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The Honorable The Secretary of the Interior

My dear Mr. Secretary:

Reference is made to undated letter from the Assistant Secretary of the Interior, received in this Office August 6, 1948, presenting for decision certain questions pertaining to the authority of your Department under two statutory provisions approved by the President on the same day authorizing financial aid to school districts serving areas in which the Bureau of Reclamation is engaged in construction of its projects.

The Interior Department Appropriation Act, 1949, Public Law 841, approved June 29, 1948, at 4:58 p.m., E.D.T., provides under Bureau of Reclamation, in pertinent part as follows:

"Administration provisions: Sums appropriated in this Act for the Bureau of Reclamation shall be available for all expenditures authorized by the Act of June 17, 1902, and Acts amendatory thereof or supplementary thereof or supplementary thereto, known as the reclamation law, and all other Acts under which expenditures are authorized, including * * * payments (not to exceed the to school districts as reimbursement, while projects are actually under construction, for the instruction of dependents of employees of the Bureau of Reclamation and of contractors engaged on such project: Provided. That a tuition charge of $25 per semester shall be charged and collected by the Bureau of Reclamation for each dependent attending such schools * * *."

Public Law 835, entitled "An Act to authorize appropriations for the Bureau of Reclamation for payments to school districts on certain projects during their construction status," approved June 29, 1948, at 5:05 p.m., F.D.T., provides:

"That the Secretary of the Interior, giving due consideration to the temporary nature of the requirements therefor, is authorized to make such provision as he deems to be necessary and in the public interest for the education of dependents of persons employed on the actual construction of projects or features of projects, by the Bureau of reclamation, in any cases in which he finds that by reason of such construction activity, an undue burden is, or will be cast upon the facilities of teh public school districts serving the areas in which construction is being undertaken, and to pay for the same from any funds available for the construction of said projects: Provided, That the Secretary of the Interior shall enter into cooperative arrangements with local school districts wherein such features are situated to contribute toward covering the

cost of furnishing the educational services required for such dependents, or for the operation by those school districts of Government facilities, or for the expansion of local school facilities. Such cost incurred hereunder shall be charged to the project concerned and shall be repayable in the same manner and to the same extent as are its other cost of construction.

"SEC. 2. The Secretary of the Interior shall furnish to the Congress each year, on or before the 3d day of January, a report on all activities undertaken during the proceding fiscal year pursuant to the provisions of the Act, together with such recommendations with respect to problems relating to it as he shall think appropriate."

The questions for consideration are stated in the Assistant Secretary's letter as follows:

"(1) Since both of the provisions referred to explicitly make construction funds of the Bureau of Reclamation available for aiding school districts, is the Bureau now authorized to proceed in accordance with the terms of either of them as may be administratively determined to be best in individual circumstances?

"(2) If the answer to the first question is 'No', is it your view that the provision of the Interior Department Appropriation Act, 1949, quoted above, has been superseded by these of R. L. 835, which, as I pointed out before, became law upon its approval by the President after he had approved the Appropriation Act?

"(3) In the event that it is your belief that the specific provision of the Interior Department Appropriation Act, 1949, is controlling in so far as direct payments by the Bureau of Reclamation "as reimbursement . . . for the instruction of dependents of employees" of its contractors are concerned, is it also your view that the Bureau has authority, under P.L. 835, to make arrangements with the school districts (for example, for the use of Government facilities) which are not covered by the terms of the Appropriation Act? yes

"(4) In so far as the Bureau of Reclamation may be authorized or required to operate under the provision of the Appropriation Act quoted above, is it your understanding that compliance with the terms of teh proviso is a condition precedent to making the payments authorized in the remainder of the provision and, if so, is the collection of $25 for each child a condition precedent to making the payment for that child or a condition precedant to making payment for any child enrolled in the public schools of that district? For example, if (as is sometimes the case) some of the persons employed on the job are local citizens whose children are regularly enrolled in the schools and who pay their share of local taxes, must $25 be collected for each child of such an employee before payments are made on behalf of children of other employee?

"(5) Shall such collections as are made under the Appropriation Act provision be handled as a reimbursement to the appropriation from which payment is to be made to the school district or shall the collection be placed in a designated Special Deposit Account and paid to the school district at appropriate times?"

Prior to enactment of Public Law 835 and 841, the Bureau of Reclamation had no general statutory authority to provide assistance to school districts furnishing educational facilities to dependents of Bureau of Reclamation personnel or contractors engaged on project construction, although funds have been provided

for such purpose at the Boulder Canyon project in annual Interior appropriation acts for a number of years, and specific authority was conferred therefor by Public Law 528, 62 Stat. 235, May 14, 1948. Clearly, the purpose of Public Law 835 was to supply general basic authority for providing assistance to school districts furnishing such educational facilities and it is the view of this Office that the said Public Law 835 properly may be regarded as making an appropriation, inasmuch as it contains express authorization make payment and designates the funds to be used. 13 Comp. Dec. 729; 16 id. 339. On the other hand, Public Law 841 is special legislation limited to the fiscal year 1949, making specific provision as to the use of funds appropriated therein for reimbursement to school districts for the instruction of dependents of employees of the Bureau of Reclamation and of contractors engaged on reclamation projects.

In 19 Comp. gen. 492, it is said quoting from page 495:

"It is an established rule of statutory interpretation that a later general statute is not to be construed as affecting the operation of an earlier special statute unless the special statute is expressly repealed or is so wholly inconsistant that its repeal must of necessity be implied. United States v. Nix. 189 U. S. 199; Rodgers v. United States 185 U. S. 83; exParts Crow dog, 109 U. S. 556, 570; Washington v. Miller, 235 U. S. 422. In the recent case of Baltimore National Bank v. Tax Commission, 297 U. S. 209, 215, the Supreme Court said:

"* * * An earlier act, specific in its coverage, will be read as an exception to a later one directed to investments generally. "It is a wall-settled principle of construction that specific terms covering the given subject matter will prevail over general language of the same or another statute which might otherwise prove controlling." Kepner v. United States, 195 U. S. 100, 124; cf. Ginsberg & Sons v. Poplin, 285 U. S. 204, 208; In re East River Co., 266 U. S. 355, 367; Washington v. Miller, 235 U. S. 422, 428; Rosencrans v. United States, 165 U. S. 257, 262; red Rock v. Henry, 106 U. S. 596, 603. * * *"

"The rule was discussed in Ex Parts Crow Dog, 109 U. S. 556, 570, as follows:

"'The language of the exception is special and express; the words relied on as a repeal are general and inconclusive. The rule is, genralis specialibur non derogant. "The general principle to be applied," said Bovill, C. J., in Thorpe v. Adams, , L. R. 6 C.P. 135, "to the construction of acts of Parliment is that a genral act is not to be construed to repeal a previous particular act, unless there is some express reference to the previous legislation on the subject, or unless there is a necessary inconsistency in the two acts standing together." "And the reason is," said Wood, V.C., in Fitzgerald v. Champanys, 30 L.J.H.S. eq. 782; 2, Johns, and Hem. 31-54, "that the legislature having had its attention directed to a special subject, and having observed all the circumstances of the case and provided for them, does not intend by a general enactment afterwards to derogate from its own act when it makes no special mention of its intention so to do."

There is no express repeal provision contained in either of the statutes here involved, nor is there any indication in the language of the statutes or in their legislative history that either was intended as a substitute for the other. It appears that Congressional action on Public Law 835 was completed before that on Public Law 841. It reasonbly may not be inferred, therefore, that the Congress intended the general statute to effect a repeal of the special

statute. Likewise, the fact that the two acts were sent to the Presidents for approval almost simultaneously (within a period of only seven minutes) would appear to negative any intention that the general act would be considered as repealing ther special act. Moreover, there appears no irreconcilable conflict or absolute incompatibility between the general provisions of Public Law 835 and the specific provisions of Public Law 841. Public Law 835 has a broad field of operation beyond the quoted provision of Public Law 841, should prevail. In other words, in reimbursing school districts during the fiscal year 1949 from funds appropriated by Public Law 841, the provisions of the act should be considered as exclusively controlling.

Accordingly, during the fiscal year 1949, in any case where the Bureau of Reclamation deems it advisable, it is authorized to reimburse school districts where reclamation projects are under construction from funds appropriated to the Bureau of Public Law 841 for instruction furnished to dependents of the Bureau's personnel and contractors enaged on such projects, such reimbursement not to exceed the average per pupil cost in the State where construction is in progress and the Bureau to collect a tutition charge of $25 per semester for each such dependent attending the schools. In all other cases where assistance to school districts is involved (including reimbursement of tuition payments chargeable to Bueau funds for which no appropriation is contained in Public Law 841), the provisions of Public Law 835 are controlling. Thus, upon his finding that by reason of construction activity on Bureau of Reclamation projects an undue burden is or will be cast upon the facilities of the public school districts serving areas in which construction is being undertaken, the Secretary of the Interior is authorized to make such provision as he deems to be necessary and in the public interest for the education of dependents of the Bureau of Reclamation's personnel and contractors employed on the actual construction of projects of features of projects and to pay for the same from any funds available for the construction of said projects, the cost thereof to be changed to the project concerned and repaid with other cost of construction.

In accordance witht he foregoing, the above-quoted questions presented in the Assistant Secretary's letter are answered as follows:

1. No. Reimbursements for cost of instruction from funds appropriated by Public Law 841 are subject to the provisions of the act.

2. No.

3. Yes.

4. No. There is no indication in the language of Public Law 841 or in its legislative history that the collection of the tuition charge provided for in the said act is intended to be a condition precedent to making payments to school districts.

5. Neither. Public Law 841 provides for the collection of the said tuition charge of $25 per semaster for each dependent but does not authorize the paying out of such amounts. Therefore, such collections are for disposition in the same manner as other collections of the Bureau of Reclamation under the provisions of the act of May 9, 1938, 52 Stat. 322, 43 U.S.C. 392a, and should be covered into the Treasury of the United States to the credit of the special fund receipt account "6,000.6 Collections, Reclamation Fund."

Respectfully,

LINDSAY C. WARREN Comptroller General of the United States.