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**GREG ZOELLER**  
INDIANA ATTORNEY GENERAL

June 10, 2009

OFFICIAL OPINION 2009-2

The Honorable William A. Crawford  
House of Representatives  
Indiana State House  
Indianapolis, Indiana 46204

Re: Conflict in Statutory Amendments Passed During the Same Legislative Session

Dear Representative Crawford:

This is in response to your request for a legal opinion regarding an apparent conflict in amendments to Indiana Code 5-10.2-4-6(b) contained in Public Law 124-2008 and Public Law 131-2008, both passed by the Indiana General Assembly in 2008. This issue has arisen before and your question allows for an opportunity to clarify this with an analysis of the rules of statutory construction.

**Brief Answer**

There is an irreconcilable conflict between P.L. 124-2008 and P.L. 131-2008 concerning the effective date of an amendment to the minimum amount of disability retirement benefits payable under IC 5-10.2-4-6(b). The conflict is to be resolved in favor of the effective date specified in the later passed law which is P.L. 131-2008.

**Analysis**

The 115<sup>th</sup> Indiana General Assembly passed House Enrolled Act 1019, which became Public Law No. 124-2008. It also passed House Enrolled Act 1125, which became Public Law No. 131-2008. Both public laws amend Indiana Code section 5-10.2-4-6 concerning public employment disability retirement benefits; however, the amendments are not identical and they have different effective dates. Your question concerns the apparent conflict between the amendments made to IC 5-10.2-4-6(b).

Subsection (b), as amended by P.L. 124-2008, **effective July 1, 2008**, reads as follows:

Benefits for disability shall be paid beginning with the month following the onset of disability as determined by the Social Security Administration. The benefit is the retirement benefit specified in section 4 of this chapter with the pension computed using only the years of creditable service worked to the date of disability and without reduction for early retirement. The monthly disability retirement benefit **payable before July 1, 2008, may not be less than one hundred dollars (\$100). The monthly disability retirement benefit payable after June 30, 2008, may not be less than one hundred eighty dollars (\$180).**

IC 5-10.2-4-6(b) Version b (emphasis added).

Subsection (b), as amended by P.L. 131-2008, **effective January 1, 2008**, reads as follows:

Benefits for disability shall be paid beginning with the month following the onset of disability as determined by the Social Security Administration. The benefit is the retirement benefit specified in section 4 of this chapter with the pension computed using only the years of creditable service worked to the date of disability and without reduction for early retirement. **However**, the monthly disability retirement benefit may not be less than **one hundred eighty dollars (\$180).**

IC 5-10.2-4-6(b) Version a (emphasis added).

The highlighted text above shows differences in the language contained in the two versions of subsection (b). One version sets the minimum monthly disability benefit at \$180.00 effective January 1, 2008, while the other version retains a minimum benefit of \$100.00 prior to July 1, 2008, and increases the minimum amount to \$180.00 for benefits payable after June 30, 2008.

Given the apparent conflict between the two statutes, we employ rules of statutory construction to determine the intent of the legislature. *Wedmore v. State*, 233 Ind. 545, 122 N.E. 2d 1 (1954). Rules of statutory construction require that efforts be made to reconcile apparently conflicting statutes so as to give effect to both. *Board of Trustees of Indiana Public Employees' Retirement Fund v. Grannan*, 578 N.E. 2d 371 (Ind. Ct. App 4<sup>th</sup> Dist. 1991). Where two acts relating to the same subject matter are passed at the same legislative session, there is a strong presumption or inference against an implied repeal. *State ex. rel. Davenport v. International Harvester Co.*, 216 Ind. 463, 25 N.E. 2d 242 (1940). The two acts are to be construed together, if possible, to avoid an implied repeal. *Fleenor v. State*, 200 Ind. 165, 162 N.E. 234 (1928); *Gates v. Hickman*, 117 Ind. App. 414, 70 N.E. 2d 441 (1947). However, if the two acts are irreconcilable, the one which is the later expression of the legislature will ordinarily prevail over the other. *Matter of Public Law No. 305 and Public Law No. 309 of Indiana Acts of 1975*, 263 Ind. 506, 334 N.E. 2d 659 (1975). The general rule is that where there is an irreconcilable conflict between statutes passed at the same session, the later will prevail. *Olszewski v. Stodola*, 226 Ind. 639, 82 N.E. 2d 256 (1948); *Long v. Kinney*, 210 Ind. 192, 1 N.E. 2d 929 (1936). It is the order of the dates on

which said enactments became law which is ordinarily used as a guide in determining which is the latest expression of legislative intent. *Milk Control Bd. v. Pursifull*, 219 Ind. 49, 36 N.E. 2d 850 (1941). The one that was approved last will prevail, even when the prior one is not to take effect until a time subsequent to the passage and taking effect of the later one. *Newbauer v. State*, 200 Ind. 118, 161 N.E. 826 (1928).

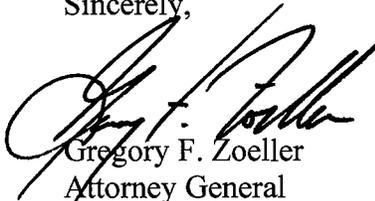
With respect to the two statutes at issue here, there is an irreconcilable conflict between the effective dates stated for the minimum benefit payment to become \$180.00. Applying the “later statute” rule of statutory construction, we find that House Enrolled Act 1019 was signed by the governor at 2:47 p.m. on March 24, 2008. House Enrolled Act 1125 was signed by the governor at 3:01 p.m. on March 24, 2008. Each Enrolled Act became law upon signature of the governor.<sup>1</sup>

House Enrolled Act 1125 (P.L. 131-2008) is the later of the two bills to become law. Since provisions of a later statute supersede a conflicting provision in an earlier statute on the same subject when the conflicting provisions are irreconcilable, the amendment to IC 5-10.2-4-6(b) specified in P.L. 131-2008 supersedes the conflicting amendment to IC 5-10.2-4-6(b) specified in P.L. 124-2008. The sections of the two statutes that are not in conflict remain in tact.

### Conclusion

Therefore, it is my opinion that the amendment in the amount of the minimum retirement disability benefit to \$180.00 set forth in P.L. 131-2008 takes effect January 1, 2008, and supersedes the conflicting provisions in P.L. 124-2008 which would increase the minimum benefit to \$180.00 effective July 1, 2008.

Sincerely,



Gregory F. Zoeller  
Attorney General

Elizabeth A. Brown  
Deputy Attorney General

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<sup>1</sup> Article 5, Section 14 of the Indiana Constitution states:

(a) Every bill which shall have passed the General Assembly shall be presented to the Governor. The Governor shall have seven days after the day of presentment to act upon such bill as follows:

(1) He may sign it, in which event it shall become a law.