

related functions remain with the Michigan Employment Security Commission. In fulfillment of these functions the Commission must necessarily retain its duties and responsibilities as the appointing authority over employees of the Commission. This conclusion negates any such authority in the head of the Department of Labor over these employees.

The rules of the Civil Service Commission have been examined and nothing is found therein defining the term "appointing authority" nor is there any provision in the rules of the Civil Service Commission for the determination or selection of an appointing authority. Under date of December 14, 1964 Franklin K. DeWald, State Personnel Director of the Civil Service Commission, issued a four page communication addressed to all state employees on the subject of State Employee Relations Policy. This policy statement contained the following definition:

"Appointing Authority: Single executives heading principal departments or the chief executive officer of each principal department headed by a board or commission, or those officials delegated by them as being responsible to administer the personnel functions of the department, board or commission."

Also set forth in that communication is a section outlining the rights, duties and responsibilities of appointing authorities. I do not consider this action by the State Personnel Director as relevant to the situation under consideration here.

FRANK J. KELLEY,
Attorney General.

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WATER RESOURCES: Inland Lake Levels – Flood Control.

Act 146, P.A. 1961, as amended, authorizes establishment and regulation of inland lake levels to prevent flooding and flood damage.

County boards of supervisors may contract with the federal government for the construction of flood control works under the provisions of Act 146, P.A. 1961, as amended.

No. 4465

January 11, 1966.

Mr. Loring F. Oeming
Executive Secretary
Water Resources Commission
200 Mill Street
Lansing, Michigan

By letter you indicate to this office that the boards of supervisors of Cheboygan and Presque Isle counties, pursuant to provisions of the inland lake level act of 1961, as amended,¹ have joined together in efforts to establish a legal normal level for the waters of Black Lake and to cause necessary works to be constructed for the maintenance of said level.

¹ Act 146, P.A. 1961, as amended by Acts 25 and 203, P.A. 1962 and Act 33, P.A. 1964, being M.S.A. 1963 Cum. Supp. and Curr. Material Sec. 11.300(1) et seq.

You advise that Black Lake is located astride the Cheboygan and Presque Isle County line, and you indicate that at the present time flow and water level in Black Lake are regulated to a degree by the Alverno dam located approximately 6 miles down river from Black Lake. Because of flow regulation by the Alverno dam, Black Lake has never suffered from low water levels, however, the lake has, on numerous occasions, suffered severe flooding caused by obstruction of flow in a portion of the Black Lake channel. During periods of flooding, water levels in Black Lake build up as much as 2½ feet causing thousands of dollars in damages to inundated shore properties.

The aforesaid boards of supervisors, in addition to initiating circuit court proceedings to establish a legal normal lake level in Black Lake, have also applied to the federal government for financial assistance² under Section 205 of the Flood Control Act of 1948, as amended.^{2a} You further state that questions have arisen concerning the appropriateness of constructing flood control projects under the provisions of the inland lake level act of 1961, as amended, supra. Specifically, you inquire as follows:

1. Is it the intention of Act 146 of the Public Acts of 1961, as amended, to include the prevention of flooding and flood damage as a part of the establishment and regulation of the normal levels of inland lakes?

2. If question No. 1 is answered in the affirmative, does the existence of Act 278 of the Public Acts of 1952, prevent or impede the county boards of supervisors from entering into contracts with the federal government for the prevention of floods and flood damage under the provisions of Act 146 of the Public Acts of 1961, as amended?

As used in the act Section 2(a) defines the term "normal water level" as follows:

"Normal water level of any inland lake, natural or artificial, is such a level as, considering the height above sea level, established by government surveys; the high water line as disclosed by old surveys; testimony of old inhabitants; the extent to which drainage and other artificial causes have decreased the natural ground water table of the areas; the extent to which natural causes have either decreased or increased the natural ground water table; and all other pertinent surrounding facts and circumstances, will provide the *most benefit to the public and best protect the public health, welfare and safety and which will best preserve the natural resources of the state, and preserve and protect the values of properties developed around said*

² Authority to contract with federal government is provided by Section 16(a) of the inland lake level act of 1961 as newly added by Act 33, P.A. 1964, supra, being M.S.A. Curr. Material § 11.300(16a).

^{2a} Section 205 first appeared in the Flood Control Act of 1948 (62 Stat. at 1182). It was subsequently amended on May 17, 1950 by the 81st Congress, Second Session (64 Stat. 183). It was again amended on July 11, 1956 by Public Law 685 (70 Stat. 522). It was last amended on October 23, 1962 by Public Law 87-874 (76 Stat. 1194). In its present form it appears in U.S.C.A., Title 33, 1964 Cum. Annual Pocket Part, page 50 as § 701s.

lake as a result of the creation of the normal level." (Emphasis supplied)

In relation to the maintenance of a legal normal lake level, Section 3 of Act 146, P.A. 1961, as amended, supra, authorizes the necessary lowering of lake levels as follows:

" * * * The board may drill wells to supply a lake with additional water in order to raise the level thereof or pump water from some other source, or in case it is necessary to lower the level thereof may arrange for the pumping of water from the lake."

That necessary lowering of lake levels may be achieved not only by means of pumping is indicated by Sections 2(b) and 11 of the statute. Section 11 provides:

"The board of supervisors of any county in which the whole or any portion of the waters of any inland lake are situated may acquire in the name of the county, by gift, grant, purchase or by condemnation proceedings any existing dam which may affect the level of the waters in the lake and any or all sites for dams or interests and rights in land needed or convenient in order to carry out the purposes of this act, and *may proceed to construct and maintain any dam that may be determined by the board to be necessary for the purpose of maintaining normal height and level of the waters of any lake as provided in section 3.* A dam may be constructed and maintained in a county next adjoining the county in which the lake or part thereof is located." (Emphasis supplied)

"Dam" as used in the statute is defined in Section 2(b) as:

"Dams means dams, embankments, dikes, pumps, weirs, locks, gates, tubes, ditches, or any other devices or construction to keep and maintain the waters in lakes at normal height and level."

The foregoing clearly indicates that the term "dam" is inclusive of any construction required to maintain lake waters at normal height and level.

The Michigan Supreme Court in considering the objective sought to be accomplished by lake level proceedings has held in *In re Petition of Lenawee County Supervisors as to Water Level of Devils and Round Lakes*, 276 Mich. 591, that the purpose of the statute giving circuit court jurisdiction in proceedings for maintenance of constant level of waters of inland lakes is to provide against unseasonable and excessive operation of such laws of nature as precipitation, evaporation or seepage. The foregoing decision of the Supreme Court was made in relation to a previous lake level statute³ but is equally applicable to the present act.

While an obvious purpose of Act 146 is to insure maintenance of specific lake levels during drought or other low water periods, it is nevertheless evident that the intention of the legislature in enacting Act 146 is not limited solely to that purpose. The broad intention of the legislature to provide for the establishment of inland lake levels which will

³ Act 337, P.A. 1921 (1 Comp. Laws 1929, Sec. 3837, et seq.). This Act was repealed by Act 146, P.A. 1961, supra.

provide the most benefit to the public and will best preserve the natural resources of the state and protect the values of properties developed around inland lakes is clearly indicated by Section 2(a) of the statute, quoted supra.

In addition, Section 10 of Act 146 (M.S.A. 1963 Cum. Supp. § 11.300(10), C.L.S. 1961 § 281.70) provides in part that:

“* * * The court shall determine the level to be established and maintained and may provide for departure from the normal level as may be necessary to accomplish the purposes of this act.”

The foregoing in effect permits the court to manipulate levels within a defined range in order that flooding caused by high water levels may be avoided. As stated in your letter, in actual experience, the courts establish a winter level at a lower stage than the summer level, thus at the lower level providing for storage reserve which may be utilized to contain flood flows during spring thaws. During the summer season, the lake level may then be brought to its upper established limit.

In response to your first question, it is my opinion that the establishment and regulation of inland lake levels to prevent the disastrous effects of flooding and flood damage is a proper and intended purpose of Act 146, P.A. 1961, as amended, supra.

With reference to your second question, Act 278, P.A. 1952, as amended by Act 86, P.A. 1956, C.L.S. 1961 Sec. 281.621, et seq.; M.S.A. 1958 Rev. Vol. Sec. 13.1821, et seq. authorizes township boards, incorporated cities and villages or the board of county road commissioners of any county, when directed by the board of supervisors of the county, to participate in flood control, drainage control and beach erosion control projects.

Section 1 of the statute authorizes the aforementioned units of government to acquire any and all interests in lands necessary to any flood control, drainage control or beach erosion control project. The provisions of Act 278, as amended, supra, clearly apply to diverse flood control and related problems ranging from local projects to those on an over-all wide area or watershed basis.⁴

It is evident that flood control works constructed under the provisions of Act 278, as amended, supra, may, in particular instances, serve effectively to control the levels of inland lakes. However, it is also apparent, in view of this State's long standing legislation providing for the establishment and regulation of such levels, that amended Act 278, supra, is not intended as the primary means of accomplishing inland lake level regulation.

To the extent that the provisions of Act 278, as amended, supra, may, in certain situations, be related to the control of levels in inland lakes, it is necessary, in my opinion, to reasonably construe both Act 278 and Act 146 and their amendments in order that each may serve its purpose and be given full force and effect.

⁴ O.A.G. 1957, No. 2791, Page 72, Townships are authorized by Act 278, P.A. 1952, as amended, supra, to participate in Federal watershed control programs.

"* * * statutes will be construed if possible so that other statutes with relation to the same subject may be given effect. * * *"

"* * * It is a well-established rule that in the construction of a particular statute, or in the interpretation of its provisions, all statutes relating to the same subject, or having the same general purpose, should be read in connection with it, * * * although they were enacted at different times and contain no reference to one another. * * *"
Rathbun v. State of Michigan, 284 Mich. 521, 532, 543."

See also *Crawford v. School District No. 6*, 342 Mich. 564 and *People v. Buckley*, 302 Mich. 12.

The present inland lake level act and previous Michigan statutes authorizing the establishment and regulation of inland lake levels are of long standing.⁵ Enactment by the legislature of Act 278, P.A. 1952, as amended, supra, should not be construed as impliedly amending or repealing the authority to establish and regulate levels as provided by Act 146, as amended, supra. As indicated by the court decision repeals by implication are not favored, especially in the case of an important public statute of long standing, which should be shown to be repealed either expressly or by a strong and necessary implication. *State Highway Commissioner v. Detroit City Controller*, 331 Mich. 337; *In re Opening of Gallagher Avenue Johnson's Appeal*, 300 Mich. 309; *Lundstrom v. Township of Ellsworth*, 196 Mich. 502; *Nolan v. Garrison*, 151 Mich. 138.

Likewise, statutes relating to the same general subject should be construed as supplementary or complementary to those preceding them. *State Highway Commissioner v. Detroit City Controller*, supra; *People v. Buckley*, supra; *John H. Rice and James B. Sturgis, Executors, etc. v. William H. Hosking, Jr.*, 105 Mich. 303.

Going back to the first lake level act passed in 1911, Michigan inland lake level legislation was enacted for a specific purpose, and it is a general rule of construction that legislation passed for a particular purpose is not abrogated by general legislation sufficiently broad to include it, unless the intent to do so is clear. *Regents of the University of Michigan v. Auditor General*, 109 Mich. 134.

In *State Highway Commissioner v. Detroit City Controller*, supra, the Michigan Supreme Court has also stated that:

"* * * when a general intention is expressed and also a particular intention which is incompatible with the general one, the particular intention shall be considered as an exception to the general one. *Attorney General, ex rel Owen v. Joyce*, 233 Mich. 619; *Heims v. School District No. 6 of Davison Township*, 253 Mich. 248, and cases therein cited. Also, see *Reed v. Secretary of State*, 327 Mich. 108. In *Attorney General ex rel Owen v. Joyce*, supra, we held that the special act providing that the board of supervisors might fill vacancies in the

⁵The first Michigan inland lake level act was enacted in 1911, being Act 202, P.A. 1911, C.L. 1915 Sec. 7377-7403. Other statutes passed prior to the present law were Act 377, P.A. 1921, Act 39, P.A. 1937, Act 194, P.A. 1939, Act 319, P.A. 1941 and Act 276, P.A. 1945, being C.L. 1948 Sec. 281.1-57, 281.101-121, 281.151-157 and 281.201-227.

office of road commissioner was not repealed by a later general act which provides for the filling of vacancies and appointments of county offices by the probate court, county clerk and prosecuting attorney, the later act not containing a repealing clause. We quoted the following:

"An act will not be construed to repeal or modify earlier legislation, if, giving such effect to the act, an apparent purpose would appear to disturb an established system of written law, covering a vital field in our system of government." 25 R.C.L., p. 919 * * * (331 Mich. 337, 363)

In construing the applicable provisions of both statutes here involved, it is clear to me that there is no repugnancy nor inconsistency present, and both statutes are capable of being independently carried out and given effect. Insofar as the provisions of Act 278, as amended, supra, relate to the establishment and regulation of inland lake levels, such provisions complement and supplement the provisions of the inland lake level act.

In answer to your second question, it is my opinion that county boards of supervisors may enter into contracts with the federal government for the prevention of floods and flood damage under the provisions of Act 146 of the Public Acts of 1961, as amended. Authority to so contract is in no way prevented or impeded by Act 278, of the Public Acts of 1952, as amended.

FRANK J. KELLEY,
Attorney General.