

Fees—Secretary of State—Railroads.

Section 6538 R. C. M. 1921 being a special statute is not repealed by section 145 R. C. M. 1921, and therefore the fee to be charged by the secretary of state for recording a contract for lease, sale or mortgage of railroad equipment or rolling stock is \$15.00 as therein provided.

William Powers, Esq.,
Secretary of State,
Helena, Montana.

January 21, 1928.

My dear Mr. Powers:

You have requested my opinion on the following question:

“The provisions of section 6538 R. C. M. 1921 provide that the secretary of state shall charge for recording a contract for lease, sale or mortgage of railroad equipment or rolling stock fee of \$15.00, while section 145 R. C. M. 1921, being a later enactment, directs the secretary of state under paragraphs 17 and 18 thereof to collect a fee of twenty cents per folio for recording miscellaneous papers or other documents not otherwise covered by the section. What fee should be charged for recording a contract for lease, sale or mortgage of railroad equipment or rolling stock?”

Section 6538, *supra*, is a special statute pertaining to railroads, while section 145 is a general statute. If the provisions of section 145 are to govern in fixing the fee in question, then it must be held that section 145 being the later enactment has repealed section 6538 by implication. However, repeal by implication is not favored by the courts. (*Metcalf v. Whiteman*, 49 Mont. 436; *Penwell v. Board of County Comrs.* 23 Mont. 351.)

The general rule is “that a general affirmative act, without express words of repeal, will not repeal, a previous special or local act on the same subject.” (36 Cyc. 1087.) And this rule has been followed by the supreme court of this state in the case of *Equitable Life Ins. Co. v. Hart*, 55 Mont. 76; 173 Pac. 1062, wherein the court held: “An act special in character, followed by one of a general nature, is not to be considered as repealed by implication.”

See also: *Rice v. Goodwin* (Colo.) 30 Pac. 330;

Banks v. Yolo County (Cal.) 37 Pac. 900.

It is therefore my opinion that section 6538 R. C. M. 1921, being a special statute is not repealed by section 145 R. C. M. 1921, and that the fee to be charged for recording a contract for lease, sale or mortgage of railroad equipment or rolling stock is \$15.00, as therein provided.

Very truly yours,

L. A. FOOT,
Attorney General.