

July 9, 1953
Opinion No. 53-130

TO: The Honorable Barry De Rose
County Attorney
Gila County Court House
Globe, Arizona

RE: Limitation on levy of taxes

QUESTION: Does the enactment of Section 73-505a A.C.A., Laws of 1953, Chapter 77, Section 1 prevent a city incorporated under a common council from levying taxes in excess of $27\frac{1}{2}$ mills on the dollar of assessed valuation for certain purposes set forth in Section 16-213, A.C.A. 1939, as amended; notwithstanding the 10% annual increase allowed in Section 73-505, A.C.A. 1939, as amended?

A city incorporated under a common council is, by virtue of Section 16-213, A.C.A. 1939, as amended, prevented from levying and collecting a tax greater than $27\frac{1}{2}$ mills on the dollar of assessed valuation for certain purposes set forth in this section, which reads as follows:

"16-213. Council may levy certain taxes.---
The common council shall have power to levy and collect annually, upon the assessed value of the real and personal property within the town, as shown by the equalized assessment roll of the current year, except such as is, or may be, exempt from taxation under the laws of the state, in each year, the following taxes: Not exceeding twenty-seven and one-half ($27\frac{1}{2}$) mills on the dollar of such assessed valuation to defray the salaries of officers, and the ordinary and contingent expenses of the corporation, not herein otherwise

provided for; and for the purpose of constructing and repairing streets, sewers, sidewalks and crosswalks, or bridges and culverts, upon such streets and sidewalks. The limitation herein imposed shall not deny the right to levy and collect the amounts necessary to defray the charges of the public debt of the town. Nothing herein contained shall be held to repeal, modify or affect the provisions of sections 73-502 and 73-505, Arizona Code of 1939 (sections 309 and 3100, Revised Code of 1925)." (Emphasis supplied)

Under the terms of Section 73-505, A.C.A. 1939, as amended, all municipalities are prohibited from raising, from taxation in any one year, more than 10% in excess of the amount raised in the previous year, excluding certain specified items. This statute reads in part as follows:

"73-505. Limitation on increase of tax levies. * * * The budget estimate as finally adopted shall not exceed by more than ten (10) per cent the total amount proposed for expenditure in the budget adopted for the previous year, after excluding expenditures for school, bond, special assessment and district levy, primary, general or special election purposes. The amount contained in said budget estimate as finally adopted, required to be raised by direct taxation, shall in no event exceed by more than ten (10) per cent the amount levied upon the tax rolls for the preceding fiscal year after excluding levies for emergency liabilities, schools, bond principal and interest, primary, general or special elections and special assessments and district levies; * * *"

In the case of SOUTHERN PACIFIC COMPANY v. GILA COUNTY, (1941) 56 Ariz. 499, 109 P. 2d 610, the Arizona Supreme Court construed the above two statutes. The Court in this case held that the statutes were workable and should be reconciled. Instead of being a substitute for Section 16-213, supra, Section 72-505, supra, was held to be an additional limitation on the taxing power of municipalities.

In 1948, Section 73-505a, A.C.A. 1939, as amended, was passed

The provisions of this statute are:

"73-505a. County, city and town budget and tax levy limitation. --The governing body of a county, city or town may adopt a budget and tax levy for the fiscal year 1948-1949 without the limitations provided in sections 73-502, 73-503 and 73-505, Arizona Code Annotated 1939, as amended.

Provided, however, that the total amount of the adopted budget shall not exceed the 1946-1947 fiscal budget together with the emergency expenditures allowed by the state tax commission during the 1946-1947 fiscal year plus twenty-one (21) per cent. Nothing herein contained shall be held to repeal, modify or affect the provisions of section 16-213, Arizona Code Annotated 1939, as amended. Said budget and tax levy so adopted shall be the basis for future budgets and tax levies of such political subdivisions." (Emphasis supplied)

This law was amended by Chapter 77 of the Laws of 1953, Section 1. This statute presently reads as follows:

"73-505a. County, City, and town budget and tax levy limitation. The governing body of a county, city or town may adopt a budget for the fiscal year 1953-54 without complying with the budget limitations provided in sections 73-502, 73-503, and 73--505, Arizona Code of 1939; provided, however, that the total amount of the adopted budget shall not exceed the actual expenditures of the general and road funds of the 1952-53 fiscal year plus twenty per cent. Said budget so adopted may be the basis for future budgets of such political subdivisions. Nothing herein contained shall be held to permit increasing the tax levy over and above the ten per cent increase allowed in section 73-505, Arizona Code of 1939, as amended."

It will be noted that no provision is made in the later enactment that section 16-213, supra, is not modified, repealed or affected, as was provided in the 1948 law.

The present question resolves itself into whether the Legislature

intended to impliedly repeal section 16-213, supra, by excluding the sentence "Nothing herein contained shall be held to repeal, modify or affect the provisions of section 16-213, Arizona Code Annotated 1939, as amended." from section 73-505a, A.C.A., Laws 1953, Chapter 77, Section 1.

It is a well established rule that Courts look with disfavor on repeals by implication. The rule is stated in 50 Am. Jur. Section 539, l.c. 546, to be:

"§ 539. Presumptions Applicable.--The courts will not presume that the legislature intended a repeal by implication. Indeed, the presumption is always against the intention to repeal where express terms are not used, and where effect can reasonably be given to both statutes. The presumption rests on the improbability of a change of intention, or, if such change occurred on the probability that the legislature would have expressed it with an express repeal of the first. * * *"

The proposition is further developed in 50 Am. Jur. Section 543, l.c. 548:

"§ 543. Inconsistency.--The criterion by which to determine whether there is an implied repeal, is whether or not there is irreconcilable conflict between an earlier and a later statute. The general rule is that where two statutes are in irreconcilable conflict, the earlier act yields to the later statute which is controlling. If an act is so repugnant to, or so contradictory of, or so irreconcilably in conflict with, a prior act that the two acts cannot be harmonized in order to effect the purpose of their enactment, the later act operates without any repealing clause, as a repeal of the first to the extent of the irreconcilable inconsistency. This rule prevails where under no reasonable hypothesis can the provisions of both be construed as coexisting. Indeed, it must appear that a later act is contrary to, or inconsistent with, a former act in order to justify the conclusion that the first is repealed. Since laws are presumed to be passed with

deliberation, and with full knowledge of existing ones on the same subject, it is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any former law relating to the same matter, unless the repugnancy between the two is irreconcilable. Except where an act covers the entire subject-matter of earlier legislation, is complete in itself, and is evidently intended to supersede the prior legislation on the subject, a later act does not by implication repeal an earlier act unless there is such a clear, manifest, controlling, necessary, positive, unavoidable, and irreconcilable inconsistency and repugnancy, that the two acts cannot, by a fair and reasonable construction, be reconciled, made to stand together, and be given effect or enforced concurrently. * * *

Several Arizona cases have followed these rules. In the case of ROWLAND v. MC BRIDE, (1929) 35 Ariz. 511, 281 P. 207, 1.c. 520 the Court stated:

"It should also be borne in mind that 'repeals by implication are not favored, and will not be indulged, if there is any other reasonable construction'. * * *"

Referring again to the case of SOUTHERN PACIFIC COMPANY v. GILA COUNTY, supra, the Court set forth the proposition, 1.c. 502 that:

"When the question of repeal by implication arises, if the later statute and the former can be construed so that both will be operative, it is the duty of the court to give them such a construction. * * * It is only when upon no reasonable construction both can be operative that it is our duty to hold that the later act repeals the former by implication." (Citations omitted)

It is our considered opinion that the terms of Section 73-505a, Laws of 1953, and Section 16-213, A.C.A. 1939, as amended, are not so repugnant, contradictory or irreconcilable that both cannot be construed to be operative and workable. The mere failure to place in Section 73-505a, Laws of 1953 the provision "Nothing herein

contained shall be held to permit increasing the tax levy over and above the ten per cent increase allowed in section 73-505, Arizona Code of 1939, as amended.", does not make the law irreconcilable and unworkable.

In addition to the above provisions it must be noted that Section 16-213, supra, is a special or specific statute applicable only to cities incorporated under common council, while Section 73-505, supra, and 73-505a, Laws 1953, supra, are general laws, applicable to all cities within the State of Arizona. 50 Am. Jur. Section 564, I.C. 565, sets forth the general rules regarding repeal of special or specific statutes by general or broad statutes, as follows:

"§ 564.---Repeal of Special or Specific by General or Broad Statute.---There is no rule which prohibits the repeal by implication of a special or specific act by a general or broad one. The question is always one of legislative intention, and the special or specific act must yield to the later general or broad act, where there is a manifest legislative intent that the general act shall be of universal application notwithstanding the prior special or specific act. It is, however, equally true that the policy against implied repeals has peculiar and special force when the conflicting provisions, which are thought to work a repeal, are contained in a special or specific act and a later general or broad act. In such case, there is a presumption that the general or broad law was not designed to repeal the special or specific act, but that the special or specific act was intended to remain in force as an exception to the general or broad act, and there is a tendency to hold that where there are two acts, one special or specific act which certainly includes the matter in question, and the other a general act which standing alone would include the same matter, so that the provisions of the two conflict, the special or specific act must be given the effect of establishing an exception to the general or broad act. Hence, it is a canon of statutory construction that a later statute general in its terms and not expressly repealing a prior special or specific statute,

will be considered as not intended to affect the special or specific provisions of the earlier statute, unless the intention to effect the repeal is clearly manifested or unavoidably implied by the irreconcilability of the continued operation of both, or unless there is something in the general law or in the course of legislation upon its subject matter that makes it manifest that the legislature contemplated and intended a repeal. Unless there is a plain indication of an intent that the general act shall repeal the special act, the special act will continue to have effect, and the general words with which it conflicts will be restrained and modified accordingly, so that the two are to be deemed to stand together, one as the general law of the land, and the other as the law of the particular case."

The Arizona case of ROWLAND v. MC BRIDE, supra, stated, I.c. 502:

"The rule is that a later act, general in its terms, will not be construed as repealing a prior act treating in a special way something within the purview of the general act. In other words, a special or particular statute is not repealed by a general statute, unless the intent to repeal is manifest. * * *"

With regard to the granting of any power to tax to municipal corporations, McQuillin's Municipal Corporations, Volume 16, Section 44.13, sets forth a well established principle of law, that:

"§ 44.13.--Strict construction. In the construction of the grant of any power to tax, made by the state to one of its municipal corporations, the rule accepted by virtually all the authorities is that it should be with strictness. A citizen cannot be subjected to the burden of taxation without clear warrant of law. Therefore, 'statutes authorizing the levy of taxes are to be strictly construed; they are not to be extended by implication, nor is their

operation to be enlarged so as to embrace matters not specifically pointed out, though standing upon a close analogy.' Stated briefly, in case of doubt a tax statute should be construed strictly in favor of the taxpayer and against the municipality."

Therefore, in light of the above cases and principles, and after careful consideration and comparison of the statutes here involved, it is our opinion that Section 16-213 was not impliedly repealed by the amendment of Section 73-505a, supra, A.C.A. 1939, as amended, Laws 1953, Chapter 77, Section 1. Consequently a city incorporated under common council has no power to levy and collect a tax in excess of $27\frac{1}{2}$ mills on a dollar of excess valuation for the purposes set forth in Section 16-213, A.C.A. supra, notwithstanding the 10% annual increase provided for in Section 73-505, A.C.A., supra.

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