The above case involves a license fee imposed upon persons operating commercial vehicles pursuant to clause Thirty-eighth, *supra*.

Therefore, it is my opinion that the provisions of the Acts of 1905, Ch. 129, Sec. 53, to which your request for my Official Opinion relates, were not intended to be, and cannot operate as, authority for cities and towns to levy independent excise taxes for revenue-raising purposes. Further, inasmuch as the power to tax rests solely with the General Assembly, cities and towns may have the power to levy such taxes only to the extent to which the General Assembly may levy taxes and to the extent to which that body may constitutionally delegate such power to tax.

---

**OFFICIAL OPINION NO. 66**

November 15, 1962

Hon. Kenneth J. Brown, Jr.
State Senator
8 Hampshire Lane
Muncie, Indiana

Dear Senator Brown:

This is in response to your recent request for an Official Opinion from me. Your question pertains to the City of Muncie, a second class city, and involves possible changes in the areas of councilmanic districts in said city. In your letter you state:

"Since these districts were established in Muncie there have been significant changes in the city lines, plus population shifts within the established districts, which now range in population from 3,000 to 10,500 people."

Your specific question is stated as follows:

"The question now has developed in our community as to whether the City Council has authority at this time under this statute to re-establish by ordinance the councilmanic districts in a manner which reflects more equal population."
The statute referred to in your letter is the Acts of 1933, Ch. 233, Sec. 9, as amended and found in Burns’ (1950 Repl.), Section 48-1220, which reads, in part, as follows:

“The number of members of the common council in cities of the second class, as herein defined, shall be nine [9] and no more; * * * The number of councilmanic districts of cities of the second class shall be six [6]; * * * Each district shall contain, as nearly as possible, an equal number of electors, * * *

 ‘On or before March 27, 1934, the common council of cities of the second, third, fourth and fifth classes, shall, by ordinance, establish councilmanic districts as herein provided and the nomination of candidates and the election of members of the common council in the year 1934 and each election thereafter shall be in accordance with the provisions of this act and the laws governing primary and general elections.” (Our emphasis)

In a review of our statutes providing for councilmanic districts, it is interesting to note that the Acts of 1909, Ch. 143, as originally passed, provided for such districts in cities having a population of 100,000 or over; in 1931 the Legislature increased this population figure to 200,000, as shown in Burns’ (1950 Repl.), Section 48-1205. There was no such provision for cities of the second class until the passage of Burns’ 48-1220, supra. It is thus apparent that the reference in Burns’ 48-1220, supra, is to the first or initial division of cities of the second, third, fourth and fifth classes into councilmanic districts.

The Acts of 1937, Ch. 248, Secs. 1, 3 and 4, as found in Burns’ (1950 Repl.), Sections 48-8301, 48-8303 and 48-8304, read in whole, or in part, as follows:

48-8301. “The common council of every city shall have the power to revise, amend, restate, codify and recodify any existing ordinance or ordinances of such city and to incorporate any ordinances into one [1] ordinance to be denominated the ‘Municipal Code of _______________’ (naming the city).’”
1962 O. A. G.

48-8303. "Any common council in adopting a municipal code may include therein a restatement of existing ordinances heretofore properly adopted concerning a thoroughfare plan, ward boundaries, councilmanic districts * * *" (Our emphasis)

48-8304. "Any municipal code adopted pursuant to this act may revise and amend any existing comprehensive zoning ordinance or thoroughfare plan ordinance or any ordinances defining ward boundaries, corporate boundaries or councilmanic districts and all ordinances amending each of the foregoing types of ordinances provided that public hearings pursuant to notices as now provided for by law have been given prior to the adoption of such municipal code."

(Our emphasis)

The above provisions of the 1937 Act are clearly indicative of the grant of legislative authority to every city to revise or amend ordinances pertaining to the boundaries of councilmanic districts.

The Acts of 1945, Ch. 241, Sec. 1, as found in Burns' (1950 Repl.), Section 48-8308, reads as follows:

"The common council of every city shall have the power to revise, amend, restate, codify, recodify, and to compile any existing ordinance or ordinances and all new ordinances not theretofore adopted or published and to incorporate said ordinances into one ordinance in book or pamphlet form and to make such changes, alterations, modifications, additions, and substitutions as said common council may deem best to the end that a complete simplified code may be made to be denominated the 'Municipal Code of______________(nameing [naming] the city).'"

It will be noted that there is a Compiler's Note following Burns' 48-8303 and 48-8304, supra, which reads: "This act may be superseded by Sections 48-8308—48-8310." The Acts of 1945, Ch. 241, Sec. 5, contains the following:

"Sec. 5. All laws or parts of laws in conflict with this act are to the extent of such conflict hereby repealed."
An examination and comparison of the 1937 and 1945 Acts will show that there is no conflict relative to the authority for amending or changing the boundaries of councilmanic districts. The two acts are in complete harmony on the authority for changes in councilmanic districts. The only difference in the acts appears to be that the 1945 Act provides for certain procedural presumptions not contained in the 1937 Act.

In 26 I. L. E. Statutes § 130, page 340, it is said:

"Statutes which relate to the same thing or general subject matter are in pari materia and should be construed together, although they have been enacted at different times, and by different Legislatures, and contain no reference to one another, provided they are consistent with each other."

See also: Huff v. Fetch (1924), 194 Ind. 570, 577, 143 N. E. 705;
Sherfey v. City of Brazil (1937), 213 Ind. 493, 497, 13 N. E. (2d) 568.

In the case of Walgreen Co. v. Gross Income Tax Division (1947), 225 Ind. 418, 75 N. E. (2d) 784, 785, it is stated:

"Statutes are not to be considered as isolated fragments of law, but as parts of one great system.

* * *

"A statute is not to be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws * * *"

The legislative authority of every city is vested in a common council, specific examples of this authority are set forth in the Acts of 1905, Ch. 129, Secs. 47, 52 and 53, as found in Burns' (1950 Repl.), Sections 48-1401, 48-1406 and 48-1407, which provide in whole, or in part, as follows:

48–1401 "The legislative authority of every city shall be vested in the common council."

48–1406 "The common council of every city shall have power to pass all ordinances, orders, resolutions and motions for the government of such city * * *"
"The common council of every city shall have the power to enact ordinances for the following purposes:

"Fifty-third. To carry out the objects of the corporation, not hereinbefore particularly specified * * *"

The 1933 Act, as found in Burns' 48-1220, supra, made it mandatory for cities of the second, third, fourth and fifth classes to establish councilmanic districts on or before March 27, 1934. This same section established a new voting procedure to be used in the election of members of a city council with no time limitation being placed on the period that this new procedure was to remain in effect. It is clearly apparent that the annexation of new territory, subsequent to the initial districting provided in Burns' 48-1220, supra, would necessitate boundary changes to insure such newly acquired electors a councilmanic voting district. The advancement of a town to city status makes districting a necessity in order that the electors thereof may be able to vote in councilmanic districts.

The 1933 Legislature, as shown in Burns' 48-1220, supra, said: "Each district shall contain, as nearly as possible, an equal number of electors." It is my judgment that said provision was intended to be prospective in nature, thereby contemplating and anticipating future growth and shifts in population within said city.

Therefore, it is my opinion, that the Common Council of the City of Muncie does have the authority under the provisions of Burns' 48-1220, 48-8301, 48-8303, 48-8304 and 48-8308, supra, to re-establish by ordinance the councilmanic districts of said city in a manner which will reflect a more equal distribution of electors.