

VOLUME NO. 38

OPINION NO. 71

LEGISLATURE - Priority of legislative enactments;  
LEGISLATIVE BILLS - Amendment and repeal of same statute;  
LEGISLATIVE BILLS - Amendment of an act repealed is void.  
1979 MONTANA LAWS - Chapters 686, 693, 706, 712.

HELD: The 1979 amendments to sections 15-6-102, MCA, through 15-6-121, MCA, are void by virtue of the repeal of those sections by chapter 693, 1979 Montana Laws.

28 February 1980

Mary L. Craig, Director  
Department of Revenue  
S. W. Mitchell Building  
Helena, Montana 59601

Dear Ms. Craig:

You have requested my opinion regarding the legal effect of amendments to certain sections of the Montana Code made by chapters 686, 706, and 712, 1979 Montana Laws, in light of

the repeal of those same sections by chapter 693, 1979 Montana Laws.

Chapter 693 was an act to generally revise the property tax classification system. The prior 20 classes of property were reorganized into 10 classes. This was accomplished by repealing sections 15-6-102 through 15-6-121, MCA, and enacting 10 new sections, now codified as sections 15-6-131 through 15-6-140, MCA.

Chapter 686, 1979 Montana Laws, was an act relating to the taxation of property owned by centrally assessed companies, and amended sections 15-6-108, 15-6-111 and 15-6-115, MCA. Chapter 686 provided for coordination with House Bill 213, subsequently adopted and signed by the Governor as chapter 693, 1979 Montana Laws. However, sections 7 and 10 of chapter 693 (now codified as sections 15-6-137 and 15-6-140, MCA) were not coordinated with chapter 686, and certain properties of centrally assessed companies were thus placed in two classes. For example, electric transformers are Class 7 property under chapter 693 and Class 11 property under chapter 686. The taxable values under these two classes differ.

Chapter 706, 1979 Montana Laws, rewrote section 15-6-116, MCA, increasing the levels of permissible adjusted gross income and providing for a graduated tax based on adjusted gross income. Chapter 693 repealed section 15-6-116, MCA, and in its place enacted section 15-6-134(1)(d) and (2)(b), MCA. The language of chapter 693 did not provide for an increase of adjusted gross income or for a graduated tax.

Chapter 712, 1979 Montana Laws, provided for the imposition of a fee in lieu of property tax on motor homes, travel trailers, snowmobiles, and campers. Chapter 712 amended section 15-6-110 and 15-6-111, MCA, to delete references to these types of property. Chapter 693, 1979 Montana Laws, repealed sections 15-6-110 and 15-6-111, MCA, and enacted sections 15-6-135, 15-6-138, 15-6-139, and 15-6-141, MCA, which contain references to motor homes, travel trailers, snowmobiles, and campers. Consequently these types of property could be subject to a property tax as well as a fee.

The Code Commissioner has not codified the amendments to the sections repealed by chapter 693, but rather has given effect to the repealers. See, e.g., Compiler's Comments to sections 15-6-134 to 135, MCA, wherein the compiler con-

strued the amendments to be "technically void." The Revenue Oversight Committee has passed a series of resolutions suggesting that the sections be construed together.

Although in some jurisdictions the courts will recognize the mistakes of a legislature in amending a repealed section and try to give effect to its intent, a minority of jurisdictions hold that an attempted amendment to a repealed act is ineffective. IA Sutherland Statutory Construction § 22.03 (4th ed. 1972). Montana follows the minority position. The State Supreme Court has on several occasions held the amendment of a repealed section ineffectual. Dept. of Revenue v. B.N., 169 Mont. 202, 209 (1976); State v. Brennan, 89 Mont. 479, 486 (1931); In re Naegele, 70 Mont. 129, 136 (1924); In re Terrett, 34 Mont. 325, 332 (1906). Furthermore, section 1-2-204, MCA, provides: "An act amending a section of an act repealed is void."

In certain instances the Court has used an amendment to a repealed section to determine legislative intent, see Dept. of Revenue v. B.N., *supra*. Subsequent resolutions passed by an interim committee, such as the Revenue Oversight Committee, could also, on occasion, be used to garner legislative intent. However, where the legislative enactment is clear and unambiguous, the language of the act itself must be followed. A cardinal principle of statutory construction is that the intent of the Legislature must first be determined from the plain meaning of the words used, and if interpretation be so determined, the courts may not go further and apply any other means of interpretation. Keller v. Smith, 170 Mont. 399, 553 P.2d 1002 (1976); Dunphy v. Anaconda Co., 151 Mont. 76, 438 P.2d 660 (1968). Here, the language of chapter 693 is clear, and unambiguous and conflicts in significant respects with the language of the other chapters.

THEREFORE, IT IS MY OPINION:

The 1979 amendments to sections 15-6-102 through 15-6-121, MCA, are void by virtue of the repeal of those sections by chapter 693, 1979 Montana Laws.

Very truly yours,

MIKE GREELY  
Attorney General