Opinion No. 364

Cities and Towns—Commission Managers — Budget Law

HELD: Cities operating under the Commission Manager Form of Government are not required to comply with the Municipal Budget Law.

October 19, 1933.

You have asked for my opinion on the following question: "Are cities operating under the commission manager form of government, Chapter 173, Session Laws 1925, required to comply with Chapter 121, Session Laws 1931, known as the Municipal Budget Law?"

The statutes relating to the Commission Manager form of government are Sections 5400-5520, R. C. M. 1921, as amended by Chapter 31, Laws of 1923, and Chapter 173, Laws of 1925. All of the cities in Montana are organized under the general Alderman-Mayor form of city government, with the exception of the City of Bozeman, which alone is organized under the Commission Manager Act, originally

passed by the legislature in 1917 and twice amended as stated above, and about two other cities organized under the commission form.

Being dissatisfied with the general Alderman-Mayor form under which the City of Bozeman seemed to be unable to operate within its income and had therefore accumulated a large floating indebtedness, some of the citizens of Bozeman, aided by others throughout the state, succeeded in getting the Commission Manager Act passed and in 1922 the people of Bozeman elected to operate their city under that act. During the 11 1-2 years of operation under this special act, it is claimed that the city has profited much and has corrected the faults and abuses which previously existed.

This special Commission Manager Act contains a complete budgeting and accounting system of its own different, inconsistent and repugnant to the Alderman-Mayor or Commission forms of city government. The fiscal year likewise is different as it ends with the calendar year. This special act apparently was followed satisfactorily by the City of Bozeman long before the so-called City Budget Act was passed in 1931.

The legal question is: Was it the intention of the Legislature in passing the general "Municipal Budget Law" in 1931, and thereby supplying a need of the cities operating under the general law relating to city governments because they did not include an adequate budget and accounting system, to repeal or amend the special Commission Manager form of city government with its own complete special budgetary, fiscal and accounting system?

There are no express words of repeal or amendment in the 1921 Act. It there was an intention on the part of the legislature to repeal or amend the Commission Manager Law, it must be implied from the use of the words "the provisions of this act shall apply to all cities in this state." It is a well settled and long recognized rule that repeals or amendments by implication are not favored. (59 C. J. p. 905, Section 510, Note 22; State v. Cascade County, 296 Pac. 1; Nichols v. Ravalli County School District No. 3, 287 Pac. 624, 87 Mont. 181; London Guaranty Co., v. State Industrial Accident Bd., 266 Pac. 1103, 82 Mont. 304; Ex p. Naegele, 224 Pac. 269, 70 Mont. 129; State v. Miller, 220 Pac. 97, 69 Mont. 1; State v. Bowker, 205 Pac. 961, 63 Mont. 1.)

On the other hand, it is the rule that "courts are slow to hold that one statute has repealed another by implication, and they will not make such an adjudication if they can avoid doing so consistently or on any reasonable hypothesis, or if they can arrive at another result by any construction which is fair and reasonable. * * * nor will they adopt an iterpretation leading to an adjudication of repeal by implication unless it is inevitable, and a very clear and definite reason therefor can be assigned. * * * The implication must be clear, necessary and irresistible." (59 C. J. p. 905, Section 510.) It is also the general and undoubted rule that a general affirmative act will not by implication repeal or effect a previous special act, or the special or particular provisions of a prior act on the same subject. (59 C. J. p. 931, Section 536; London etc. Co. v. Industrial Accident Board, supra; Stadler v. City of Helena, 46 Mont. 128; Reagan v. Boyd, 59 Mont. 453; Daley v. Torrey, et al., 71 Mont. 513; Franzke v. Wright, et al, 70 Mont. 531, 226 Pac. 524.)

In passing the Commission Manager Law, the legislature had its attention directed to the special case which the act was meant to meet. It considered and provided for all the circumstances of that special case. Having done so it is not to be considered that by the general enactment, the Budget Act, passed subsequently and making no mention of any such intention, to have intended to derogate from that which, by its own special act, it has thus carefully supervised and regulated. If possible, a special act and the general law should stand together; the one is the law in the particular case and the other is a general law of the land. (59 C. J. pp. 931-932.) "The principle generalia specialibus non derogant is especially applicable to cases where general statutes are argued to overrule the provisions of special charters granted to municipal corporations, or special acts passed for

their benefit." (59 C. J. p. 935, Section 538.)

Applying these universal rules, I am unable to say that the intention of the legislature to amend or repeal the special Commission Manager Law, providing for a special budgetary, fiscal and accounting system, is clear, necessary or irresistible. While the two laws are inconsistent and repugnant, each has a reasonable field of operation without trenching on the ground covered by the other. Neither under the purpose as expressed in its title, of providing a general budget system, etc., nor in the body of the act itself does there appear any intention on the part of the legisltaure to in any way change or interfere with a special act providing for the City-Manager plan of municipal government. Nor does there appear to be any intention on the part of the legislature to revise the whole subject of city government by providing a substitute for all prior enactments. It would seem, rather, that it was the intention of the legislature to provide for a budgetary, and accounting system for all cities generally, operating under the old general law relating to city government which did not have an adequate budget and accounting system.

A comparison of the Municipal Budget Law with the Commission Manager Law, discloses that the former does not fit in with the special structure and set-up of the latter; in fact, the two acts are inconsistent and repugnant. On the other hand, the Municipal Budget Act fits in with the general structure and set-up of the Alderman-Mayor form of city government. It refers specifically to the officers of the latter and makes use of them in its budgetary, fiscal and accounting system. Furthermore, it is consistent with the general theory of city government set up by the old Alderman-Mayor system and it is entirely inconsistent with the new special Commismission Manager Act, the fundamental idea and cornerstone of which is the segregation of the legislative branch from the administrative branch of the city. The city manager is the head of the administrative branch and is charged with the responsibility of the general management of the city and carrying out of its financial operations.

The Municipal Budget Act places upon the city clerk, city treasurer and the mayor, all officers of the old system, certain specific duties consistent with their general duties and consistent with the general scheme of the old system. There are no city clerk and city treasurer in the Commission Manager Act and the mayor is practically such in name only, when compared with the powers and duties of the mayor under the Alderman-Mayor form. The clerk of the commissioners, appointed by the commissioners, keeps the records of the commissioners and performs other clerical duties only. He has no power to sign or issue warrants and his duties and powers cannot be compared to the city clerk. The Municipal Budget Act would place upon him duties and powers which are vested in the city manager and he is authorized to withhold warrants and deduct from the salary of the city manager for disobedience (Section 3, Chapter 121, 1931), all of which is repugnant to the fundamental idea of the city manager plan. Instead of being the administrative head (Section 5455 R. C. M.), the city manager becomes subordinate to a clerical employee of the commissioners who represent the legislative branch of the city. The Commission Manager Act has no treasurer but has a director of finance appointed by the city manager.

These are some of the inconsistencies between the two acts. In short, the Municipal Budget Act names and requires for its operation a set of different officers who are not known under the Commission Manager Act; whose duties and functions are entirely inconsistent with, and repugnant to the set-up and the basic idea of the latter. To apply the Municipal Budget Act to the Commission Manager Act, would tend to disintegrate and and destroy its unique character. It is impossible to compare the two acts without reaching the conclusion that in enacting the Municipal Budget Act, the legislature intended to have it apply to all cities of the old Alderman-Mayor plan with which it is not repugnant and whose officers are specifically mentioned and in which

system there was a specific need for a budgetary and accounting system, and that there was no intention on the part of the legislature to amend or repeal a special act so radically different in its theory of city government, and having its own complete budgetary, fiscal and accounting system, to which no reference whatever is made. It is inconceivable that the legislature intended by this indirect method to jeopardize or destroy the special Commission Manager Act which it had carefully built up.

If uniformity in city government had been its object it carefully concealed its purpose. If uniformity had been its purpose and had been desirable, it is reasonable to suppose that it would have carefully repealed all the different laws pertaining to city government and have built an entirely new structure. On the other hand, in the absence of express purpose and in the absence of a real need therefor it is probable that the legislature intended to retain intact in its laboratory of social and governmental experiments, this special act under which the City of Bozeman, so far as I am informed, has successfully governed itself.

I am unable to find any clear, necessary or irresistible implication of repeal or amendment of the Commission Manager Act. Having in mind the rule, herein stated, that repeals by implication are not favored and that they are to be avoided if it is possible to do so consistently on any reasonable hypothesis or by any fair and reasonable construction, it is my opinion that the question you have submitted should be answered in the negative.