

Park County Attorney

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Big Timber Range
NOV 9 '88

Wm. Nels Swandal

Jack Yardley Deputy

414 East Callender — Livingston, MT 59047
Telephone: (406) 222-6120 ext. 239

*General Current
WEEP
5-4-80*

November 3, 1986

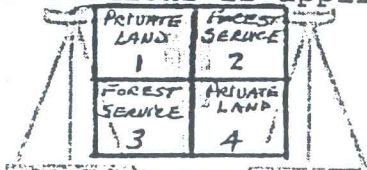
Gary Duffey
Post Office Box 863
Corwin Springs, MT 59021

re: question re trespassing

Dear Mr. Duffey:

You asked me for a clarification regarding the trespass laws as they apply to the crossing of corners of sections that have diagonal corners. While each case has to be looked at on its own facts I can give you my general opinion.

For purposes of this letter, I will assume that the following diagram of four sections is applicable:



The question you asked and which has been asked by others is whether it is permissible (assuming the two private sections are properly posted) for a person to travel across the corners of sections 4 and 2. In my opinion it is.

The trespass laws were designed to protect the land but they do not protect the air space above that land. It is certainly possible for a person to locate a corner or make a good faith effort to locate a corner and step across it without trespassing on private land. Assuming the 4 sections are unfenced, it is also feasible that a horse or pack animal could be led across the corners without trespassing. If the sections were fenced and no gate existed at the corner, an individual could cross but it appears they would have to trespass on one of the private sections to get animals across. Again, it would depend on the facts of each case.

I hope the above answers your questions.

We are still waiting for the Forest Service to provide us

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with a survey regarding the disputed road up Cinnabar. At the present time, my secretary, who has much experience researching titles, is doing some more background research on the history of the road. Once she finishes her job and my new deputy starts work, I hope to move forward on this case. I have had little time to work on it and it does not appear things will change for the next month at least.

Please advise me if you have any questions.

Sincerely,



Wm. Nels Swandal
Park County Attorney

wms/la
cc: Park County Commissioners