

AUDITS: The accounts of the county treasurer of
COUNTY TREASURER: a second class county upon his retire-
AUDITOR: ment cannot be singled out for audit un-
COUNTY AUDITOR: der either Section 29.230, RSMo Supp.
COUNTIES: 1967, or Section 50.055, RSMo 1959. Such
audit can be made only under Section
55.160, RSMo 1959. An independent certified public account-
tant cannot be hired to audit only the accounts of the county
treasurer, but can be hired to audit all the accounts of the
county at a maximum cost of five thousand dollars under Sec-
tion 50.055.

OPINION NO. 57
(314 - 1967)

June 18, 1968



Honorable Robert P. Warden
Prosecuting Attorney
Jasper County
Courthouse - 6th and Pearl Streets
Joplin, Missouri 64801

Dear Mr. Warden:

This is in answer to your request for an opinion of this office on the question of whether the \$5,000 maximum payment that may be made under Section 50.055, RSMo 1959, is applicable when the county court of a second class county employs a firm of independent certified public accountants to make an audit of the county treasurer's office, after retirement of the county treasurer, because of certain alleged irregularities in his accounts.

Audits for a second class county are provided for in Sections 50.055 and 55.160, RSMo 1959, and Section 29.230, RSMo Supp. 1967.

Section 29.230 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

Honorable Robert P. Warden

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."

Section 50.055 reads as follows:

"The accounts of the county may be audited if the county court shall determine such an audit desirable or necessary, every odd numbered year within six months after the termination of the preceding fiscal year, either by a certified public accountant to be employed by the county court or by the state auditor, as said court may determine. If such audit is to be made by the state auditor, the state auditor shall be requested by the county court to make such audit, as provided by law. The audit herein provided shall also review the records of the receipts and disbursements and the property inventory of every officer or office of the county which receives or disburses money on behalf of the county or which holds property belonging to the county. Upon the completion of the investigation, the certified public accountant or the state auditor, as the case may be, shall render a report to the county court at the close of said period, together with a statement showing under appropriate classifications, the receipts and disbursements of the county during said period. The first audit, as provided by this section, may be made following the fiscal year of 1946, and such audit may be made every two years thereafter. The county court shall provide for the expense of such audit, which in no event shall exceed the sum of five thousand dollars, if made by a certified public accountant employed by the county court."

Honorable Robert P. Warden

Section 55.160 reads as follows:

"The auditor shall keep an inventory of all county property under the control and management of the various officers and departments and shall annually take an inventory of such property showing the amount, location and estimated value thereof. He shall keep accounts of all appropriations and expenditures made by the county court, and no warrant shall be drawn or obligation incurred without his certification that an unencumbered balance, sufficient to pay the same, remain in the appropriation account or in the anticipated revenue fund against which such warrant or obligation is to be charged. He shall audit the accounts of all officers of the county annually or upon their retirement from office. The auditor shall audit, examine and adjust all accounts, demands, and claims of every kind and character presented for payment against said county, and shall in his discretion approve to the county court of said county all lawful, true, just and legal accounts, demands and claims of every kind and character payable out of the county revenue or out of any county funds before the same shall be allowed and a warrant issued therefor by said court; and provided further, that whenever the auditor may think it necessary to the proper examination of any account, demand or claim, he may examine the parties, witnesses, and others on oath or affirmation touching any matter or circumstance in the examination of said account, demand or claim before he allows same; and provided further, that said auditor shall not be personally liable for any cost for any proceeding instituted against him in his official capacity. The auditor 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

Honorable Robert P. Warden

them for and with the county court or with each other, and said auditor shall, whenever he desires, have access to all books, county records or papers kept by any county or township officer or road overseer. Said auditor shall, during the first four days of each month, strike a balance in the case of each county and township officer, showing the amount of money collected by each, the amount of money due from each to the county, and the amount of money due from any source whatever to such office, and said auditor shall include in such balance any fees that may have been returned to said county court or to said auditor as unpaid and which since so having been returned shall have been collected."

Enclosed is a copy of Attorney General's Opinion No. 293, dated June 15, 1967, to the Honorable Haskell Holman, discussing Sections 50.055 and 29.230 and holding that these sections are alternative methods by which the State Auditor can be requested to audit a second class county. Section 50.055 is the only authority for the county court to employ a certified public accountant. Also enclosed is a copy of Attorney General's Opinion No. 327, dated July 20, 1967, to the Honorable Haskell Holman, holding that if the State Auditor is requested to make an audit under the authority of either Section 29.230 or 50.055 the county must pay the actual cost of the audit and it is only when the county employs a certified public accountant that there is a maximum cost of an audit. Therefore, if the county court were to hire an independent certified public accountant under the authority of Section 50.055 there is a maximum of five thousand dollars that can be paid.

However, there is a question of whether under either Section 29.230 or 50.055 an audit can be made of the accounts of only one county officer, in this case the county treasurer. Under Section 29.230 the county could be audited annually. Under Section 50.055 the accounts of the county could be audited every odd numbered year. It is our opinion that under each section an audit of all of the accounts of the county must be made and one account cannot be singled out. The only way that the accounts of the county treasurer can be singled out for audit is under the authority of Section 55.160.

Honorable Robert P. Warden

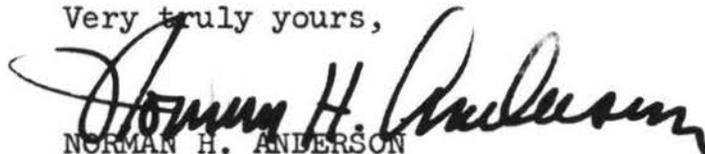
Therefore, the answer to your question is that an independent certified public accountant cannot be hired to audit only the accounts of the county treasurer. However, an independent certified public accountant can be hired to audit all the accounts of the county, but if this is done the maximum cost of the audit is five thousand dollars.

CONCLUSION

It is the opinion of this office that the accounts of the county treasurer of a second class county upon his retirement cannot be singled out for audit under either Section 29.230, RSMo Supp. 1967, or Section 50.055, RSMo 1959. Such audit can be made only under Section 55.160, RSMo 1959. An independent certified public accountant cannot be hired to audit only the accounts of the county treasurer, but can be hired to audit all the accounts of the county at a maximum cost of five thousand dollars under Section 50.055.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Walter W. Nowotny, Jr.

Very truly yours,


NORMAN H. ANDERSON
Attorney General

Enclosures: Opn. No. 293/6-15-67/Holman
Opn. No. 327/7-20-67/Holman