> of the contractor over the work covered by his contract, the surety or sureties on such contractor's bond do not within ten days give the state highway commissioner the written notice provided for above, it shall be the duty of the state highway commissioner to complete the work in the following manner: * * *"

the sureties on the bond were obligated either to complete the unfinished work under the contract or pay the cost thereof, and had the option to take over the unfinished work called for in their principal's contract and complete it. This they elected to do, entering into a contract therefor with Hill and Woodyard.

The sureties through their contractor have completed the unfinished job of their principal and I am of the opinion that such work should now be paid for by the delivery of the voucher to the Auditor of State, on which he should draw his warrant in payment thereof.

You say that the auditor of Brown County requested a duplicate copy of a certification, the original of which had been certified to John P. Stephan, Auditor of Brown County, for the sum of $2,490.48, which duplicate the auditor honored, and which resulted in the county officials of Brown County paying the Losey Engineering and Supply Company, on another contract, $2,490.48 more than was coming to them. However, it does not appear that the sureties on the bond of the Losey Engineering and Supply Company had anything to do with the issuance and payment of the duplicate voucher, nor does it appear that the contractor had anything to do with the issuance and payment thereof. Indeed, for aught that appears, neither the contractor nor the sureties on the bond of the Losey Engineering and Supply Company knew anything about the issuance and payment of the duplicate voucher. I see no lawful reason why the money due to the bondsmen for completing the contract should not be paid.

The auditor of Brown County has a claim or cause of action against the Losey Engineering and Supply Company to recover the excess amount paid to said company on account of the issuing of the duplicate voucher, but that does not in any way preclude or prevent the payment of the balance of the money due and owing to the bondsmen for the completion of I. C. H. No. 459, Sections G and H, Highland County.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1129.

CONTRACT—OF POLITICAL SUBDIVISION FOR CONSTRUCTION OF SYSTEM OF SEWERS—COST OF AUDIT MAY BE PAID AS PART OF COST OF IMPROVEMENT.

SYLLABUS:

Political subdivisions joining in a contract for the construction of a system of sewers and a sewage disposal plant, under authority of Sections 6602-10, *et seq., General Code, may in their discretion provide that, after the construction work is completed, settlement shall be made among the several contracting parties in accordance with an audit made*

by some particular auditor, and the authority to make such provisions necessarily implies that the cost of said audit may be paid as a part of the cost of the improvement for which the audit is made.

COLUMBUS, OHIO, October 10, 1927.

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

GENTLEMEN:—This will acknowledge receipt of your inquiry reading as follows:

> "Please note attached copy of a contract governing the division of costs of sewers and a sewage disposal plant between six villages in, and the County of, Cuyahoga. On page 3 of this contract there is a clause providing for an audit of the municipal records by a firm of accountants located in Cleveland but no rate of compensation is fixed and of course it is the intent to pay the cost of such audit from the public funds of the various municipalities and Cuyahoga County.
>
> Section 4284 G. C. provides for audits of departments by the auditor of a city and the clerk of the village. Section 284 G. C. provides for examinations by the Bureau of Inspection and Supervision of Public Offices.
>
> In view of the statutory provisions is the clause in the contract referred to legal authority for the payment of public funds to the firm mentioned for accounting services rendered?"

The contract submitted is an agreement among the villages of Euclid, South Euclid, University Heights, Lyndhurst and Beechwood, all in Cuyahoga County, Ohio, and the county commissioners of Cuyahoga County representing Sewer District No. 3 in said county. The contract makes provision for the construction and operation of a sewage disposal plant to be located in the village of Euclid. It also provides for the construction of the necessary main sewers leading to the disposal plant, to which is to be connected the local sewage system of each of the subdivisions represented by the contracting parties, thus providing a joint sewage disposal system for the areas embraced within the five villages and Sewer District No. 3. Authority for the making of such an agreement is contained in sections 6602-10 et seq., of the General Code, these sections respectively reading as follows:

> Sec. 6602-10. "That the board of county commissioners of any county in this state or the council of any city or village may enter into a contract, upon such terms and conditions, and for such period of time, as may be mutually agreed upon, with any other county, city or village, to prepare all necessary plans and estimates of cost, to connect any sewer or sewers of such county, city or village, with any sewer or sewers constructed, or to be constructed, by any other county, city or village, and to provide for the joint use by such contracting parties of such sewer or sewers and of any sewage treatment or disposal works of such county, city or village."
>
> Sec. 6602-11. "All such contracts shall provide for payment, to the county, city or village owning, constructing, or about to construct a sewer, sewers, or sewage treatment or disposal works, to be jointly used, of the amount agreed upon, by the county, city or village so contracting for the joint use thereof; * * *"

It appears at the time of the execution of this contract there was already under construction a disposal plant in the village of Euclid, together with outlets into Lake Erie and inlets from main sewers in Lake Shore Boulevard, as well as conduits for diverting storm water around the plant, and other necessary construction work in

connection with the building of the plant. It also appears that in the construction of the sewage system to make the disposal plant available to the territory to be served, it is necessary for some of the subdivisions, on account of their relative locations to the plant, to construct main or trunk sewers of larger size than would be necessary to serve their own territories were they building a sewage system primarily for their own use.

The contract fixes the responsibility for the construction of the disposal plant and the necessary main sewers leading thereto and seeks equitably to apportion the cost of the entire system as well as the disposal plant among the several contracting subdivisions. It fixes the basis for the division of costs among the several parties to the contract and sets out the agreed proportionate benefits accruing to each party. It provides for the payment of interest on moneys already expended and to be expended by the Village of Euclid in the construction of the disposal plant and main sewers leading thereto. It provides for the reimbursement of each contracting party for excess costs to which it may be put by reason of being required to build main sewers of a larger size than necessary for its own use. It also provides for the operation and maintenance of the disposal plant when completed and fixes the basis upon which the cost of such maintenance and operation shall be pro rated among the several subdivisions using it. In addition thereto, it provides for settlement among the several parties to the contract upon completion of the disposal plant and main sewers as follows:

> "Upon the completion of sewage disposal plant, and the aforesaid main sewers in South Euclid, Lyndhurst and Euclid village, an audit shall be made by Scoville Wellington and Co., a full report made to each of the parties to this agreement and a financial settlement made within thirty days thereafter."

You question the authority of the contracting parties to this agreement to employ accountants at public expense in view of the fact that the law provides for examination of the accounts of the several political subdivisions of the State by the Bureau of Inspection and Supervision of Public Offices, together with the fact that the accounts of cities and villages are to be audited by the auditor of the city or clerk of the village as the case may be.

The authority to contract embodied within sections 6602-10, et seq., General Code, clearly implies the authority to provide in said contract for the apportionment of the cost of disposal plants and joint sewers. When the basis is fixed whereby such costs shall be apportioned the facts that the actual expenditures going into the construction work include many items of expenditure and will probably extend over a considerable period of time necessarily implies that some auditing at least will be necessary in order to arrive at the specific amount to be borne by each of the contracting parties in accordance with the terms of the contract. The determination of this is as important as the determination of engineering problems arising during the course of the work.

In this case the contracting parties have fixed a time when financial settlement is to be made among them, to-wit:

> "Upon the completion of sewage disposal plant, and the aforesaid main sewers * * *, an audit shall be made by Scoville Wellington and Co., a full report made to each of the parties to the agreement and a financial settlement made within thirty days thereafter."

They have further provided that this settlement shall be made in accordance with the report of the auditors specified. Having authority to contract as authorized by the statute, it seems clear that they have authority to fix all their rights and liabili-

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,*