

January 24, 1961

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ARIZONA ATTORNEY GENERAL

Mr. A. N. Gandrud
Executive Secretary
Arizona School Board Association
4833 N. 31st Street
Phoenix, Arizona

Dear Mr. Gandrud:

This is to acknowledge your request for an opinion as to the effect of Senate Bill No. 27 and Senate Bill No. 18, passed by the Twenty-fourth Legislature, amending A.R.S. § 15-442, 1956.

A.R.S. § 15-442 describes the general powers and duties of the Board of Trustees of a School District. Senate Bill No. 18 amending A.R.S. § 15-442, 1956, sets forth in full A.R.S. § 15-442, 1956 and adds two paragraphs numbered 5 and 6 which relate to traveling of school officials and to renting of buildings. This amendment is in operation at the present time, as the effective date of it was June 25, 1960. Senate Bill No. 27 also amending A.R.S. § 15-442, 1956, changes paragraph 2 by describing a method for the selection of school books. The other paragraphs are identical with the provisions of A.R.S. § 15-442, 1956. Paragraphs 5 and 6 contained in Senate Bill 18 are omitted. Section 8 of Senate Bill No. 27 states that the act shall become effective on July 1, 1961.

The problem consists of two amendatory acts passed at the same legislative session. Each of the amendments sets forth fully the provisions contained in the original statute. Thus, it is a question of whether paragraphs 5 and 6 contained in Senate Bill 18 are repealed by being omitted in Senate Bill 27.

A.R.S. § 1-245, 1956, reads as follows:

"When a statute has been enacted and has become a law, no other statute or law is continued in force because it is consistent with the statute enacted, but in all cases provided for by the subsequent statute, the statutes, laws and rules theretofore in force, whether consistent or not with the provisions of the subsequent statute, unless continued in force by it, shall be deemed repealed and abrogated."

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Generally, repeals by implication are not favored. Industrial Commission v. Hartford A.C.C. & Indem. Co., 61 Ariz. 86, but the Supreme Court of Arizona has stated that where a later enactment covers the entire subject matter of an early one, it supersedes the earlier act. Kitchel v. Gadsden Hotel Co., 42 Ariz. 226.

Many courts invoke the doctrine of repeal by implication or omission where the amendment sets forth in full provisions of the original statute. This was stated in Parker v. Blackwell Zinc Co., 325 p. 2d 958, as follows:

"A statute expressly amendatory of another section of statute purports to set out in full all that it intended to contain, any matter which was in the original section, but not in the amendatory section, is repealed by omission."

The Supreme Court of California was confronted with the problem of two amendatory acts to a statute in the case of Stockburger v. Jordan, 76 p. 2d 671. The rule announced in the decision of the California Court is quoted as follows:

"Where one amendatory act amending statute relating to duties of the state director of finance gave director authority to lease state lands for production of hydrocarbons, but another amendatory act subsequently becoming effective, omitted that authorization, and both amendatory acts purported to cover the whole subject of duties of director of finance respecting leasing of state lands, the last amendment to become effective was controlling and the director of finance was thereafter without authority to lease lands for hydrocarbons."

Courts are reluctant to insert either words or provisions in statutes that legislatures omit. 50 Am. Jur. states this rule:
(p. 219)

"Section 232. Courts will not, as a general rule, undertake a correction of legislative mistakes in statutes. This principle is adhered to notwithstanding the fact that the court may be convinced by extraneous circumstances that the legislature intended to enact something very different from that which it did enact. The question is not what the general assembly did intend to enact, but what is the meaning of that which it did enact."

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"Section 234. It is a general rule that the courts may not, by construction, insert words or phrases in a statute, * * *"

"Section 276. The omission of a word in the amendment of a statute will be assumed to have been intentional."

Thus, it is the opinion of this office that where there are two amendatory acts to a statute, both setting forth the provisions of the original statute, that the later effective amendment supersedes the earlier one, and that provisions contained in the earlier one, but omitted in the later effective amendment, are repealed by implication or by omission.

Therefore, this office is of the opinion that on July 1, 1961, paragraphs 5 and 6 of the amendment to A.R.S. § 15-42, 1956, will be repealed by implication or omission.

Very truly yours,

ROBERT W. PICKRELL
The Attorney General

FRANK SAGARINO
Assistant Attorney General

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