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CONSERVANCY DISTRICTS—SECTION 6101.51 R. C.—POWERS TO INVEST AND DEPOSIT ITS FUNDS—EXCEPTION TO UNIFORM DEPOSITORY ACT, CHAPTER 135., R. C.

SYLLABUS:

Section 6101.51, Revised Code, making special provision as to the powers of a conservancy district to invest and deposit its funds, is an exception to the general provisions of the uniform depository act, Chapter 135., Revised Code, relative to the deposit of inactive funds of the state and of the several subdivisions of the state.

Columbus, Ohio, November 19, 1956

Mr. Allen Pretzman, Secretary
Scioto-Sandusky Conservancy District
2540 Leveque Lincoln Tower
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Scioto-Sandusky Conservancy District is preparing to take bids for the deposit of inactive funds, which will be done under Section 6101.51, Revised Code, (a part of the Conservancy Act). The question arises as to whether the Conservancy District is subject to the Uniform Depository Act, wherein we must specify that the funds are subject to withdrawal on thirty days notice, which automatically reduces the possible interest rate to one per cent.

“It has always been our feeling that the Conservancy District is not subject to that act, particularly in view of the broad provisions contained in Section 6101.51, giving the directors the right to specify the terms and conditions on which the deposit and handling of inactive funds will be made.

“Of course we want to obtain the highest rate of return possible, and the directors have asked me to request your opinion as to whether we are or are not subject to the Uniform Depository Act.”

Section 6101.51, Revised Code, referred to above, reads in part as follows:

“* * * All moneys of a district deposited with the treasurer of state to provide for the payment of bonds and interest shall be deposited by the treasurer of state in the name of the district in a national or state bank subject to the same conditions as are provided by law for the deposit of moneys of the state, and all interest received on such deposit shall be paid to such district.

“The successor in office of any treasurer of a conservancy district shall not be entitled to take over the assets of the treasury until he has complied with this section. Moneys derived from the sale of bonds and from all other sources shall be deposited by the treasurer of the district with depositories designated by the board. At intervals of not greater than two years the board shall invite proposals from banks and trust companies for the deposit of district funds. So long as such banks and trust companies are permitted by law to pay interest the board shall select as depositories the bank or banks or trust company or companies which at competitive bidding offer the highest rate or rates of interest, but if no proposal offering depository interest is received, the board may designate depositories for the funds of the district without payment of interest. The selection of any depository shall be evidenced by a resolution of the board which shall set forth the terms governing such selection. The funds so deposited shall at all times be protected by the hypothecation by the depository of securities of market value or par value, whichever is less, in an amount equal to one hundred five per cent of such funds and additional securities shall be hypothecated when necessary to maintain such percentage. The amount so determined of such securities to be hypothecated shall be reduced by an amount equal to the insurance of deposits provided by the federal deposit insurance corporation pursuant to the act of congress known as the ‘Banking Act of 1933’ or any act amendatory or supplementary thereto. Such securities shall be obligations of, or guaranteed as to principal and interest by, the United States or obligations of the state or of the conservancy district or, subject to acceptance by the board, obligations of any political subdivision lying wholly or partly within the boundaries of the district. From time to time as the amount on deposit is

reduced the amount of the hypothecated securities may be reduced but the total protection of deposits shall be not less than five per cent in excess of the amount on deposit. The board may invest moneys of the district in United States savings bonds or other interest bearing obligations of the United States having similar guarantee as to redemption. The funds derived from the sale of any of said bonds and notes shall be used only for paying the cost of the properties, works, and improvements and such costs, expenses, fees, and salaries as are authorized by law. * * *

These provisions, clearly applicable only to funds of a conservancy district, are sharply at variance with the more general provisions of the Uniform Depository Act as set out in Chapter 135., Revised Code, relative to funds of the state and of subdivisions. Specifically, and of primary importance in this instance, such provisions are at variance with the requirement in Section 135.14, Revised Code, that deposits must be subject to withdrawal upon thirty days notice. The latter section was the subject of consideration in my opinion No. 6121, Opinions of the Attorney General for 1955, page 734, the syllabus in which reads:

“The Treasurer of State, treasurer of a subdivision or officer exercising the functions of a treasurer of such subdivisions may not under the provisions of Section 135.14, Revised Code, enter into a contract for the inactive deposit of public funds whereby withdrawals are subject to notice in excess of thirty days.”

The term “subdivision” as used in Chapter 135., Revised Code, is defined in Section 135.01, Revised Code, as follows:

“* * * ‘Subdivision’ means any county, school district, municipal corporation, except a municipal corporation or a county which has adopted a charter under Article XVIII or Article X, Ohio Constitution, having special provisions respecting the deposit of the public moneys of such municipal corporation or county, township, municipal or school district sinking fund, special taxing or assessment district, or other district or local authority electing or appointing a treasurer. In the case of a school district, special taxing or assessment district, or other local authority for which a treasurer, elected or appointed primarily as the treasurer of a subdivision, is authorized or required by law to act as ex officio treasurer, the subdivision for which such a treasurer has been primarily elected or appointed shall be considered to be the ‘subdivision.’ Said term also includes a union or joint institution or enterprise of two or more subdivisions, which is not authorized to elect or appoint a treasurer, and for which no ex officio treasurer is provided by law. * * *

Even a casual perusal of the provision, in Chapter 6101., Revised Code, relative to the corporate organization and powers of a conservancy district, leads surely to the conclusion that such a district is included in this definition unless the special powers granted such agencies, as set out in Section 6101.51, *supra*, constitute an exception to the general provisions in Chapter 135., Revised Code.

The rule as to prevalence of special statutory provisions over general provisions which might otherwise be applicable is stated in *State ex rel. Elliott Company v. Connar*, 123 Ohio St., 310, as follows:

“Special statutory provisions for particular cases operate as exceptions to general provisions which might otherwise include the particular cases and such cases are governed by the special provisions. * * *”

In *Leach v. Collins*, 123 Ohio St., 530, Judge Matthias said (p. 533, 534):

“* * * The rule applicable here is stated by the Supreme Court of the United States in *Rodgers v. United States*, 185 U. S., 83, 22 S. Ct., 582, 583, 46 L. Ed., 816, as follows: ‘Where there are two statutes, the earlier special and the later general, (the terms of the general being broad enough to include the matter provided for in the special), the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, and the general will not be understood as repealing the special, unless a repeal is expressly named, or unless the provisions of the general are manifestly inconsistent with those of the special.’ * * *”

In *Engineering Company v. Jones*, 150 Ohio St., 423, the court held, as disclosed in the first paragraph of the syllabus:

“A special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subjects as well as the specific subject matter which might otherwise be included under the general provision. (*State, ex rel. Steller et al., Trustees v. Zangerle, Aud.*, 100 Ohio St., 414, and paragraph one of the syllabus in *State, ex rel. Elliott Co. v. Connar, Supt.*, 123 Ohio St., 310, approved and followed.)

An examination of the history of the two statutes here in question discloses that the special provisions as to conservancy districts, quoted above in Section 6101.51, Revised Code, were originally enacted in Amended Senate Bill No. 69, 117 Ohio Laws 163 (197), as a part of Section 6828-47, General Code. This act was passed on March 30, 1937, approved

by the Governor and filed in the office of the Secretary of State on April 19, 1937, and became effective on the ninety-first day thereafter.

The general provision now found in Section 135.14, *supra*, was originally enacted as a part of the Uniform Depository Act in Amended House Bill No. 326, 117 Ohio Laws 227 (234) as Section 2296-14, General Code. This act was passed on March 31, 1937, and was approved by the Governor and became effective as an emergency measure on April 16, 1937.

It is an established rule of statutory construction that statutes in *pari materia* are to be construed in relation to each other and harmonized so that each may be fully effective. Crawford on Statutory Construction 434, Section 231. This is especially true where the statutes are enacted at approximately the same time by the same legislative body. 50 American Jurisprudence 349, Section 351.

In such a case there is a presumption that the legislature "had the whole subject in mind and did not intend to enact conflicting provisions." See *Evans v. Lawyers* 123 Ohio St., 62 in which Judge Day quoted to that effect from 25 Ruling Case Law, 1062, Section 286.

An indication of the comprehension by the legislature of "the whole subject" relative to the deposit of public funds at the time of these two enactments is found in Section 6828-47, General Code, as enacted in 1937. In the ninth paragraph in that section (now found in the second paragraph in Section 6101.51, Revised Code,) there is the following provision:

"* * * All moneys of a district deposited with the treasurer of state to provide for the payment of bonds and interest shall be deposited by the treasurer of state in the name of the district in a national or state bank subject to the same conditions as are provided by law for the deposit of moneys of the state, and all interest received on such deposit shall be paid to such district. * * *"

This quite clearly shows a legislative awareness, at the time of this enactment, of the fact that general provisions were to be found elsewhere in the code governing "the deposit of moneys of the state," and the circumstance that this provision is followed, in the paragraph immediately succeeding, by special provisions as to the deposit of the funds of a conservancy district which are widely at variance with the then existing provisions as to state funds, gives rise to a strong implication that such special provisions were intended as exceptions to any general provisions which might otherwise apply.

It is clear, moreover, where we are concerned with unambiguous language in a special statute, that the plain meaning of that language cannot be disregarded in an effort to "harmonize" it with a supposed general legislative object or policy. As said by Judge Robinson in *Surety Company v. Slag Company*, 117 Ohio St., 512 (517) :

"* * * We do not deem the fact that the Legislature enacted Sections 2365-1, 2365-2, 2365-3, and 2365-4, and Section 6947, on successive days as controlling, in view of the fact that they are not in irreconcilable conflict, and in view of the well-known fact that a considerable portion of the labors of the various courts is devoted to the reconciliation of the seeming inconsistencies, not only of different acts, but of different portions of the same act. In such situation it is the duty of the court to first endeavor to so construe the inconsistent acts or portions of the same act as to give vitality to both or all. * * *"

The syllabus in that case reads in part :

"* * * The fact that two laws are enacted at or about the same time by the same session of the legislature does not alter the obligation of the courts to so construe the two laws as to give effect to both, if the same can reasonably be done. * * *"

In the instant case the special statute, Section 6101.51, Revised Code, is without ambiguity. Only the term "subdivision" as used in Chapter 135., Revised Code, may be said to be uncertain in scope; and I consider that the construction of this term as being subject to the exception provided in Section 6101.51, Revised Code, can "reasonably be made" so as to "give effect to both" these enactments.

Finally, it should be noted that Section 6828-47, General Code, was amended a *second* time by the 92nd General Assembly in its second special session extending from November 29, 1937 to February 28, 1938. This was in House Bill No. 765, 117 Ohio Laws, 815, and the amendment of this section was the sole purpose of that act. This second amendment of this section, by the same General Assembly that enacted the Uniform Depository Act, making a later provision as to conservancy districts at variance in pertinent part from such uniform act, is strongly indicative of an intent that such districts were intended to enjoy special powers in this regard.

Accordingly, for the reason that the former is a special enactment and the latter general, and because full effect must be given to each to the extent that that is possible, it becomes necessary to conclude that Section 6101.51,

Revised Code, making special provision as to the powers of a conservancy district to invest and deposit its funds is an exception to the general provisions of the Uniform Depository Act, Chapter 135., Revised Code, relative to the deposit of inactive funds of the state and of the several subdivisions of the state.

Respectfully,

C. WILLIAM O'NEILL
Attorney General