

STATE AUDITOR:  
SUNSHINE LAW:  
PUBLIC RECORDS:  
PUBLIC MEETINGS:

Raw files, work papers, and other documents and meetings held preparatory to the issuance of signed audit reports of the State Auditor issued pursuant to Section 29.270, RSMo 1969, shall not be open to the public.

OPINION NO. 209

October 20, 1975

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



Dear Mr. Lehr:

This opinion is in response to your request as stated:

- "1. Are the raw files, work papers, and other documents, or meetings, relating to a particular audit required to be open to the public prior to release of a signed audit report?
- "2. If the answer to question No. 1 is "no," is there any change in the status of raw files, work papers, and other documents, relating to a particular audit, after issuance of the signed audit report."

It is our understanding that the auditing work of your office culminates with the issuance of formal audit reports as required in Section 29.270, RSMo 1969. Preparatory to the issuance of these audit reports, preliminary investigations are conducted by examiners who are employed by your office. These preliminary investigations include the accumulation of raw files, preparation of work papers and other documents, and the holding of intra-office meetings and meetings with officials of the offices being audited. You have asked whether these materials and meetings must be open to the public either before or after the formal audit report is signed and issued. For the reasons stated herein, it is the conclusion of this office that such materials and meetings may not be made available for public inspection.

As a general rule, the degree of public inspection authorized for the meetings and records of governmental bodies is governed by

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the so-called "Sunshine Law" found in Chapter 610, RSMo Supp. 1973. Clearly, the office of the State Auditor is a "public governmental body" within the meaning of Section 610.010(2) of the Sunshine Law.

Section 610.025.5 states that meetings and records of governmental agencies are to be closed, despite the general principle of disclosure mandated by the Sunshine Law, if such closing is provided for in other sections of the statutes. Specifically, Section 610.025.5, RSMo, states:

"Other meetings, records or votes as otherwise provided by law may be a closed meeting, closed record, or closed vote."

It is the opinion of this office that records and meetings of the State Auditor do fall within this exception of the Sunshine Law, and that the degree of public access to such records and meetings is governed by Chapter 29 relating to the operation of the office of State Auditor. The scheme of Chapter 29 is that final audit reports are public documents, but that material gathered by your office in preparation for the issuance of such final reports is not to be open to the public.

Section 29.270 directs that you issue audit reports of your examinations to appropriate state and county officials. That section also states that ". . . All audit reports and reports of examinations made by the state auditor shall be made a matter of public record. . . ." Thus, it is clear from the express language of the statute that final audit reports issued by your office must be open to public inspection. However, Chapter 29 demonstrates an equal intention by the General Assembly that preliminary material compiled in preparation for such final reports must not be open to the public.

Section 29.070 provides, in part, that examiners employed by you must be discrete and impartial, and that they must not ". . . reveal the condition of any office examined . . . or any information secured in the course of any examination . . . to anyone except the state auditor, . . ."

In its entirety, Section 29.070 states:

"Every examiner appointed by the state auditor shall, before entering upon the duties of his appointment, take and file in the office of the secretary of state an oath to support the constitution of the state, to

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faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept as presents or emoluments any pay, directly or indirectly, for the discharge of any act in the line of his duty other than the remuneration fixed and accorded to him by law, and that he will not reveal the condition of any office examined by him or any information secured in the course of any examination of any office to anyone except the state auditor, and every examiner shall enter into a bond, payable to the state of Missouri, in the sum of ten thousand dollars, to be approved by the state auditor and deposited in the office of the state treasurer conditioned that he will faithfully perform his duties as such examiner, and in case any such examiner shall knowingly report any officer as being a defaulter or as not being a defaulter, and knowing the same to be otherwise, and any person be injured thereby, such person shall have a right of action on such bond for his injuries; such action shall be brought in the name of the state and at the relation of the injured party."

Section 29.080 provides that:

"For any violation of his oath of office or of any duty imposed upon him by this chapter, any examiner shall be guilty of a felony, and upon conviction shall be punished by imprisonment in the penitentiary for a term not exceeding five years, or by a fine not less than one hundred dollars or by imprisonment in the county jail for not less than one nor more than twelve months, or by both such fine and imprisonment."

Therefore, it is our view that the General Assembly took great care to provide for publicity of final audit reports, but that it was highly sensitive to the impropriety of disclosing preliminary information which may or may not find its way into final audit reports. Indeed, an employee of your office who reveals such information is guilty of a felony and subject to imprisonment of a term up to five years. We are confident that the General Assembly did not intend the Auditor, himself, to make public preliminary information which, if released by an employee of the Auditor, would be punishable

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by a term in the penitentiary. The whole thrust of Chapter 29, as we see it, is to provide for the formal publication of official audits, and to provide for great care and discretion in guarding material which is not, itself, a part of the final audit.

Moreover, we note that Section 29.235.1 provides that "[a]ll audits shall conform to recognized governmental auditing practices." Although this office does not purport to have expertise in the field of "recognized governmental auditing practices," it is our general understanding that governmental auditing does entail a degree of discretion which would be the converse of the release of raw files, work papers, and other documents and the opening of meetings conducted by the Auditor and his staff.

We are unable to discern any legal distinction, for the purposes of this opinion, between the publication of such information before or after the release of a signed audit report.

#### CONCLUSION

It is the opinion of this office that raw files, work papers, and other documents and meetings held preparatory to the issuance of signed audit reports of the State Auditor issued pursuant to Section 29.270, RSMo 1969, shall not be open to the public.

Yours very truly,



JOHN C. DANFORTH  
Attorney General