

2432

NATURAL RESOURCES, DIRECTOR OF THE DEPARTMENT OF—SALARIES—AM. SUB. H. B. 382, 98th GENERAL ASSEMBLY—APPROVED BY GOVERNOR JULY 28, 1949—PREVAILS TO EXTENT TWO ACTS ARE IN CONFLICT OVER AM. S. B. 13, 98th GENERAL ASSEMBLY—APPROVED BY GOVERNOR MAY 9, 1949—SECTION 154-10 G. C. AS RE-ENACTED IN AM. SUB. H. B. 382 CURRENTLY EFFECTIVE AS LAW.

SYLLABUS:

Amended Substitute House Bill No. 382, 98th General Assembly, having been approved by the Governor on July 28, 1949, will prevail, to the extent that the two acts are in conflict, over Amended Senate Bill No. 13, 98th General Assembly, approved by the Governor on May 9, 1949; and that Section 154-10, General Code, as re-enacted in Amended Substitute House Bill No. 382, is currently effective as law.

Columbus, Ohio, October 18, 1950

Civil Service Commission of Ohio
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Amended Senate Bill No. 13 created a Department of Natural Resources, which was enacted in the law by the recent session of the General Assembly and approved May 9, 1949, by the Governor, provides in Section 154-10:

“‘The annual salary of the Director of the Department of Natural Resources shall be \$10,000.00. The director with the approval of the Natural Resources Commission shall fix the salaries of the chiefs of the divisions of the department, but in no event shall the salaries of the chiefs of any division transferred to the department be less than the salary paid at the time of the taking effect of this act.’

“Amended substitute House Bill No. 382 providing for the standardization of positions, titles, classes, salaries and wages of employes in the state service adopted into law by the recent session of the General Assembly and approved July 28, 1949, by the Governor also contains Section 154-10 apparently as amended, since it says, ‘the annual salary of the Director of the Department of Natural Resources shall be \$10,000.00’ but does not contain the additional sentence quoted above that the ‘Director

with the approval of the Natural Resources Commission shall fix the salaries of the chiefs of the divisions of the department.'

"The State Civil Service Commission respectfully requests your Opinion as to whether Amended Substitute House Bill No. 382 or Amended Senate Bill No. 13 governs the establishment of the salaries of the chiefs of the divisions of the department of natural resources."

These two acts are obviously irreconcilable as to Section 154-10, General Code, and in such a situation it is a general rule that effect must be given to the one which is the later. *State ex rel. Guilbert v. Halliday*, 63 O. S. 165. Accordingly, it becomes necessary to examine the legislative history of the two enactments here involved to ascertain which is the later.

Amended Substitute House Bill No. 382 was passed by the General Assembly on July 15, 1949, and approved by the Governor on July 28, 1949. By reason of the emergency clause carried in Section 6 of the bill, and Article II, Section 1d, Ohio Constitution, it became effective when approved and signed by the Governor.

Amended Senate Bill No. 13 was passed by the General Assembly on April 20, 1949, approved by the Governor on May 9, 1949, and filed in the office of the Secretary of State on May 12, 1949. Since this bill carried no emergency clause it became effective ninety days after May 12, 1949, by reason of the provisions of Article II, Section 1c, Ohio Constitution.

The question thus becomes one of determining whether an act is to be considered "the later" by reference to the date of passage by the General Assembly, the date of approval by the Governor, or the date it becomes effective as law.

In Horack's *Sutherland on Statutory Construction*, Volume I, 484, 485, Section 2020, the following statement is found:

"* * * However, when two acts of the same session cannot be harmonized or reconciled, that statute which is the latest enactment will operate to repeal a prior statute of the same session to the extent of any conflict in their terms. * * *"

A footnote to the statement quoted above reads as follows:

"As the latest expression of the legislative will prevails, the statute last passed will prevail over a statute passed prior to it,

irrespective of whether the prior statute takes effect before or after the later statute. *People v. Kramer*, 328 Ill. 512, 160 N. E. 60 (1928); *Newbauer v. State*, 200 Ind. 118, 161 N. E. 826 (1928); *State v. Schaumburg*, 149 La. 470, 89 So. 536 (1921); *State v. Marcus*, 34 N. M. 378, 281 Pac. 454 (1929); *Winslow v. Fleischner*, 112 Ore. 23, 228 Pac. 101, 34 A. L. R. 826 (1924); *Buttorff v. York*, 268 Pa. 143, 110 Atl. 728 (1920). * * *

The question thus becomes one of determining the "date of passage" of the two acts here under consideration.

The second paragraph of the syllabus in *State, ex rel. Bishop v. Board of Education*, 139 O. S. 427, reads as follows:

"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 that case the court was considering an act which was not enacted as an emergency and which, therefore, became effective as law ninety days after receiving the Governor's approval and being filed in the office of the Secretary of State. Commenting on this in the opinion, Judge Zimmerman said (pp. 439-440):

"The next matter of inquiry is: What date marks the passage of the act? As has already been observed, the law was enacted by the General Assembly on May 15, 1941, was approved and signed by the Governor on June 2, 1941, and became effective on September 1, 1941.

"In 25 Ruling Case Law, 796, Section 44, the following statement appears:

"The taking effect of an act is a different thing from its passage or enactment. * * * in ordinary usage the passage of an act is well understood as that time when it is stamped with the approval of the requisite vote of both houses in the constitutional manner, signed by the presiding officer of each house, and approved by the chief executive * * *. But its going into effect * * * means its becoming operative as a law.'

"This statement corresponds with the views expressed by this court and by other authorities. See, *Patterson Foundry & Machine Co. v. Ohio River Power Co.*, 99 Ohio St., 429,, 124 N. E., 241; *Cincinnati Traction Co. v. Public Utilities Commission*, 113 Ohio St., 618, 150 N. E., 81; *State, ex rel. City Loan & Savings Co., v. Moore, Clerk*, 124 Ohio St., 256, 258, 177 N. E., 910; *Jemison v. Town of Ft. Deposit*, 214 Ala., 471, 108 So., 397; *State v. Williams*, 173 Ind., 414, 90 N. E., 754, 140

Am. St. Rep., 261, 21 Ann. Cas., 986; *Morse v. State*, 130 Miss., 341, 94 So., 226; *Cordiner v. Dear*, 55 Wash., 479, 104 P., 780; 1 Lewis' Sutherland on Statutory Construction (2 Ed.), 308, Section 172."

Applying these rules to the present situation it becomes clear that the date of passage of Amended Senate Bill No. 13 was May 9, 1949, and that of Amended Substitute House Bill No. 382 was July 28, 1949; and that the latter, being the later expression of the legislative will, must prevail.

Accordingly, in specific answer to your inquiry, it is my opinion that Amended Substitute House Bill No. 382, 98th General Assembly, having been approved by the Governor on July 28, 1949, will prevail, to the extent that the two acts are in conflict, over Amended Senate Bill No. 13, 98th General Assembly, approved by the Governor on May 9, 1949; and that Section 154-10, General Code, as re-enacted in Amended Substitute House Bill No. 382, is currently effective as law.

Respectfully,

HERBERT S. DUFFY,
Attorney General.