

Opinion No. 314.**Cities and Towns—Licenses—Barbers.
Statutes, Construction of.**

HELD: Cities and towns may not collect license fees for police regulation from barbers.

August 3, 1938.

Mr. A. F. Hamilton
Secretary, Montana State Board
of Barber Examiners
Missoula, Montana

Dear Mr. Hamilton:

You have submitted the question whether cities and towns may collect license fees from barbers.

Section 3228.29, R. C. M. 1935, as amended by Chapter 183, Laws of 1937 (Section 3228.29(a)), provides:

“ * * * no other or additional license, or fee, shall be imposed upon barbers, or barber apprentices, by any municipality or other subdivision of the State of Montana.”

Section 5039.2, R. C. M. 1935, reads:

“The city or town council has power: To license all industries, pursuits, professions, and occupations, and to impose penalties for failure to comply with such license requirements.”

Since, however, Section 3228.29, as amended, is a later enactment and also

a special statute, it must prevail over the general law above quoted, to the extent that it conflicts therewith. A city or town derives its power from the legislature. Inasmuch as the legislature has seen fit to expressly withhold or withdraw the power of municipalities to collect license fees from barbers for police regulation, they may not do so. While it is not our function to discover the reason for enactments, the legislature perhaps felt that the police regulation by the state was sufficient and that not more than one license fee should be collected for such regulation.

Our Supreme Court, in interpreting Section 1, Article XII of the Montana Constitution, has held that a city may not raise revenue for general municipal purposes by the imposition of license taxes.

Johnson v. City of Great Falls, 38 Mont. 369, 99 Pac. 1059;

State ex rel. City of Bozeman v. Police Court, 68 Mont. 435, 219 Pac. 810;

State ex rel. City of Bozeman v. Nelson, 73 Mont. 147, 153, 237 Pac. 528.

For the reasons above stated, it is my opinion that cities and towns may not collect license fees from barbers.