Opinion No. 57-130

June 12, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Hilton A. Dickson, Jr., Assistant Attorney General

TO: George Case, Director, School Tax Division, Bureau of Revenue, Santa Fe, New Mexico

QUESTIONS

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What effect is given an amendatory act which refers to an earlier existing statute but which fails to make reference to previous amendments thereto?

CONCLUSION

See opinion.

OPINION

ANALYSIS

House Bill No. 84, entitled "An Act Relating to Food Establishments, Providing for Permits and the Collection and Disposition of Fees", and as was signed into law by the Governor at the conclusion of the 1957 Legislative Session, provides specifically for the amendment of § 3, Chapter 212, Laws 1951.

The 1951 law is stated as follows:

"All restaurants operating within the state of New Mexico must obtain within thirty (30) days after the effective date of this act (54-3-1 to 54-3-16), a permit from the health officer, issued through the Bureau of Revenue upon payment of a permit fee of ten ($ 10.00) dollars, and on or before the first day of July of each year thereafter, pay an annual fee therefor of ten ($ 10.00) dollars to said Bureau of Revenue.

All moneys so collected shall be deposited with the state treasurer to the credit of the state health department to be used solely for the administration of said act; Provided meat markets operated as an integral part of frozen food locker plants shall not be required to pay said fees."

Subsequently, in 1955, the afore quoted statute was amended so as to substitute for an annual permit fee graduated fees. The statute giving consideration to the aforesaid amendment thus become effective in the following form:

"All restaurants operating within the state of New Mexico must obtain by July 1, 1955, and annually thereafter, a permit from the health officer, issued through the Bureau of Revenue upon payment to said bureau of a permit fee based upon gross receipts for the preceding calendar year, as follows:

From $ 1.00 to $ 30,000.00 . . . . $ 3.00; From $ 30,000.00 to $ 75,000.00 . . . . $ 5.00; From $ 75,000.00 to $ 100,000.00 . . . . $ 10.00; From $ 100,000.00 to $ 125,000.00 . . . . $ 15.00; Above $ 125,000.00 . . . . $ 20.00

Restaurants commencing operation after January 1, 1955, shall estimate their annual gross receipts for the purpose of determining the cost of their first permit.

All monies so collected shall be deposited with the state treasurer to the credit of the state health department to be used solely for the administration of said act; Provided meat markets operated as an integral part of frozen foods locker plants shall not be required to pay said fees."

In an effort to de-earmark the proceeds realized from the herein considered permits, the 1957 Legislature failed to recognize or was unaware of the 1955 amendment, and accordingly, in presenting House Bill No. 84, did so in such a form as to amend the earlier 1951 law and made no reference to any previous amendments.

The question of effect in cases similar to the instant situation is one which is well settled by the weight of authority. In **State v. Blake,** 214 Mo. 100, 144 S.W. 1094, the Supreme Court of Missouri stated, that

"The rule of law is that when a section of a statute is amended or displaced by a later substituted act, and still later an act is passed which in terms purports to amend the original section, referring to it by number, such last amendment applies to any intermediate amendment of, or substitution for, the original section; such intermediate amendment or substitute to be regarded as if it had always been a part of or in place of the original section."

This rule is also generally stated in **50 Am. Jur.** 483, as follows:

"The weight of authority is that an amendatory statute is not invalid because it purports to amend a statute which had previously been amended, and that an act may be amended without specific reference to it, where it is itself an amendment to a former act into which, by its terms, it is incorporated and to which reference is made. Under this rule, where a section is amended and a later amendment is enacted, which by its terms purports to amend the original section, reference being made thereto by number, the last amendment will be held to apply to any intermediate amendment of the original section which is to be regarded as if it had been a part or in place of the original section."

In keeping with the aforesaid theory, the amendatory language of the 1955 Act, hereinabove stated, should be considered as a part of, and existing with, the earlier statute, and further, that the last or instantly considered amendment shall apply to the earlier act but with effect given also to the intermediate and disregarded previous amendment where no conflict of legislative intent is manifest.

Accordingly, it is our opinion that House Bill No. 84, being Chapter 29, Session Laws 1957, will be given full effect with regard Chapter 212, Laws 1951, as amended by Chapter 26, Laws 1955.