

when the provisions of the General Code applicable thereto are complied with."

I am therefore of the opinion, in specific answer to your question, that where a public health nurse is not employed in a city health district, the board of education of the city school district is not empowered to expend funds in any way for the compensation of a public health nurse within the district other than for the employment of nurses by said board of education, by authority of Section 7692, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3059.

PARTITION FENCE—CONSTRUCTION ORDERED BY TOWNSHIP TRUSTEES—MUST BE GOOD AND SUBSTANTIAL—CAPABLE OF TURNING LIVE STOCK.

SYLLABUS:

1. *Under Section 5910, General Code, the township trustees shall assign the portion of a partition fence which the owners are to build, and the owners may build any kind of fence they choose, so long as it is a good and substantial fence. Undoubtedly, such a fence should be capable of turning live stock ordinarily kept by farmers, including sheep.*

2. *If a land owner fails to build a good and substantial fence, the other party may apply to the township trustees, under Section 5913, supra, whereupon the trustees shall sell the contract for the construction of such fence to the lowest responsible bidder. Under such procedure, the trustees specify the kind of fence that is to be constructed.*

3. *When the trustees assign the portion of the fence each owner is required to build, under Section 5910, General Code, they may suggest to the owners the kind of fence they regard as good and substantial, but such suggestion can have no binding force except in so far as it bears upon their action when application is made to them under Section 5913, General Code.*

COLUMBUS, OHIO. March 18, 1931.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—Your recent communication reads:

"Section 5910 and kindred sections of the General Code of Ohio, provide for the settling of line or partition fence disputes by application to the Board of Trustees of the Township in which the fences in question lie for an apportionment of the building of the parts of said fence between the respective landowners by the said Board of Trustees. Various provisions are made for the working out of this apportionment in the building of said partition fences between the respective landowners. However, the one question that is in dispute in a particular case before a particular Board of Township Trustees of Monroe County, Ohio, does not seem to

have been clearly provided for by the law. The particular question on which I desire your opinion is—What kind of a fence, specifically speaking, has a Board of Township Trustees a right to order to be built?

To show you the situation that has arisen in the particular case in question, permit me to state the following state of facts:

One landowner keeps sheep and insists that he needs a woven wire fence constructed, at least, to the distance from the ground that would permit the placing of barb wires as the top part of said fence. The other landowner keeps no sheep and says that three or four strands of smooth wire, topped by a strand or two of barbwire, should suffice. The Township Trustees are in a quandary as to what kind of a fence to order the landowners in question to build, both parties being ready and willing to build a partition fence but both being unable to agree upon the kind of a fence to be built.

Does it lie within the authority of the trustees to determine the specific kind of a fence to be built? What kind of a fence does the statute contemplate that the trustees shall order to be built in these line fence cases?

For the trustees to specify generally the kind of a fence to be built in the case in question will not lead to anything but trouble. If the trustees have the right and power to prescribe, they must prescribe the specific kind of a fence to be built."

Section 5908, General Code, requires the owners of adjoining lands to maintain in good repair in equal shares all partition fences, unless otherwise agreed upon, however the section excepts from the operation thereof lots in municipal corporations, etc., also railroad fences.

Section 5909, General Code, among other things provides that a land owner may not construct a partition fence from barbed wire, without the written consent of the adjoining owner; however, said section provides that such consent is not necessary to the use of one or two barbed wires, provided that neither is less than forty-eight inches from the ground and is placed on top of a fence other than barbed wire.

Section 5910, General Code, reads:

"When a person neglects to build or repair a partition fence, or the portion thereof which he is required to build or maintain, the aggrieved person may complain to the trustees of the township in which such land or fence is located. Such trustees, after not less than ten day's written notice to all adjoining land owners of the time and place of meeting, shall view the fence or premises where such fence is to be built, and assign, in writing, to each person his equal share thereof, to be constructed or kept in repair by him so as to be good and substantial."

In analyzing the above sections, it would appear that when the trustees act under Section 5910, *supra*, they simply assign to each adjoining owner the portion of the fence he is to build. The statute contemplates that such owner shall construct or repair such fence "so as to be good and substantial." Technically, it would appear that where the trustees act under this section they do not determine the kind of fence. In other words, when the portion has been determined, it is believed that the owner may build the kind of fence he chooses, so long as the same is *good and substantial*. What is a good and substantial fence is, of course, a question of fact.

Under Section 5913, General Code, if the land owner fails to build a *good and*

substantial fence, the other party may apply to the trustees. If the trustees find that a *good and substantial* fence has not been constructed, they shall sell the contract to the lowest responsible bidder agreeing to build the fence according to specifications "proposed by the trustees." Clearly, under Section 5913, *supra*, the trustees are authorized and required to specify in detail, the kind of fence that is to be constructed. However, as heretofore indicated, when they assign the portion of the fence that each owner is to build, under Section 5910, *supra*, they are not authorized or required to specify the *kind*. From a practical standpoint, it will be apparent that it probably would be well for the trustees at the time of assignment to suggest to the owners the kind of fence they will regard as *good and substantial* in the event an appeal is made under Section 5913, *supra*. In other words, the owners would probably save much expense if they knew in advance the kind of fence which would be regarded by the trustees as good and substantial at the time they build it, after the portion is assigned. Undoubtedly the term "good and substantial" has reference to a fence that is sufficient to turn stock ordinarily kept by farmers and undoubtedly should be constructed so as to properly turn sheep.

Based upon the foregoing, it is my opinion that:

(1) Under Section 5910 of the General Code, the township trustees shall assign the portion of a partition fence which the owners are to build, and the owners may build any kind of fence they choose, so long as it is a *good and substantial* fence. Undoubtedly, such a fence should be capable of turning live stock ordinarily kept by farmers, including sheep.

(2) If a land owner fails to build a good and substantial fence, the other party may apply to the township trustees, under Section 5913, *supra*, whereupon the trustees shall sell the contract for the construction of such fence to the lowest responsible bidder. Under such procedure, the trustees specify the kind of fence that is to be constructed.

(3) When the trustees assign the portion of the fence each owner is required to build, under Section 5910, General Code, they may suggest to the owners the kind of fence they regard as *good and substantial*, but such suggestion can have no binding force except in so far as it bears upon their action when application is made to them under Section 5913, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3060.

RECORDS—CONCERNING PATIENTS OF STATE INSTITUTIONS—
WHEN SUPERINTENDENTS OF SUCH INSTITUTIONS MAY MAKE
RECORDS PUBLIC.

SYLLABUS:

Superintendents of state institutions may not make public the records of patients of such institutions unless authorized by the Department of Public Welfare or by order of a judge of a court of record.

COLUMBUS, OHIO, March 18, 1931.

HON. JOHN McSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent letter which reads:

"A question has arisen on the right of superintendents of state hos-