Opinion No. 23.

Board of Health—Shoddy—Mattresses —Constitutional Law—Statutory Construction.

Held: No mattresses, pillows, couch pads, or lounges, containing shoddy in whole or in part, may be sold, offered for sale, or manufactured within the State of Montana. Section 2615 of the Revised Codes of Montana of 1935 so states and was not repealed by the provisions of Chapter 70, Laws of 1941.

March 20, 1943.

Mr. Elton M. Andrew
Acting Director
Division of Food and Drugs
State Board of Health
State Capitol
Helena, Montana

Dear Mr. Andrew:

You have inquired whether a product made from shoddy may be admitted to commerce within this state.

Section 2615 of the Revised Codes of Montana, 1935, provides:

"No person, firm or corporation, shall within this state, sell, offer for sale, or manufacture, what is commonly known as shoddy, or sell, offer for sale or manufacture mattresses, pillows, couches, couch pads, or lounges, containing shoddy in whole or in part."

On the other hand, Chapter 70, Laws of 1941, provides in part:

"Section 1. The term 'mattress' as used herein shall be construed to mean any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settees, couches, day beds, davenports and overstuffed chairs, cushion or pillow stuffed or filled with wool, hair, cotton, cottonlinters, kapok, feathers or other soft material capable of use for sleeping or reclining purposes.

"Section 2. No person, firm or corporation, . . . shall employ and/or use in the making, remaking and/or renovating of any mattress . . . any material known as 'shoddy,' or material made in whole or in part from old or worn clothing, carpets and/or other fabrics or material previously used, or any other fabric or material from which shoddy is constructed, or any material not herein specifically mentioned of which prior use has been made, unless any and all of said materials have been thoroughly sterilized and disinfected by a process approved by the state board of health."

Section 2615, supra, was enacted as Chapter 146, Laws of 1915, under this title:

"An Act to prohibit the manufacture and sale of shoddy, and mattress containing shoddy and providing a penalty for the violation thereof."

The 1915 enactment, now Section 2615, supra, was and is a special statute. It deals with a clear and specific subject: "shoddy." In unambiguous terms, it prohibits the sale or manufacture of shoddy or the sale or manufacture of certain items containing shoddy in whole or in part.

The purpose of the enactment is obvious, when the entirety of the chapter is studied. Various duties were placed on the Board of Health, the Attorney General, and the county attorneys with regard to enforcement of the provisions. Beyond doubt, the legislative intention was to prevent the spread of contagion and disease by prohibiting the use of the one material most likely to constitute a menace to public health.

The Twenty-seventh Legislative Assembly passed Chapter 70 of the Laws of 1941 under this title:

"An Act Relating to Public Health and Sanitation, Defining Mattresses, Regulating the Making, Remaking and Sale Thereof, Prohibiting the Use of Unsanitary or Unhealthful Materials, Therein, Providing for the Proper Labeling Thereof, and Providing Penalties for Violations Thereof."

Clearly the 1941 enactment is a general enactment insofar as the subject of shoddy is concerned. Although sections two and nine of the Chapter refer to and deal with the use of shoddy in making, remaking or renovating mattresses, there is no mention of the material in the title of the bill. Likewise, there is no reference to Section 2615, Revised Codes of Montana, 1935 in the above-quoted title. No intention of amending Section 2615—to say noth-

ing of repealing it—is expressed in the title of Chapter 70, Laws of 1941. To be sure, the usual repealing clause—"All acts and parts of acts in conflict herewith are hereby repealed"—is contained in Section seventeen of Chapter 70; but at best that legislative act can constitute no more than a repeal by implication.

Section 23 of Article V of the Montana Constitution provides in part:

> ". . . If any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

When the framers of our constitution provided that the subject of a bill before the assembly shall be clearly expressed in its title, they meant to make it mandatory that attention be directed truly to the matter proposed to be legislated upon. Although courts attempted to and must be liberal in construing such a rule in order to avoid embarrassing legislation by technical interpretation, it must be borne in mind always that the constitutional provision exists for good reason and cannot be ignored.

In the instant case, any legislator, from a reading of the title of Chapter 70, Laws of 1941, had the right to presume—and who can say many did not presume?—that the bill's provisions regulated the manufacture and sale of mattresses by adding new matter to already existing laws, rather than by repealing existing statutes.

Our Supreme Court has many time considered such legislation; and it had this to say in the case of State v. McKinney, 29 Mont. 375, 380-382, 74 Pac. 1095-1096:

> "First: **The purposes of this constitutional provision are to prevent the legislature from the enactment of laws surreptitiously; to prevent 'log-rolling' legislation; to give the people general notice of the character of proposed legislation, so they may not be misled; to give all interested an opportunity to appear before committees of the legislature and be heard upon the advisability of the proposed legislation; to advise members of the legislature of the character of the proposed legislation, and give each an opportunity to intelligently watch the course of the proposed Bill; to guard against fraud in legislation, and against false and deceptive titles.** These purposes have been so plainly announced by this court in numerous opinions that a statement of the rule and a citation of cases would seem sufficient. (Citing cases.)
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> "Second. While all the provisions of the constitution are 'mandatory and prohibitory' (Art. III, Sec. 29), yet the courts, bearing in mind that the legislature is a co-ordinate branch of the government, and that its action if fair, should be sustained, have given this section of the constitution a liberal construction, so as to not interfere with or impede proper legislative functions. (Citing cases.)
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> "Third. The legislature is the judge, to a great extent, at least, of the title which it will prefix to a bill; and the court has no right to hold a title void because, in its opinion, a better one might have been used. (Citing cases.)
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> "Fourth. The title is generally sufficient if the body of the Act treats only, directly or indirectly, of the subjects mentioned in the title, and of other subjects germane thereto, or of matters in furtherance of or necessary to accomplish the general objects of the Bill, as mentioned in the title. Details need not be mentioned. The title need not contain a complete list of all matters covered by the Act. (Citing cases.)
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> "Fifth. If the court, after an application of all these principles, is still in doubt as to the constitutionality of the Bill, it should sustain the Act. (Citing cases.)" (Emphasis mine.)

The material emphasized in the first item set forth by the court supra, is particularly applicable to the instant problem. Here, we had a public health bill before the legislative assembly which was amending by implication an already existing law—and no notice of such an amendment was given in the title of the bill so that persons interested could appear before the legislature or other obvious democratic processes could be observed and followed.

It has been said many times by our Supreme Court that, where one act deals with a subject generally and another with a part of the same subject, the two are to be read together and harmonized, if possible, but—to the extent of any necessary repugnancy be-

tween them—the special statute prevails over the general one. (Franzke v. Fergus County, et al., 76 Mont. 150, 159, 245 Pac. 962, 965, and cases cited therein.)

Repeals by implication are not favored, and courts will not presume that, by a subsequent enactment, the legislature intended to repeal former laws upon the subject not mentioned. (State v. Bowker, 63 Mont. 1, 6, 205 Pac. 961, 963.)

Hence, I am of the opinion no mattresses, pillows, couches, couch pads, or lounges, containing shoddy in whole or in part, may be sold, offered for sale, or manufactured within the State of Montana; Section 2615, Revised Codes of Montana, 1935, so states and was not repealed by the provisions of Chapter 70, Laws of 1941.

Sincerely yours,
R. V. BOTTOMLY
Attorney General