

Opinion No. 31-26

January 27, 1931

BY: E. K. Neumann, Attorney General

TO: Mr. F. H. Keller, J. P., Pct. No. 3, Hidalgo County, Valedon, New Mexico.

{*30} Your letter of January 21, 1931, has been received, in which you inquire as to whether or not the provisions of section 17-101, 1929 Compilation, supercede the provisions of section 79-107.

Section 17-101 in part reads as follows: "that whenever **any** recognizance, stipulation, bond or undertaking is required to be given by the laws of this state, conditioned for the faithful performance **of any duty** or from doing or refraining from doing anything in such recognizance, stipulation, bond or undertaking specified, which bond is now required or permitted to be given with one or with two or more securities, the execution of the same, or the guaranteeing of the performance of the condition thereof shall be sufficient if executed or guaranteed solely by a corporation, etc." As mentioned in your letter this section was enacted in 1899, while section 79-107 was enacted in 1891.

It is my opinion that the provisions of section 17-101 apply to the bonds of the Justices of the Peace as well as to the bonds of other officials, and that section 79-107 in so far as it is inconsistent with section 17-101 is repealed by implication. I base this opinion upon the following language taken from 25 R. C. L. 914; "the fact that an act does not contain either general or specific repealing clause will not prevent it from repealing a prior inconsistent act; for an act may be repealed by implication as well as in direct terms, even though it is a constitutional provision to the effect that no law or section of law shall be revived, amended or repealed by reference to its section or title only. This doctrine rests on the ground that the last expression of the legislative will ought to control -- A repeal resulting from irreconcilable inconsistency and repugnancy between two acts is measured by the extent of the conflict or inconsistency, and if any part of the earlier act can stand as not superceded or affected by the later act, it is not repealed."

It would follow, then, that the bond of the Justices of the Peace may be executed by a corporation surety company such as is contemplated by section 17-101 and that such bond fulfills the requirements by law as fully as a bond with two {*31} local sureties. Trusting that this gives you the information desired.

By Quincy D. Adams,

Asst. Att'y General