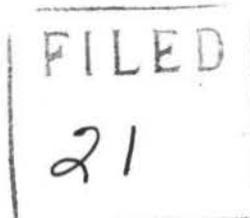


STATE AUDITOR:
CONSTITUTIONAL LAW:
KANSAS CITY PHILHARMONIC ORCHESTRA:

The State Auditor is not authorized to audit the Kansas City Philharmonic Association.

OPINION NO. 21

January 19, 1976



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

Dear Mr. Lehr:

This opinion is in response to your request as follows:

"Do I, as State Auditor, have the authority to audit the Kansas City Philharmonic Orchestra?"

The Kansas City Philharmonic Orchestra Association ("Philharmonic") is a not-for-profit corporation duly organized and registered under the laws of Missouri. You have informed us that the General Assembly has appropriated funds to the Missouri State Council on the Arts which, in turn, has granted an amount in excess of \$300,000 to the Philharmonic for fiscal year 1975.

Article IV, Section 13 of the Missouri Constitution states:

"The state auditor shall have the same qualifications as the governor. He shall establish appropriate systems of accounting for all public officials of the state, post-audit the accounts of all state agencies and audit the treasury at least once annually. He shall make all other audits and investigations required by law, and shall make an annual report to the governor and general assembly. He shall establish appropriate systems of accounting for the political subdivisions of the state, supervise their budgeting systems, and audit their accounts as provided by law. No duty shall be imposed on him by law which is not related to the supervising and auditing of the receipt and expenditure of public funds."

Honorable George W. Lehr

Section 29.200, RSMo 1969, states:

"The state auditor shall postaudit the accounts of all state agencies and audit the treasury at least once annually. Once every two years, and when he deems it necessary, proper or expedient, the state auditor shall examine and postaudit the accounts of all appointive officers of the state and of institutions supported in whole or in part by the state. He shall audit any executive department or agency of the state upon the request of the governor."

Section 29.230, RSMo 1969, states:

"1. In every county which does not elect a county auditor, the state auditor shall audit, without cost to the county, at least once during the term for which any county officer is chosen, the accounts of the various county officers supported in whole or in part by public moneys. The audit shall be made as near the expiration of the term of office as the auditing force of the state auditor will permit.

"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 addition to the Constitution, these two statutory provisions contain the basic authority for the State Auditor to audit state and local government. Nowhere in these provisions, or in Chapter 29 generally, is the State Auditor authorized to audit the accounts of a private not-for-profit corporation.

Honorable George W. Lehr

As expressed in 67 C.J.S., Officers, Section 102, p. 365 (1950):

"Public officers have only such power and authority as are clearly conferred by law or necessarily implied from the powers granted, . . .

* * *

". . . no powers will be implied other than those which are necessary for the effective exercise and discharge of the powers and duties expressly conferred and imposed, . . ." (l.c. 366, 369)

Considering these principles, in light of your request, we can find no authority for the proposed audit of the Kansas City Philharmonic Association. Therefore, we are compelled to conclude you are not authorized to conduct such audit.

CONCLUSION

It is the opinion of this office that the State Auditor is not authorized to audit the Kansas City Philharmonic Association.

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

Very truly yours,



JOHN C. DANFORTH
Attorney General