

nor has the legislature made it his duty to make an annual examination of the books of such cities and such cities are not required to pay the fee provided for in Section 6014.79, Revised Codes of Montana, 1935.

February 11, 1944.

Mr. W. A. Brown
State Examiner
State Capitol
Helena, Montana

Dear Mr. Brown:

You have requested an opinion of this office as to whether or not the State Examiner has the power to prescribe and supervise the methods of accounting of cities operating under the commission-manager plan of government as provided in Chapter 408, Political Code, Revised Codes of Montana, 1935, and if so, must such officer make an annual examination and are cities required to pay the fee provided for in Section 6014.79, Revised Codes of Montana, 1935.

Section 210, Revised Codes of Montana, 1935, provides in part as follows:

"The duties of the state examiner and his assistants are: . . .

"2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to the counties, cities, towns, or school districts . . . and to establish in all such offices such general methods and details of accounting as are required by law or are prescribed by the state examiner, and all county, city, town or school district officers . . . are hereby compelled to conform therewith."

Chapter 164, Laws of 1937, provides in part as follows:

"That Section 215 of the Revised Codes of Montana of 1935, be, and the same is hereby, amended to read as follows:

"Section 215. Examination of Accounts of Cities, Towns . . . The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one examination each year of the books and accounts of all incorporated cities and towns . . ."

Opinion No. 175.

**Cities and Towns—State Examiner—
Audit—Commission Manager Plan of
Government.**

Held: The legislature has not given the authority to the State Examiner to prescribe and supervise the methods of accounting of cities operating under the commission manager plan of government,

It is to be noted that the foregoing statutes are general statutes, pertaining mainly to the duties of the State Examiner and only incidentally to cities. Section 6014.79 is also general in scope and pertains to the "state examiners fund."

Sections 5400-5520, inclusive, Revised Codes of Montana, 1935, being Chapter 408, Political Code, Revised Codes of Montana, 1935, specially sets forth the powers of cities operating under the commission-manager plan of government. Therefore, any powers which are specifically set forth in that chapter can not be governed by the general laws. See in this respect, In re Stevenson, 87 Mont. 486, as follows:

"Where one statute deals with a subject in general and comprehensive terms and another deals with a part of the same subject in a more minute and definite way, to the extent of any necessary repugnancy between them the special will prevail over the general statute."

Section 5452, Revised Codes of Montana, 1935, provides in part as follows:

"The commission shall cause a continuous audit to be made of the books of account, records, and transactions of the administrative department of the municipality. Such audit, during each fiscal year, shall be made by one or more well-qualified accountants. The duty of the auditor or auditors so appointed shall include the certifications of all statements required under Section 5466 of this code. . . . The report of such audit for each previous year shall be printed and a copy thereof furnished the state bank examiner of Montana . . ."

Section 5466, Revised Codes of Montana, 1935, provides in part as follows:

"The duties of the director of finance shall include the keeping and supervision of all accounts and the custody of all public money of the municipality . . ."

"He shall install and have supervision over the accounts of all the departments and offices of the municipality . . ."

"Accounting procedure shall be devised and maintained for the municipality adequate to record in detail all transactions affecting the acquisition, custodianship and disposition

of values, including cash receipts and disbursements . . ."

" . . . The director of finance shall have such assistants and force of office employees as may be necessary to properly carry out his duties under the provisions of this act. If it is found desirable, he may divide his office into divisions presided over by the following officers: accountant, treasurer and purchasing agent." (Emphasis mine.)

Section 5515, Revised Codes of Montana, 1935, provides as follows:

"Except as otherwise in this act provided, all acts and parts of acts and all laws now in force or hereafter enacted relative to municipal corporations, are hereby continued in full force and effect and shall be considered and construed as not repealed by this act, except insofar as the same may be in conflict or inconsistent with the provisions of this act."

These sections of said Chapter 408 specifically provide that the director of finance shall provide the method and supervise the accounting of the cities operating under the commission-manager plan of government, and also provide how the audit shall be made, who shall make it and that a copy be furnished the State Examiner.

A former Attorney General in 1933, Report and Official Opinions of the Attorney General, Vol. 15, page 248, Opinion 364, held cities operating under the commission-manager form of government were not required to comply with the municipal budget law, on the grounds that the act providing that form of government for cities was a special act and cities formed under such an act are not controlled by the general laws.

Section 5515, Revised Codes of Montana, 1935, specifically provides that Chapter 408 does not repeal any former, present or subsequent enactments except as the same conflicts with the act. This I believe evidences an intent that Chapter 408 is to be taken as a special act and that cities operating under the same are to be governed in accordance with the provisions of the act without affecting the regulation of other cities formed under the general laws.

It is also to be noted the legislature saw fit to amend Chapter 407, Political Code, Revised Codes of Montana, 1935.

relative to commission form of government, by Chapter 52, Laws of 1943, so as to bring cities operating under the commission form of government within the provisions of Sections 210, 215 and 6014.79. It was then necessary to so amend Chapter 407; then it seems that Chapter 408 should likewise be amended before cities operating thereunder would fall within the provisions of said Sections 210, 215, and 6014.79.

It is therefore my opinion the legislature has not given to the State Examiner authority to prescribe and supervise the methods of accounting of cities operating under the commission-manager plan of government, nor has the legislature made it his duty to make an annual examination of the books of such cities and that such cities are not required to pay the fee provided for in Section 6014.79, Revised Codes of Montana, 1935.

Sincerely yours,
R. V. BOTTOMLY
Attorney General