

Opinion No. 63-54

May 16, 1963

BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Honorable W. T. Scoggin District Judge Third Judicial District Las Cruces, New Mexico

QUESTION

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What is the status of laws 1963, Chapter 68 (Senate Bill 30) when considered in the light of Laws 1963, Chapter 303 (House Bill 10, the Criminal Code)?

CONCLUSION

Laws 1963, Chapter 68 (Senate Bill 30) is repealed effective July 1, 1963.

OPINION

{*111} ANALYSIS

Article IV, Section 22 of the New Mexico Constitution provides that "every bill passed by the legislature shall, before it becomes a law, be presented to the governor for approval. If he approves, he shall sign it and deposit it with the Secretary of State."

Both of the bills in question were approved by the Governor and deposited with the Secretary of State. Senate Bill 30 (Laws 1963, Chapter 68), dealing with the conditions of suspension and deferment of criminal sentences, was approved by the Governor on March 2, 1963. House Bill 10 - the Criminal Code (Laws 1963, Chapter 303), which also contains provisions dealing with suspension and deferment of sentences, was approved by the Governor on March 25, 1963.

While repeals by implication are not favored, it is the rule that where two statutes on the same subject matter are passed at the same session of the legislature and these statutes contain an irreconcilable conflict, the later enactment approved by the governor prevails to the extent of the conflict. See **State v. Montiel**, 56 N.M. 181, 241 P. 2d 844; **Commonwealth v. Sanderson**, 170 Va. 33, 195 S.E. 516.

We want to emphasize, however that we do not have a repeal by implication situation here. We have a direct repeal. Senate Bill 30, the enactment which was first approved by the Governor, amended § 40-1-11, N.M.S.A., 1953 Compilation. House Bill 10, the Criminal Code, which was the later enactment approved by the Governor, and which is

therefore controlling, specifically **repealed** § 40-1-11, supra, both in the title and the body of the Act (page 92).

We now have to resolve the effective date of the repeal of § 40-1-11, as amended by Senate Bill 30. Senate Bill 30 contained no emergency clause nor effective date, and under Article IV, Section 23, New Mexico Constitution, the Bill therefore goes into effect on June 7, 1963. On the other hand, the Criminal Code contains an effective date of July 1, 1963 (p. 9 of the Act). We might mention at this point that the constitutional provision in Article IV, Section 23, providing that except for emergency measures and general appropriation laws the effective date of statutes is ninety days after adjournment of the legislature, is a limitation upon the right of the legislature to provide *{*112}* a shorter period than ninety days within which laws shall become effective, but does not preclude it from fixing a longer period as was done in the case of the Criminal Code - House Bill 10. **State ex rel. New Mexico State Bank v. Montoya**, 22 N.M. 215, 160 Pac. 359.

We see then that Section 40-1-11, supra, as amended by Senate Bill 30 of the 1963 general session of the legislature, will go into effect on June 7, 1963 and will be repealed on July 1, 1963. Further, it must be kept in mind that the **entire** Section 40-1-11, as amended by Senate Bill 30, is repealed on that date, not just the portion which is in conflict with the Criminal Code.

By: Oliver E. Payne

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