

fences shall be applicable to this act, and for determining the liability of such adjacent land owners by reason of trespass of domestic animals upon the lands of the other, such water gate or gates shall be a partition fence."
(Italics the writer's.)

In the case of *Kingman vs. Williams*, 50 O. S. 722, in which sections of the General Code relating to partition fences were involved, the court stated at page 725:

"If the land of some other proprietor should be included in the enclosure there would be no equity in enforcing contribution against one thus situated, for he could not use the enclosure for his own animals, because they would trespass upon the lands of the other proprietor within the enclosure."

See also *Zarbaugh, Treas. vs. Ellinger*, 99 O. S. 133.

There is no doubt but the reasoning therein is applicable to the situation you present.

It should also be observed that the statute clearly contemplates a water gate constructed upon a division line and not the erection and maintenance of a water gate located at a distance from such line.

Accordingly, I am of the opinion that a land owner may not be compelled to contribute to the expense of the construction and maintenance of a water gate not located on a division line, but wholly upon the land of an adjacent owner.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4087.

APPROVAL, BONDS OF DENNISON VILLAGE SCHOOL DISTRICT,
TUSCARAWAS COUNTY, OHIO—\$9,600.00.

COLUMBUS, OHIO, February 24, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4088.

APPROVAL, NOTES OF W. SALEM RURAL SCHOOL DISTRICT, SHEL-
BY COUNTY, OHIO—\$1,000.00.

COLUMBUS, OHIO, February 24, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.