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Statutes-Time of Taking Effect

STATUTES—TIME OF TAKING EFFECT.—Mandamus against a township trustee to compel payment of the salary of the justice of the peace and an allowance for office rent. Complainant relied on Chapter 308 and respondent on Chapter 323 of the Indiana Acts of 1913. Both acts were passed at the same session of the legislature, both received executive approval on the same day, both became effective at the same time, and both carried clauses repealing all laws in conflict therewith. Chapter 308 was applicable to townships containing a city having from 45,000 to 100,000 population and included an allowance for office rent. Chapter 323 was applicable to townships containing one or more cities with a combined population from 45,000 to 60,000, and there was no allowance for office rent, though the same provision as to salary was made. This chapter contained a phrase referring to fees "as now provided by law." A prior act, Chapter 91, Acts of 1903, referred to the collection of fees by justices of the peace in townships containing a city from 45,000 to 60,000 population. As the two acts of 1913 were inconsistent, it was necessary to determine which was controlling, and the court affirmed judgment for the complainant. *Ross v. Chambers,* (Ind. 1938), 14 N. E. (2d) 1012.

The problem here turns on a question of the time an act takes effect. When a single act is involved the rule in England once was that acts took effect from the date of the beginning of the session of Parliament, but this was changed by statute to make the effective date the day the act received the royal assent.[1] In the United States a statute takes effect from the date of its passage unless the time is fixed otherwise, either by the constitution, or by a general satutory provision applicable to all enactments, or within the act itself.[2] The date of passage is defined by the courts as the date of the last act necessary to give the bill the force and effect of law.[3]

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[17] Downey v. National Exchange Bank (1912), 52 Ind. App. 672, 96 N. E. 403; Olinger v. Sanders (1931), 92 Ind. App. 358, 174 N. E. 513.

[18] See Note 14, *supra.*

[1] See stat. 33 Geo. III, ch. 13. Rex. v. Justices of Middlesex (1831), 2 Barn. & Ad. 818, 109 Eng. Rep. 1347; Lattless, executrix, and Patton v. Holmes (1792), 4 T. R. 660, 100 Eng. Rep. 1230; King v. Smith (1910), 1 K. B. 17.

[2] Indiana's constitution provides that acts shall not be in effect until published and circulated. Ind. Const. Art. IV, § 28. This provision has been construed to mean that the statute takes effect at the precise time of publication. State v. Williams (1909), 173 Ind. 414, 90 N. E. 754, 140 Am. S. R. 261, 21 Ann. Cas. 986. The constitutional provisions vary widely. States requiring publication date to determine date of passage are: Ind. Const. Art. IV, § 28; Kan. Const. Art. II, § 19; N. M. Const. Art. IV, § 15; La. Const. § 42; Wis. Const. Art. VII, § 21. States fixing effective dates at definite time after adjournment or passage are: Ariz. Const. Art. IV, Pt. I, § 1; Cal. Const. Art. IV, § 1; Colo. Const. Art. VI, § 19; Fla. Const. Art. III, § 18; Ida. Const. Art. III, § 22; Ill. Const. Art. III, § 22; Iowa Const. Art. III, § 26; Ky. Const. § 55; Md. Const. Art. III, § 31; Mass. Const., Referendum Amendment I; Me. Const. Art. IV, § 23; Nebr. Const. Art. III, § 24; Ohio Const. Art. II, § 1 c; Okla. Const. Art. V, § 58; Ore. Const. Art. IV, § 28; S. D. Const.

When two acts approved the same day are involved and it is uncertain which was approved first, each act takes effect at the same time.[4] The presumption is that they were approved in numerical order,[5] but the courts will try to ascertain the facts as to the actual order of approval.[6] Two acts on the same subject, taking effect on the same day, will be harmonized and construed as one act if at all possible because the courts do not favor implied repeal,[7] but when they are absolutely repugnant the one passed later will prevail.[8] In the absence of evidence as to which act is the latest, the statute that is the clearest expression of the legislative intent will prevail.[9]

In the instant case, the court, being unable to select the latest act by aid of chonology, sought recourse in legislative intent. Three acts were involved; three decisions were possible. (1) The original act could stand and Chapter 323 and Chapter 308 could be held void for uncertainty; (2) Chapter 323 could be sustained as the last act and Chapter 308 because of its inconsistency with Chapter 323 be held repealed by implication; (3) Chapter 308 could be

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Art. III, § 22; Tenn. Const. Art. II, § 20; Tex. Const. Art. III, § 39; Utah Const. Art. VI, § 25; Va. Const. § 53; W. Va. Const. Art. VI, § 30; Wash. Const. Art. II, § 31.

Examples of general statutory provisions: N. Y. Cahill, Ch. 33, Consol. Law Art. 4, § 43; N. C. Ch. 270, § 1, Acts 1868-9 (Code § 2862); Penn. 1929, May 17, P. L. 1808, 1935, June 10, P. L. 293; Tex. Penal Code, Title 1, Ch. 1, Art. 11.

Provision is usually made in the constitutions for emergency measures to take immediate effect. Ind. Const. Art. IV, § 28, requires the emergency to be expressed in the act. Many states require a larger vote to pass an emergency measure than to pass an ordinary measure. See provisions cited above.

The reason for the rules is to provide certainty and fairness. It would be practically impossible to notify every person of the passage of a law, but if ignorance of the law was admitted as an excuse, the door for breach would be open too wide. Matthews v. Zane (1822), 20 U. S. (7 Wheat.) 164, 179, 2 L. Ed. 654; Russell v. Kennington (1925), 160 Ga. 467, 128 S. E. 581.

[3] Tarlton v. Pegg (1862), 18 Ind. 28; Matthews v. Zane (1822), 20 U. S. (7 Wheat.) 164, 211, 5 L. Ed. 425. Approval by the executive: Gardner v. The Collector (1867), 73 U. S. (6 Wall.) 499, 18 L. Ed. 890; Bristol Mfg. Corp. v. U. S. (1933), 2 F. Supp. 781; State ex rel. Donahue v. Roose (1914), 90 Ohio St. 345, 107 N. E. 760. Passage over veto or by non-action of the executive: Harpending v. Haight (1870), 39 Cal. 189, 2 Am. Rep. 432; Floyd Co. v. Solmon (1921), 151 Ga. 313, 106 S. E. 280; Capito v. Topping (1909), 65 W. Va. 587, 64 S. E. 845, 22 L. R. A. (N. S.) 1080.

[4] Greene v. E. H. Taylor, Jr., and Sons (1919), 184 Ky. 739, 212 S. W. 925; Mahoney v. Commonwealth (1934), 162 Va. 846, 174 S. E. 817.

[5] State v. Davis (1889), 70 Md. 237, 16 A. 529; Ottman v. Hoffman (1894), 7 Misc. 714, 28 N. Y. S. 28.

[6] Davis v. Whidden (1897), 117 Cal. 618, 49 P. 766; Ottman v. Hoffman (1894), 7 Misc. 714, 28 N. Y. S. 28.

[7] Lutz v. Arnold (1935), 208 Ind. 480, 193 N. E. 840; People v. Chicago, B. & Q. R. Co. (1920), 295 Ill. 191, 129 N. E. 168; City of Chicago v. Chicago Great Western R. Co. (1932), 348 Ill. 193, 180 N. E. 835.

[8] Davis v. Whidden (1897), 117 Cal. 618, 49 P. 766; State ex rel. Guilbert v. Holliday (1900), 63 Ohio St. 165, 57 N. E. 1097; State v. Marcus (1929), 34 N. M. 378, 281 P. 454; Commonwealth v. Sanderson (Va. 1938), 195 S. E. 516.

[9] People ex rel. Chadbourne v. Voorhis (1923), 206 App. Div. 374, 201 N. Y. S. 300.

sustained as the last act. The first choice is to be avoided since effect will be given to the statute wherever possible.[10] Choosing between Chapter 308 and Chapter 323 involved the real difficulty, as the two acts were inconsistent and no evidence concerning the actual time of approval was available. The court selected Chapter 308, and justified the selection on the ground that the reference in Chapter 323 to fees "as now provided by law" indicated the non-existence of Chapter 308 at the time of the approval of Chapter 323 and established that Chapter 308 was the last in point of time. As a logical proposition this is not conclusive,[11] but the selection of Chapter 308 is justified by practical considerations. If chapter 308 is law, a single and more recent enactment governs the administration of justice courts. If chapter 323 is effective, a portion of the justice courts will operate under the 1903 act and a portion will operate under the act of 1913. Simplicity and unity in administration are sufficient reasons in case of doubt. Furthermore Chapter 308 was a more general act—embracing more courts.[12] The rule of interpretation is well settled that where a general act and a special act conflict preference will be given to the general act.[13] Chapter 323 was not special in the "constitutional sense" but its more limited operation made its choice less attractive. The court's choice could not depend upon the rules of "time of taking effect" but rather depend on more subtle considerations of administration. Obviously the court is not to be blamed for this predicament. It is time that enough order is found in legislative procedure to meet the simplest needs of statutory interpretation.[14] B. W.

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[10] Pennsylvania Co. v. State (1895), 142 Ind. 428, 41 N. E. 937.

[11] Accepting the court's interpretation of "as now provided by law" it is proper to assume that the existence of Chapter 308 was unknown at the time of the drafting of Chapter 323. However, this does not establish the fact that the Governor signed Chapter 323 first.

[12] Chapter 308 was much broader in its scope than Chapter 323, as it not only provided that the county commissioners were to select the number of justices in each township, but it also set up a schedule of fees to be collected, and in addition provided for salaries of justices in townships containing a city over 100,000 population. Chapter 323 contained only the salary provision relating to a smaller number of townships.

[13] Ind. Const. Art. IV, § 23. Lewis Sutherland Statutory Construction (2d ed.), p. 533, §§ 274-279. Special or local laws will be repealed by general laws when the intention to do so is manifest, as where the latter were intended to establish uniform rules for the whole state.

[14] A study of the Senate Journal, 1913, indicates a need for a more competent supervision of legislation. Chapter 308 and Chapter 323 were introduced at different times, by different men, assigned to different committees, both recommended favorably, and passed at the same time. At no time was any indication given that the conflict in the provisions was noticed by the legislature.

At the present time to prevent the recurrence of such lack of information as to the order of approval of bills, the Governor keeps a record book showing the action taken on each bill.