mr. Donald B. Dawson, Prosecuting Attorney of Bates County, Butler, Missouri, wherein it was held that it was not necessary to notify landowners to cut hedge fences before beginning civil action.

The following are some of the cases construing Section 8578 R. S. Missouri, 1939:

Moore v. Hawk, 57 Mo. App. 495 -(hedge case);  
State v. Feitz, 154 Mo. App. 578 -(twp. org.);  
Board ex rel v. McPhearson, 172 Mo. App. 369;  
State of Missouri v. Auffart, 192 Mo. App. 133.

We are also attaching hereto a suggested form of petition, instruction and verdict to be used in a proceeding of this kind.

Respectfully submitted

B. RICHARDS CREECH  
Assistant Attorney General

APPROVED:

YANE C. THURLO  
(Acting) Attorney General