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ARMORY — CONSTRUCTION — APPROPRIATION — CAM-
BRIDGE — HOUSE BILL 496, 97TH GENERAL ASSEMBLY—
SECTION 5242 G. C.

SYLLABUS:

Appropriation of moneys for construction of armory at Cambridge, Ohio, dis-
cussed.

Columbus, Ohio, April 29, 1948

Hon. Chester W. Goble, Adjutant General of Ohio
Columbus, Ohio

Dear Sir:

I am in receipt of your letter which reads as follows:

“Section 5242 of the General Code of Ohio as amended by
Amended Substitute Senate Bill No. 167, establishes a maximum

amount that can be expended in the construction of a one unit armory at the sum of \$125,000.00. House Bill No. 496 of 1947 appropriates \$150,000.00 for the construction of a single unit armory at Cambridge, Ohio.

“This department is about to start on plans for the construction of the Cambridge armory and requests an opinion from your department as to whether or not the full \$150,000.00 appropriated for the Cambridge armory can be legally spent in the construction of that armory, or whether we will be held to the maximum of \$125,000.00 as set up in Section 5242.”

You have stated that the money appropriated under House Bill No. 496 of the 97th General Assembly is for a single unit armory. Although the proposed armory may be one of a single unit, there is nothing in the language employed by the General Assembly in connection with said appropriation which indicates how many units or organizations will be included in the Cambridge armory.

Section 5242 of the General Code, which became effective August 11, 1947, reads in part as follows:

“The maximum amount to be expended by the state for the building or purchase of any armory shall be one hundred twenty-five thousand dollars for one organization and forty thousand dollars for each additional Ohio national guard organization for which quarters are to be provided therein. The adjutant general may allow a sum not to exceed four thousand dollars for the furnishing and equipping of each armory so built or purchased. * * *”

House Bill No. 496, which became effective September 27, 1947, reads in part:

“OHIO NATIONAL GUARD, OHIO STATE GUARD AND ARMORIES

G-2. Buildings—
* * *

Armory at Cambridge.....\$150,000
* * *”

The question which you have raised concerns the policy and intent of the General Assembly by its enactment of the above provisions. At first glance these provisions appear to be in conflict and irreconcilable. If this assumption is true, then the applicable basic principles of construction are: (1) When two laws are irreconcilably repugnant, the one last enacted

prevails; (2) When a special act conflicts with a general law, precedence will favor the special act. The above two principles are elements of the doctrine of Repeal by Implication. However, the application of this doctrine is governed by still another set of basic and fundamental rules of construction.

In order for repeal by implication to take effect, it has been accepted as a canon of interpretation that the repugnancy between two statutes must be necessary, clear, obvious, true, strong and absolute.

In 37 O. Jur. 401, it is stated:

“Repeals by implication are not favored and have even been declared to be ‘abhorred.’ They will not be indulged if there is any other reasonable construction.”

On pages 404 and 405 of the same volume it is related:

“* * * Indeed, it has been adjudged that repeals by implication only obtain where such seems to have been the obvious intention of the legislature. An enlarged meaning, beyond the import of the words, will not be given to one act in order to repeal another by implication. Where it is manifestly the intention of the legislature that a subsequent act shall not control the provisions of a former act, the subsequent act shall not have such operation, even though the words, if taken strictly and grammatically, would repeal the former act. * * *

“As a general rule, the legislature, when it intends to repeal a statute, may be expected to do so in express terms or by the use of words which are equivalent to an express repeal. The express repeal of one section of a statute and silence as to another lead very strongly to the conclusion that the latter was not intended to be repealed. * * *

See also 59 C. J. 1061 and 1 Sutherland on Statutory Construction, (3rd Ed.) 468.

Thus, in the present case, before the latter special act may supersede the former general law, it must be shown that the two are so clearly inconsistent and irreconcilable that they can not by fair and reasonable construction be harmonized and effect given to both. If the two acts can stand together or if both can be enforced concurrently, each is to be given full force and effect. In other words, the presumption is against a repeal if reasonable ground can be found to hold to the contrary. This presumption

rests on the probability that the General Assembly would have expressly rather than impliedly repealed the provision in question for they presumably pass all laws with deliberation, and with full knowledge of all other existing laws on the same subject.

House Bill No. 496 is not in irreconcilable conflict with Section 5242, supra. The appropriation provision merely states "Armory at Cambridge . . . \$150,000." There is no statement that this armory is to be constructed for one organization or for one or more units. I am aware that the full amount, \$165,000, for a two unit armory, and \$125,000 for a one unit armory, was not granted; nor was it necessary for these exact amounts to be granted; nor is it necessary that the Controlling Board authorize the entire amount appropriated for the construction of the Cambridge armory. Therefore, the above laws can be reconciled, enforced concurrently and given effect for an unavoidable and positive conflict does not herein exist.

Another canon of construction important to the present problem is that the General Assembly by its passage of two acts at the same session intended these acts to stand together. This doctrine is explained in 50 Am. Jur. 553, as follows:

"The fact that two statutes were passed at about the same time, or at the same session of the legislature, is strong evidence that they were intended to stand together. Hence, where provisions alleged to conflict were enacted on the same day, at nearly the same time, the presumption against implied repeals is especially strong. Indeed, where two acts relating to the same subject were under consideration and enacted at about the same time or at the same session of the legislature, the courts, it has been said, will exhaust all the resources of interpretation before coming to the conclusion that there is an irreconcilable repugnancy between them and that one repeals the other. * * *"

In the present case, Section 5242, supra, was amended by the 97th General Assembly. Less than a month and a half later the appropriation measure, House Bill No. 496, was passed. Surely the General Assembly did not intend to again amend Section 5242, General Code, within such a brief period. Thus, the presumption is strong that the two provisions should stand in *pari materia*.

You are consequently advised that in my opinion, it was not the intent of the General Assembly to repeal Section 5242, General Code, by the enactment of the appropriation in House Bill No. 496. Therefore, the

Cambridge armory may be built for \$150,000 if quarters are provided for more than a one unit armory or for more than one organization. In like manner, the construction of the Cambridge armory is limited to \$125,000 if it is for one organization.

Respectfully,

HUGH S. JENKINS,
Attorney General.