

STATUTES: A statute amended by different acts of  
AMENDMENTS: the same general assembly should be  
REPEALS: construed so that all amendments may have  
force and effect.

---

September 6, 1941

FILED  
12

Mr. Dwight H. Brown  
Secretary of State  
Jefferson City  
Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the question of whether Section 571 R. S. 1939 is amended by adding the proviso contained in Senate Bill 70 and by the proviso contained in Senate Bill 85, both passed by the Sixty-first General Assembly. The statement of facts furnished you by the Commerce Clearing House, Inc. pertaining to this question and which accompanied your request are as follows:

"Chapter 1, Article 21 revised statutes of 1939, Section 571 is amended by both Senate Bill 70 and Senate Bill 85 of the 1941 Missouri regular session. Senate Bill 85 added a proviso at the end of Section 571 which read 'provided further that nothing herein contained shall be construed as imposing a tax upon any transfer as defined in this Act, of intangibles, however used or held, whether in trust or otherwise, by a person, or by reason of the death of a person, who was not a resident of this state at the time of his death.' Senate Bill 70 provides for the addition of the following proviso at the end of Section 571; 'and provided further that nothing herein contained shall be construed as imposing a tax upon any transfer as defined in this Act, on a trust or any distributee thereof, created as a part of a stock bonus plan,

pension plan, disability or death benefit plan or profit sharing plan, for the exclusive benefit of employees, to which contributions are made by an employer or employees, or both, for the purpose of distributing in accordance with such plans, the earnings or principal, or both the earnings and principal of the trust fund.' The procedure for adding the provisos by both bills was to provide that Section 571 was to be read as set forth in bill texts themselves. In neither case did one bill include the proviso intended to be enacted by the other. That is, Senate Bill 70 which was approved by the Governor August 4, 1941 restated Section 571 but did not include the amendment which was made by Senate Bill 85 approved by the Governor June 26, 1941. According to our records, both measures are to become effective October 10."

"We would be pleased to have you advise us whether the amendments made by Senate 85 and Senate Bill 70 both will take effect from and after October 10 or whether the amendment made Senate 85 is by inference repealed because it is not restated in Section 571 as set forth in Senate 70, the Act with the latest approval date. It is our conclusion that since there is no conflict between the two added provisions that both will take effect and be incorporated as part of Section 571, however, we would appreciate your confirmation of this conclusion."

In 1933 the General Assembly of Missouri enacted two laws pertaining to the same section of the Revised Statutes, namely 9952 R. S. 1929, and the question of the construction of these two acts were before the Supreme Court in the case of the State et rel. vs. Bader et rel. 78 S.W. (2d) 835. In speaking of the rule of construction that the courts should place upon

statutes passed under such circumstances, the court said: l.c. 839:

"We think the applicable rule is:  
'That where two acts are passed at the same session of the Legislature, relating to the same subject-matter, as here, they are in pari materia, and, to arrive at the true legislative intent, they must be construed together. Forry v. Ridge, 56 Mo. App. 615; State ex rel. v. Klein, 116 Mo. 259, 22 S.W. 603; St. Louis v. Howard, 119 Mo. 41, 24 S.W. 770, 41 Am.St. Rep. 630. The law does not favor repeals by implication. If by any fair interpretation all the sections of a statute can stand together, there is no repeal by implication.' Gasconade County v. Gordon, 241 Mo. 569, 145 S. W. 1160, 1163. The opinion in which case says further:

"In Black on Interpretation of Laws, in speaking of statutes in pari materia, it is said: "Especially is it the rule that different legislative enactments passed upon the same day or at the same session, and relating to the same subject, are to be read as parts of the same act."

"To like effect is 2 Lewis' Sutherland on Statutory Construction (2d Ed.) p. 845, whereat it is said: 'It is observed that in the comparison of different statutes passed at the same session or nearly at the same time this circumstance has weight; for it is usually referred to as indicating the prevalence of the same legislative purpose, as rendering it unlikely that any marked contrariety was intended.'"

"It is easy to see why the rule of construction pertaining to statutes in pari materia applies with peculiar force to statutes passed at the same session of a legislative body. In such case

we have, in fact, the same minds acting upon the same subject. 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."

Said Section 571 R. S. 1939 is amended by two acts of the General Assembly by adding proviso clauses to the original act. The provisions of the two proviso clauses are not conflicting, and applying the rules of construction stated in the Bader case supra, it seems that they are in *pari materia* and in order to arrive at the true legislative intent they must be construed together. The fact that one act is passed after the other act and the first act is not restated in the later act would not alter the foregoing rule.

On the question of the duties of the Secretary of State in relation to the publication of these two acts in the session Laws for 1941 will say that under Section 663 R. S. 1939 the original roles of these two acts after having been approved by the Governor, would be deposited in the office of the Secretary of State. Then under Section 665 R. S. 1939, the Secretary of State shall deliver copies of these two bills to the public printer. He directs and superintends the printing of them which are finally published in the session Laws. We do not find where the Secretary of State would be authorized to consolidate these two bills for the purpose of being printed in the session Laws.

Hon. Dwight H. Brown

-5-

September 6, 1941

CONCLUSION

From the foregoing it is the opinion of this department that since there is no conflict between the proviso clause to Section 571 R. S. 1939 which were enacted by Senate Bills 70 and 85 of the Sixty-first General Assembly, that both of said proviso clauses will take effect and be incorporated in the session Laws for 1941.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

---

VANE C. THURLO  
(Acting) Attorney-General

TWB:DJ