



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Buford D. Battle
State Auditor and Efficiency Expert
Austin, Texas

Dear Sir:

Opinion No. 0-4260
Re: Does the State Auditor have authority to go into a Texas county and make a complete audit of the county's revenues and expenditures, and a related question?

Your letter of December 5, 1941, requesting the opinion of this department, reads as follows:

"This office desires to know whether it has authority to go into a Texas county and make a complete audit of the county's revenues and expenditures.

"If we do not have authority to make a complete audit, please inform us to what extent the State Auditor can audit a county's record."

Articles 4413a-3 and 4413a-4, Vernon's Annotated Civil Statutes, prescribing the duties of the State Auditor and Efficiency Expert read as follows:

"Art. 4413a-3. Said Auditor is hereby granted the authority to inspect all the books and records of all the officers, departments and institutions of the State Government and shall make a complete and thorough investigation of all custodians of public funds and disbursing officers of this State and shall have continual access to and shall examine all the books, accounts, reports, vouchers and other records of any office, department, Institution, Board or Bureau of the State, and

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shall investigate the efficiency of the personnel and clerical forces thereof, and shall keep a proper record of his investigations. All present auditors of each and every department and institution are hereby required to furnish assistance to said Auditor and to permit an inspection of their several reports, at all times."

"Art. 4413a-4. In addition to the other duties provided for said Auditor, he shall thoroughly examine all departments of the State government with special regard to their activities and the duplication of efforts between departments, and the efficiency of the subordinate employees in each of such several departments. He shall examine into the work done by the subordinate employees in the several departments of the State Government.

"Upon completing the examination of any department he shall furnish the head of said department with a report on (a) the efficiency of the subordinate employees; (b) the status and condition of all public funds in charge of said department; (c) the amount of duplication between work done by the department so examined and other departments of the State Government; (d) such a system of auditing, bookkeeping, and system of accounts as will provide for a uniform system of auditing, bookkeeping, and system of accounts for every department of State. He shall also make recommendations to the said head of the departments for the elimination of duplication and inefficiency. A copy of each such report submitted by said officer to the head of department shall be forthwith furnished to the Governor, the Speaker of the House, and the President of the Senate. Nothing contained herein shall be construed as authorizing the State Auditor to employ or discharge any state employee other than those herein authorized to be appointed by him for his department."

We have failed to find any case where the appellate courts of this State have construed the two above mentioned statutes. However, we think that the above statutes

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only authorize the State Auditor and Efficiency Expert to inspect all the books and records of all the officers, departments and institutions of the State government, and further empower him to make a complete and thorough investigation of all custodians of public funds and disbursing officers of the State and give him access to and the authority to examine all the books, accounts, reports, vouchers and other records of any office, department, institution, board or bureau of the State. The above enumerated powers and duties are specifically set forth in Article 4413a-3, supra. Article 4413a-4 imposes additional duties upon the State Auditor and Efficiency Expert, but the power and right to audit a county's revenues and expenditures are not included in either of the above mentioned statutes.

There are other statutes imposing certain duties upon the State Auditor and requiring the Auditor to perform certain functions in connection therewith. To illustrate, Article 689a-3, Vernon's Annotated Civil Statutes, requires the Auditor on or before the 1st day of October of the year immediately preceding the regular biennial session of the Legislature to secure, compile and submit to the Governor a report containing the information required by said statute. However, we have failed to find any statute authorizing the State Auditor and Efficiency Expert to audit a county's revenues and expenditures.

Articles 1645-1676, inclusive, Vernon's Annotated Civil Statutes, and the amendments thereto, prescribe a definite and certain method for auditing a county's revenues and expenditures by county auditors. It is a well recognized principle of law that where the Legislature prescribes a definite, certain method of procedure for a city or county to follow, other methods are by implication of law excluded. *Foster v. City of Waco*, (Sup. Ct.) 253 S. W. 1104.

Generally speaking, it is stated in Texas Jurisprudence, Vol. 34, p. 438:

"The powers and duties of public officers are quite generally prescribed by the Constitution and statutes, and, subject to constitutional limitations, these matters are under the control of the Legislature; indeed, in many instances the Constitution expressly gives it

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power to prescribe the duties of particular officers. The term 'duties' in such a grant to the Legislature comprehends the further idea of power or authority, and the legislative act will be looked to for the authority of the officer as well as for a definition of his duties. Power and duties are coextensive, and an officer has no authority to perform an act in respect of which no duty has been made to devolve upon him."

It is further stated in Texas Jurisprudence, Vol. 34, p. 440:

"Public officers and governmental and administrative boards possess only such powers as are expressly conferred upon them by law or are necessarily implied from the powers so conferred. They cannot legally perform acts not authorized by existing law, and the repeal of a statute authorizing an officer to do a particular thing, or of the statute that creates the office, necessarily revokes and terminates his power."

Quoting further from Texas Jurisprudence, Vol. 34, p. 443, it is stated:

"Statutes which prescribe and limit the exercise of official duty are strictly construed in respect of the powers conferred and the manner of their exercise, and such powers are not to be enlarged by construction. . . ."

"It is equally well settled, however, that a law which confers a power or imposes a duty upon an officer or board carries with it by implication the authority to do such things as are reasonably necessary to carry into effect the power granted or the duty imposed. . . ."

As above stated we have failed to find any statute expressly authorizing the State Auditor to audit a county's revenues and expenditures; neither do we find any statute from which such power or authority may be necessarily implied.

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Therefore, it is our opinion that the State Auditor and Efficiency Expert has no power or authority to go into any Texas county and make a complete audit of the county's revenues and expenditures. We cannot specifically answer your second question without the presentation of all the facts that are or may be involved.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Ardell Williams*

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Assistant

APPROVED DEC 12, 1941

Samuel D. Battle
FIRST ASSISTANT
ATTORNEY GENERAL

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