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TOWNSHIP TRUSTEES — FENCE LINE — NO AUTHORITY TO CAUSE A FENCE TO BE ERECTED AND MAINTAINED ON LAND OWNED BY OHIO LANDOWNER AND OWNER IN ANOTHER STATE — SECTION 5908 ET. SEQ G. C.

SYLLABUS:

Trustees of a township have no authority, under Section 5908, et seq., General Code, to cause the erection and maintenance of a fence between a landowner in Ohio and a landowner in another state.

Columbus, Ohio, September 17, 1940.

Hon. John M. Kiracofe, Prosecuting Attorney,
Eaton, Ohio.

Dear Sir:

This will acknowledge receipt of your request for my opinion which reads as follows:

“The Board of Trustees of Jefferson Township, Preble County, Ohio, have requested your opinion on the following statement of facts, to-wit:

A, a resident of Indiana, has requested to file with their board a petition under the partition fence law against B, who is a resident of Ohio. The lands of A lay in Indiana adjacent to the lands of B in Jefferson Township, Preble County, Ohio. B will not build this fence which follows the state line, claiming that previously the office of the Attorney General had rendered an opinion that the Trustees had no authority when there is an interstate fence involved. The older trustees seem to think that such an opinion was rendered but I am unable to find it.

The trustees feel that they have no authority to proceed when the adjacent lands and land owner lay in the other state, as they can not make any order on costs and fence to the non-resident owner and his land.

I would appreciate your opinion on the authority of the trustees in this situation as they could not recover half of costs from A or make him build his half of fence and if they built it they could not collect.”

It may be stated at the outset, that an investigation fails to disclose any previous opinion rendered by this office on the question you have presented.

The provisions of law relating to the erection and maintenance of partition fences are found in Section 5908, et seq., General Code.

Section 5908, General Code, provides:

“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.”

Section 5910, General Code, provides that under certain circumstances, township trustees shall assign to each of the adjoining landowners a portion of the partition fence to be erected or maintained by such landowner.

Sections 5913 to 5915, General Code, provide that when a landowner refuses to erect or maintain his portion of the partition fence, the trustees of the township wherein such land or fence is located, may cause the work to be done, the cost of which shall be certified to the county auditor and collected as other taxes.

In 37 O. J. at pages 807 and 808, the following statement is made:

“It is frequently declared that statutes can have no extra territorial effect. By this statement it is meant that legislative enactments can operate, *proprio vigore*, upon persons and things within the territorial jurisdiction of the lawmaking power, and that no law has any authority or effect of its own force, beyond the territorial limits of the sovereignty from which its authority is derived. Thus, no state or nation can, by its own laws, directly affect, bind, or operate upon property, or persons beyond its territorial jurisdiction.”

Considering the above rule and the pertinent statutes, the conclusion is inescapable that township trustees have authority in matters pertaining to partition fences only when adjoining landowners in Ohio are involved. This is the only logical conclusion for the reason that in the situation you have presented such trustees could not collect the portion of the cost due from the owner of the lands in the other state. In the instant case there is no partition

fence involved since the fence is not between two adjoining landowners in Ohio.

Therefore, I am of the opinion that trustees of a township have no authority, under Section 5908, et seq., General Code, to cause the erection and maintenance of a fence between a landowner in Ohio and a landowner in another state.

Respectfully,

THOMAS J. HERBERT,
Attorney General.