

MAINE STATE LEGISLATURE

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JOSEPH E. BRENNAN
ATTORNEY GENERAL

29 MAR)AP 1312-10
29 MAR)AP 2123
30 MAR)AP 958
30 MAR)AP 4105



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

January 4, 1978

To: David Silsby, Director, Legislative Research
From: Donald G. Alexander, Deputy, Attorney General
Re: Conflicts in Volume 14, Maine Revised Statutes

This responds to your request that this office suggest disposition of certain identified conflicts in Volume 14 of the Maine Revised Statutes (Titles 29 through 31) so that the volume may be prepared for republication

The conflicts and suggested dispositions are as follows:

1. 29 M.R.S.A. § 113. Section 113 discusses the surrender of motor vehicle registration number plates. The conflict in question results from enactment of P.L. 1977, c. 294 §2, which repealed a provision of the first sentence of § 113 which specified that registration number plates be surrendered on demand of the Secretary of State, and subsequent enactment of P.L. 1977, c. 481, § 5-A, which specified, without reference to the prior amendment, that registration number plates be surrendered on demand of the Secretary of State and then added the words "or his designee."

Both the amendments appear to be technical in nature. The Chapter 294 amendment makes surrender of the plates automatic, and the Chapter 481 amendment makes it clear that the Secretary of State himself need not take the action to require surrender of plates, a designee of the Secretary of State being sufficient to take the action. Following the doctrine that, where legislation is effective on the same date, as is the case with Chapter 294 and Chapter 481, then the later enacted legislation will prevail, it would be my view that the first sentence of 29 M.R.S.A. § 113 as that sentence appears amended in Chapter 481, § 5-A should prevail in the republished volume. This amendment would have the effect of reviving the words stricken by chapter 294, § 2.

Citation of both Chapter 481 and Chapter 294 in the amendment noted under the statute would avoid need for any further footnote.

2. 29 M.R.S.A. § 545. In 1977, the Legislature repealed and replaced 29 M.R.S.A. § 545 by two separate acts. P.L. 1977, c. 217, § 4, effective November 1, 1977, amended § 545 to require that persons age 65 and over be required to pass the vision portion of the driver's examination before renewal of their licenses. It also amended § 545 to require that persons 75 years of age and over be required to pass the driver's examination before renewal of the license.

P.L. 1977, c. 558, § 1, also effective November 1, 1977, repealed and replaced § 545 to specify that the visual portion of the examination would also apply, with certain exceptions, to persons between ages 40 and 65. This later enactment, chapter 558, did not reference the earlier enactment but simply repealed and replaced § 545 as that section was last amended by P.L. 1969, c. 135.

As both sections were enacted in 1977 and effective the same date, and as both sections may be read so as not to be inconsistent, both should be considered to be in effect and should be published in the statute books. The first section applies certain reexamination requirements to drivers age 65 and over, and second, later enacted provision applies certain reexamination requirements to drivers between age 40 and age 65.

I believe that it would be appropriate to publish both as part of a § 545 in the republished volume with a footnote indicating the separate enactment of the provisions. The enactment by Chapter 212 should be published first, to be followed by the provisions added by Chapter 558.

3. 29 M.R.S.A. § 1312, sub-§ 10. The conflicts here result from simultaneous amendment of 29 M.R.S.A. § 1312, sub-§ 10, by P.L. 1977, c. 438, P.L. 1977, c. 481, § 21, and P.L. 1977, c. 498 without cross references, all the chapters becoming effective on the same date. Chapter 498 appears to be a comprehensive revision of 29 M.R.S.A. § 1312, sub-§ 10, intended by the Legislature to wipe out all prior changes in that section.

A review of the provisions of Chapter 498 indicates that the provisions of the second and third paragraphs of sub-§ 10, as adopted by Chapter 498, treat the matter of education courses and temporary permits in a manner similar to the treatment provided by the amendments in Chapter 438. Accordingly, the provisions of the second and third paragraphs of sub-§ 10, ¶ A, as enacted by Chapter 498, were clearly intended and may be deemed to have replaced the provisions of Chapter 438. Therefore, no reference to the amendments in Chapter 438 need appear in the Revised Statutes by footnote or otherwise other than the normal citations of prior amendments which would appear under the section.

Similarly, the matter dealt with in the amendment adopted by § 21 of Chapter 481 is addressed by the provisions of sub-§ 10, ¶ E, enacted by Chapter 498. As later enacted legislation, the provisions of paragraph E would prevail. In this case, however, it is suggested that the amendment of § 1312, sub-§ 10, ¶ A, attempted by Chapter 481, § 21, be noted in a footnote. This is important because it is likely that this provision may be subject to some litigation as it governs with differing provisions, the law relating to prior convictions and their applicability to penalties in present offenses.

4. 29 M.R.S.A. § 2123. In this case, § 2123 was repealed and replaced by P.L. 1977, c. 485, approved July 11, 1977, and effective October 24, 1977. Subsequently, P.L. 1977, c. 564, § 109 (the errors and inconsistencies bill) adopted and effective July 23, 1977, also amended the prior provisions of § 2123. Section 2123, sub-§ 1, as adopted by Chapter 485, and § 109 of Chapter 564 basically adopted similar penalty clauses. P.L. 1977, c. 564, § 109 - unlike P.L. 1977, c. 485 - was designed to omit from its penalty provisions the offense of "failure to display inspection certificate" (29 M.R.S.A. § 2122-A), which offense the legislature apparently intended (by its omission

from c. 564, § 109) to be a traffic infraction rather than a criminal violation. The inclusion of § 2122-A in the penalty prescription created by c. 485 transforms the offense into a crime.

Additionally, the omission from c. 564, § 109 of the "notwithstanding" clause found in c. 485 suggests a legislative intent (albeit perhaps inadvertent) that the penalty for violations of the enumerated sections be that prescribed by 17-A M.R.S.A. §4-A rather than the penalty specifically set forth in § 2123. The presence of the clause in c. 485, on the other hand, manifests a legislative intent that the penalty be that set forth in § 2123.

The reference in c. 485 to 17-A M.R.S.A. § 4 is erroneous. The appropriate reference is to 17-A M.R.S.A. § 4-A.

It is suggested that the provisions of § 2123 adopted by Chapter 485 be included in the published volume as this is later effective legislation and as it is a more comprehensive coverage, by the Legislature, of the same subject matter addressed in Chapter 564, § 109. Chapter 564, § 109, should be noted, however, in a footnote to avoid any dispute as to the penalty provisions. This section also may be subject to some litigation and court dispute as it will be employed in assessing penalties.

5. 30 M.R.S.A. § 958. P.L. 1977, c. 67, § 8, amended § 958 to specify that fulltime sheriffs' deputies would not receive fees for service of process and that rather those fees would be paid to the county treasurer for use of the county. Subsequently, P.L. 1977, c. 431, repealed and replaced the entire § 958 to specify the method of compensation for fulltime and parttime deputies. As the amendment adopted by Chapter 67, § 8, was an amendment to a section subsequently repealed, and as the subsequent repealing section, Chapter 431, § 11, dealt comprehensively with the subject matter previously addressed by the repealed § 958, the provisions of 30 M.R.S.A. § 958 as adopted by Chapter 431, § 11, should be published in the republished volume. The provision adopted by Chapter 67, § 8, should, however, be noted in a footnote. It is not inconsistent with the provisions of Chapter 431, § 11 but it would appear to have no place in statutes as it amended a section repealed by subsequently enacted legislation.

6. 30 M.R.S.A. § 4105. P.L. 1977, c. 300, § 7-A, repealed the last sentence of the first paragraph of 30 M.R.S.A. § 4105. Subsequently P.L. 1977, c. 353 repealed the entire section 4105 of Title 30 M.R.S.A. The entire section should be deemed to be repealed. No citation or other footnote would be necessary. The repeal by the provisions of Chapter 353 is clear and comprehensive.

I hope this information is helpful.


DONALD G. ALEXANDER
Deputy Attorney General

DGA:jg

cc: Senator Samuel W. Collins, Jr.
Representative Richard A. Spencer