

477.

FEES—CONFLICT OF STATUTES—AMENDED SENATE BILL NO. 284,  
DISCUSSED.

## SYLLABUS:

1. *Where an act of the legislature fails to repeal in terms an existing statute on the same subject matter, it must be held to repeal the former statute by implication if the later act is in irreconcilable conflict with the former.*

2. *Upon the effective date of Amended Senate Bill 284, which is an emergency act, it is the duty of the Secretary of State to charge the fees therein provided, although Sections 8728-1 to 8728-10, inclusive, of the General Code of Ohio, dealing with the same subject matter, will not be specifically repealed until the effective date of Amended Senate Bill No. 11, which becomes effective June 8, 1927.*

3. *As to fees not provided in the schedule in Amended Senate Bill 284, it is the duty of the Secretary of State to charge in accordance with the schedule provided in Sections 8728-1 to 8728-10, inclusive, of the General Code, until the effective date of the repeal of such sections.*

COLUMBUS, OHIO, May 11, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication as follows:

“Fees to be charged and collected by the Secretary of State for filing the various papers relating to corporations having non par stock are provided in Sections 8728-1 to 8728-10, inclusive, of the General Code of Ohio. These sections are specifically repealed by Amended Senate Bill 11 (General Corporation Act) which becomes effective June 8, 1927.

We are advised this morning that Senate Bill 284, which provides for fees to be collected by the Secretary of State for official services, is to be allowed to become law without the signature of the Governor. As this bill carries an emergency clause it will become effective tonight at midnight. While this bill specifically repeals the present Section 176 of the General Code, it does not specifically repeal the above mentioned non par sections.

Will you kindly advise the Secretary of State whether he shall collect fees for the filing of papers relating to corporations with non par stock prior to June 8, 1927, under Senate Bill 284 or under Sections 8728-1 to 8728-10, inclusive, of the General Code?

The General Corporation Act eliminates the filing of certificates of subscription, payment, reorganization and assets relating to non par stock companies. Senate Bill 284 does not provide fees for filing these papers. Kindly advise whether or not the Secretary of State shall charge and collect the fees provided in Sections 8728-1 to 8728-10, inclusive, of the General Code, for filing such certificates until the 8th day of June, 1927, at which time Amended Senate Bill 11 becomes effective.”

As you point out, the fees provided under Amended Senate Bill 284, relative to the filing and recording of certain papers relating to corporations with no par value stock, are different from those now in effect under the provisions of Sections 8728-1 to 8728-10, inclusive, of the General Code. These latter sections are specifically repealed by Amended Senate Bill 11, which is the general corporation act, but that act does not become effective until June 8, 1927.

Assuming, therefore, that Senate Bill 284, which is an emergency act, will become effective prior to the effective date of the repeal of these sections, there arises a situation in which is found two sections of the General Code purporting to cover the same specific subject matter and essentially different in terms. Your inquiry is as to the amount properly chargeable during this period in which the two inconsistent provisions are apparently operative.

It is a well known rule of statutory construction that an earlier statute may be repealed by implication by a subsequent enactment dealing specifically with the same subject matter and irreconcilable therewith. While repeals by implication are not favored in law and every effort will be made by the courts to harmonize the language of the legislature, where there exists an absolute inconsistency so that there is no possibility of two enactments both being operative, the doctrine is universal that the later enactment will prevail and the earlier be repealed by implication.

As was said by the Supreme Court of Ohio in the case of Goff et. al., vs. Gates, et al., 87 O. S. 142, in the first branch of the syllabus:

“An act of the legislature that fails to repeal in terms an existing statute on the same subject-matter must be held to repeal the former statute by implication if the later act is in direct conflict with the former, or if the subsequent act revises the whole subject-matter of the former act and is evidently intended as a substitute for it.”

Many other authorities might be cited to the same effect.

If, therefore, there is an inconsistency in these sections, it necessarily follows that the later enactment, which is Amended Senate Bill 284, must prevail. An examination of that bill discloses that the fees therein are different from those found in Sections 8728-1 to 8728-10, inclusive. I have no hesitancy, therefore, in holding that where a different fee is prescribed for the same thing in Amended Senate Bill 284, the amount therein provided should be chargeable from the effective date of that bill and that the rates prescribed in Sections 8728-1 to 8728-10, inclusive, would no longer be in effect.

You call my attention to the fact, however, that Amended Senate Bill No. 11, the general corporation act, dispenses with the necessity of filing certain papers now required under the no par act. Amended Senate Bill 284, being a bill to provide for the fees to be paid the Secretary of State for the filing of such papers as will be necessary under the new act, fails to provide any schedule of filing fees for those papers rendered unnecessary by the general corporation act. Obviously, however, until the general corporation act becomes effective, it will be necessary for corporations to proceed under the law as it exists today, irrespective of the fact that the law will be radically changed upon the general corporation act becoming effective. Accordingly, it will be necessary to file these papers for which no filing fee is specified in Amended Senate Bill 284. Since this bill is silent as to these specific filing charges, it follows necessarily that, as to these fees, the provisions of Sections 8728-1 to 8728-10 of the General Code, are still in force and effect and it is your duty to charge the fees therein provided for your services. There can, of course, be a repeal by implication of an inconsistent provision of an earlier statute, which will not affect other provisions of that statute concerning which the latter enactment is silent.

Answering your question specifically, therefore, I am of the opinion that upon Amended Senate Bill 284 becoming effective, it will be your duty to charge the fees therein provided for the services specified, irrespective of the fact that there are inconsistent fees provided in Sections 8728-1 to 8728-10 of the General Code,

which have not as yet been specifically repealed. As to those matters in the latter sections not specifically covered by Amended Senate Bill 284, it is your duty to charge the fees provided in Sections 8728-1 to 8728-10, inclusive, until the effective date of the repeal thereof.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

478.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN CARROLL, CLERMONT, COLUMBIANA, LOGAN, MEIGS, PORTAGE AND TRUMBULL COUNTIES.

COLUMBUS, OHIO, May 11, 1927.

*Retirement Board, State Teachers' Retirement System, Columbus, Ohio.*

479.

FAILURE TO PROVIDE—CONVICTION UNDER SECTION 13008, GENERAL CODE—FORFEITURE OF BOND—DISPOSITION OF BOND.

SYLLABUS:

*Where a parent, convicted of failure to provide his or her minor children with the necessary or proper home, care, food or clothing in violation of Section 13008, General Code, after conviction and before sentence, enters into a bond to the State of Ohio, conditioned as provided in Section 13010, General Code, and the conditions of said bond are broken and the same is forfeited, the proceeds collected under such forfeiture should be paid to the trustee appointed by the court under the provisions of Section 13010, and should be expended under the court's direction by such trustee, for the maintenance of the children of such parent under sixteen years of age.*

COLUMBUS, OHIO, May 11, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—I am in receipt of your communication, requesting my opinion in answer to the following question:

"A father is charged with non-support of his children, the affidavit being filed under Section 13008 of the General Code. After conviction he is permitted to give bond in a sum fixed by the Court at not less than \$500.00 as provided by Section 13010 G. C. If the condition of his bond is not met and the same is forfeited and the sureties of the bond pay the amount into court, what disposition should be made of the money thus collected."

Sections 13008 and 13010, General Code, read as follows: