

Opinion No. 4

Statutes—Construction—Repealing Clause—Repeal By Implication.

Held: (1) That Chapter 153, Session Laws of 1947, does not repeal all of Chapter 59, Session Laws of 1941, but only repeals that part which is in conflict with Chapter 153, Session Laws of 1947. That the paragraphs in Chapter 59, Session Laws of 1941, dealing with "contracts payed in installments" and "rental contracts construed as sale contracts" still stands.

January 21, 1949.

Mr. W. A. Brown
State Examiner
Capitol Building
Helena, Montana

Attention: Mr. A. M. Johnson, First Assistant State Examiner

Dear Sir:

You have requested an opinion on the statutory construction of Section 5070, Revised Codes of Montana, 1935, as amended by Chapter 18, Session Laws of 1939, Chapter 59, Session Laws of 1941, and Chapter 153, Session Laws of 1947.

The factual situation which you have presented to this office is as follows:

Section 5070, Revised Codes of Montana, 1935, was amended by Chapter 18, Session Laws of 1939, and provided for the letting of contracts for work, supplies or material and prescribed that such contracts for which the amount to be paid exceeds the sum of \$500.00 must be let to the lowest responsible bidder. The amendment then goes on to set out the procedure for letting such a contract.

In Chapter 59, Session Laws of 1941, Section 5070, Revised Codes of Montana, 1935, as amended by Chapter 18, Session Laws of 1939, was again amended. Chapter 59, Session Laws of 1941, is identical with Chapter 18, Session Laws of 1939, excepting that in Chapter 59, Session Laws of 1941, two paragraphs were added, one of which provided for the payment of such contracts in installments and the other provided that rental contracts, under certain circumstances, shall be deemed and construed to be sale contracts.

Section 5070, Revised Codes of Montana, 1935, as amended by Chapter 18, Session Laws of 1939 was again amended by Chapter 153, Session Laws of 1947, and provided that:

"All contracts for work, or for supplies, or for material, for which must be paid a sum exceeding **one thousand dollars (\$1,000.00)**, must be let to the lowest responsible bidder. . . ."

The amendment being that the sum of **five hundred dollars (\$500.00)**, provided for in Section 5070, Revised Codes of Montana, 1935, as amended, was raised to the sum of **one thousand dollars (\$1,000.00)**.

The balance of Chapter 153, Session Laws of 1947, is identical with Chapter 18 of the Session Laws of 1939.

While Chapter 153, Session Laws of 1947, amends Chapter 18 of Session Laws of 1939 in one particular and one particular only, as hereinabove pointed out, Chapter 153 makes no mention of Chapter 59, Session Laws of 1941, which amended Section 5070, Revised Codes of Montana, 1935, as hereinabove expounded.

You will recall that Chapter 59, Session Laws of 1941, contained the two paragraphs, one of which provides for installment contracts not exceeding \$500.00, the other providing for rental contracts.

Chapter 153, Session Laws of 1947, does not contain these two paragraphs, nor are they, or either of them, mentioned any place in Chapter 153, Session Laws of 1947.

The question is then presented whether or not Chapter 153, Session Laws of 1947, Repeals Chapter 59, Session Laws of 1941, or whether the two paragraphs in Chapter 59, Session Laws of 1941, referring to "payments in installments" and "rental contracts construed as sale contracts" still stand.

"In construing an act amendatory of statutory provision, it is undoubtedly the rule that when the Legislature declares an existing statute to be amended, 'to read as follows', as was done here; that body evinces the intention to make the new act a substitute for the amended statute exclusively, only those portions of the old law repeated in the new are retained and all portions omitted are repealed".

State ex Rel Nagle Attorney General v. The Leader Company, et al, 97 Montana 586, at page 591, 31 Pac. 2d, 561.

It will be noted that Chapter 153, Session Laws of 1947, contains the following: "be amended to read as follows". It is my opinion, however, that the case of State ex Rel Nagle v. The Leader Company, et al, is distinguishable from the question presented here in that Chapter 153, Session Laws of 1947, fails to mention Chapter 59, Session Laws of 1941, while it does mention Section 5070, Revised Codes of Montana, 1935, and Chapter 18, Session Laws of 1939.

The question with which we are now confronted is whether or not the repealing clause contained in Chapter 153, Session Laws of 1947, repeals the paragraphs in question as to "payments in installments" and "rental contracts" as contained in Chapter 59 Session Laws of 1941, or whether these two paragraphs are repealed by implication.

The Supreme Court of Montana has ruled that to make tenable the claim that an earlier statute was repealed by a later one, 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.

L.B. Jobb v. The County of Meagher 20 Montana, 424, 51 Pac. 1034.

Tipton v. Sands, 103 Montana 1, 60 Pac. 2d, 662, 106 A.L.R., 474.

The Supreme Court has further held:

"Repeal by implication is not favored and it will not be presumed that by a subsequent enactment the Legislature intended to repeal former laws upon the subject not mentioned, (L. B. Jobb v. The County of Meagher, 20 Montana, 424, 51 Pac. 1034)".

State v. Bowker, 63 Montana 1, 205 Pac. 961.

As to the effect of a general repealing clause, it is stated in 25 R.C.L. Section 165, 166, pages 912, 913, Statutes, that:

"The common formula in a repealing clause that 'all acts and parts of acts in conflict with the provisions of this act are hereby repealed' implies very strongly that there may be acts on the same subject which are not to be repealed".

In 59 C. J., 519, pages 918, 919, Statutes, the rule is stated as follows:

"A Statute is not to be deemed repealed merely by the enactment of another statute on the same subject as both can stand. The court will, if possible, give effect to all statutes covering in whole or in part, the same subject matter where they are not absolutely irreconcilable and no purpose of repeal is clearly shown or indicated".

In Montana it has been held in effect that repealing clauses 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. The Legislature's 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, County Treasurer, v. Wells, 14 Montana
462, 36 Pac. 1076.

State ex Rel Charette v. District Court, 107 Montana
489, 86 Pac. 2d 750.

It would seem that there is no direct repeal and that there is no repeal by implication. It is therefore my opinion that Chapter 153, Session Laws of 1947, does not repeal the two paragraphs of Chapter 59, Session Laws of 1941, that provide for "payments in installments" and "rental contracts construed as sale contracts".

The question presented here is indeed a close one, over which there can readily be diversity of opinion and ultimately the question will of necessity have to be determined by our Supreme Court.

In passing may I suggest it might be well to call this matter to the attention of the Legislature now in session.

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