ties involved in the subject matter of the contract, including the time, manner and basis of the settlement.

There is no specific provision of the statute providing for an audit of an account of this kind. True, each of the subdivisions has an auditor of its own who is charged with the duty of auditing the accounts of his own subdivision, but here is a joint enterprise involving several subdivisions.

The province of the Bureau of Inspection and Supervision of Public Offices is to examine the accounts of the several political subdivisions within the state, but there is no provision of law requiring a subdivision or several subdivisions acting jointly to depend on an audit by this bureau in the first instance in the transaction of its business and the management of its affairs. The function of the bureau as set out in Section 284, General Code, is as follows:

> "The Bureau of Inspection and Supervision of Public Offices shall examine each public office * * *. On examination, inquiry shall be made into the methods, files and reports of the office, whether the laws, ordinances and orders pertaining to the office have been observed, and whether the requirements of the bureau have been complied with."

Had these contracting parties agreed that settlement should be made among them in accordance with an audit to be made by the Bureau of Inspection and Supervision of Public Offices they might have done so, but I know of no law requiring them to do so even though such a procedure might save money for the tax payers; nor do I know of any statute requiring or authorizing the bureau to audit in the first instance amounts engendered by contracts of the kind under consideration.

In my opinion the power to contract as authorized in Sections 6602-10, et seq. of the General Code is sufficiently broad to authorize a provision in such contract that settlement between the contracting parties will be made in accordance with an audit to be made by some particular auditor, and the authority to make such provision necessarily implies that such audit may be paid as a part of the cost of the improvement for which the audit is made.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1130.

FORMER JEOPARDY—PLEA IS LIMITED TO "SAME OFFENSE"—CHARGES OF PETIT LARCENY.

SYLLABUS:

1. *The plea of former jeopardy, under the Ohio Constitution, is limited by such constitution to the "same offense."*

2. *Where one is tried upon an affidavit charging petit larceny, under Section 12447, General Code, and is convicted therefor, and thereafter is indicted under Section 12619-1,*

General Code, and interposes a plea of former jeopardy to the indictment, such plea upon demurrer of the state should be overruled.

COLUMBUS, OHIO, October 10, 1927.

HON. GEORGE A. MEEKISON, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of October 3, 1927, which reads as follows:

> "Please give me your opinion on the following state of facts:
>
> This office has had numerous complaints of tires, motor meters and other accessories being stolen from cars parked on the streets of the village at night.
>
> About a month ago two young men removed a tire, tire cover and rim from the back of an automobile by unscrewing the bolts, without the knowledge of the owner, and took the property to Defiance, Ohio, a nearby town, where they undertook to sell it at a garage. The garage proprietor became suspicious and called the police. The police arrested them on suspicion and the next day the owner of the property was found and the prisoners were surrendered to the Sheriff of Henry County, Ohio, where they were placed in the county jail without any affidavit or warrant having been filed. The matter was not called to the attention of the Prosecutor's office.
>
> The owner of the stolen property did not wish to prosecute and when requested by the sheriff to file a warrant he refused to do so. About three days after the arrest a Justice of the Peace in the village of Napoleon approached the owner of the stolen property and requested him to file an affidavit charging the young men with petit larceny. An affidavit was drawn up by an attorney in no ways connected with the Prosecutor's office, and having no other official responsibility. The affidavit then appears on file in the Justice of the Peace's office and neither the Justice nor the owner of the property are able to say whether the owner of the property or the attorney took the affidavit to the Justice's office. A warrant is then issued to a constable. The prisoners are surrendered by the sheriff to the constable and taken to the office of the Justice of the Peace and are fined One Dollar and costs and turned loose.
>
> The Prosecutor's office is not notified of the contemplated action by the Justice of the Peace.
>
> The two young men were this day indicted by the Grand Jury of Henry County, Ohio, for 'Removing Part of Motor Vehicle' under Section 12619-1 of the General Code. All of the property stolen was of less value than $35.00.
>
> At the hearing before the Grand Jury we were unable to ascertain if the entire proceeding was a devise for securing their discharge from actual prosecution.
>
> Please give me your opinion as to whether a conviction of Petit Larceny under Section 12447 will constitute a bar to further prosecution for 'Removing part of Motor Vehicle' under Section 12619-1."

Your attention is directed to Article I. Section 10 of the Constitution of the State of Ohio, which concludes as follows:

> "* * * No person shall be twice put in jeopardy for the *same offense.*" (Italics the writer's.)

The question you present is whether or not the jeopardy of the prisoners under the affidavits charging petit larceny is available to them by plea in bar, or otherwise,

upon their trial upon the indictments returned charging a violation of Section 12619-1, General Code. In other words, does an indictment charging a violation of Section 12619-1, General Code, charge "the same offense" as an affidavit for petit larceny (Section 12447, General Code)?

The words "same offense" were defined by the Supreme Court of Ohio in *State vs. Rose*, 89 O. S. 383 at page 386, in the following language:

> "The words 'same offense' mean same offense, not the same transaction, not the same acts, not the same circumstances or same situation."

As stated on page 387 thereof:

> "It is not enough that some single element of the offense charged may have a single element of some other offense as to which the defendant had theretofore been in jeopardy, but the constitutional provision requires that it shall be the 'same offense.' The usual test accepted by the text-writers on criminal law and procedure is this: If the defendant upon the first charge could have been convicted of the offense in the second, then he has been in jeopardy.
>
> Some courts have greatly expanded the natural and ordinary meaning of the words 'same offense' to include all lesser degrees that may be fairly included within the major charge. * * * This doctrine, however, has not found favor in the decisions of the Supreme Court of this state."

To the same effect see *State vs. Billotto*, 104 O. S. 13, *State vs. Corwin*, 106 O. S. 638 and *Duvall vs. State*, 111 O. S. 657.

The case of *Gavieres vs. United States*, 220 U. S. 338, holds that a single act may be an offense against two statutes, and if each statute requires proof of an additional fact, which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution or conviction under the other. The opinion in this case quotes with approval a case cited, to-wit, that of *Money vs. Commonwealth*, 108 Mass. 433 in which the Supreme Court held:

> "A conviction or acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense. A single act may be an offense against two statutes: and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other."

This principle of law was reiterated by the Supreme Court of Ohio in the case of *Duvall vs. State*, 111 O. S. 657, the third paragraph of the syllabus of which reads:

> "A conviction or acquittal upon one indictment is no bar to a subsequent conviction and sentence upon another, unless the evidence required to support a conviction upon one of them would have been sufficient to warrant a conviction upon the other. A single act may be an offense against two statutes: and if either statute requires proof of an additional fact, an acquittal of the offense requiring proof of the additional fact does not exempt the defendant from prosecution and punishment under the statute which does not require proof of such additional fact."

Section 12447, General Code, defines larceny as follows:

> "Whoever steals anything of value is guilty of larceny, and, if the value of the thing stolen is thirty-five dollars or more, shall be imprisoned in the penitentiary not less than one year nor more than seven years, or, if the value is less than that sum, be fined not more than two hundred dollars, or imprisoned not more than thirty days, or both."

To sustain a conviction therefor the burden is upon the state to prove beyond a reasonable doubt the following elements:

1. Venue.
2. The taking of the property of another, actual or constructive.
3. The carrying away or asportation of the property.
4. The ownership of the property as laid.
5. The felonious intent.
6. The identity of the property stolen with that charged.
7. The value of the property taken.

Section 12619-1, General Code, reads as follows:

> "Whoever maliciously or with intent to steal or without authority from the owner, unlawfully removes from any motor vehicle any portion of the running or steering gear, pump or any tire, rim, cover, tube, clock, casing, radiator, fire extinguisher, tool, lamp, starter, battery, coil, spring, gas or oil tank, bell or any signal device, speedometer, license number, horn, box, basket, trunk, or carrier, shield, hood, oiler, gauge, grease-cup, chain, lock, nut, bracket, valve, bolt, rod, cap, screws, wire, spark-plug, carburetor, magneto, pipe, fan, belt, cylinder, switch, brake, electric bulbs, or any device, emblem or monogram thereon, or any attachment, fastening or other appurtenance, or any other part or parts attached to said motor vehicle which are necessary in the use, control, repair or operation thereof, or whoever, knowingly buys, receives or has in his possession any of such articles or any part thereof, so unlawfully removed as aforesaid, shall be imprisoned in the county jail or workhouse not more than six months nor less than three months, or fined not more than five hundred dollars nor less than one hundred dollars."

An examination of this section discloses that six distinct and separate offenses are therein enumerated, viz.:

1. The unlawful and malicious removal from any motor vehicle any of the articles or parts therein enumerated.

2. The unlawful removal from any motor vehicle any of the articles or parts therein enumerated with intent to steal such articles or parts.

3. The unlawful removal from any motor vehicle any of the articles or parts therein enumerated without authority from the owner.

4. Knowingly buying such articles or parts so unlawfully removed.

5. Knowingly receiving such articles or parts so unlawfully removed.

6. Knowingly having in possession such articles or parts so unlawfully removed.

It is obvious that none of the several offenses above enumerated is the same offense as petit larceny. The same proof is not required in each case and the offenses are dissimilar. The question that you present is not one of included offenses, or dif-

ferent degrees of the same offense, such as murder in the first degree or murder in the second degree, or manslaughter, etc., where the rule might be otherwise.

In view of the foregoing and answering your question specifically I am of the opinion that:

1. The plea of former jeopardy, under the Ohio Constitution, is limited by the constitution to the "same offense."

2. Where one is tried upon an affidavit charging petit larceny, under Section 12447, General Code, and is convicted therefor, and thereafter is indicted under Section 12619-1, General Code, and interposes a plea of former jeopardy to the indictment, such plea, upon demurrer of the state, should be overruled.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1131.

APPROVAL, BONDS OF DENNISON CITY SCHOOL DISTRICT, TUSCARAWAS COUNTY, OHIO—$24,000.00.

COLUMBUS, OHIO, October 10, 1927.

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

1132.

COUNTY DOG WARDENS—MAY GO INTO ADJOINING COUNTIES TO INVESTIGATE.

SYLLABUS:

County dog wardens and their deputies may go into an adjoining county or counties to investigate claims for damages to live stock inflicted by dogs.

COLUMBUS, OHIO, October 10, 1927.

HON. RALPH E. HOSKOT, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

"We respectfully request your opinion upon the following question:

Section 5652-7 of the General Code has been amended by House Bill No. 164, passed on April 21, 1927, in one of the following particulars, to-wit: