

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

July 29, 1966

Albert Parker
Commissioner of Motor Vehicles
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 67-68 pg. 11

Motor Vehicles. Special License Plates Required by Chapter 275, Session Laws of 1963.

You have requested an official opinion interpreting the effect of SDC 1960 Supp. 44.0336-3 (which originated as Ch. 263 of the Session Laws of 1959) and Ch. 275 of the Session Laws of 1963.

Specifically you have asked the following question in regard to such statutes:

"1. Does the issuance of an oversize permit issued by the State Highway Commission exempt a contractor from licensing any oversize equipment included in the terms of Ch. 275 of the Session Laws of 1963?

"2. If any exemptions are allowed, what units are specifically exempt?"

SDC 1960 Supp. 44.0336-3 provides as follows:

"That notwithstanding any provision contained in SDC Title 44, as amended, any motor vehicle, trailer, semitrailer, motor propelled or traileed vehicle chassis, or any other item of equipment or machinery used exclusively for the construction or maintenance of highways which by reason of its excessive size or weight is operated upon any highway in this state under a special permit as provided by SDC 1960 Supp. 44.0342, or its owner or operator shall be exempt from purchasing any license plate or compensation plate prior to or at the time of the operation of any of the above items on any highway within the state of South Dakota.

"Section 1. That notwithstanding any provision contained in Title 44 of the South Dakota Code of 1939, as amended, any motor vehicle, trailer, semi-trailer, motor propelled or traileed vehicle chassis,, which heretofore could have been licensed or compensated for unusual use of the highways in the State of South Dakota which were used for the construction of township roads, stock-water dugouts, dams, and other soil and water conservation practices on farms and ranches, or the construction or maintenance of highways in the State of South Dakota, may hereafter be operated upon the highways of the State of South Dakota without having made payment of the otherwise provided license and compensation fees for unusual

use provided that the Commissioner of Motor Vehicles determines that such vehicles or items of equipment are but infrequently and on occasion operated on the highways of this state In conjunction with the construction of town. ship roads, stockwater dugouts, dams and other soil and water conservation practices on farms and ranches, or the construction and maintenance of highways. The Commissioner of Motor Vehicles may use information furnished by the Division of Motor Patrol in making such determination.

"Section 2. Prior to so operating any such vehicle or item of equipment but on occasion or infrequently upon the highways of this state in conjunction with the construction of township roads, stockwater dugouts, dams and other soil conservation practices on farms and ranches, or highway construction or maintenance, the owner thereof for the calendar year in which such vehicle is to be operated shall file with the Commissioner of Motor Vehicles an application for a license on a form prescribed and furnished by the Commissioner, showing a description of such motor vehicle, trailer, semi-trailer, motor propelled or trailed vehicle chassis or other item of equipment and such other information deemed necessary by the Commissioner of Motor Vehicles. The owner shall at such time certify that such vehicle or item or equipment is but on occasion and infrequently operated on the highways of the State of South Dakota. In Che event that the Commissioner of Motor Vehicles determines that such vehicle or item of equipment is but infrequently and on occasion operated on the highways of the State of South Dakota in conformity with the requirements set forth in this Act, the Commissioner, upon receipt of the proper application therefor, and receipt of the prescribed fee, shall issue a distinctive license plate, to be placed upon such motor vehicle or item of equipment before it IS operated on the highways of the State of South Dakota. The fee for each motor vehicle or item of equipment shall be ten dollars.

"Section 3. That upon the issuance of such distinctive license plate, such vehicle or item of equipment shall be exempt from the payment of any other license or compensation fee for unusual use of the highways, as provided in Title 44 of the South Dakota Code of 1939, as amended. The provisions of this Act shall not alter that provision of law requiring vehicles of excessive width, height or weight from obtaining special permission from the Department of Highways before using such highways and the payment of a fee and obtaining such special permit.

"Section 4. Each registration and licensing permitted under the provisions of this Act shall expire on the 31st day of March following the calendar year in which the licensing is made.

"Section 5. Such fee so collected by the Commissioner of Motor Vehicles shall be transferred to the State Treasurer and by him credited to the State Motor Vehicle fund.

"Section 6. The property licensed under the provisions of this Act shall not be exempt from being taxed as personal property under the applicable provisions of statute."

There are several principles of statutory construction which are of assistance in interpreting these statutes in order to answer your questions. First: It is long settled that repeals by

implications are not favored, and if by any reasonable construction both acts can stand, they should.

Black Hills Flume etc. v. Grand Island, Etc. co., 2 SD 546, 51 NW 342;

Coler v. Rhoda, 6 SD 640, 63 NW 158;

Brookings County v. Sayre, 53 SD 350, 220 NW 918;

Jacobi v. Clarkson, 60 SD 401, 244 NW 535;

Security State Bank v. Breen, 65 SD 640, 277 NW 497;

Argo Oil corp and State v. Lathrop, 76 SD 60, 72 NW 2d 431.

Second: Although repeals by implication are not favored, even in the absence of a repealing clause, two irreconcilable repugnant acts, passed at different times cannot stand, and the latter operates as a repeal. of the former.

Collins v. State, 3 SD 18, 51 NW 776;

Somers v. State, 5 SD 321, 58 NW 804;

Busby v. Riley, 6 SD 401, 61 NW 164

Third: Where a general statute covering an entire matter is so inconsistent with a special statute covering some particular part thereof that effect cannot be reasonably given to both, the latter is to be read as an exception to the former.

Sanford v. King, 19 SD 334, 103 NW 28;

State v. Mudie, 22 SD 41, 115 NW 107;

Antonen v. Swanson, 74 SD 1, 48 NW 2d 161, 28 ALR 2d 1;

See also:

Varney v. City of Albuquerque, (NW 1936) 55 P (2) 40, 106 ALR 222;

Herman v. Baltimore, (MD 1947) 22 A(2) 491, 173 ALR 1310;

State ex rel Kearns v. Lindsfoos, 161 Ohio st. 60, 118 NE 2d 138, 43 ALR 2d 1316.

The Varney case is not illustrative of the rule. A general statute provided that a city could construct "needful buildings" and issue bonds for the funds to construct if a majority of the

electors voted in favor thereof. Another statute provides that cities could construct auditoriums, and issue bonds therefore if two-thirds of the electorate voted in favor of such bond issue.

The Court held that insofar as the construction of a municipal auditorium was concerned, it would require % vote in order to legally issue bonds therefore.

"A statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject matter, supersedes a general statute which does not refer to that subject, although broad enough to cover it." .

It is my opinion that we need not consider whether or not there is an outright repeal of SDC 1960 Supp. 44.0336-3 by the enactment of Chapter 275 of the Session Laws of 1963. It is sufficient to say that as to its substance Chapter 275 is a specific statute providing the issuance of a distinctive vehicle license plate to specified persons for specified vehicles. While such vehicles were not referred to as such in the 1959 act, such was broad enough to cover such vehicles. However, that act is a general act, and the provisions of the 1963 enactment must be read as an exception thereto.

It is my opinion that Question 1 must be answered "No." SDC 1960 Supp. 44.0336-3 does not exempt a contractor from complying with the provisions of Ch. 275 of the Session Laws of 1963 as to equipment coming within the class therein specified.

Your attention is called to the fact that any vehicle licensed under Ch. 275, Session Laws of 1963, is subject to being taxed as personal property, and any exemption from the personal property included in the provisions of SDC 1960 Supp. 44.0336-3 has been overruled by the adoption of Ch. 275.

Because of my answer to Question 1, there is no need to consider Question 2.