2000.

COUNTY OFFICERS—SECTION 2983 G. C. (108 O. L. 1217) IMPLIEDLY REPEALS SECTION 5372-4 G. C. IN SO FAR AS IT PROVIDES FOR COLLECTION OF FEES BY COUNTY OFFICERS FROM COUNTY.

Section 2983 G. C. as amended in 108 O. L., Part II., page 1217, impliedly repeals section 5372-4 G. C. in so far as the latter section provides for the collection of fees by county officers from the county.

COLUMBUS, OHIO, April 14, 1921.

HON. THOMAS M. WALTER, *Probate Judge, New Philadelphia, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your recent request for the opinion of this department on the question stated in your letter, as follows:

> "Pursuant to said section 5372-4, regardless of the language under the amended section of 2983, are officials still legally entitled to the fee of ten cents for each estate certified to the county auditor, payable out of the county treasury?"

Section 2983 is a part of Chapter 1, beginning with section 2977, entitled "Salary of County Officers," and was amended in 108 O. L., Part 2 (1920), page 1217. That part which, with section 5372-4, gives rise to your question, was added by the amendment and is as follows:

> "Provided that none of such officers shall collect any fees from the county."

Said section 5372-4—the older of the two sections—is found in Chapter 3, entitled "Listing Personal Property," and was passed in 106 O. L. (1917), 264.

The earlier section said certain fees should be paid from the county treasury to the officers for specific services; the later section says that no fees of any kind shall be paid such officers from the county. They are *prima facie* repugnant.

In State ex rel vs. Morris, 63 O. S., 496, the first branch of the syllabus reads:

> "In so far as two statutes are irreconcilable, effect must be given to the one which is the later."

As Black, in Interpretation of Laws, page 115, holds, this is so, "more especially when the later act is expressed in negative terms, as where, for example, it prohibits a certain thing from being done."

In State ex rel Fosdick vs. Village of Perrysburg, 14 O. S., 472, in the fifth branch of the syllabus, the rule in cases of such conflict between general and special statutes is to the effect that particular and positive provisions, in the absence of express repeal, control over general provisions, regardless of the time of enactment.

All of these rules, however, are only means to an end, viz., the ascertainment of the legislative intention.

It is believed that consideration of the history and purpose of these various sections will assist in determining that intention.

Prior to 1908, county officers were compensated for their services by keeping their official fees. They paid their deputies an agreed salary out of their own funds.

Then came the salary law, putting the officers on a straight salary and requiring them to collect the fees as formerly and to pay them into the county fee fund, from which salaries of the officer and his deputies were paid. The salaries of the latter were fixed by the officer, subject to an aggregate allowance by the county commissioners. This allowance was originally limited to a *maximum* per cent of the total earnings of the officer. See section 2980-1, 105 O. L., p. 14.

Section 3000 prohibited officers from remitting any fees which they were required to collect and pay into their fee fund.

There were, and still are, many sections scattered through the code, relating to the fees of the various officers, which neither provide for nor exempt county payment of fees for services performed for the county.

In State ex rel vs. Board of Public Works, 36 O. S., 409, the third branch of the syllabus is:

> "The state is not bound by the terms of a general statute unless it be so expressly enacted."

Whether this attribute of sovereignty follows the delegation of the state's power to the county in this regard that the statute fixing the fees for services generally without express provision for county obligation was intended "to regulate the conduct of subjects only, and not its own (state-county) conduct," (page 414, supra), is queried but not decided here. My information is that over a course of years the Bureau of Inspection and Supervision of Public Offices and the county officers throughout the state have given such statutes a practical construction, requiring payment from the county for the benefit of the fee funds, where the services are performed for the county. This practice had been followed and acquiesced in, and in 1917 section 5372-4 was passed. The effect has been that the county paid fees which finally found their way back to the county treasury in the respective fee funds. So that there was no net loss or gain to the county. Then in 1920, section 2983 was amended, as above noted, providing that no such officers should collect "any fees from the county." This could only affect and increase the fee funds at the expense of the funds from which such fees were payable, in most cases the general county fund. At the same time section 2980-1 was amended by section 2980 (108 O. L., Part 2, page 1216), whereby a *minimum* was fixed for the aggregate deputy allowance instead of the maximum before provided. So that there no longer existed the necessity of having so much office earnings before adequate deputy allowance could be made.

Considering the history of these sections, it is concluded that in this later negative statute, 2983, the legislature had in mind the special object of charging off, if it may be so expressed, the fees theretofore collected, under special fee statutes, as well as general fee statutes from the county, and to thus dispense with such unnecessary bookkeeping transactions which under the new policy would have no practical effect.

Consistent with this conclusion your question is answered in the negative. This opinion will not affect sections 1602 and 1982 as amended in House Bill 58, signed March 17, 1921.

Respectfully,
JOHN G. PRICE,
Attorney-General.