of the State of Ohio, by which there are leased and demised certain parcels of land adjacent to Buckeye Lake in Licking County, Ohio, which said parcels of land are more particularly described in said respective leases. The leases above referred to are the following:

Lessee	*Valuation*
Ella Hildebrandt	$250 00
F. H. Hildebrandt and W. D. Weltner	250 00

An examination of the leases above noted shows that they have been executed in conformity with the provisions of Section 471 and other sections of the General Code relating to the execution of leases of this kind. Said leases are, accordingly, hereby approved, and my approval is endorsed on said leases and the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

156.

APPROVAL, LEASES TO LANDS NEAR LAKE ST. MARYS, AUGLAIZE COUNTY.

COLUMBUS, OHIO, March 6, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval certain leases executed by you as Superintendent of Public Works, as Director thereof, on behalf of the State of Ohio, by which there were leased and demised certain parcels of land adjacent to Lake St. Marys, in Auglaize County, Ohio. The leases referred to are the following:

Lessee	*Location*	*Valuation*
J. T. Kaufman,	Section 4, Township 6 So., Mercer County	$400 00
Irwin G. Patch,	Section 17, Township 6, Auglaize County	250 00
Dosia Waggoner,	Section 12, Township 6, Auglaize County	200 00

An examination of the above noted leases shows that the same have been executed in conformity with the provisions of Section 471, General Code, and other statutory provisions applicable in the execution of leases of this kind. Said leases are, therefore, hereby approved and my approval is endorsed on the original and duplicate copies thereof, all of which are herewith returned.

Respectfully,
GILBERT BETTMAN,
Attorney General.

157.

HOUSE BILL NO. 210—CONSTITUTIONAL BUT UNNECESSARY ACT—PROOF OF BENEFIT TO ADJOINING LAND OWNERS IN ASSESSING COSTS OF PARTITION FENCE UNNECESSARY.

SYLLABUS:

House Bill No. 210, *providing for the enactment of supplemental Section* 5908-1 *of the General Code, considered.*

HELD: That although this department is not warranted in holding said proposed act unconstitutional, notwithstanding the decision of the Supreme Court in the case of the Alma Coal Company vs. Cozad, Treasurer, 79 O. S. 348, doubt is expressed as to whether the enactment of said measure will serve any useful purpose, since Section 5908 at present by its terms requires no proof of direct benefit to adjoining landowners in the assessment of costs of a partition fence.

COLUMBUS, OHIO, March 6, 1929.

HON. STANLEY E. LAYBOURNE, *Chairman, Agriculture and Forestry Committee, House of Representatives, Columbus, Ohio.*

MY DEAR SIR:—This is to acknowledge receipt of your communication of recent date, which reads as follows:

> "As chairman of the Agriculture and Forestry Committee of the House, I am writing you for your opinion regarding the inclosed House Bill No. 210, Mr. Woods.
>
> We would like to know the legality and the constitutionality of this proposed measure."

House Bill No. 210 is a proposed act providing for the enactment of supplemental Section 5908-1, of the General Code, to read as follows:

> "The provisions of Section 5908 of the General Code shall not require a proof of direct benefit to either of the adjoining land owners."

Section 5908, General Code, was enacted in its present form April 18, 1904, 97 O. L. 138, and provides 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."

I do not deem it necessary to quote or to discuss at length the other related sections of the General Code providing for the construction and maintenance of partition fences. It is sufficient to know that under the provisions of said sections of the General Code, the trustees of the township upon complaint of the aggrieved person, may assign to an adjoining land owner the share of a partition fence to be constructed by him, and on his failure to do so they may have such fence constructed, and have the cost thereof certified to the county auditor to be placed upon the tax duplicate against the land of such adjoining owner and collect it as ordinary taxes.

Touching the question presented in your communication, it may be noted that there is nothing in the statutory provisions relating to the construction of partition fences which in terms requires the accrual of a benefit to an adjoining land owner by the construction of a partition fence as a condition of the right of the trustees to require him to construct his proportionate share of such partition fence, or to have the cost thereof certified for tax levy against his lands if he fails to construct such fence. However, in the case of the *Alma Coal Company* vs. *Cozad, Treasurer,* 79 O. S. 348, it was held, as set out in the syllabus of the report of said case, as follows:

"1. The provisions of the constitution forbid not only the taking of the private property of one, but as well the laying of an imposition upon it, for the sole benefit of another.

2. The act of April 18, 1904 (97 O. L. 138), may not be so construed and administered as to charge an owner of lands which are, and are to remain, unenclosed, with any part of the expense of constructing and maintaining a line fence for the sole benefit of the adjoining proprietor."

In the case of Zarbaugh, Treasurer, vs. Ellinger, 99 O. S. 133, it was held that where the owner of a private right of way which passes through farm lands owned by others, uses it as an outlet to a public highway, he is required by the provisions of Section 5908 et seq., General Code, to build and keep up one-half of the fence on each side of such highway. In the opinion of the court in this case it is said:

"From the fact that for so long a time the statutes required an owner to contribute to the cost only where the "fence answered the purpose of enclosing his land," it would seem to be apparent that at that time the General Assembly felt that the only benefit conferred on a farmer's land by a fence was by its making a complete enclosure. The amendment to the statute in 1904, now Section 5908 et seq., General Code, evidences a different view by the legislature and a determination to impose a larger duty, namely, the view that there are conditions and circumstances in which a partition fence is of advantage and value to a land owner, even when it does not make a complete enclosure. When such a situation is presented the enforcement of the requirements of the statute is not a violation of rights guaranteed by the constitution."

In the case of *Jennings* vs. *Nelson et al.*, 15 O. A. 395, which was an action to enjoin the trustees of Wilksville Township, Vinton County, from proceeding in accordance with Sections 5908 et seq., General Code, to compel the plaintiff to construct his assigned share of a partition fence, or to pay taxes to pay for the construction of the same, it was said:

"So we take it that the question in this case is not whether the partition fence when constructed will enclose the lands of the plaintiff, but whether his premises will be benefited by such fence—whether such fence will be of advantage to the farm. For, if so, then Section 5908 et seq. must govern, like any other statute that is not contrary to the state or federal constitutions."

If as indicated by the above noted decisions, the authority of the township trustees to require an adjoining land owner to construct his assigned share of the partition fence or to pay taxes for the construction of the same is conditioned on the fact that his lands adjoining such partition fences will be benefited by the construction of the same, it is clear that such requirement as to benefits does not proceed from the statutory provisions relating to construction of partition fences, but such requirement is to be found in the provisions of the state constitution. In this view, it is obvious that the proposed act providing that a benefit to such adjoining land owner is not necessary to the exercise by the township trustees of the authority vested in them by Section 5908, General Code, would be unconstitutional and void.

In this connection, it is to be noted that the case of *Alma Coal Company* vs. *Cozad, supra*, is not in accord with the authorities generally in this country with respect to the construction and constitutionality of statutes relating to the construction of partition fences. In 25 Corpus Juris, page 1020, it is said:

"Laws regulating the building and maintenance of partition fences are enacted in the exercise of the police power and are sustained as constitutional. They are not within the constitutional prohibition against laws which deprive a person of property without due process of law."

On this point the Supreme Court in the case of *Zarbaugh, Treasurer,* vs. *Ellinger,* supra, in its opinion said:

"Moreover, a statute prescribing the duty of adjoining owners to fence is in the nature of the exercise of the police power. The assessment differs from a special assessment to pay for a public improvement made by a governmental body. In the latter case the special assessment is made and sustained because the public improvement confers a special benefit on the property assessed, different from the general benefit conferred on the public; and the special assessment must be limited to the extent of the special benefit. But, in the case of the fence, there is no assessment in the sense just described. The owner is required by the statute to himself build his part of the fence. That is a duty that is imposed upon him, because of the situation and the use made of his property; and because of its relation to the property of his neighbors. If he does not perform it, the designated authorities proceed to build the fence and collect the cost thereof from him in the manner laid down in the statute.

The state is invested with the power in the presence of the necessities of economic conditions to prescribe such regulations with reference to persons and property as are reasonable and have a real relation to the subject."

If, following this view the provisions of Section 5908 et seq. relating to the construction of partition fences are to be considered as an exercise of the police power of the state through legislative enactment having reasonable relation to the public welfare, such laws would have to be sustained, even though the same do not contemplate any benefit to the lands of an adjoining land owner as a condition to the authority of the township trustees under such statutory provisions, unless it can be said as a matter of law that said statutory provisions are unreasonable, arbitrary or oppressive. In this view of the provisions of Sections 5908 et seq., General Code, the proposed act here in question would not be unconstitutional.

In the present situation with respect to the decisions of the courts of this state above noted, construing and applying the provisions of Sections 5908, et seq., General Code, relating to the construction of partition fences, this department does not feel warranted in holding that the proposed act here in question would be unconstitutional. Every reasonable presumption is indulged in favor of the constitutionality of an act of the legislature, and the courts are not authorized to adjudge a statute unconstitutional where the question of its constitutionality is at all doubtful.

In this connection, it may be doubted whether the enactment of the proposed measure will serve any useful purpose other than to indicate the legislative view that the partition fence statutes are an expression of the police power of the state. If the requirement of a benefit to adjoining lands is a necessary condition under the Constitution to the authority of the township trustees under the provisions of Sections 5908, et seq., General Code, the proposed law would be wholly ineffectual. If, on the other hand, the Constitution does not require an accrual of a benefit to the land adjoining a partition fence as a condition to the right of the township trustees to require the owner of such lands to construct or pay for such fence, the township trustees

now have the same power and authority in the matter of requiring the construction of partition fences that they would have if the proposed act here in question were enacted.

Respectfully,
GILBERT BETTMAN,
Attorney General.

158.

CORPORATION—FOR PROFIT BUT WITH PURPOSE CLAUSE IN ARTICLES INDICATING NOT FOR PROFIT—ARTICLES OF INCORPORATION AMENDABLE.

SYLLABUS:

When articles of a corporation have been filed in the office of the Secretary of State, purporting to be a corporation for profit, but which contain a purpose clause which clearly sets forth a purpose which is not only evidently that of a corporation not for profit, but which precludes the exercise of any purpose for profit and which corporation has, pursuant to such organization, acted solely as a corporation not for profit, its articles may be amended to eliminate such contradictory statements and set forth that it is, in fact, a corporation not for profit.

COLUMBUS, OHIO, March 6, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date which is as follows:

> "Some time ago, there was submitted on behalf of The Cincinnati Symphony Orchestra Association Company, an amendment seeking to change the Company from one for profit to one not for profit. The amendment was returned for the reason that in the opinion of the Secretary of State the amendment effected a substantial change of purpose, within the meaning of the General Corporation Act.
>
> The proposed amendment has been resubmitted by attorneys for the orchestra company with a letter, which you will find herewith. The attorneys contend that while nominally a corporation for profit the submitted company is actually a not for profit corporation and that for such reason the amendment should be accepted and filed.
>
> For your information the original of the proposed amendment is enclosed. This, you will please return together with the original letter and two copies of your opinion."

Attached to your communication is a letter from the counsel for The Cincinnati Symphony Orchestra Association Company, which reads as follows:

> "I am returning herewith certificate of amendment to the Articles of Incorporation of The Cincinnati Symphony Orchestra Association Company.
>
> I realize that ordinarily a corporation for profit cannot be turned into a corporation not for profit by amendment. The circumstances in this case, however, are peculiar. I assume that the objection is made on the ground