Under the circumstances presented which called for the opinion just referred to, it clearly appeared that the finances of a certain school district would not permit continuance of schools within the district for thirty-two weeks of the school year without securing additional funds which might have been raised by a tax levy outside the limitations prescribed by law, and the local board of education positively refused to submit the question of the additional tax levy to the electors of the district. The question presented was whether or not under those circumstances the county board of education was empowered to submit the question. In the course of the opinion the Attorney General said:

> "You are advised that there can be little doubt of the intent of the law to invest county boards of education with power to perform all the acts and duties enumerated in Section 7610-1, General Code, in which the local board of education is in default or has failed in its duty, and where the facts showing a dereliction of duty on the part of the local board are as conclusive as set forth in your inquiry and statement, it is believed the county board of education would be fully justified in taking the necessary and proper action to bring about a submission of an additional levy to the electors of the district in question."

It is impossible to state as a matter of law just what the specific duty of the county board of education is in the instant case, under the facts presented. As stated above, I am not advised of what the intentions of the local board are in the matter. If, however, the local board fails to provide necessary school privileges for the school pupils affected by the burning of the schoolhouse, it becomes the duty of the county board to provide those privileges and in doing so they should be guided by the law as hereinbefore set forth.

Respectfully,
GILBERT BETTMAN,
Attorney General.

535.

JOINT AFFIDAVIT—AGAINST DEFENDANTS IN MUNICIPAL COURT—AUTHORIZED—CONDITION NOTED.

SYLLABUS:

Two or more defendants may be joined in a single affidavit in a prosecution instituted in a municipal court where all the defendants participated in the same offense.

COLUMBUS, OHIO, June 17, 1929.

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

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

> "Can a prosecution in a municipal court be legally instituted and carried on against two or more persons for the commission of a misdemeanor in a joint affidavit? That is, in a prosecution, in a municipal court, for a misdemeanor, may two or more defendants be joined in a single affidavit, or must separate affidavits be filed against each one of the defendants?"

Under the statutes of Ohio, an affidavit is a proper form of accusation for the prosecution of offenders before a justice of the peace, mayor, police court or municipal court. Although Section 13677, of the General Code, provides that when two or more persons are jointly indicted for felony except for a capital offense they shall be tried jointly, etc., and Section 12380, General Code, provides that whoever aids, abets, or procures another to commit an offense may be prosecuted and punished as if he were the principal offender, which statutes tend to recognize that two or more defendants may be joined in one indictment, nevertheless, there is no statute in Ohio that definitely authorizes the joining of two or more defendants in one indictment and there is no statute in Ohio that authorizes the joining of two or more defendants in an affidavit or an information. However, the practice of joining two or more defendants in one indictment is well established in Ohio by a number of decisions in the courts of this State. In the case of *Benjamin Hess* vs. *State of Ohio,* 5 O. R., page 1, the sixth branch of the syllabus reads in part as follows:

> " * * * Two may be joined in an indictment for having counterfeit notes in possession."

In the case of *H. & G. Bixbee* vs. *State of Ohio,* 6 Ohio Reports, page 86, the court says:

> "There are certain offenses which cannot be committed by more than one individual, consequently two cannot be presented of such in one indictment, but wherever offenses may be committed by several, they may be united in the same accusation."

In *Carper* vs. *The State,* 57 O. S. 572, 575, the court says:

> "The statute makes it an offense for any person or persons to play at any game whatsoever, for money or property. Each individual engaged in the game may be separately, or all jointly indicted, and on a joint indictment there may be several verdicts."

In 31 Corpus Juris, 754, it is said:

> "The general rule is, save in case of those offenses which cannot be committed singly, and those which cannot be committed by two or more parties jointly, all the parties jointly concerned in the same offense may be indicted jointly or separately."

In view of the foregoing authorities, it seems that the courts in Ohio recognize this rule.

Rules of pleading with reference to indictments are much stricter than those with reference to informations and affidavits, and if several defendants may be joined in an indictment, it appears to me that the same rule will apply as to affidavits and informations.

Section 13763, General Code, provides that if a case arises in Title II, Part 4, of the General Code of Ohio not provided for therein, the practice heretofore observed may be followed if necessary to prevent a failure of justice. Title II, Part 4 of the General Code, relates to criminal procedure.

From the foregoing discussion, I am of the opinion that two or more defendants

may be joined in a single affidavit in a prosecution instituted in a municipal court where all the defendants participated in the same offense.

Respectfully,
GILBERT BETTMAN,
Attorney General.

536.

STREET RAILROAD COMPANY—OPERATING BUSSES PRIOR TO 1925—LIABLE FOR FREEMAN-COLLISTER TAX—NOT LIABLE FOR EXCISE TAX ON GROSS EARNINGS FROM BUS BUSINESS—SUNDRY CLAIMS BOARD MAY NOT OFFSET CLAIMS.

SYLLABUS:

1. *The Sundry Claims Board has no authority to offset against a present liability for taxes, payments theretofore unnecessarily made.*

2. *Prior to the amendment of Section* 614-84, *of the General Code, in* 1925, *a street railroad company, operating bus lines as supplementary to its street railroad service was liable for the payment of the Freeman-Collister tax, but such company was not required to pay the excise tax imposed by Section* 5484 *of the General Code upon the gross earnings derived from its bus business.*

COLUMBUS, OHIO, June 17, 1929.

The Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—This will acknowledge your recent communication in which you request my opinion concerning certain claims filed with the Sundry Claims Board by the Youngstown Municipal Railway Company and the West End Traction Company. These claims have been referred by the Sundry Claims Board to your Commission, and all of the facts on which the claims are based are set forth in the file which you enclose with your letter.

The claimant, the Youngstown Municipal Railway Company is a public utility which for many years has been operating an electric street railway in the city of Youngstown and in the contiguous city of Campbell. In 1922 it inaugurated a system of motor bus transportation to supplement the service rendered by its street railway. Both of these services have continued until the present time.

The claimant, the West End Traction Company was similarly engaged in the city of Warren and the supplementary bus service by that company commenced in 1924.

During the years 1924 and 1925 each of the claimants paid into the state treasury what is popularly known as the Freeman-Collister tax levied upon motor transportation companies under authority of Section 614-94 of the General Code. In those years the section was so worded as to apply to all motor transportation companies as defined in Section 614-84 of the Code, and that section made no exemption covering a company operating wholly within the territorial limits of a municipal corporation. In 1925, Section 614-84 was amended so as to exclude from the provisions of law covering motor transportation companies any such company which operated wholly within the limits of a municipal corporation or within such limits and the territorial limits of municipal corporations immediately contiguous thereto. At the present time, therefore, the motor bus operation of the claimants is not subject to the tax imposed by Section 614-84 of the General Code, which tax is stated to be levied "for the expense of the administration and enforcement of the provisions of Section 614-84