

STATE AGENCY:
STATE AUDITOR:
BI-STATE DEVELOPMENT AGENCY:
KANSAS CITY AREA TRANSPORTATION AUTHORITY:

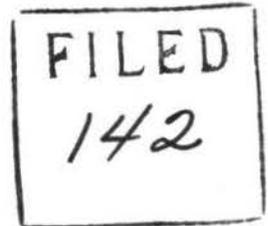
The Bi-State Development Agency and the Kansas City Area Transportation Authority are not "state agencies"

within the meaning of the term as used in Section 29.200, RSMo, and the State Auditor is not authorized to postaudit their accounts.

OPINION NO. 142

July 24, 1975

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



Dear Mr. Lehr:

This opinion is in response to your question as follows:

"Are the Bi-State Development Agency, Section 70.370, RSMo, and the Kansas City Area Transportation Authority, Section 238.010, RSMo, state agencies within the meaning of Section 29.200, RSMo?"

Section 29.200, RSMo, states:

"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."

The Bi-State Development Agency of the Missouri-Illinois Metropolitan District (Bi-State) was created in 1949 by compact authorized by the legislatures of Missouri and Illinois with the approval of the United States Congress. Section 70.370, RSMo, and ch. 127, § 631-1, Ill.Rev.Stat.

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Article III of the Compact contained in Section 70.370, RSMo, states, in part:

"ARTICLE III

There is created 'The Bi-State Development Agency of the Missouri-Illinois Metropolitan District' (herein referred to as 'The Bi-State Agency') which shall be a body corporate and politic. . . ."

The Kansas City Area Transportation Authority of the Kansas City Area Transportation District (KCATA) was created in 1965 by compact authorized by the legislatures of Missouri and Kansas with the approval of the United States Congress. Section 238.010, RSMo, and Sections 12-2524, et seq., K.S.A.

Article III of the Compact contained in Section 238.010, RSMo, states, in part:

"ARTICLE III

There is created the Kansas City Area Transportation Authority of the Kansas City Area Transportation District (hereinafter referred to as the 'Authority'), which shall be a body corporate and politic and a political subdivision of the States of Missouri and Kansas."

For the purposes of answering this question, we perceive no significant difference in the legal nature of Bi-State and KCATA. We do note, however, that the Compact creating KCATA expressly describes it as a political subdivision of Missouri and Kansas while the Bi-State Compact is silent. As in Kansas City Area Transportation Authority v. Ashley, 478 S.W.2d 323 (Mo. 1972), we find this difference to be insignificant.

The legal status of Bi-State and KCATA is less than clear. The Missouri Supreme Court has held that Bi-State and KCATA are not political subdivisions of the state for the purposes of Supreme Court jurisdiction pursuant to Article V, Section 3, Missouri Constitution. St. Louis County Transit Co. v. The Division of Employment Security of the Department of Labor and Industrial Relations, 456 S.W.2d 334 (Mo. 1970); Kansas City Area Transportation Authority v. Ashley, supra. The theory of these cases was that neither Bi-State nor KCATA exercised governmental functions "as would provide for a separate and distinct 'governmental' unit."

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At the same time, as noted before, the Compact creating KCATA expressly provides that KCATA is a political subdivision of Missouri and Kansas. Furthermore, in the Transportation Sales Tax Act of 1973, Sections 94.600, et seq., RSMo, the Missouri General Assembly, in a clear reference to Bi-State and KCATA, defined "Interstate Transportation Authority" [Section 94.600(5)] as:

". . . shall mean any political subdivision created by compact between this state and another state, which is a body corporate and politic and a political subdivision of both contracting states, and which operates a public mass transportation system;"
(Emphasis added)

The United States Court of Appeals for the Eighth Circuit has characterized Bi-State as a "joint or common agency of the States of Missouri and Illinois." Ladue Local Lines, Inc. v. Bi-State Development Agency of the Missouri-Illinois Metropolitan District, 433 F.2d 131, 132 (8th Cir. 1970).

This office has previously held the view that Bi-State was a "public corporation" with power to engage in proprietary functions for the common good." Opinion No. 218, dated December 30, 1964, to State Tax Commission (copy enclosed).

We have contacted the appropriate offices in Illinois and Kansas for their views on this issue. The Illinois Attorney General has informed us that they have informally expressed the view that Bi-State is not an agency or arm of the State of Illinois, but rather it is an "independent organization."

The Illinois Auditor General informed us that his office is not authorized to audit Bi-State directly as a state agency. His office does, however, audit the Illinois Department of Transportation which grants funds to Bi-State.

The Kansas Attorney General has informed us that he has never expressed an opinion on the nature of KCATA.

The Kansas Legislative Post Auditor informed us that his office has never conducted an audit of KCATA as a state agency. It is his view, however, that he would be authorized under Kansas law (K.S.A. 1974 Supp. 46-1114) to conduct such an audit if so directed by the Kansas Legislative Post Audit Committee and if KCATA was a recipient of funds from or through the State of Kansas.

While it may be unresolved as to whether Bi-State and KCATA are "common or joint agencies" of their respective states or are

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"instrumentalities" of each state separately, or are of some other nature, we believe that it is safe to conclude that they are not agencies of the State of Missouri for which Section 29.200, RSMo, has application.

The provisions of Sections 70.370 to 70.440, RSMo, and Sections 238.010 to 238.100, RSMo, respectively, clearly provide for the creation of self-sufficient independent entities, vested with specific powers and authority to perform specific functions. Both entities are characterized as bodies corporate and politic. Both entities are authorized to acquire, construct, operate, and maintain transportation systems and/or other specific systems and projects; collect fees and rents; issue bonds; to sue and be sued; contract generally; condemn property; borrow funds; and other specified functions.

In this respect, Bi-State and KCATA appear to be similar in nature to the Environmental Improvement Authority which this office concluded was not an agency of the state, but rather was similar to a "quasi-public corporation" with "precise duties which may be enforced and privileges which may be maintained by suits at law." Opinion No. 225, dated November 19, 1973, to James R. Strong (copy enclosed).

Furthermore, if Section 29.200 were interpreted to permit the State of Missouri to independently audit Bi-State or KCATA, it could conceivably be viewed as undermining the rights and privileges conferred upon the States of Illinois and Kansas, respectively, under the Compacts. See Bush Terminal Co. v. City of New York, 273 N.Y.S. 331, 346 (1934), wherein the Port Authority of New York, created as an instrumentality of New York and New Jersey, was held not subject to property tax of New York City.

Therefore, it is our view that Bi-State and KCATA are not "state agencies" within the meaning of Section 29.200, RSMo. It follows that the State Auditor is not authorized to audit those entities pursuant to this statutory provision.

CONCLUSION

It is the opinion of this office that the Bi-State Development Agency and the Kansas City Area Transportation Authority are not "state agencies" within the meaning of the term as used in Section 29.200, RSMo, and that the State Auditor is not authorized to postaudit their accounts.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 218
12-30-64, State Tax Commission

Op. No. 225
11-19-73, Strong