

COUNTY COURT: Has power to contract with private auditing firm to audit the accounts of county officers.

May 27, 1936.



Honorable C. Arthur Anderson,  
Prosecuting Attorney,  
St. Louis County,  
Clayton, Mo.

Dear Sir:

This department is in receipt of your letter of May 8 wherein you make the following inquiry:

"I would like to have an opinion as to whether or not the County Court has the legal right to appoint and hire an auditor or auditors to audit the books of county offices. Also, if the county court has a legal right to pay the auditors for same, the contract with said auditors having been made in June, 1935."

We are also in receipt of opinion rendered on April 12, 1935 by the Honorable John E. Mooney, County Counselor, which has been of much assistance in determining the question which you present. It appears that in 1923, Mr. C.C. Wolff, Assistant Prosecuting Attorney, rendered an opinion on this question holding a contrary view from that of Mr. Mooney.

In defining the powers of the county court in relation to auditing and settling claims, Section 12162, R.S. Mo. 1929 contains at the close thereof the following proviso: "Provided, that if a county court finds it necessary to do so, it may employ an accountant to audit and check up the accounts of the various county officers." This proviso, standing alone, would appear to give the county court power to contract with private accountants to audit the various county offices. However, in 1913, the Legislature passed an Act entitled "Examination of books, accounts, settlements and statements of state institutions, county officers, and to provide a uniform system of bookkeeping." By the terms of

this Act the State Auditor was given almost exclusive right to make audits of county officers' accounts. It was necessary to present a petition containing the names of 300 taxpaying citizens and the county was to pay a per diem charge for the examination of the accounts of the county officers. The effect of this Act as it might relate to Section 12162, is discussed in the case of State ex rel. v. Buck, 182 Mo. App. 101, a mandamus suit, which is not directly in point. In that case the Court did not determine the effect of this Act on Section 12162, but in a separate concurring opinion of Judge Farrington, it was contended that the proviso mentioned in Sec. 12162 was impliedly repealed by this Act, in the following language: (l.c. 110)

"It being the first time the Legislature has undertaken to say who could examine the county records, and this act expressly repealing all previous acts or parts of acts not in conformity therewith, it seems to me to expressly repeal that part of section 3781, R.S. 1909, which only incidentally delegated the power to the county courts to name the accountants. What act or part of an act, other than section 3781, R.S. 1909, could the Legislature have had in mind in the repealing section (section 12) of the Act of 1913? It will be borne in mind that the power to have the books audited is not taken away from the county courts but is expressly confirmed in the later law. It is only the incidental power of naming the accountants that to me seems to have been limited. The Act of 1913 for the first time delegated the power to the taxpayers of a county (three hundred or more signing a petition) to have the books audited. The county court is merely the instrument of the people. It is a body formed to carry on the county's business and to protect the rights and interests of the people within their jurisdiction. If those for whom the work of auditing is ultimately to be done and those who are ultimately benefited can only call upon the State examiners for such service, it would not seem far out of reason that the county court acting for

those people should be limited to the same examiners. The work done by the public examiners would tend to secure uniformity, economy, and good business, as well as amply protect the public, and these were the ideas the lawmaking body must have had in mind in passing the Act of 1913. I therefore construe the Act of 1913 as covering the entire field of who must examine county records regardless of who (whether county court or taxpayers) puts such examination in motion, and that that part of section 3761, R.S. 1909, which incidentally gives the county courts power to employ private accountants has been repealed."

The Act of 1913 remained on our statute books with minor changes until 1933, when the Legislature repealed certain sections and enacted in lieu thereof Section 11478, Laws of Mo. 1933, page 417, which provides:

"It shall be the duty of the State Auditor at least once every two years, either in person or by one or more competent persons appointed by him, to visit, examine, inspect and audit the accounts of the various institutions of the state, including the state hospitals, state university, Rolla School of Mines, State Teachers Colleges, Missouri State School, Reform School for Boys, Industrial Home for Girls, Missouri State Sanatorium, Confederate Soldiers' Home, Federal Soldiers' Home, and all other institutions supported in whole or in part by the state, and such other officers of the state as receive their appointment from any elective officer, and also, at least once during the term for which any county officer is chosen to 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 centum of the total number of votes cast in 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."

The principal change in the new section is the clause "and without cost to the county." Bearing in mind that Judge Farrington's concurring opinion was not the opinion of the court, and the law relating to auditing of county officers' accounts is now entirely different from the Act of 1913, we think the implied repeal, as mentioned by Judge Farrington, does not exist. The state auditors are paid by the State at the present time and it is mandatory on the Auditor to audit the accounts of the various officers as nearly as possible at the close of their respective terms, whereas, the proviso under Section 12162, if valid and effective, gives the county court at any time the power to employ private accountants.

Bearing further in mind that courts do not favor repeals by implication and that no conflict now exists between the statute and the power of the county court and of the State Auditor to audit, we are of the opinion that the county court has the power to employ private accountants at a stipulated fee.

Pursuing the matter from another angle, i.e., the general power of the county court with respect to general financial affairs,

you are referred to the case of State ex rel. Mitchell v. Rose, 313 Mo. l.c. 373, wherein the Court said:

"The various provisions of the Constitution and statutes, Article VI, Section 36, Constitution of Missouri, and Sections 2574 and 9560, Revised Statutes 1919, demonstrate that it is not only within the power, but is the duty of the county court, to look after public funds, examine, audit, adjust and settle all accounts to which the county shall be a party, and to pay out of the county treasury any sum of money found to be due by the county on such accounts; in short, responsibility for the safety of public funds, the accuracy and honesty of accounts and statements of officials is imposed on the county courts. It is for the county court to audit the claim of the relator to determine the correctness of same and to say whether it will demand that the correctness of the reports made to it by the State Registrar shall be decided by the judicial department of the government before payment is made. (State ex rel. Forgrave v. Hill, 272 Mo. 206, l.c. 213, 198 S.W. 844.)"

You will note the above decision states "responsibility for the safety of public funds, the accuracy and honesty of accounts and statements of officials is imposed on the county courts." This burden being on the county court, it is our opinion that irrespective of the provisions contained in Section 12162, R.S. Mo. 1929, the county court has implied power to contract with and hire private accountants if it become necessary to conserve the funds of the county and determine whether or not the county officers are rendering honest and legal accounts to the county.

Under Sec. 12199, R.S. Mo. 1929, counties are given the power to create the office of county auditor if the county contains a city of 50,000 and less than 150,000 inhabitants. We assume that St. Louis County has no officer designated as county auditor.

In 1933 the Legislature passed the County Budget Act, Section 19 of which refers to the execution of contracts. The orders, minutes and contract which your county court made with the private

auditing firm appear to meet all the requirements of said section. Section 12, page 348 (Laws of Mo. 1933) is directory in its terms in outlining the contents of the budget document. Section 14 (page 348) gives the county court power to revise and alter the budget. The liability section of the act (Section 20, page 351) by its terms would impose no liability on any of the officers entering into the contract and paying for the services of private auditors.

Section 21 of the County Budget Act (page 351) contains this sentence: "Whenever the term 'accounting officer' shall appear, it shall be deemed to mean the county clerk, auditor, accountant, or other officer or employe keeping the principal financial records of the county." In mentioning "auditor", we do not believe that same refers to a private auditor, but to the county auditor, which in your county does not exist.

Again referring to Section 12199, R.S. Mo. 1929, which gives counties of the population of St. Louis County the right to elect a county auditor, it does not appear that you have elected a county auditor, but we note that on April 12, 1935, Mr. Edward Harper was appointed Auditor of St. Louis County by the county court; then there were orders following purporting to appoint A. Donald Cook as assistant auditor, and later orders to the effect that L.R. Schuessler be appointed assistant auditor. It appears that Mr. Harper has been designated county auditor, whereas, his appointment is merely for the purpose of auditing the county records; he does not have the full authority of a county auditor as enumerated in Sec. 12218, Laws of Mo. 1933, p. 352; therefore, we conclude that there is no conflict between Section 12218, Laws of Mo. 1933, p. 352 and Sec. 11478, Laws of Mo. 1933, p. 417.

#### CONCLUSION

It is the opinion of this department that the county court has not exceeded its authority in employing a private auditing firm to audit the books of the county officers at a stipulated amount. Such power, if not by direct statutory authority, is among the implied powers of the county court regardless of the fact that under Sec. 11478, the State Auditor is required to audit the accounts of county officers. The contract having been made in 1935, it is our opinion that if St. Louis County has followed the terms of the County Budget Act, Sections 8 to 20 inclusive being the sections pertinent to counties of the size of St. Louis County, the making

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of said contract and the paying of same out of county funds would not be in conflict with the County Budget Act.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General.

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