

Repeal—Re-Enactment—Banks and Banking.

The repeal and simultaneous re-enactment of laws operate as a continuation of the old law and do not affect proceedings commenced and pending under the old law.

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Superintendent of Banks,
Helena, Montana.

April 26, 1927.

My dear Mr. Larson:

You have submitted to me the following statement of facts, and have requested my opinion thereon:

“Before the new banking bill became a law, and, therefore, before the old bill was repealed, an assessment was levied against a bank under our supervision.

“Before the time limit had expired wherein the stockholders might pay the assessment, and if they failed to do so the stock might be sold at public auction and deficiency judgment taken

against the stockholders, a new law was enacted and the old law was repealed. The new law, of course, is identical with the old law, but the above mentioned bank gave notice of sale of stock of certain stockholders, with the idea of taking a deficiency judgment under the old law and at our request. This transaction, however, was not completed until the law under which they were working was repealed and the new one substituted. May they continue their action under the old law, since it was commenced and proceed as though the law were still in effect, or are they estopped from any further action by reason of the repeal?"

It is the general rule of law that where a statute is repealed but re-enacted in its identical terms, the repeal does not affect proceedings initiated prior to the repeal and pending at the time of the repeal and re-enactment.

The general rule is stated in 25 R. C. L. section 186, page 934, as follows:

"But the prevailing view is that where a statute is repealed and all, or some, of its provisions are at the same time re-enacted, the re-enactment neutralizes the repeal, and the provisions of the repealed act which are thus re-enacted continue in force without interruption, so that all rights and liabilities that have accrued thereunder are preserved and may be enforced."

In 36 Cyc. 1229 it is said:

"So where a statute repeals a former act, but re-enacts substantially the same provisions, the new statute is generally construed as a continuance of the old one, and does not operate to abate an action pending at the time of its enactment." It is also stated in 36 Cyc. 1084 as follows:

"The repeal and simultaneous re-enactment of substantially the same statutory provisions is to be construed, not as an implied repeal of the original statute, but as a continuation thereof."

And in 1 Lewis Sutherland Statutory Construction, section 238, the rule is stated as follows:

"Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time. The intention manifested is the same as in an amendment enacted in the form notices in the preceding section. Officers are not lost; corporate existence is not ended; inchoate statutory rights are not defeated; a statutory power is not taken away, nor pending proceedings or criminal charges affected by

such repeal and re-enactment of the law on which they respectively depend.”

The following cases support this general rule:

Bear Lake etc. Co. v. Garland, 41 L. Ed. 327;
The Pac. Mail S. S. Co. v. Joliffe, 17 L. Ed. 805;
U. S. v. Landram, 30 L. Ed. 58;
Forbes v. Board of Health (Fla.) 26 Am. St. Rep. 63;
Sage v. State, 127 Ind. 15;
Hancock v. Dist. Township, 78 Iowa 550;
Florida etc. Ry. Co. v. Foxworth (Fla.) 79 Am. St. Rep. 149;
White Sewing Mch. Co. v. Harris (Ill.) 96 N. E. 857, Ann.
Cas. 1912 D 536;
Heath v. State (Ind.), 90 N. E. 310, 21 Ann. Cas. 1056;
Brown v. Pinkerton (Minn.) 103 N. W. 897;
Hospel v. O' Brien (Pa.) 67 Atl. 123;
Tufts v. Tufts (Utah) 30 Pac. 309.

Hence, under the foregoing authorities it is my opinion that the repeal and re-enactment of the laws referred to by you did not in any manner affect the action brought under the old law and that the proceedings initiated thereunder may be carried out with like force and effect as if the law had never been repealed and re-enacted.

Very truly yours,

L. A. FOOT,
Attorney General.