

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.

An examination of the student was made by a physician on January 28, 1932, and a report of this examination was submitted as follows:

"January 28, 1932.

Medical report of ....., examined at office  
January 26, 1932.

Stated she had swallowed some metallic substance while eating on January 14, 1932. Had pain on pressure at left costal border. Pain spasmodic. Advised X-ray.

January 27, 1932. Fluoroscope at Salem City Hospital, Salem, Ohio, revealed nothing. An hour later had emesis and threw up a small piece of metallic substance."

Signed, ....., M. D."

In view of the results of the physical examination as reported by the physician, and the circumstances surrounding the entire matter, there is some doubt whether the student's condition, as reported by the physician, was brought about by reason of some foreign substance in the food served at the college dining room. Even if it was, however, it does not necessarily follow that the student has an enforceable claim against the college or anyone else, or that the board of trustees of the college may lawfully recognize the claim and pay out moneys appropriated for the maintenance of the college in satisfaction of the alleged claim.

Prior to 1929, Kent State College was a part of the normal school system of the State of Ohio, created and established by the legislature in pursuance of its broad powers to foster and promote education within the state.

Originally there were established by the legislature two state normal schools—one in connection with Ohio University at Athens, and one in connection with Miami University at Oxford. (95 O. L. 45).

By the terms of this act, the organization, management and control of these two normal schools were entrusted to the trustees of the respective institutions. In the same act provision was made for the levying of a state tax for the maintenance of the normal schools. By force of this act, these normal schools clearly were constituted state institutions—agencies or arms of the state for the promotion of normal school training. These statutes, in this respect, have remained the same, although the provision for the levying of a state tax for the maintenance of the schools was later repealed, and this maintenance is now provided for by direct appropriations made by the state legislature from state funds.

Upon the codification of the statutes in 1910, the provisions for the creation of these two normal schools were codified as Section 7897, General Code, appearing in Chapter 10, "Normal Schools", Title V, "Public Schools" of Part Second, of the General Code of Ohio.

In 1910, an Act of the Legislature was passed, entitled:

"To provide for the appointment of a commission to establish two normal schools, and to provide for the maintenance thereof."

Section 1, of this Act, read in part, as follows:

"That the normal school system of the State of Ohio created and established by Chapter 10 of the General Code, be extended by the creation and establishment of two additional state normal schools, one in northeastern Ohio and one in northwestern Ohio."

In pursuance of this Act, Kent State Normal School was established. The act provided for the appointment of a board of trustees for the proposed normal school in northeastern Ohio, which board was authorized to establish, organize and maintain a normal school at said place.

By an act of the legislature, passed in 1929 (113 O. L., 34) the name of Kent State Normal School was changed to Kent State College. This act was codified as Sections 7924 to 7924-3, inclusive, of the General Code. The act provided that the board of trustees of the said normal school should continue to exercise its powers and perform its duties with respect to said Kent State College as before, with authority to provide additional courses and instructors and to confer certain honorary degrees usually conferred by colleges. Section 7924-3, General Code, provides that Kent State College shall be supported by such sums and in such manner as the General Assembly may provide. In pursuance of this provision the General Assembly provides for the maintenance of said college by specific appropriations thereto, which sums so appropriated may be expended by the trustees of said college for the support and maintenance of the college and according to the tenor of the said appropriations.

This act did not change the status of said college or of its board of trustees, so far as its being an agency or arm of the state is concerned. A claim for damages against the college or the trustees of the college would virtually be a claim against the state. The state is sovereign, and to permit proceedings against it in the nature of a proceeding for the collection of damages would be tantamount to a denial of sovereignty. In its sovereign capacity the state can do no legal wrong; nor can administrative officials, boards or commissions in carrying out the sovereign functions of the state.

It is a fundamental principle of law, that the state as a sovereign, is not liable to be sued in its own courts without its express consent. No legislative action has been taken authorizing suit against the state for claims such as the one here under consideration.

It is equally fundamental that administrative boards and commissions created by statute, have no powers except such as are expressly granted to them by the statute, together with such incidental powers as may be necessary to carry out and perform the express powers granted to them. While the powers extended to the Trustees of Kent State College to administer the affairs of the college are broad in terms, no express authority exists to pay or compromise claims of this nature, and it can not be said that the power to do so is a necessary incident of any express power granted to them.

In the absence of any statute empowering or authorizing the Board of Trustees of Kent State College to pay or compromise a claim of this kind, I am of the opinion that it is without authority to do so.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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4161.

APPROVAL, BONDS OF DEERFIELD TOWNSHIP RURAL SCHOOL DISTRICT—MORGAN COUNTY, OHIO—\$20,000.00.

COLUMBUS, OHIO, March 17, 1932.

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