Opinion No. 63-87

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BY: OPINION of EARL E. HARTLEY, Attorney General

TO: Mr. John G. Jasper Attorney Department of Public Welfare 408 Galisteo Street Santa Fe, New Mexico

QUESTION

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In view of the apparently conflicting legislation enacted in 1963, are fees and expenses connected with the commitment and maintenance of indigent patients at the Los Lunas Hospital and Training School to be paid by the court, institution or the county?

CONCLUSION

Where no order of the court is entered regarding costs, expenses and maintenance, court costs are to be defrayed by the court and maintenance costs are to be defrayed by the institution as provided by Chapter 26, Section 1, Laws 1963 (Senate Bill 12).

OPINION

*{*192}* **ANALYSIS**

The issue here presented raises some of the most interesting questions in the entire field of statutory interpretation and construction.

Chapter 26, Section 1, Laws 1963 (Senate Bill 12) amended Section 34-3-8, N.M.S.A., 1953 Compilation, to provide in part as follows relative to costs of commitment and maintenance at the Los Lunas Hospital and Training School:

"Where no order of court is entered regarding costs, expenses and maintenance, the court costs shall be defrayed by the court, the expenses and maintenance of the inmate at the institution by the institution."

This enactment was approved by the Governor on February 21, 1963.

The same Section (34-3-8, supra) was also amended by another enactment of the 1963 Legislature (Chapter 293, Section 6, Laws 1963. Senate Bill 211). This second amendment, approved by the Governor on March 25, 1963, provides **in part** that:

"Where no order of court is entered regarding costs, expenses and maintenance, the same shall be defrayed by the county."

However, this was simply a reiteration of Section 34-3-8, supra, as it existed prior to the 1963 legislative session insofar as costs of commitment and maintenance were concerned. This fact should be borne in mind since, as will be seen, it is the important factor in resolving the question presented.

It does not require any particularly close scrutiny to observe that these two provisions are irreconcilably in conflict. The amendment to Section 34-3-8, supra, which was first approved, places the burden of costs and maintenance on the **court** and the *{*193}* **institution.** The later approved amendment to Section 34-3-8, supra, placed the burden of costs and maintenance on the **county.** Thus the question is whether Senate Bill 211, the amendment which was approved last, repeals by implication Senate Bill 12, the amendment to the same section which was first approved.

It is a universal rule of statutory interpretation that repeals by implication are not favored. **Mendoza v. Acme Transfer & Storage Co.,** 66 N.M. 32, 340 P. 2d 1080. The courts are fully aware that there is no rule of law which prevents the legislature, if it sees fit, from changing its mind during the same legislative session and repealing or amending a provision enacted earlier in the session on a particular subject. **Commonwealth v. Lomas,** Pa., 153 Atl. 124. However, the disfavor with which courts look upon repeals by implication is based on the presumption that laws are passed with deliberation and with full knowledge of previous legislative action and that generally where a repeal is intended, express terms will be used to accomplish that result. This presumption is especially strong with respect to acts passed at the same legislative session. **State v. Fidelity & Deposit Co. of Maryland,** 36 N.M. 166, 9 P. 2d 700.

While statutes passed at the same legislative session must, if possible, be construed together and effect given to each, nevertheless if there be an irreconcilable conflict, it is presumed that the legislature intended the earlier enactment to give way to the later enactment. **State v. Marcus,** 34 N.M. 378, 281 Pac. 454; **Buttorff v. City of New York,** Pa., 110 Atl. 728. The basis for the doctrine is simply that the later enactment is the last expression of legislative will on the subject. **S. Buchsbaum & Co. v. Gordon,** Ill., 59 N.E. 2d 832.

As noted earlier, the two amendments of Section 34-3-8, supra, are so inconsistent insofar as commitment and maintenance costs are concerned, that both cannot operate and be given effect. In the usual case then this would dispose of the matter and Senate Bill 211 (Chapter 293, Section 6, Laws 1963), the later enactment, would be deemed to have repealed by implication Senate Bill 12 (Chapter 26, Section 1, Laws 1963). However, there is another rule of statutory interpretation, often overlooked, which dictates a different result in this case.

Senate Bill 12, the earlier enactment, made a substantive change in existing law relative to costs of commitment and maintenance of patients at the Los Lunas Hospital and Training School. Prior to this enactment such costs were to be borne by the county. Senate Bill 12 changed this and provided that such costs were henceforth to be borne by the court and the institution. Then next in the chronological order of events came

Senate Bill 211 which also amended the section relating to such costs. The purpose of this legislation was **not** connected with costs of commitment and maintenance. Its purpose was to change other features of Section 34-3-8, supra. However, since Article IV, Section 18 of the Constitution provides that an amendment to a statute shall be set out in full, the old (pre-1963) provision relative to such costs was included. But, and here is the crux of the matter, this later amendment used the exact language of the original statute **insofar as costs of commitment and maintenance are concerned.** When this is the case, i.e., a portion of the original act is repeated *{*194}* in an amendment to that act, the portion simply reiterated is not considered to be a new enactment; rather it is deemed to be a mere continuation of the original act. Thus, in legal contemplation, there was only one amendment of Section 34-3-8, supra, during the 1963 legislative session insofar as costs of commitment and maintenance are concerned and this was accomplished by Senate Bill 12. **Janney v. Fullroe,** 53 N.M. 327, 207 P.2d 1013. Applying this rule to our fact situation, Senate Bill 211, the later enactment, did **not** repeal Senate Bill 12 by implication. Senate Bill 211 is to be given full force and effect except as to the provision for costs of commitment and maintenance. Such costs are to be borne by the court and the institution in the manner prescribed in Senate Bill 12 (Chapter 26, Section 1, Laws 1963). See 1 Sutherland, **Statutory Construction,** § 1934 (1943) and **S. Buchsbaum & Co. v. Gordon,** Ill., 59 N.E. 2d 832.

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