

APRIL 4, 1949.

HON. JOHN T. CONNOLLY, *Deputy Commissioner,*
Department of Banking and Insurance,
 State House Annex,
 Trenton, New Jersey.

FORMAL OPINION—1949. No. 24.

DEAR MR. CONNOLLY:

I have before me your request for an opinion relative to the effect of the limitations on mortgage loans contained in Section 69 "A" of The Banking Act of 1948 upon the amounts guaranteed by the Administrator of Veterans' Affairs in those mortgage loans made to veterans commonly known as "G. I. Mortgages".

The facts contained in the question are relatively simple. Chapter 257, P. L. 1945, authorizes banks to exclude the amount of such guarantees from any statutory limitation affecting investments. The Banking Act of 1948 containing the aforesaid limitations became effective on September 16, 1948.

The specific question is, did the enactment of The Banking Act of 1948 repeal Chapter 257, P. L. 1945?

The answer to the question lies in ascertaining the intention of the Legislature as expressed in the applicable statutes. After reading them and the many cases on this subject, we are of the opinion that the 1945 act is in full force and effect and that it was not repealed by the later enactment of The Banking Act of 1948.

The parts of the statutes applicable to the question, are as follows:

Chapter 257, P. L. 1945:

TITLE: "AN ACT to provide that certain loans to veterans guaranteed by the Administrator of Veterans' Affairs shall be legal investments for any savings bank, banking institution or trust company of this State, and that any amount so guaranteed may be excluded in applying legal limitations affecting investments or loans in certain cases.

"1. Any savings bank, banking institution or trust company organized under the laws of this State, notwithstanding any law of this State prescribing the nature, amount or form of security or requiring security for its loans or investments, may legally invest its funds in bonds or notes evidencing loans to veterans if the full amount of any such loan is guaranteed by the Administrator of Veterans' Affairs, pursuant to the servicemen's readjustment act of one thousand nine hundred and forty-four, approved June twenty-second, one thousand nine hundred and forty-four; and in the case of loans guaranteed for less than the full amount thereof by the Administrator of Veterans' Affairs, the maximum amount which may be loaned or invested by it pursuant to the provisions of any law of this State shall be increased by the amount so guaranteed."

Section 69 "A", of Chapter 67, P. L. 1948 (The Banking Act of 1948):

"'A'. No bank shall make a mortgage loan when the total cost of acquisition by the bank of all real property owned by it, other than real property held for the purposes specified in subparagraph (a) of paragraph (5) of section

24, and the total of all principal balances owing to the bank on mortgage loans, less all write-offs and reserves with respect to such real property and mortgage loans, together exceed, or by the making of such loan will exceed, fifty per centum of the time deposits of the bank or one hundred per centum of the aggregate of its unimpaired capital stock and its surplus, whichever is the greater. For the purposes of this subsection, principal balances owing on mortgage loans subject to the provisions of subsection A of section 68 shall, only to the extent of seventy-five per centum of such balances, be included in the total of all principal balances owing to the bank on mortgage loans. This subsection shall not, however, prevent the renewal or extension of the time for payment of a mortgage loan for the amount due thereon at the time of such renewal or extension."

Section 336 "C" of Chapter 67, P. L. 1948:

"'C'. All other acts and parts of acts inconsistent with this act are hereby repealed."

Section 336 "A" and "B" of the said Banking Act of 1948 expressly repeals certain sections of the Revised Statutes and certain statutes by chapter number and year, but they do not include the above mentioned 1945 act.

The Title of Chapter 67, P. L. 1948 reads as follows:

"AN Act concerning banking and banking institutions (Revision of 1948)."

The 1945 act clearly indicates an intention by the Legislature to expedite housing for veterans and The Banking Act of 1948 clearly indicates from its title an intention to revise the existing laws affecting the banking business and the operation of banking institutions. It is apparent that the Legislature had two distinct and separate thoughts in mind at the time of the enactment of these statutes.

The mere fact that both statutes touch on the same subject matter is not controlling. There is ample authority to the effect that if the Legislature intended to repeal the 1945 act upon the enactment of the 1948 act it would have done so in definite language. Repeal by implication is not favored and when the later is not necessarily repugnant, the intent to repeal is not implied. *Bugbee vs. Mills*, 116 E. 59; *Terrone vs. Harrison*, 87 N. J. L. 541; *Winne vs. Castle*, 99 N. J. L. 345, affirmed 100 N. J. L. 291; *First National Bank vs. Bianchi*, 106 N. J. E. 333; *Adams vs. Plainfield*, 161 N. J. L. 282. *Ruckman vs. Ransom*, 35 N. J. L. 565, and *In re Kellner*, 11 N. J. M. 201. It should be noted at this point, that of the many statutes expressly repealed in the 1948 act, no mention is made of the 1945 act.

It has been held that nothing short of an irreconcilable conflict between two statutes works a repeal by implication. *Title Guarantee Land Co. vs. Paterson*, 76 N. J. E. 539; *State vs. Garris*, 98 N. J. L. 608; and *Ruckman vs. Ransom*, *supra*.

It has also been held that when both acts can, by reasonable construction, be upheld, the later act will not operate as a repeal of the former. *Britton vs. Blake*, 35 N. J. L. 208, affirmed 36 N. J. L. 442; *Trustees, &c. vs. Trenton*, 30 N. J. E. 618, affirmed 30 N. J. E. 667; *Winne vs. Castle*, *supra*. Our examination of the two statutes fails to reveal any repugnance or irreconcilable conflict to the degree required to work a repeal of the 1945 act by implication, nor do we find anything that would indicate that both statutes cannot be upheld. As a matter of fact, the history of the 1945 act leads us to the contrary view. There has been no fact or circumstance

directed to our attention that would lead us to the view that there was any difficulty in the operation of the 1945 act with the loan limitations in effect prior to the enactment of the 1948 act.

In view of the 1948 act being a complete revision of the banking laws of this State, we feel that it is proper to comment briefly upon the rule found in *O'Neill vs. Johnson*, 99 N. J. L. 317. The Supreme Court in that case held that a statute of complete revision is decisive evidence of intent to repeal or supersede whatever of prior law on the subject matter is not included in the new act. However, in considering that rule, the Court in *Bugbee vs. Mills, supra*, held that this rule must be limited and controlled in accordance with the decisions above set forth.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: OLIVER T. SOMERVILLE,
Deputy Attorney General.

OTS/b

APRIL 11, 1949.

THE HONORABLE ALFRED E. DRISCOLL,
Governor of New Jersey,
State House,
Trenton, New Jersey.

FORMAL OPINION—1949. No. 25.

DEAR GOVERNOR:

You have requested my opinion as to the status of the present Highway Commissioner. Mr. Miller was appointed April 29, 1942, for a six-year term; thus his term expired on April 29, 1948. On July 1, 1948, Chapter 91, P. L. 1948, "constituting" the Highway Department a principal department, became effective. On July 2, 1948, the Highway Commissioner was given an ad interim appointment. The Legislature was then only in temporary adjournment. The Legislature adjourned sine die September 8, 1948. In 1949, the nomination of Mr. Miller, for appointment as Highway Commissioner, was submitted to the Senate. It has not been acted on; it has neither been rejected nor confirmed.

In determining the status of the present Highway Commissioner, the Statutes in force at the time of the original appointment, the Constitution of 1947, and the 1948 Act must, in turn, be considered.

I. WHAT IS THE EFFECT OF THE APPOINTMENT UNDER THE STATUTES IN FORCE PRIOR TO THE 1948 ACT?

Mr. Miller was appointed in 1942 pursuant to the provisions of Revised Statutes 27:1-3:

"The state highway commissioner, hereinafter in this title referred to as the 'commissioner', shall be a citizen and resident of this state, and shall be nominated and appointed by the governor, by and with the advice and consent