

File No. 9764 Continued.

CORRESPONDENCE.

"The Ordinance does not prohibit that which the Statute permits; there is no repugnancy between them, the Ordinance may consist with the Statute."

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17 Colorado 307. The same act may constitute two offences, one a crime against the public law of the State, and the other a petty offence against a local municipal regulation. The prosecution and punishment for one of these offences is no bar to proceedings for the other; the offences being different, there is no violation of the constitutional prohibition against putting one person twice in jeopardy for the same offence.

But the Ordinance, to be valid, must be authorized, and must not be repugnant to a statute in force in the same territorial area; but if there be no other conflict between the provisions of the statute and those of the Ordinance, save that they deal with the same subject, both may be given effect.

Cooley on Constitutional Limitations, 239. "Municipal By Laws must be in harmony with the general laws of the State, and with the City Charter; wherever they come in conflict with either, the By Law must give way. An Act may be a penal offence under the laws of the State, and further penalties, under proper legislative authority, may be imposed, for its commission, by municipal By Laws, and the enforcement of one would not preclude the enforcement of the other."

We respectfully submit, therefore, that the principle established by these cases is the same as that established by the Maryland cases to which we gave reference in the letter of April 14, 1908 to Mr. Hoffman, a copy of which you have, and that, inasmuch as the Maryland State Statute expressly authorizes the use of steam in the Union Railroad tunnel, an Ordinance of the City prohibiting its use must necessarily be void.

Very truly yours,

(Signed) Bernard Carter & Sons,
Advisory Counsel.