

thority to hear and determine protests on grounds not within these limitations. *State, ex rel vs. Smith*, 101 O. S. 358.

I am of the opinion that, if there is no question about the identity of the person to whom you refer and if he is known as Albert Smith, his signature on the nomination petition can be counted and his declaration of candidacy is valid and is a sufficient compliance with the law, provided said papers are in all other respects regular.

I also note that Lima, the city in which the person referred to resides, does not appear in the nominating petition. I am of the view that this omission is a mere technical defect within the meaning of the provision contained in section 4785-78, General Code, which may be disregarded by the election officials.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4159.

LIQUIDATION OF BANK—HUNTING AND FISHING LICENSE FEES DEPOSITED AS STATE FUNDS—SUCH A PREFERRED CLAIM.

SYLLABUS:

When a person, authorized to issue fishing or hunting and trapping licenses, deposits in a bank, as agent of the state, funds collected by him as license fees, such funds are entitled, in the event of the subsequent insolvency of such bank, to priority of payment.

COLUMBUS, OHIO, March 17, 1932.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“You are no doubt familiar with the fact that the Division of Conservation has about two thousand county and township clerks in this state issuing Hunter’s and Rod and Reel licenses. They are required by law to make a settlement quarterly.

There are now about fifteen or twenty banks in the state being liquidated which had the money of these clerks on temporary deposit. In all such cases, part of this money is that which belongs to this Division for the sale of aforesaid licenses.

Will you please advise me if it is your opinion that the money due the Division of Conservation deposited in a bank being liquidated is a preferred claim?”

I assume that such deposits were made by the persons referred to in their capacity as agents of the state.

Section 1433, General Code, provides, with reference to hunting and trapping

licenses, that the clerks and deputies authorized to issue licenses shall make quarterly reports to the division of conservation and "shall transmit with such report to the commissioner, the moneys received as license fees, other than the amounts paid to the clerks as their fees, which shall be paid into the state treasury," etc.

Section 1340, General Code, with reference to fishing licenses, provides that "the provisions of the hunting and trapping license fee section of this state in so far as the same are applicable to the license fees herein provided for shall apply to all licenses under this section."

I find no statute giving clerks or other persons authorized to issue such licenses any authority to deposit license fees received by them in banks or other depositories. There being no authority for the deposit of these funds which belong to the state, such deposit would not create the relationship of debtor and creditor between the state and the bank, but would be in the nature of a special deposit and entitled to preference.

Where a deposit of state funds is authorized by statute, there is a conflict of authorities as to the right of the state to preference in respect thereto in the assets of an insolvent bank. The states which uphold such preference do so under the old common law theory under which the Crown arrogated to itself the prerogative right of preference in the estate of insolvent debtors, the courts in those states holding that such right is an attribute of sovereignty and a part of the common law as adopted by the people. 51 A. L. R. 1336.

This law has been denied by this state. As was said by Ranney, J., in *State vs. Executor of Buttles*, 3 O. S. 309:

"When the state appears in her courts as a suitor, to enforce her rights of property, she comes shorn of her attributes of sovereignty, as a body politic, capable of contracting, suing, and holding property, subject to those rules of justice and right, which, in her sovereign character, she has prescribed for the government of her people."

In the case of *Fidelity and Casualty Company vs. Union Savings Bank Company*, 119 O. S. 124, it is held that a deposit of state funds, made under authority of law, creates the relation of borrower and lender between such depository and the state, and the state is not entitled to preference in the event of insolvency of the depository. The court says in this opinion:

"Under the authorities and upon principle we are of the opinion that the deposit of state funds in banking institutions, upon a stipulated rate of interest, and with security, is an ordinary business transaction entirely beyond the domain of those essential functions which are defined as the exercise of sovereignty."

However, unauthorized or unlawful deposits of public funds in a bank which becomes insolvent are very generally held to be special deposits entitled to priority of payment out of the assets of the bank. To this effect are the cases of *In Re Liquidation of Osborn Bank*, 1 O. A. 140, and *Crawford County vs. Strawn, Receiver*, 6 O. L. R. 309.

In Opinions of the Attorney General for 1930, Vol. II, page 1301, it was held:

"When a deputy commissioner of motor vehicles deposits funds collected by him in the sale of motor vehicle license plates, in a bank as

deputy commissioner, such funds are held by the bank in trust for the state, and in the event of the liquidation of such bank, by the Superintendent of Banks, the state has a preferred claim to the extent of the balance of such deposit."

This opinion is equally applicable to deposits of funds received by clerks and deputies for fishing and hunting and trapping license fees.

I am therefore of the opinion that when a person, authorized to issue fishing or hunting and trapping licenses, deposits in a bank, as agent of the state, funds collected by him as license fees, such funds are entitled, in the event of the subsequent insolvency of such bank, to priority of payment.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4160.

TRUSTEES KENT STATE COLLEGE—UNAUTHORIZED TO PAY DAMAGES TO STUDENT FOR INJURIES RECEIVED WHILE IN ATTENDANCE AT SUCH COLLEGE.

SYLLABUS:

The Trustees of Kent State College are without power to expend funds appropriated for the use of said college or belonging to any department of the college for the purpose of paying claims for damages resulting from an injury received by a student while in attendance at said college, regardless of the manner in which that injury was received.

COLUMBUS, OHIO, March 17, 1932.

DR. J. O. ENGLEMAN, *President, Kent State College, Kent, Ohio.*

DEAR DR. ENGLEMAN:—I have your request for my opinion with respect to the right of the Board of Trustees of Kent State College to recognize and pay a certain claim for damages presented by the father of one of the students at the college.

Aside from the question of the merit of the claim, there has arisen a doubt in the minds of the members of the board as to the powers of the board with respect to the use of moneys appropriated for the maintenance of the college for the payment of claims of this kind.

It appears that there is maintained in connection with the college, a dormitory for students known as "Lowry Hall". In connection with this Hall there is a dining room for the use of students. According to the claim presented, one of the students was injured "by swallowing a metallic substance on January 14, 1932, while eating in the dining room at Lowry Hall." The claim consists of the cost of an X-Ray examination at Salem City Hospital, for medical services in connection with the matter, and for expenses of the father of the student in making several trips to Kent, to the doctor's office and to the Salem City Hospital, amounting in all, to \$64.00.