

3506

TAX LIEN DATE FOR REAL PROPERTY—TAX YEAR 1954—  
SECTION 5719.01 RC—PROVIDES JANUARY 1, 1954 AS DATE,  
NOT DAY PRECEDING SECOND MONDAY IN APRIL AS PRO-  
VIDED IN SECTION 5719.01 RC, EFFECTIVE OCTOBER 1, 1953.

SYLLABUS :

Section 5719.01, Revised Code, as currently in force and effect, is such section as amended by Amended Senate Bill No. 147, 100th General Assembly, effective October 13, 1953, and the tax lien date for real property for the tax year 1954 is the first day of January, 1954 as therein provided, and not the day preceding the second Monday in April, as provided in Section 5719.01, Revised Code, as amended by Senate Bill No. 361, effective October 1, 1953.

Columbus, Ohio, February 23, 1954

Hon. Edward J. Kirwin, Chairman, Board of Tax Appeals  
Columbus, Ohio

Dear Sir :

I am in receipt of your request for my opinion, which reads as follows :

“For many years prior to the enactment of House Bill No. 1 by the 100th General Assembly, Section 5671 of the General Code provided, among other things, that, ‘the lien of the state for taxes levied for all purposes, in each year, shall attach to all real property subject to such taxes on the day preceding the second Monday of April, annually.’

“By House Bill No. 1, above referred to, which as passed was approved by the Governor under date of February 24, 1953, and which by its terms became effective on October 1, 1953, the provisions of Section 5671, General Code, with a few minor changes, not here important, were enacted as Section 5719.01, Revised Code. Section 5719.01, Revised Code, likewise provided that the lien of the state for taxes levied for all purposes shall attach to all real property subject to such taxes on the day preceding the second Monday in April, annually.

“Thereafter, on July 1, 1953, the General Assembly passed Amended Senate Bill No. 147, the same being an act, ‘to amend Section 5719.01 of the Revised Code, relative to the lien date for real property taxes.’ By this act, which was approved by the Governor on July 14, 1953, and which was filed in the office of the Secretary of State the same day, and became effective October 13, 1953, it is provided that, ‘the lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for the year 1954 and each year thereafter shall attach to all real property subject to such taxes on the first day of January, annually.’ By Section 2 of this act it is provided that original Section 5719.01 of the Revised Code is repealed.

“On August 7, 1953, after the enactment of Amended Senate Bill No. 147 but before it became effective, the General Assembly passed Senate Bill No. 361, the same being an emergency act to amend a number of sections of the Revised Code which were enacted in and by House Bill No. 1, above referred to. And among the sections thereby amended was Section 5719.01, Revised Code. In the enactment of Section 5719.01 for the apparent purpose of making a certain other change in the section therein noted, it is provided that, ‘the lien of the state for taxes levied for all

purposes shall attach to all real property subject to such taxes on the day preceding the second Monday in April, annually.' This provision in Section 5719.01, as the same was enacted by Senate Bill 361, which by its terms became effective October 1, 1953, is identical with that contained in Section 5719.01, Revised Code, as originally enacted in and by House Bill No. 1. In this connection it is noted that in Section 2 of Senate Bill 361 as enacted, it is provided that the existing sections 'as enacted in H. B. No. 1 of the 100th General Assembly, are hereby repealed.'

"For the reason that applications for tax exemptions on real property which are filed with the Board of Tax Appeals during the year 1954 are determined by the Board on a consideration of the ownership and use of the real property in question on tax lien date in the tax year 1954, and for other reasons, as well, it is a matter of importance for this Board to be advised as to whether tax lien date is that provided for in Section 5719.01, Revised Code, as enacted in and by Amended Senate Bill 147, or that provided for in this section of the Revised Code as the same was enacted in and by Senate Bill 361, above noted.

"In this situation as to the facts above noted, and upon a consideration of such facts and of such further facts as you may deem to be relevant, your opinion is respectfully requested on the question as to whether tax lien date on real property for the tax year 1954 is the first day of January of said year or is the day preceding the second Monday in April of this year."

Ordinarily, a statute later in time of passage will control over a statute containing inconsistent or repugnant language and which is earlier in time of passage. *State, ex rel. Guilbert v. Halliday*, 63 Ohio St., 165; *Rogers v. State, ex rel. Lucas*, 129 Ohio St., 108; Opinion No. 3372, Opinions of the Attorney General for 1953.

This, however, is not always true. The polestar of all attempts at legislative interpretation is the determination of actual legislative intent. True, the plain language of the statute can not be so changed by interpretation as to create an ambiguity when none otherwise would exist, but where an ambiguity does exist, based upon the actual language employed, resort may be had to a variety of tests, including legislative history, in order to resolve such ambiguity. *Slingluff v. Weaver*, 66 Ohio St., 621.

The rule of giving full effect to a statute later in time of passage in preference to a statute earlier in time of passage is but one of such tests.

In this connection I quote from my opinion No. 3146, Opinions of the Attorney General for 1953:

“It is true that the Ohio courts ordinarily give effect to the latest expression of the legislative will, but this rule is by no means without exception. Thus in *State v. Lathrop*, 93 Ohio St., 79 (85), the court cited with approval the holding in *Southwark Bank v. Commonwealth*, 26 Pa. St., 446, as follows:

‘1. The general rule is that where two statutes contain repugnant provisions, the one last signed by the governor is a repeal of the one previously signed.

‘2. This is so merely because it is presumed to be so intended by the lawmaking power; but where the intention is otherwise, and that intention is apparent from the face of either enactment, the plain meaning of the legislative power thus manifested is the paramount rule of construction.’”

One of the questions involved in Opinion No. 3146 was the effect of the re-enactment by the 100th General Assembly of Section 6309-2, General Code, by the passage of Amended Substitute House Bill No. 24 on June 30, 1953 as an emergency measure. This act contained no termination date and was enacted subsequent to the enactment of Amended House Bill No. 243, which had amended Section 4501.04, Revised Code, Section 6309-2, General Code, effective October 2, 1953. Section 4501.04 was later amended again by Amended Substitute House Bill No. 734, effective November 7, 1953. Thus, the question arose as to whether Amended Substitute House Bill No. 24 continued in effect after October 1, 1953, the effective date of the Revised Code, and if so, for how long. I concluded that it was the intention of the Legislature that the provisions of Amended Substitute House Bill No. 24 should expire on October 1, 1953 and that such intent was apparent from the legislative history of such enactment.

I believe that such interpretation is fully in accord with the holding of the Supreme Court of Ohio in *State, ex rel. Enos v. Stone*, 92 Ohio St., 63, the syllabus of which reads:

“1. When the general assembly of Ohio has entered upon a general policy of legislation, such as the abolition of the fee system and the establishment of fixed and certain lump sums as compensation for county officers, and provided that such compensation shall be in full payment for all services rendered as such public officer, such general statutes declaring such policy repeal by implication all other statutes in conflict therewith.

“2. Such policy of the general assembly should not be overturned or invaded by carrying or reenacting such impliedly

repealed statute in the report of a codifying commission, which is subsequently adopted by the general assembly, or by some subsequent enactment of the general assembly, unless such other statute clearly evinces by appropriate language an intention and purpose to provide 'an additional salary.'

"3. Mere technical rules of law or interpretation may be invoked to preserve the natural justice and substantial equities of any given case, but they should not be permitted to defeat or destroy the same."

I turn, therefore, to the application of these principles to the facts before me. As noted in your letter, by the passage of Amended House Bill No. 1, Section 5671, General Code, was recodified as Section 5719.01, Revised Code, to become effective October 1, 1953. Certain changes in phraseology were made in the process of such recodification, but it clearly was not the purpose or intent of the Legislature to make any changes in the substance of the statute. In this connection, see Section 1.24, Revised Code, wherein the General Assembly stated its intent "not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act."

After the passage of Amended House Bill No. 1 enacting the Revised Code, all amendatory legislation, except that of an emergency nature involving amendments to the General Code, were introduced as amendments to the Revised Code. The practice was followed of making such legislation effective on October 2, 1953, one day after the Revised Code was scheduled to become effective, except where the requirements of Section 1c of Article II of the Ohio Constitution would prevent the legislation from going into effect until a later date.

In the instant case, for example, Amended Senate Bill No. 147, changing the tax lien date of real property from April to January, became effective October 13, 1953 because of the fact that it was not passed at a time when it could have become effective on October 2, 1953.

In the meantime, apparently feeling that certain changes in phraseology in the recodification might possibly be construed as changes in substance, despite the legislative declaration of intent in Section 1.24, Revised Code, the 100th General Assembly established a committee for the purpose of further study of the Revised Code to insure against changes in substance and to introduce a single bill making such corrective measures. The culmination of the work of this committee was the passage,

on August 7, 1953, of Senate Bill No. 361. This act contained some 149 pages and amended some 290 sections of the Revised Code, including sections in every chapter of the Revised Code. The purpose of all of these amendments was to return to a closer employment of the exact phraseology of the old General Code so as to further insure against claims being made that the Revised Code had effected changes in substance.

It will be noted, of course, that Senate Bill No. 361 did not purport to repeal any of the amendments to the Revised Code enacted subsequent to the passage of Amended House Bill No. 1 and which amendments were due to become effective on and after October 2, 1953. Instead, it repealed the 290 sections of the Revised Code, including Section 5719.01 "as enacted in House Bill No. 1 of the 100th General Assembly." It would appear clear, therefore, that an express repeal of Section 5719.01, Revised Code, as enacted in Amended Senate Bill No. 147, was not effected and that Section 5719.01, Revised Code, as enacted in Amended Senate Bill No. 147 is still in force and effect unless it could be said to have been repealed by implication.

As clearly indicating the intent that substantive changes were not being made in Senate Bill No. 361 and that the sole purpose of such bill was to avoid the claim of substantive changes having already been made in the process of recodification, reference should be made to Section 3 of the act, which reads :

"This act is hereby declared to be an emergency measure, necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that these corrective amendments to the Revised Code must take effect at the same time the Revised Code goes into effect. Therefore, this act shall take effect on October 1, 1953."

Note, too, that whereas the General Assembly had adopted the policy of making substantive changes to the Revised Code effective on and after October 2, 1953, Senate Bill No. 361 became effective October 1, 1953 with the inception of the Revised Code.

Under the peculiar factual situation presented, I am of the opinion that the true legislative intent can not be determined by a blind acceptance of the test of giving effect to the statute which is later in time of passage. Here, I believe, such test is greatly outweighed by the fact that Amended Senate Bill No. 147 is clearly a considered substantive change of law

enacted in a bill amending a single section of the law, while Senate Bill No. 361, in effect, is but a series of corrections deemed advisable as a sort of appendage to the previous recodification. The former is specific—the latter general. As noted before, Senate Bill No. 361 does not, by its terms, repeal Section 5719.01, as amended by Amended Senate Bill No. 147.

In view of the legislative history, I believe it clear that Section 5719.01, as amended by Amended Senate Bill No. 147, was not repealed by implication. Instead, I believe that the General Assembly intended that all of the many sections of the Revised Code amended by Senate Bill No. 361 should continue in force and effect from October 1, 1953 only until supplanted by such sections as might have been previously amended by specific legislation directed to changes in substance.

In specific answer to your question, it is my opinion that Section 5719.01, Revised Code, as currently in force and effect, is such section as amended by Amended Senate Bill No. 147, effective October 13, 1953, and that the tax lien date for real property for the tax year 1954 is the first day of January, 1954 as therein provided, and not the day preceding the second Monday in April, as provided in Section 5719.01, Revised Code, as amended by Senate Bill No. 361, effective October 1, 1953.

Respectfully,  
C. WILLIAM O'NEILL  
Attorney General