OPINION
45-47

October 26, 1945 (OPINION)

CITIES

RE: Ordinances - Repeal of

Your letter of October 24 addressed to this office has been received and contents noted.

You refer to subdivision 26 of section 3818 C.L. 1913, which authorized cities to license, tax and regulate all bowling alleys, billiard tables, etc., and you state that pursuant to the authority of said statute the city of Grand Forks in 1908 passed an ordinance (which has never been formally repealed by the city) licensing bowling alleys at $20.00 per alley per year.

The legislative session of 1919 enacted chapter 6 of the session laws of that year, which provides that, "No pool hall, billiard room, ball alley or pin alley, dance hall, theatre, moving picture show, taxicab stand, or any place where soft drinks are sold, or public hall, owned privately and used for public purposes, shall be opened, maintained, operated or conducted within this state unless the owner, proprietor or managing agent thereof shall first secure a license so to do in the manner herein prescribed."

Subdivision 30 of section 40-0501 of the 1943 revised code is substantially the same as subdivision 6 of section 3818 C.L. 1913, and authorizes cities to license, regulate, tax, prohibit and suppress bowling alleys, etc.

You inquire whether in our opinion the reenactment of the old provision of the 1913 law - that is, subdivision 26 thereof - restores the right of the city to license bowling alleys, and if so, whether the old ordinance, never having been repealed by the city, still is in force and effect.

Section 9 of chapter 6 of the 1919 session laws is the repealing clause of said chapter, and provides, "All Acts and parts of acts vesting power to license, regulate, control and supervise the licensing and inspecting of all such public places named in this Act and in conflict therewith are hereby repealed."

In the first place, said Chapter 6 repeals only such acts named therein as are in conflict with the provisions of said chapter.

The question then arises whether or not the ordinance of the city of Grand Forks, which authorizes the governing body to license bowling alleys is in conflict with the state statute which provides for and requires a license from the state.

Said chapter 6 was enacted by the legislature under the police powers of the state; likewise, the city ordinance of the city of Grand Forks also was enacted under the general police powers. Is there any conflict between the state statute referred to and the city

ordinance? In other words, can it be said that licensing of bowling alleys under the Grand Forks ordinance is in conflict with or contrary to the provisions of chapter 6 of the legislative session of 1919?

The general rule that repeals are not favored by the law applies here. In McQuillin Municipal Corp., 2d Ed., Rev. Vol. 2, Sec. 875, we find the following:

> "Both statutes and ordinances are clothed, in the first instance, with presumptive validity. It is familiar that there are two methods of repealing an ordinance or statute, express and implied; the first occurs where the repeal is by express terms, and the latter arises by necessary implication where total repugnancy exists between a later and an earlier ordinance or law; or a repeal pro tanto when such partial repugnancy exists; or, again, total or partial, where the whole or part of the subject-matter of the former is covered by the latter and revising regulation."

Again, we find in the same section the following:

> "Where a contrary intention is not manifest, the general rules relating to repeals by general laws of charter and ordinance provisions and legislative acts applicable to municipal corporations, which, in effect, become constituent parts of their charters, may be thus summarized:
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> 1. Constructive repeals or repeals by implication are not favored.
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> 2. A later statute which is general does not repeal a former one that is particular, unless negative words are used, or the acts are so entirely inconsistent that they cannot stand together. Thus laws existing for the benefit of particular municipalities ordinarily are not repealed by general laws relating to the same subject-matter. Stated in different phrase, where the subsequent general law and prior special law, charter or ordinance provisions do not conflict they both stand; but this result must depend, of course, upon the legislative intent which is to be ascertained from an examination and comparison of the whole course of legislation relating to the subject under consideration.
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> 3. Where there is a difference in the whole purview of two statutes, apparently relating to the same subject-matter, the former remains of force."

We can see no conflict or repugnancy between the city ordinance of Grand Forks and chapter 6, supra, it cannot be inferred that it was the intention of the legislature to curtail or take away from the cities the right or power to license bowling alleys and the other activities mentioned therein; rather it would appear that it was the intention of the legislature, under the police powers of the state, to enact a law providing further supervision and regulation to promote the safety and general welfare of the public. This would

appear clear from the provisions of the emergency clause of said chapter 6 which provides that, "Whereas, an emergency exists in this that it is necessary for the immediate preservation of the public peace, health and safety that this law shall become effective without delay for the reason that at the present time there exists no law providing for adequate regulation and inspection of public places named herein resulting in widespread lawlessness and danger to life and limb; therefore, this Act shall be in full force and effect from and after its passage and approval."

It should be noted that the emergency clause quoted recites that, "at the present time there exists no law providing for adequate regulation and inspection of public places * * *." The clear and logical inference from the language employed would lead to the inference that it was not the intention of the legislature to repeal city ordinances regulating the places enumerated therein, but rather to emphasize the necessity of such regulation and to provide additional legislative safeguards.

It is true that as a rule general legislation supersedes inconsistent special legislation relating to the same subject, although the special legislation is not expressly repealed. For instance, a legislative act which in terms applies to all cities of the state will be construed as repealing inconsistent charter provisions, but, as we have pointed out, there is no inconsistency between chapter 6, 1919 S.L. and subdivision 30, setion 3818, 1913 C.L., or as the same statute now appears in the 1943 code.

A statute carrying the repeal clause that, "All Acts and parts of Acts inconsistent, or in conflict with, are hereby repealed", would have the same effect without such a clause; but that phrase leaves open the question which acts are inconsistence and since chapter 6, supra, is not inconsistent with the city ordinance, then there is no reason why the two acts may not be concurrently in full force and effect.

We quote from McQuillin Mun. Corp., 2d Ed., Rev. Vol 2, Sec. 877:

> "Implied or constructive repeals are not favored by the courts. Accordingly, they will not adjudge a former law repealed by implication unless the new law is so repugnant to the old that the two cannot be reconciled, or unless it clearly appears that the latter law would not have been enacted without a plain intent to repeal the former. Repeals of ordinances by implication * * * are to be found only when there is such utter repugnancy between the earlier ordinance * * * and the latter ordinance * * * that the two cannot be reconciled and stand together. An act is not repealed by implication where the legislature had no intention to repeal it. A general statute will not impliedly repeal a prior local or special statute, unless there is such a positive repugnance between the two that they cannot stand together or be consistently reconciled."

Along the same line of reasoning we find the following in 43 C. J. Sec. 894, p. 567:

> "It has also been held that a statute repealing an enactment

> giving certain powers to a city does not repeal ordinances passed by it in pursuance of such action except in so far as they are in conflict with the provisions of the repealing statute; and this principle applies with peculiar force to a statute which repeals and substantially reenacts the previous law under which the ordinances have been passed, and, although a statute repeals the statute under which an ordinance was passed and enacts a substitute therefor, the ordinance is not affected if in harmony with the new provision."

It is the opinion of this office, therefore, upon the reasoning set forth herein, that the city ordinance of Grand Forks was not repealed by chapter 6 of the session laws of 1919, and unless the same has been repealed by the governing body of the city of Grand Forks, the same is still in full force and effect, and that therefore the city has the authority under such ordinance and under the state statute to regulate and license bowling alleys and the other places mentioned in said statute and ordinance.

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