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STATE OF MAINE

Inter-Departmental Memorandum Date December 19, 1975

To David S. Silsby, Director

Dept. Legislative Research

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject Resolution of Conflicting Statutes

Your memorandum of November 7, 1975, and accompanying materials, noted the potentially overlapping and conflicting provisions contained in four public laws enacted during the last legislative session. The question is whether these conflicts presently exist and, if so, how they are to be resolved. You indicated your position that there is no present conflict, but that variances in language and conflicts will arise when two of the laws (P.L. 1975, c. 383 and 498) become effective on July 1, 1976, and July 1, 1977. We agree with your position to the extent that variances and conflicts between two statutes do not exist until both statutes become effective. However, we also believe there are present conflicts between the two laws (P.L. 1975, c. 408 and 254) which are now effective, and these conflicts must be resolved.

A statute is a nullity until its effective date, and, conversely, speaks only from that date. Plummer v. Jones, 24 A. 585 (Me., 1891); 82 C.J.S., Statutes, 959, § 399. For this reason, an existing statute is amended only when the amending statute becomes effective. Old Tavern Farm, Inc. v. Fickett, 131 A.305 (Me., 1925). Likewise, an existing statute is repealed, either expressly or by implication, only when the repealing statute becomes effective. 2 Sutherland, Statutory Construction, Ch. 34 - "Duration of Statute Laws." Therefore, a conflict between statutes will exist only when the statutes are both effective and part of the law.

The effective date of statutes in Maine is primarily governed by constitutional provision. A statute will become effective 90 days after the recess of the Legislature unless it is an emergency enactment or the Legislature specifies some effective date more than 90 days after its recess. Art. IV, Part 3, § 16, Constitution of Maine; Paine v. State, 258 A.2d 266 (Me., 1969), (See also, Atty. Gen. Rept. 1967-72, p. 73). An emergency enactment becomes effective immediately upon approval by the Governor, or overriding of his "veto." Where the Legislature has otherwise specified the effective date of all or part of an act within the act itself, such specification will govern, so long as the date specified is not within 90 days from the date of recess.

The four laws you cited in your memorandum all have different effective dates, as follows: Chapter 408 (L.D. 1263) was enacted on an emergency basis and became effective when approved by the Governor - June 3, 1975. Chapter 254 (L.D. 671) was not emergency legislation and specified no effective date, and, therefore, became effective on October 1, 1975 (90 days after recess). Chapter 383 (L.D. 575) contains a specific provision (Section 30) that the act will become effective

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July 1, 1976, except for the authority of the Chief Justice to negotiate leases, which will be effective January 1, 1976. Chapter 498 contains a specific provision that the act will become effective July 1, 1977.

The foregoing analysis substantiates your position that potential conflict involving provisions of chapters 383 and 498 will not occur until those chapters become effective by their specific terms in 1976 and 1977. However, chapters 408 and 254 are presently both effective and any conflicts between the chapters exist now. According to the chart which you furnished with your memorandum, these conflicts exist between § 21 of chapter 408 and § 1 of chapter 254; § 23 of chapter 408 and § 3 of chapter 254, and § 25 of chapter 408 and § 4 of chapter 254.

The conflict between § 21 of chapter 408 and § 1 of chapter 254 is minimal. Both sections would repeal and replace 4 M.R.S.A. § 551. Though the wording of the respective replacements is different, they can be read together and given effect in a harmonious manner. Therefore, there would be no implied repeal of either section by the other, regardless of the chronological order of enactment and effective date. State v. London, 162 A.2d 150, 153 (Me., 1960). Since the primary goal is to give effect to the legislative intent, and that goal can be accomplished in this case because the provisions of the amendatory acts are not irreconcilably in conflict, the two sections should be read together.

The conflicts between the other sections are more difficult because they are irreconcilable conflicts. Sections 23 and 25 of Chapter 408 would amend parts of 4 M.R.S.A. §§ 554 and 562, respectively, while sections 3 and 4 of chapter 254 would repeal those statutory sections as amended prior to the last session. The situation is complicated by the chronology of enactment, approval, and effective date for the two acts. Chapter 254 was passed to be enacted by the House on May 6, 1975, passed to be enacted by the Senate on May 7, and approved by the Governor on May 12. The chapter became effective on October 1, 1975. On the other hand, Chapter 408 was passed to be enacted and approved later (June 2 and 3, 1975), but became effective immediately because it was emergency legislation. Since upholding legislative intent is the ultimate goal of statutory construction, any clear expression of such intent would serve to solve the conflict. But where, as here, such statement of intent is lacking, it is necessary to apply rules of construction.

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The specific fact situation described above has been judicially considered, but not in Maine courts. The Supreme Court of Idaho has made the following comments which are on point:

"The general rule at common law seems to have been that, of two inconsistent statutes enacted at the same session of the Legislature, the one which went into effect at the later date would prevail. [citations omitted] At common law this was a sensible rule, because the general rule was that a statute went into effect from the date of its passage, that is, from the date of the last act necessary to complete the process of legislation and give the bill the force of law. Sutherland on Statutory Construction (2d. Ed.) p. 308, § 172. Under our Constitution no act takes effect until 60 days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the law. Thus, except in the case of emergency acts, all acts of the Legislature go into effect at the same time. Therefore, in the great majority of cases, the common-law rule would not be an effective guide." Peavy v. McCombs, 150 P. 965 (Idaho, 1914).

The Court went on to suggest that a better guide would be which act was last signed by the Governor. However, it should be noted that this approach also has weakness as a guide in cases where one of the acts is passed over the Governor's veto or the Governor approves the conflicting statutes in a different order than they were passed by the Legislature.

The facts before the Idaho court in the Peavy case were nearly identical to the ones giving rise to this opinion - an act passed on an emergency basis inconsistent with an earlier enactment of the same legislature - and the Court held that the emergency act should prevail. One basis for the decision was that the subject matter of an emergency enactment would have been more clearly before the legislature. This rationale has also been used by courts of the State of Washington

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(Heilig v. City Council of Puyallus, 34 P. 164 (Wash. 1893)), with the added reason that the intent of the Legislature is best reflected by its last expression - the last measure enacted - rather than depending upon the date of the Governor's approval or the effective date. (State ex rel Gebhardt v. Superior Court for King County, 131 P.2d 943 (Wash., 1942); State ex rel Shomaker v. Superior Court of King County, 76 P.2d 306 (Wash., 1938)). The same general rationale has been applied in similar cases in Illinois (People v. Mattes, 71 N.E.2d 690 (Ill., 1947) and Pennsylvania (United States Steel Co. v. County Allegheny, 86 A.2d 838 (Pa., 1952)).

In light of the foregoing, we conclude that the Maine courts would probably follow what appears to be the majority rule for conflicts between acts passed at the same legislative session, where there is no clearly stated legislative intent, especially when one of the acts was emergency legislation. The majority rule could be stated thus: When there is irreconcilable conflict between enactments of the same session of the Legislature, the last act passed by the Legislature shall prevail over previously passed acts, to the extent of the conflict. There is no indication in the legislative history which would suggest that the Legislature had any specific intent concerning the effect of chapter 254 at the time they enacted chapter 408. However, applying the majority rule stated above, the provisions of chapter 408 should be construed to prevail over those of chapter 254 to the extent that there is irreconcilable conflict between them. This means that 4 M.R.S.A. §§ 544 and 562, as amended by P.L. 1975, c. 408, are presently in effect despite the repeal of these sections found in P.L. 1975, c. 254.

To summarize this opinion, there are listed below the steps which should be taken in analyzing two or more statutes passed in the same legislative session on the same topic:

1. Enactments should be read together and harmonized as far as possible to give effect to all provisions.
2. If there is an irreconcilable conflict between provisions of the enactments, the acts should be read carefully for any intrinsic guides indicating legislative intent that one of the acts should prevail over the other.
3. In the absence of any indication of legislative intent, the act which was last passed by the Legislature will prevail over previously passed acts, to the extent of any irreconcilable conflicts.


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cc: Senator Roland J. Carbonneau