

1058.

STUDENT FEES MAY NOT BE USED BY KENT STATE
UNIVERSITY.

SYLLABUS:

The general appropriation act, Amended Senate Bill No. 369 of the 92nd General Assembly, contains no appropriation of student fees for the uses and purposes of Kent State University, and unless and until the General Assembly sees fit to appropriate the proceeds of such fees these moneys must be deposited in the state treasury to the credit of a special fund, as required by Section 7986-1, General Code.

COLUMBUS, OHIO, August 25, 1937.

HON. M. RAY ALLISON, *Director of Finance, Columbus, Ohio.*

DEAR SIR: Your letter of recent date is as follows:

“By direction of the Controlling Board, I am submitting request for your interpretation of Section 6 of the General Appropriation Bill, Am. S. B. No. 369, as construed in connection with Section 7981-1 of the General Code.

The General Appropriation Bill does not specifically appropriate student fees of Kent State University, in words similar to the appropriations to the other State Universities. In other words, for each State university except Kent, the wording of the appropriation bill reads: ‘A 1 Salaries—Student Fees and \$\$\$.’

Section 7986-1 of the General Code provides that, ‘All receipts from student fees and deposits of the Ohio State University and of each state normal school and university receiving state aid, required by law to be paid into the state treasury, shall be credited therein to special funds to be appropriately designated by the names of the respective institutions from which they are received. Such funds shall be applied to the uses and purposes of such respective institutions and shall be used for no other purpose.’

Section 6 of the General Appropriation Bill, Am. S. B. No. 369, provides: ‘The term “Rotary” as used in this act, and unless the context otherwise requires, includes all rotary funds established by permanent law and also means *and includes a working capital fund in whole or in part derived from a function or activity of an institution and set aside to establish*

or enable the department or institution to carry on such function or activity.'

Question. Is the special fund of Kent State University, created under authority of Section 7986-1, to which is credited its student fees, a rotary fund or working capital fund as described in paragraph one of Section 6 of Am. S. B. No. 369, and if so, are the moneys credited to said special fund during the years 1937 and 1938 appropriated by the second paragraph of Section 6 for the uses and purposes of Kent State University?"

The reference in the first paragraph of your letter to Section 7981-1, General Code, is apparently to Section 7986-1, General Code. There is no Section 7981-1, General Code.

Section 7986-1, General Code, quoted in the third paragraph of your letter, is a permanent statute enacted in 1919 (108 O. L., Pt. 2, 1109). It does not purport to be an appropriation act and even if it did, it would no longer be in effect as such, since Article II, Section 22 of the Constitution provides:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

Said Section 7986-1 is accordingly but declarative of the legislative policy as to what disposition shall be made of student fees of each university receiving state aid which are required by law to be paid into the state treasury. Student fees received by Kent State University are required by law to be paid into the state treasury in view of Section 24, General Code, which provides in so far as is pertinent as follows:

"On or before Monday of each week every state officer, state institution, department, board, commission, college, normal school or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, college, normal school or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, and file with the auditor of state a detailed, verified statement of such

receipts. Where tuitions and fees are paid to the officer or officers of any college, normal school or university receiving state aid, said officer or officers shall retain a sufficient amount of said tuition fund and fees to enable said officer or officers to make refunds of tuition and fees incident to conducting of said tuition fund and fees. * * *

It is fundamental that the student fees in question, after being paid into the state treasury and credited to a special fund for the uses and purposes of Kent State University, may not be expended or withdrawn from the state treasury except pursuant to specific appropriation made by law. Article II, Section 22 of the Constitution, supra. As stated in your communication, the appropriations for Kent State University contained in the current general appropriation act, Amended Senate Bill No. 369, pages 134 and 135, make no reference whatsoever to student fees received by that university. In making the appropriations for the other state universities, as indicated in your letter, the General Assembly has appropriated student fees for the payment of salaries. You inquire as to whether or not Section 6 of the general appropriation act serves to appropriate the student fees in question for the uses and purposes of Kent State University. The pertinent portion of such Section 6 reads as follows:

“The term ‘Rotary’ as used in this act, and unless the context otherwise requires, includes all rotary funds established by permanent law and also means and includes a working capital fund in whole or in part derived from a function or activity of an institution and set aside to establish or enable the department or institution to carry on such function or activity.

Unless otherwise provided by this act or by permanent law, each rotary appropriation herein made shall have the effect of appropriating for the purpose of carrying on the function for which the rotary fund is established all sums obtained from such function or activity and (a) remaining unexpended and unencumbered in the state treasury to the credit thereof on January 1, 1937, and (b) paid into the state treasury to the credit of such rotary between January 1, 1937, and December 31, 1938, both inclusive and only such sums, the provisions of Section 8 of this act to the contrary notwithstanding. Any such appropriation may be expended for any and all purposes authorized by permanent law, or, as the case may require, for any and all purposes mentioned

in this act as descriptive of the function or functions, or activity or activities, for which the same is established, or directly related thereto, and only for such purposes, anything in Section 8 of this act to the contrary notwithstanding.”

Section 8 of the act referred to in Section 6, *supra*, relates to the powers of the Controlling Board and is not pertinent to a determination of this question. The first paragraph of Section 6, *supra*, defines the term “rotary”, “as used in this act”. The act being silent as to any appropriation of student fees received by Kent State University for any rotary fund, it is at once apparent that this paragraph constitutes no appropriation of such fees. Likewise the second paragraph of such Section 6, *supra*, relates only to “each rotary appropriation herein made”. The language of the second sentence of the paragraph as to the purposes for which “such appropriation” may be expended is necessarily limited in its application to rotary appropriations made by the general appropriation act. I find no authority whatsoever for construing the language of Section 6 of the general appropriation act as an appropriation of the proceeds of student fees received by Kent State University for any rotary or any other fund. It appears that nowhere in the general appropriation act has the General Assembly made any appropriation of student fees received by Kent State University for the present biennium since the partial appropriation act, House Bill No. 33, containing such appropriation, was repealed by the general appropriation act.

As above stated, student fees of other state universities are appropriated for the payment of A-1 Salaries and the partial appropriation act, as above indicated, appropriated student fees of Kent State University for A-1 salaries. I am convinced that the failure of the General Assembly, in the enactment of the general appropriation act of this biennium, to appropriate student fees received by Kent State University must have been an accidental omission or oversight in the drawing of the bill. There have been numerous decisions of the Supreme Court of Ohio, as well as the courts of other states, holding that certain clerical mistakes of the legislature in the enactment of laws which are apparent upon the face of the statute, such as when the General Assembly has erroneously used one word for another, may be corrected by the judiciary. Cases of this nature inevitably arise when the error or omission of a word may be supplied by the context or where such error or omission renders the statute meaningless. A number of cases in which the courts were concerned with

such matters are cited and discussed in my Opinion No. 777, rendered to the Tax Commission on June 24 of this year.

In the instant case, however, to say that the courts may supply the omission here under consideration would be to say that the courts have authority to make a specific appropriation of moneys which the legislature did not make. This, in my judgment, would clearly constitute judicial legislation. The early case of *Woodbury & Co. vs. Berry*, 18 O. S. 456, is, I believe, peculiarly in point. The court said at pages 462 and 463:

“These considerations, and a comparison of the provisions of these sections of the statute, as they stand with those of the statute which was superseded and repealed by the code of civil procedure, not only suggest the conjecture, but convince us of the fact, that the words, *other than the county*, or some equivalent phrase, must have been, by accident or oversight of the draftsman of the bill to establish a code of civil procedure, or of the clerk who engrossed it, omitted before the words ‘from which the execution issued’ in Section 455. But, notwithstanding all this, *its lex scripta est*. The language as it stands is clear, explicit, and unequivocal. It leaves no room for interpretation, for nothing in the language employed is doubtful. We are satisfied, by considerations outside of the language, that the legislature intended to enact something very different from what it did enact. But it did not carry out its intention; and we can not take the will for the deed. It is our legitimate function to interpret legislation, but not to supply its omissions.”

In *Hough vs. Dayton Manufacturing Co.*, 6-66 O. S. 427, the court said at page 438:

“It is our legitimate function to interpret legislation, but not to supply its omissions.”

In *King, et al. vs. Cemetery Association*, 67 O. S. 240, at 244, it is said:

“* * * we have no power to amend the legislative enactment. If the legislature made the mistake suggested, it alone can amend and correct it. The intent of the legislature is determined from what it says, and if its language is clear and unambiguous, the courts have no authority to change it.”

To the same effect is *Steel Co. vs. Oberlander*, 109 O. S. 592, at pages 596 and 597:

“It is the province of the court to construe and interpret statutes only when the language employed is ambiguous and the meaning and application thereof uncertain. If the provisions of a statute are plain and unequivocal, there is no occasion for construction or interpretation; nor, under such circumstances, is it the province of the court to consider or attempt to determine what the Legislature should have enacted, nor even what it may have intended to enact.”

In view of the foregoing, I am constrained to advise that in my opinion the failure of the present General Assembly to appropriate student fees received by Kent State University for the purposes of that university, however inadvertent such failure may have been, constitutes an omission which may not be supplied by the courts and that the remedy lies exclusively with the General Assembly.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

1059.

DESIGNATION OF PUBLIC DEPOSITORY FOR ACTIVE COUNTY FUNDS.

SYLLABUS:

1. Under the *New Uniform Public Depository Act*, namely Sections 2296-1 2296-25, *General Code*, inclusive, an eligible institution within a subdivision other than a county has a preferential right to the active funds of such subdivision.

2. An eligible institution located in the county seat of a county has a preferential right to the active funds of the county.

3. In case the subdivision has no eligible institution within its territorial limits or the county has none at its county seat, then the governing board of such subdivision or county shall designate another or other eligible depositories of the active funds of the subdivision or county, as the case may be, conveniently located.

4. In case the subdivision or county seat has more than one eligible institution within its territorial limits that have made application for the