

Gates and Cattle Guards

With county commission approval, gates and cattle guards have been allowed on county and township roads since 1874. In pasture country in the 1800's, it was typical to open roads based on easy travel rather than on section lines. When roads were opened through pastures, gates or cattle guards were placed in the fences at property lines.

K.S.A. 68-128a specifically allows gates and cattle guards on pasture roads and provides that the county or township maintain the gates and cattle guards. This law also provides that any user of such a road shall be personally liable for any damages to livestock caused by him while traveling such road, and no liability shall be incurred by the county, township, or landowner. I call these "open range roads," and they are still common in the Flint Hills and in western Kansas. See Figure 1 for a typical cattle guard on an open range road.

We don't open roads through pastures any more, but requests for gates and cattle guards seem to be increasing. There are two factors that are feeding the request for gates. With larger farms, the rural population is decreasing, and with the old farmsteads being abandoned, many rural roads have less traffic. As farms get bigger, a land owner may own both sides of a road and it is a major expense to maintain a fence on both sides of a road. State law does allow gates and cattle guards across the road so it seems to be a good time to discuss when that might be appropriate.

The law that allows gates and cattle guards across the road is very broad and allows the county commission to stipulate the type of gate, cost for installation, maintenance responsibility, and time the gates can be closed. The law is as follows:

68-126. Fences across public highways; gates; county commissioners' powers and duties.
The county commissioners of any county are

hereby empowered, where lands are used largely as pasture lands and wherever in their judgment the convenience of the traveling public will not be materially affected thereby, to authorize and permit the construction and maintenance of fences across public highways under their jurisdiction. Wherever such fences are permitted the board of county commissioners shall require and it shall be the duty of the person constructing or maintaining such fences to construct and maintain therein sufficient gates to accommodate travel, which gates shall be either swinging on hinges or gates that may be opened by the driver of a vehicle without alighting therefrom, or the ordinary wire gate, as the county commissioners may require. The board may also require the owner or other person constructing or maintaining such fence to construct upon such road an auto gate sufficient



FIGURE 1. Cattle guard in Kiowa County.



FIGURE 2. Proper way to sign a gate with ROAD CLOSED sign, OM-4 end of road markers, and object markers on gate posts.



FIGURE 3. Road closed sign at gate in Miami County.

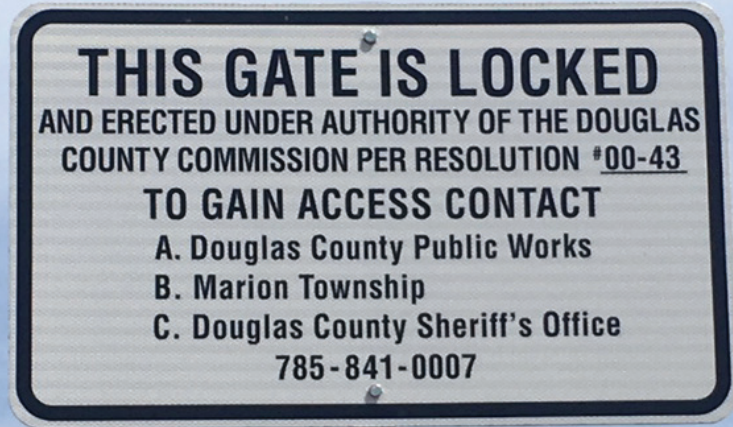


FIGURE 4. Sign at gate in Douglas County.

to enable automobiles to pass over or through such fence upon such road without stopping, and sufficient also to prevent stock passing through said fence.

All orders allowing the construction of such fences and requiring the gates herein provided shall be entered upon the journal of the board of county commissioners. The said board may, in its discretion, order and direct that any gates shall remain open during certain portions of the year, the time to be fixed by said board, or in its discretion and where there is a reasonable necessity therefor and the convenience of the traveling public would not be materially affected thereby, it may order such gate or gates to be kept closed during the entire year.

68-127. Same; penalty. Any person who shall injure or destroy, at any time, or who shall leave open any gate constructed under the provisions of K.S.A. 68-126, contrary to the intent and the purpose of said order, and at a time when by the terms of said order such gate or gates are to remain closed, shall be guilty of a misdemeanor and on conviction thereof, shall be fined in a sum not exceeding \$100 and costs of prosecution.

The most common situation is a dead end road. Dead end roads provide an isolated location for dumping trash, target practice and parties. These activities are a serious and ongoing issue for both the land owners and law enforcement. A way to stop these inappropriate uses is to install a gate and provide keys only to those that need access.

Another common situation is where a person owns both sides of a road. If he owns two quarter sections, he needs to maintain a mile of road fence. If a gate or cattle guard is placed at the property lines he can combine the two pastures and pull the road fences.

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FIGURE 5. Gate at feed lot to move cattle across the road. Object markers are fine but STOP sign should be replaced with road closed sign. Note blinking light, which is helpful to warn traffic, but not an MUTCD requirement.



FIGURE 6. It is easy to overlook maintenance of gates and related signing.

A more unusual situation is when a farmer or feedlot operator needs to move cattle across the road on a regular basis. In this case they may need to gate the road for an hour or less. While they can legally herd the cattle across the road, a gate on each side of the cattle crossing may speed up the operation and cause less traffic disruption.

Whatever the situation, the county commission is the final authority on the authorization of a gate and stipulates the various conditions that might be appropriate. The first consideration is to determine if the gate is appropriate and that is based on

whether the traveling public will not be materially affected. Of course, a gate will delay traffic, so traffic volume is the prime consideration. This then limits gates to little used roads. The less a gate is allowed to be closed, the more traffic may be tolerated.

There are a number of things to consider related to gates.

1. Type and size of gate.
2. Ownership of the gate.
3. Installation and maintenance responsibilities.
4. Time period the gate can be closed.
5. Proper signing including signs on the gate and advance warning signs.
6. Who gets keys if the gate is locked.

Usually the cost of the gate, signs and maintenance is the responsibility of the person that benefits from the gate. If the county wants to maintain more control over the gate and signs, they may want to pay the cost and maintain ownership. The authorization for a gate should be made by resolution. The resolution should stipulate that the gate can be removed by the county if conditions change or the owners violate the terms of the resolution. In order to inform future property owners about the situation, the resolution should be recorded at

the Register of Deeds office. Contact me if you need a sample resolution.

It is important that the gate and warning signs are properly maintained. Since gates are on dead ends and other little used roads, it is easy to forget about them until something bad happens. ■

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