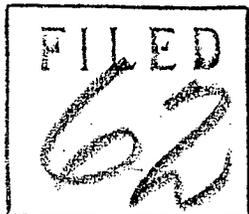


HEDGE FENCES: The term "hedge fence" as used in Sec. 229.110 means a fence composed of Osage Orange, and need not be one which is actually and presently used for fence purposes, but must be one intended or capable of being used for said purposes as distinguished from a voluntary, intermittent or irregular growth.



November 1, 1954

Honorable Joe H. Miller  
Prosecuting Attorney  
Carroll County  
Carrollton, Missouri

Dear Sir:

Reference is made to your recent request for an official opinion of this office, which request reads as follows:

"It is my desire to have your interpretation of Section 229.110 Revised Statutes of Missouri, 1949. This statute in substance provides that the owner of hedge fences situate along, on, or near the right of way of any public road must keep them cut to a certain height.

"1. What constitutes a hedge fence under this section; i.e. must the fence be one used for fence purposes, and must it be one made up of Osage Orange, or would it apply to any kind of brush or shrubbery which is used wholly or partially for fence purposes?

"2. If the road overseer, or the proper authority should cut the hedge fence, or brush and if so, is the cutting limited to the hedge or brush growing on the right of way or can the cutting be done as far back as is necessary to protect the roadway?"

You first inquire whether Section 229.110 relates only to a fence made up of Osage Orange as distinguished from brush or other shrubbery, and whether the hedge must be one used for fence purposes. Section 229.110 provides in part as follows:

"1. Every person owning a hedge fence situated along or near the right of way of any public road shall between the first days of

Honorable Joe H. Miller

May and August of each year cut the same down to a height of not more than five feet, and any owner of such fence failing to comply with this section shall forfeit and pay to the capital school fund of the county wherein such fence is situated not less than fifty nor more than five hundred dollars, to be recovered in a civil action in the name of the county upon the relation of the prosecuting attorney, and any judgment of forfeiture obtained shall be a lien upon the real estate of the owner of such fence upon which same is situated, and a special execution shall issue against said real estate and no exemption shall be allowed."

The term "hedge" is defined in Websters International Dictionary, Second Edition, as follows:

- "1. A thicket of bushes, often thorn bushes, esp. when planted as a fence or boundary.\* \* \*
4. The Osage Orange."

The same works, referring to "Osage Orange," notes the following:

"Now commonly planted for hedges."

While we are unable to find any reported case defining the term "hedge fence" as used, we direct your attention to the case of Moore v. Hawk, 57 Mo. App. 495, l.c. 498, wherein the court makes use of the term "Osage hedge." From the foregoing definitions and from our understanding of the general concepts of the term "hedge" when used in reference to a stock tight enclosure, we are of the opinion that the term "hedge fence" as used in the above section refers to an enclosure made up of Osage Orange.

We are further of the opinion that the hedge fence referred to in Section 229.110 need not be actually and presently used for fence purposes, but that it falls within the purview of said section if it was intended for fence purposes or is capable of being used for fence purposes if properly attended, as distinguished from intermittent, irregular or voluntary growth.

You next inquire whether this section pertains only to hedge fence situated on or along the right of way, or whether it would

Honorable Joe H. Miller

encompass the cutting of hedge fence some distance from the right of way. In this regard, I am enclosing a copy of an opinion written to Ralph H. Duggins, Prosecuting Attorney of Saline County, under date of October 16, 1949, holding that the words "or near" as used in the phrase "along or near the right of way" should be treated as having the same meaning as "at or along," which opinion, I believe, fully answers the latter question.

CONCLUSION

Therefore, it is the opinion of this office that the term "hedge fence" as used in Section 229.110 means a fence composed of Osage Orange. We are further of the opinion that the term "hedge fence," as used in the said section, need not be one which is actually and presently used for fence purposes, but must be one intended or capable of being used for said purposes as distinguished from a voluntary, intermittent, or irregular growth.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

John M. Dalton  
Attorney General

DDG/vtl

Enclosure: 10-16-49 to Ralph H. Duggins