



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 26, 1977

ATTORNEY GENERAL OPINION NO. 77- 311

Mr. Gary House
Chautauqua County Attorney
Post Office Box 417
Sedan, Kansas 67361

Re: Fences--Viewers--County Lines

Synopsis: Where the fence to be viewed lies on a county line, the procedure for viewing prescribed by K.S.A. 29-314 should be followed.

* * *

Dear Mr. House:

You advise that the county commissioners of Chautauqua County, Kansas, have been requested by a resident of that county to view a partition fence which runs between property owned by that individual and property owned by another, who resides in Montgomery County, Kansas. The partition fence divides not only the property of these two parties, but also marks the county line between Chautauqua and Montgomery counties. You request my opinion whether the board of county commissioners of Chautauqua may proceed to view the fence, or whether it will be necessary to have a joint viewing by the commissioners of both counties.

In my judgment, the question is controlled by K.S.A. 29-314, which provides thus

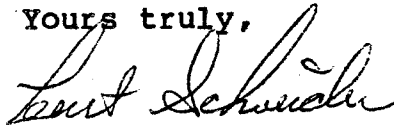
"In all cases where the line upon which a partition fence is to be made or to be divided is the boundary line between counties and in all cases where such line is partly in one county and partly in another, two of the

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fence viewers shall be the chairmen of the board of county commissioners of the respective counties and in case of their disagreement a third shall be chosen by them from the county fence viewers in the two counties, and their assignment, in order to be binding and effectual, must be recorded, as hereinbefore provided, in each of such counties." [Emphasis supplied.]

The underscored language requires the joint viewing, as prescribed therein, where the partition fence which is to be made or to be divided is the boundary line between counties. Here, the partition fence which is to be viewed is the boundary line between the counties, and whether the viewing is for the purpose of "making" or "dividing" such a fence or for determining the respective obligations of the adjoining owners to share in its maintenance or repair or for any other purpose, in my judgment, this statute should be followed.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj