

"In the State of Ohio the statute now provides that adjoining landowners must build and maintain the partition fence in equal shares, making no provision as to whether the lands be enclosed or not, or used in any particular manner. * * * If the owner does not build the portion of the fence required by him, the township trustees may have it built, and certify its cost to the tax assessing official and it is put on the tax duplicate and collected as ordinary taxes. This statute has been assailed in the Supreme Court, as to its constitutionality, three times. First in the case of *Alma Coal Co. vs. Cozard* (79 O. S. 34). Here the law was not held to be generally unconstitutional, but only in its application to the facts in this case, and as the coal company's land was uninclosed, and it would reap no benefit from the fence, and there was no such use of the coal company's property as to indicate probable injury to its neighbors or the community in absence of a fence, its land could not be assessed for construction of one-half of the fence on its boundary line. The next case was that of *McDorman vs. Ballard* (94 O. S. 183). Here it was held that as the facts did not show that the lands were uninclosed, the law was not unconstitutional and a valid assessment on the land could be made. Unless such fence will be of no benefit to their lands adjoining land owners must build partition fences. (*Jennings vs. Wilson*, 32 O. C. A. 453, 1922) ; 15 O. App. 395."

In the case of *David Jennings vs. Fred W. Wilson et al.*, reported in 32 O. C. A., page 453, the court held that land owners must build partition fences as required by Sections 5908, et seq., unless such fences will be of no benefit to their land. In this case the court reviews extensively the authorities as to the constitutionality of Sections 5908, et seq.

From the decisions cited above, it appears that the courts have not declared Sections 5913, et seq., unconstitutional. You are therefore advised that the trustees are to follow the procedure set forth in Sections 5908, et seq., of the General Code, in the building of partition fences and collection of costs incurred thereby.

Respectfully,

GILBERT BETTMAN,
Attorney General.

278.

APPROVAL, NOTES OF SPRINGFIELD CITY SCHOOL DISTRICT, CLARK COUNTY—\$250,000.00.

COLUMBUS, OHIO, April 8, 1929.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

279.

INSURANCE—BURGLARY—NO AUTHORITY FOR COUNTY TO PAY FOR SUCH FOR PROTECTION OF FUNDS IN CUSTODY OF INSOLVENCY COURT JUDGE.

SYLLABUS:

To pay, from county funds, for insurance to protect funds in the custody of the