

**Licenses, Law Not Repealed in Cities and Towns. Cities
May Impose Licenses.**

Chap. 22, Laws 1907, which repealed merchants' professional and occupation licenses imposed by counties, does not affect the power of cities and towns to impose similar licenses.

Helena, Montana, May 29, 1907.

Hon. S. V. Stewart,
County Attorney,
Virginia City, Montana,

Dear Sir:—

I have your request for an opinion relative to whether or not the repeal of the State law effected the power of incorporated cities and towns to collect occupation licenses.

House Bill No. 203, Laws Fifth Session, page 203, amends Section 4800 of the Political Code, and, among other powers granted to cities and towns, we find therein at subdivision 3. the following:

“To license all industries, pursuits, professions and occupations, and to impose penalties for failure to comply with such license requirements; but the amount to be paid for such license must not exceed the sum required by the State law when the State law requires a license therefor.”

Therefore it is my opinion that the cities and towns have the power by the enactment of ordinances to provide for the collection of occupation licenses independent of whether the State requires a similar license, for the reason that Chap. 22, Laws 1907, does not directly or indirectly repeal Section 4800 Political Code, as amended by House Bill No. 203, Session Laws, Fifth Legislative Assembly.

The power of municipal corporations to license, tax and regulate occupations engaged in within their limits has always been upheld by the courts, whenever the Legislature by charter or general laws has granted cities and towns that power. However, ordinances enacted by municipal corporations must be reasonable, consonant with the general power and purpose of the corporation, and not inconsistent with the laws and policy of the State; must not be oppressive; must be impartial, fair and general; and they may regulate but not restrain trade.

Dillon on Munc. Corp. Sec. 254; 358 Note, 4th. Ed.

Ex parte Newton, 53 Cal. 572.

Kentz vs. Mobile, 120 Ala. 623.

Webber vs. Chicago, 148 Ill. 313.

Gosheen vs. Kern (Ind.) 30 Am. Reps. 234.

Daus vs. Bacon, 103 Ga. 774.

People vs. Mulholland, 37 Am. Reps. 568.

Girard vs. Bissel, 45 Kan: 66.

Yours very truly,

ALBERT J. GALEN,

Attorney General.