

Opinion No. 61-34

April 27, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General F. Harlan Flint, Assistant Attorney General

TO: John W. Chapman, Chief Counsel, Bureau of Revenue, Santa Fe, New Mexico

QUESTION

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There is an apparent conflict between Laws 1961, Chapter 189, Section 4, and Laws 1961, Chapter 190, Section 2. Each of the said sections purports to amend the specific exemption section of the Emergency School Tax, being § 72-16-15, N.M.S.A., 1953 Compilation, as amended. The Bill adopted as Chapter 189 continued in force the already existing exemption upon "all sales or services made or performed by societies and other organizations not organized or operated for gain or profit." The Bill adopted as Chapter 190 amended said § 72-16-15 in such manner as to remove the above mentioned exemption.

1. To the extent that the two chapters are conflicting and irreconcilably inconsistent, which prevails?
2. Upon what date did the amendment of § 72-16-15 which was accomplished by Laws 1961, Chapter 190, become effective?

CONCLUSIONS

1. Laws 1961, Chapter 190.
2. It became effective on March 31, 1961.

OPINION

ANALYSIS

In order to fully understand the facts which constitute the basis of this opinion, it is necessary to elaborate upon the statement of facts found above. This opinion deals with two House Bills introduced in the 1961 Legislature for the State of New Mexico. We shall refer to the two bills in the form in which they received approval by the two Houses of the Legislature and were signed by the Governor.

The first of these, in order of discussion, was House Revenue and Taxation Substitute for House Bill No. 140. This is the Bill which, upon becoming law, was designated as

Chapter 189. We shall refer to it as House Bill No. 140. This bill comprised Sections 1, 2, 3 and 4. For the purposes of this opinion we are interested in and direct your attention solely to Section 4, thereof. In this regard the said Section 4 purported to amend Section 72-16-15, N.M.S.A., 1953 Compilation. For our purposes the most significant characteristic of this section is that it continued in existence the pre-existing exemption upon sales or services made or performed by nonprofit organizations.

House Bill No. 140 which became Chapter 189 was passed by both Houses and signed by the Governor on March 31, 1961 at 2:35 P.M. The bill as passed contained a section providing that the effective date of the Act should be July 1, 1961.

We next direct your attention to House Taxation and Revenue Committee Substitute for House Bill No. 88. This bill, upon passage and receiving the Governor's signature has been designated as Chapter 190. It contains two substantive sections. For the purposes of this opinion we are concerned only with Section 2 which, as did House Bill 140, amends Section 72-16-15, N.M.S.A., 1953 Compilation. While the amendment expressed by this section is substantially identical with that expressed by House Bill 140, there is one significant and crucial difference. The nonprofit organization exemption contained in pre-existing law and in House Bill No. 140 is absent from the House Bill No. 88 amendment. This Bill was passed by both Houses of the Legislature and was signed by the Governor at 3:00 P.M. March 31, 1961. It will be noted that House Bill No. 88 was signed twenty-five minutes later than House Bill No. 140. Another distinguishing feature of House Bill No. 88 is that it carried an Emergency Clause.

Considering these two bills upon the basis of the facts outlined above it would appear that there is an irreconcilable conflict between them such as would require the utilization of the maxims of judicial construction in order to determine the legislative intent. However, there is one further characteristic of House Bill No. 88 which, in our view, makes it unnecessary to use rules of construction in order to ascertain legislative intent. This characteristic consists of the language in the first sentence of Section 2 thereof which is to the following effect:

"Section 2. Section 72-16-15, N.M.S.A., 1953 Compilation (being Laws 1959, Chapter 5, Section 18, as amended and as amended by House Revenue and Taxation Committee Substitute for House Bill No. 140 if it becomes law prior to this act) is amended to read:"

This language is significant because even though there is a conflict in the exemption sections of the two Acts, the above quoted language contained in House Bill No. 88 indicates the intention of the Legislature to correct it. Except for the above quoted language we would feel constrained to apply established rules of statutory construction to determine legislative intent. However, the presence of the quoted words prohibits the use of rules of construction because true legislative intent is revealed thereby. In this regard see 82 C.J.S. 835 STATUTES, § 367 b, which states in part:

"Where statutes passed at the same legislature are necessarily inconsistent, the question of which shall take effect depends upon the intent of the legislature."

The prime rule of statutory construction to which all other rules are subordinate, is to ascertain by any means available and to give effect to the intention of the Legislature. This is true because the intention of the Legislature as imposed in a statute is the law -- **State v. Thompson**, 57 N.M. 459, 260 P. 2d 370; **Reese v. Dempsey**, 48 N.M. 417, 152 P. 2d 157. There is no immutable and infallible rule for determining legislative intent and the question of such intent must be decided from the peculiar facts and circumstances of each enactment. It has been stated that the intention of the Legislature is to be ascertained primarily from the language used in the statute **State v. Thompson**, supra; **Hendricks v. Hendricks**, 55 N.M. 51, 226 P. 2d 464; **George v. Miller & Smith**, 54 N.M. 210, 219 P 2d 285.

It is the view of this office that the above quoted language from House Bill No. 88 constitutes a clear and unambiguous expression of the Legislature's intention that House Bill No. 88 should prevail over House Bill 140, if the latter should become law before the former. In this regard it is apparent that the conditions provided in the quoted section of House Bill No. 88 were met in that House Bill No. 140 did become law prior to House Bill No. 88. Every bill passed by the Legislature becomes law when it is signed by the Governor. (Art IV, Section 22, New Mexico Constitution.) House Bill No. 140 became law twenty-five minutes before House Bill No. 88 was signed. Therefore, pursuant to the expressed legislative intent House Bill No. 88 amended and superseded that portion of House Bill No. 140 with which it was in conflict.

It has been pointed out that the two bills under consideration are in conflict only as regards their treatment of specific exemptions contained in Section 72-16-15. As regards this portion of the two statutes, House Bill No. 88, now designated as Chapter 190 prevails. As to its other sections, House Bill No. 140, now designated as Chapter 189 will become effective according to its own terms, on July 1, 1961.

Since House Bill No. 88 contained an emergency clause, the provisions of that Act became fully effective when the bill was signed by the Governor on March 31, 1961 and the exemption section found designated as Section 2 of Chapter 190 is in effect and will remain in effect from that date forward.

By way of anticipation and clarification of a further possible issue arising from the problem now under consideration, we refer you to Laws 1961, Chapter 236. This chapter was introduced as House Taxation and Revenue Committee Substitute for House Bill No. 52. That bill amended Section 45-4-28, N.M.S.A., 1953 Compilation to eliminate the exemption from emergency school tax previously granted to cooperative and foreign corporations. This Act, which was signed by the Governor on March 31 carries with it a provision declaring that the effective date shall be July 1, 1961. There is, in our view, no conflict between this statute and the views expressed in this opinion. Pursuant to the provisions of Section 45-4-28, prior to the effective date of Chapter 236, rural electric cooperatives are exempt from sales tax. This condition will continue until the effective date of Chapter 236, at which time such corporations will then become subject to the emergency school tax act.