

687.

APPROVAL, BONDS OF SUMMIT COUNTY—\$221,050.00.

COLUMBUS, OHIO, July 29, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

688.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN JEFFERSON COUNTY.

COLUMBUS, OHIO, July 29, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

689.

HOUSE BILL NO. 74—SECTION 710-17a, GENERAL CODE, ENACTED THEREIN VALID—REPEALS BY IMPLICATION PRE-EXISTING LAW WHERE INCONSISTENT THEREWITH.

SYLLABUS:

1. Section 710-17a of the General Code, as enacted in House Bill No. 74 of the 88th General Assembly, is a piece of original and independent legislation, complete in itself, and is a valid statute supplemental to supplemental Section 710-17 of the General Code, and will so appear in the session laws and in any publication of the General Code.

2. Section 710-17a, as enacted in House Bill No. 74 by the 88th General Assembly, repeals by implication any pre-existing law with which it is inconsistent to the extent that it is inconsistent therewith, for the reason that it is a later expression of legislative will.

COLUMBUS, OHIO, July 29, 1929.

HON. MYERS Y. COOPER, *Governor of Ohio, Columbus, Ohio.*

MY DEAR GOVERNOR:—This will acknowledge the receipt of your request for my opinion respecting the validity of Section 710-17a, General Code, as enacted in House Bill 74 of the Eighty-eighth General Assembly.

House Bill No. 74 is an act entitled "An Act to amend Sections 710-17a, 710-19,

* * * and 710-174 of the General Code relative to the organization and supervision of banks." The act consists of two sections, and reads in part as follows:

"Be it enacted by the General Assembly of the State of Ohio:

Section 1. That Sections 710-17a, 710-19, * * * and 710-174 of the General Code, be amended to read as follows:

Sec. 710-17a. * * *

Sec. 710-19. * * *

* * *

Sec. 710-174. * * *

Section 2. That original Sections 710-17a, 710-19, * * * and 710-174 of the General Code be, and the same are, hereby repealed."

Section 710-17a, as contained in said House Bill No. 74, purports to provide a schedule as a basis for determining the annual fees to be paid to the Superintendent of Banks for the support of the State Department of Banks by each bank which, under the laws of Ohio, is subject to inspection and examination by the Superintendent of Banks and is authorized to do business, or is in process of voluntary liquidation on the day preceding the first Monday in May of each year.

Prior to the enactment of said House Bill No. 74, these fees had been fixed by the terms of Section 710-17, General Code. Said Section 710-17, General Code, not only provides a schedule of fees to be paid to the Superintendent of Banks, but also the time when such fees shall be paid and the use to which the fees shall be put, to-wit, "for the maintaining of the Department of the Superintendent of Banks and the payment of expenses incident thereto, and especially the expenses of inspection and examination."

The fees to be paid the Superintendent of Banks, as provided for in said section, are to be paid by several classes of persons, associations, or corporations, including banks, foreign trust companies, railroad, steamship and express companies. For the purpose of classification of the persons who shall pay the fees, the time when fees shall be paid and statement of the purposes to which the fees are to be put, the Legislature divided Section 710-17, General Code, into several paragraphs denominated (A), (B), (C), (D) and (E). These paragraphs, however, are not separate sections of the Code but simply paragraphs of the said Section 710-17, General Code, which, including these several paragraphs, is one entire section of the Code.

Inasmuch as there was no section of the General Code designated as Section 710-17a at the time of the enactment of said House Bill 74, and the additional fact that the subject treated of in the newly enacted Section 710-17a, General Code, is the same as that dealt with in clause (A) of Section 710-17, General Code, it seems apparent from the language used in the enacting and repealing clause of said House Bill No. 74 that the Legislature intended to repeal said clause (A) of Section 710-17, General Code, and enact in its place Section 710-17a, General Code, as set out in the act.

The substantial legal question involved in determining the force and effect of the action of the Legislature with respect to the fees to be paid by banks in enacting said House Bill No. 74, is whether the legal effect of the action of the Legislature amounted to the accomplishment of what clearly appears to have been its intention in enacting the bill, and, if so, how the intended purpose has been accomplished.

While the cardinal rule for the construction of legislative acts and the object of all judicial investigation in the construction of statutes is to ascertain and give effect to the intent of the law-making body which enacted it, that intent is to be sought first of all in the language employed, and the action taken, in the light of well established rules of interpretation and constitutional injunctions. The question is not what did

the General Assembly intend to accomplish by its enactment, but what did it actually enact and what is the meaning of what it did enact. *Slingluff et al vs. Wcover*, 66 O. S. 621.

Section 16 of Article II of the Constitution of Ohio contains the following language:

“ * * * and no law shall be revived, or amended unless the new act contains the entire act revived, or the section or sections amended, and the section or sections so amended shall be repealed.”

The Supreme Court of Ohio in an early case, *Lehman vs. McBride*, 15 O. S. 573, 602, after referring to the clause of the constitution above quoted, said:

“As we understand this clause of the constitution, it requires, in the case of an amendment of a section or sections of a prior statute, that the new act shall contain, not the section or sections which it proposes to amend, but the section or sections in full, as it purports to amend them. That is, it requires, not a recital of the old section, but a full statement, in terms of the new one.”

House Bill No. 74 does not purport in terms to amend Section 710-17, General Code, and does not contain the terms of a proposed amended Section 710-17, General Code; nor does it purport to repeal Section 710-17, General Code. We must conclude, therefore, that Section 710-17, General Code, remains intact and is not repealed or amended except as any language of Section 710-17a which is inconsistent with the provisions of Section 710-17 may, if Section 710-17a is a valid enactment, repeal by implication those provisions of Section 710-17, General Code, with which it is inconsistent.

Section 710-17a, as contained in said House Bill No. 74, is an expression of legislative intent. It is the enactment of a law. By its terms the fees to be paid to the Superintendent of Banks when computed on the basis of the schedule provided for therein will be somewhat different than those fixed by clause (A) of Section 710-17, General Code, and to that extent its provisions are inconsistent with the earlier statute. I have no doubt the Legislature intended by the provisions of Section 710-17a to change and supersede kindred provisions in the present existing Section 710-17, General Code, neither have I any doubt that the Legislature intended, by enacting Section 710-17a in the manner it was done, to expressly repeal paragraph (A) of Section 710-17, General Code, which, as we have seen, was not accomplished. The fact, however, that parts of Section 710-17, General Code, with which the provisions of Section 710-17a are inconsistent, were not expressly repealed, does not serve to invalidate the latter section, but, on the other hand, makes the provisions of Section 710-17a effective in the place of inconsistent provisions of the earlier statutes, as being a later expression of legislative intent, and does in effect repeal the former provisions by implication. Under similar circumstances, the Supreme Court, in the case of *Lehman vs. McBride*, *supra*, said:

“But we are satisfied that the clause of the constitution which requires that ‘the section so amended shall be repealed’ is merely directory to the General Assembly; and that a statute cannot be judicially declared invalid because that direction has not been complied with.”

In Lewis' *Sutherland on Statutory Construction*, 2nd Edition, Section 239, it is said:

“Where an act does not purport to be amendatory, but is enacted as or-

iginal and independent legislation, and is complete in itself, it is not within the constitutional requirements as to amendments though it may, by implication, modify or repeal prior acts or parts thereof."

A large number of authorities, including the case of *Lehman vs. McBride, supra*, are cited in support of the text.

In *Scarights' Estate*, 163 Pa. St., 210, 217; 29 Atl. 800, where a clause of the constitution of the State of Pennsylvania, almost identical with the clause of the Ohio Constitution quoted above, was under consideration, it is said:

"The constitution does not make the obviously impractical requirement that every act shall recite all other acts that its operation may incidentally affect, either by way of repeal, modification, extension or supply. The harmony or repugnance of acts not passed with reference to the same subject can only be effectually developed by the clash of conflicting interest in litigation and the settlement of such questions belongs to the judicial not the legislative department."

Section 710-17a, General Code, as contained in House Bill 74, is complete in itself and should be considered as an original and independent legislative expression and as having the force of a law, although it purports to be amendatory of a section of the Code which did not exist. It repeals by implication any prior existing law with which it is inconsistent, to the extent that it is inconsistent therewith for the reason that it is the later expression of legislative will.

The part of House Bill No. 74 which purports to amend and repeal existing Section 710-17a of the General Code, is of no force and effect for the reason that no Section 710-17a was in existence at the time of the enactment of the bill.

The Attorney General of Ohio by statute, Section 342-1, General Code, is constituted the codifier of the laws of the state. It is his duty, when an act of a general or permanent nature is passed by the General Assembly and has been enrolled and signed by the necessary officers and before it is filed with the Secretary of State, to examine said act. If there is no sectional number in the act or such numbering is not in conformity with the General Code, he shall give each section of the act so passed its proper sectional or supplemental sectional number and the number so designated by him shall be the official number, and such number so placed shall be published in the session laws and in any publication of the General Code. In giving an official supplemental number, the Attorney General is directed by Section 342-2, General Code, to give the original number followed by a dash, and a consecutive subsectional number beginning with the figure one. It is provided by said section that "the letters of the alphabet shall not be used except for a supplement to a supplemental section."

In House Bill No. 74, the Legislature itself gave to the several sections of the Code therein enacted a Code number. The Attorney General did not change the number given by the Legislature to Section 710-17a, General Code. Said section is designated by a small letter a, thus indicating that it is supplemental to a supplemental section (Section 710-17, General Code).

In consideration whereof, I am of the opinion, in specific answer to your question, that Section 710-17a of the General Code, as enacted in House Bill No. 74 of the 88th General Assembly, is a piece of original and independent legislation, complete in itself, and is a valid statute supplemental to supplemental Section 710-17, General Code, and will so appear in the session laws and in any publication of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.