

Opinion No. 82.**Cities and Towns—Commission Form of City Government—Offices and Officers—Bonds.**

Held: 1. Chapter 9, Laws of 1943 repeals so much of Section 5377, Revised Codes of Montana, 1935, as relates to the amount of official bond required by the mayor or councilmen of a municipal corporation operating under the commission form of government.

2. Chapter 9, Laws of 1943 does not operate to affect such city officers' bonds which were filed as a condition to their assuming their present terms of office.

July 1, 1943.

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

Dear Mr. Brown:

You have inquired:

Chapter 9, Laws of 1943 reduces the amount of the official bond required by the mayor or councilmen of a municipal corporation operating under the commission form of government from \$10,000 to \$5,000. The mayor and one of the councilmen of the city of Helena—both of whom assumed office on the first Monday in May, 1942, and qualified by filing bonds in the sum of \$10,000 each for a term ending on the first Monday in May, 1944—now seek to have their bonds reduced to \$5,000 each in order to save some premium expense. The question whether such action may be taken arises from the fact the state examiners will have to pass on the sufficiency of the bonds.

Chapter 9, Laws of 1943 is one of the briefest enactments of the Twenty-eighth Legislative Assembly

"An Act Prescribing the Amount of the Official Bond of the Mayor and Councilmen in Cities Having a Commission Form of Government and Repealing All Acts and Parts of Acts in Conflict Herewith.

"Be it enacted by the Legislative Assembly of the State of Montana:

"Section 1. That hereafter the official bond required by the mayor or councilmen of a municipal corporation operating under the commission form of government shall be in the sum of five thousand dollars (\$5,000.00).

"Section 2. All acts and parts of acts in conflict herewith are hereby repealed.

"Section 3. This act shall be in full force and effect from and after its passage and approval.

"Approved January 29, 1943."

The last paragraph of Section 5377, Revised Codes of Montana, 1935 provides:

"Every person who has been declared elected mayor or councilman, shall, within ten days thereafter, take and file with the city clerk his oath of office in the form and manner provided by law, and shall execute and give sufficient bond to the municipal corporation in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of his office, which bond shall be approved by the judge of the district court of the county in which such city is situated, and filed with the clerk and recorder of the county in which such city is situated."

Obviously there is a direct conflict between the two statutes with regard to the amount of the bond to be filed. Repeals by implication are not favored by our Court. (*State v. Bowker*, 63 Mont. 1, 6, 205 Pac. 961, 963.) To work a repeal by implication of a former statute by a subsequent statute, it must appear the later statute is plainly and irreconcilably in conflict with the former, and they must relate to the same subject and have the same object in view. (*Montana-Dakota Utilities Company v. City of Havre*, 109 Mont. 164, 171, 94 Pac. (2nd) 660, 664; *Wheir et al., v. Dye et al.*, 105 Mont. 347, 359, 73 Pac. (2nd) 209, 216; *Box et al. v. Duncan et al.*, 98 Mont. 216, 220, 38 Pac. (2nd) 986, 987; *Opinion No. 15*, Volume 19, Report and Official Opinions of the Attorney General, pages 887 and 888.)

Such an irreconcilable conflict exists here between Section 5377, Revised Codes of Montana, 1935 and Chapter 9, Laws of 1943 so that—even though

repeals by implication are frowned upon —I am of the opinion the provisions of Section 5377 relating to the amount of official bond required by a mayor and councilman of a municipal corporation operating under the commission form of government is repealed by Chapter 9, Laws of 1943.

The terms of Chapter 9, Laws of 1943 provide "hereafter the official bond required by the mayor or councilmen . . . shall be in the sum of five thousand dollars (\$5,000.00)." Section 8782, Revised Codes of Montana, 1935 declares "whenever the word 'hereafter' occurs, it shall be construed to mean the time after the statute containing the term shall take effect." No express mention of bonds in effect at the time of the enactment is made in the new law. For this office to supply one would be to legislate. It appears then, the new statute means whenever an official bond is required by a mayor or councilmen of the type of city mentioned, after the passage and approval of the statute, the bond shall be in the sum of five thousand dollars. No further official bond will be required by the officials about whom you inquire unless and until they are required to qualify for another term of office.

It is my opinion:

1. Chapter 9, Laws of 1943 repeals so much of Section 5377, Revised Codes of Montana, 1935 as relates to the amount of official bond required by the mayor or councilmen of a municipal corporation operating under the commission form of government.

2. Chapter 9, Laws of 1943 does not operate to affect such city officers' bonds which were filed as a condition to their assuming their present terms of office.

Sincerely yours,
R. V. BOTTOMLY
Attorney General