

STATUTES -- IF THE TITLE OR CAPTION AND THE BODY OF BILL IDENTIFIES  
THE STATUTE TO BE REPEALED SO NO DOUBT EXISTS AS TO  
WHAT STATUTE IS INTENDED TO BE EFFECTED, IT IS SUFFICIENT.

11-27  
November 27, 1933. # 892 Laws 33

Honorable J. H. Gunn  
Member of the Senate  
State of Missouri  
Jefferson City, Missouri.



Dear Sir:

Perfected House Bill No. 92 of the Fifty-Seventh General Assembly ( Extra Session ) has been submitted to this department with a request for an opinion as to whether or not, in the form in which it now appears, it will be a legal enactment and will repeal Sections 5312, 5313, 5314 and 5315 of Article I. of Chapter 34 of the Revised Statutes of Missouri, 1929, entitled, "State Department of Finance".

The record of the bill, as it appears in a printed copy submitted to this department, discloses the fact that said bill has been ordered perfected and printed. This department is further informed that the bill, in the form in which it has been submitted for an opinion, has also passed the Senate.

The title of the Act reads as follows:

"AN ACT

To repeal Sections 5312, 5313, 5314 and 5315 of Article I of Chapter 34 of the Revised Statutes of 1929, entitled "State Department of Finance", in relation to issuance and sale of certificates of indebtedness by banks and trust companies, denominations, rate of interest thereon and maturity thereof, for what purpose issued and how renewed or reissued and providing for

the creation of a separate fund to be held in trust for the holders thereof, and providing that certain obligations shall be a prior claim, and to enact four new sections in lieu thereof to be known as Sections 5312, 5313, 5314 and 5315 authorizing banks and trust companies to issue and sell capital notes, and providing that in cases where the capital of the bank or trust company issuing such notes is impaired, and such notes are issued and sold in an amount equal to, or greater than, the amount of such impairment, the capital of such bank or trust company shall for all purposes be deemed to be restored, and prescribing the nature of such capital notes, the denominations, income return thereon, retirement, and extension thereof, and providing for setting apart a separate fund to be held in trust for the benefit of the holders thereof, with an emergency clause."

That part of the Act purporting to repeal certain sections of the Statutes is found in Section 1. in the following language:

"Section 1. That Sections 5312, 5313, 5314 and 5315 of Article I of Chapter 34 entitled, "State Department of Finance", be and the same are hereby repealed, and four sections enacted in lieu thereof to be known as Sections 5312, 5313, 5314 and 5315, and to read as follows:

" \* \* \* \* \*

It will be observed that the numbers of the sections to be repealed are given, together with the article and the chapter, but Section 1. fails to give the style and date of the Revised Statutes of Missouri, and this presents the question as to whether or not the bill is legally in shape to become a law if signed by the Governor, and whether or not Sections 5312, 5313, 5314 and 5315 of Article I.

Chapter 34, Revised Statutes of Missouri 1929, are repealed.

The title of the Act clearly identifies the sections to be repealed in the following language:

" AN ACT

To repeal Sections 5312, 5313, 5314 and 5315 of Article I of Chapter 34 of the Revised Statutes of 1929 entitled, 'State Department of Finance', \* \* \* \*"

An examination of the four new sections enacted in lieu of the four sections - 5312, 5313, 5314 and 5315 - now composing part of Article I., Chapter 34, of the Revised Statutes of Missouri, 1929, entitled, "State Department of Finance", reveals that the subject-matter dealt with in the four new sections set out in House Bill No. 92, is the same subject-matter dealt with in the four sections named in Article I., Chapter 34, R. S. Mo. 1929.

It is perfectly clear what the Legislature intended to do. The caption or title of the Act, taken in connection with Section 1. and with the four new sections, clearly discloses beyond any question of doubt that the Legislature intended to repeal Sections 5312, 5313, 5314 and 5315, Article I., Chapter 34, Revised Statutes of Missouri, 1929, entitled "State Department of Finance," and to enact in lieu thereof four new sections numbered Sections 5312, 5313, (a), (b) and (c), Section 5314 and Section 5315. The intention of the Legislature in this legislation is made still more apparent by reference to Section 3. of the Act providing the reason for an emergency clause in the following language:

"That the Congress of the United States recently passed an act authorizing the organization of a federal corporation known as

the Federal Deposit Insurance Corporation, which is authorized to insure on January 1, 1934, certain deposits in banks and trust companies, including all state banks and trust companies in Missouri; that many banks of Missouri may desire to take advantage of the benefits and privileges extended by said Federal Deposit Insurance Corporation; that the general welfare of the state and the people thereof, will be greatly advanced by having the privileges extended by said Federal Deposit Insurance Corporation open to the banks and trust companies organized under the laws of this state; that such banks and trust companies cannot have all advantages extended by said Federal Corporation without they acquire such advantages under the provisions of this act. \* \* \* \* ."

Section 33. of Article IV. of the Constitution of Missouri reads as follows:

"No act shall be revived or re-enacted by mere reference to the title thereof, but the same shall be set forth at length, as if it were an original act."

Section 34. of Article IV. of the Constitution of Missouri provides:

"No act shall be amended by providing that designated words thereof be stricken out, or that designated words be inserted, or that designated words be stricken out, and others inserted in lieu thereof; but the words to be stricken out, or the words to be inserted, or the words to be stricken out and those inserted in lieu thereof, together with the act or section amended, shall be set forth in full as amended."

This state of facts presents the legal question as to whether or not, if the caption or title of the bill and the body thereof clearly indicate the intention of the Legislature and beyond question identifies the statutes and identifies the section or sections to be repealed and effected by the legislation, such an enactment is a legal statute although in the repealing clause the Legislature omitted to specify the particular Revised Statutes in which the sections repealed are to be found.

It is plain common sense that all construction of the Statutes is based on the fundamental proposition that it is the object of the courts to determine and carry out the intention of the legislative body. That is all there is to statutory construction and all that statutory construction was ever intended to accomplish.

The legal rule for identification of a repealed statute is expressed in 59 Corpus Juris, Section 504, page 901, in the following language:

"To effectuate an express repeal, a statute must so describe and distinguish the statute to be repealed, as by designation of its name, title or caption or by reference to its subject, contents or substance, as to leave no doubt as to what statute is intended. However, in the absence of an applicable constitutional provision prescribing or prohibiting a particular mode of identification, an identification of any kind, either in the body or in the title or caption of the repealing act, which points with certainty the law to be repealed is sufficient; and where the intention is otherwise plainly and clearly expressed, effect may be given to a repealing statute notwithstanding an error or inaccuracy in its description of the statute to be repealed. \* \* \* ."

On this question of identification of statutes, the Tennessee Court announces the same rule in Greenwood, v. Richardson, 145 Tenn. 1.c. 73, in the following

language:

"This court has established a liberal interpretation for upholding amendatory acts where the caption and the body of the act taken as a whole and from a practical standpoint indicate the subject of the legislation sought to be effected."

In the North Carolina case, where the repealing provision of the act named an entirely different statute and did not mention the statute intended to be repealed, but the title of the act and the whole body of the act showed clearly what statute was intended to be repealed, the Court, in Murphy v. Webb, 156 N. C. 402, said that the intention of the Legislature should be followed and the enactment was valid.

To the same effect is School Directors v. School Directors, 73 Ill. 249, wherein the Court said, the reasonable intention of the Legislature should and will be carried out.

A still later case of House et al. v. Greveling, 250 S. W. 1.c. 360, wherein the caption or title of the Act pointed to the laws establishing certain administrative offices of the State as those to be effected, which were abolished, but did not detail these laws; but the body of the act abolishing said offices, therefore created by law, did indicate the laws to be repealed, and the Court said:

"Bearing in mind that we can look both to the caption and body of an act to see that, if it sufficiently identifies former laws sought to be repealed or amended, and looking to the body of this act, we find it supplements the caption and removes any doubt as to the particular laws designed for excision."

To the same effect is State v. Knoll, 69  
Kans. 767.

PROVISIONS OF MISSOURI CONSTITUTION  
HEREIN ABOVE QUOTED,  
SECTIONS 33 and 34 OF ARTICLE  
IV. DO NOT INTERFERE WITH  
APPLICATION OF THE ABOVE STATED  
RULE AS TO IDENTIFICATION OF  
A REPEALING STATUTE TO HOUSE  
BILL NO. 92.

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Said Sections 33 and 34 deal with reviving or re-enacting by reference to title other acts, and with amending statutes by insertion of designated words or by striking out designated words, or striking out certain words and inserting other words in lieu thereof, and provide that where words are stricken out and others inserted in lieu thereof, the same together with acts or sections amended should be set out in full.

The fact that the repealing clause here merely refers to the sections of the statutes by number does not affect the validity of the repealing clause.

Our court has said in State ex rel. Drainage District v. Hackmann, 305 Mo. 1.c. 701

"The practice of amending statute laws by reference to the sections contained in the volumes of authorized revisions of the laws of this State is the established law."

The House Bill No. 92 does not revive an act or re-enact another act, nor does it amend an existing statute by inserting designated words therein. It merely repeals four sections and enacts four new sections in lieu thereof.

The House Bill No. 929

House Bill No. 32, in Section 3, thereof provides that if any part of the act be found invalid, the General Assembly declare that it would have passed the remainder of the act without such invalid section or provision.

While this provision, placed in very recently enacted statutes only re-enacts, in other language, a rule of law well established by the courts as to the construction of statutes, yet the Court will give weight and consideration to it as evidence of the intention of the Legislature.

Applying that Section 3 to Section 1. of the Act, and eliminating Section 1. as illegal, there would still be a complete statutory enactment expressing the intention of the Legislature; and, while no mention would be made therein of Sections 5312, 5313, 5314 and 5315, Article I., Chapter 34, R. S. No. 1929, entitled, "State Department of Finance", yet to the extent that the four new sections conflicted with the four existing sections in Article I. of Chapter 34, R. S. No. 1929, the said sections in the 1929 Statutes would be repealed by implication. There is no constitutional provision in this State prohibiting repeal by implication.

Our Supreme Court said in Manning v. Gunn, 47 No. 1.c. 32:

" \* \* \* The Constitution has gone so far as to prohibit amendments in terms, except in particular way, but it has not prohibited amendments by implication. It has not said that when an act is passed inconsistent with a preceding one, so that both can stand, the latter one shall be void and the earlier one shall prevail, but has left the law as it always has been, viz: that when two statutes are inconsistent and repugnant, the one last enacted shall be considered in force. This must be so in the nature of things, for the last enactment is the latest expression

of the Legislative will, and must prevail, unless it contains some inherent vice that prevents it becoming a statute."

And later, after the adoption of the Statutes of 1875, our Supreme Court in State ex rel. Attorney-General v. Miller, 100 Mo. 446, used the following language in a case where the new act did not mention the repealed statute:

"It is there shown that when an act undertakes to amend a former statute it is not sufficient to say certain words are stricken out, or certain words inserted, but the section as amended must be set out in full, and this is all that is required. Here, it is true, portions of the special act creating the school corporation are repealed or modified by this act of March 30, 1887, and the last-named act does not name the sections which are thereby repealed, nor are the sections thereby modified set out in their modified form. This may lead to inconvenience in requiring a comparison of the old and the new law, but such legislation is not prohibited by the provision of the constitution before quoted. The constitution of 1865 contained a provision much like the one now in question, under which it was held that repeals by implication were not prohibited. \* \* \* \* ."

It is the opinion of this department that the caption or title of House Bill No. 92, together with the body of the act, clearly identifies the sections of the Statutes - Revised Statutes of Missouri, 1929 - intended to be repealed; and that the bill, as it stands, if signed, by the Governor, will be a legally enacted statute.

It is the further opinion of this department

that regardless of the rule as to identification of a statute by an examination of the caption or the title thereto and the remainder of the Act, that eliminating Section 1. of the Act, the remainder thereof is a complete statutory enactment and to the extent that same conflicts with Sections 5312, 5313, 5314 and 5315, Revised Statutes of Missouri, 1929, Article I. Chapter 34, said last named sections of Revised Statutes of Missouri, 1929, are repealed by implication and that, upon this theory, the bill when signed by the Governor, will be a legally enacted statute.

Respectfully submitted,

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APPROVED:

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