

cient to warrant the extension of the license of the deceased permit holder under a rule or regulation of the Pharmacy Board until such time as the new application of the personal representative might be passed upon.

To summarize, the Indiana Board of Pharmacy has the authority to make a rule or regulation extending to the personal representative of a deceased permit holder the right to operate a drug store under the permit of a deceased permit holder until such time as the Board may meet and pass upon a new application. Proof of the authority of the personal representative and his willingness to abide by the rules and regulations of the State Board of Pharmacy should be sufficient to bring the personal representative within the provisions of any regulation the board may adopt.

**INDIANA STATE LIBRARY: Library Certification Board—
Whether holder of certificate is also required to take examination by personnel board.**

June 22, 1942.

Dr. Christopher B. Coleman,
Director, Indiana State Library,
State Library Building,
Indianapolis, Indiana.

Dear Dr. Coleman:

I have your letter of May 19, 1942, setting out certain resolutions adopted by the Library and Historical Board and submitting the following specific questions for my official opinion:

“1. Does the Act creating the Library Certification Board (Laws of the State of Indiana 1941, Chapter 195, pages 591-596), in providing for the certification of librarians and making librarians holding certificates from the Library Certification Board eligible for appointment to positions in public libraries, supersede, so far as the State Library is concerned, the provision in the earlier State Personnel Act putting the State Library under the control of the state personnel merit system and the State Personnel Board (Laws of the

State of Indiana 1941, pages 387-418), particularly paragraph (a) Section 2, page 388?

2. Does the provision that librarians holding certificates from the Library Certification Board are entitled to be appointed to and to hold in any public library any position of the grade or class prescribed in such certificate (Laws of Indiana 1941, page 594, Section 5), make the holder eligible to appointment in the State Library without taking the examination prescribed by the State Personnel Board? Are present incumbents of positions in the State Library who hold certificates from the Library Certification Board, required to take the examination set by the State Personnel Board, and to pass the examination with the standing required by the State Personnel Board, in order to be eligible to appointment to the positions which they now hold?

3. If the State Personnel Board has authority over the eligibility of applicants for professional positions in the State Library, is it legal for it to put upon its eligible lists for the several professional positions in the State Library, without examination by the State Personnel Board, all the names of those who hold certificates from the Library Certification Board, for the several positions of the grades for which their certificates qualify them?

4. Would it be legal for the State Library to pay as its share of the cost of administration and enforcement of the State Personnel Act, a sum based only on the number of its employees excepting the Head Librarian, the Heads of Divisions, and the Professional Assistants, who are expressly put under the Library Certification Board requirements?"

All four of the above questions are related and require an examination and construction of certain provisions of the Library Certification Board Act and the State Personnel Act, both being laws of the General Assembly of 1941. The State Personnel Act (Chapter 139, Acts 1941), is an Act to insure the employment of qualified persons in state service and by Section 2(a) of the Act, the term "state service" is defined to mean all public services in all offices and employments in a

number of named institutions and agencies, among which is found "Indiana Library and Historical Department". By Section 3 of this law, all appointments to positions in the classified state service, as defined, shall be made on a merit basis set out in some detail in other sections of the Act. It is not necessary to dwell upon these provisions except to note that a complete system of examination, classification lists and appointment procedures is provided for the administration of a scientific merit system.

Section 48 of the State Personnel Act provides as follows:

"It is hereby expressly provided that in case of conflict between any of the provisions of this act and any provisions in any statute of the State of Indiana, including any act passed at the 82d regular session of the General Assembly, the provisions of this act shall supersede all conflicting provisions in such other statutes or acts and in all such cases of conflict, the provisions of this act shall govern."

I will consider the force and validity of this section later in connection with its application to the Library Certification Board Act.

Chapter 195, Acts 1941, created the Library Certification Board which, among other things, was authorized and required by section 2 of the Act:

"(1) To prescribe and define grades of public library service and to prescribe the qualifications which persons shall possess who are employed in each of such grades of library service; * * *

(3) To examine candidates who apply for certificates qualifying them to secure employment in any designated grade or grades of public library service, and to issue certificates to such candidates as are found to be competent and who are eligible to apply for such examination;

(4) To issue certificates, without examination, to candidates who apply therefor and who, by reason of their academic or technical training, and/or experience are found to be fit and suitable persons to certify; * * * and

(5) To adopt and promulgate such rules and regulations as the board may deem necessary and proper to carry out and administer the provisions of this act."

Section 3 of the Act provides as follows:

"On and after the first day of January, 1942, and except as hereinafter otherwise provided, *it shall be unlawful for the board of trustees, school board or any other governing body having the lawful charge of any public library, or any other library, supported in whole or in part by public funds, except school libraries and the libraries of educational institutions, to appoint as the head librarian, or as the head of any department or branch, or as professional assistant of any such library, any person who does not hold a certificate of a suitable and requisite grade, granted in accordance with the provisions of this act, and rules and regulations of the Library Certification Board issued thereunder.*" (Our italics.)

Section 4 of the Act provides in part as follows:

"* * * The application shall be made on a blank form which shall be prescribed and furnished by the Library Certification Board, shall be accompanied by a fee of not more than ten nor less than two dollars, which shall be prescribed by the board, and, if found to be satisfactory, *shall entitle such applicant to take the examination applied for in such application at a point within his own congressional district.*" (Our italics.)

Section 5 of the Act provides as follows:

"If, upon such examination, an applicant is found to be competent, he *shall be granted a certificate of the suitable grade and class, which shall entitle such licensee to be appointed to and to hold in any public library contemplated in this act, any position, of the grade or class prescribed in such certificate.*" (Our italics.)

Chapter 139, Acts 1941 (the State Personnel Act) was filed in the office of the Secretary of State on March 8, 1941, and became a law without the Governor's approval. By Section 49 of the Act, it was provided that "Whereas an emergency exists for the taking effect of this Act on May 1, 1941, the same shall be in full force and effect on and after May 1, 1941." Chapter 195, Acts 1941 (the Library Certification Board Act), was approved March 11, 1941, and, lacking an emergency clause, became effective on July 8, 1941, the date of the promulgation of the laws of the 82nd regular session of the General Assembly. It will be seen, therefore, that the Library Certification Board Act was passed later in the legislative session than the State Personnel Act and likewise became operative at a later date.

Chapter 139, Acts 1941 (the State Personnel Act), is a broad, general, and expansive law having as its objective the establishment of a state personnel merit system affecting many agencies and thousands of employees in the service of the state. The Indiana Library and Historical Department is but one of some twenty-six agencies and institutions of the State Government included in the "state service" covered by the Act. On the other hand, Chapter 195, Acts 1941 (the Library Certification Board Act, is a special restricted law dealing only with the examination and certification of professional positions and grades in the public library service. By Section 3 of the Act, *supra*, it will be noted that the term "public library service" includes "any public library, or any other library, supported in whole or in part by public funds."

There are certain exceptions not necessary to be mentioned but it is clear that the definition of "public library service", necessarily includes the professional library positions and services of the Indiana Library and Historical Department. So we are faced with the situation on the one hand of the State Personnel Act prescribing a distinct and exclusive method of examination, classification and appointment to professional library positions in the State Library, while on the other hand the Library Certification Board Act in perhaps an even more express and specific fashion establishes a method for the examination and certification of positions in the public library service through which all appointments thereto must be made.

These two laws, though they do not by any means attempt to cover an identical field, do impinge to a limited extent upon the same subject matter in the sense that both touch upon the examination, certification and method of appointment to positions in the public library service. It is an elementary rule of statutory construction that statutes relating to the same subject matter, must, if possible, be construed together.—(Starr v. City of Gary, 206 Ind. 196.) However, this rule is qualified to the extent that statutes in *pari materia* are to be construed together with respect only to such statutes as are consistent with each other.—(People ex rel. Hines v. Baltimore & O. S. W. R. R. Co., 366 Ill. 318, 8 N. E. (2d) 655.) But the rule of construction requiring that statutes be construed together where the statutes are in *pari materia* or relate to the same subject matter so as to achieve a reasonable or harmonious construction, has no validity and is not possible of application where there are repugnant or irreconcilable provisions in such statutes.

Where repugnancy of provisions and an obvious conflict between two statutes is apparent, the later of two statutes covering similar subject matter is controlling as to any conflicting provisions.—(Brumfield v. State ex rel. Wallace, 206 Ind. 647.) This general rule is held to be even more rigidly applicable in the case of special and general statutes and the fundamental rule is that where two acts are in conflict, that act which is later in time and more specific in nature will prevail.—(State ex rel. Davenport v. International Harvester Company, 216 Ind. 463, 25 N. E. (2d) 242; Western and Southern Indemnity Co. v. Cramer, 104 Ind. App. 219; Rogers v. State ex rel. Lucas, 129 O. St. 109, 198 N. E. 754; Wiedoft v. Frank Holton & Co., 294 Ill. App. 118, 13 N. E. (2d) 854.)

As I have pointed out earlier, not only is the Library Certification Board Act special in nature and exclusive in its provisions for the certification and appointment of librarians to the public library service even to the extent of making it unlawful to hire librarians in any other way, but this special Act was passed later in the legislative session and after the State Personnel Act and courts have gone so far as to say in such situations that when two inconsistent acts relating to same or similar subject matter are passed by the same legislature, the one passed later but going into effect earlier will prevail over the one passed earlier but going into effect

later.—(People ex rel. English v. Atchison T. & S. R. R. Co., 370 Ill. 420, 19 N. E. (2d) 170.) This, it will be observed, is an extreme application of the theory that the statute later in point of time will prevail and in the case here under discussion, the facts are that Chapter 195 was passed later in the session and went into effect later in point of time.

With these principles of construction in mind, it is clear that the Library Certification Board Act, passed later in the session and being an Act of a special nature, will prevail over the earlier State Personnel Act with respect to any conflict or repugnancy between the two. On this latter point, I do not believe there can be doubt. The Library Certification Board Act is complete within itself, establishes an exclusive and precise method for the examination and certification of positions in the library service and, further, the Act goes so far as to use the most mandatory language in indicating the limits of its operation. For example, it is provided that "it shall be unlawful for the board of trustees * * * having the lawful charge of any public library * * * supported in whole or in part by public funds * * * to appoint as head librarian * * * or as professional assistant of any such library, any person who does not hold a certificate of a suitable and requisite grade granted in accordance with the provisions of this act. * * *" Later, in Section 5 of the Act, it is provided that if upon examination an applicant is found to be competent, he not only shall be granted a certificate of suitable grade and class but that this certificate "shall entitle such licensee to be appointed to and to hold in any public library contemplated in this Act" any position of the class prescribed in his certificate. These affirmative provisions seem to me to preclude the possibility of holding that the examinations and appointment procedures contemplated in the State Personnel Act can be superimposed upon the requirements of the Library Certification Board with any due regard to or consistent evaluation of the plain provisions of the Library Certification Act. In other words, two exclusive methods for appointment to positions in the public library service have been provided and because they are mutually exclusive, they cannot be construed together or harmonized. So, it is necessary to hold that the two methods are in conflict and are repugnant one to the other.

It remains only to assess the application and force of Section 48 of the State Personnel Act quoted above. This provision evinced a legislative intent that the provisions of the State Personnel Act in case of conflict with any acts passed in the same session of the Legislature should supersede and govern in all cases of conflicting provisions between acts. That this was the legislative intent at the time of passage of the State Personnel Act cannot well be doubted, but that we can say it is the ultimate and final expression of the legislative intent on the question, is not clear. Law-making is the peculiar province of the legislature and that sovereign power is shared with no other body and cannot be disowned, devised or defeated by the law-making body itself. It is fundamental that the legislature may change, modify or repeal any laws of the state.—(Egbert v. State, 215 Ind. 575.) In a recent case, our Supreme Court held that the legislature, in enacting school laws, exercises the function of sovereignty, and the right to control public policy in respect to the management and operation of schools cannot be contracted away by one legislature so as to fix a permanent public policy, unchangeable by succeeding legislatures.—(State ex rel. Anderson v. Brand, 214 Ind. 347, modified by 303 U. S. 95, but not in this particular.) The general statement usually is that one legislature cannot control or abridge the power of succeeding legislatures.—(Blue v. State ex rel. Brown, 206 Ind. 98.) And it follows that the legislature has the right to repeal all legislative acts which are not in the nature of a private grant.—(Cooney v. F. Landon Co., 308 Ill. App. 444, 32 N. E. (2d) 403.)

While it is clear that one legislature cannot control or contract away the freedom of action of a succeeding legislature, I have been unable to find any cases applying to inconsistent action by the same legislature at different times in the same session. However, orderly parliamentary procedure demands and the sovereign right to enact legislation requires that the ultimate legislative intent be discovered in the last and final pronouncement upon similar subjects where conflicting provisions occur. No one doubts that the General Assembly had the power to repeal Chapter 139 of the Acts of 1941 at any time during the session. And it seems to me that it is equally clear that the legislative right to change its mind by means of repeal, must include the right to change its mind by modi-

fication or the passage of superseding legislation. Consequently, it is my opinion that Section 48 of Chapter 139 of the Acts of 1941 can be validly administered only with respect to laws passed before its passage and that it has no impact or effect upon the provisions of Chapter 195 of the Acts of 1941.

Summing up, it is my opinion in answer to your first question that the Library Certification Board Act supersedes, so far as the State Library is concerned, the provisions in the State Personnel Act putting the State Library under the control of the state merit system but only with respect to professional library service.

Your second question is answered in the affirmative and certificate holders under the Library Certification Board are entitled to appointment without taking examinations prescribed by the State Personnel Board, whether they are present incumbents of positions in the State Library or whether they have yet to secure certificates for library service.

It is unnecessary to answer your rather hypothetical third question since it is my opinion that the State Personnel Board has no authority or control over applicants for professional positions in the State Library.

In answering your fourth question affirmatively, it is my opinion that not only is it legal for the State Library to pay as its share the cost of administration of the State Personnel Act a sum based only upon the number of its employees excepting the professional library positions, but you are directed to so figure your pro rata share of the Personnel Act administrative expense.

STATE HIGHWAY COMMISSION: Whether Commission is required to take bids on more than one type of pavement for a resurfacing job.

June 29, 1942.

State Highway Commission of Indiana,
Indianapolis, Indiana.

Dear Sirs:

You have asked whether or not you have the discretionary power to take bids on more than one type of resurfacing for any designated project.