

Following the construction applied to supplemental sections of the law as stated in the court's opinion above quoted, it is the opinion of this department that section 12680-1 G. C. is to be looked upon as a part of said original section 12680, and that the fees obtained under convictions under said supplemental section are to be distributed as required in sections 5900, 5901, and 12683 G. C.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2320.

DEPARTMENT OF COMMERCE—CONSTRUCTION OF STATUTES
 RELATIVE TO STATE INSPECTOR OF OILS—WHAT STATUTES
 NOW IN FORCE.

1. *Section 11 of Amended Senate Bill No. 183, numbered section 853 of the General Code of Ohio, found in 105-106 O. L. at page 311, in so far as it relates to the annual report of the state inspector of oils to the governor, is not repealed.*

2. *Collection of the fees due for the inspection of oils in the state is by section 850 G. C. made the duty of the treasurer of state.*

3. *Certificates in triplicate to the auditor of state required by section 24-1 G. C. are to be made at the times fixed by said auditor, and are a part of the method prescribed for the collection of the inspection fees so charged, but the collection of which is the duty of the treasurer of state. Funds belonging to the state are to be paid weekly into the state treasury.*

COLUMBUS, OHIO, August 12, 1921.

Department of Commerce, HON. W. H. PHIPPS, Director, Columbus, Ohio.

GENTLEMEN:—This department is in receipt of your letter asking:

(1) Has section 853 G. C. been eliminated by the several enactments found in 105-106 Ohio Laws, at pages 230, 311 and 517?

(2) What provisions, if any, are made by the statutes for payment of the funds arising from the inspection of oils, etc., into the state treasury?

Your letter discusses the various acts of the 80th general assembly in its general and special sessions in 1915, and also refers to section 24-1 G. C., with particular attention directed to the payment of the fund arising from inspection of oils in the state into the state treasury.

The act passed April 27, 1915, found at page 228 in 105-106 O. L., is not similar in text to the act passed May 19, 1915, found at page 309 in the same volume. This fact may be seen by a comparison of the text of the laws. And comparison of the acts makes it evident that the later act is the one last amended by the general assembly. Both acts are designated as Am. Senate Bill No. 183. An investigation of the signed bills filed with the secretary of state of Ohio shows that the acts as printed in 105-106 O. L. are exact reproductions of the acts on file in said office. According to a familiar rule of construction, the later of two acts, upon the same subject, by implication repeals the earlier, the former being the latest expression of the legislative intent on the subject.

"It is the duty of a court to harmonize and reconcile laws where possible: It is also the settled law of this state that an act of the legislature that fails to repeal in terms existing statutes on the same subject-matter must be held to repeal the same by implication if the later law is in direct conflict therewith. *Goff et al. vs. Gates, et al.*, 87 Ohio St. 142."

Rabe vs. Board of Education, 88 O. S. 409.

A search of the senate and house journals of the eightieth general assembly shows that both of these acts were passed after considerable debate, and were amended and otherwise given close attention before becoming laws. The house journal shows that on March 17, 1915 S. B. No. 183 was put to vote and failed to pass (See H. J., p. 453); that later, on the same day, upon motion to reconsider, which was agreed to, the bill did pass; that after a recess, still on the same day, the emergency clause to said bill was agreed to, and likewise was the title (See H. J., pp. 461-63). Later, a conference on the differences between the house and the senate was had—page 598—and also an error was discovered after enrollment of the bill and the same was by resolution sent to the joint committee on enrollment—page 737. At page 875 the record recites this bill was signed by the speaker of the house and in the presence of the house, and again at page 1176 the record is that he did the same thing again in the same presence. This record of the two signings at different dates shows that there were two, shall we say paper writings, both known as Am. S. B. No. 183.

In the senate journal the record discloses that S. B. No. 183 was, on March 10, 1915, introduced, read the first time, the second reading dispensed with, referred to the judiciary committee, and then ordered printed (See S. J., p. 271). The bill was on March 11, 1915, reported back by said judiciary committee recommending its passage, and was passed with the emergency act attached thereto (S. J., pp. 284, 285). At page 450 the bill, after conference, was agreed to, and at page 674 the president pro tem of the senate signed it in the presence of the senate, while at page 896 the president of the senate in the presence of the senate, the record says, did the same thing a second time. The bill signed by the president pro tem of the senate was of date April 27, 1915, and the one signed by the president of the senate was of date May 19, 1915. It is this later act that must be regarded as the effective law on the subject. These signings again show that there were two paper writings having the same official designation (Am. Senate Bill No. 183) signed as acts of the senate on two different dates, about three weeks apart. In this case it turns out that the one last signed was evidently the bill as amended in conference, and being of a later date is referred to, as before stated, as the law, repealing by force of its later enactment the former act bearing the same designation. So the later act is the one claiming our attention in so far as it is not repealed by other acts.

The titles of both acts are identical, and read:

"An act to provide for the inspection of petroleum, illuminating oils, gasoline and naphtha and to repeal sections 844 to 868 inclusive of the General Code."

How the passage of two acts having the same title or number could have occurred is not pertinent to this discussion. There can be no doubt that such an event did occur, since both bills are on file with the secretary of state. Both of these bills were passed without sectional numbering in the

printed act, and section 11 of each act was numbered by the then Attorney-General, pursuant to the law as found in sections 342-1 and 342-2, as section 853 of the General Code of Ohio. It is required by law that the Attorney-General place the numbers he gives to the sections of a bill on each bill so numbered by him just prior to its being filed with the secretary of state or just after approval by the governor. Section 11 of each of the acts known as Am. S. B. No. 183 is a duplicate, the one of the other, and each was given the same sectional numbering by the Attorney-General, written in ink on the margin of the printed form; to-wit, section 853. The one found in 105-106 O. L. p. 311, which is the later act, reads:

"Section 853. Section 11. The state inspector of oils shall pay, weekly, into the state treasury to the credit of the oil inspection fund all moneys received by him under this chapter. He shall make (and deliver to the governor) an annual report of inspections and transactions of his office."

This section repealed the former section passed in 101 O. L. at page 347, which was as follows:

"Section 853. After payment of salaries due him and his deputies and the expenses incident to the conduct of his office, the state inspector of oils shall pay, quarterly, into the state treasury all moneys received by him under this chapter. On the second Monday of each year he shall make and deliver to the governor a report of inspections and a statement of the receipts and expenditures of his department during the preceding year."

It is to be noticed that each of these sections above quoted concerns the payment of the fees obtained through the inspection of oils in the state into the state treasury, and the making of a report of the business of the office of the state inspector of oils to the governor. In the newer law all money collected was required to be paid into the treasury weekly by the state inspector of oils and an annual report filed; while before, after paying salaries, the remainder of the money collected was paid by the inspector into the treasury quarterly, and an annual report of the business of his office for the year beginning the second Monday of each year was to be made by him. The later law gives no date for the beginning of the fiscal year, while the former one did.

Am. S. B. No. 297, found in 105-106 O. L. at page 500, to which your letter refers, has this title:

"An act to provide for the collection by the treasurer of state * * * upon duplicates set up by the auditor of state, to amend sections 841, 5433, 1352-4, 1815-4, 1815-12 and 1816, and to repeal section 722 of the General Code, section 8 of an act passed March 17, 1915, entitled * * * and enact new section 1352-7."

The title of this act recites the title to amended S. B. No. 183, *supra*, in full, but has the date of the passing of that act as of March 17, 1915. This is a typographical error, since it recites the date when the bill was passed in the house.

But the title of Am. S. B. 297 recites the correct title of Am. S. B. No. 183, though the wrong date of passage of the act is given, the correct section

number of that part of the act to be repealed is given, and the new act contains all of the text of said section which is to be amended. That is, section 8 of Am. S. B. No. 183, referred to in the title quoted, is set out in full as it is intended to be amended in Am. S. B. No. 297. So that there is clarity and directness as to the intent of the legislature, and there is direct compliance with the provisions found in section 16 of Article II of the constitution of Ohio, and the incorrect date of the passage of the act intended to be amended does not invalidate the amending law.

Section 8 of Am. S. B. No. 297 is the section of Am. S. B. No. 183 numbered by the Attorney-General as section 850. It is important to notice that it is referred to, not as section 850, but as section 8 of the act. In this respect it has force in the discussion of the validity of section 853, which is section 11 of the act in which passed, and is not referred to in the repealing act as section 853. Section 850 being the present law, operates to change the manner of the collection of fees for oil inspections, which, under its terms, are "payable on demand of the treasurer of state" and not on demand of the state inspector of oils, as was the case before the enactment of amended section 8 of Am. S. B. No. 183, in Am. S. B. No. 297.

There is thus a conflict in terms between the provisions of the law as found in section 853, or section 11 of Am. S. B. No. 183, and amended section 8 as it appears in Am. S. B. No. 297. The state inspector of oils can have no funds to pay weekly into the state treasury since the state treasurer under the later enactment is required to make such collections.

Another familiar rule of statutory construction is that when a later law is inconsistent with an earlier one on the same subject matter and cannot be reasonably reconciled with the former or earlier law, the later law prevails.

"It is a rule constantly observed in the construction of statutes, that where the general provisions of a statute conflict with the more specific provisions of another, or are incompatible with its provisions, the latter is to be read as an exception to the former."

City of Cincinnati vs. Holmes, 56 O. S. 114.

"Where statutes conflict in terms, ordinarily the later prevails over the earlier and the specific over the general."

Black on Interpretation of Laws, section 35.

Section 850 G. C. is now the law, making the collection of fees for oil inspections a duty of the treasurer of state.

Your letter also refers to Am. S. B. No. 158, 105-106 O. L. 508. This act was passed May 27, 1915, approved June 4, 1915, and filed with the secretary of state on the same day. The title of this act is, in part, as follows:

"An act to amend sections 253, etc. * * * and to add supplemental sections * * * to provide for the filing of official reports with the expiration of the state fiscal year, and for the publication of uniform statistical reports of the state, and to repeal certain sections of the General Code."

This act declares the beginning of the state fiscal year to be the first day of July of each year. Among the sections of the General Code that are to be repealed is mentioned section 853, and the repealed sections are enumerated in the act in section 3 thereof. There can be little doubt that the section 853 referred to as repealed in section 3 of the above mentioned

act is the section of the General Code quoted above found in 101 O. L., p. 347, and not the section of the same numbering found in Am. S. B. No. 183. Original section 853 fixes the fiscal year to begin on the second Monday of January of each year as the time of filing an official report by the inspector of oils. The title of the act declares the intention of the general assembly to establish a new fiscal year, and the act fixes that date as of the first day of July of each year.

Newly numbered section 853 of Am. S. B. No. 183 could not have been within the knowledge of the general assembly during the time that Am. S. B. No. 158 was in the process of becoming a law. The record shows that this bill was not amended in either house after April 28, 1915 (See H. J., p. 896) and the house amendments were concurred in by the senate on May 20, 1915 (See S. J. 933). What amending there was done at any time in either the house or the senate, the record shows, left the last section of this bill; to-wit, section 3, untouched, and section 3 is the part of the bill relating to the sectional numbers of the General Code that were to have been repealed by it.

Another reason for reaching the conclusion we do is seen in the purpose for which Am. S. B. No. 158 was enacted, that purpose being the making of uniform statistical reports. Old section 853 provided for a report of the oil inspector's office on the second Monday of January of each year, the repeal of which was clearly necessary to conform to the intent of the legislature as expressed in Am. S. B. No. 158. The section 853 found in Am. S. B. No. 183 provided for an annual report but made no mention of the date when the year should begin, and so needed no attention in the new law, but would conform to the directions of the law found in section 260-1 of Am. S. B. No. 158, which provides that the fiscal year for all state offices, officers, departments, commissions, boards and institutions shall begin on July 1st of each year.

Section 8 of Am. S. B. No. 183, which is section 850 G. C., as amended in Am. S. B. No. 297, takes the collection of fees from the state inspector of oils and places that duty upon the treasurer of state. So that all there is left of section 853 as found in Am. S. B. 183, having force and effect, is the part providing for an annual report by the state inspector of oils to the governor of the operation and work of his office.

Section 24 G. C. provides for weekly payments into the state treasury by all offices, commissions, institutions and boards in the state of the moneys of the state coming into their hands. It also repeals all inconsistent statutes or parts of statutes in conflict with its provisions.

Section 24-1 G. C. reads:

"Whenever any moneys are payable to the state or any department thereof pursuant to sections 720, 841, 5433, of the General Code, section 8 of the act passed March 17, 1915, entitled, 'An act to provide for the inspection of petroleum, illuminating oils, gasoline and naphtha and to repeal sections 844 to 868 inclusive of the General Code,' and pursuant to the provisions of title 5, division 1, chapter 1, and title 3, division 2, chapter 24, of part first of the General Code, excepting therefrom, however, sections 1352-5 and 1653, and whenever moneys are payable to the state or the superintendent of public works pursuant to any sale or lease of lands or surplus water power and appurtenant rights executed or granted by the superintendent of public works or his predecessors in office, or lease of docks or boat landings or other special privileges granted or executed by the

superintendent of public works, or his predecessors in office, it shall be the duty of the officer, board or commission ascertaining or fixing such charge or the amount so payable, to certify the same to the auditor of state upon triplicate forms prescribed by such auditor, and at such time or times as he may prescribe, including in such certification such matters and information as he may direct. Within five days next following the receipt by the auditor of state of such certification, and also at the time the auditor of state determines the amount payable by a county pursuant to section 287 of the General Code, or payable by a taxing district pursuant to section 288 of the General Code, the auditor of state shall transmit to the treasurer of state for collection a duplicate of the charges so certified or determined. The treasurer of state shall immediately proceed to the collection of the charges upon such duplicate and shall forthwith notify the person, co-partnership, corporation, county or taxing district so charged upon such duplicate of the amount thereof, by mail to the address of such person, co-partnership, corporation, county or taxing district known to the treasurer of state. The treasurer of state, upon the receipt of any such moneys, shall set up an account thereof as otherwise provided by law and shall have authority to employ such assistants, clerical and expert help, or other employees, as he may deem necessary for the proper discharge of the duties of his office."

This section provides for a certificate of the sums of money due under section 850 for the inspection of oils in the state to the auditor of state, on triplicate forms, at such time or times as the auditor may prescribe, and for the collection of these sums by the treasurer of state, who shall keep a proper account of the same upon receipt thereof.

Section 24-2 G. C. provides for the collection of delinquent moneys due the state. In a general way these sections, 24, 24-1, 24-2, provide for getting the funds due the state into the treasury without needless delay, and the collection by legal proceedings at an early date of all delinquent sums due. The duty of the state inspector of oils under section 24-1 G. C. is to assess the amounts due for each inspection and to certify the same, in triplicate, to the auditor of state, who in turn furnishes the treasurer of state with a copy of such certificate, upon which said treasurer makes collection of the amount due. Any sums delinquent or unpaid of such certificates are returned to the auditor within thirty days, who may send them to the Attorney-General for collection. The discretion of the auditor that may be exercised by him as to the times of making certificates and as to information desired in them, is such as will enable him early and expeditiously to collect the funds charged by the various offices, boards and commissions and place the same in the state treasury.

I can find only one reference to an annual report of the state inspector of oils and that is to be found in the last sentence of section 853 of Am. S. B. No. 183.

The fact that the four volume code of Ohio laws and the one volume code of these laws refer to section 853 as repealed is not overlooked in this discussion.

The opinion of this department then is that that part of section 853 requiring an annual report by the state inspector of oils to the governor of the state is not repealed, and that in compliance to section 24-1 G. C. he is to make certificates, in triplicate, to the auditor of state of the sums charged

for the inspection of oils, at such times as such auditor may direct. And it is the duty of the treasurer of state to collect such sums so charged in the manner prescribed in section 24-1 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2321.

JOINT COUNTY DITCH—WHERE IMPROVEMENT UNDERTAKEN IN
YEAR 1917—CONTRACTOR DEFAULTED IN COMPLETING WORK—
PARTICULAR CASE PASSED UPON.

Where in the year 1917, a joint county ditch improvement was undertaken, and the contractor defaulted in completing the work, HELD,

1. *That by virtue of section 26 G. C. the project is to be carried to completion under statutes in force at the time the project became a pending proceeding.*

2. *That the cost of completion over and above the original contract price, to the extent that it may not be recovered from the contractor and his surety, is to be assessed against benefited lands and not borne by the counties. (Former sections 6442 to 6517 G. C. referred to).*

3. *Former section 6489 G. C. authorizes the issue of bonds for the completion of the improvement.*

4. *The assessment against affected lands on account of the additional cost is to be made at the time and in the manner provided by former section 6489 G. C. and need not await the termination of efforts to recover from the defaulting contractor and his surety. In the event of such recovery, the amount collected will be transferred to the sinking fund to be used in redemption of additional bonds issued in completing the improvement.*

COLUMBUS, OHIO, August 12, 1921.

HON. J. E. WEST, *Prosecuting Attorney, Bellefontaine, Ohio.*

HON. GEORGE WAITE, *Prosecuting Attorney, Urbana, Ohio.*

GENTLEMEN:—Your offices have submitted to this department for consideration, the following statement of facts:

"In 1917 the joint board of county commissioners of Logan and Champaign counties ordered the construction of the Hartzler joint ditch improvement and the contract for the same was let to a contractor who gave bond with his father as surety. Prices of labor and material increased rapidly, which, together with other reasons assigned by the contractor caused him to delay the completion of the construction until the time fixed in the bond expired, and 120 days were granted under section 6488 of the General Code, and this additional time was used up by the contractor without finishing the job. In the meantime the government commandeered his machinery for construction work in camps. Returning home from camp with his machinery, the contractor undertook to complete the ditch work undertaken, and finally quit work, leaving the job uncompleted. The county surveyor now in charge wishes either to re-sell the uncompleted portion of the improvement, or complete it at the expense of the original contractor, either course involving an expenditure of