Motor Vehicles—Common Carriers—Private Carriers—Licenses—Board of Railroad Commissioners—Applications—Permits.

All applications for licenses or permits pending before the board of railroad commissioners abate on July 1, 1931, under and by virtue of the repeal contained in chapter 184, laws of 1931. Thereafter only licenses or permits may be granted under that act.

Board of Railroad Commissioners, June 22, 1931.
Helena, Montana.

Gentlemen:

You state that there are pending before your board applications for certificates or permits to operate motor vehicles as common carriers of persons and property under the provisions of chapter 154, laws of 1923, as subsequently amended.

These present laws which govern the application are specifically repealed by chapter 184, laws of 1931, which chapter is a complete new enactment governing the transportation by motor vehicles of persons and property for hire upon the public highways of the state, and which will become effective on July 1, 1931.

You inquire if, in case the board does not determine these applications before July 1, 1931, it would have the right to determine them after that date and, if so, whether the determination of the board should be governed by the provisions of said chapter 154, as amended, or by chapter 184, laws of 1931.

No person has a vested right to use the public highways of the state as a place of business for private gain. On the contrary, it is a privilege or license which the legislature may grant or withhold in its discretion or which it may grant upon such conditions as it may see fit to impose. (State vs. Johnson, 75 Mont. 240, 243 Pac. 1073.) These applicants under the present existing law merely had an inchoate right to engage in such business which did not and could not ripen into a definite fixed right unless and until the board determines that the conditions of the statute have been complied with by the applicants and a certificate or permit has been issued.

Inchoate rights under a statute are lost by repeal unless they are saved by express words in the statute.

Morr vs. Seaton, 31, Ind. 11;

Crawford vs. Halsted, 20 Gratt. 211;

State vs. American Bond Co., 128 Md. 268, 97 Atl. 529.

It is the general rule that the repeal of a statute without any reservation takes away all the remedies existing under the repeal act and defeats all actions pending under it at the time of its repeal. The rule is peculiarly applicable to the repeal of a statute which creates a cause of action providing a remedy not known to the common law.

Continental Oil Co. vs. Concrete Co., 63 Mont. 223, 207 Pac. 116.

It would seem that inasmuch as the rights of these applicants are, until the final determination by the board, merely inchoate and that the rights themselves emanate from said chapter 154, as amended, that the repeal of said chapter and its amendments would destroy the rights of the applicants and that all further proceedings would be abated as there would be no law authorizing any further steps to be taken in the matter. This seems to be in keeping with section 95, R.C.M. 1921, which declares that any statute may be repealed at any time except when it is otherwise provided therein, and that persons acting under any statute are deemed to have acted in contemplation of the power of repeal.

It has been held in some cases, as for instance Curran vs. Owens, 15 W. Va. 209, Steamship Co. vs. Joliffe, 2 Wall, 450, that where a statute is repealed but the repealing statute re-enacts substantially the provisions of the old one, rights acquired and proceedings pending under the old, may be continued under the new statute. Our own court in State vs. Board of County Commissioners, 47 Mont. 531, 134 Pac. 291, quoted with approval from the Indiana court to the effect that when the new law is a substantial re-enactment of the old, merely changing modes of procedure but not changing the tribunal or the basis of the right, and when the new act takes effect simultaneously with the repeal of the old one it will be presumed, even without an express saving clause, that the legislature intended that proceedings instituted under the old law should be carried to completion under the new. Our court also said that the converse of this proposition is equally true, namely, that if the amendment changes the very basis of the right or affects the jurisdiction it cannot be that the legislature intended the proceedings to be completed under the new act.

Chapter 184 of the laws of 1931 does not purport to be an amendment of chapter 154 of the laws of 1923 as amended. It is a new act broader in its scope than the old one, and, in my opinion, changes the very basis of the right to operate motor vehicles upon the highways for the transportation of persons and property for hire. Under chapter 154 the board, in determining an application, in so far as convenience and necessity is concerned, considers only existing auto transportation facilities while under the new act the board must take into consideration transportation facilities furnished by railroads and other forms of transportation service, and not only the service that is being furnished but which will be furnished by the railroad or any other existing transportation agency. Also, under the new act railroad companies and other parties are declared to be interested parties in regard to the hearing on the applications and notice is required to be served upon them of the hearing. This is not true under said chapter 154 and amendments.

In my opinion, the foregoing is sufficient to illustrate the fact that the very basis of the right to operate motor vehicles upon the public highways for the transportation of persons or property for hire has been changed by chapter 184, laws of 1931, and, therefore, the legislature, by failing to incorporate a saving clause, did not preserve existing proceedings from abatement when said chapter 154 expires by virtue of the repeal contained in said chapter 184.

The act itself, in my opinion, clearly indicates that the legislature did not intend to preserve any pending proceedings to be completed under said chapter 184. It is specifically provided in said chapter that it shall be unlawful to operate motor vehicles for the transportation of persons or property for hire on any public highway in this state except in accordance with the provisions of the act. It is also provided that neither a class A, B or C carrier can operate for the transportation of persons or property for hire on any public highway in the state without first having obtained from the board "under the provisions of this act" a certificate as provided in the act. The only way that a certificate can be acquired under chapter 184 is by making an application as required by said chapter or if a motor carrier has been legally licensed under said chapter 154 and is "engaged in business" at the time chapter 184 becomes effective such a carrier may have a certificate issued to it without application. These are the only two ways in which the certificate required by the act may be acquired. Obviously, they exclude a certificate being issued under the new act upon an application made under the old act and a hearing or determination held under the new act. If the legislature had intended that pending proceedings could be completed under the new act and a certificate issued thereunder it would, no doubt, have taken care of such a situation as it did when it provided that certificates might be issued to carriers engaged in the business at the time chapter 184 goes into effect, namely, July 1, 1931.

It is therefore my opinion that as to the applications now pending before the board, if they are not disposed of before July 1, 1931, when chapter 154 terminates by repeal, that all pending proceedings will abate, and that they cannot be continued and determined thereafter, either under said chapter 154, laws of 1923, as amended, or chapter 184, laws of 1931.

Very truly yours,

L. A. FOOT,
Attorney General.