

Opinion No. 119

**Department of Agriculture, Labor and Industry—General Funds—Dairy
Division—Egg Grading—Licenses—Taxes—Statutes—
State Treasurer.**

**Held: Licenses, taxes and fees collected by the Dairy Division of the
Department of Agriculture, Labor and Industry under the egg
grading laws are to be paid over to the State Treasurer and
deposited to the credit of the general fund.**

June 29th, 1950.

Mr. Alfred R. Anderson
Commissioner of Agriculture, Labor and Industry
Capitol Building
Helena, Montana

Dear Mr. Anderson:

By your letter of June 7, 1950, you ask my opinion on the following question:

The provisions of Sections 3-2302, 3-2310, 3-2312, and 3-2315, R. C. M., 1947, are in conflict with Section 84-1902, R. C. M., 1947. What is the proper manner of disposition of fees collected by the Dairy Division of the Department of Agriculture under the provisions of Chapter 23 of Title 3, R. C. M., 1947, in view of this conflict?

Section 3-2302, R. C. M., 1947, provides:

"All license fees shall be remitted to the Department of Agriculture, Dairy Division, who shall disburse them for the enforcement of this act as provided in Section 3-2310."

Section 3-2310, R. C. M., 1947, provides:

"It shall be the duty of the Commissioner of Agriculture to enforce the provisions of this Act and to make such rules and regulations as may be necessary for the enforcement of this act."

Section 3-2312, R. C. M., 1947, provides:

"The Commissioner of Agriculture is hereby authorized and it shall be his duty to provide and make available a suitable gummed paper seal to be known as the Montana State egg seal; and he shall have the power from time to time to establish the price at which said seal shall be sold, but in no case shall the cost of such seal exceed one and three-quarters mills ($1\frac{3}{4}$) per dozen eggs. The proceeds from the sale of said seals shall be expended by the Commissioner of Agriculture to assist in defraying salaries and expenses incurred in the enforcement of the provisions of this act." Section 3-2315, R. C. M., 1947, provides:

"All funds derived from the licenses herein provided and from the sale of the Montana state egg seal shall be paid to the State Treasurer and by him credited to the revolving fund of the Dairy Division of the Department of Agriculture, Labor and Industry." Section 84-1902, R. C. M., 1947, provides:

"That all moneys collected or received by or paid over to the Board of Railroad Commissioners of Montana, Public Service Commission of Montana, State Board of Health, Milk Control Board, State Auditor and Insurance Commissioner ex officio, under the provisions of Section 82-1231, Department of Agriculture, Labor and Industry, or any of the bureaus, divisions, officers, or employees of any thereof, and to the State Examiner and State Forester, by way or on account of fees, licenses, or for any other purpose, on or after July 1, 1941, shall be paid over the State Treasurer who shall deposit the same to the credit of the general fund of the State."

Sections 3-2302 and 3-2310, R. C. M., 1947, were enacted by the Legislature in 1931, being Section 2 and Section 10, respectively, of Chapter 189, Laws of Montana, 1931. Sections 3-2312 and 3-2315, R. C. M., 1947, were enacted by the Legislature in 1939 being Section 11 and 8, respectively, of Chapter 151, Laws of Montana, 1939. Thus, all four of these Sections were on the statute books in 1941 when Section 84-1902, R. C. M., 1947, was enacted as Section 2 of Chapter 14, Laws of Montana, 1941. Chapter 14 of the Laws of Montana, 1941, provided for a whole new scheme for the dispositions of moneys coming to the various agencies of the State in the form of fees and license taxes. Chapter 14 of the Laws of Montana, 1941, contains a provision, to-wit: Section 10; which specifically repeals all acts and parts of acts which were in conflict with the provisions of Chapter 14, Laws of Montana, 1941. Therefore, the provisions of Sections 3-2302, 3-2310, 3-2312 and 3-2315, R. C. M., 1947, which conflict with the provisions of Section 84-1902, R. C. M., 1947, was enacted as Section 2 of Chapter 14, Laws of

force and effect. It might be contended that even though Chapter 14 of the Laws of Montana, 1941, contains the usual repealing clause, repealing all acts and parts of acts in conflict therewith, it does not repeal the provisions of Section 3-2302, 3-2310, 3-2312, and 3-2315, R. C. M., 1947, since those specific Sections are not mentioned as being repealed by the act while other statutes are specifically repealed. But the Supreme Court of Montana considered the effect of a repealing clause of this type in *State ex rel. Charett v. District Court of the Second Judicial District*, 107 Mont. 489, 86 Pac. (2d) 750, and held:

"Courts in general, in speaking of these repealing clauses, have held that they add nothing to the repealing effect of the Act of which they are a part, as without the clause all prior conflicting laws, or parts of laws, would be repealed by implication. Their chief purpose seems to be to limit the extent of the repeal effected by the Act to those laws, or parts of laws, which are actually inconsistent with the Act. *Barden v. Wells*, 14 Mont. 462, 36 Pac. 1076; *Bank of British North America v. Cahn*, 79 Cal. 463, 21 Pac. 863; *In re Clary*, 149 Cal. 732, 87 Pac. 580; *Batchelor v. Palmer*, 129 Wash. 150, 224 Pac. 685."

The position that the provisions of Sections 3-2302, 3-2310, 3-2312, and 3-2315, R. C. M., 1947, which are in conflict with Section 84-1902, R. C. M., 1947, have been repealed by the enactment of Chapter 14 of the Laws of 1941 has been accepted by the Supreme Court of Montana. In the course of its opinion in *State ex rel, State Aeronautics Commission v. Board of Examiners*, _____ Mont. _____, 194 Pac. (2d) 633, the Court stated:

"It is not a new thing in Montana for the legislature to place license fees in a special fund for a special purpose. Prior to the passage of Chapter 14, Laws of 1941, many license fees were paid into special funds for special purposes. By Chapter 14 most of them are now required to be paid into the general fund of the State."

The Supreme Court also stated in the course of its opinion in *Brackman v. Kruse, Commissioner of Agriculture*, 120 Mont. 349, 199 Pac. (2d) 971:

"The subsequent enactment of Chapter 14, Session Laws of 1941, and particularly Section 2 thereof providing that all the money received by said department (the Agriculture department) and other departments should be deposited with the State Treasurer to the credit of the general fund and repealing Section 3645, R. C. M., 1935, etc."

It might further be contended that the enactment of the Revised Codes of Montana, 1947, re-enacted the provisions of Sections 3-2302, 3-2310, 3-2312, and 3-2315, R. C. M., 1947, which are repugnant to and which were repealed by the enactment of Section 84-1902, R. C. M.,

1947. But the Supreme Court of Montana held in *State v. Holt*, _____ Mont. _____, 194 Pac. (2d) 651:

"It might be suggested that by the adoption of the Codes as "the Laws of Montana now in force and effect," Chapter 1, Laws of 1937, Section 1 of Chapter 122, Laws of 1927, appearing therein as Section 11048.1, was re-enacted and became a law as part of the Code, despite its previous repeal in 1933. This is not tenable. This court held in *State v. Zorn*, 99 Mont. 63, 41 Pac. (2d) 513, 515, that where a Section of the statute repealed by implication was nevertheless carried forward into the Codes of 1907, and of 1921, it did not thereby become a law, because erroneously included in the Codes."

The general rule is well stated in 59 C. J., Statutes, Section 490:

"The acts of revisers in continuing to include a statute which has been repealed in subsequent revisions of the statutes does not operate to keep it in force."

Regardless of the repeal of the conflicting provisions Sections 3-2302, 3-2310, 3-2312, and 3-2315, R. C. M., 1947, by 84-1902, R. C. M., 1947, the provisions of Section 84-1902, R. C. M., 1947, would prevail under the rule stated in 50 Am. Jur., Statutes, Section 457:

"Moreover the general rule is that where two inconsistent statutes are carried into the codified law, the last one passed, which is the later declaration of the legislative will, should prevail, regardless of the order in which they are placed in the compilation."

Considering the plain and unambiguous language of Chapter 14 of the Laws of Montana, 1941, and the statements by the Supreme Court of Montana, it is my opinion that the provisions of Sections 3-2302, 3-2310, 3-2312, and 3-2315, R. C. M., 1947, which are in conflict with Section 84-1902, R. C. M., 1947, have been repealed by Chapter 14, Laws of Montana, 1941. Under the provisions of Section 84-1902, R. C. M., 1947, it is the duty of the Commissioner of Agriculture, Labor and Industry to deliver to the State Treasurer all moneys which may be collected by him or any of the division heads or agents of the Department of Agriculture, Labor and Industry under the provisions of Chapter 23 of Title 3, R. C. M., 1947, and it is the duty of the State Treasurer to deposit such moneys received in the general fund.

Therefore, in editing and publication of the booklet on the Egg Grading Law, you would be correct in omitting those parts of Sections 3-2302, 3-2310, 3-2312 and 3-2315, R. C. M., 1947, which have been repealed by the enactment of Section 84-1902, R. C. M., 1947. If these conflicting Sections were included in the booklet it would only lead to confusion. I might suggest that any reference to the disposition of the

funds collected by your Department could be eliminated altogether from the booklet since it would be of little interest to the people engaged in the egg industry.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.