

AUDITS:
COUNTIES:
STATE AUDITOR:
CITIES, TOWNS & VILLAGES:

(1) The scope of an audit requested pursuant to Section 29.230.2, RSMo, lays within the discretion of the State Auditor, provided that discretion is reasonably exercised; (2) the

State Auditor is authorized to include those public offices in the City of St. Louis performing a function comparable to a county within an audit of the City of St. Louis, requested pursuant to Section 29.230.2, RSMo; and (3) there is no requirement that the political subdivision, which is to be audited, produce to the Auditor the receipt of the state collector showing that the cost of such audit has been paid to the collector.

OPINION NO. 98

March 28, 1975

Honorable George W. Lehr
State Auditor
State Capitol Building
Jefferson City, Missouri 65101



Dear Mr. Lehr:

This opinion is in response to the questions you have asked as follows:

- "1) Do I have the sole discretion to determine the scope of the audit properly requested for the City of St. Louis, pursuant to Section 29.230.2, RSMo?
- "2) In determining the scope of said audit, am I authorized to include those public offices in the City of St. Louis which perform a function comparable to county offices?
- "3) Does Section 29.275, RSMo prevent me, as State Auditor, from initiating said audit until I receive a receipt from the Director of Revenue, pursuant to said section?"

Concerning your first question, Section 29.230.2, RSMo, states:

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"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 percent 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."

In the case of Deubler v. Iron County, 93 S.W.2d 899 (Mo. 1936), the Supreme Court of Missouri considered the issue of the Auditor's discretion to establish the scope of an audit requested by residents of a county, pursuant to statutory provisions then existing which were similar in nature to, and statutory predecessors to, Section 29.230.2, RSMo. The county, in that action, attempted to limit the audit to a three year period by refusing to pay for the financial obligation incurred (personal services and expenses of the examiners) for the portion of the audit that went beyond the three year period. While disallowing the extra amount for other reasons, the court held, at page 903:

". . . Since the statute did not limit the period of time the audit should cover or the expense which might be incurred, the only reasonable construction to be given it is that the state auditor was required to make an audit covering the time and at such expense as might be necessary to accomplish all of the proper purposes for which the audit was being made, and that in determining the necessary period to be covered, the state auditor should exercise a reasonable discretion. . . ."

Therefore, it is our view that the scope of an audit requested pursuant to Section 29.230.2, RSMo, is solely within your discretion, provided it is exercised reasonably.

Concerning your second question, Section 29.230.2, RSMo, must again be considered and specifically the portion which reads:

"The state auditor shall audit any political subdivision of the state, including counties

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having a county auditor, if requested to do so by a petition . . ." (Emphasis added)

If the City of St. Louis is considered a political subdivision for the purposes of this statute, then it would appear that the issue would be clearly resolved. However, an analysis of the unique nature of the City of St. Louis is necessary to fully consider the question.

It is our view that the City of St. Louis has been considered a political subdivision of the state since at least 1875. The Supreme Court of Missouri, in Kansas City v. Neal, 26 S.W. 695 (Mo. 1894), stated, at page 696:

". . . 'Subdivision' means to divide into smaller parts the same thing or subject-matter, and no city or town in this state is a subdivision thereof, except the city of St. Louis; and it became so under sections 20, 22, 23, art. 9, Const., and by an act of the legislature, in pursuant thereof, setting off certain defined boundaries defining the city limits, and conferring upon the city all the rights and privileges possessed by a county. . . ." (Emphasis added)

Furthermore, in State on inf. of Barker v. Koeln, 192 S.W. 748 (Mo. Banc 1917), the Supreme Court of Missouri considered whether the collector of the City of St. Louis was a county officer or a city officer. In concluding that the City of St. Louis was to be considered a political subdivision of the state, as are other counties, the court, at page 751, stated:

"The process of logic by which is determined whether the collector of the city of St. Louis is a city officer or a state officer is apt to become confused by reason of the singular and peculiar relationship which the city of St. Louis bears to the state. Loosely speaking any officer elected by the suffrage of the city of St. Louis might be termed a city officer, at least in the sense that he is elected by the vote of the city. The character of the electorate, however, should not necessarily determine the character of the office. The territory confined within the boundaries of

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the city of St. Louis forms a political subdivision of the state. This territory has no county organization in the ordinary use of that term, but by the Constitution the said city is to 'collect the state revenue and perform all other functions in relation to the state, in the same manner, as if it were a county as in this Constitution defined.' If this political subdivision of the state were styled a county, no confusion would arise in arriving at the conclusion that the person whose duty it was to collect the state taxes was an officer of the state, and that his election would be a subject of legislative control.

"Why, then, should the election of the collector of the revenue of the city of St. Louis (a separate political subdivision of the state which, under the Constitution, bears the same relationship to the state as a county) who, at least so far as collecting the revenue ordinarily collected by a county collector, performs the same governmental function, be controlled by a law different from that which controls the election of collectors in the other political subdivisions (counties) of the state? No reason is apparent why the election of one should be controlled by a law different from that applying to other officers exercising a like governmental function, and none can be said to exist unless perchance the power of control over the election of this officer in the city of St. Louis was, by the Constitution, permanently transferred to the charter making power of said city." (Emphasis added)

The court concluded that the state law (Section 11432, Rev.St. 1909) was applicable to the City of St. Louis, as a political subdivision, as it is to counties of the state.

In State on inf. of McKittrick v. Dwyer, 124 S.W.2d 1173 (Mo.Banc 1938), the Supreme Court of Missouri dealt with a similar issue concerning the treasurer of the City of St. Louis. Again the court considered whether the selection of the city treasurer was subject to the provision relating to selection of a county treasurer (1937 M.S.A. §12130) or whether the charter provision of the City of St. Louis (Article VIII, Section 1) prevailed. The court acknowledged, at page 1174, that:

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"On the adoption of the 'scheme' for the separation of the city and the county, the city became both a political subdivision of the State and a city in its corporate capacity. . . ."

In concluding that the City of St. Louis was to be included in the interpretation of the law relating to counties, the court also acknowledged the dual role that the office played, at page 1176:

". . . The treasurer of the city performs official duties relating to the city as a political subdivision and also performs official duties relating to the city in its corporate capacity."

See also State ex rel. Walker v. Bus, 36 S.W. 636, 639 (Mo.Banc 1896).

Article VI, Section 31, Missouri Constitution of 1945, states:

"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."

The 1945 Constitution did not alter the status of the City of St. Louis, as a political subdivision, as indicated by the Supreme Court of Missouri, en banc, in Stemmler v. Einstein, 297 S.W.2d 467 (Mo.Banc 1956), at pages 469-470, as follows:

"Since the adoption of the Constitution of 1875, the City of St. Louis, by virtue of the provisions of Sections 20-26, Article IX, thereof, has been invested with and has exercised the powers of both a city and county, with the same power reserved over it by the General Assembly, however, under Section 23 of said Article, that it had over other cities and counties of the State. And such of its officers as have performed the

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functions and duties generally exercised by county officers have been held to be county officers and subject to the general laws of the State relating to the selection and duties of county officers, as distinguished from municipal officers. State ex rel. Walker v. Bus, 135 Mo. 325, 36 S.W. 636, 639, 33 L.R.A. 616; State on inf. of McKittrick v. Dwyer, 343 Mo. 973, 124 S.W.2d 1173, 1174-1176. It is also provided in Section 1.080 RSMo 1949, V.A.M.S., that whenever the word 'county' is used in any law general in character to the whole State, it shall be construed as applicable to the City of St. Louis unless such a construction be inconsistent with its evident intent or some law specially applicable to the city. But, although it constitutes a legal subdivision of the State and exercises such governmental functions as are generally exercised by the one hundred fourteen counties of this State, the City of St. Louis is not legislatively classified as a county, but as a city. Section 46.040. And the framers of the 1945 Constitution declared in Section 1 of Article VI that the 'existing counties' were 'recognized as legal subdivisions of the state'." (Emphasis added)

See Stemmler, supra, generally for a comprehensive review of the problems involved in determining the legal nature of the City of St. Louis. See also Preisler v. Hayden, 309 S.W.2d 645 (Mo. 1958).

It is clear, from the previously cited cases, that the City of St. Louis is one legal entity (a political subdivision of the state) that has a "dual nature." It is also clear that the City of St. Louis has consistently been considered a county for the purposes of statutes which relate to county functions. Indeed, Section 1.080, RSMo, states:

"Whenever the word 'county' is used in any law, general in its character to the whole state, it includes the city of St. Louis, unless such construction is inconsistent with the evident intent of the law, or of some law specially applicable to such city. Whenever the county clerk is authorized or required to perform an act by a law which applies to the

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city of St. Louis as well as to the counties of the state, the register of the city of St. Louis is authorized or required to perform the act insofar as it is to be performed in the city."

In light of this, we must next consider whether the City of St. Louis is a "political subdivision" for the purposes of Section 29.230.2, RSMo. In the case of Consolidated School District No. 1 of Jackson County v. Bond, 500 S.W.2d 18 (Mo.Ct.App. at K.C. 1973), the Missouri Court of Appeals, Kansas City District, considered whether a school district is a political subdivision within the application of Section 29.230. The court stated, at page 21:

". . . The established rule of statutory construction is that the legislative intention must be ascertained if possible from the words used in the statute. State ex rel. Highway Comm. v. Wiggins, 454 S.W.2d 899, 903 (Mo. banc 1970). Here the statute can be construed from the words used. There is no ambiguity and therefore no room for the use of extrinsic aids to construction. (citations omitted)"

Looking to the words used in Section 29.230.2, RSMo, it is our view that the City of St. Louis is a "political subdivision of the state" for the reasons previously expressed. This view is further supported by the supplemental language in the section which states ". . . including counties having a county auditor, . . ." The City of St. Louis has, as previously expressed, been considered a county for the purposes of applying statutory provisions relating to counties. See also State ex rel. McClellan v. Godfrey, No. 58894 (Mo.Banc February 21, 1975).

Furthermore, this office has previously held in Opinion No. 41 to Holman, dated March 7, 1955, that cities are considered political subdivisions of the state for the purposes of Section 29.230, RSMo.

Therefore, it is our view that you are authorized to include within the scope of your audit, pursuant to Section 29.230.2, RSMo, those offices in the City of St. Louis that perform a city function and those that perform a function analogous to that of a county.

Your third question, in effect, is whether Section 29.275, RSMo, is applicable to audits petitioned for pursuant to Section 29.230.2, RSMo. Section 29.275, RSMo, states:

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"Before the state auditor performs a duty or service required by law for which a fee is charged, the person requiring the service shall produce to the state auditor the receipt of the state collector of revenue showing that the fee has been paid to him."
(Emphasis added)

Section 29.230.2, RSMo, in relevant part, requires that:

". . . The political subdivision shall pay the actual cost of audit. . . ." (Emphasis added)

Therefore, the question becomes whether the "actual cost" of an audit is considered a "fee" as such word is used in Section 29.275.

It is our view that the "actual cost" of the audit is unknown until the audit is completed and therefore cannot be a "fee" within the meaning of Section 29.275.

In addition, Section 29.275 states that the "person" requiring the service shall produce a receipt from the collector of revenue to the State Auditor. In the case of audits requested pursuant to Section 29.230.2, the "person" requiring the service is at least five percent of the qualified voters of the political subdivision by petition. However, the political subdivision, itself, is required to pay the actual cost. It is our view that this consideration adds further support to our view concerning the nonapplicability of Section 29.275 to this situation.

Therefore, it is our view that Section 29.275 is not applicable to an audit petitioned for pursuant to Section 29.230.2. It follows that you are authorized to initiate an audit pursuant to said section without first being presented with a receipt from the collector of revenue (now director of the department of revenue pursuant to Section 12.2 of C.C.S.H.C.S.S.C.S.S.B. No. 1, First Extraordinary Session, 77th General Assembly).

CONCLUSION

It is the opinion of this office that (1) the scope of an audit requested pursuant to Section 29.230.2, RSMo, lays within the discretion of the State Auditor, provided that discretion is reasonably exercised; (2) the State Auditor is authorized to include those public offices in the City of St. Louis performing a function comparable to a county within an audit of the City of St. Louis,

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requested pursuant to Section 29.230.2, RSMo; and (3) there is no requirement that the political subdivision, which is to be audited, produce to the Auditor the receipt of the state collector showing that the cost of such audit has been paid to the collector.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Andrew Rothschild.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General