2-A" as stated in the proposed Articles is erroneous), under which the corporation is organized and will operate.

Section 8623-97, General Code, provides:

> "A corporation not for profit may be formed hereunder for any purpose or purposes *not involving pecuniary gain or profit* for which natural persons may lawfully associate themselves, provided that where the General Code makes special provision for the filing of articles of incorporation of designated classes of corporations not for profit, such corporations shall be formed under such provisions and not hereunder." (*Italics* the writer's).

Although the statute above quoted contains a clear implication that corporations not for profit may be formed under other chapters of the General Code than that containing the General Corporation Act, it is a matter of grave doubt in my mind whether a corporation organized under the provisions of Sections 9607-1 to 9635, inclusive, General Code, for the transaction of several branches of the insurance business for the exclusive benefit of its members is of such a benevolent, philanthropic or social nature as to entitle it to be classed as a corporation not for profit within the purview of Section 8623-97, General Code, supra, and related sections. However, the particular provisions of the General Code under which said proposed corporation is organized being correctly cited in said proposed articles of incorporation, I am of the opinion that the designation of said proposed insurance corporation as one not for profit, and of "Chapter 2-A" as the chapter of the General Code under which the proposed corporation is organized, al-although erroneous, may be ignored as surplusage. See Vol. I, Opinions of the Attorney General for 1919, p. 36; also my opinion No. 2834, rendered to you January 16, 1931.

I am therefore of the opinion that said proposed Articles of Incorporation of Empire Mutual Insurance Company are consistent with the constitutions and laws of Ohio and of the United States. I herewith return the same to you with my approval endorsed thereon.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3124.

COUNTY FUNDS—DEPOSITED IN STATE BANK BY COMMISSIONERS—NOT PREFERRED CLAIM AGAINST ASSETS WHEN SUCH BANK FAILS.

SYLLABUS:

County commissioners are not entitled to a preference in the liquidation of a legally selected active county depositary bank, for county moneys rightfully deposited therein.

COLUMBUS, OHIO, April 7, 1931.

HON. JOHN W. BOLIN, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—Acknowledgment is hereby made of your request for my opinion which reads as follows:—

> "Where the county commissioners have followed the procedure as laid down under Section 2715 of the General Code and entered into a contract with a State bank for the active depositary of public funds, and said bank has failed does the fact that the depositary is of public money give the right

to the commissioners to have a preferred claim against the assets of said defunct bank."

Section 2715, General Code, to which you refer, reads in part as follows:

"The commissioners in each county shall designate in the manner hereinafter provided a bank or banks or trust companies, situated in the county and duly incorporated under the laws of this state, or organized under the laws of the United States as inactive depositaries, and one or more of such bank or trust companies located in the county, at least one of which shall be located at the county seat, as active depositaries of the money of the county. * * *"

It is to be noted that this chapter, in Section 2722, provides that no money shall be deposited thereunder until the hypothecation of securities or the execution of an undertaking by the bank in such sum as the commissioners direct but not less than the sum that shall be deposited in such depositary. I assume, for the purposes of this opinion, that in the deposit of the county funds above referred to there was a compliance with all of the provisions of the chapter.

It is a well known principle of law, as stated in 5 *Ohio Jurisprudence*, 513, that the deposit of public funds made under authority of the depositary law creates the relationship of borrower and lender between said depositary and the state.

Pertinent language relating to deposits of state funds in banks is used in the case of *Fid. & Cas. Co.* v. *Sav. Bank Co.*, 119 O. S. 124, wherein Sections 321 et seq. were construed, which sections are comparable to those relating to county depositaries. The second, third and fourth branches of the syllabus of that case are as follows:

"2. The legislature has made provision for deposit of state funds in Section 321 et seq., General Code, and a deposit when made under authority of these sections creates the relation of borrower and lender between such depositary and the state.

"3. Section 321 et seq., General Code, neither expressly nor impliedly give to the state priority of payment out of the funds of such banking institution in the event of insolvency.

"4. A deposit of state funds in a depositary under authority of Section 321 et. seq., General Code, is not an exercise of sovereignty but on the other hand in such a transaction the government is acting in its proprietary capacity."

At page 132, the court stated:

"The Legislature having made no provision for priority, it will be presumed that the legislative intent has been exhausted. Clearly, the Legislature had the power to provide for priorities, and, not having expressly made such provision, all other depositors in the banks where state funds are deposited have a right to assume that their deposits are as secure as all other deposits. To so interpret the statutes as to permit priorities in favor of the state would require that matter to be read into the statutes which the Legislature has not written in."

I believe, however, that the case of *In re Liquidation of Osborn Bank*, 1 *Ohio App.* 140, is dispositive of your inquiry. In the second branch of the syllabus of that case, it is stated:

"County funds deposited in a bank in pursuance to the county depositary

act as an interest-bearing fund constitute a general deposit without preference over general creditors although there are slight but not material or substantial irregularities in the designation of the bank under the depositary law."

It is my opinion, therefore, that county commissioners are not entitled to a preference in the liquidation of a legally selected active county depositary bank, for county moneys rightfully deposited therein.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3125.

OXFORD VILLAGE—RIGHT TO LEVY AND COLLECT SPECIAL ASSESSMENTS AGAINST REALTY OWNED BY MIAMI UNIVERSITY WITHIN SUCH VILLAGE, UPHELD.

SYLLABUS:

Under the provisions of Section 3812, of the General Code, the Village of Oxford has authority to levy and collect assessments for public improvements mentioned in said section, upon lands situated within such village, which are owned by Miami University.

COLUMBUS, OHIO, April 7, 1931.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting an opinion upon a question propounded to you by the village solicitor of Oxford, in a letter which you enclose. The question presented is whether the village of Oxford may levy and collect assessments against real property owned by Miami University within the village of Oxford, for the purposes of public improvements. The following is quoted from the letter of the solicitor, which relates to the facts:

> "The Village of Oxford has located in its midst and within the village boundaries, the Miami University which is a state institution supported by state funds. Although in some respects it has functioned as a private institution, receiving state aid, it nevertheless is regarded as a state university.
>
> The territory occupied by Miami University in the village almost comprises one-half of the village, and from time to time this non-taxable institution in our midst has caused a great burden and hardship upon the village proper because the village land owner's tax must contribute to the maintenance of the village sewage, lighting, etc., for a town of 5,000 persons when if the student population were excluded the village would only have a population of 2570.
>
> In years past it was thought that since such institutions were tax exempt that they might also be exempt from special assessments for improvements of a public nature."

As suggested in the solicitor's letter, the act authorizing the establishment of Miami University is found in 7 O. L., 184. Without undertaking to discuss in detail the numerous provisions of the act, suffice it to say that such university is designated by the act as "a body politic and corporate, by the name of the president and trustees of the Miami University" as indicated by Section 3 of the act. Throughout the entire act