

priation Item, of which this appropriation is a part, shall become a law, namely, on and after August 9, 1927.

Respectfully,
EDWARD C. TURNER,
Attorney General.

623.

ELECTION—TIME OF OPENING AND CLOSING OF POLLS—HOUSE
BILL NO. 10 DISCUSSED.

SYLLABUS:

Sections 5056, 4925 and 5976, General Code, are unaffected by House Bill No. 10 passed by the 87th General Assembly amending Section 5979, General Code, and the polls should be opened at five-thirty forenoon and be kept open until five-thirty o'clock central standard time in the afternoon of the same day, as prescribed by the three sections above enumerated.

COLUMBUS, OHIO, June 15, 1927.

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

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

“This department has been asked several times as to the application of Section 5056 in view of the enactment of House Bill No. 10.

In other words will the election polls now open at 5:30 o'clock forenoon and close at 5:30 o'clock eastern standard time or as set out in Section 5056 at 5:30 o'clock central standard time?”

Section 5056, General Code, enacted in its present form on February 6, 1913, (103 v. 21) reads as follows:

“The polls shall be open at five-thirty o'clock forenoon and kept open up to, and closed at five-thirty o'clock central standard time, in the afternoon of the same day.”

In connection with this section your attention is directed to Section 4925, General Code, passed as it now reads on February 28, 1906, (98 v. 31) and to Section 5976, General Code, enacted in its present form on February 6, 1913, (103 v. 25) which sections respectively provide as follows:

“Sec. 4925. On the day of the November election in each year and of any other election, the polls shall be opened by the judges of elections appointed and organized, as herein provided, by proclamation made by the chairman at the hour of five-thirty o'clock forenoon, standard time, and shall be closed by proclamation at the hour of five-thirty o'clock afternoon.”

“Sec. 5976. The first Tuesday after the first Monday in November of each year, between the hours of twelve o'clock noon, central standard time, and five-thirty o'clock p. m., central standard time, shall be a legal part holiday.”

It will be observed that Section 6976, is the first section in Chapter 12, Title II, Part Second of the General Code entitled "Holidays and Time", and that Section 5979 is contained in the same chapter. This latter section was passed on March 22, 1893 (90 v. 115) in "An Act—To establish a uniform system of keeping time throughout the state of Ohio", and reads as follows:

"The standard of time throughout this state shall be that of the ninetieth meridian of longitude west of Greenwich and shall be known as 'central standard time.' Courts, banks, public offices, and legal or official proceedings shall be regulated thereby; and when, by a law, rule, order or process of any authority, created by or pursuant to law, an act must be performed at or within a prescribed time, it shall be so performed according to such standard of time."

House Bill No. 10 passed by the 87th General Assembly on February 15, 1927, approved by the Governor on March 7, 1927, and filed in the office of the Secretary of State March 8, 1927, and therefore effective on and after June 6, 1927, reads as follows:

"An Act—To amend Section 5979 of the General Code, providing for the standardization of time in Ohio.

Be it enacted by the General Assembly of the state of Ohio:

Section 1. That Section 5979 of the General Code be amended to read as follows:

Sec. 5979. The standard of time throughout this state shall be that of the seventy-fifth meridian of longitude west from Greenwich and shall be known as 'eastern standard time'. Courts banks, public offices, and legal official proceedings shall be regulated thereby; and when, by a law, rule, order or process of any authority, created by or pursuant to law, an act must be performed at or within a prescribed time, it shall be so performed according to such standard of time.

All clocks maintained in or upon public buildings shall be set and run according to the provisions of this act.

Section 2. That said existing Section 5979 of the General Code be and the same is hereby repealed."

If Section 5979, supra, as amended in House Bill No. 10, above set forth, were an entirely new section, in view of the sweeping provisions thereof to the effect that courts, banks, public offices and legal official proceedings shall be regulated by eastern standard time and to the effect that "when, by a law, rule, order or process of any authority, created by or pursuant to law, an act must be performed at or within a prescribed time, it shall be so performed according to such standard time", I would have no difficulty in determining that by the express terms of such section the legislature clearly indicated its intention to amend Sections 5056, 4925 and 5976, supra, so as to substitute in the case of elections, eastern standard time instead of central standard time, even though such sections were not specifically referred to. However, a different situation is presented.

It will be observed that Section 5979, as amended in House Bill No. 10, reads exactly as it did prior to such amendment except that the "ninetieth meridian" is changed to the "seventy-fifth" and the term "central standard time" is changed to "eastern standard time" and the provision is added that "All clocks maintained in or upon public buildings shall be set and run according to the provisions of this

act." This latter provision in no way affects the instant question and may be disregarded.

Sections 5056, 4925 and 5976, *supra*, relating to the time of holding elections were not expressly referred to in House Bill No. 10, and remain unchanged, unless it can be said that by the amendment of Section 5979 in House Bill No. 10 the legislature has by implication clearly and unmistakably manifested an intention to amend such sections.

One of the cardinal rules of construction is that a statute is presumed to be enacted by the legislature with full knowledge of the existing condition of the law and with reference to it. Another fundamental rule of construction is as stated in 36 Cyc. 1147:

*"Statutes in pari materia are those which relate to the same person or thing or to the same class of persons or things. In the construction of a particular statute, or in the interpretation of any of its provisions, all acts relating to the same effect, or having the same general purpose, should be read in connection with it, as together constituting one law. * * * It is proper to consider not only acts passed at the same session of the legislature, but also acts passed at prior and subsequent sessions, and even those which have been repealed. So far as reasonably possible the several statutes, although seemingly in conflict with each other, should be harmonized and force and effect given to each, as it will not be presumed that the legislature, in the enactment of a subsequent statute, intended to repeal an earlier one, unless it has done so by express terms; nor will it be presumed that the legislature intended to leave on the statute books two contradictory enactments. * * *"*
(Italics the writer's)

And on the subject of general and special statutes, this same authority at page 1151 states the law in the following language:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication."
(Italics the writer's).

Sections 5056, 4925 and 5976, *supra*, are all statutes relating to a special subject, namely, the time elections are to be held. Section 5976, *supra*, is a statute applying generally to a general subject, namely, the standard of time by which courts, banks, public offices and legal official proceedings shall be governed generally. It is apparent that the provisions of Section 5056, 4925 and 5976 will be in conflict with Section 6979 as amended by House Bill No. 10. In view of the fact that the legislature did not see fit to amend these sections relating to elections, and since in amending Section 5979, by the simple substitution of the word "eastern" for the word "central", it cannot be said that the legislature has by express words or by necessary implication indicated an intention to amend Sections 5056, 4925 and 5976, it must be held that

even though the general act is later, the special sections must be construed as remaining an exception to its terms.

Moreover, it is manifest that prior to the effective date of House Bill No. 10, the standard of time governing elections is fixed not by Section 5979, *supra*, but by Sections 5056, 4925 and 5976, *supra*. This is true because these latter sections are statutes relating to a special subject, namely, the standard of time governing elections, while Section 5979 is a statute of general application. And while the language of Section 5979 would, in the absence of special statutes on the subject, seem to be broad enough to include the holding of elections, since the legislature has seen fit to make special provision with reference to the standard of time governing elections, we have a legislative interpretation that holding of elections is not a subject included within the scope of Section 5979. Especially is this true when it is remembered that Sections 5056, 4925 and 5976 were all enacted in their present form subsequent to the passage of Section 5979.

That the present legislature did not intend Section 5979, as amended by House Bill No. 10, to include the standard of time to be applied with reference to the holding of elections is disclosed by an examination of the "Herbert-Chappelear Election Bill" (Amended Substitute Senate Bill No. 20) passed by the 87th General Assembly, but vetoed by the Governor. Section 147 was to take the place of Section 4925, General Code, which was to have been repealed by said bill, and read as follows:

"On the day of the November election in each year and of any other election, the polls shall be opened by the judges of elections appointed and organized, as herein provided, by proclamation made by the chairman at the hour of six-thirty o'clock a. m., and shall be closed by proclamation at the hour of six-thirty o'clock p. m."

Section 167 of said bill, which was entitled "Opening and closing polls" read in part as follows:

"Promptly at 6:30 o'clock a. m. the polls shall be opened by proclamation of one of the judges, and shall be kept open continuously during the day until closed by proclamation of one of the judges at 6:30 p. m. unless there are qualified voters waiting an opportunity to cast their ballots inside the polling place or in line outside, in which case the polls shall not be deemed closed until all such qualified electors have been allowed to vote. * * *

Section 337 read:

"Wherever time is designated in this act it shall mean eastern standard time."

It will thus be seen that the present General Assembly contemplated the passing of special sections fixing the standard of time governing elections as former legislatures had done in the past, and it is of significance that by its terms Amended Senate Bill No. 20 was not to be effective until on and after January 1, 1928, thus leaving the old sections governing elections in effect until that date.

For these reasons it is my opinion that Sections 5056, 4925 and 5976, General Code, are unaffected by House Bill No. 10 of the 87th General Assembly amending Section 5979, General Code, and that the polls should be opened at five-thirty forenoon and be kept open until five-thirty o'clock *central standard time* in the afternoon of the same day.

Respectfully,
EDWARD C. TURNER,
Attorney General.