In the case of *People of the City of Ann Arbor v. Frank Hubble* (Washtenaw County Circuit Court No. CR-373, decided July 30, 1965), the Washtenaw County Circuit Court upheld the power of the City of Ann Arbor to enact a fair housing ordinance. The ordinance in question provided criminal penalties. In the case of *Staunton M. Elsea, et al. v. John D. Watts, Judge of Recorders Court* (Wayne County Circuit Court No. 27865, decided June 7, 1965), the Wayne County Circuit Court held that a fair neighborhood practices ordinance enacted by the City of Detroit was valid. This ordinance also provided for criminal sanctions.

Of course, an ordinance providing criminal sanctions, like any other ordinance, must not conflict with state policy and law. It may not prohibit what is permitted or required by state law, nor permit what is forbidden by state law. *National Amusement Co. v. Johnson,* 270 Mich. 613 (1935); *Builders Association v. City of Detroit,* 295 Mich. 272 (1940).

In summary, civil enforcement of civil rights by a local human relations commission, by means of injunction and cease and desist orders, etc., is pre-empted because of the provision of the Constitution granting broad and detailed enforcement powers by those methods to the Civil Rights Commission. Criminal sanctions to enforce equal opportunity in housing, not being within the sphere of authority of the Civil Rights Commission, may be invoked by municipalities, providing the ordinance creating such sanctions does not conflict with state law.

FRANK J. KELLEY,
Attorney General.

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COSMETOLOGY: Subject to licensing by municipality.
MUNICIPALITY: Licensing of occupation – cosmetology.
ORDINANCE: Ordinance existing concurrently with general law.

Although there is a comprehensive Michigan statute controlling the licensing and regulation of the practice of cosmetology, a municipality may also, under its police power, license and regulate cosmetologists as long as its ordinance does not conflict with the state law.

Local authorities are without power to enforce the sanitation provisions of Act 279, P.A. 1909.

No. 4581 August 30, 1967.

Hon. Charles N. Youngblood, Jr.
The Senate
Lansing, Michigan

You have requested my opinion as to the validity of a proposed Grosse Pointe Woods ordinance requiring cosmetologists to obtain a license to practice their occupation in that city. Since Act 176, P.A. 1931, as amended (M.S.A. 18.131, et seq.), provides for the licensing, regulation, inspection and general policing of the practice of cosmetology by state authorities, you question whether a municipality may also license, regulate, inspect and police the same occupation.

It is my opinion that Grosse Pointe Woods may enact an ordinance which provides for concurrent local licensing, regulation and inspection of the practice of cosmetology; also that the proposed ordinance, as submitted, would be a valid such enactment.

The City of Grosse Pointe Woods was incorporated as a home rule city in accordance with the provisions of the home rule act [Act 279, P.A. 1909, as amended (M.S.A. 5.2071)].

The purpose of the home rule act, as its title suggests, is to secure cities a greater degree of home rule than they formerly possessed, and to confer upon them almost exclusive rights in the conduct of their affairs where not in conflict with the constitutional or general laws. *Conroy v. City of Battle Creek,* 314 Mich. 210 (1946).

Said home rule act not only specifically states many things a city may do, but also leaves other further lawful activities to be implied from the powers thus conferred. Its provisions should be liberally construed. *Conroy v. City of Battle Creek,* supra.

Under the home rule act, a city is granted the general power to preserve public health. Section 4-i thereof (M.S.A. 5.2082) specifically provides:

> "Each city *may* in its charter provide: * * *
>
> "(4) For the regulation of trades occupations * * *
>
> "(9) For the enforcement of all such local, police, sanitary and other regulations as are *not in conflict with the general law.*" (emphasis supplied).

The City of Grosse Pointe Woods has availed itself of the above permissive power. Its charter (December 11, 1950), chapter 2 (General Powers), section 2.2., authorizes:

> "(o) Regulating of trades, occupations and amusements within the city, *not inconsistent with state and federal laws* * * *." (emphasis supplied)

It is apparent that the City of Grosse Pointe Woods has authority to license and regulate trades and occupations so long as the "regulations are not in conflict with the general law."

Licensing and regulation of the practice of cosmetology clearly involves an exercise of the police power. The ordinance in question is quite obviously a public health and sanitary measure. Among other things, it designates the director of public health safety to inspect the locations where licensees practice "to insure that such locations and equipment used by the licensee * * * are maintained in a clean and sanitary condition." Manifestly there is a reasonable relationship between such requirements and the power and/or duty of the city to protect the health of its people.

The Michigan Supreme Court has plainly declared that exercise of the police power of a municipality, as to public health and welfare, is indispensable to the continued safety and well-being of the inhabitants. See *People v. Sill,* 310 Mich. 305 (1945).

The court also has always recognized the general rule that a presumption prevails in favor of the reasonableness and validity of a municipal ordinance unless the contrary is shown by competent evidence, or appears on the face

of the enactment. See *Harrigan & Reid Co. v. Burton,* 224 Mich. 564, 569 (1923); and *People v. Sill, supra.*

It is not the office of the judiciary (or the Attorney General) to inquire into the motive for passing an ordinance. The courts merely look to the legal validity thereof. See *C. F. Smith Co. v. Fitzgerald,* 270 Mich. 659 (1935).

In *Eanes v. City of Detroit,* 279 Mich. 531 (1937), a municipal ordinance was challenged as invalid. The ordinance provides for the licensing of barbers and inspection of barber shops. The court states the issue as follows on page 533:

> "The state having entered the field, may the city, by ordinance, duplicate or complement statutory regulations?"

The court answered its question in the affirmative, stating:

> "Where no conflict exists, both laws stand. * * * As a general rule, additional regulation to that of a state law does not constitute a conflict therewith."

The same rule was declared in *Miller v. Fabius Township Board,* 366 Mich. 250 (1962), wherein the subject was given more extended consideration by the Michigan Supreme Court. Specifically before the court was a township ordinance regulating the hours of water skiing on Pleasant Lake. Validity of the ordinance was challenged for the reason, among others, that the hours it ordained were more restrictive than those which the Michigan statute on the subject made applicable to "any of the waterways of this state." In the course of sustaining the ordinance as valid, the court reviewed Michigan cases and other legal authority at some length and adopted, as the controlling principle, the following statement of the law in 37 Am. Jur., Municipal Corporations, § 165, p. 790:

> " 'It has been held that in determining whether the provisions of a municipal ordinance conflict with a statute covering the same subject, the test is whether the ordinance prohibits an act which the statute permits, or permits an act which the statute prohibits. * * *.
>
> " 'The mere fact that the state, in the exercise of the police power, had made certain regulations does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two, and the requirements of the municipal bylaw are not in themselves pernicious, as being unreasonable or discriminatory, both will stand. The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith, unless the statute limits the requirement for all cases to its own prescription. *Thus, where both an ordinance and a statute are prohibitory and the only difference between them is that the ordinance goes further in its prohibition, but not counter to the prohibition under the statute, and the municipality does not attempt to authorize by ordinance what the legislature has forbidden or forbid what the legislature has expressly licensed, authorized, or required, there is nothing contradictory between the provisions of the statute and the ordinance because of which they cannot coexist and be effective.* Unless legislative provisions are contradictory in the sense that they

cannot coexist, they are not deemed inconsistent because of mere lack of uniformity in detail.' " (emphasis supplied)

By the clearest implication, if not expressly, the Supreme Court's validation of the local ordinance in the aforesaid *Fabius Township* case, includes the ruling that a difference in the severity of the respective penalties under the statute and the ordinance, does not constitute a "conflict" within the intent of the applicable rule as above quoted (certainly, at least, as long as both fall within misdemeanor classification).

An Attorney General's opinion quite directly in point is No. O-2483 (O.A.G. 1945-46, p. 12). There the fact situation involved a boiler inspection ordinance which was stricter than that provided by statute. The Attorney General concluded that the ordinance was a valid exercise of municipal police power authorized under the home rule act. The opinion specifically ruled that since the municipal ordinance and the state law did not conflict, the ordinance should stand.

As indicated, the validity of the proposed Grosse Pointe Woods ordinance turns finally on whether it conflicts with the state law.

Michigan's comprehensive cosmetology statute (M.S.A. 18.131, et seq.; C.L. 1948, § 338.751, et seq.; as amended) has been implemented by a substantial and highly particularized body of rules and regulations promulgated by the State Board of Cosmetology under authority of section 10, Act 176, P.A. 1931 (M.S.A. 18.140; C.L. 1948, § 338.760). See Michigan Administrative Code (State Board of Cosmetology; Rules and Regulations of Beauty Culture), R 338.751 - R 338.761.

The 36 sections of the statute and all of the several score rules and regulations promulgated by the State Board of Cosmetology as aforesaid, have been reviewed in detail in relation to all provisions of the nine sections of the proposed ordinance.

The thrust of the ordinance is quite obvious. It omits any licensing or direct regulation of cosmetological establishments or schools, leaving them quite entirely in state domain. It licenses and regulates only the cosmetologists themselves, including both owners and employees. However, through "inspecting" (ordinance, § 7) said licensees, it proposes "to insure that such locations and equipment used by the licensee or intended to be used by said licensees are maintained in a clean and sanitary condition." Where "the licensee is maintaining or allowing unsanitary conditions to prevail at such location," the license of the persons responsible for maintaining or allowing such unsanitary conditions may be revoked. While it is apparent that the latter provision applies primarily to owners (as the persons responsible for equipment, conditions, etc.), it is equally clear that through such provision the city proposes to control the establishments and their equipment. There is, of course, nothing illegal or improper in the indirect control of cosmetological establishments thus effectuated. The city simply proposes to insure high sanitation standards in the establishments without incurring the considerable cost and administrative burden of establishment-licensing and regulation itself.

The subject ordinance does not conflict with the cosmetology statute. The maximum annual license fee of two dollars under the ordinance is plainly

reasonable, by applicable legal standards, for licensing, regulation, inspection and enforcement costs. The legal definitions of the ordinance are adopted verbatim from the statute. The sole standard of license-issuing is possession of a state board license (though in connection therewith the city will be maintaining license and identification records, including records of any transfers of employee-licensees from one establishment to another within the city). The penalty provisions of $500 maximum fine and/or 90 days maximum imprisonment under the ordinance, while somewhat in excess of the comparable statutory penalties ($25.00 to $200.00 fine and/or 30 to 90 days) are nevertheless within the statutory power of a home rule city under M.S.A. 5.2082(10); (C.L. 1948, § 117.4i(10)).

As originally indicated herein, it is my opinion that the proposed Grosse Pointe Woods ordinance would be a valid local enactment, not being in conflict with the Michigan cosmetology statute in contemplation of law.

This answers the principal inquiry of your letter, though actually it is only one (No. 4) of four questions presented. The remaining three are stated and answered seriatim as follows:

> 1. May a municipality, including a home rule city, superimpose a municipal license on professions and occupations, licensed and regulated by the state without specified constitutional and/or statutory authority such as has been provided for in the case of plumbers?

This question has been answered at some length, and affirmatively, in the body of the preceding opinion. Actually there *is* statutory authority, the home rule act as earlier recited herein, as well as case law which has also been cited and quoted.

> 2. Where state law provides for policing, inspection, and regulation by state authorities and penalties for violations, may local authorities inspect for the same or similar violations without a local ordinance under their police power?

Under section 32 of the state "act concerning cosmetology (M.S.A. 18.162; C.L. 1948, § 338.782), *only* the practice of cosmetology without a license *and* the unlicensed operation of a cosmetological establishment or school are made crimes (misdemeanors). Other violations of the act and of rules and regulations thereunder are not crimes, but are merely made grounds for license revocation or suspension under section 34 (M.S.A. 18.164; C.L. 1948 § 338.784). Accordingly, except as immediately hereinafter noted, local police can only check, or "inspect" for state licenses. In such cases they may, of course, arrest unlicensed persons or the owners of unlicensed establishments. Also they may arrest persons (and owners) where an establishment is being used for sleeping or other residential purposes, because such conduct is made a misdemeanor by section 15 (M.S.A. 18.145; C.L. 1948 § 338.765). Beyond these narrow limits local police have no authority though, of course, they can report unsanitary conditions, for example, to a state office. Under the statute, all inspection as to state requirements is by state officers and inspectors.

> 3. If so, does such municipality have adequate remedy and control by reporting such violations to the appropriate state agency?

Whether the local authorities consider the reporting of violations of the state law to the appropriate state agency an adequate remedy is for said local authorities to determine. Whatever determination is made does not preclude them from enacting appropriate ordinances not in conflict with state law.

This completes my answer to your several inquiries.

FRANK J. KELLEY,
Attorney General.

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ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS:

Professional engineers who perform services as independent contractors for the federal government on property which is not federally owned under exclusive jurisdiction must comply with Act 240, P.A. 1937, as amended.

No. 4101 September 8, 1967.

Department of Licensing and Regulation
Board of Registration for Architects,
Professional Engineers, Land Surveyors
200 Lafayette Building
Detroit, Michigan

Attention: Henry G. Groehn
Executive Secretary

You have asked my opinion on the following questions:

"1. Whether individuals, corporations or partnerships or other organizations who offer professional engineering services to the federal government are subject to the provisions of Act 240, Public Acts of 1937, as amended.

"2. Are individuals who are not registered as professional engineers, or partnerships or corporations of which all the partners, officers, and directors of such organizations are not registered professional engineers subject to prosecution under Act 240, Public Acts of 1937, as amended, if professional engineering work is rendered by them to the federal government?

"3. If the work rendered by these individuals or firms to the federal government is on federal owned property, would they be subject to prosecution under Act 240, Public Acts of 1937, as amended?

"4. If the work rendered by these individuals or firms to the federal government is on property not owned by the federal government, would they be subject to prosecution under Act 240, Public Acts of 1937, as amended?"

The pertinent sections of Act 240, P.A. 1937, as amended,[1] are:

[1] C.L.S. 1961 § 338.551, et seq.; M.S.A. 1965 Cum. Supp. § 18.84(1), et seq.