

4241.

APPROVAL, BONDS OF EAST CANTON RURAL SCHOOL DISTRICT, STARK COUNTY, OHIO, \$16,000.00 (UNLIMITED).

COLUMBUS, OHIO, May 7, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4242.

TAX COMMISSION—NO AUTHORITY FOR BONDING EMPLOYES OF TAX COMMISSION—SECTION 154-14, G. C., REPEALED JULY 26, 1929.

SYLLABUS:

1. *There is no authority in the statutes at the present time for the bonding of employes engaged in the performance of duties for the Tax Commission of Ohio.*

2. *Section 154-14, General Code, enacted in 1921 (109 O. L. 108), has been repealed since July 26, 1929.*

COLUMBUS, OHIO, May 7, 1935.

HON. HOWARD L. BEVIS, *Director of Finance, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent communication reading as follows:

“I have the attached letter from Carlton S. Dargusch of the Tax Commission which explains itself.

It seems to me this raises a point which should be answered by your office. Will you kindly advise.”

The letter attached to your communication reads:

“Will you please advise if we are authorized to require certain of our employees who handle some money—particularly in the excise tax section—to have surety bonds. If so, may the commission lawfully make an expenditure for this purpose out of its funds allotted for maintenance?”

An examination of the statutes of Ohio does not reveal any authority for the bonding of any employes in the Tax Commission of Ohio, unless section 154-14, General Code, could be said to be in force at this time. Section 154-38, General Code, provides as follows:

“The tax commission of Ohio shall be a part of the department of finance for administrative purposes, in the following respects; All clerical and other agencies for the execution of the powers and duties vested in said tax commission of Ohio shall be deemed to be in the department of finance, and the

employees thereof shall be deemed to be employees in said department and shall have and exercise all authority vested by law in the employees of such commission, but the tax commission of Ohio shall have direct supervision and control over, and power of appointment, compensation and removal of, such employees."

Section 154-2 of the General Code defines the word "department" to mean "the several departments of state administration enumerated in section 154-3 of the General Code."

Section 154-3, General Code, creates "the department of finance" as one of the administrative departments.

Section 154-14, General Code, mentioned above, provided prior to July 26, 1929, as follows:

" * * *

The director of each department may, with the approval of the governor, require * * * any officer or *employee in his department* to give like bond (conditioned according to law) in such amount as the governor may prescribe. The premium, if any, on any bond required or authorized by this section may be paid from the state treasury."

On April 26, 1929, Amended Senate Bill 131 of the 89th General Assembly was passed. The title of such bill (113 O. L. 551) provided:

"AN ACT

To create a department of conservation, determine the powers and duties thereof, to transfer certain functions of the department of public works to the department of conservation and to abolish the division of fish and game of the department of agriculture and transfer the functions thereof to the department of conservation; to amend sections 154-6, 154-42, 433, 464, 470, 471, 472, 473, 475, 476, 478, 479, 480, 481, 482, 483, 484, 486, 1409, 1414-1, 1415, 1416, 1423, 1424, 1425, 1427, 1430, 1432, 1433, 1435, 1435-1, 1435-2, 1435-3, 1435-4, 1436, 1438, 1439, 1441, 1442, 1443, 1445, 1446, 1447, 1450, 1452, 1453, 1454, 2250, and 2496, of the General Code; and to supplement sections 472 and 1438 of the General Code, by the enactment of supplemental sections 472-1, 1438-1, 1438-2 and 1438-3."

The bill was composed of three sections, and section 3 provided as follows:

"That existing sections 154-6, *154-14*, 154-42, 433, 464, 470, 471, 472, 473, 475, 476, 478, 479, 480, 481, 482, 483, 484, 486, 1409, 1414-1, 1415, 1416, 1423, 1424, 1425, 1427, 1430, 1432, 1433, 1435, 1435-1, 1435-2, 1435-3, 1435-4, 1436, 1438, 1439, 1441, 1442, 1443, 1445, 1446, 1447, 1450, 1452, 1453, 1454, 2250 and 2496 of the General Code be, and the same are hereby repealed." (Italics the writer's.)

The foregoing bill was filed in the office of the Secretary of State on April 26, 1929 (see 113 O. L. 592), and therefore under the rule of the Supreme Court in the case of *State ex rel. Heuck vs. Mack*, 127 O. S., 247, was effective upon July 26, 1929.

It will be noted that the title of Amended Senate Bill 131 does not mention Section 154-14, General Code, but that such section is mentioned only in Section 3 of the act. However, it is the general rule that a repeal of a statute may be effected by identification of such statute, accompanied by an expression of an intent to repeal it, either

in the title or body of an act. The rule is stated in 59 *Corpus Juris*, pages 901 and 902, under the topic "Statutes", Section 504 (3) entitled "Reference to, and Identification of, Act Repealed—(a) In General":

"To effectuate an express repeal, a statute must so describe and distinguish the statute to be repealed as by designation of its name, title or caption or by reference to its subject, contents or substance, as to leave no doubt as to what statute is intended. However, in the absence of an applicable constitutional provision prescribing or prohibiting a particular mode of identification, *an identification of any kind, either in the body or in the title or caption of the repealing act, which points out with certainty the law to be repealed is sufficient; * **" (Italics mine.)

In Volume 37, *Ohio Jurisprudence*, pages 394 and 395, Section 133 of the topic "Statutes", it is stated:

"The general rule is that a court will not inquire whether the legislature intended the repeal of a statute specifically repealed. If it is true that a statute was unintentionally or inadvertently repealed, the remedy is by legislative action, and not by judicial declaration that the General Assembly has done that which it did not intend to do. However, there is also authority to the effect that courts have the power to correct self-evident mistakes appearing upon the face of the statute. In any event, the fact that an intention to repeal a particular provision is not expressed in the title of the bill cannot be considered as supporting the claim that its repeal was a mistake."

In support of the foregoing the text cites the cases of *Christ Diehl Brewing Co. vs. Schultz*, 96 O. S., 27 and *Jones vs. Franklin County*, 2 C. C. (N. S.) 14. An examination of the case of *The Christ Diehl Brewing Co. et al. vs. Schultz, Treasurer*, 96 O. S., 27, discloses the following language of the court at page 28:

"Where an existing statute is specifically repealed, a court will not inquire whether the legislature intended its repeal. If it be true that a statute was unintentionally or inadvertently repealed, the remedy is by legislative action, and not by judicial declaration that the general assembly has done that which it did not intend to do. *Slingluff et al. vs. Weaver et al.*, 66 Ohio St., 621, approved and followed.

Section 6085, General Code, having been specifically repealed by the act of May 31, 1911 (102 O. L., 291), the tax duplicate offered in evidence by the treasurer to support the allegations of his petition was not authorized by law, and can have no probative force or effect." (Italics, the writer's.)

A reference to Volume 102, *Ohio Laws*, pages 277 to 291, shows that Section 6085, General Code, mentioned in the foregoing case, was not referred to in the title of House Bill No. 163 of the 79th General Assembly and that the only place in such act where Section 6085, General Code, was mentioned was in Section 2 of the act (containing two sections) reading as follows:

"Sec. 2. That said original section 281, * * 6085 * * and 3362 of the General Code, be, and the same are hereby repealed."

As noted in the Schultz case, *supra*, the court specifically held that Section 6085, General Code, was repealed by such House Bill No. 163. Thus it can be seen that the same situation exists with reference to Section 154-14, General Code, as was the case with Section 6085, General Code.

It is to be noted that Page's Annotated Ohio General Code, Permanent Supplement 1926-1935, carries the following statement under "Sec. 154-14":

"History—This section was repealed, probably by mistake, in *Am. S. B. No. 131, 113 vs. 551 (592)*, section 3."

In Throckmorton's Annotated Code of Ohio, Baldwin's 1934 Certified Revision, Section 154-14, General Code, is quoted as it existed prior to July 26, 1929, but the following appears directly beneath the quoted section:

"*Note:* In the enacting clause of 113 vs. 551, G. C. Section 154-15 is not mentioned, but it is set forth in the repealing clause of the act (113 vs. 592, Sec. 3). *Quare:* Was G. C. 154-14 repealed by 113 vs. 551, 592?"

On the authorities cited, I am of the view that Section 154-14, General Code, was repealed in 1929.

Since such a conclusion is reached, it follows that a treatment of the second question is rendered unnecessary.

However, it may be pointed out that the last sentence of Section 154-14, General Code, provided:

"The premium, if any, on any bond required or authorized by this section may be paid *from the state treasury.*" (Italics, the writer's.)

Also, Section 9573-1, General Code, reads:

"The premium of any duly licensed surety company on the bond of any public officer, deputy or employe shall be allowed and paid by the state, county, township, municipality or other subdivision or board of education of which such person so giving such bond is such officer, deputy or employe."

Reading the foregoing provisions together, it is to be seen that there is authority to pay premiums of bonds only from the general fund of the state. Where a statute states that a charge shall be made against the "state" or "state treasury" it would seem that the general fund is to bear the charge, unless another fund is designated. Hence, even if Section 154-14, General Code, were in existence, the bonds of employes in the excise sections of the Tax Commission could not be paid from the "maintenance" appropriation made from the special funds created by the legislature from the special excise tax levies.

In passing, it is to be noted that there has been introduced in the present regular session of the 91st General Assembly, a bill to re-enact Section 154-14, General Code. Such bill is Senate Bill No. 27, entitled, "To supplement Section 154 of the General Code by the enactment of a supplemental Section 154-14, relative to bond and oath of office of public officials, and to declare an emergency." It was introduced on January 23, 1935, and referred the same day to the Senate Judiciary Committee, wherein it now rests.

If the legislature should desire that there be authority to bond employes in the Tax Commission and pay the premiums from maintenance appropriation of special excise tax moneys, it is suggested that same could be accomplished by adding to Section 154-14, General Code, the following words, "or from any appropriation of special funds of the state made for expenses of a department."

Respectfully,
JOHN W. BRICKER,
Attorney General.

4243.

APPROVAL, BONDS OF WESTERN RURAL SCHOOL DISTRICT, PIKE COUNTY, OHIO, \$1,626.94.

COLUMBUS, OHIO, May 8, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4244.

APPROVAL, BONDS OF WAVERLY RURAL SCHOOL DISTRICT, PIKE COUNTY, OHIO, \$6,036.21.

COLUMBUS, OHIO, May 8, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4245.

APPROVAL, BONDS OF UNION RURAL SCHOOL DISTRICT, PIKE COUNTY, OHIO, \$2,071.39.

COLUMBUS, OHIO, May 8, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4246.

APPROVAL, BONDS OF PERRY RURAL SCHOOL DISTRICT, PIKE COUNTY, OHIO, \$1,250.64.

COLUMBUS, OHIO, May 8, 1935.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.