2002

1. WHEN STATUTE ADOPTS PART OF ANOTHER STATUTE BY SPECIFIC REFERENCE, PART ADOPTED AS IT EXISTS AT TIME OF ADOPTION BECOMES PART OF REFERENCE STATUTE—ANY SUBSEQUENT AMENDMENT OR REPEAL OF ADOPTED LANGUAGE HAS NO EFFECT ON ADOPTING OR REFERENCE STATUTE.

2. EFFECT OF AMENDMENT ON REFERENCE STATUTE—RE-ENACTMENT OF STATUTE.

3. OCCUPATIONAL DISEASE CASES — LIMITATION — SIX MONTHS AFTER DATE OF DEATH TO FILE CLAIM—TWO YEARS AFTER DATE OF DEATH TO FILE CLAIM—EXCEPTION—SILICOSIS OR ANY OTHER OCCUPATIONAL DISEASE OF RESPIRATORY TRACT—SECTION 1465-68a (22) G. C.

SYLLABUS:

1. When a statute adopts a part of another statute by specific reference thereto, the part adopted as it exists at the time of the adoption becomes a part of the reference statute and any subsequent amendment or repeal of the adopted language has no effect on the adopting or reference statute.

2. Where a reference statute adopts, in express terms, all the provisions contained in a certain numbered paragraph of another statute, and thereafter the entire language of such numbered paragraph is changed by amendment and subsequent to such amendment the reference statute itself is amended in other respects, the language of said adopted paragraph, as it existed at the time of its adoption, will continue to be read into the reference statute, notwithstanding the fact that in re-enacting the latter statute at the time of its amendment, the paragraph previously adopted was again referred to by the number it bore previous to the amendment of the statute in which it appeared.

3. In occupational disease cases, the dependent of a decedent has only six months after the date of the decedent's death within which to file a claim for death benefits with the Industrial Commission, with the exception that, in those cases in which compensation on account of the occupational disease has been continuous to the time of the death of the injured person, the dependent has two years after the death of the injured person within which to file a claim for death benefits. This exception, however, does not apply to claims for compensation for death due to silicosis or any other occupational disease of the respiratory tract resulting from injurious exposure to dusts, such death claims being provided for in Section 1465-68a (22), General Code, which specifically requires the filing of the application for death benefits within six months after the death of the decedent.

Columbus, Ohio, June 24, 1947

The Industrial Commission of Ohio
Columbus, Ohio

Gentlemen:

Your request for my opinion reads in part as follows:

"The Industrial Commission of Ohio respectfully requests your opinion on the following question:

Section 1465-72b of the Ohio General Code provides as follows:

'In all cases of occupational disease, or death resulting from occupational disease, claims for compensation shall be forever barred, unless, within four months after the disability due to the disease began, or within six months after the death occurred, application shall be made to the industrial commission of Ohio, or to the employer in the event such employer has elected to pay compensation direct, *except in such cases as are provided for in Section 1465-82, subdivision 4, General Code.*'

(Underscoring ours.)

Section 1465-82, subdivision 4 (effective October 12, 1945) provides as follows:

'4. The following persons shall be presumed to be wholly dependent for the support upon a deceased employee:

(A) A wife upon a husband with whom she lives at the time of his death.

(B) A child or children under the age of sixteen years (or over said age if physically or mentally incapacitated from earning) upon the parent with whom he is living at the time of the death of such parent, or for whose maintenance such parent was legally liable at the time of his death.

(C) It shall be presumed that there is sufficient dependency to entitle a surviving natural parent or surviving natural parents (share and share alike) with whom decedent was living at the time of his death, to a total minimum award of one thousand dollars.

(D) The commission may take into consideration any circumstances which, at the time of the death of the decedent, clearly indicate prospective dependency on the part of the claimant and potential support on the part of the decedent; provided that no person shall be considered a prospective dependent unless a mem-

ber of the family of the deceased employee and bears to him the relation of husband, or widow, lineal descendant, ancestor or brother or sister; and provided further that the total award for any or all prospective dependency to all such claimants, except to a natural parent or natural parents of the deceased, shall not exceed one thousand dollars to be apportioned among them as the commission may order; and provided further that prospective dependency shall be found only by the unanimous vote of the commission and from the decision of the commission there shall be no appeal under section 1465-90.

In all other cases, the question of dependency, in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of the injury resulting in the death of such employee, but no person shall be considered as dependent unless a member of the family of the deceased employee, or bears to him the relation of husband or widow, lineal descendant, ancestor or brother or sister. The word "child" as used in this act shall include a posthumous child, and a child legally adopted prior to the injury. The aggregate of compensation paid to a decedent prior to his death and of all benefits paid to such a decedent's dependents after his death shall not exceed seven thousand five hundred dollars, and the commission shall have final discretion to award death benefits solely to those who are wholly dependent or to apportion such benefits among wholly dependent persons and other dependent persons as the commission may deem equitable in the circumstances of each particular case.'

In the light of the foregoing Sections of the Ohio General Code, we would like your opinion on the following question: Does the provision in Section 1465-72b permit a dependent of a deceased person only six months after the date of the decedent's death in which to file a claim for compensation with the Industrial Commission, or does the exception in that section make inoperative the six months provision?"

An examination of Section 1465-72b, General Code, discloses that that section refers to and incorporates as an exception, Subdivision 4 of Section 1465-82. Therefore, Section 1465-72b falls within the classification of a "reference statute," and is governed by the rules of construction applicable to such statutes.

In this connection, it may be noted that there are two types of reference statutes, each having its own separate and well established rule as to the effect of an adoption by reference. In Sutherland Statutory

Construction, Third Edition, Volume II, which classifies these two types of reference statutes as "statutes of specific reference" and "statutes of general reference," it is said at page 547:

> "* * * A statute of specific reference, as its name implies, refers specifically to a particular statute by its title or section number. A general reference statute refers to the law on the subject generally. * * * When the reference is made to a specific section of a statute, that part of the statute is taken as though written into the reference statute.
>
> A statute which refers to the law of a subject generally adopts the law on the subject as of the time the law is invoked."

See also: Stoner v. Railway, 9 N.P. (N.S.) 337, 348, 20 O.D. 448.

It is, therefore, apparent that as a specific reference statute, Section 1465-72b incorporated, at the time of its enactment, Subdivision 4 of Section 1465-82 as fully as if Subdivision 4 had been repeated verbatim in Section 1465-72b.

Section 1465-72b made its first appearance among the Ohio laws in 1921 (109 O.L. 181), at which time it read as follows:

> "In all cases of occupational disease, or death resulting from occupational disease, claims for compensation shall be forever barred, unless, within two months after the disability due to the disease began, application shall be made to the industrial commission of Ohio, or to the employer in the event such employer has elected to pay compensation direct, except in such cases as are *provided for in Section 1465-82, subdivision 4, General Code.*"
> (Emphasis added.)

Although Section 1465-82, General Code, was first enacted in 1913 (103 O.L. 72, 86), the adopted Subdivision 4 was not inserted until Section 1465-82 was amended in 1919 (108 O.L. Pt. 1, 313, 320). Subdivision 4 of Section 1465-82, when adopted by Section 1465-72b in 1921, read as follows:

> "4. In cases in which compensation on account of the *injury* has been continuous to the time of the death of the injured person, and the death is the result of such original *injury,* compensation shall be paid for such death as though same had occurred within the two years hereinbefore provided, deducting from the final award therefor the total amount theretofore paid on account of total or partial disability on account of such *injury.*" (Emphasis added.)

The General Assembly, by providing in Section 1465-72b for the adoption of the provisions of Subdivision 4 of Section 1465-82, broadened the meaning of the word "injury," as used in Subdivision 4, so as to include occupational diseases.

By reading Section 1465-72b in conjunction with Subdivision 4 of Section 1465-82, the exception intended by the General Assembly in 1921 is apparent, namely, that in cases in which the decedent dies as a result of his original occupational disease (injury), *and has received compensation up to the time of his death,* his dependents are not required to file an application for compensation within the period of two months as is otherwise demanded by Section 1465-72b.

It is true that subsequent to 1921 a radical change was made in Subdivision 4 of Section 1465-82 when the General Assembly, in 1931, transposed the provisions of that particular subdivision, some being incorporated in the first paragraph of Section 1465-82 and the gist of the remainder becoming part of Subdivision 2 of Section 1465-82 (114 O.L. 26, 36). Having in this manner completely eliminated Subdivision 4 as a separate and distinct subdivision, the General Assembly proceeded to designate the succeeding subdivision, which was formerly numbered "5," as "Subdivision 4." This new Subdivision 4 read as it is quoted in your letter, with the exception of paragraphs "C" and "D" and the last sentence of the last paragraph, all of which were added by amendment in 1937 (117 O.L. 110). Further amendments to Section 1465-82 occurred in 1941 (119 O.L. 565, 574) and in 1945 (121 O.L. 660, 669), but are not pertinent to this opinion.

In considering the possible effect upon Section 1465-72b of the above mentioned amendments to Section 1465-82, it is well to keep in mind that Subdivision 4 of Section 1465-82 was adopted as it read at the time Section 1465-72b was enacted in 1921. Subsequent amendment or repeal of the adopted subdivision does not affect the wording or the meaning of the specific reference statute. In Sutherland Statutory Construction, Third Edition, Volume II, page 548, this rule of law is expressed as follows:

> "A statute of specific reference incorporates the provisions referred to from the statute as of the time of adoption *without subsequent amendments,* unless the legislature has expressly or by strong implication shown its intention to incorporate subsequent

> amendments with the statute. In the absence of such intention subsequent amendment of the referred statute will have no effect on the reference statute. Similarly, *repeal of the statute referred to will have no effect on the reference statute* unless the reference statute is repealed by implication with the referred statute."
> (Emphasis added.)

More than a century ago the Supreme Court of Ohio considered the effect of the repeal of an adopted statute upon a reference statute, saying in Ludlow v. Johnson, 3 Ohio 553, 572:

> "When in one statute a reference is made to an existing law, in prescribing the rule or manner in which a particular thing shall be done, or for the purpose of ascertaining powers with which persons named in the referring statute shall be clothed, the effect, generally, is not to revive or continue in force the statute referred to, for the purposes for which it was originally enacted, but merely for the purpose of carrying into execution the statute in which the reference is made. For this purpose the law referred to is, in effect, incorporated with and becomes a part of the one in which the reference is made, and so long as that statute continues, will remain a part of it, and *although the one referred to should be repealed, such repeal would no more affect the referring statute than a repeal of this latter would the one to which reference is made.* * * *" (Emphasis added.)

See also: Stall v. Macalester, 9 Ohio 19, 23, 34 A.D. 415; Stoner v. Railway, supra; Clarke v. Thomas, 34 O.S. 46, 59; Cleveland v. Piskura, 41 O.L.A. 73, 80, 56 N.E. (2nd) 683; 1932 O.A.G., Vol. III, page 1403; 1935 O.A.G., Vol. I, page 47; 1935 O.A.G., Vol. II, page 1364; 1938 O.A.G., Vol. III, page 2226.

The above discussion amply demonstrates the proposition that language adopted into a reference statute undergoes no change even though such language in the adopted statute has been changed by amendment. However, in the instant case, consideration must be given to the fact that the reference statute has itself undergone amendment since it adopted Subdivision 4 of Section 1465-82 in 1921.

Section 1465-72b was amended in 1925 (111 O.L. 218, 221) by changing the period within which a claim must be filed from "within *two* months after the disability due to the disease began" to "within *four* months after the disability due to the disease began." The next amend-

ment to this section, occurring in 1937, consisted of the insertion of the phrase "or within six months after death occurred."

As is well known, the General Assembly, in amending a section, expressly repeals the entire section and concurrently re-enacts that section as amended. A cursory examination of this procedure might lead to the inference that there was a legislative intent to incorporate into Section 1465-72b the changes made in Subdivision 4 of Section 1465-82. Such conclusion, however, is untenable when consideration is given to the rule postulated by our courts with respect to amendments of statutes.

The Supreme Court of Ohio, in considering Section 16 of Article II of the Constitution and its effect upon legislation, said, in the first branch of the syllabus of In Re Harry Allen, 91 O.S. 315, that:

> "Where there is reenacted in an amendatory act *provisions of the original statute* in the same or substantially the same language and the original statute is repealed in compliance with Section 16, Article II of the Constitution, such provisions will not be considered as repealed and again re-enacted, but *will be regarded as having been continuous and undisturbed by the amendatory act.*" (Emphasis added.)

To the same effect, see Sutherland Statutory Construction, Third Edition, Vol. I, page 441.

Thus, even though the General Assembly, in amending Section 1465-72b in 1925 and again in 1937, re-enacted Section 1465-72b in its entirety, including the exception, this re-enactment did not thereby change the reference from the old adopted Subdivision 4 to the subdivision in existence at the time of the amendment of the reference statute.

The repeal of Section 1465-72b and the concurrent re-enactment of that entire section, supplemented only by the phrase "or within six months after death occurred," indicated that the General Assembly desired to make only that one change and to leave undisturbed the remainder of this section, including the exception. The same principle applies to the amendment of this section in 1925. The Supreme Court further enunciated this rule by quoting and approving the following passage from Sutherland Statutory Construction in the case of Durr v. Spiegel, 91 O.S. 13, at page 19:

> "In 1 Lewis' Sutherland on Statutory Construction (2 ed.),

> Section 237, it is said: 'The constitutional provision requiring amendments to be made by setting out the whole section as amended was not intended to make any different rule as to the effect of such amendments. So far as the section is changed it must receive a new operation, but so far as it is not changed it would be dangerous to hold that the mere nominal reenactment should have the effect of disturbing the whole body of statutes *in pari materia* which had been passed since the first enactment. There must be something in the nature of the new legislation to show an intent with reasonable clearness. * * * The portions of the amended sections which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along; and the new parts of the changed portions are not to be taken to have been the law at any time prior to the passage of the amended act.' "

Although the General Assembly added the phrase "or within six months after death occured," it still retained the reference to the exception. Effect can be given both to this amendment requiring the filing of death claims within six months after death and to the exception; they are not mutually exclusive. The General Assembly, therefore, did not intend to require that all occupational disease death claims be filed within the designated six month period.

The question then arises as to the period of time within which a dependent falling within the exception of Section 1465-72b must file his application for compensation. Section 1465-72b specifically excepted such cases from its provisions. However, an examination of its companion statute, Section 1465-72a, discloses that the provisions of that section are applicable to the exception in Section 1465-72b. Section 1465-72a reads in part as follows:

> "In all cases of injury or death, claims for compensation shall be forever barred, unless, *within two years after the injury or death,* written application shall have been made to the industrial commission of Ohio or, in the event the employer has elected to pay compensation direct written notice of injury shall have been given to the industrial commission or compensation shall have been paid under sections 1465-79, 1465-80, 1465-81 within two years after the injury or written notice of death shall have been given to the industrial commission or benefits shall have been paid under section 1465-82 within two years after the death." (Emphasis added.)

It should be noted that Section 1465-72a was originally enacted in 1919 in the same act in which the pertinent Subdivision 4 of Section 1465-82 first appeared (108 O.L. Pt. I, 313). It is apparent from the wording of Section 1465-72a that all death claims must be filed within two years after the injured person's death. This general provision as to the time within which a death claim must be filed applies to all death claims not otherwise provided for in the Workmen's Compensation Act. As noted above, Section 1465-72b delimits six months as the time for filing in occupational disease death cases, *except* where compensation has been paid up to the time of the death of the person suffering from an occupational disease. It is my opinion that in these latter cases, the general provision in Section 1465-72a applies, and the dependent has two years after the death of the decedent within which to file for compensation.

In this connection, I find that in Section 1465-68a(22), occupational disease claims based on silicosis, are governed by the following provision:

> "* * * Claims of an employee for compensation, medical, hospital and nursing expenses, on account of silicosis shall be forever barred unless application therefor shall have been made to the industrial commission within one year after total disability began or within such longer period as shall not exceed six months after diagnosis of silicosis by a licensed physician. *Claims of dependents for benefits on account of death from silicosis shall be forever barred unless application therefor shall have been made to the industrial commission within six months after death."* (Emphasis added.)

The above quoted limitations were made applicable in 1939 to certain other occupational diseases of the respiratory tract, by the addition of a final paragraph to Section 1465-68a, which reads as follows (118 O.L. 422, 425):

> "All conditions, restrictions, limitations and other provisions of this section, with reference to the payment of compensation or benefits on account of silicosis, shall be applicable to the payment of compensation or benefits on account of *any other occupational disease of the respiratory tract resulting from injurious exposure to dusts."* (Emphasis added.)

Although Subdivision 4 of Section 1465-82 was made applicable to all occupational diseases by Section 1465-72b in 1921, recognition of

silicosis as an occupational disease did not appear in statutory form until 1937 (117 O.L. 268, 269). The General Assembly, by enacting extensive provisions under Subsection 22 of Section 1465-68a, indicated that silicosis and certain other respiratory diseases were occupational diseases requiring different restrictions and limitations from other kinds of occupational diseases. Accordingly, neither disability nor death claims for either silicosis or diseases of the respiratory tract resulting from injurious exposure to dusts, are governed by Section 1465-72b. Specific provisions for them are made in Section 1465-68a(22). Thus, the dependents of persons dying from such diseases are not entitled to the benefit of the exception contained in Section 1465-72b.

Therefore, in answer to your question, it is my opinion that in occupational disease cases, the dependent of a decedent has only six months after the date of the decedent's death within which to file a claim for death benefits with the Industrial Commission, with the exception that, in those cases in which compensation on account of the occupational disease has been continuous to the time of the death of the injured person, the dependent has two years after the death of the injured person within which to file a claim for death benefits. This exception, however, does not apply to claims for compensation for death due to silicosis or any other occupational disease of the respiratory tract resulting from injurious exposure to dusts, such death claims being provided for in Section 1465-68a(22), General Code, which specifically requires the filing of the application for death benefits within six months after the death of the decedent.

Respectfully,

HUGH S. JENKINS,
Attorney General.