

"A special fund for each class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose."

In addition to this requirement, paragraph (d) of the section requires a subdivision to establish "A special fund for each special levy."

From your communication, it would appear that several funds have been grouped into one. Manifestly, the provisions of paragraph (f) would require a separate fund for the proceeds of the motor vehicle license tax and also a separate fund for the proceeds of the gasoline tax. Furthermore, there is no authority for the commingling of the proceeds of a special levy with revenue derived from a source other than a general property tax where the law requires the latter class of revenue to be used for a particular purpose. This comment is made in order that proper book-keeping methods may be adopted which will tend to make more easy of application the conclusions reached in this opinion.

In view of the foregoing, and in specific answer to your communication, it is my opinion that:

1. Funds in the county treasury representing the county's share of motor vehicle registration fees arising under the provisions of Section 6309-2 of the General Code, may be used by the county to pay its share when co-operating with the State in the maintenance and repair of a bridge located upon a state highway, a part of which extends within the boundaries of a municipal corporation, and which said bridge within the municipality carries the highway over a railroad track.

2. Under such circumstances, funds in the county treasury arising from the gasoline tax under the provisions of Section 5537 of the General Code, may not be used for the purpose of maintenance and repair of such a bridge, for the reason that the use of such funds, by the express provisions of the statute, is restricted to the county system of highways.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

303.

FOREIGN CORPORATION—ENGAGED IN CATCHING FISH IN OHIO—  
LIABLE FOR NON-RESIDENT LICENSE FEE.

*SYLLABUS:*

*A corporation organized outside of the State of Ohio and authorized to engage in the business of catching fish in the State of Ohio must pay a non-resident license fee as provided in Section 1423, General Code of Ohio.*

COLUMBUS, OHIO, April 13, 1929.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of March 29, 1929, which is as follows:

"We have had for several years, in connection with the licensing of nets and boats for Lake Erie fishery activities, the question arising whether or, not a fish company incorporated under the laws of another state, and maintaining a branch fish house in Ohio, is entitled to a resident license for their nets and boats.

We have quite a few such companies operating in Ohio which have heretofore only paid a resident license. We should like to have your immediate answer to this question. We are asking this because licenses are being issued at this time."

Parts of Section 1423 of the General Code pertinent to your inquiry are as follows:

"No person, firm or corporation shall use or operate for the purpose of catching fish; a boat, net or device other than hook and line with bait or lure in the Lake Erie fishing district of this state, or the bays, marshes, estuaries or inlets bordering upon, flowing into, or in any manner connected with Lake Erie, without a license from the Director of Agriculture. Application for licenses and all licenses herein required shall be in such form as the director may prescribe. The fees for license in the Lake Erie fishing district, and in the bays, marshes, estuaries or inlets bordering upon, flowing into, or in any manner connected with Lake Erie, where fishing is permitted with a 4-inch seine, for each fishing season defined in this chapter shall be as follows:

\* \* \* \* \*

For each gasoline or other power boat and for each steamboat owned or chartered by any person not a resident of the State of Ohio, fifty dollars;

\* \* \* "

Section 1390 of the General Code of Ohio defines words and phrases used in the Fish and Game Act, of which Section 1423 of the General Code, is a part. The term "person" as defined by Section 1390 "includes company, partnership, corporation or association, also any employe, agent or officer thereof." The word "resident", as defined in said section is "any citizen of the United States who has lived in the State of Ohio for not less than ninety days next preceding the date of making application for a license." A "non-resident" is defined by said section as "Any person who is a citizen of the United States and has not resided in the State of Ohio for a period of ninety days or more next preceding the date of making application for license."

"A corporation is a 'citizen' within the meaning of a statute conferring rights, defining the jurisdiction of the courts, or otherwise relating to citizens, if the purpose and intent of the statute renders it applicable, and for such purpose it is, as a general rule, a citizen of the state or country by or under the laws of which it was created or exists without regard to the citizenship of its stockholders or members."—14 C. J. 67.

"Since a corporation is a person in the law, it is also to be deemed a 'resident' or 'non-resident' of a particular state, county, or district within the meaning of a statute, if it is within the purpose and intent of the statute, as in the case of statutes defining the jurisdiction of the courts, or relating to venue, taxation, etc."—14 C. J. 66.

A corporation, the same as an individual, can have only one place of residence. A corporation is a citizen of the state by and under the laws of which it was created and only that state, even though it may be doing business in another state. While it appears from the statute cited above that a foreign corporation must pay a non-resident's license fee, as provided in Section 1423 of the General Code of Ohio, yet a much more difficult question presents itself, that is, can the State of Ohio require a foreign corporation authorized to do business in this state, to pay a greater license fee

to catch fish in the State of Ohio than a domestic corporation engaged in the same business?

To answer this question, it is necessary to determine whether or not such action on the part of the state relative to foreign corporations is in conflict with Section 1, Article 14 of the amendments to the federal constitution. The particular provisions of the Amendments to the United States Constitution with which we are concerned here is that part of Section 1, Article 14, which provides that:

“ \* \* \* Nor shall any state \* \* \* deny to any person within its jurisdiction the equal protection of the laws.”

Corporations, by doing business in another state, do not become, in any sense, citizens or residents of the latter state any more than a natural person becomes a citizen or resident of another state by doing business through its agent. It cannot be rightfully urged that a foreign corporation doing business in another state can have greater rights and privileges in that state under the Constitution of the United States than natural persons who do business in other states. Natural persons enjoy privileges and immunities under Article 4, Section 2 of the Amendments to the Constitution of the United States that corporations do not have.

“No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; \* \* \* nor deny to any person the equal protection of the laws.

\* \* \* \* \*

Within the meaning of this clause, a foreign corporation is not a citizen and cannot invoke its protection.”—*Humphreys vs. State*, 70 O. S. 85.

The courts universally hold that the right to fish in the waters of a state is not a privilege of the citizens of the several states and granting to citizens of a particular state the right to fish for and take fish in certain ways, is not a discrimination against the privileges of citizens of the several states within the meaning of Article IV, Section 2, Part I, of the Amendments to the Constitution of the United States. The principle has long been settled in the courts that each state owns the beds of all waters within its jurisdiction, unless they have been granted away. In like manner, the state owns the waters themselves and the fish in them, so far as they are capable of ownership while running. For this purpose, the state represents its people and the ownership is that of the people in their constitutional sovereignty. The state has a right, in its discretion, to appropriate its waters and their beds to be used by its people as a common for taking and cultivating fish, so far as it does not obstruct navigation. The right which the people of the state acquire does not come alone from their citizenship, but from their citizenship and property combined. It is, in fact, a property right and not a mere privilege or immunity of citizenship. *The right of fishery is a right of property vested in the state for the benefit of its own people and under its own control.* A statute which regulates or restricts fishing rights in particular waters or particular portions of the state and applies to all persons who may avail themselves of such rights is not a violation of the constitutional provisions against denying to any person the equal protection of the law. So, also, a regulation is not invalid which discriminates as to the right of residents to take fish as against non-residents.

26 C. J. 625-626;  
*State vs. Horub*, 95 Ala. 176;  
*Silver vs. State*, 147 Ga. 162;  
*State vs. Tower*, 84 Me. 444.

The license by the state to a foreign corporation to do business in a state does not give that corporation the right to property vested in the state for the benefit of its own people.

I am, therefore, of the opinion that a foreign corporation authorized to engage in the business of catching fish in the State of Ohio must pay a non-resident's license fee, as provided in Section 1423 of the General Code of Ohio.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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304.

HOLIDAY—SATURDAY AFTERNOON—PUBLIC OFFICES CAN REMAIN  
OPEN—BUSINESS TRANSACTED LEGAL.

*SYLLABUS:*

*Section 5978, General Code, makes Saturday afternoon one-half legal holidays for all purposes and contemplates that public offices shall be closed on said afternoons. However, there is no inhibition against keeping such offices open for the purpose of transacting public business and any such business so transacted will not be invalidated by reason of the fact that it was consummated on Saturday afternoon.*

COLUMBUS, OHIO, April 13, 1929.

HON. C. G. L. YEARICK, *Prosecuting Attorney, 1003 Trust Building, Newark, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication, which reads:

“Sec. 5978, of the General Code of Ohio, provides that every Saturday afternoon of each year shall be a one-half legal holiday *for all purposes*, beginning at twelve o'clock noon and ending at twelve o'clock midnight. It is also stated that nothing in this section or any other, or any decision of any court, shall in any manner affect the validity of, or render void or voidable, any check, bill of exchange, order, promissory note, due bill, mortgage or other writing obligatory made, signed, negotiated, transferred, assigned or paid by any person, persons, corporation or bank upon said half holiday, *or any other transaction had thereon.*”

The majority of the offices in the Licking County Court House at Newark are open for the transaction of official business on Saturday afternoon. The County Recorder closes his office at noon Saturday, for which he claims to have full warrant under Sec. 5978.

This situation makes it possible for a creditor to obtain a judgment lien against his debtor's property on a Saturday afternoon, or to commence an action or proceeding in the Common Pleas Court or in the Probate Court of this county, which has concurrent jurisdiction with our Common Pleas Court in divorce, alimony, partition and foreclosure of mortgages. But a creditor desiring to file a chattel mortgage or a mortgage on real estate, or a mechanic's lien, would find it impossible to do so on Saturday afternoon. Members of the local bar are complaining of the advantage afforded one class of creditors over another by reason of the situation here existing.

It is the further claim of each county officer that he has the right to regulate his own office hours, and those who are open Saturday afternoon