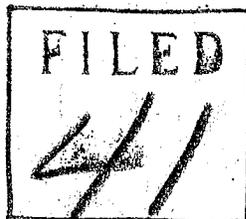


STATE AUDITOR:
CITIES, TOWNS
AND VILLAGES:

Cities, towns and villages are political subdivisions of the state within meaning of the statute providing for audit by State Auditor of political subdivisions.



March 7, 1955

Honorable Haskell Holman
State Auditor
Jefferson City, Missouri

Dear Sir:

We have received your request for an opinion of this office, which request reads as follows:

"Will you furnish this department with an official opinion based on the following question:

Is a city, town or village a political subdivision in the meaning of Section 29.230, RSMo 1949, so that we would be empowered to make an audit upon request of 5% of the qualified voters of such city?"

Section 29.230, RSMo 1949, provides as follows:

"At least once during the term for which any county officer is chosen, the state auditor shall examine, inspect, and audit the accounts of the various county officers of the state supported in whole or in part by public moneys, and without cost to the county, county clerks, circuit clerks, recorders, county treasurers, county collectors, sheriffs, public administrators, probate judges, county surveyors, county highway engineers, county assessors, prosecuting attorneys, county superintendents of schools, in every county in the state which does not elect and have a county auditor. Such audit shall be made by the state auditor as near the expiration of the term of office as the auditing force of the state auditor will permit. Such audit shall be made in counties having a county auditor whenever qualified voters of the county to a number equal to five per cent of the total number of votes cast in

Honorable Haskell Holman

said county for the office of governor at the last election held for governor preceding the filing of such petition shall petition the state auditor for such audit, but such counties shall pay the actual cost thereof into the state treasury; provided, that any county having an audit by petition shall not be audited more than once in any one year. He shall audit any department, board, bureau or commission of the state which is under the control or supervision of the governor or any other elected official of the state, upon the request of the governor, and he shall further audit any political subdivision of the state whenever requested to do so by five per cent of the qualified voters of such political subdivision, determined on the basis of the votes cast for the office of governor in the last election held. Such political subdivision shall pay the actual cost thereof; provided, that no political subdivision shall be so audited by petitions more than once in any one calendar or fiscal year."

The phrase "political subdivision of the state" is employed frequently in constitutional and statutory provisions. It has not received uniform application in all of its uses. Section 3 of Article V of the Constitution of Missouri, 1945, gives the Supreme Court appellate jurisdiction in cases where the "state or any county or other political subdivision of the state" is a party. A city within a county has been held uniformly not to be a "political subdivision of the state" within the meaning of this provision. In the case of *Kansas City v. Neal*, 122 Mo. 232, 1.c. 234, the court, in discussing the similar provision of the 1875 Constitution (Sec. 12, Art. VI), stated:

"That Kansas City is not a political subdivision of the state, within the meaning of the constitution is equally clear. Subdivision means to divide into smaller parts the same thing or subject matter, and no city or town in this state is a subdivision thereof except the city of St. Louis, and it became so under sections 20, 22 and 23, article 9, state constitution, and by an act of the legislature in pursuance thereof setting off certain defined boundaries defining the city limits, and conferring upon the city all the rights and privileges possessed by a county. Voters in all other cities and towns, act in common with the voters of the county or counties in which they may be located in electing

Honorable Haskell Holman

county and state officials and do not simply, because of their incorporation, become subdivisions of the state. Kansas City is within Jackson county and is not a subdivision thereof or of the state."

Section 13 of Article XIV of the 1875 Constitution, as amended, prohibited nepotism by "any public officer or employee of this state or any political subdivision thereof." In the case of *State ex inf. Ellis ex rel. Patterson v. Ferguson*, 333 Mo. 1177, 65 S.W. (2d) 97, the court held a city of the third class to be a "political subdivision" within the meaning of such provision. In that case the court stated, 65 S.W. (2d) 1.c. 99:

"Is a city of the third class a political subdivision? A standard work on municipal corporations so defines it in the following language: 'A municipal corporation, in its strict and proper sense is a body politic and corporate constituted by the inhabitants of a city or town for the purposes of local government thereof. Municipal corporations as they exist in this country are bodies politic and corporate of the general character above described, established by law as an agency of the State to assist in civil government of the country, but chiefly to regulate and administer the local or internal affairs of the city, town or district which is incorporated.' Dillon (5th Ed.) vol. 1, Sec.31. (Italics ours.)

"Section 47 of article 4 of the original Constitution, prohibiting the lending of credit, refers to counties, cities, towns, or townships as 'political corporations or subdivisions of the State.' (Italics ours.)

"We approve the following observations made in *Kinney v. City of Astoria*, 108 Or. 514, 528, 217 P. 840, 845: 'Pure municipal corporations, such as cities, are merely instrumentalities of the state, established for the convenient administration of local government; they are state governmental agencies; they are auxiliaries of the state for the purpose of self-government; they are mere political subdivisions of the state created by authority of the state for the purpose of exercising a part of its powers.'"

A school district has been held not to be a political subdivision of the state within the constitutional provision conferring appellate jurisdiction on the Supreme Court. *State ex rel. School District No. 4 v. School District No. 3*, 238 Mo. 407, 141 S.W.1111.

Honorable Haskell Holman

However, a school district was held to be a political subdivision within the meaning of the nepotism provision of the 1875 Constitution, above referred to, in the case of *State ex inf. McKittrick v. Whittle*, 333 Mo. 705, 63 S.W. (2d) 100, l.c. 102, 88 A.L.R. 1099. The court stated:

"Respondent next contends that a school district is not a political subdivision of the state. The authorities are to the contrary. It is defined by a standard text as follows: 'A school district, or a district board of education or of school trustees, or other local school organization, is a subordinate agency, subdivision, or instrumentality of the state, performing the duties of the state in the conduct and maintenance of the public schools.' 56 C. J. 193.

"This definition is approved by this court in *State ex rel. Carrollton School Dist. v. Gordon*, 231 Mo. 547, loc. cit. 574, 133 S.W. 44, 51, in which we said: 'A school district is but the arm and instrumentality of the state for one single and noble purpose, viz., to educate the children of the district; a purpose dignified by solemn recognition in our Constitution (section 1, art. 11 * * *), reading: "A general diffusion of knowledge and intelligence being essential to preservation of the rights and liberty of the people, the General Assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty years". In obedience to that constitutional mandate, the General Assembly has established such schools and given over to school districts, acting through boards of directors, the single duty and authority to maintain them.'

"In *City of Edina to use v. School District*, 305 Mo. 452, loc. cit. 461, 267 S.W. 112, 115, 36 A.L.R. 1532, we also said: 'Under the Constitution of 1875, the public schools have been intrenched as a part of the state government and it is thoroughly established that they are an arm of that government and perform a public or governmental function and not a special corporate or administrative duty. They are purely

Honorable Haskell Holman

public corporations, as has always been held of counties in this state.'

"Respondent directs attention to decisions of this court holding that, under section 12, art. 6, of the Constitution, a school district is not a political subdivision of the state. In doing so we said:

"The defendant is a drainage district. Is such district such a political subdivision of the state as to give us jurisdiction under the provisions of section 12, art. 6, of the Constitution? We think not. It is true that we have said that it was a political subdivision, of the state. Morrison v. Morey, 146 Mo. 543, 48 S.W. 629. But so is a township or a school district. Whilst they are political subdivisions of the state, they are not such as are contemplated by the section of the Constitution, supra, referring to our jurisdiction.* * *

"We are of the opinion that the words "other political subdivisions of the state," as used in section 12, art. 6, following as they do, the word "county," mean such political subdivisions as may be created having power similar to those of a county, and do not refer to townships, school districts, levee districts, drainage districts, and such like minor political subdivisions of the state.' Wilson v. Drainage & Levee District, 237 Mo. 39, loc. cit. 46,48, 139 S.W. 136, 139.

"Thus it appears that a school district is a political subdivision of the state within the meaning of section 13, art. 14, of the Constitution."

From the foregoing discussion, it appears that the Supreme Court has given the phrase "other political subdivisions of the state," as employed in the constitutional provision relative to its appellate jurisdiction, a somewhat restricted meaning because of its use following the word "county." Under this provision the "political subdivision" must exercise powers similar to those exercised by counties. Only townships in counties under township form of government (Harrison and Mercer County Drainage District v. Trail Creek Tp., 317 Mo. 933, 939, 297 S.W.1) and the city of St. Louis (Kansas City v. Neal, supra) have been held to come within the provision.

Honorable Haskell Holman

Inasmuch as the limited application of the term as used in the Constitution relative to the appellate jurisdiction of the Supreme Court has been made by the Supreme Court by reason of the use of the term in connection with the word "county," we are of the opinion that the Legislature, in Section 29.230, supra, in speaking of "political subdivisions of the state" generally, did not intend any such narrow and limited meaning, but intended the broader and more generally understood meaning applied in the cases cited above in which the courts held that cities and school districts were "political subdivisions" and that a city, town or village is a political subdivision within the meaning of section 29.230 RSMo 1949.

CONCLUSION

Therefore, it is the opinion of this office that a city, town or village is a political subdivision within the meaning of Section 29.230, RSMo 1949, providing for audits by the State Auditor of "any political subdivision of the state whenever requested to do so by five per cent of the qualified voters of such political subdivision,* * *."

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Robert R. Welborn.

Yours very truly,

JOHN M. DALTON
Attorney General

RRW/ml/ld