

MAINE STATE LEGISLATURE

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May 9, 1940

Subject: Answers to Auditor's questions.

Mr. Fessenden

Mr. Burkett

Question 1. The Administrative Code exempts the Judiciary from its provisions.

a. Does the Auditor have the right or duty to audit municipal court accounts and trial justice's accounts?

b. Does the exemption of the Judiciary exempt it from the whole Code?

It is my opinion that the State Auditor has neither the right nor the duty to audit the accounts of any courts of this State. Section 1 of Article 6 of the Constitution of the State provides for the judicial power, and Section 8 of the same Article provides for judges of municipal and police courts. The reference to their appointment by the executive power³ in the same manner as other judicial officers. It seems to me that the reference to the constitution clearly establishes that the inferior courts are a part of the Judiciary and that furthermore, the various statutes of the State with respect to trial justices, appeals therefrom, etc., warrant the conclusion that they are a part of the Judiciary.

I have examined the following statutes to ascertain the possibility of an audit being permitted or required with respect to courts:

P. L. 1937, page 247 (audit of municipal accounts)

P. L. 1937, Page 236 (audit of county accounts)

P. L. 1939, Page 328 (accounting of fines by municipal courts, etc.)

P. L. 1937, Page 136 (costs and fees municipal courts)

None of the foregoing Sections refer in any way to the auditing of accounts.

It seems to me that serious consideration should be given to a provision for audit.

Question 2. What are the State Auditor's duties specifically with regard to State agencies?

Section 3 of Article 6 of the Administrative Code sets forth the general powers and duties of this Department of Audit. Sub-section 1 provides substantially that the Department shall perform a post-audit of all accounts and other financial records of the State government or any Department or Agency thereof. Section 4 of the same Article provides detailed requirements substantially as follows; that the State Auditor shall conduct a continuous post-audit of the accounts, books, records and other evidences of financial transactions kept in the Department of Finance or in the other Departments or Agencies of the State government. Provision is made for making

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reports and, further, that any evidences of impropriety, incompetence or improper practice, be reported to the Governor immediately, and evidences of illegality be reported to the Governor and Attorney General immediately.

In view of these provisions, it is my opinion that the substantial part of the duties of the State Auditor with respect to State agencies, may be performed by post-auditing transactions kept in the Department of Finance in view of the provisions of the Code, with respect to the duties of the Department of Finance. In other words, the Code so integrates the functions of the State government in the Department of Finance, that the bulk of the work of the State Auditor in this classification can be done from the records of the Department of Finance. In any case, where the records of the Department of Finance are insufficient or inadequate to permit the State Auditor to make the post-audit required by the Code, he should proceed to post-audit from the records of financial transactions kept in the other Departments or Agencies of the State government. Any Department or Agency of the State government whose financial transactions are not integrated in the Department of Finance, should be post-audited by the State Auditor with the exception of those Departments or Agencies specifically enumerated in the last paragraph of Section 1 of Article 1 of the Administrative Code.

Your attention is called to the provisions of Chapters 131 and 132 of the Public Laws of 1931, each of which Acts were approved March 31, 1931, being the second day prior to the approval date of the Administrative Code, namely April 2, 1931, which Chapters provide for the permissive audit by the State Auditor of the accounts of the University of Maine and of private educational institutions which are eligible for State aid. It is my opinion that while the University of Maine is specifically exempted from the provisions of the Code, nevertheless, by virtue of Chapter 131, P.L. 1931, the State Auditor has permissive authority to audit the accounts of the University of Maine, if it seems practical or necessary. My opinion is based on the fact that both the Code and Chapter 131 became effective law on the same date.

Question 3. What can be done about the prohibition against the Auditor handling funds, when, as a matter of fact, he handles a considerable amount of money for the auditing of towns.

Section 3 of Article 6 of the Administrative Code provides for municipal audits as required by Sections 97 to 106 of Chapter 5 of the Revised Statutes of 1930. Section 101 provides that such expenses shall be paid, in the first instance, by the State, and that the Treasurer of State shall issue a warrant requiring the Assessors of the municipalities concerned to assess a tax to the amount of such expenses and that such amounts shall be collected

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and paid to the Treasurer of State in the same manner and subject to the same penalties as State taxes. It seems to me that this Section contains sufficient authority for the Auditor to simply bill the municipality for the amount of his expense and turn the bill over to the State Treasurer for collection. This is an account receivable of the State and not of the Department of Audit. It seems to me that it is incompatible for the State Auditor to collect his own accounts unless provision is made for his accounts to be audited by some other agency. Provision for some other agency to audit his accounts does not seem practical to me, whereas it does seem practical to assign to another agency the duty of collecting the accounts receivable resulting from work performed by the State Auditor.

While the compulsory county audit law makes no provisions for the manner of collecting the audit expenses from the county, it is, nevertheless, my opinion that the Auditor should bill the counties in the same way as my recommendation for billing the towns, and that such bills should be turned over to the State Treasurer for collection. In view of the fact that the Code specifically states that the State Auditor shall not handle money, I think it is undesirable for the responsibility for collecting these accounts to be in the hands of the State Auditor.

Question 4. What are the duties of the State Auditor with respect to the teachers' retirement fund (Chapter 19, Section 246, R.S. of 1930).

This Section imposes a duty to examine and audit in the same manner as provided for accounts of trustees of the permanent school fund. The permanent school fund audit is provided for in Section 204 of Chapter 19, R.S. 1930, page 401. This section purports to have been amended by Chapter 242 of P.L. 1937. However, the Section has not, in fact, ever been amended, as Chapter 242, P.L. 1937 was rejected by the people on a referendum. Therefore, the State Auditor has a clear duty to audit the teachers' retirement fund and the permanent school fund, which duty has never been taken from the State Auditor, as each of these funds are a part of the State government; a Department or Agency thereof.

Question 5. How should the State Liquor statutes be amended so as to provide that the State Liquor Commission's accounts should be audited by the State Auditor.

This can be provided by amending Chapter 84, P.L. 1936, by simply striking out the word "controller" wherever it appears therein, and substituting in place thereof, the word "auditor". A bill for this purpose has been prepared and is attached hereto for your approval.

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In my research with respect to the foregoing questions, I have discovered that sub-section 10 of section 10 of Article 8 of the State Administrative Code, has been used as authority for transferring to the State Controller, duties of the State Auditor which, in my opinion, should not be transferred to the Controller, and which, in my opinion, are not authorized by this sub-section. I believe that this sub-section applies only to methods of administration, accounting, control and auditing before payment, and that any previously existing legislation which imposes a duty upon the State Auditor, in the nature of a post-audit function, is still valid existing legislation with respect to the Auditor's duties, if such legislation is not inconsistent with sub-sections 1, 2 and 3 of section 3 of Article 8 which sets forth the general powers and duties of the Department of Audit (an illustration of the type of misinterpretation to which I am referring is in a reprint by the Department of Education of Section 245 of Chapter 10, R.S. 1930, wherein the word "controller" is substituted for "auditor". This Section obviously refers to a post-audit function and certainly is not authority for such a substitution).

Respectfully submitted,



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