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1. UNEMPLOYMENT COMPENSATION BOARD OF REVIEW
—AMENDED SENATE BILL 336, 98 GENERAL ASSEMBLY
—UPON EFFECTIVE DATE SUPERSEDES PROVISIONS
OF AMENDED SUBSTITUTE HOUSE BILL 382—SAME
GENERAL ASSEMBLY—FIXING SALARIES AND CLAS-
SIFYING REFEREES.
2. SALARY INCREASES—NOT APPLICABLE TO SALARIES
OF REFEREES SUBSEQUENT TO EFFECTIVE DATE OF
AMENDED SENATE BILL 336, 98 GENERAL ASSEMBLY.
3. NECESSARY FOR GOVERNOR TO APPROVE APPOINT-
MENTS AND SALARIES OF REFEREES APPOINTED BY
UNEMPLOYMENT COMPENSATION BOARD OF REVIEW
—APPOINTMENTS AND SALARIES SUBJECT TO CIVIL
SERVICE LAWS OF STATE.
4. APPROVAL OF GOVERNOR NOT NECESSARY FOR PRO-
MOTIONS OR INCREASES IN COMPENSATION OF
REFEREES APPOINTED BY BOARD OF REVIEW.

SYLLABUS:

1. Amended Senate Bill No. 336 of the 98th General Assembly will, upon its effective date, supersede the provisions of Amended Substitute House Bill No. 382 of the same General Assembly in fixing the salaries and classifying the referees of the Unemployment Compensation Board of Review.

2. The various salary increases referred to in Amended House Bill No. 654, 98th General Assembly, will not be applicable to the salaries of the referees of the Unemployment Compensation Board of Review subsequent to the effective date of Amended Senate Bill No. 336 of the 98th General Assembly.

3. It is necessary for the Governor to approve the appointments and salaries of referees appointed by the Unemployment Compensation Board of Review, which appointments and salaries are subject to the civil service laws of the State.

4. The approval of the Governor is not necessary for any promotions or increases in compensation of referees appointed by the Unemployment Compensation Board of Review.

Columbus, Ohio, November 16, 1949

Hon. W. T. Roberts, Chairman, Unemployment Compensation
Board of Review
Columbus, Ohio

Dear Sir:

Receipt is acknowledged of your request for my opinion upon the following matters:

"The 98th General Assembly enacted Amended Senate Bill No. 336, amending Section 1346-3 of the General Code, relating to the salaries and classifications of Referees of the Unemployment Compensation Board of Review. This act, passed July 13, 1949, was vetoed July 27, 1949, and passed, notwithstanding the objections of the Governor, July 29, 1949. It was filed in the Office of the Secretary of State on July 30, 1949 and becomes effective October 29, 1949.

The 98th General Assembly also enacted Amended Substitute House Bill No. 382, relating to the standardization of salaries and wages of employees in the State services. This Act also amends Section 1346-3 relating to the salaries of the Referees of the Board of Review. This Act was passed July 15, 1949, as an emergency measure, was approved by the Governor July 28, 1949 and went into immediate effect. It was filed in the Office of the Secretary of State, August 1, 1949.

Your attention is called to the fact that Section 5 of Amended Substitute House Bill No. 382 repeals existing Section 1346-3 and at page 64 of the printed act as prepared by the Secretary of State said section is amended as aforesaid.

QUESTION :—Does Amended Senate Bill No. 336 take precedence over Amended Substitute House Bill No. 382 in fixing the salaries and classifying the Referees of the Board of Review?

Section 4 of Amended Substitute House Bill No. 382, 98th General Assembly (page 73 of the printed act as prepared by the Secretary of State) provides in part as follows:

* * * On December 31, 1949, the adjustments and increases in salaries and wages of employees as provided in House Bill 227 of the 95th General Assembly, in House Bill 495 of the 97th General Assembly, and in House Bill 503 of the special session of the 97th General Assembly, shall expire and terminate, any provisions of Amended House Bill 654 passed by the 98th General Assembly on July 15, 1949, to the contrary notwithstanding.

On and after January 1, 1950, that part of the appropriations made in said Amended House Bill 654 for personal service pertaining to compensation of employees, except for those employees not coming within the provisions of this Act, shall be expended only in accordance with the classifications and rates of pay as provided in this Act, any provisions of said Amended House Bill 654 of the 98th General Assembly to the contrary notwithstanding. * * *

Amended House Bill No. 654, 98th General Assembly (beginning at page 128 of the printed act as prepared by the Secretary of State) relating to general appropriations for the biennium beginning July 1, 1949, and ending June 30, 1951, appropriates funds to continue in effect increases granted to and received by employees under the salary and wage adjustment provisions of House Bill No. 484 of the 96th General Assembly, House Bill No. 495 of the 97th General Assembly, Senate Bill No. 348 of the 97th General Assembly and House Bill No. 503 of the 97th General Assembly.

No specific monetary appropriation is made to the Bureau of Unemployment Compensation for salaries, as all operating costs and expenses are paid from funds received by the State of Ohio from the Federal Government. Section 2 of the Amended House Bill No. 654, 98th General Assembly, contains the following provision appropriating all revenues received from the Federal Government for the purpose for which allotted.

* * * All revenues received from the federal government by the state of Ohio, or any of its departments or divisions, and any receipts or any collections made for and on behalf of the United States government are hereby appropriated for the purpose for which allotted or collected.
* * *

The Federal appropriation includes funds for the payment of salaries and any increases that may be payable under the Ohio law.

QUESTION:—Assuming that the provisions of Amended Senate Bill No. 336, 98th General Assembly, establishes the base salaries of the Referees of the Board of Review, are they entitled, in addition to said base salaries, to the various increases referred to in the current budget (Amended House Bill No. 654, 98th General Assembly) which continues in effect increases previously enacted: If so, do these increases continue in effect to June 30, 1951, and if not, when do they terminate?

Section 1346-3 of the General Code, as amended by Amended Senate Bill No. 336, 98th General Assembly, provides in part as follows:

* * * The board, subject to the civil service laws of this state and to the approval of the governor, shall appoint and fix the compensation of such referees as may be deemed necessary, but the base salary so fixed for any such referee shall not be less than five thousand nor more than six thousand dollars per annum and any promotions of such referees or any increase in compensation of such referees as may be ordered by the board subject to classification as may be made by the civil service commission. * * *

It appears from the foregoing that it will be necessary to set a salary schedule of various rates for the Referees ranging from a minimum base salary of \$5,000.00 per annum to a maximum base salary of \$6,000.00, as the language used apparently contemplates promotions and increases in compensation within the established limitations.

QUESTION:—Is it necessary for the Governor, as well as the Civil Service Commission, to approve the schedule of rates to be set up within the salary limits set forth in Amended Senate Bill No. 336? After the Board of Review has appointed and fixed the compensation of Referees with the approval of the Governor and subject to the Civil Service Law, is it necessary to obtain the approval of the Governor thereafter, in the event that promotions of said Referees or any increases in compensation of said Referees is ordered by the Board, subject to classifications made by the Civil Service Commission?"

The 98th General Assembly passed three separate enactments which contained provisions amending Section 1346-3, General Code. The first of these was Amended Senate Bill No. 140 which was passed as an emergency measure on March 7, 1949, approved by the governor March 11, 1949, and filed in the office of the secretary of state on the same date. The effect of this amending enactment was to increase the salary of the members of the Unemployment Compensation Board of Review from \$6,000,000 to \$8,000,000 per annum. The second was Amended Senate Bill No. 336, the legislative history of which you have recited in your letter. The third was Amended Substitute House Bill No. 382, the legislative history of which you also have recited in your letter.

There can be no doubt that either Amended Senate Bill No. 336 or Amended Substitute House Bill No. 382 amended and supplemented Amended Senate Bill No. 140 for both of these enactments were in all respects subsequent to the latter act. It is a general rule that in so far as two statutes are irreconcilable, effect must be given to the one which

is the later. (State, ex rel. Guilbert, Auditor, v. Halliday, Auditor of Franklin County, 63 O. S. 165.)

It is readily observed that Amended Substitute House Bill No. 382 is irreconcilable with Amended Senate Bill No. 336, for the former, besides amending Section 1346-3, General Code, enacted new sections 486-7a, 486-7b and 486-7c, General Code, providing for the standardization of all positions, titles, classes, salaries and wages of employees in the state service, while the latter amends Section 1346-3 relative to the salary and classification of referees and certain employees of the Unemployment Compensation Board of Review.

The question then resolves itself into a determination of which of these two enactments are the later in point of time. In 1937 this office considered a question of which of two amended Senate bills, passed by the same general assembly (92nd General Assembly), prevailed where one was passed by the legislature as an emergency measure on March 9, 1937, and the other, not passed as an emergency measure, was passed on March 11, 1937, both of which were signed by the governor on March 25, 1937, but the emergency measure was signed subsequent to the latter act and was filed with the secretary of state three days subsequent to the filing of the former. This opinion is reported as opinion number 543 in Opinions of the Attorney General for the year 1937, Volume 1, at page 905. The conclusions reached in that opinion are embodied in the second branch of the syllabus, which reads as follows:

“Sections 486-32 and 486-69 of the General Code as enacted in Amended Senate Bill No. 81, passed as an emergency measure by the 92nd General Assembly, effective when signed by the Governor on March 25, 1937, are amended by the enactment of Amended Senate Bill No. 253, passed by the 92nd General Assembly March 11, 1937, signed by the Governor March 25, 1937, and filed in the office of the Secretary of State on March 26, 1937, effective as of June 25, 1937. Amended Senate Bill No. 253 repeals Sections 486-32 and 486-69 of the General Code, as enacted in Amended Senate Bill No. 81, effective March 25, 1937, as of June 25, 1937.”

It will be evident from a reading of the foregoing opinion that I reached the above conclusion after a thorough analysis of the statements of various courts, including our Supreme Court, which had been written up to that date. I based my conclusion in that opinion upon the apparent intent of both the legislature and the governor which is summarized in

the next to the last paragraph on page 913 of the report, and reads as follows:

“The logic of the situation would seem to show that it was the intention of both the General Assembly and the Governor that Amended Senate Bill No. 81 should act only as a stop-gap measure and should operate only until the general legislation on the same subject matter could go into effect. This, at least, is the view I am taking on this matter.”

Since the rendition of that opinion the Supreme Court of Ohio in the case of *State, ex rel. Bishop v. Board of Education of Mt. Orab Village School District*, 139 O. S. 427, 40 N. E. (2nd) 913, had occasion to determine the date of passage of the so-called “Ohio Teachers Tenure Act” (Sections 7690-1 to 7690-8, General Code, 119 Ohio Laws, 451,) passed by the General Assembly of Ohio May 15, 1941, and approved by the governor June 2, 1941, effective September 1, 1941. The second branch of the syllabus in that case reads:

“The words ‘at the time of the passage of this act,’ as used in the first proviso of Section 7690-2, General Code, mean the date upon which the act was approved and signed by the Governor, viz., June 2, 1941.”

In the case of *The Patterson Foundry & Machine Co. v. The Ohio River Power Co.*, 99 O. S. 429, the first branch of the syllabus reads:

“The date of the passage of an act is the date of the last action required to complete the process of legislation and give the bill the force of law.”

Based upon the foregoing, it appears eminently clear that Amended Substitute House Bill No. 382, passed as an emergency measure, was enacted into law upon its being approved by the governor. The remaining question to be determined is whether or not Amended Senate Bill No. 336 is a subsequent enactment. Article II, Section 16, of the Ohio Constitution provides in part:

“Every bill passed by the general assembly shall, before it becomes a law, be presented to the governor for his approval. If he approves, he shall sign it and thereupon it shall become a law and be filed with the secretary of state. If he does not approve it, he shall return it with his objections in writing, to the house in which it originated, which shall enter the objections at large upon its journal, and may then reconsider the vote on its passage.

If three-fifths of the members elected to that house vote to repass the bill, it shall be sent, with the objections of the governor, to the other house, which may also reconsider the vote on its passage. If three-fifths of the members elected to that house vote to repass it, it shall become a law notwithstanding the objections of the governor * * *."

When the foregoing constitutional provision is construed in connection with the Patterson case, *supra*, it is apparent that Amended Senate Bill No. 336 was enacted into law on the 29th day of July, 1949. The date of enactment of this Senate bill being on the next day following the approval of the House bill by the Governor, it is the later act and will upon its effective date supersede the provisions of the emergency legislation.

Pertinent to your second question, the first sentence of the fifth paragraph of Section 1346-3, General Code, as amended by Amended Senate Bill No. 336, effective October 29, 1949, reads as follows:

"The board, subject to the civil service laws of this state and to the approval of the governor, shall appoint and fix the compensation of such referees as may be deemed necessary, but the base salary so fixed for any such referee shall not be less than five thousand nor more than six thousand dollars per annum and any promotions of such referees or any increase in compensation of such referees may be ordered by the board subject to classifications as may be made by the civil service commission."

Prior to the enactment of Amended Substitute House Bill No. 382, this same sentence, contained in Amended Senate Bill No. 140 and previous enactments read as follows:

"The board, subject to the civil service laws of this state, and to the approval of the governor, shall appoint and fix the compensation of such referees as may be deemed necessary, with power to take testimony in any appeals coming before the board."

The compensation fixed by the board, pursuant to this provision of the prior law has been interpreted as the base salary of such referees and the salary and wage adjustment provisions of the appropriation acts of the 95th, 96th, 97th and 98th General Assemblies have been applied thereto. It may be readily seen that this interpretation is correct when it is considered that the federal appropriation includes funds for the payment of salaries and any increases that may be payable under Ohio law; that this

provision made no mention of increases in the compensation so established, and that the provisions of the appropriation acts providing for salary and wage increases defined "base salary" to mean the base salary or wage received by an employee on a certain date, or on the date of his subsequent appointment, exclusive of compensation allowed or paid as maintenance, and declare the same applicable to the annual salaries and wages of all employees in the service of the state to which appropriations for salaries and wages were made by such appropriation acts, including those employees receiving compensation from the various rotary accounts, both state and federal.

It will be noted, however, that the new amendment to the section of the code, effective October 29, 1949, by its express provision designates a base salary of not less than five thousand nor more than six thousand dollars and further specifically provides that :

"any promotions of such referees or *any increase in compensation* of such referees may be ordered by the board subject to classification as may be made by the civil service commission."

(Emphasis added.)

This amendment would indicate a legislative intent to specifically provide for increases in compensation of such referees since the prior enactments of said section of the code were silent as to such increases. The increases having heretofore been provided by acts containing general statutory provisions the problem of the effect of special statutory provisions upon general statutory provisions is presented.

In 37 O. Jur. at page 407, under the title "Statutes", Section 148, it is stated :

"It is well settled that a special law repeals an earlier general law to the extent of any irreconcilable conflict between their provisions ; or, speaking more accurately, it operates to engraft on the general statute an exception to the extent of the conflict.
* * *"

and Section 150 at page 409 reads :

"As a general rule, general statutory provisions do not control, or interfere with, specific provisions. To the contrary, to the extent of any irreconcilable conflict, the special provision generally operates as an exception to the general provision, which, accordingly, must yield to the former. The special provision has been declared to modify, qualify, limit, restrict, ex-

clude, supersede, control, govern, and prevail over the general provision, although the words of the general act, standing alone, would be broad enough to include the subject to which the more particular provisions relate. The general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."

To the same effect see *The Acme Engineering Co. v. Jones, Admr.*, 150 O. S. 423, 83 N. E. (2nd) 202, which approves and follows *State, ex rel. Steller, et al., Trustees, v. Zangerle, Aud.*, 100 O. S. 414, and paragraph 1 of the syllabus in *State, ex rel. Elliott So. v. Connar, Supt.*, 123 O. S. 310.

It may be argued that the above quoted phrase of the newly enacted Section 1346-3, General Code, is not in conflict with the salary and wage adjustment provisions of the appropriation acts since the legislature has used the words "any" and "may" instead of "all" and "shall" and therefore the reference to salary increases are permissive increases supplementary to the increases provided in the appropriation measures. I am inclined to the view that such a construction would be not only iniquitous but would be reading into the act a provision which is not incorporated in its language. The absurdity of such a construction becomes apparent when it is pointed out that practically all other state positions, offices and employments have been classified and assigned to specified pay ranges and salary increases provided in the appropriation measures repealed as of December 31, 1949, by the same legislature that enacted Amended Senate Bill No. 336. To say that such increases continued as to such referees and that in addition thereto they may have salary increases awarded them by the board would place them in a favored employment category.

I take the position that the legislature having established a method of fixing a base salary for such referees, not controlled by Amended Substitute House Bill No. 382, it was compelled to provide for increases in that salary. These increases were made discretionary with the Unemployment Compensation Board of Review by the use of permissive language and further made subject to classifications by the Civil Service Commission so as to place the total compensation received by such referees on a parity with other state employees. I am further inclined to the view that the plain and obvious import of the word "any" as used in said section was to extend the method therein specified to all salary increases for such referees. Having determined that the discretionary method pro-

vided for salary increases would apply to all such increases it becomes evident that such provision would be in conflict with the general provisions of the budgetary acts which automatically grant salary increases.

Your last two questions require a further construction of the first sentence of the fifth paragraph of Section 1346-3, General Code, quoted in your letter as well as in the discussion of your second question herein. For comparative purposes your attention is called to the wording of this same sentence as contained in Amended Senate Bill No. 140 and previous enactments as quoted above and to the same sentence as contained in Amended Substitute House Bill No. 382, which reads as follows:

“The board, subject to the civil service laws of this state and to the approval of the governor, shall appoint such referees as may be deemed necessary, with power to take testimony in any appeals coming before the board.”

From the varied wording of these sentences, when considered along with other statutes requiring gubernatorial approval of appointments it would appear that the object of the legislature was to require only the appointments to be so approved. However, it is a general rule of statutory construction that it is presumed that the legislature, in phrasing a statute, knows the ordinary rules of grammar, and consequently that the grammatical reading of a statute gives its correct sense. (37 O. Jur. 561.) Analyzing this sentence, as embodied in Amended Senate Bill No. 336, it is evident that the sentence embodies three sentences connected by the conjunctives “but” and “and”. These three sentences, without the conjunctives, would read:

“The board, subject to the civil service laws of this state and to the approval of the governor, shall appoint and fix the compensation of such referees as may be deemed necessary. The base salary so fixed for such referee shall not be less than five thousand nor more than six thousand dollars per annum. Any promotions of such referees or any increase in compensation of such referees may be ordered by the board subject to classification as may be made by the civil service commission.”

Further, the first of the above sentences should more logically be phrased as follows:

“The board shall appoint and fix the compensation of such referees as may be deemed necessary, subject to the civil service laws of this state and to the approval of the governor.”

It is evident from the foregoing breakdown of the sentence under consideration that the appointment and fixing of compensation can not be separated and that both duties imposed upon the board are subject to the approval of the Governor. It further becomes apparent that the last part of said sentence which deals with promotions and increases in compensation makes no reference to gubernatorial approval but is qualified only to the extent that they be subject to classifications made by the Civil Service Commission.

You are advised that it is my opinion that:

1. Amended Senate Bill No. 336 of the 98th General Assembly will, upon its effective date, supersede the provisions of Amended Substitute House Bill No. 382 of the same general assembly in fixing the salaries and classifying the referees of the Unemployment Compensation Board of Review.

2. The various salary increases referred to in Amended House Bill No. 654, 98th General Assembly, will not be applicable to the salaries of the referees of the Unemployment Compensation Board of Review subsequent to the effective date of Amended Senate Bill No. 336 of the 98th General Assembly.

3. It is necessary for the Governor to approve the appointments and salaries of referees appointed by the Unemployment Compensation Board of Review, which appointments and salaries are subject to the civil service laws of the state.

4. The approval of the Governor is not necessary for any promotions or increases in compensation of referees appointed by the Unemployment Compensation Board of Review.

Respectfully,

HERBERT S. DUFFY,
Attorney General.