

Opinion No. 51-5389

July 18, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Chief Joseph P. Roach New Mexico State Police Santa Fe, New Mexico

{*79} I am in receipt of your letter of June 15 in which you request an opinion from this office regarding uniform allowances for State Police personnel. In particular, you mention that you have budgeted for an allowance of \$ 20 per month for each officer and that this amount was not cut by the State Board of Finance, subsequent to the passage of the Appropriation Bill for the 40th and 41st fiscal years by the 1951 Legislature. You ask whether you may legally increase this uniform allowance from \$ 10 to \$ 20.

The only statute relating solely and specifically to uniform allowances for State Police personnel is N.M.S.A. § 40-213 (Laws of 1941 ch 147 § 13). The pertinent portion of this section reads as follows:

"A suitable and distinctive uniform shall be prescribed by the State Police Board, and a **uniform allowance not exceeding \$ 10 per month**, over and above the salary, shall be allowed each member of the State Police required to wear a uniform /--." This portion of the statute has never been specifically repealed or amended by the Legislature. In my opinion, however the underlined words above have been repealed by implication, through the enactment of the Appropriation Act, 1951 Legislature.

In submitting its budget estimate for the consideration of the 1951 Legislature, your department included an item entitled "uniform allowance (75 men) \$ 20 per month each, \$ 240 per year. Total \$ 18,000." This item was considered by the Legislature and was also included in the appropriation voted for the State Police for the 40th and 41st fiscal years. And, as has been mentioned previously, this item in the budget was left intact by the State Board of Finance. Thus the uniform allowance of \$ 20 per month for each man has had the sanction of both the Legislature and the State Board of Finance.

The doctrine of repeal by implication rests on the ground that the last expression of the legislative will ought to control and that the Legislature intended to give effect to its enactments. (See 50 Am. Jur. 540.) It is well-settled in New Mexico law that repeals by implication are not favored and {*80} will not be indulged in if there is any other reasonable construction. Attempts shall be made to reconcile conflicting statutes where possible. (See 40 N.M. 511; 40 N.M. 344; and 28 N.M. 653.) But where two statutes cannot be construed so as to give effect to each without contradiction or repugnancy, the last enactment will survive. (See 47 N.M. 6 and 50 Am. Jur. 548.) Of course, the older statute is repealed only to the extent of the repugnancy. It is my opinion that the provision of N.M.S.A. § 40-213 specifying an expenditure of \$ 10 per month, and the appropriation act, 1951 Legislature, authorizing a \$ 20 expenditure, are completely irreconcilable and that the 1951 Act must prevail.

It can be contended, with some justification, that § 40-213 is a specific act and that the Appropriation Act by the 1951 Legislature is one which is general and broad in scope. But there is no rule which prohibits the repeal by implication of a special or specific act, or portion of such act, by a broad and general one. The question is always one of legislative intent. (See 50 Am. Jur. 565.) In my opinion the intention of the Legislature to effect the repeal of the "\$ 10 per month clause" of § 40-213 is clearly manifest through its enactment of the 1951 Appropriation Act authorizing the \$ 20 allowance.

It is my opinion that you are authorized, both by legislative enactment and the approval of the Board of Finance, to increase the uniform allowance from \$ 10 to \$ 20.

I hope that this opinion has proved helpful and has answered all your questions on this subject.