employee aggrieved by an order or decision of the commission may, within fifteen days therefrom, appeal such order or decision to the court of common pleas of the county wherein said appellant is resident or was last employed; and said appeal shall be heard upon a transcript of the proceedings before the commission and said order shall not be modified or reversed unless said court shall find, upon consideration of the record, that it was unlawful or unreasonable. Either party shall have the right to prosecute error from the court of common pleas as in other civil cases." (Italics the writer's.)

It thus appears that the act provides for judicial review of all orders of the commission.

In view of the foregoing, I am of the opinion that:

1. House Bill No. 1, relative to aid to aged persons does not provide for the use of public funds for a private purpose, and therefore is not unconstitutional within the principle of *Auditor of Lucas County* vs. *State,* 75 O. S. 114.

2. House Bill No. 172, if enacted, will not be violative of the Fourteenth Amendment within the principle of *Adkins* vs. *Children's Hospital,* 261 U. S. 525.

3. A law which has as its purpose the shifting upon industry of the financial burden of employes caused by unemployment resulting from economic conditions is not so arbitrary, capricious and clearly unreasonable as to violate the Fourteenth Amendment.

4. Since the scope of the unemployment insurance bill is by substantive provisions restricted to its avowed purpose, i. e., to provide benefits for persons who become unemployed by reason of economic conditions, the proposed act does not so restrict freedom of contract as to deprive persons of property without due process of law.

5. Since the proposed unemployment insurance act is restricted to its proper scope by procedural safeguards, i. e., administration by a commission whose orders are subject to judicial review, it provides the notice, hearing and day in court necessary to due process and due course of law.

Respectfully,
JOHN W. BRICKER,
Attorney General.

441.

PARTITION FENCE—LOCATED IN MUNICIPALITY—COST OF ERECTING SAME NOT CHARGEABLE TO THE LANDOWNERS OF THE TOWNSHIP.

SYLLABUS:

The cost of erecting a partition fence located within the limits of an incorporated village may not be assessed against the land owners, nor is it payable by the township trustees.

COLUMBUS, OHIO, April 4, 1933.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—This will acknowledge your request for my opinion which reads as follows:

"On behalf of the county treasurer I will appreciate your opinion concerning the legality of an assessment of one-half the cost of a line fence against W. upon the following set of facts:

L., owner of Lot No. 171 having an acreage of 68.50 acres within the incorporated village of Polk, complained to the Jackson Township Trustees within which such village is situated, that W., owner of Lot No. 172 having an acreage of 2.75 acres within said incorporated village of Polk, and adjoining the lands of said L., refused or neglected to assume his equal share in building a partition fence. The Trustees thereupon, following the provisions of G. C. 5910 et seq., built the fence and duly certified the cost thereof to the county auditor who placed it on the duplicate. W. refuses payment, claiming the assessment illegal.

If the assessment against W. is illegal is it payable by L. or do the Trustees of Jackson Township take the loss?"

Section 5908, General Code, reads as follows:

"The owners of adjoining lands shall build, keep up and maintain in good repair in equal shares all partition fences between them, unless otherwise agreed upon by them in writing and witnessed by two persons. *This chapter shall not apply to the enclosure of lots in municipal corporations* or of lands laid out into lots outside of municipal corporations, or affect any provision of law relating to fences required to be constructed by persons or corporations owning, controlling or managing a railroad."

(Italics, the writer's.)

Section 5910, General Code, referred to in your letter, reads as follows:

"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."

The history of the legislation upon this subject is so clearly stated in Rockel's Guide for Township Officers, section 348, et seq., that it is needless to restate it here. The language of section 5908, supra, is indeed clear and unambiguous. It definitely excludes lots within a municipal corporation. As stated in 18 O. Jur. 1100, "The whole scheme of the legislation on this phase of the subject applies only to rural districts; urban districts are expressly excluded; nor does it affect the duties imposed by the railroad fence laws." It is a general principle of law that where a statute is free from ambiguity and clearly expresses the intent of the legislature, it is not open to judicial construction.

Hence, it is clear that the assessment may not be legally charged against either of the land owners, since the lots in question lie within the corporate limits of the village of Polk. Since the assessment is illegal, it follows that the cost of erecting the fence may not be paid by the township trustees from any public funds. It is fundamental that a board of township trustees, being a creature of statute,

can exercise only such powers as are expressly given. It has frequently been judicially determined in this state that funds may not be drawn from a public treasury, except in pursuance of express provisions of law. The Constitution of Ohio, article X, section 5, provides:

> "No money shall be drawn from any county or township treasury, except by authority of law."

As stated in Opinions of the Attorney General for 1927, Vol IV, page 2708:

> "A person furnishing supplies and labor to a county in the absence of a valid contract therefor is a mere volunteer and neither he nor those employed by him can recover for property or labor so furnished or the reasonable value thereof on quantum meruit."

I am therefore of the opinion, in specific answer to your question, that the cost of erecting a partition fence located within the limits of an incorporated village may not be assessed against the land owners, nor is it payable by the township trustees.

Respectfully,
JOHN W. BRICKER,
Attorney General.

442.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS DUTIES AS RESIDENT DISTRICT DEPUTY DIRECTOR IN ASHTABULA COUNTY, OHIO—E. N. LUCE.

COLUMBUS, OHIO, April 5, 1933.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted a bond in the penal sum of $5,000.00, upon which E. N. Luce appears as principal. The name of the United States Fidelity and Guaranty Company appears as surety on said bond. Such bond is conditioned to cover the faithful performance of Mr. Luce's duties as Resident District Deputy Director in Ashtabula County.

The aforementioned bond is executed, undoubtedly, in accordance with the provisions of sections 1183 and 1182-3, General Code. Said sections provide, so far as pertinent:

> Sec. 1183. "* * * Such resident district deputy directors shall * * * give bond in the sum of five thousand dollars * * *."
>
> Sec. 1182-3. "* * * All bonds hereinbefore provided for shall be conditioned upon the faithful discharge of the duties of their (employes or appointees) respective positions, and such bonds * * * shall be approved as to the sufficiency of the sureties by the director (of highways), and as to legality and form by the attorney general, and be deposited with the secretary of state. * * * "