Opinion No. 61-29

April 17, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General 02,05,50 Mark C. Reno Assistant Attorney General

TO: Honorable Walter R. Kegel, District Attorney, First Judicial District, County Courthouse, Santa Fe, New Mexico

QUESTION

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Does Section 40-47-12, N.M.S.A., 1953 Compilation supersede Section 40-47-6, idem, insofar as injury or destruction to fences are concerned?

CONCLUSION

No.

OPINION

ANALYSIS

Section 40-47-6 makes it a misdemeanor, **inter alia,** to maliciously break down any fence, belonging to another or enclosing any land not that of perpetrator or to maliciously throw down or open any gate or fence and leave the same down or open. This was enacted as a part of the laws of 1853-4.

Section 40-47-12, enacted in 1891, declares to be a felony the unlawful cutting, destruction or injury to any fence enclosing real estate or lands, added to which there must be a malicious destruction or injury of enumerated items on the land. This section further requires that the owner of the trespassed fence have good and indefeasible title by grant from Spain or Mexico or under the laws of the United States or New Mexico.

Under the earlier statute, damage only to a fence or gate is a criminal offense. No proof of ownership of the enclosed land is required. Under the later enactment there must be damage to a fence coupled with injury to enclosed items plus title to the land as prescribed in the statute. The language describing the acts constituting damage differs.

The statutes are therefore clearly reconcilable and the legislative intent clear and distinguishable. That statutes are to be reconciled when reasonably possible to do so, and that repeals by implication are not to be favored requires no citation of authority. Here, the two relate to different acts, different proof is required as to ownership of the land, different language is used to describe forbidden acts and there is clearly no repeal

for there is no conflict between the statutes. The later, in our opinion, does not supersede the earlier. Compare **Brown** v. **Martinez,** A.C.N.M. 7 April 61, as yet not reported.