

Opinion No. 51-5441

October 4, 1951

BY: JOE L. MARTINEZ, Attorney General

TO: Hon. Claron E. Waggoner District Attorney Seventh Judicial District Socorro, New Mexico

{*147} This is in reply to your letter of September 25, 1951, in which you request an opinion as to our interpretation of Chap. 176 and Chap. 177 of the 1951 New Mexico Session Laws.

It appears that Chap. 176 of the 1951 New Mexico Session Laws sets one date for the term of court in Catron County while the following chapter, 177, in the same New Mexico Session Laws sets another date for the commencing of the term of court. The same setup appears as to the Third Judicial District, relating to Dona Ana County.

I have checked the Journal of the Legislature in the office of the Secretary of State and I find that these two chapters, 176 and 177, were passed the same day and approved the same day by the Governor. There is no definite record as to which one was passed first and which last in talking about a question of hours. I have given this matter considerable study and have done quite a bit of research because of the importance of this opinion.

36 Cyc. 1130, sub-section (c) "Conflicting Provisions", under general heading of "Statutes", reads as follows:

{*148} "In the consideration of conflicting provisions in a statute, the great object to be kept in view is to ascertain the legislative intent, and all particular rules for the construction of such provisions must be regarded as subservient to this end. In accordance with the well-settled principle that the last expression of the legislative will is the law, in case of conflicting provisions in the same statute, or in different statutes, the last enacted in point of time prevails; and on the same principle, if both were enacted at the same time, the last in order of arrangement controls. As a corollary to this latter rule, a proviso in an act repugnant to the purview thereof is not void, but stands as the last expression of the legislative will. Where the conflict is between words and figures, the words will be given effect. Where general terms or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part, the particular provisions will be given effect as clearer and more definite expressions of the legislative will. But a particular expression in one part of a statute not so large and extensive in its import as other expressions in the same statute will yield to the larger and more extensive expressions, where the latter embody the real intent of the legislature."

I find the case of Board of County Commissioners v. James Leavitt et al, a Supreme Court case in 4 N.M. 37, 12 Pac. 759, to be in point. The facts in this case appear in the

opinion and it is a coincidence that this case arose in the then Second Judicial District of Socorro County. The Court said:

"In construing together provisions of the same statute, and statutes in pari materia, the cardinal rule is to ascertain the intention of the legislature, and courts should adopt such construction as will best effectuate the intention of the legislature. Particular enactments to be taken against general enactments in the same statute." (Citing several cases.)

On page 41 of the same case, same citation, the Court went on to say:

"Of two repugnant clauses or statutes, that which is last in order of time or in local position prevails over that which is first. 12 U.S. Dig., p. 741, secs. 897, 832, 835, 842, 844, 849. The 'act to incorporate cities and towns,' of April 1, 1884, is last in local position."

The same reasoning and the same holding by the Supreme Court of New Mexico is to be found in the case of Nye v. Board of County Commissioners, 36 N.M. 169, 9 P. 2d 1023. Also in the case of Turkenkoph v. Te Beeste, reported in 232 P. 2d 684.

In view of the above and foregoing authorities, it is my opinion that Chap. 177, being last in position in the 1951 New Mexico Session Laws, supersedes Chap. 176 and, therefore, Chap. 177 is controlling.

Trusting that this fully answers your inquiry, I remain