

SCHOOLS: Senate Bill No. 4, 64th General Assembly repeals and supersedes Section 10374 of Senate Bill No. 100, 64th General Assembly. Senate Bill No. 4, does not become operative until July 1, 1948.

August 27, 1947



7/3

Mr. Hubert Wheeler, Commissioner  
Department of Education  
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your request for an official opinion, which reads as follows:

"The Sixty-fourth General Assembly enacted Senate Bill 4 and Senate Bill 100. Both bills have been signed by the Governor -- Senate Bill 4 June 2 and Senate Bill 100 July 7. Section 10374, R. S. 1939, was included in Senate Bill 4 and Senate Bill 100. Both bills repealed and reenacted the same section but with different subject matter. Neither of these senate bills contained an emergency clause. Since Senate Bill 100 is of later enactment, it would appear that the provisions of Section 10374 in this act would take precedence over the provisions of Section 10374 of Senate Bill 4.

"Senate Bill 4 contains other sections dealing with the same subject matter. Section 10373, R. S. 1939, is changed by Senate Bill 4 to include instruction in American history and the study of American institutions. This section provides that the instruction shall commence with the school year next ensuing after the passage of this act.

"Sections 10374a, 10374b and 10374c are new and provide additional regulations governing the teaching of the Constitutions of the United States and the State of Missouri, with studies in American history and American institutions. Nothing seems to prevent these sections from becoming operative.

Mr. Hubert Wheeler

Aug. 27, 1947

"Section 10374, Senate Bill 100 is in direct conflict with the same section number in Senate Bill 4. The one provides that the instruction shall begin not later than the opening of the eighth grade to an extent to be determined by the State Board of Education. The other provides that the instruction shall begin not later than the opening of the seventh grade to an extent to be determined by the State Commissioner of Education. Also, Senate Bill 100 does not include the instruction of American history and American institutions, also varies in defining what institutions shall offer such instructions.

"I shall appreciate your advice and official opinion for the administration and operation of these laws in regard to the following questions:

"1. Since Section 10374 of Senate Bill 4 does not harmonize with the same section of Senate Bill 100 would it be repealed by implication and the provisions of Section 10374, Senate Bill 100 prevail?

"2. If Section 10374 of Senate Bill 4 is nullified by the same section in the latter enactment Senate Bill 100, would this result in nullifying all other sections enacted in Senate Bill 4 or just the one conflicting section?

"3. Since these laws take effect September 10, 1947 would the provisions in Section 10373, Senate Bill 4, that they shall commence with the school year next ensuing after the passage of this act, mean the school year beginning July 1, 1948."

Senate Bill No. 4 enacted by the 64th General Assembly and approved by the Governor, June 2, 1947, repealed Sections 10373 and 10374, R. S. Mo. 1939 and enacted in lieu thereof five new sections.

Aug. 27, 1947

Senate Bill No. 100 enacted by the 64th General Assembly and approved by the Governor, July 7, 1947, repealed twelve sections of Article II, Chapter 72 R. S. Mo. 1939 as amended, which related to all classes of schools and enacted in lieu thereof thirteen new sections. One of the sections repealed and reenacted was Section 10374, the only change made being that the words "state department of education" were substituted for the words "state superintendent of public schools."

In order to present clearly the difference and the changes created by these bills, we will quote Section 10373 and 10374 as they will be if Senate Bill No. 100 repeals Senate Bill No. 4, and Sections 10373, 10374, 10374a, 10374b and 10374c, which will be in effect if Senate Bill No. 4 has not been repealed by implication.

Section 10373, R. S. Mo. 1939 provides:

"In all public and private schools located within the state of Missouri, commencing with the school year next ensuing after the passage of this section, there shall be given regular courses of instruction in the Constitution of the United States and of the state of Missouri."

Section 10374, Senate Bill No. 100, 64th General Assembly reads:

"Such instruction in the Constitution of the United States and of the State of Missouri shall begin not later than the opening of the eighth grade, and shall continue in the high school courses and in the courses in state colleges, universities and the education departments of state and municipal institutions to an extent to be determined by the state board of education."

A comparison of the above sections with Senate Bill No. 4 will disclose various conflicts insofar as Sections 10373 and 10374 are concerned and for your convenience we have underlined where said conflicts occur:

"Section 10373. In all public and private schools located within the State of Missouri, except privately operated trade schools, commencing with the school year next ensuing

Mr. Hubert Wheeler

Aug. 27, 1947

after the passage of this Act, there shall be given regular courses of instruction in the Constitution of the United States and of the State of Missouri, and in American history, including the study of American institutions.

"Section 10374. Such instruction in the Constitution of the United States and of the State of Missouri, and in American history, including the study of American institutions, shall begin not later than the opening of the Seventh Grade, and shall continue in the high school courses and in the courses in state colleges and universities and, to an extent to be determined by the State Commissioner of Education.

"Section 10374a. No pupil shall receive a certificate of graduation from any school described in Section 10373, unless he has satisfactorily passed an examination on the provisions and principles of the Constitution of the United States and of the State of Missouri, and in American history, including the study of American institutions.

"A student of a college or university, who, after having completed a course of instruction prescribed in this article and successfully passed an examination on the provisions and principles of the United States Constitution, and in American history, including the study of American institutions, transfers to another college or university, shall not be required to complete another such course or pass another such examination as a condition precedent to his graduation from such a college or university.

"Section 10374b. The wilful neglect of any superintendent, principal or teacher, to observe and carry out the requirements of this article, shall be sufficient cause for dismissal or removal from his position.

"Section 10374c. The State Commissioner of Education shall make arrangements for carrying

Aug. 27, 1947

out the provisions of this article and prescribe a list of suitable texts adapted to the needs of the school and college grades."  
(Underscoring ours)

For the purpose of this opinion we will combine your first two questions in one answer.

I.

Senate Bill No. 4 being a special law repeals Section 10374, Senate Bill No. 100.

The first question to be determined is whether in view of the conflict between Senate Bill No. 4 and Senate Bill No. 100, which section shall prevail? As stated above Section 10374 of Senate Bill No. 100 merely reenacts the old law, but changes the designation as to who shall determine the extent of the instructions in the Constitutions of the United States and Missouri, from the superintendent of public schools to the state department of education. This change was necessitated by the Constitution of 1945, which abolished the office of state superintendent of public schools and vested control of public education in the state board of education.

Senate Bill No. 4, however, changes and broadens the law relating to the teaching of the Constitutions and provides that American history including the study of American institutions shall be taught, which courses of study shall begin a year earlier than provided for in the previous law. It further provides that no pupil shall receive a certificate of graduation unless he has passed an examination in these studies, and exempts any college student who having completed a course and successfully passed an examination in a college or university thereafter transfers to another college or university. The willful neglect to carry out the requirements of the act is made a cause for dismissal or removal, and the state commissioner of education is required to make arrangements to carry out provisions of the act.

From a reading of the above it will be seen that Senate Bill No. 4 goes into detail and particularities as to the teaching of the fundamentals of American principles.

The rule in this state is that when two acts are passed at the same session of the legislature which deal with the same subject matter, but are in conflict with each other to such an extent that both cannot stand, then the act that deals with the subject matter in a particular way repeals the act which deals with the subject generally. The principle case in this regard is that of *State v. Harris*, 337 Mo. 1052, 87 S. W. (2d) 1026. We quote from this case extensively because the facts are especially apropos and all the authorities are cited therein. The court said at page 1029:

"Sections 4428 and 4061 were enacted at the same session of the Legislature in 1927, Laws 1927, pp. 173, 174. Section 4428 was a new law. Section 4061 repealed the former statute, section 3310, R. S. 1919, which prescribed the punishment for robbery in the first degree, regardless of how committed, at imprisonment in the penitentiary for not less than five years, and substituted therefor the present provision, to bear the same section number, 3310. The two enactments were carried into the 1929 revision of the statutes as sections 4428 and 4061, respectively. The legislative steps culminating in the passage of said section 4428 were completed a few days prior to the completion of the passage of section 4061. Section 4428 was approved by the Governor April 6, 1927, and section 4061 April 8, 1927. Neither had an emergency clause, and both therefore took effect at the same time, ninety days after adjournment of the Legislature. The act approved April 6, 1927, section 1. of which now appears as section 4428, supra, contained a second section repealing 'all acts and parts of acts inconsistent with this act.' (Laws 1927, p. 174). It could not, of course have been the intention of the Legislature thereby to repeal section 4061, which was not then in existence. If either act is to be treated as later than the other, section 4061 would be the later act.

"Assuming for the purpose of this case that section 4428 is a valid enactment, we have, then, two legislative acts passed at the same

session of the Legislature, taking effect at the same time and relating to the same general subject. They should be construed together and if possible harmonized so as to give effect to each. *Gasconade County v. Gordon et al.*, 241 Mo. 569, 581, 145 S.W. 1160. If, however, the statutes are necessarily inconsistent, that which deals with the common subject-matter in a minute and particular way will prevail over one of a more general nature. *Gasconade County v. Gordon et al.*, supra. The rule is thus stated in *State ex rel. County of Buchanan v. Fulks et al.*, 296 Mo. 614, 626, 247 S. W. 129, 132 quoting from 36 Cyc. 1151:

"Where there is one statute dealing with a subject in general and comprehensive terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication."

"See, also, announcing the same rule, *State ex inf. Attorney General v. Dabbs*, 182 Mo. 359, 81 S. W. 1148; *Gilkeson v. Missouri Pac. R. Co.*, 222 Mo. 173, 204, 121 S. W. 138, 24 L. R. A. (N.S.) 844, 17 Ann. Cas. 763; *State ex rel. American Central Ins. Co. v. Gehner*, 315 Mo. 1126, 1132, 280 S. W. 416, 418."

While it is true that the rule in other states is that a later statute, which is in conflict with an earlier statute passed at the same session, will repeal the earlier statute by implication (59 C. J. 1055), still

Mr. Hubert Wheeler

Aug. 27, 1947

we believe that the rule as laid down in the Harris case is controlling in Missouri and is the better rule as announced by the courts of other jurisdictions and by text book writers. (See 58 C. J. 1055; 50 American Jurisprudence, page 564.) Therefore, it is our opinion that Section 10374 of Senate Bill No. 100 enacted by the 64th General Assembly has been repealed by Senate Bill No. 4 enacted by the 64th General Assembly.

## II.

### Senate Bill No. 4 not applicable until school year beginning July 1948.

Section 10373 provides that the course of instructions therein provided for shall be given, "commencing with the school year next ensuing after the passage of this Act." The school year by Section 10362, R. S. Mo. 1939, runs from July 1st, of one year until July 30th, of the next.

Senate Bill No. 4 was signed and sent to the Governor, May 19, 1947 and was approved by the Governor on June 2, 1947. Since there was no emergency clause, the bill will go into effect September 10, 1947.

Insofar as this point is concerned, it is necessary to determine what is meant by the phrase "after the passage of this act." Does it refer to the date of the original passage by the legislature as opposed to the approval by the executive, or to the date that the act was approved by the Governor, or does it mean the date that the act shall take effect?

132 American Law Reports, page 1049 states:

"Whether such expressions as prior to, or after, or at the time of the 'passage,' or 'passing,' of the act in which such expression appears will be construed literally or given a technical meaning seems to be largely dependent upon such factors as the entire context of the act; the surrounding circumstances of its enactment, that is, the various elements

Aug. 27, 1947

indicating the intent of the legislative body in using such language in the act; the relative hardship or inconvenience which each construction would impose upon those affected thereby; and the existence or non-existence of constitutional provisions which would conflict with a literal construction of the enactment. There is noted, however, among the American courts, a pronounced tendency to adopt a technical construction of such statutory provisions, in decided contrast to the literal construction adhered to in England."

In *Ex parte Lucas*, 160 Mo. 218, 61 S. W. 218, the court had before it the construction of a statute which required certain acts to be performed ninety days after "approval of this Act." The court said that the statement in the Act, l. c. 228:

"\* \* \* \* must therefore be considered technical terms having a peculiar and appropriate meaning in law and must be construed according to their technical import, as is required by section 4160, Revised Statutes 1899, in construing laws. That is, those words must be understood under the Constitution to mean ninety days after the act can and does constitutionally take effect in the absence of a declared emergency."

In the early case of *Andrews v. St. Louis Tunnell R. Co.*, 16 Mo. App. 299 the court had before it a statute which gave a certain lien priority over all mortgages placed upon property "subsequent to the passage of this Act." The court held that the act did not go into effect until ninety days after its approval by the Governor and that word "passage" should be construed as meaning the time that the act took effect.

In *Nichols v. Robinson*, 277 Mo. 483, 211 S. W. 11, it will be noted that the court held that the "passage" referred to in an act included the approval of the Governor, but this case dealt with the time when the act was to go into effect. It is not the same question as is presented in the instant case and the *Lucas* and *Andrews* cases above.

Mr. Hubert Wheeler

Aug. 27, 1947

That the act should go into effect the first day of July 1948, was the intent of the legislature is shown by the fact that the course of study should be for the entire school year and since there would be no law requiring such a course until September 10, 1947, such a course could not be given for an entire school year beginning July 1, 1947. Further, Section 10374c, provides that the state commissioner of education shall make arrangements for carrying out the provisions of the act and shall prescribe a list of suitable texts adapted to the needs of the school and college grades. It is common knowledge and a fact of which judicial notice may be taken, that such arrangements will entail a great deal of work and to interpret the act so as to require this work to be done in the space of little more than three weeks would be, "a hardship or inconvenience which \* \* \* \* the construction would impose upon those affected thereby."

Therefore, we believe the provisions of Senate Bill No. 4 shall not take effect until July 1, 1948.

#### CONCLUSION

It is therefore the opinion of this department that Section 10374 of Senate Bill No. 100, 64th General Assembly relating to the teaching of the course of study in the United States Constitution and the Missouri Constitution in the schools of this state is repealed by Senate Bill No. 4, 64th General Assembly relating to the same subject. It is further the opinion of this department that the provisions of Senate Bill No. 4 will not take effect until the school year beginning July 1, 1948.

Yours very truly

ARTHUR M. O'KEEFE  
Assistant Attorney General

APPROVED

---

J. E. TAYLOR  
Attorney General

AMO\*K:MA