

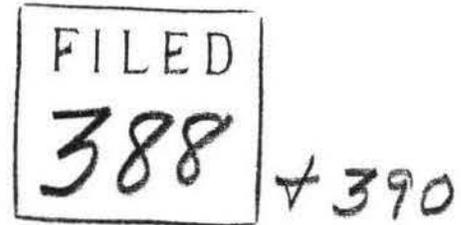
COUNTIES: Where statutes are passed at the same legisla-  
CIRCUIT JUDGES: tive session and are in pari materia, the last  
SALARIES: statute signed by the Governor is considered  
CONSTITUTIONAL LAW: as being the law where there are conflicting  
provisions. Where county courts so order, the  
circuit judge shall receive an additional \$3,000 per annum, each  
county contributing in equal amounts.

Opinions No. 388 and No. 390

November 8, 1965

Honorable Carroll M. Blackwell  
Prosecuting Attorney  
Callaway County  
Fulton, Missouri

Honorable Roderic R. Ashby  
Prosecuting Attorney  
Mississippi County  
Charleston, Missouri



Dear Sirs:

This opinion is in response to your inquiry concerning the amount of contribution by each county in a judicial circuit under Subsection 3 of Section 478.013, as amended by the 73rd General Assembly where the counties have allowed such additional compensation as provided by such amendment.

Section 478.013, RSMo. Cum. Supp. 1963, was repealed and a new section is enacted in lieu thereof by two bills, H.B. 390 and H.B. 459. These two bills are not identical. The pertinent portions, however, are as follows:

Subparagraph 3, of H.B. 390 reads as follows:

"All other judges of the circuit courts of this state shall each receive an annual salary of sixteen thousand dollars payable by the state out of the state treasury. If the county courts of all of the counties composing a circuit so order, the judge of that circuit shall receive an additional three thousand dollars per annum to be paid by the counties composing the circuit. The county part of the salary shall be divided among the counties and be paid by them proportionately as the population of each county bears to the entire population of the circuit."

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Subparagraph 3 of H.B. 459 reads as follows:

"All other judges of the circuit courts of this state shall each receive an annual salary of sixteen thousand dollars payable by the state out of the state treasury. If the county courts of all the counties composing a circuit so order, the judge of that circuit shall receive an additional three thousand dollars per annum to be paid by the counties composing the circuit the counties contributing equal amounts."  
(Emphasis added)

The underscored portions reveal a direct conflict in terms, that is to say, H.B. 390 provides the salary increase of three thousand dollars "shall be divided among the counties and paid by them proportionately as the population of each county bears to the entire population of the circuit."

House Bill 459 provides the counties shall contribute in "equal amounts."

House Bill 390 was passed by the legislature on June 15, 1965 (Senate Journal 84th day, p.1177) and signed by the Governor on the 29th day of June, 1965. Senate Substitute for House Bill 459 was passed by the legislature on June 28, 1965 (House Journal 92nd day, p.1707) and signed by the Governor on the 23rd day of August, 1965. Both became effective on the same day, viz., October 13, 1965.

To resolve this apparent conflict, we must construe these to arrive at some conclusion based on law. A basic guide in construing statutes is first to seek the intention of the lawmakers for the act and if possible, to effectuate that intent. (Julian v. The Mayor et al, 391 S.W.2d 864). Where two acts are passed at the same session relating to the same subject, they are in pari materia and to arrive at the legislative intent, they must be construed together (State ex rel. Karbe v. Rader, 78 S.W.2d 835, l.c. 839; Hull v. Baumann, 131 S.W.2d 721, l.c. 725). We recognize the law does not favor repeal by implication. The statutes must, if reasonably possible, be construed to maintain the integrity of both. (Gross v. Merchants-Produce Bank, 390 S.W.2d 591).

We have been unable to reconcile the provisions of H.B. 390 and H.B. 459 of the 73rd General Assembly. Sutherland on Statutory Construction, 3rd Edition, Volume 2, § 520 at p. 537, has this to say on the subject:

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"To be in pari materia, statutes need not have been enacted simultaneously or refer to one another. However, application of the rule that statutes in pari materia should be construed together is most justified in the case of statutes relating to the same subject matter that were passed at the same session of the legislature, especially if they were passed or approved or take effect on the same day, and in the case where the later of two or more statutes relating to the same subject matter refers to the earlier. In these situations the probability that acts relating to the same subject matter were actuated by the same policy is very high, for in the first three cases they were enacted by the same men and in the last were declared to be within the knowledge of the legislature at the same time. But in construing an ambiguous enactment it is held proper to consider not only acts passed at the same session of the legislature or to which the act refers, but also acts passed at prior and subsequent sessions to which the act does not refer. However, if a subsequent act is in irreconcilable conflict with the act under consideration, the subsequent act must prevail."

This office believes H.B. 459 to be the subsequent or later bill. We base our opinion on the following words of the Supreme Court found in *State v. Harris*, 87 S.W.2d 1026 1.c. 1029, which are as follows:

" \* \* \* Section 4428 was approved by the Governor, April 6, 1927, and section 4061, April 8, 1927. Neither had an emergency clause, and both therefore took effect at the same time, ninety days after adjournment of the Legislature. The act approved April 6, 1927, section 1, of which now appears as section 4428, supra, contained a second section repealing 'all acts and parts of acts inconsistent with this act' (Laws 1927, p. 174). It could not, of course, have been the intention of the Legislature thereby to repeal section 4061, which was not then in existence. If either act is to be treated as later than the other, section 4061 would be the later act.

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"Assuming for the purpose of this case that section 4428 is a valid enactment, we have, then, two legislative acts passed at the same session of the Legislature, taking effect at the same time and relating to the same general subject. They should be construed together and if possible harmonized so as to give effect to each. *Gasconade County v. Gordon et al.*, 241 Mo. 569, 581, 145 S.W. 1160 \* \* \*." (Emphasis added)

The Supreme Court, en banc, in *State on inf. Taylor v. American Insurance Company et al.*, 200 S.W.2d 1, 1.c. 14, stated:

" \* \* \* The provisions are necessarily repugnant and the later act controls. The rule is stated in *State ex rel. City of Republic v. Smith*, 345 Mo. 1158, 139 S.W.2d 929, 934(14,15), as follows:

"Moreover, where there are two acts on one subject, the rule is to give effect to both if possible, but if the two are repugnant in any of their provisions, the later act, without any repealing clause, operates to the extent of the repugnancy as to repeal the first. *Meriwether v. Love*, 167 Mo. 514, 67 S.W. 250."

Accordingly, we conclude that the counties contribute in equal amounts under Subsection 3, of H.B. 459, 73rd General Assembly (Section 478.013, RSMo, as amended), because it was last enacted by the legislature and signed by the Governor.

This opinion is limited to the narrow question presented. You did not ask, we have not considered and do not pass on the constitutionality of these bills (Section 478.013 as amended).

#### CONCLUSION

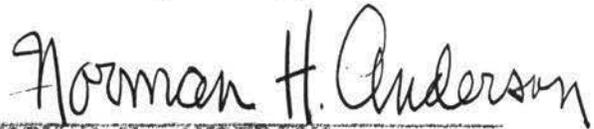
It is the opinion of this office that House Bill 459, 73rd General Assembly (Section 478.013, RSMo. Cum. Supp. 1963 as amended) is controlling. Where a conflict of provisions occurs between House Bill 459 and House Bill 390 (both passed by the 73rd General Assembly and amending Section 478.013, Cum. Supp. 1963) the provisions of House Bill 459, 73rd General Assembly will govern. Thus,

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under Subsection 3, of House Bill 459 (Section 478.013, Cum. Supp. 1963 as amended) where the county courts of all the counties comprising the circuit so order, the judge of that circuit shall receive an additional three thousand dollars per annum to be paid by the counties composing the circuit, the counties contributing equal amounts.

The foregoing opinion, which I hereby approve, was written by my assistant, Richard C. Ashby.

Yours very truly,



NORMAN H. ANDERSON  
Attorney General