

Opinion No. 65-176

September 7, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Oliver E. Payne, Deputy Attorney General

TO: Mr. James L. Parmelee, Jr., Deputy City Attorney, Box 1293, Albuquerque, New Mexico 87103

QUESTION

QUESTION

Does the Private Investigators Act, Sections 67-33-1 to 67-33-49 N.M.S.A., 1953 Compilation (P.S.) vest all authority to regulate private investigators in the State of New Mexico?

CONCLUSION

Yes, but see analysis.

OPINION

{*289} ANALYSIS

The present statute authorizing the licensing and regulation of businesses by municipalities is as follows:

"LICENSING AND TAXATION -- BUSINESS ACTIVITIES. -- The governing body may declare, by ordinance, that the licensing or regulation of a business not otherwise exempt by law is conducive to the promotion of the health and general welfare of the municipality and may impose a license fee and a separate license on each place of business conducted by the same person, firm, corporation or association. The license fee shall bear a reasonable relation to the regulation of the business." Section 14-37-1, N.M.S.A., 1953 Compilation (P.S.)

The present statute governing licensing and regulation of private investigators is the Private Investigators Act, Section 67-33-1 to 67-33-49, *supra*. Unlike Section 14-37-1, *supra*, which is of general application, the Private Investigators Act, *supra*, is a comprehensive, specific piece of legislation designed to set forth the authority to license investigators; who may license investigators; the authority to regulate and what classes of regulation may be applied. The rule of statutory construction in these cases is to attempt to harmonize the general and specific statutes where possible. Where this is not possible the specific statute prevails.

"A statute enacted for the primary purpose of dealing with a particular subject prescribing terms and conditions covering the subject-matter supersedes a general statute which does not refer to that subject although broad enough to cover it. . . ."
Varney v. City of Albuquerque, 40 N.M. 90, 92, 55 P.2d 40, 42, 106 {*290} A.L.R. 222, 224.

In applying this doctrine, then, it must be determined to what extent the two statutes can be harmonized. Section 67-33-5 N.M.S.A., 1953 Compilation (P.S.) states:

"ADMINISTRATION OF ACT. -- The attorney general through the department of justice shall enforce and administer the provisions of this act [67-33-1 to 67-33-49]."

Without more, the two statutes, 14-37-1, *supra*, and Private Investigators Act, *supra*, would appear to be incapable of being harmonized and the latter would prevail. However, 67-33-11, N.M.S.A., 1953 Compilation (P.S.) provides:

"LOCAL REGULATIONS. -- The provisions of this act [67-33-1 to 67-33-49] shall not prevent the local authorities of any city, county, or city and county by ordinance and within the exercise of the police power of such city, county or city and county from imposing local ordinances upon any street patrol special officer or upon any person who furnishes the street patrol or street patrol special officer requiring registration with an agency to be designated by the city-county or city and county, if the ordinances are consistent with the private investigators' act."

Therefore, to the extent local authorities of a city are authorized to regulate under 67-33-11, *supra*, they may do so. Further regulation of the businesses or occupations included in the Private Investigators Act, *supra*, may not be engaged in by municipalities.

This conclusion is supported by the application of another maxim of statutory construction when it is noted that Section 14-37-1, *supra*, and the Private Investigators Act, *supra*, were both passed by the 1965 legislature. By this second method courts generally hold that statutes dealing with the same subject matter and passed by the same session of the legislature should be construed in *pari materia*. The reason for such a construction is the very high probability that acts relating to the same subject matter were actuated by the same policy since they were enacted by the same men.

". . . The two acts (laws 1923, cc 76 and 148) are peculiarly in *pari materia*, having been passed at the same legislative session. *Mayes v. Bassett*, 17 N.M. 93, 125 P. 609. Both are comprehensive. Their general subject-matter is quite different. They run together at but one point, the custody of school moneys. It cannot be supposed that the Legislature, in treating this matter in the School Code, intended to upset the elaborate system, just thoroughly revised, for the control and security of all public moneys." **State v. Fidelity & Deposit Co. of Maryland**, 36 N.M. 166, 169, 9 P.2d 700, 701.

It is to be noted that 14-37-1, supra, was derived in part from 14-42-8, N.M.S.A., 1953 Compilation, repealed by laws 1965, Ch. 300 § 595, which was a lengthy statute enumerating those businesses and occupations which cities, towns and villages were empowered to license and regulate. This statute read, in pertinent part:

"LICENSING AND REGULATION -- ENUMERATION OF ENTERPRISES SUBJECT -- EXCEPTION. -- The legislative or governing bodies of cities, towns and villages shall have the power to license and regulate . . . private detectives, private detective agencies . . ."

By construing 14-37-1, supra, and the Private Investigation Act, supra, in pari materia in the light of the legislative history of 14-37-1, supra, the one common plan {**291*} of the 1965 legislature in this area can be deduced. The only statute dealing with licensing and regulation of private detectives, 14-42-8, supra, was repealed and replaced in part by a general statute, 14-37-1, supra. And the same session of the legislature passed the comprehensive Private Investigators Act, supra, to be administered by the Attorney General through the Department of Justice, 67-33-5, supra, with one specific exception pertaining to limited regulation by municipalities of street patrol special officers, 67-33-11, supra.

Therefore, with the exception provided by 67-33-11, supra, cities may not regulate the businesses and occupations which are included in the Private Investigators Act.