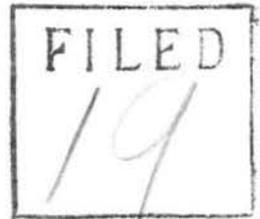


SOCIAL SECURITY - Social Security Act does not repeal, expressly or impliedly, the Act creating Social Welfare Boards in counties having a city or cities of the first class.

November 16, 1937.

Honorable J. E. Corby, President
Social Welfare Board
St. Joseph, Missouri



Dear Sir:

This will acknowledge receipt of your request for an opinion reading as follows:

"Last week when Mr. George I. Harworth was in St. Joseph we discussed what effect, if any, the passage of the last Legislature of the act creating the Social Security Commission has on the Social Welfare Board of this city. It was agreed that the writer should bring the matter to your attention with the request that your Department make a ruling on this point.

"In the preamble of the Social Security Commission law a number of Sections are specifically mentioned as being repealed, but no specific mention is made of those Sections covering the Social Welfare Board law. The Social Welfare Board law is contained in Sections 12938 to 12945, incl., it being Article II of Chapter 90 of the Revised Statutes of Missouri for 1929."

In determining your request for an opinion, we point to the general law and cases construing inconsistent act or parts of acts that have been repugnant to one another. In this respect we have also considered the modes of repeal and whether or not one act repeals another act without express mention.

Your attention is directed to 59 C. J., page 900, Section 501, which reads:

"In the absence of any constitutional restraint, a state legislature may exercise the power of repeal in any form in which it can give a clear expression of its will. There are two ways of repealing a statute or part thereof; one is by express terms, the other is by necessary implication. While ordinarily the legislature may be expected to employ express terms to give effect to its intent to repeal a statute, it is under no obligation to do so, and in a proper case a repeal may be effected by implication. The question of repeal is one of intent and must be solved by determining as near as may be the intent of the legislature. ** "

Then again, at page 902, Section 506, it is stated:

"A statute which in general terms repeals all other laws within its purview repeals an earlier statute covering the same subject; and the repeal is not confined merely to such parts of the former act as are inconsistent with the provisions of the repealing act; but there is no repeal of the provisions of former laws as to cases not provided for by the repealing statute; and where some of the provisions of the prior are within the purview of the repealing act, while others are not, and to hold the former repealed and the latter not would lead to an absurdity, none of the provisions upon the subject will be held repealed."

And Section 507 reads in part:

"Instead of carefully scrutinizing the existing statutes and specifying in terms which are repealed, it is a

common practice for the legislature, in enacting a statute, to insert a clause that all laws and parts of laws in conflict, or all acts and parts of acts inconsistent, with the statute are repealed. Such a provision indicates a legislative intent and undertaking to repeal some statutory provision, but it leaves open the question of what acts are inconsistent, and frequently it leaves the question of repeal in doubt. ** "

In considering whether or not the Social Security Act, Laws of Mo. 1937, page 467, is repugnant to Article 2 of Chapter 90, R. S. Mo. 1929, we have assumed that the Legislature must have had in mind the latter act at the time the former was passed.

In the case of State vs. Bader, 78 S. W. (2d) 835, 839, the Supreme Court, in speaking of the presumption that the Legislature had in mind a previous act or an act in *pari materia*, said:

"It is not to be presumed that the same body of men would pass conflicting and incongruous acts. The presumption is that they had in mind the whole subject under consideration; that, whilst the one general subject is touched in several separate acts, yet the legislative intent was that of a harmonious whole. In such case, it is the duty of the courts to so construe all the act in such manner that each and every part thereof may stand, if such construction can be attained, without doing violence to the language used in the several acts."

Attention is directed to Section 25 of the Social Security Act, Laws of Mo. 1937, at page 478, reading:

"All provisions of law in conflict with this Act are hereby repealed. If any provision of this Act, or the application thereof to any person or circumstance is held invalid the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby."

In the case of State vs. Smith, 67 S. W. (2d) 50, 57, the Supreme Court has aptly stated the rule to be, in quoting Lewis-Sutherland on statutory construction and 25 R.C.L., Section 169, 170, as follows:

"It is the established rule of construction that the law does not favor repeal by implication but that where there are two or more provisions relating to the same subject matter they must, if possible, be construed so as to maintain the integrity of both. It is also a rule that where two statutes treat of the same subject matter, one being special and the other general, unless they are irreconcilably inconsistent, the latter, although later in date, will not be held to have repealed the former, but the special act will prevail in its application to the subject matter as far as coming within its particular provisions.

"In many of the cases just cited (under the passage quoted supra) there was a general repeal of all inconsistent acts and parts of acts. As a general rule the insertion of this general repealing clause does not add anything to the effect of the general act to repeal local or special laws.

"The same text states in section 275:
'The general law can have full effect beyond the scope of the special law, and by allowing the latter to operate according to its special aim, the two acts can stand together. Unless there is a plain indication of an intent that the general shall repeal the other, it will continue to have effect, and the general words with which it conflicts will be restrained and modified accordingly.' "

We deduce from the authorities cited that where a statute or act is inconsistent or repugnant to another, that such statutes or acts should be construed so as to permit both to stand. The reason for this is apparent, because the Legislature would not pass conflicting or incongruous acts, and we should indulge in the presumption that they had the whole subject under consideration. However, this rule in the construction of inconsistent or repugnant acts is not always to be followed, because in some instances while repeals by implication are not favored, acts totally repugnant must necessarily be repealed by implication.

While the Social Security Act is intended to be comprehensive in its scope within the purview of the designated purposes outlined in Section 1, it does not follow from this observation that the Legislature intended a repeal of the Act providing for Social Welfare Boards. A reading of the Act providing for Social Welfare Boards clearly indicates that such Board or Boards may function without conflicting with the operation of the Social Security Act. This may be illustrated by reference to Section 12944, R. S. No. 1929, which provides in part, in substance, that the Board shall make a concentrated attack on social causes of hardship, unsanitary housing, child labor, extortionate charges of pawnshops, salary loan and chattel mortgage agreements. Other duties imposed upon the Social Welfare Boards might be illustrated for which we have no useful purpose in this opinion. Nowhere is any duty expressed nor implied that would indicate the Social Security Commission is authorized to engage in the activities illustrated.

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Without attempting to consider every provision of the Social Security Act to see whether or not any of such provisions are inconsistent or repugnant to the Act creating Social Welfare Boards, suffice it to say that the two Acts can be permitted to stand and function within the scope of their general plan.

CONCLUSION

In view of the above, it is our opinion that the Social Security Act, Laws of Mo. 1937, page 467, does not repeal, expressly or impliedly, Article 2 of Chapter 90, R. S. Mo. 1929 relating to Social Welfare Boards in counties having a city or cities of the first class.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

RCS:FE