

As you do not state the facts under which said corporation was dissolved, and whether or not it was in the hands of a receiver who continued to carry on the business of the corporation after his appointment, I am unable to formulate an opinion in answer to your question.

If you will supply me with the necessary information in regard to the dissolution of this corporation, I shall then furnish you with an opinion based thereon.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

277.

PARTITION FENCES—BUILDING BY TOWNSHIP TRUSTEES—TERMS OF SECTIONS 5908, ET SEQ., GENERAL CODE, APPLICABLE—EXCEPTION.

*SYLLABUS:*

*Township trustees are to follow the terms of Sections 5908, et seq., in the building of partition fences and collecting costs incurred thereby from adjoining land owners unless such fences will be of no benefit to their lands.*

COLUMBUS, OHIO, April 8, 1929.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Your letter of March 20, 1929, is received by this office, which is as follows:

“Section 5910 places upon the trustees the duty to proceed and assign equal shares of partition fences where a dispute has arisen, and the proper notices have been given. Section 5913 for the method of constructing the fence, in case the parties fail to do so, but apparently this section has been declared unconstitutional in 80 O. S. 746. The question is what procedure can be followed, if any by the trustees to have fence built and collect the costs of construction from the parties.

I will appreciate your opinion in regard to this matter.”

It appears that your question is prompted by your conclusion that Sections 5913, et seq., of the General Code were declared unconstitutional by the Supreme Court in the case of *Beech vs. Roth*, 80 O. S. 746.

While the case of *Roth et al. Trustees, et al., vs. Beech*, 80 O. S. 746, affirms the judgment of the Circuit Court of Medina County, 18 O. C. (n. s.) 579, yet it does not do so for the reason given by the Circuit Court, that is, that Sections 5913, et seq., are unconstitutional, but affirms it for the reasons set forth in the case of *The Alma Coal Company vs. Cozard, Treasurer*, 79 O. S. 34. In the *Alma Coal Company* case the court held that Sections 5913, et seq., were not generally unconstitutional but only in their application to the facts in that case, as the coal company's land was unenclosed and would reap no benefit from the fence.

With reference to the constitutionality of Sections 5913, et seq., of the General Code, Rockel at page 236, Section 387, of his *Complete Guide for Ohio Township Officers* says as follows:

"In the State of Ohio the statute now provides that adjoining landowners must build and maintain the partition fence in equal shares, making no provision as to whether the lands be enclosed or not, or used in any particular manner. \* \* \* If the owner does not build the portion of the fence required by him, the township trustees may have it built, and certify its cost to the tax assessing official and it is put on the tax duplicate and collected as ordinary taxes. This statute has been assailed in the Supreme Court, as to its constitutionality, three times. First in the case of *Alma Coal Co. vs. Cozard* (79 O. S. 34). Here the law was not held to be generally unconstitutional, but only in its application to the facts in this case, and as the coal company's land was uninclosed, and it would reap no benefit from the fence, and there was no such use of the coal company's property as to indicate probable injury to its neighbors or the community in absence of a fence, its land could not be assessed for construction of one-half of the fence on its boundary line. The next case was that of *McDorman vs. Ballard* (94 O. S. 183). Here it was held that as the facts did not show that the lands were uninclosed, the law was not unconstitutional and a valid assessment on the land could be made. Unless such fence will be of no benefit to their lands adjoining land owners must build partition fences. (*Jennings vs. Wilson*, 32 O. C. A. 453, 1922) ; 15 O. App. 395."

In the case of *David Jennings vs. Fred W. Wilson et al.*, reported in 32 O. C. A., page 453, the court held that land owners must build partition fences as required by Sections 5908, et seq., unless such fences will be of no benefit to their land. In this case the court reviews extensively the authorities as to the constitutionality of Sections 5908, et seq.

From the decisions cited above, it appears that the courts have not declared Sections 5913, et seq., unconstitutional. You are therefore advised that the trustees are to follow the procedure set forth in Sections 5908, et seq., of the General Code, in the building of partition fences and collection of costs incurred thereby.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

278.

APPROVAL, NOTES OF SPRINGFIELD CITY SCHOOL DISTRICT, CLARK COUNTY—\$250,000.00.

COLUMBUS, OHIO, April 8, 1929.

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

279.

INSURANCE—BURGLARY—NO AUTHORITY FOR COUNTY TO PAY FOR SUCH FOR PROTECTION OF FUNDS IN CUSTODY OF INSOLVENCY COURT JUDGE.

SYLLABUS:

*To pay, from county funds, for insurance to protect funds in the custody of the*