

674.

PORTAGE LAKES—CONCERNING SALARY OF PATROLMAN.

SYLLABUS:

1. *The legislature in appropriating nine hundred dollars for the next six months and eighteen hundred dollars for the succeeding twelve months, for the salary of the patrolman at Portage Lakes, did not suspend, amend or repeal Rule 3 of Section 479 of the General Code which limits the amount that such patrolman may receive to twelve hundred dollars per annum.*

2. *The police patrolman at Portage Lakes may not receive more than twelve hundred dollars per annum.*

COLUMBUS, OHIO, June 29, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows:

“Under the provisions of Rule 3, Section 1, of the Act of the General Assembly of Ohio, passed March 26, 1925, O. L. 111, page 175, the Director of Highways and Public Works is authorized to employ one police patrolman at each reservoir park, at a salary not to exceed twelve hundred (\$1200.00) dollars per year, but by the General Appropriation Bill, page 40, as passed by the 87th General Assembly, under Appropriations for the Department of Highways and Public Works, under Personal Service, the patrolman at Portage Lakes was given nine hundred (\$900.00) dollars for the last half of the year 1927, and eighteen hundred (\$1800.00) dollars for the year 1928, being a raise of salary amounting to six hundred (\$600.00) dollars per year.

We respectfully request that you advise the Division of Public Works, whether or not the salary as appropriated, can be paid in view of the statute that fixes the maximum salary.

We are arranging to pay increased salaries where they do not conflict with the statutory provisions, but do not wish to fall into an error in our efforts to carry out the evident intention of the General Assembly, unless the appropriation itself authorizes the payment of the salary appropriated.”

Your question is whether the salary of the patrolman employed by your department at Portage Lakes on and after July 1, 1927, will be limited by the provisions of Rule 3 of Section 479 of the General Code, or whether he may receive the amount appropriated for that purpose by the present General Assembly.

Rule 3 of the aforesaid section as amended in 111 Ohio Laws, p. 175, reads in part as follows:

“The director of highways and public works is hereby authorized to employ one police patrolman at each reservoir park, at a salary of not to exceed twelve hundred dollars per year, * * *.”

As suggested in your communication, the General Appropriation Act (House Bill No. 502) in making appropriations for your department, on page 40 appro-

brates for "Patrolman—Portage Lakes", July 1, 1927 to January 1, 1928----\$900.00; January 1, 1928 to January 1, 1929----\$1800.00.

Rule 3, supra, is a general section which authorizes you to employ police patrolmen at the various reservoir parks and limits the amount of the salaries which they may receive. This therefore gives you authority to fix the salary of such patrolmen, providing it does not exceed twelve hundred dollars per year, and providing further that there is money appropriated for that purpose.

It is well known that the Constitution of Ohio provides that no money shall be drawn from the state treasury for any purpose unless a sum has been appropriated therefor by the legislature. The Appropriation Act for the ensuing eighteen months, like all other general appropriation acts, is for the sole purpose of setting aside money which may be used for the purposes specified therein. It does not, unless some special provision is made in connection therewith, direct that the amounts appropriated must be expended. The act merely makes the money available for use for the purposes therein set forth. It is apparent that there is a discrepancy between the maximum amount fixed by Rule 3, supra, and the amount provided in the Appropriation Act. This discrepancy, however, is not such as to amount to an amendment or a repeal of the provisions of said Rule 3.

It is well recognized that there are two ways of repealing a statute. One way is for the legislature specifically to provide that the section shall be repealed, which is known as an express repeal of the section. We also have repeals by implication. These, however, are not favored, and when legislation is seemingly in conflict the later provisions of the legislature do not repeal the former provisions unless the intent to do so is plainly expressed in the later enactment. Before it can be held that a section is repealed by a later enactment of the legislature we must find conflicting provisions in the sections which can not be harmonized.

"One statute is not repugnant to another unless they relate to the same subject *and are enacted for the same purpose*. 'It is not enough that there is a mere discrepancy between different parts of a system of legislation on the same general subject; there must be a conflict between the different acts on the same specific subject.'"

Sutherland on Statutory Construction, Volume I, p. 468. (2nd Ed.)

Applying these principles to the legislation before us, the act of the legislature in appropriating the amounts hereinabove set forth does not repeal the provisions of Rule 3, supra.

I find this question was given consideration by my predecessor (Opinions of the Attorney General 1919, Volume 1, p. 513). The syllabus of said opinion reads as follows:

"A mere item in a bill appropriating money is not sufficient authority for the payment to an officer or employe of a greater amount of salary than that authorized by permanent law."

In the opinion it is stated : (p. 514)

"A later law is not potent to repeal, modify or suspend an earlier law unless the provisions of the later law are irreconcilably inconsistent with those of the former. In the case supposed there is no irreconcilable inconsistency; for the appropriation law expends its primary force in setting aside money in the treasury and making it subject to withdrawal; whereas the permanent law relates to a logically distinct subject matter, namely,

the power to appoint or employ and the limitation on that power with respect to the payment of compensation. It is only by drawing from the item in the appropriation law an inference which takes its operation beyond the natural scope of the law that we are able to educe an intent to suspend the permanent law. To permit such effect to be given to the appropriation law by inference would be violative of the principle which must be applied in such cases."

It is therefore my opinion that:

(1) The legislature in appropriating nine hundred dollars for the next six months and eighteen hundred dollars for the succeeding twelve months, for the salary of the patrolman at Portage Lakes, did not suspend, amend or repeal Rule 3, Section 479 of the General Code, which limits the amount that such patrolman may receive to twelve hundred dollars per annum.

(2) The police patrolman at Portage Lakes may not receive more than twelve hundred dollars per annum.

Respectfully,
EDWARD C. TURNER,
Attorney General.

675.

BOARD OF EDUCATION—ELECTION OF COUNTY SUPERINTENDENT
AT SPECIAL MEETING MAY BE RATIFIED AT REGULAR MEETING
IF NO PROTEST FILED AND ALL ACTION TAKEN WITHIN TIME
LIMITED BY LAW.

SYLLABUS:

Election of county superintendent at special meeting may be ratified at regular meeting if no protest filed and all action taken within time limited by law.

COLUMBUS, OHIO, June 29, 1927.

HON. HOWARD J. SEYMOUR, *Prosecuting Attorney, Ravenna, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion as follows:

"I am writing for your opinion as to the legality of the election of a Superintendent of Schools by a County Board of Education under the following circumstances:

A County Board of Education, at a meeting for re-organization held January 15, 1927, passed the following resolution in compliance with General Code, Section 4733:

'Moved by ———, seconded by ———, that the board reorganize by re-electing the 1926 corps of officers, ———, president; ———, vice-president, board to meet the third Saturday of odd months, unless otherwise legally notified.