

## Opinion No. 57-91

May 7, 1957

**BY:** OPINION OF FRED M. STANDLEY, Attorney General Robert F. Pyatt, Assistant Attorney General

**TO:** Honorable Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

### QUESTIONS

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Are the salary increases for elective State officials provided for by Laws 1957, Chapter 238, effective July 1, 1957, in addition to appropriations for departmental salaries provided for by the 1957 General Appropriations Act?

#### CONCLUSION

Yes.

### OPINION

#### ANALYSIS

It is clear by the terms of Laws 1957, Chapter 238, that elective officers of New Mexico, as set forth in said Chapter, are to receive the salaries therein fixed. Such Chapter, fixing salaries, is itself an appropriation law. **State ex rel Fornoff vs. Sargent**, 18 N.M. 272, 136 P. 602. The question becomes one of deciding whether or not the General Appropriations Act, being Laws 1957, Chapter 235, is inconsistent with the later enactment, to-wit: Chapter 238. If such repugnancy exists, then Chapter 238 would prevail.

However, we do not wish to place this opinion upon such narrow grounds. We are cognizant of Opinion of Attorney General No. 4331, dated July 7, 1943, which was concerned with the question of whether or not a General Appropriations Act supersedes a former appropriation made by specific statute. It was held that since the General Appropriations Act was later, it of necessity, superseded any prior, **inconsistent** statute concerning the same matter.

Now, it is mandatory that we bear in mind that Chapter 235, the General Appropriations Law, does not fix the salary of an elective State officer, except that of the Governor. While appropriations are made for salaries of various departments under such officers (See for example salaries for the Attorney General, State Auditor, Secretary of State, State Treasurer, etc.), Chapter 235 does not define the individual salary of such officers. Chapter 238, and it alone, has that function. It is generally recognized that where one is

dealing with two laws, enacted at the same legislative session, the last expression of the Legislature governs, **but only in case of conflict**. The intention of the Legislature is the controlling item. Opinion of the Attorney General No. 5441, dated October 4, 1951. The rule is stated in **82 C.J.S.**, Statutes, Section 297, as follows:

"The principle that a repeal by implication is not favored by law, discussed supra § 288, is especially applicable as between two statutes passed at the same session of the legislature. Also, where two acts relating to the same subject matter are passed at the same legislative session, there is a strong presumption against implied repeal, and they are to be construed together, if possible, so as to reconcile them and, likewise, they are to be construed together to give effect to each, and thereby avoid an implied repeal, rather than to infer that one destroys the other; but, if the two are irreconcilable, the one which is the later expression of the legislative will ordinarily prevails over, and impliedly repeals, the other."

Inasmuch as Chapter 238 fixes the salaries, with the above exception, we find no repugnancy between the two chapters, and hold that they must be construed together.

In Opinion of the Attorney General No. 4336, dated July 14, 1943, the question arose because the 1943 Legislature passed an act increasing the Insurance Commissioner's salary from \$ 3,000.00 to \$ 4,000.00. However, the same Legislature, in its General Appropriations Act, only appropriated \$ 3,000.00 for the salary of such Commissioner. Citing **State ex rel Fornoff vs. Sargent**, supra, among other cases, the Attorney General held that where a State officer's salary is fixed by a particular act, and provision is made for its payment out of a particular fund, such an act amounts to a continuing appropriation. We agree with such citation, but do not read the **Fornoff** case as limited to the view that no appropriation results unless made from a particular fund. In other words, the principle of **Fornoff** applies though the salary payment be from the General Fund as well as from a particular fund.

Continuing with Opinion of the Attorney General No. 4336, it was further held that both the General Appropriations Act of 1943, (which appropriated \$ 3,000.00 to the salary of the Insurance Commissioner), and Laws 1943, Chapter 79 (which appropriated \$ 4,000.00 to the salary of the Insurance Commissioner), could be harmonized and construed together, with the result that there had been two appropriations; one for \$ 3,000.00, and the second (for the salary increase) of \$ 1,000.00.

Applying such reasoning here, and bearing in mind the quotation from 82 C.J.S., Statutes, Section 297, supra, we hold that Laws 1957, Chapters 235 and 238 are to be construed together. It then logically follows, and we so hold, that the salary increases provided by Chapter 238, over Section 4-5-1, N.M.S.A., 1953 Compilation, are in addition to departmental salary appropriations provided by Chapter 235.