



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN, TEXAS 78711

February 25, 1972

Honorable Louis Dugas, Jr.
County Attorney
Orange County Courthouse
Orange, Texas 77630

Opinion No. M-1079

Re: Whether Article 1436-3,
Vernon's Penal Code, re-
pealed Article 5503 and
5504, Vernon's Civil Statutes.

Dear Mr. Dugas:

Your request for an opinion asks the following question:

"Whether Article 1436-3, Vernon's Penal Code,
repealed Article 5503 and 5504, Vernon's Civil Statutes."

Article 1436-3, Vernon's Penal Code is entitled "Abandoned
Motor Vehicle Act." Section 6 of that Article provides as follows:

"Sec. 6. Any motor vehicle left for more than
10 days in a storage facility operated for commercial
purposes after notice by registered or certified mail,
return receipt requested, to the owner to pick up the
vehicle, or for more than 10 days after the period when,
pursuant to contract, the vehicle was to remain on the
premises of such storage facility, and any motor ve-
hicle left for more than 10 days in such storage facility
by someone other than a registered owner or left by a
person authorized to have possession of the motor ve-
hicle under a contractive use, service, storage, or re-
pair, shall be deemed an abandoned vehicle and shall be
reported by the garagekeeper to the police department
. . . Except for the termination of claim for service,
storage, or repair for failure to report an abandoned
motor vehicle, nothing in this section shall be construed
to impair any lien of a garagekeeper under the laws of
this State, or the right of a lienholder to foreclose."

Article 5503 provides that mechanics may retain property until the amount due on the same for repairing by contract shall be fully paid off and discharged. Article 5504 provides that property retained under Article 5503 may be sold by the person holding the property if his possession has continued for sixty days after the charges accrue and the charges have not been paid, and if after notice to the owner, the owner fails to pay such charges, the person so holding the property is authorized to sell the property at public sale and apply the proceeds to the payment of the charges.

Article 1436-3 does not repeal Articles 5503 and 5504. In fact, the Act, of which Article I was codified by Vernon as Article 1436-3, specifically amends such Articles. (Acts 1971, 62nd Legislature, Chap. 784, p. 2441.) The repeal of laws by implication is not favored. Halsell v. Texas Water Commission, 380 S. W. 2d 1 (Tex. Civ. App. 1964, error ref. n. r. e.), American Canal Company v. Dow Chemical Company, 380 S. W. 2d 662 (Tex. Civ. App. 1964, error dism.) Where there is no express repeal, the presumption is that in enacting a new law the Legislature intended the old statute to remain in operation. Cunningham v. Henry, 231 S. W. 2d 1013 (Tex. Civ. App. 1950, error ref. n. r. e.) Where there is no direct and irreconcilable conflict between the two statutes they will be construed to give effect to both statutes. International Service Company v. Jackson, 335 S. W. 2d 420 (Tex. Civ. App. 1960, error ref. n. r. e.)

Further, it appears that Article 1436-3 and the reenactment of Article 5503 with amendment were passed by the same Legislature. Under such circumstances,

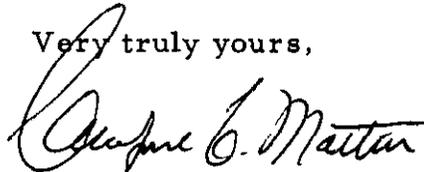
" . . . nothing short of a direct repeal in express terms, or such irreconcilable repugnancy as that both acts cannot stand together, will justify a court in holding an act repealed by another act passed at the same session . . ." 53 Tex. Jur. 2d 156, Sec. 105, Statutes.

Article 1436-3 and Articles 5503 and 5504 are not in irreconcilable conflict, since they may by reasonable construction be harmonized and each stand together and given full force and effect as intended by the Legislature. Cole v. State, 106 Tex. 472, 170 S. W. 1036 (1914.) Therefore, both Articles would be in effect and a mechanic's lien may be retained under Article 5503 and such lien may be foreclosed under Article 5504.

SUMMARY

Article 1436-3, Vernon's Penal Code, did not repeal Articles 5503 and 5504, Vernon's Civil Statutes; therefore, a mechanics' lien may be retained under the provisions of Article 5503, and such lien may be foreclosed under the provisions of Article 5504.

Very truly yours,


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