

Thus it will seem that section 4 of Article XVIII of the Constitution of Ohio as adopted September 13, 1912, clearly authorizes municipalities to acquire the property of persons or corporations when required for the purpose of its public utilities. Under the very broad authority granted municipalities by the provisions of this section, I am inclined therefore to the opinion that water mains when necessary for the operation for the municipal water works system, may lawfully be purchased or acquired by such corporation, either from private persons or corporations when required for the purposes of the public utility provided by this section.

Relative to certain other questions pertaining to the ownership of the water mains, pertinent to your local situation and as embodied in the communication of the city solicitor of Warren, Ohio, to Mr. Foster of the Bureau of Inspection and Supervision of Public offices, opinion may not be passed, since it is thought that the ownership of the property mentioned is a question of fact which this department is unable to determine.

Relative to ordinance No. 1292, passed by the council of the city of Warren December 30, 1921 which provides for the purchase of the water mains previously laid by the Warren Building and Investment Company, it would seem conclusive that the legal effect of such legislation must be delayed until such a time as the city has funds in its treasury for the accomplishment of the purpose of said ordinance, and this fact as part of the necessary legislation in the instance, must be certified by the city auditor to council under the provisions of section 3806 G. C., before a valid or binding contract may be entered into by the municipality.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3696.

PARTITION FENCES—TOWNSHIP TRUSTEES—NOT AUTHORIZED  
 TO PROCURE MAKING OF SURVEY TO SETTLE DISPUTED  
 BOUNDARY LINE AS PRELIMINARY TO AN ORDER RESPECTING  
 APPORTIONMENT OF PARTITION FENCE.

*When proceeding under sections 5908 et seq. G. C. (partition fence statutes), township trustees are not authorized to procure the making of survey with the view of settling a disputed boundary line as a preliminary to an order respecting the apportionment of a partition fence.*

COLUMBUS, OHIO, November 1, 1922.

HON. HAVETH E. MAU, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—You have recently addressed this office as follows:

“The Board of Trustees of German Township, Montgomery County, Ohio, have taken up with us the question of establishing a partition fence in accordance with Sec. 5908, etc.

The query put to us is whether or not where there is a dispute between the property owners as to what is the line; as to whether or not under Section 5910, G. C., providing in part: ‘shall view the fence or prem-

ises where such fence is to be built, and assign, in writing, to each person his equal share thereof,' they have the right to establish the line by a survey; or whether the property owners must first determine the partition line through court procedure or otherwise.

If the township trustees have the right to establish the line where the fence is to be built, have they any authority to employ the County Surveyor to make the survey and make the line."

Section 5910, G. C., 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 days' 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."

Said statute is part of the group of sections beginning with Section 5908, providing in general that owners of adjoining lands are to share equally in the construction and repair of partition fences, and for the enforcement of that principle through proceedings before township trustees.

A careful examination of the statutes indicated fails to disclose any express grant of authority to the trustees to go to the expense of a survey for the purpose of establishing or attempting to establish a boundary line in connection with their partition fence proceedings; nor has such authority been found elsewhere in the statutes. Neither may it be said that the authority in question exists by necessary implication; because the purpose of the partition fence statutes is to provide an inexpensive method of allotting to affected land-owners their respective shares of fences, which are of benefit to more than one owner, and not to provide a method of settling boundary disputes. Again, the expenses of the surveyor in making a line survey such as is described by Sections 2807, et seq., are to be paid by the person making application for the survey; so that we have no warrant for an implication that what is really a private expense may be incurred in the first instance by the township.

You are accordingly advised that in the opinion of this department, township trustees are without authority when proceeding under Sections 5908, et seq., to cause the making of a survey with the view of settling a disputed boundary line.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*