THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

January 9, 1948

Hon. Will R. Wilson, Jr.
Criminal District Attorney
Dallas County
Dallas, Texas

Opinion No. V-472

Re: Whether H. B. 501 as passed by the 50th Leg. or Art. 3912e, Sec. 19, Subd. (1), V.C.S., dealing with travel expenses of sheriffs, applies to Dallas County.

Dear Sir:

We refer to your recent letter in which you asked our opinion as to whether H. B. 501 as passed by the 50th Legislature, or Article 3912e, Section 19, Subdivision (1), V. C. S., dealing with travel expenses of sheriffs, applies to Dallas County.

H. B. 501, Acts of 50th Legislature, R. S. 1947, is as follows:

> "Section 1. The County Commissioners Courts of this State are directed to supply and pay for transportation of sheriffs of their respective counties and their deputies to and from points within this State, under one of the four (4) following sections:
>
> "(a) Such sheriffs and their deputies shall be furnished adequate motor transportation including all expense incidental to the upkeep and operation of such motor vehicles.
>
> "(b) Motor vehicles shall be furnished to such sheriffs and their deputies who may furnish gas and oil, wash and grease, incidental to the operation of such vehicles; for which gas and oil, wash and grease, such sheriffs and deputies shall be compensated at a rate not to exceed four cents (4¢) per mile for each mile such vehicle is operated in the performance of the duties of his office.

"(c) Alternatively such County Commissioners Courts may allow sheriffs and their deputies in their respective counties to use and operate cars on official business which cars are personally owned by them for which such officers shall be paid not less than six cents (6¢) per mile nor more than ten cents (10¢) per mile for each mile traveled in the performance of official duties of their office.

"(d) All compensation paid under the provisions of this Act shall be upon a sworn statement of such sheriff."

Prior to the enactment of H. B. 501 by the 50th Legislature, subdivisions (a) and (b) of Art. 3899, V. C. S., and Art. 3912e, Section 19, subdivision (1), V. C. S., were the statutes which governed the travel expenses of sheriffs throughout the State. Subdivision (a) of Article 3899 was applicable to counties whose officers were compensated on a fee basis. Subdivision (b) of said Article applied to those counties operating on a salary basis and having a population of not more than 190,000 inhabitants, while subdivision (1), Section 19 of Article 3912e was applicable to counties having a population in excess of 190,000 inhabitants.

We deem it advisable to quote certain well settled rules of statutory constructions pertinent to your request.

39 Tex. Jur. 137 and 138 provides, in part, as follows:

"Sec. 73. In General. - Although it contains no repealing clause, a new enactment abrogates any former act on the same subject, with which it clearly and manifestly conflicts, to the extent of the inconsistency or repugnancy between the two. This constitutes a repeal by implication, or, more properly speaking, by necessary implication.

"Implied repeal is a matter of legislative intent - that is, a statute is repealed by implication when it clearly appears that such was the intention of the Legislature.

> The passage of a statute that is conflicting and inconsistent with, and repugnant to, former acts on the same subject, shows an intent to repeal such acts."

In Vol. 1, pages 475-477, Sutherland Statutory Construction, 3rd Edition, we find the following:

> "The intent to repeal all former laws upon the subject is made apparent by the enactment of subsequent comprehensive legislation establishing elaborate inclusions and exclusions of the persons, things and relationships ordinarily associated with the subject. Legislation of this sort which operates to revise the entire subject to which it relates, by its very comprehensiveness gives strong implication of a legislative intent not only to repeal former statutory law upon the subject, but also to supersede the common law relating to the same subject."

In passing upon a somewhat similar question in the case of Meek v. Wheeler County, 125 S. W. (2d) 331, the court said:

> "In the case of Bryan v. Sundberg, 5 Tex. 418, 424, the Supreme Court of this State announced the rule which, we think, is decisive of the issue before us. Such rule is in the following language: 'It undoubtedly is true that a construction which repeals former statutes, by implication, is not to be favored; and it is also true that statutes in pari materia, and relating to the same subject, are to be taken and construed together; because it is to be inferred that they had one object in view, and were intended to be considered as constituting one entire, and harmonious system. But when the new statute, in itself, comprehends the entire subject, and creates a new, entire, and independent system, respecting that subject matter, it is universally held to repeal and supersede all previous systems and laws respecting the same subject matter.'

"An even stronger rule than the above is to be found in Black on Interpretation of Laws, Second Edition, page 355, in the following language: 'Even where there is no direct repugnancy or inconsistency between the earlier and the later law, there may in some cases be an implied repeal. This result follows where the later act revises, amends, and sums up the whole law on the particular subject to which it relates, covering all the ground treated of in the earlier statute, and adding new or different provisions, and thus plainly shows that it was intended to supersede any and all prior enactments on the subject-matter, and to furnish, for the future, in itself alone, the whole and only system of statute law applicable to that subject.'

"Again, in State v. Houston Oil Co. of Texas et al., Tex. Civ. App., 194 S. W. 422, 432, writ refused, it is said: 'The rule is well settled that, when a subsequent statute shows by its context that it was intended to embrace all the law upon the subject dealt with, such statute will, by implication, repeal all former laws relating to the same subject. The correctness of that rule is not controverted, and it is unnecessary to cite authorities in support of it.'"

It will be noted that H. B. 501 is made applicable to all counties of the State. It states in unambiguous terms that the Commissioners Courts are directed to supply transportation under one of the four alternatives given. The language is mandatory and not merely permissible.

Moreover, the fact that the Act provides different methods of allowing the sheriff's expenses, and leaving it within the discretion of the respective Commissioners Courts as to which method it will follow is rather convincing that the Legislature intended that said Act be applicable to all counties of the State regardless of its size.

The Legislature is presumed to have had knowledge of all existing laws dealing with the same subject

matter and could have excluded those counties having a population in excess of 190,000 inhabitants, if it had not intended that such counties be included within the Act. This it did not do. Would it not be just as reasonable to say that the Act is not applicable to counties operating on a fee basis or to those counties operating on a salary basis and having a population of not over 190,000 inhabitants as it would to say that it does not apply to those counties having a population in excess of 190,000 inhabitants? In that event the Act would not apply to any county in the State and would be meaningless. It would be attributing to the Legislature the intention of having done a meaningless thing in passing such a bill.

Therefore, in view of the foregoing it is our opinion that H. B. 501 supersedes subdivision (1), Section 19 of Art. 3912e, V. C. S., and is applicable to the sheriff of Dallas County.

SUMMARY

H. B. 501, Acts of the 50th Legislature, R. S. 1947, dealing with traveling expenses of sheriffs is applicable to Dallas County. It supersedes and repeals by implication subdivision (1) of Section 19 of Art. 3912e, V. C. S.

Yours very truly

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