

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider.
Attorney General

January 26, 1977

ATTORNEY GENERAL OPINION NO. 77- 32

The Honorable E. Richard Brewster
State Representative
Chairman, Judiciary Committee
3rd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Statutes--Amendment--Implication

Synopsis: Section 3 of 1977 House Bill 2005 impermissibly operates to amend and repeal other statutes without compliance with Article 2, § 16 of the Kansas Constitution.

* * *

Dear Representative Brewster:

You inquire concerning 1977 House Bill 2005, and in particular, concerning the following underscored portion of section 3, which states thus:

"Whenever an agency is required by law to give an opportunity for a hearing to any person, other than hearings pursuant to K.S.A. 1976 Supp. 77-421, and any amendments thereto, the procedure set forth in this act for contested cases shall apply. Such procedure shall control over any conflicting hearing procedures set forth by statutes of this state." [Emphasis supplied.]

The Honorable E. Richard Brewster
Page Two
January 26, 1977

You inquire whether the underscored language complies with Article 2, § 16 of the Kansas Constitution which states in pertinent part thus:

"No law shall be revived or amended, unless the new act contain the entire act revived or the section or sections amended, and the section or sections so amended shall be repealed. The provisions of this section shall be liberally construed to effectuate the acts of the legislature."

The title of the bill does not reflect that the bill affects any other statutes of the state in any fashion whatever, for it provides simply thus:

"AN ACT relating to state agencies; establishing a state administrative procedures act."

In Atchison, Topeka and Santa Fe Railway Co. v. Board of Education, 123 Kan. 378 (1927), the court considered a similar question. There, the court considered a 1909 enactment which purported to alter school levy authority granted and fixed by a 1907 act. Section 22 of the 1909 action in question commenced thus:

"The authority of boards of education in cities of the first class to levy taxes, as provided in chapter 330, Laws of 1907, is hereby limited so that the board of education of any such city shall not fix a rate of levy for the respective purposes in excess of the following named rates. . . ."

Chapter 330 of the Laws of 1907 was not reenacted as amended, nor was it repealed save by a provision that "All acts or parts of acts in conflict with this act are hereby repealed," which the court dismissed as "nonsensical." After pointing out the substantial alterations in prior law sought to be effected by the 1909 act, the court held it invalid under Article 2, section 16, supra, stating thus:

"If the act of 1909 had contained but a single section consisting of the matter contained in section 22, besides the repealing section, it would have been patently invalid. Invalidity was multiplied, not cured, by dealing in wholesale fashion with any statutes whose provisions were changed without compliance with the constitutional requirement. The act was not legislation by reference, because legislation by reference leaves the law referred to unmodified. (State v. Shawnee County, 83 Kan. 119, 110 Pac. 92.) The act was not a new independent superceding act, a code complete in itself, relating to power of taxing bodies, including boards of education in cities of the first class, to levy taxes. It was not interpretative. It could not operate to repeal the law of 1907 by implication because that law was expressly referred to and modified, and attempt was made to repeal the inconsistent portion. . . ." 123 Kan. at 382. [Emphasis supplied.]

In Hicks v. Davis, 97 Kan. 312 (1916), the court stated thus:

"The constitution plainly instructs the legislature as to its procedure when it deliberately sets out to amend or repeal a specific statute or a section of a statute. Of course, when the legislature is legislating directly on any subject, it may close its eyes, and frequently does, to all earlier legislation, and a later act, as the last expression of the legislative will, will supersede and repeal by implication all inconsistent earlier legislation. But when the legislature has a direct and special purpose in view, as it had when it attempted to revoke and expunge item 106 in the act of 1913, it was bound to amend the section in which it was incorporated. This it could do only by re-writing the section to suit its determination. . . ."

The Honorable E. Richard Brewster
Page Four
January 26, 1977

In Parker-Washington Co. v. Kansas City, Kansas, 73 Kan. 722, 85 Pac. 781 (1906), the court upheld a 1905 enactment over objections based on Article 2, § 16, stating thus:

"The act of 1905 in a sense amends various sections of the earlier act, but it does so by implication; it does not cover their entire subject-matter, and hence does not supersede them, but merely restricts the field of their operation; it is a complete and in a sense an independent enactment, which requires no reference to any other statute to make its meaning clear. The objection made to it in this report is therefore not well taken." 73 Kan. at 724.

The direction that the procedure in this act "shall control over any conflicting hearing procedures set forth by statutes of this state" is not strictly interpretive. Section 4 of the act prescribes that no license shall be denied, revoked, cancelled, suspended or withdrawn by an agency without notice and an opportunity to be heard as in a contested case. The remaining section prescribes the procedure to be followed in contested cases, and to obtain judicial review thereof. The last sentence of section 3 is not merely interpretive of any matter of the bill, but operates to supersede and to that extent repeal any statute which prescribes conflicting hearing procedures, and to extend this procedure to virtually every hearing required by Kansas law.

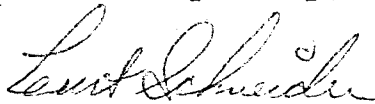
It is settled that Article 2, § 16 does not apply to repeals by implication. However, the sentence in question does not operate to repeal any statutes by implication, for it is the clearly expressed legislative intent that all statutes falling within the described category shall be repealed pro tanto. Section 4, for example, which by reference incorporates the contested case procedure in all licensure proceedings, necessarily, and permissibly, in my view, repeals or amends by implication all those statutes which prescribe conflicting procedures in licensing proceedings. Section 4 represents a traditional instance of repeal merely by implication, an example of a "new, independent superseding act, a code complete in itself." Atchison Topeka and Santa Fe Railway Co. v. Board of Education, supra. However, the last sentence of section 3 extends the act beyond its direct subject, administrative procedure in licensing proceedings, and seeks to repeal not merely by implication, but by express direction all statutes of

The Honorable E. Richard Brewster
Page Five
January 26, 1977

a described class. Certainly, the statutes in the class are not enumerated by chapter and article, but the class of statutes affected is described, and the legislative intent to displace and supersede them is expressed in certain and unambiguous language. The sentence is tantamount, in my judgment, to a statement that all acts or parts thereof in conflict with this act are repealed, which the court dismissed as "nonsensical" in Atchison, Topeka, and Santa Fe Railway Co. v. Board of Education, supra.

It is my opinion, accordingly, that the second sentence of section 3 of 1977 House Bill 2005 impermissibly operates to amend and repeal other statutes without compliance with Article 2, § 16 of the Kansas Constitution.

Yours very truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj