

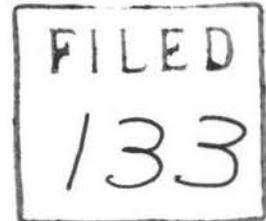
POLICE:
CITY POLICE:
STATE AUDITOR:
STATE AGENCIES:
CITIES, TOWNS & VILLAGES:

The metropolitan police systems in St. Louis and Kansas City are "state agencies" within the meaning of Section 29.200, RSMo.

OPINION NO. 133

May 30, 1975

Honorable George W. Lehr
State Auditor
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Lehr:

The following opinion is in response to the question you have posed as follows:

"Are the Boards of Police Commissioners and the Police Departments in St. Louis and Kansas City state agencies within the meaning of Section 29.200, RSMo?"

Section 29.200, RSMo, states as follows:

"The state auditor shall postaudit the accounts of all state agencies and audit the treasury at least once annually. Once every two years, and when he deems it necessary, proper or expedient, the state auditor shall examine and postaudit the accounts of all appointive officers of the state and of institutions supported in whole or in part by the state. He shall audit any executive department or agency of the state upon the request of the governor."

We have found no cases that construe this provision in relation to the police departments of St. Louis and Kansas City.

For the purposes of answering this question, we perceive no significant difference between the statutes establishing a Board of Police Commissioners in St. Louis (Sections 84.010 to 84.340, RSMo) and Kansas City (Sections 84.350 to 84.860, RSMo). Sections 84.010 to 84.350, RSMo, are still applicable to the City of St. Louis even though the official census of 1970 listed a population in St. Louis less than 700,000. State ex rel. McNeal v. Roach, No. 58884 (Mo.Banc March 28, 1975), page 10.

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Both sets of statutes: provide for a board of police commissioners consisting of four commissioners appointed by the Governor with the advice and consent of the Senate, in addition to mayor (Sections 84.020 to 84.080--St. Louis, Sections 84.350 to 84.410--Kansas City); authorize the boards to establish a permanent police force to assist in performing the duties imposed upon them (Section 84.100--St. Louis, Section 84.470--Kansas City); vest the boards with the exclusive management and control of their respective police departments (Section 84.010--St. Louis, Section 84.460--Kansas City); and state that the respective boards shall prepare a budget estimate annually which shall be submitted to the legislative body of the municipality which, in turn, is required to appropriate the amount budgeted (Section 84.210--St. Louis, Section 84.730--Kansas City).

A system of metropolitan police, under the control of a board of police commissioners appointed by the Governor and financed by the municipality, has existed in St. Louis since 1861 and Kansas City since 1874. American Fire Alarm Co. v. Board of Police Com'rs of Kansas City, 227 S.W. 114, 116 (Mo. 1920).

In the case of State ex rel. Hawes v. Mason, 54 S.W. 524 (Mo. Banc 1899), the Supreme Court of Missouri expounded on the public policy behind the establishment of metropolitan police systems of this nature. It stated at pages 528-529:

". . . 1. The fundamental principles underlying the acts of 1861 and 1899 creating boards of police commissioners for the city of St. Louis are the same, and the constitutionality of such legislation has stood the test of the most critical judicial examination and review. Laws like these, and those of other states, providing a metropolitan police system for large cities, are based upon the elementary proposition that the protection of life, liberty, and property, and the preservation of the public peace and order, in every part, division, and subdivision of the state, is a governmental duty, which devolves upon the state, and not upon its municipalities, any further than the state, in its sovereignty, may see fit to impose upon or delegate it to the municipalities. The right to establish the peace and order of society is an inherent attribute of government, whatever its form, and is co-extensive with the geographical limits thereof, and touching every part of

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its territory. From this duty, existing in the very nature of the state government, flows the corresponding power to impose upon municipalities of its own creation a police force of its own creation, and to compel its support out of the municipal funds. Such is the conceded doctrine by the most learned of our writers upon constitutional law, and such the consensus of judicial decision throughout the United States. Wherever the legislature has the right to assume control of a municipal office, it has likewise the right to compel the city to provide for defraying the expenses of such office; and while it is sometimes difficult to draw the line, and distinguish whether a given office is of a public or state character, or is simply one to subserve a municipal function, it is almost universally conceded that police boards and metropolitan police forces are state officers, and fall clearly within legislative control. . . ."

The Mason case dealt with the St. Louis Police Board but its view that the Board performs a state (as versus municipal) function has been applied to Kansas City also. State ex rel. Goodnow v. Police Com'rs of Kansas City, 71 S.W. 215, 220 (Mo.Banc 1902).

Furthermore, in the case of American Fire Alarm Co. v. Board of Police Com'rs of Kansas City, supra, the Supreme Court of Missouri considered the tort liability of the Kansas City Board of Police Commissioners. In determining that a defense of immunity to the action for being a department of municipal government was inapplicable, the court stated at page 117:

"The pertinency of the foregoing observations and authorities to the point in hand in the present case consists in their demonstration that the board of police and the police system of Kansas City do not compose a department of the municipal government, . . ."

To the same effect is the case of State ex rel. Field v. Smith, 49 S.W.2d 74 (Mo.Banc 1932), in which the court stated at page 75:

". . . The system so set up in and for Kansas City is a department of the state government, and not of the municipal government of that city. . . ."

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and at page 76:

"As stated, the metropolitan police system of Kansas City is a state agency, a department of the state government, created or attempted to be created by the Legislature."

Also, State ex rel. Spink v. Kemp, 283 S.W.2d 502 (Mo. Banc 1955), where the Missouri Supreme Court en banc stated at page 514:

"[2,3] The statutes creating the board of police commissioners of Kansas City and the police department thereof, defining their respective duties, powers and responsibilities, and providing for their maintenance, §§ 84.350-84.860, expressly retain jurisdiction of the Kansas City police system as an agency of the state. . . ."

Of interest also is the case of Pearson v. Kansas City, 55 S.W.2d 485 (Mo. 1932), involving allegations of tort liability resting with the municipality. Kansas City raised, as a defense, that the police board, which was in charge of the facility in question, was a state agency for whose acts the city was not liable, page 487. The court, however, determined it unnecessary to consider this point.

In addition, this office has previously held that the Kansas City Board of Police Commissioners constitutes a state agency. Opinion No. 30, Fox, 1960.

From the foregoing, it is clear that the police systems in St. Louis and Kansas City have been considered as state agencies.

There remains a possible consideration of whether the metropolitan police systems were intended to be included within the provisions of Section 29.200, RSMo. As mentioned before, the functioning of the metropolitan police systems is funded from municipal sources (and any federal sources). Therefore, conceivably, there could be an argument that the State Auditor would have no interest since no state funds are involved.

It is our view that any such argument is without merit. Initially, Section 29.200 makes no distinction among state agencies by its terms.

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Furthermore, as stated in Spink, supra, at page 522:

"[25-28] The proper maintenance of an adequate police system in Kansas City is a matter of state concern. State ex rel. Reynolds v. Jost, 265 Mo. 51, 67, 175 S.W. 591, 593. See also Van Gilder v. City of Madison, 222 Wis. 58, 267 N.W. 25, 268 N.W. 108, 105 A.L.R. 244, and annotation at page 259. The fiscal affairs of a municipality such as Kansas City are subject to such legislative control as is necessary to the proper enforcement of matters of general state concern. 62 C.J.S., Municipal Corporations, § 193, p. 352. . . ."

The audit of the accounts of any public agency is one aspect of the supervision and accountability established in any governmental system. It would be consistent with the state level general supervision of the metropolitan police systems by the General Assembly to require a state level audit by the State Auditor.

Therefore, it is our view that the metropolitan police systems in St. Louis and Kansas City are "state agencies" within the meaning of Section 29.200, RSMo.

CONCLUSION

It is the opinion of this office that the metropolitan police systems in St. Louis and Kansas City are "state agencies" within the meaning of Section 29.200, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Andrew Rothschild.

Yours very truly,



JOHN C. DANFORTH
Attorney General