

No. 515

**BONDS—OFFICERS AND OFFICES—RAILROAD COM-
MISSION—BOARD OF RAILROAD COMMISSIONERS—
STATUTORY CONSTRUCTION**

Held: Section 464, as amended by Chapter 161, Laws of 1937, governs with regard to the amount of bond of a member of the Board of Railroad Commissioners, Section 3780, Revised Codes of Montana, 1935, is in effect repealed by Chapter 161, Laws of 1937, insofar as Section 3780 speaks of the amount of bond of a member of said board.

November 25, 1942.

Mr. Sam W. Mitchell
Secretary of State
State Capitol
Helena, Montana:
Attention: Mr. Clifford Walker, Deputy

Dear Mr. Mitchell:

You have asked this office whether Section 464, Revised Codes of Montana, 1935, as amended by Chapter 161, Laws of 1937, or Section 3780,

governs with regard to the bond required of the member of the Board of Railroad Commissioners, elected at the November election.

Section 3780, Revised Codes of Montana, 1935, provides the members of the board shall each give a bond in the sum of twenty-five thousand dollars. This section, first enacted in 1907, has been carried forward into subsequent codifications. Section 464 first appeared as an enactment of the Seventeenth Legislative Assembly in 1921, was carried forward in subsequent codifications, and was amended by the Twenty-Fifth Legislative Assembly in 1937. Section 464, as amended, provides each of the Railroad Commissioners shall provide an official bond in the amount of five thousand dollars.

It is axiomatic that, in the construction of statutes, the construction must be adopted which will give effect to all the statutes, if possible. (Section 10519, Revised Codes of Montana, 1935; *In re Baxter's Estate*, 101 Mont. 504, 515, 54 Pac. (2nd) 869). It is also the rule that, when a general and particular provision are inconsistent, the latter is paramount to the former, so that a particular intent will control a general one which is inconsistent with it. (Section 10520, Revised Codes of Montana, 1935; *Lillis v. City of Big Timber*, 103 Mont. 206, 210, 62 Pac. (2nd) 219; *Durland v. Prickett, et al.*, 98 Mont. 399, 409, 39 Pac. (2nd) 652.) To the extent that Section 464, Revised Codes of Montana, 1935, as amended by Chapter 161, Laws of 1937, provides the amount of bond for more than three score of public officers—while Section 3780 is a section pertaining only to members of the Railroad Commission—it might be said Section 464, as amended, is a general statute and Section 3780, a special one. But Section 464, as amended, is later in point of time and furnishes the last pronouncement of the Legislative Assembly with regard to the bonds to be furnished by public officers.

No mention is made of Section 3780, Revised Codes of Montana, 1935, in either the title or body of Chapter 161, Laws of 1937. There is no express repeal of Section 3780. But the provisions in regard to the bond to be furnished by a railroad commissioner are obviously wholly in conflict—\$5,000 under Chapter 161, Laws of 1937, and \$25,000 under Section 3780. Repeals by implication are not favored in Montana. (*Wheir et al., v. Dye et al.*, 105 Mont. 347, 359, 73 Pac. (2nd) 209.)

“To make tenable the claim that an earlier statute was repealed by a later one (with no specific repeal), the two Acts must be plainly and irreconcilably repugnant to, or in conflict with, each other; must relate to the same subject and must have the same object in view. (Cases cited.)”

Box et al., v. Duncan et al., 98 Mont. 216, 220, 38 Pac. (2nd) 986;

Wheir et al., v. Dye et al., 105 Mont. 347, 359, 73 Pac. (2nd) 209.

I am therefore of the opinion Section 464, as amended by Chapter 161, Laws of 1937, governs with regard to the amount of bond of a member of the Board of Railroad Commissioners, Section 3780, Revised Codes of Montana, 1935, is in effect repealed by Chapter 161, Laws of 1937, insofar as Section 3780 speaks of the amount of bond of a member of said board.

Sincerely yours,

R. V. BOTTOMLY
Attorney General