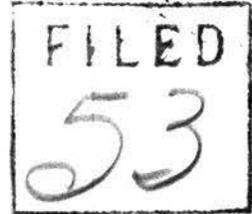


OFFICERS:
AUDITING ACCOUNTS OF PUBLIC
ADMINISTRATOR OF COUNTY OF
ST. LOUIS:

Comptroller of the County of St.
Louis may audit the accounts of
the public administrator of that
county.

June 13, 1939



Mr. Paul S. Limerick
Public Administrator
St. Louis County
Clayton, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the question of whether or not the County Auditor or Comptroller of the County of St. Louis is authorized by law to audit the books, records and accounts of your office.

The Missouri statute which provides for the election of a public administrator for counties provides in part as follows (Section 296, R. S. Missouri 1929):

"Every county in this state, and the city of St. Louis, shall elect a public administrator at the general election in the year 1880, and every four years thereafter, who shall be ex officio public guardian and curator in and for his county.
*****"

This section was amended in 1933, Laws of Missouri, 1933 at page 165 by adding Section 296-A, which provides as follows:

"Each Public Administrator elected, as now or as hereafter provided for in this Article, is hereby declared to be an officer for the County in which he is elected and for the City of St. Louis, if elected therein. The County courts of each County in this

state now or hereafter having a population of 100,000 inhabitants or more according to the last federal census shall make suitable provision for an office for the Public Administrator in the Courthouse of the County if suitable space may be had for same, and shall be provided as soon as the County Court shall be of the opinion that the business in charge of the Public Administrator is such as to reasonably require a separate office for the convenience of the public: The Public Administrator of the City of St. Louis shall have suitable and convenient offices provided for him in the Civil Courts Building by said City."

It will be noted by this amendment that the public administrator is treated as a public officer of the county. In counties with one hundred thousand population or more the public administrator is authorized to have an office in the courthouse as soon as the business will justify. According to the opinion of the county court, St. Louis County, having a population of over two hundred thousand, would be within that classification.

From the fact that the public administrator is elected, and from the fact that he is designated as a public officer, and from the fact that he is provided with an office by the county, there is no question but that such officer is a public official within the meaning of that term and within the meaning of the provisions of the Constitution of this state.

When our Constitution was adopted, the makers of that document had in mind a limitation to be placed upon the amount of salary that the public officials might retain. With that idea in mind, we think that Section 13 of Article IX of the Constitution was included. This section is as follows:

"The fees of no executive or ministerial officer of any county or municipality, exclusive of the salaries actually paid to his necessary deputies, shall exceed the sum of ten thousand dollars for any one year. Every such officer shall make return, quarterly, to the county court of all fees by him received, and of the salaries by him actually paid to his deputies or assistants, stating the same in detail, and verifying the same by his affidavit; and for any statement or omission in such return, contrary to truth, such officer shall be liable to the penalties of willful and corrupt perjury."

It will be noted that there is a ten thousand dollar limitation on the amount of salary that a county or municipal officer may retain in any one year. Such officers are also required to make a quarterly return of the fees which he collects as such officer during that period.

In State ex rel. v. Pohlman, 60 Mo. App. 444, 450, the court, in discussing this section of the Constitution, said:

"* * * * The evident meaning of both the constitutional provision and the statute is that the compensation of the officer shall not exceed \$10,000 per annum from all sources of revenue incident to his office."

The compensation of the public administrator is fixed by Section 298, R. S. Missouri, 1929, which is as follows:

"He shall receive the same compensation for his services as may be allowed by law to executors and administrators, unless the court,

for special reasons, allow a higher compensation. Such public administrator may be removed from office in the same manner and for the same causes as judges of the county court."

For the purpose of removing such officer the lawmakers have set up the same causes as those in which judges of the county court may be removed. Whatever fee the public administrator receives as such officer it is by virtue of his office and comes within the class of fees which the foregoing provisions of the Constitution requires to be reported quarterly.

From the foregoing we do not think that there is any question but that the public administrator is one of the officials which the Constitution contemplates that shall make a report of his fees and who shall be limited in the amount of fees which he earns and collects in any one year. That being the case, the question is then who would be authorized to audit your accounts.

St. Louis County, having a population of two hundred eleven thousand, comes within the classification of counties mentioned in Sections 9a and 9b, Laws of Missouri, 1937, page 428. These sections relate to the office of the county comptroller in counties of that size. Section 9a provides in part as follows:

"In all counties of this state having or which may hereafter have a population of more than two hundred thousand inhabitants and less than four hundred thousand inhabitants according to the last federal decennial census, the people of such county shall elect a county comptroller who shall be the budget officer and accounting officer of such counties and all of the duties and powers conferred by this Act upon the budget officer and accounting officer shall be vested in the said county comptroller. The county comptroller shall be elected for a term of four years

at the general election held in the year 1938 and every four years thereafter. The salary of the said county comptroller shall be five thousand dollars per annum, payable monthly.
 * * * * *

Section 9b also applies to the county comptroller, and referring to this section as it applies to the duties of the comptroller to audit accounts of officers of the county, we find that this section provides in part as follows:

"* * * * He shall audit the accounts of all officers and employees of the county annually and upon their retirement from office and shall keep a correct account between the county and all county and township officers, and it shall be his duty to examine all records and settlements made by them for and with the county court or with each other, and said county comptroller shall, whenever he desires, have access to all books, county records, or papers kept by any county or township officer, employee, or road overseer. * * * * "

In 1933 the lawmakers enacted an auditing bill which provided for the State Auditor to audit the accounts of all the county officers of the state except those counties in which a county auditor is elected. Among the officers listed as those who would be audited from the State Auditor's office, we note that the public administrator is listed, so if your office was not in a county in which the auditor is elected, there is no question but that you would be subject to the audit.

By referring to Article IX, chapter 85, R. S. Missouri, 1929, which pertains to county auditors in counties which contain cities from fifty thousand to one hundred fifty thousand, and especially Section 12217 of said article, it will be seen that all of the officers of

Mr Paul S. Limerick

- 6 -

June 13, 1939

such counties are subject to audit by the county auditor. By Section 12239, R. S. Missouri, 1929, which applies to counties from eighty thousand to one hundred fifty thousand it will be seen that all of the county officers are subject to examination by the county auditor.

Reading all of these sections together, which we think are intended to cover every county in the state, there is no doubt in our mind but that it was intended by the lawmakers that the officers of the county be subject to audit and in the case of the County of St. Louis the provision has been made for the comptroller to perform that duty. As stated above, the public administrator, being a county officer, comes within the same class as other county officers do with reference to an audit.

CONCLUSION

From the foregoing it is the opinion of this department that the Comptroller of the County of St. Louis is authorized by law to audit the records, books and accounts of the public administrator of that county.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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