purposes. The then Attorney General said that, since there was no statutory law authorizing the county auditor, upon certificate of the clerk setting forth the mistake, to issue a warrant upon the treasurer for such money, and since no money could be paid from the county treasury except in compliance with statutory law, he was of opinion that the money could not be paid over to the trustees in that manner. However, he held that a claim arose against the county for such money, to be paid to said trustees upon the allowance of the county commissioners as provided by section 2460, General Code.

Answering your inquiry specifically, my opinion is, therefore, that, when there are collected fees of witnesses, fees of magistrates and fees of constables, all emanating from civil cases before a justice of the peace, such fees belong and should be paid to such witnesses, magistrates and constables respectively; and it is error to pay them into the county treasury to the credit of the general fund. If such fees, however, are so erroneously paid into the county treasury to the credit of the general fund, (a) the auditor can not, upon the certificate of the erring payer, issue a warrant upon the treasurer for the payment of such money to those justly entitled thereto, but (b) the parties entitled to such fees may present to the county commissioners for their allowance, under section 2460, General Code, claims for the amount of money so paid erroneously into the county treasury, and when such claims are allowed by the county commissioners a warrant may legally be drawn by the auditor upon the county treasurer in favor of such parties for the amounts thereof.

Respectfully,
GILBERT BETTMAN,
Attorney General,

2951.

HOTEL OR INN—POSTING CERTAIN NUMBER OF COPIES OF DEFRAUDING STATUTE IN PLACE OF BUSINESS SPECIFIED—NON-COMPLIANCE OF HOTELKEEPER NOT FATAL TO PROSECUTION OF DEFRAUDER.

SYLLABUS:

Failure to post notices, as required by the provisions of Section 13131 General Code, is not a proper defense to a prosecution for a violation of the provisions of this section.

COLUMBUS, OHIO, February 16, 1931.

HON. RICHARD C. THRALL, *Prosecuting Attorney, Marysville, Ohio.*

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

> "Section 13131, of the General Code of Ohio, provides for the punishment of persons defrauding an innkeeper and defines what acts constitute the offense. The last sentence in the section provides that the proprietor of a hotel must keep a certain number of copies of this section of law displayed in his place of business.
>
> A is charged with defrauding B and it is possible to produce all of the elements of the crime as defined by Section 13131. However, A,

the defrauder, shows that B, the hotel keeper, has failed to keep posted the required number of copies of this section, although some copies were displayed.

Will the failure of the innkeeper to post the required number of notices constitute a defense in itself to a prosecution under this section? I have not been able to find any decision on this point and believe the question will come up several times in the near future in in this county."

Section 13131, General Code, to which you refer in your letter, provides as follows:

"Whoever, with intent to defraud, obtains food, lodging or other accommodations at a hotel, inn, boarding or eating house or private room in or pay-ward of a hospital or sanitarium, shall be fined not more than two hundred dollars or imprisoned in jail or a workhouse not more than three months, or both, or in the penitentiary not less than one year nor more than five years. Obtaining such lodging, food or other accommodation by false pretense, or by false or fictitious show of pretense of baggage or other property, or refusal or neglect to pay therefor on demand, or payment thereof with negotiable paper on which payment was refused, or absconding without paying or offering to pay therefor, or surreptitiously removing or attempting to remove his baggage, shall be prima facie evidence of such fraudulent intent, but this section shall not apply where there has been an agreement in writing for more than ten days' delay in such payment. The proprietor of such hotel, inn, boarding house, hospital or sanitarium shall keep a copy of this section printed in distinct type posted conspicuously in the office, ladies' parlor or sitting room; washroom and five other conspicuous places therein or not less than ten such places in all."

The legislature of Ohio, acting within constitutional bounds, is clothed with unlimited and absolute power to define statutory offenses and to prescribe punishment therefor. Acting under this authority, the legislature enacted Section 13131 of the General Code with the view of protecting innkeepers against fraud.

While Section 13131 of the General Code makes it mandatory for the proprietor of a hotel, inn, boarding or eating house, etc., to post certain notices, there is no express language in the statute which indicates the intention of the legislature as to whether or not the protection provided innkeepers by this section should be denied if there is a failure to comply with the provisions relating to the posting of notices. Since the intention of the legislature in this respect cannot be gathered from the language of the statute itself, reference may be made to the history of this legislation for this purpose.

In 1886 (May 11th), 83 O. L., 138, the legislature of Ohio passed an act entitled "An Act supplementary to Section 7076 of the Revised Statutes of Ohio." This act contained Sections 7076a, 7076b and 7076c. Section 7076c provided as follows:

"It shall be the duty of every hotel, inn, or boarding house keeper within this state, to keep a copy of this and the two preceding sections printed in large, plain, English type, upon the inside entrance

door of any public sleeping room *and no conviction shall be had under Section 7076a until it be made to appear to the satisfaction of the court that the provisions of this section have been complied with by the person making the complaint.*" (Italics the writer's.)

You will note that Section 7076c provides that no conviction shall be had under Section 7076a until it be made to appear to the satisfaction of the court that the provisions of Section 7076a have been complied with by the person making the complaint. The legislature by this language placed the burden of proof upon the complainant to satisfy the court that the provisions relating to the posting of notice had been complied with before a conviction could be had under the act, and the defendant was not required to put on his defense until the complainant had shown affirmatively this fact.

Sections 7076b and 7076c were amended February 20, 1900 (94 O.L.20). Section 7076c, as amended, read as follows:

"It shall be the duty of every hotel, inn, or boarding house keeper within this state to keep a copy of section seven hundred (thousand) and seventy-six (a) and of Section seven hundred (thousand) and seventy-six (b) printed in distinct type, posted conspicuously in the office, the ladies' parlor or sitting room, bar room, work room and in five other conspicuous places in said inn, or in not less than ten conspicuous places in all in said inn."

The legislature in this amendment left out the provision that "no conviction shall be had under Section 7076a until it be made to appear to the satisfaction of the court that the provisions of this section have been complied with by the person making the complaint." This manifests a clear intention upon the part of the legislature that a conviction under Section 7076a should not depend upon proof of posting of notices by the complainant, and the fact that the legislature retained in the statute the requirement for the posting of notices does not sustain a view that this provision was retained in the statute for the purpose of shifting the burden of proof upon the defendant and making it available to the defendant as a defense.

Section 7076c was again amended April 14, 1908 (99 O. L. 115), but no change was made in its language in so far as it is pertinent to the particular inquiry before me, nor were there any such changes made when Sections 7076a, 7076b and 7076c were consolidated by the Codifying Commission and carried into the General Code in its present form as Section 13131.

From an examination of the history of this legislation, it appears clear that it is not necessary for the complainant to prove that notices were posted as provided by Section 13131, General Code, in order to sustain a conviction for a violation of this provision, for to construe it otherwise requires a reading into the statute of something which the legislature intentionally omitted, and it further appears that the retention in the statute of the mandatory provisions for the posting of notices does not indicate an intention upon the part of the legislature to make a failure to do so a defense to a prosecution under Section 13131, General Code, for if the legislature had had such intention it would have used more apt language to effect this purpose. I am of the view that the requirement for the posting of notices, as provided in Section 13131, General Code, has no pertinency either as an element of the offense or as a defense to a prosecution for a violation of its provisions.

Specifically answering your inquiry, I am of the opinion that the failure to post notices as required by the provisions of Section 13131, General Code, is not a proper defense to a prosecution for a violation of the provisions of this section.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2952.

APPROVAL, BONDS OF BROWN TOWNSHIP RURAL SCHOOL DISTRICT, FRANKLIN COUNTY, OHIO—$25,000.00.

COLUMBUS, OHIO, February 17, 1931.

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

2953.

JOINT COUNTY DITCH—PETITION FILED IN ONE COUNTY—PROPORTIONATE SHARE OF OTHER COUNTY MAY NOT BE PAID OUT OF GENERAL DITCH IMPROVEMENT FUND IN ANTICIPATION OF COLLECTION OF SPECIAL ASSESSMENTS.

SYLLABUS:

When a petition has been filed in a county for a joint county ditch improvement the cost of which is to be paid in part by assessments levied in another county, such other county may not pay to the county in which the petition was filed, out of available funds in its general ditch improvement fund in a lump sum, the amount to be collected by special assessments and then reimburse such general ditch improvement fund from the proceeds of such assessments as they are collected.

COLUMBUS, OHIO, February 17, 1931.

HON. WM. M. VANCE, *Prosecuting Attorney, Urbana, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion on the following query:

> "When there is a surplus in the general ditch improvement fund of a county sufficient to pay such county's full share of a joint county ditch improvement, the petition for which was filed in an adjoining county, may the county auditor draw his warrant on such fund for the full amount of such county's share of the improvement, payable to the auditor of the other county, and replenish such general ditch improvement fund by receiving into it the assessments made under G. C. 6542, rather than turning over such assessments when collected to the general ditch improvement fund of the county in which the petition was filed?"