

be necessary for such enjoyment and the protection of such stream from erosion, contamination or deposit of sediment."

Section 30 of said law (now section 3203-7 G. C.) applying to leases, says:

"In each lease there shall be a special reservation to the state of all oil, gas, coal and other minerals * * *."

It will be observed that Am. S. B. No. 75 is entirely silent upon the subject of reservations. The act provides that the lessee may

"pay to the county treasurer of said county the full amount of the value of such lands, as appraised prior to March 9, 1904."

There is no showing that the appraisal referred to, did not, in arriving at the value of such lands, include everything under, in, and upon the same. This being true, it could hardly have been the intention of the legislature to cause the lessee to pay to the county treasurer "the full amount of the value of such lands," and then to give him a deed which would so operate as to deny him the right to exert full ownership and control over those lands.

It is also significant that, although the Garver act provides a method whereby lessees of school and ministerial lands may apply for, and receive, fee simple titles, the legislature, by enacting Am. S. B. No. 75, provided a special method to authorize the surrender of leases for school lands in Homer township, Morgan county. The latter act is a special act, and contains no evidence of any legislative intention that the provisions of the Garver act—the general—should be read into and made a part of it.

Hence, it is believed that the provisions of section 36 of the Garver act (Sec. 3203-13 G. C.) have no application to deeds executed under authority of Am. S. B. No. 75, 109 O. L. 67.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2319.

CIGARETTES—COPY OF LAW REGULATING SALE MUST BE POSTED IN CONSPICUOUS PLACE—FINES COLLECTED IN PROSECUTIONS UNDER SAID SECTION 12680-1 G. C. (109 O. L. 223)—HOW DISTRIBUTED.

Fines collected in prosecutions had under supplemental section 12680-1 G. C. (Senate Bill No. 219, 109 O. L. 223) are to be distributed according to the provisions of sections 5900, 5901 and 12683 G. C.

COLUMBUS, OHIO, August 12, 1921.

HON. J. T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your letter requesting an opinion reads thus:

"On May 16, 1921, a supplemental section (12680-1 enacted by the general assembly), was filed with the secretary of state.

I desire an opinion from your department as follows:

In case of a conviction for a violation of any provision under this supplemental section 12680-1, will the fine collected be disposed of under the provision of section 12683 G. C.? If not disposed of under section 12683 G. C., under what section shall we dispose of same?"

Section 12680-1 G. C., found in S. B. No. 219, passed April 29, 1921, reads:

"Whoever, being engaged in the business of trafficking in cigarettes, cigarette wrappers or a substitute for either, or cigars or tobacco, fails to post and keep constantly displayed in a conspicuous place in the building where such business is carried on, a copy of section 12965 of the General Code, regulating the sale of tobacco and cigarettes to minors, shall be fined not less than fifty dollars nor more than one hundred dollars, and for each subsequent offense shall be fined not less than one hundred dollars nor more than two hundred dollars. Copies of such law shall be obtained from the county auditor.

The secretary of state shall distribute copies of the above mentioned section of the General Code, to the county auditors of the various counties, who, in turn, shall distribute the same to any dealer in cigarettes or tobacco in the county who has made application therefor."

This section is declared in the title of the act to be a supplement to section 12680 of the General Code of Ohio. It makes no statement as to the disposition of the fines collected in prosecutions had for violation of its provisions. It is, however, a supplemental section to a section of a system of laws regulating the trafficking in cigarettes, being sections 12680 to 12683, inclusive of chapter 6 of title I, penal code, offenses against public health, of the General Code of Ohio.

Section 12683 G. C. reads:

"In case of a conviction for the violation of any provision of the next three preceding sections, the person who furnished the information from which such conviction resulted shall be paid one-half of the fine collected."

Manifestly, if section 12680-1 G. C. cannot be found to be a part of section 12680, but is a new or other section, the provisions of section 12683 G. C. cannot be made to apply to the distribution of one-half of the fines collected thereunder to the informant causing conviction, since section 12680-1 G. C. is not one of the "three preceding sections" described in section 12683.

Section 5900 G. C. provides that "the revenues and fines collected under the provisions of this chapter and the penal laws relating to cigarettes, shall be distributed as follows, to-wit; in each county * * *" Section 5901 G. C. provides for a further distribution of the fees and fines to certain other political divisions.

In supplemental section 12680-1 G. C., being a penal law, there can be no doubt that the fines going to the state, county, city, etc., are provided for expressly by section 5900 G. C. Under section 5899 G. C. the informer gets one-half of the assessment and penalty recovered for selling, etc., cigarettes without having paid the fifty dollars assessment required to legally engage in such trafficking.

This will dispose of your question in so far as the disposition of the fines that go to the state, county, etc., is concerned, that is, one-half of such fines are to be distributed in this manner. This conclusion then leaves the distribution of the remaining one-half of the fines collected in such cases, or in cases where information has been given by someone which resulted in conviction.

A rule of construction found in *Cincinnati vs. Connor*, 55 O. S. 82, in the syllabus, is as follows:

“Where, in a code or system of laws relating to a particular subject, a general policy is plainly declared, special provisions should, when possible, be given a construction which will bring them in harmony with that policy.”

Applying this rule, it would appear that section 12680-1, being a section of a penal code, offenses against public health, and one of a series applying to trafficking in cigarettes, should be so construed that one-half of the fines produced by the information given by the person responsible for conviction should go to such person, even though no express statement of the section of the law directs. The rule of strict construction of penal laws does not apply to this side of the question since that rule is invoked for the benefit of the accused.

This statute is silent on the details of the expense of furnishing copies of section 12965 G. C. to dealers for display, and silent as to form, size, place and general character of such display, though it seems to have been the purpose of the legislature in passing this law that said section 12965 should be prominently displayed with a certificate for the sale of cigarettes.

In Opinions of the Attorney-General, 1920, Vol. I, page 415, a question similar to the one you ask was discussed, from which the following is quoted:

“In the case of *City of Cincinnati vs. Taft*, 63 O. S. 163, Chief Justice Shauck in his opinion in part said:

‘The act before us is supplementary to that whose validity was * * * affirmed. Counsel for the plaintiff are aware of the familiar rule that supplementary acts are, in their interpretation, subject to the same rules as those which they supplement, to the end that the entire body of legislation so related may operate harmoniously. Nor do we understand them to deny that this rule embraces all constitutional questions which may have been involved in the original act.’

In the case of *Miller vs. Miller et al.*, 21 O. C. C. (n. s.) 181, it was held:

‘Where the legislature in the enactment of a law states that it is to supplement a certain statute, it thereby becomes a part of that statute, even though separately numbered, and another previously enacted law applying to cases arising under the original statute applies also to cases arising under the supplementary section as well.’

It will be observed that in effect the operation of a supplemental section is very similar to an amendment. As stated by the lexicographers, ‘to supplement’ means ‘to fill up or supply by additions; to add to or something added to a thing to complete it.’ In fact the authorities generally concede that a supplement to a statute is a form of amendment and the courts have frequently held that an amended section is to be treated as if it were a part of the original act.”

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.