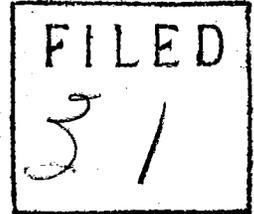


AUDITS: State auditor is not required to audit or formulate bookkeeping systems for the office of the sheriff of the City of St. Louis.

June 12, 1947



Mr. James V. Frank
First Associate City Counselor
Law Department, City of St. Louis
St. Louis, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you submit a request for an official opinion upon the following statement of facts:

"The Comptroller's Office of the City of St. Louis is in a quandary as to whether the State Auditor, under Senate Bill 311, Sections 21 and 24, passed by the 63rd General Assembly, is required to audit the office of the Sheriff of the City of St. Louis, and whether or not the State Auditor is required to formulate a system of accounting and reporting for the office of the Sheriff of the City of St. Louis."

The portion of Section 21 of Senate Bill No. 311, passed by the 63rd General Assembly, which is found at page 584, Laws of Missouri 1945, is as follows:

"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 in accordance with recognized governmental auditing practices 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. * * * (Underscoring ours.)

Section 24 of said Senate Bill referred to in your request provides that the auditor shall formulate a simple and complete system of accounting and reporting for all state institutions and appointive officers referred to in Section 21 and for each and every county office. The provisions of the two sections hereinbefore referred to were taken from the Revised Statutes of 1939, relating to audits and uniform systems of bookkeeping and found at Article 3, Chapter 87, especially in Sections 13094 and 13095. Said Section 13094 requires the auditor to, at least once during the term for which any county officer is chosen, inspect, examine and audit the accounts of such county

officer in every county in the state which does not elect and have a county auditor. The language of Section 13095, R. S. Mo. 1939, is copied almost verbatim in Section 24 of said Senate Bill No. 311 and referred to in your request.

The construction placed on said Sections 13094 and 13095, supra, by the state auditor has been that he did not have jurisdiction to audit the accounts or provide a book-keeping system for the City of St. Louis. These sections have been the law since 1933 (Laws of Missouri 1933, page 416). While the courts are not bound by the construction placed upon a statute by an administrative official, still the rule seems to be that some weight should be given to the construction placed on a statute by the administrative official. This principle was followed in the case of *Brown v. Mars, Inc.*, 135 Fed. (2d) 843. Also in the case of *Williams v. Williams*, 30 S.W. (2d) 69, the court held that a construction long placed on a statute by clerks of courts, unless plainly wrong, should be upheld.

However, without applying this rule of construction in order to reach our conclusion, we think the Constitution, statutes and charter of the City of St. Louis will support our conclusion hereinafter set out. Under Section 31 of Article VI of the Constitution of 1945, the City of St. Louis is recognized both as a city and as a county. This section reads as follows:

"The city of St. Louis, as now existing, is recognized both as a city and as a county unless otherwise changed in accordance with the provisions of this Constitution. As a city it shall continue for city purposes with its present charter, subject to changes and amendments provided by the Constitution or by law, and with the powers, organization, rights and privileges permitted by this Constitution or by law."

Section 32 (b) of said Article VI of the Constitution of 1945 reads as follows:

"The lawmaking body of the city may order an election by the qualified voters of the city of a board of thirteen freeholders of such city to prepare a new or revised charter of the city, which shall be in harmony with the Constitution and laws of the state, and shall provide, among other

things for a chief executive and a house or houses of legislation to be elected by general ticket or by wards. Such new or revised charter shall be submitted to the qualified voters of the city at an election to be held not less than twenty nor more than thirty days after the order therefor, and if a majority of the qualified voters voting at the election ratify the new or revised charter, then said charter shall become the organic law of the city and shall take effect, except as otherwise therein provided, sixty days thereafter, and supersede the old charter of the city and amendments thereto."

These provisions of the Constitution clearly demonstrate that the framers of the Constitution intended that the City of St. Louis be treated both as a city and as a county, and that the charter of the City of St. Louis, in its present form and as amended, would be the organic law of that city.

Then, in order to determine whether or not the officers of the City of St. Louis would be subject to audit by the state auditor, it would depend upon whether or not the City of St. Louis elects or has a county auditor.

Under Section 2 of Article 15 of the charter of the City of St. Louis, the duties of the comptroller, with reference to auditing the accounts of the officers, provides as follows:

"The comptroller shall have the qualifications and forfeit his office for the causes provided with regard to the mayor; receive a salary of eight thousand dollars per annum; give bond to the city for not less than three hundred thousand dollars, and appoint one deputy comptroller and such other deputies and employes as may be provided by ordinance. The comptroller shall be the head of the department of finance and exercise a general supervision over its divisions, over all the fiscal affairs of the city and over all its property, assets, and claims, and the disposition thereof. He shall preserve the credit of the city, and for that purpose, or in case

of any extraordinary emergency of any kind, he may, with the approval of the board of estimate and apportionment, and with or without any ordinance or other authority or appropriation therefor, draw warrants on the treasurer or effect temporary loans to pay debts and judgments and other liabilities of the city, or to meet any such emergency, charging such warrants to any excess balances in appropriations made by the general annual appropriation bill and specifically reporting his action to the board of aldermen at its first meeting thereafter. He shall have a seat and a voice but no vote in the board of aldermen. He shall be the general accountant and auditor of the city and the records in his office shall show the financial operations and condition, property, assets, claims, and liabilities of the city, all expenditures authorized, and all contracts in which the city is interested. He shall require proper fiscal accounts, records, settlements, and reports to be kept, made, and rendered to him by the several departments and offices of the city, including the license collector's office so far as consistent with law, and shall control and continually audit the same, and prescribe forms, rules, and regulations therefor and require their observance. He shall regulate the making of all requisitions for supplies. Except as by this charter or by law or ordinance otherwise provided he shall prescribe and regulate the manner of paying creditors, officers, and employes of the city. He shall audit all pay rolls, accounts, and claims against the city, and certify thereon the balance as stated by him and draw his warrant on the treasurer therefor, but no pay roll, account, or claim, or any part thereof, except for the preservation of the credit of the city, or in case of extraordinary emergency as hereinbefore provided, shall be audited against the city unless certified by the officer having knowledge of the facts, and authorized by law or ordinance, and the amount required for payment of the same appropriated for that purpose by ordinance and in the treasury. * * *

Then, in Article 1 of Chapter 13 of the Revised Code or General Ordinances of the City of St. Louis and especially under Section 1038, the duties of the comptroller, with respect to auditing accounts, is set out in the following language:

"The division of audit and accounting shall examine and audit all payrolls, accounts, claims, and demands against the city for the payment of which money may be drawn from the city treasury and for which appropriation has been made with the approval of the board of estimate and apportionment. It shall examine the accounts of the treasurer and at least monthly verify the cash on hand and in banks. It shall examine and adjust the accounts of all officers or employes who receive or collect city revenue, doing so as often as the comptroller may think proper or the city's interest may require, and such examination shall be made at least monthly. It shall examine the accounts of constables and clerks of justices of the peace and the clerk of the city courts and dockets of the said courts and of the justices of the peace and of the divisions of the court of criminal correction and of the circuit court (both civil and criminal divisions), to the end that the fees and costs accruing therein and belonging to the city shall be promptly paid into the city treasury. It shall examine the accounts of the sheriff and ascertain the amounts of fees collected and the expenses authorized. * * *"
(Underscoring ours.)

Then, under Section 1083 of Article 5 of Chapter 13 of the Revised Code or General Ordinances of the City of St. Louis, it is provided that reports be made to the comptroller by the various departments of the city. This section reads in part as follows:

"Annual and semi-annual reports of the fiscal business under the charge of all officers and departments and boards of the city shall be made and delivered to the

comptroller on the second Tuesday of April and October, respectively, of each year, in relation to all the fiscal business under their charge since their last annual report. That of the head of division of audit and accounting shall present a balance sheet of all accounts at the date of his last annual report, the aggregate debits and credits, respectively, in detail added to each account since, and a balance sheet of all such accounts of the date of the report, and shall contain such other information in relation to the business of his office as may be required. That of the treasurer shall state in detail the cash on hand at the date of his last annual report, the amount since received and the amount paid out in detail to the debit and credit, respectively, of the various accounts of his books, the balance remaining on hand, and of what it consists and where it is deposited. Similar monthly reports shall be made by all officers and departments and boards, and submitted to the comptroller on the second Tuesday of each month, and all reports shall contain a list of all deputies, clerks and assistants, employed in their respective offices.* *"

We think that since the provisions of the Constitution, whereby the charter of the City of St. Louis becomes the organic law of the city, and the provisions of the charter and enabling ordinances, wherein the office of comptroller is set up as the auditing department of the City of St. Louis, that the City of St. Louis would be in a separate class from those counties in which the lawmakers have provided for audits by the state auditor. However, we do think that the City of St. Louis, since the comptroller does audit the various county officers and formulates a bookkeeping system, would come within the class of counties which does elect and have an auditor, and for that reason, the state auditor would not have any jurisdiction over the officers of the City of St. Louis for the purpose of auditing or for formulating a uniform accounting system except in cases where he is petitioned to make an audit as is provided for in the latter part of said Section 21 of Senate Bill No. 311.

Mr. James V. Frank

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CONCLUSION

It is therefore the opinion of this department that the state auditor is not required to audit the office of the sheriff of the City of St. Louis, nor is he required to formulate a system of accounting and reporting for that office, because under the charter and ordinances of the City of St. Louis that city does have an officer, namely the comptroller, who performs the functions of a county auditor.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

TWB:VLM