

TAXATION:

Senate Bill 143 of the 58th General Assembly does not apply to drainage district assessments but only applies to penalty on taxes.

6-8  
June 7, 1935.



Hon. G. R. Breidenstein,  
Prosecuting Attorney,  
Clark, County,  
Kahoka, Missouri

Dear Mr. Breidenstein:

Acknowledgment is herewith made of your recent request for an opinion of this office reading as follows:

"I would like to have the opinion of your department in regard to the following question. Does the recent law 'Senate Bill No. 143', providing for remission of the penalty on 1933 and prior taxes apply to assessments due drainage districts?"

In an opinion dated November 12, 1934, it was the holding of this office that House Bill 124, page 166, Laws of Missouri 1933-34, Extra Session, applied only to penalty on "taxes" and did not apply to drainage district assessments. House Bill 124 of the Extra Session of the 57th General Assembly, which was construed by that opinion, reads as follows:

"That all penalties and interest on personal and Real Estate Taxes, delinquent for the year 1932 and prior years shall be computed after December 31, 1933, on the same penalty basis as the taxes delinquent for the year 1933 until paid."

On the 29th day of April 1935, Governor Park approved Senate Bill 143 passed by the 58th General Assembly and reading as follows:

"Section 1. That all penalties and interest on personal and real estate taxes, delinquent for the year 1934 and prior years shall be computed after December 31st, 1934 on the same penalty and interest basis as the taxes delinquent for the year 1934 until paid.

Section 2. As the expeditious collections of such taxes is necessary for the maintenance of the State Institutions and for the support of the Public Schools, an emergency exists within the meaning of Section 57, Article 4 of the Constitution of this State, and this act shall be in force and take effect immediately after its passage by the 58th General Assembly and approval by the Governor."

It is to be noted that this act carried no repealing clause and that therefore House Bill 124 of the 57th General Assembly in Extra Session, is not by express terms repealed. However, it is clear from a reading of these two acts that under one the penalties and interest are to be calculated upon one basis, and under the other act the penalties and interests are to be calculated upon a different basis. Although repeals by implication are not favored, State ex rel. McDowell v. Smith, 67 S. W. (2d) 50, yet, when there is a total repugnancy between the two statutes it will be held that the later statute repealed by implication the earlier statute.

In the case of State ex rel. Wells vs. Walker, 34 S. W. (2d) 124, 129, it is stated:

"However, repeals by implication occur when there is a total repugnancy between the later and the earlier statutes. Section 1136 was reenacted in 1927 (Acts of 1927, page 131). In order to leave no doubt of the legislative intention at the same session the other act of 1927 (page 129, 130), more comprehensive and more specific, was passed. These two acts, at the same session, without exception or qualification, showed conclusively what was in the legislative minds. The total repugnancy should be conclusive to repeal the objectionable sentences respecting 12426."

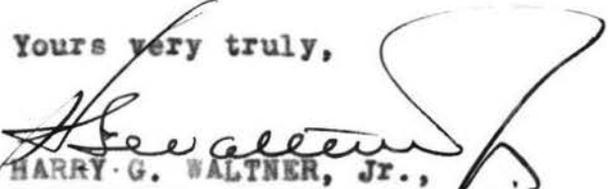
So with the enactment of Senate Bill 143, by the 58th General Assembly, it is clear what was in the legislative mind in respect to House Bill 124 of the 57th General Assembly in Extra Session. It must be construed to have been repealed by the later enactment.

Comparing House Bill 124 supra with Senate Bill 143 supra, it is apparent that the subject matter with which these two bills deal is identical, and that the only change made was to include subsequent taxes within the terms of the later law. This being the case, there is no basis for changing the rule laid down in the opinion to the Honorable Charles Young, Treasurer of Livingston County on November 12, 1934.

CONCLUSION.

It is therefore the opinion of this office that Senate Bill 143 of the 58th General Assembly applies only to the penalty on "taxes" and does not provide for the remission of any penalties accrued upon drainage district assessments.

Yours very truly,

  
HARRY G. WALTNER, Jr.,  
Assistant Attorney General.

APPROVED:

---

ROY McKITTRICK,  
Attorney General.