LINCOLN UNIVERSITY:
TEACHERS' RETIREMENT SYSTEM :

Sec. 172.300, RSMo, Cum. Supp. 1955, does apply to curators of Lincoln University with respect to the use of state appropriated funds for retirement, disability and death plans.

December 10, 1957

Honorable Earl E. Dawson
President
Lincoln University
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"Vernon's Annotated Missouri Statutes lists the following revision of Section 172.300 of the Missouri Statutes:

"'Section 172.300 (1955 Supp.)

"'The curators may appoint and remove, at discretion, the president, deans, professors, instructors and other employees of the university; define and assign their powers and duties, and fix their compensation, and such compensation may include payments under, or provision for, such retirement, disability, or death plan or plans as the curators deem proper for persons employed by the university and paid out of any of its public funds for educational services, their beneficiaries or estates, and the curators may administer such plan or plans under such rules and regulations as they deem proper; and for these purposes the curators may use state-appropriated or other public funds under their control and pay or transfer such funds into a fund or funds for paying such benefits, and they may enter into agreements for and make contributions to both voluntary and statutory plans for paying such benefits.'

"The Board of Curators of Lincoln University would be most pleased to have the written opinion of your office as to whether

> the revision with respect to the use of state-appropriated funds for retirement, disability and death plans applies to the Curators of Lincoln University."

In regard to the above, we direct your attention to Section 175.040, RSMo 1949, which reads:

> "Board to organize and have same powers as curators of state University of Missouri.- It is hereby provided that the board of curators of the Lincoln University shall organize after the manner of the board of curators of the state University of Missouri; and it is further provided, that the powers, authority, responsibilities, privileges, immunities, liabilities and compensation of the board of curators of the Lincoln University shall be the same as those prescribed by statute for the board of curators of the state University of Missouri, except as stated in this chapter."

The situation with which we are confronted here is that Section 175.040, RSMo 1949, applied to and adopted Section 172.300, RSMo 1949. In 1955, Section 172.300, supra, was amended. The question is whether Section 175.040 applies to the amended section as it did apply to the section before its amendment. In other words, when a reference statute is amended, does it continue to be applicable to the statute to which it referred. We may here point out that Section 172.300, as amended, contains the same material that was found in the section prior to its amendment, plus additional material.

In this respect, we direct attention to Vol. 82, C.J.S., p. 846, et seq., which reads:

> "Construction with statute adopted by reference in general. Where a statute adopts a part or all of another statute by a specific and descriptive reference thereto, as it may do in accordance with the rules stated supra §§ 70-72, the effect is the same as if the statute or part thereof adopted had been written into the adopting statute. Where, however, the adopted statute is referred to merely by

words describing its general character, only those parts of it which are of a general nature, or particularly relate to the subject of the adopting statute, will be considered as incorporated into the later.

"Where one statute adopts such provisions of another 'as are applicable,' the court, in determining what provisions are applicable, must construe into the adopting statute only such provisions of the prior act as will give force and effect to the later act; and, when the subsequent legislation incorporates pre-existing laws 'insofar as same is applicable,' the quoted expression controls in determining the force or application of such adopted laws in a particular situation. When the legislature, in adopting the procedural provisions of another act, made substitution in certain instances, it will be inferred that, on matters not specified, no substitution was intended.

"In dealing with cases of legislation by reference, the primary consideration to be kept in view is the general scope and object of the amending legislation; and, in determining whether a reference adopted or included a particular clause of the first act, neither statute should be subject to a strained construction.

"Effect of modification of adopted statute. The question whether one statute absorbing or incorporating by proper reference provisions of another will be affected by amendments made to the latter is one of legislative intent and purpose. As a rule the adoption of a statute by reference is construed as an adoption of the law as it existed at the time the adopting statute was passed, and, therefore, is not affected by any subsequent modification of the statute adopted unless an intention to the contrary is clearly manifested; but, where the legislative intent to do so clearly appears, the adopting statute will include subsequent modifications of the original act.

> "A well-established exception to, or qualification of, the general rule exists where the reference in an adopting statute is to the law generally which governs the particular subject, and not to any specific statute or part thereof; in such case the reference will be held to include the law as it stands at the time it is sought to be applied, with all the changes made from time to time, at least as far as the changes are consistent with the purpose of the adopting statute.
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> "Where a statute limits its provisions by reference to a section of the code of civil procedure which is further limited by a subsequent section of such code, both sections relating to a common subject, one being a complement of the other, and both having always been regarded as one, the statute is not limited merely by the section specifically referred to, but also by the other. So it has been held that, where one section or provision of a statute adopts and incorporates by reference the provisions of another section or subdivision of the same statute, a subsequent amendment of the latter will be regarded as affecting the entire statute, including the subdivision which made the adoption."

We also direct attention to the case of Johnson v. Laffoon, 77 S.W. 2d 345, a case decided by the Court of Appeals of Kentucky, which case, at l.c. 347, reads:

> "Now it is true that, when a statute adopts a part or all of another statute by a specific and descriptive reference thereto, the adoption takes the statute as it exists at that time. The subsequent amendment or repeal of adopted statute has no effect on the adopting statute, unless it is also repealed expressly or by necessary implication. Burns v. Kelley, 221 Ky. 385, 298 S.W. 987. But this rule has application only to where the adoption is by a specific and descriptive reference. Where the reference is not to any particular statute or part of a statute, but to the

> law generally which governs a particular subject, the reference in such case means the law as it exists at the time the exigency arises to which the law is to be applied. Cole v. Wayne Circuit Judge, 106 Mich. 692, 64 N.W. 741. * * *"

We next direct attention to the case of Turner v. Missouri-Kansas-Texas R. Co., 142 S.W. 2d 455, a case decided by the Supreme Court of Missouri, which case, at l.c. 458, reads:

> "We are unable to accept this view. The title of the bill when Sec. 869 was first enacted discloses a contrary legislative intent. It read: 'An Act to amend chapter 103 of the Revised Statutes of Missouri of 1889, entitled "Limitations of actions," by adding a new section thereto.' (Chapter 103 then covered the same subject matter as Arts. 8 and 9 now.) The whole chapter was amended by the addition of the section, and the rule is that for the purposes of construction the amendment is to be considered a part of the original act as if it had always been contained therein. 59 C.J. § 647, p. 1096; 25 R.C.L. § 159, p. 907. Further, the chapter dealt generally with limitations governing real and personal actions; and another rule of construction is that when a statute (like Sec. 874) refers not merely to a particular statute, but to the law generally governing a certain subject, the reference includes not only the law in force when the referring statute was enacted but also subsequent laws on that subject, so far as consistent with the statute. 25 R.C.L. § 160, p. 908, 59 C.J. § 624, p. 1061."

We also direct attention to the case of State v. McHarness, 255 S.W. 2d 826, which, at l.c. 827, et seq., reads:

> "The instant case was tried March 3, 1952, by a jury selected from a panel of veniremen drawn from a list of persons qualified for jury service, the list having been complied in accordance with Section 497.130 RSMo 1949, V.A.M.S. The Section 497.130 (and Section 497.010) originally a part of the Act of 1947 applicable to juries in

Jackson County, Vol. 1, Laws of Missouri 1947, pp. 342-350, was repealed, and a new Section 497.130 (and a new Section 497.010) enacted, effective October 9, 1951. Laws of Missouri 1951, pp. 562-563. The repeal and re-enactment of Section 497.130 (and Section 497.010) were in effect an amendment of the Act of 1947. Defendant-appellant filed her motion to quash the panel or to challenge the array on the stated grounds that the panel of veniremen was drawn and selected from a list compiled under the old, now repealed and non-existing statute, and that, consequently, the panel, from which the trial jury in the instant case was selected, was illegal.

"The new Section 497.130 provides that, after it is ascertained that a county contains the prescribed number of inhabitants (see the new Section 497.010), the Board of Jury Supervisors shall cause a complete list to be made 'immediately.' However, the evidence shows that, from a practical standpoint, the list such as required under the new Section 497.130 cannot be compiled without laborious and painstaking examinations of the assessor's books and the list of registered voters, and the further investigation as to qualifications of the persons to be included in the compilation. Surely the Legislature never contemplated such a list could be made available for use 'immediately' upon the effective date of the amendment. According to the evidence introduced upon the hearing of the motion to quash, the Jury Commissioner of Jackson County under the supervision of the Board of Jury Supervisors, even before but in contemplation of the possible repeal of the old and the enactment of the new Section 497.130 in 1951, had been, and was at the time of the hearing, engaged in compiling a list of persons qualified under the provisions of the new Section 497.130. This labor had been diligently pursued, when possible, but had not been completed at the time of the hearing of the motion to quash and the trial of the instant case.

> "Referring to the unrepealed Section 497.140, subd. 2, RSMo 1949, V.A.M.S., it will be observed the Legislature contemplated that time is required to complete the compilation of a new list of qualified jurors, and so the Legislature in the Act of 1947 provided that the list in effect at the time of the enactment of the Act of 1947 should be continued in use until a list could be made ready for use under the then new, but now repealed, Section 497.130. Inasmuch as the new Section 497.130, enacted in 1951, is a re-enactment of a part of the Act of 1947 (now Chapter 497, RSMo 1949, V.A.M.S.) applicable to juries in Jackson County, and the Section 497.140, supra, of the Act of 1947 was not amended or repealed, we are of the opinion it was intended that Section 497.140 should become applicable to the new Section 497.130 enacted in 1951. Otherwise stated, in ruling the instant assignment of error, we are of the opinion the amendment should be considered as a part of the original act as if it had always been contained therein. Turner v. Missouri-Kansas-Texas R. Co., 346 Mo. 28, 142 S.W. 2d 455, 129 A.L.R. 829; 59 C.J., § 647, pp. 1096-1097."

Further, attention is directed to the case of Pogue v. Swink, 261 S.W. 2d 40, where, at l.c. 43, the Missouri Supreme Court stated:

> "Another principle of law also applies; that is: The rule that where a later act covers the entire subject of a prior act or acts, manifesting a legislative intent that the later act prescribes the law with respect to the subject matter, the later act supersedes the earlier act or acts. * * *"

From the above, it appears to be clear that where the adopting statute (§174.040) adopts in general terms all portion of another statute (§172.300) and not specific parts, that the amended statute is to be regarded as being adopted as well as the statute before its amendment. An examination of Section 174.040 shows it to be that type of statute. It provides that the board of Lincoln University shall "have same powers" as the board of curators of the University of Missouri. Also, that the "powers, authority,

responsibilities, privileges, immunities, liabilities and compensation of the board of curators of the Lincoln University shall be the same as those prescribed by statute for the board of curators of the State University of Missouri * * *." From the above, it would appear to be plain that it was the intent of the framers of Section 175.040 that the board of curators of Lincoln University should be in precisely the same situation as the board of curators of Missouri University. It could hardly be believed that the framers of the above section did not contemplate that the situation of the board of curators of the University of Missouri, with respect to powers and authority, would not be changed from time to time. It seems clear that the intention of the Legislature was that whatever changes might be made with respect to the powers and authority of the curators of the University of Missouri, that the same changes as to powers and authority would automatically extend to the curators of the Lincoln University.

CONCLUSION

It is the opinion of this department that Section 172.300, RSMo,1955 Cum. Supp., does apply to the curators of Lincoln University with respect to the use of state appropriated funds for retirement, disability and death plans.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

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