

ceived notice that the seeds were seized, and while it is good practice to obtain his signature, nevertheless the failure to do so will not defeat the notice.

In specific answer to your inquiry, I am of the opinion that :

1. In order to constitute a valid seizure under the provisions of Section 5805-9, there must be an open, visible possession claimed and authority exercised by the officer over the seizure. However, it is not necessary to actually dispossess the person selling or offering for sale seeds not properly labeled, if the person upon notice submits to the order of the Department of Agriculture by removing the seeds so that they will not be sold or offered for sale.

2. The acceptance of service of notice by the vendor of seeds in violation of law is for the purpose of providing proof that the vendor actually received notice and the failure to secure his signature on the notice will not invalidate such notice.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1549.

PARTITION FENCE—ADJACENT LANDOWNER REQUIRED TO CUT
DOWN SUCH SMALL TREES AS COME WITHIN TERM "BRUSH."

SYLLABUS:

Under the provisions of Section 5942, General Code, the owner of land adjacent to a line or partition fence is required to cut only such small trees as come within the meaning of the term "brush" as used in this section.

COLUMBUS, OHIO, February 21, 1930.

HON. JESSE K. BRUMBAUGH, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows :

"I have been asked to construe that part of Sec. 5942 of the General Code which pertains to brush, briars, etc., along or adjacent to partition fences.

"One of two adjacent land owners has petitioned the Board of Trustees of one of our townships for the cutting down of stripling growths on and within a strip four feet wide of the adjacent tenant's land. For the past ten or fifteen years this fence row has been permitted to grow up with all kinds of brush, briars, etc., and among them grew some trees of the various varieties found in this section of the state. About two years ago the land owner upon whose land this condition existed removed all of the small growth and left remaining a number of small trees which were voluntary growth, and claimed that he was not obliged to remove them under and by virtue of the section above mentioned.

"At this time, perhaps the largest of these trees is from three to four inches in diameter.

"Kindly give me an expression as to whether a condition of this kind, in your opinion, is within the meaning of Sec. 5942 of the Ohio General Code, and whether the Township Trustees would be within their rights in ordering them removed."

Section 5942, General Code, provides as follows :

"An owner of land, adjacent to a line or partition fence, shall keep all brush, briars, thistles, or other noxious weeds out in the fence corners and a strip four feet wide on his side along the line of a partition fence, but this section shall not affect the planting of vines or trees for use."

Section 5943, General Code, provides that if the owner of land refuses to comply with the provisions of Section 5942, the township trustees upon giving notice shall view the premises and if satisfied that there is cause for complaint may let the work to the lowest bidder or by entering into a private contract.

Section 5944, General Code, provides that the cost of the work ordered by the township trustees is to be placed upon the tax duplicate by the auditor and collected as other taxes.

Brush is defined in Webster's New International Dictionary as "A thicket of shrubs or small trees"; brier is defined as "A group or mass of brier brushes"; and thicket is defined as "A dense growth of shrubbery".

You will note that the definition of the word "brush" includes small trees. It appears from the reading of the last sentence of Section 5942, that is: "but this section shall not affect the planting of vines or trees for use," that the Legislature contemplated that the provisions of this section should apply to small trees such as are included within the meaning of the word "brush".

I do not believe, however, that trees such as you have described in your letter, being three or four inches in diameter, can be construed as brush and therefore are not included within the meaning of the terms of Section 5942.

In specific answer to your inquiry, I am of the opinion that under the provisions of Section 5942, General Code, the owner of land adjacent to a line or partition fence is required to cut only such small trees as come within the meaning of the term "brush" as used in this section.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1550.

CREATION OF NEW TOWNSHIP—WITHIN LIMITS OF VILLAGE SITUATED IN A TOWNSHIP—JUSTICE OF PEACE OF ORIGINAL TOWNSHIP MAY HOLD CIVIL, BUT NOT CRIMINAL, COURT IN NEW TOWNSHIP.

SYLLABUS:

1. *When a justice of the peace is elected in a township and subsequently a new township is created within the limits of a village situated in such township, said justice of the peace may not hold civil court in the new township but must confine his jurisdiction to the township for which he was elected.*

2. *When a justice of the peace is elected in a township and subsequently a new township is created within the limits of a village situated in such township, said justice of the peace may hold criminal court in the new township as well as in the township for which he was elected.*

COLUMBUS, OHIO, February 24, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent communication, as follows: