

November 17, 1967

OPINION NO. 372  
Answered by letter-Nowotny

Honorable Haskell Holman  
State Auditor  
State of Missouri  
State Capitol Building  
Jefferson City, Missouri



Dear Mr. Holman:

This is in answer to your request for an opinion of this office concerning the question of whether the State Auditor has the authority to audit the records of the City of Holden pertaining to the construction of a community building being built by the City of Holden with money received from a residuary bequest of an individual.

You have enclosed copies of the: (1) Will; (2) Final Settlement of the Probate Court; (3) Circuit Court Decree; (4) Inheritance Tax Appraiser's Report; (5) Minutes of the City Council pertaining to the Hallar Memorial Building Fund; and, (6) Cancelled Checks transferring money to the City of Holden.

The authority for an audit of Holden is found in Section 29.230, RSMo Supp. 1965, which reads in part as follows:

"2. The state auditor shall audit any political subdivision of the state, including counties having a county auditor, if requested to do so by a petition signed by five per cent of the qualified voters of the political subdivision determined on the basis of the votes cast for the office of governor in the last election held prior to the filing of the petition. The political subdivision shall pay the actual cost of audit. No political subdivision shall be audited by petition more than once in any one calendar or fiscal year."

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You have informed us that you have been requested by a petition signed by five per cent of the qualified voters of Holden, Missouri, to audit that city.

The applicable part of the will dated July 18, 1956, providing for the community building provides as follows:

"I would like for a committee out of the bank to take out enough to provide a public meeting place for the public for the town."

On April 7, 1960, the Circuit Court of Johnson County, Missouri, entered a decree construing the will said decree reading in part as follows:

"(n) Comes now City of Holden, a municipal corporation, as aforesaid, and offers evidence from which the Court finds and determines that a sum necessary to provide a public meeting place for the public of the City of Holden, a municipal corporation, as the deceased had in mind and contemplated should be provided and such a meeting place as would be comparable to similar public meeting places in towns and cities in the same class as the City of Holden, a municipal corporation of the third class, will require the sum of One Hundred Thousand Dollars (\$100,000.00); and accordingly, the Court doth now and here make the specific finding, and decrees that the amount which the deceased testator, Mary Mabel Hallar, intended to and did in fact bequeath and devise to the said City of Holden, a municipal corporation, in her will as being the sum which, 'I would like for a committee out of the bank to take out enough to provide a public meeting place for the public for the town,'; was in truth and fact the sum of One Hundred Thousand Dollars (\$100,000.00) and hence the Court now determines and decrees that the aforequoted bequest as set forth in the will of the deceased was in fact and law a bequest to the City of Holden, a municipal corporation, of Johnson County, Missouri, in the sum and amount of One Hundred Thousand Dollars (\$100,000.00).

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" \* \* \* and it is now therefore further found, determined and decreed by the Court that the defendant, the City of Holden, a municipal corporation, as aforesaid, shall receive four-sevenths (4/7) of said residue of the deceased's estate and so regardless of whether said four-sevenths (4/7) share is more or less than the amount of said defendant's devise and bequest in the amount and sum of One Hundred Thousand Dollars (\$100,000.00) as hereinbefore determined and adjudged by the Court."

The Probate Court of Johnson County, Missouri, on December 27, 1962, approved final settlement and ordered distribution in part as follows:

"The Court does further find that by virtue of an agreement entered into on April 1, 1960, by and between the City of Holden, Missouri, a municipal corporation, the school district of Kansas City, Missouri, acting on behalf of (R.J.) DeLano School, St. Luke's Hospital of Kansas City, and said executors which was embodied in the decree of the Circuit Court of Johnson County, Missouri, the said school district for and on behalf of DeLano School was to and did receive the sum of \$18,750.00; and St. Luke's Hospital, having been determined to be the 'St. Luke's Hospital' mentioned in the will, likewise received the sum of \$18,750.00; both of which sums have been paid and payment thereof is hereby approved; and the City of Holden having accepted the custody and maintenance of the 'provide a public meeting place for the public of the town' did by said agreement receive the sum of \$91,285.71, the payment of which is hereby approved, and,"

Thus, under the decrees of the Circuit Court and Probate Court there was a gift to the city of \$91,285.71; and the cancelled checks you have enclosed show that the City of Holden has received the total sum of \$91,285.71 from the estate.

We note that Holden is a third class city. Section 77.010, RSMo 1959, provides for the incorporation and powers of a third class city and reads as follows:

"Any city of the third class in this state may become a body corporate under the provisions of this chapter, in the manner provided by law, under

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the name of the 'The city of \_\_\_\_\_', and by that name shall have perpetual succession, may sue and be sued, implead and be impleaded, defend and be defended in all courts of law and equity, and in all actions whatever; may receive and hold property, both real and personal, within such city, and may purchase, receive and hold real estate within or without such city for the burial of the dead; and may purchase, hold, lease, sell or otherwise dispose of any property, real or personal, it now owns or may hereafter acquire; may receive bequests, gifts and donations of all kinds of property; and may have and hold one common seal, and may break, change or alter the same at pleasure, and all courts of this state shall take judicial notice thereof."

Section 77,140, RSMo 1959, provides for public buildings and grounds and reads in part as follows:

"The council may also provide for the erection, purchase or renting of a city hall, workhouses, houses of correction, prisons, engine houses and any and all other necessary buildings for the city; and may sell, lease, abolish or otherwise dispose of the same, and may enclose, improve, regulate, purchase or sell all public parks or other public grounds belonging to the city, and may purchase and hold grounds for public parks within the city, or within three miles thereof."

Thus, the City of Holden has the power to receive the gift as declared by the Circuit Court and to use the gift for the intended purpose. It is our opinion, therefore, that such funds are subject to an audit by the State Auditor when made under the provisions of Section 29.230, supra.

Yours very truly,

NORMAN H. ANDERSON  
Attorney General

WVN:maw