



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

0-5-5-29  
GERALD C. MANN  
ATTORNEY GENERAL

Honorable C. H. Cavness  
State Auditor  
Austin, Texas

Dear Mr. Cavness:

Opinion No. 0-4829

Re: Qualifications to be possessed  
by First Assistant State Auditor  
under Senate Bill 27, 49th Legisla-  
ture, Regular Session.

We have your letter of recent date requesting the  
opinion of this department upon the following question:

"Under Senate Bill No. 27, 49th Legislature,  
must the First Assistant State Auditor have the  
same qualifications as those provided in the law  
for the State Auditor?"

Section 4 of the Act referred to sets forth in  
detail the qualifications to be possessed by the State  
Auditor. This Section provides:

"The person appointed State Auditor shall  
have had at least five years' experience as a  
certified public accountant immediately preced-  
ing his appointment, and he shall be a man of  
unquestioned integrity and moral character and  
who has had sufficient experience in business  
and finance to properly discharge the functions  
of the office. He shall have been a citizen  
and resident of Texas for at least five years  
immediately preceding his appointment. He shall  
qualify by taking the constitutional oath of  
office and executing a bond to be approved by  
the appointing power, payable to the Governor  
of the State of Texas and his successors in  
office, in the sum of Twenty-five Thousand  
(\$25,000) Dollars, conditioned upon the faith-

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ful discharge of the duties of his office, with a solvent surety company as surety. The premium to the surety company for the execution of such bond shall be paid by the State."

Section 11 of the Act provides in part as follows:

"The First Assistant State Auditor shall perform such duties and assignments as the State Auditor may prescribe, and shall act as State Auditor in the absence of the State Auditor. All such assistant auditors and stenographic and clerical assistants shall be named and appointed by the State Auditor. ..."

Section 12 provides in part as follows:

"The State Auditor shall be free to select the most efficient personnel available for each and every position in his office, to the end that he may render to the members of the Legislature that service which they have a right to expect. . . . The State Auditor is hereby authorized to conduct such professional examinations as he may deem expedient in determining the qualifications of the persons whom he contemplates placing on his staff."

Section 13 of the Act provides in part:

"The State Auditor may remove or discharge any assistant auditor or any stenographic or clerical assistants at any time and for any reasons satisfactory to himself and without a hearing."

The above-quoted portions of the Act constitute all that we find in the Act bearing upon the First Assistant State Auditor and the other assistant auditors in the State Auditor's employ. It will be observed that the Legislature has not seen fit to prescribe the qualifications to be possessed by the First Assistant State Auditor, or by any other assistant auditor. Therefore, the State Auditor is free to determine the qualifications he will require of those whom he employs.

That the law provides that the First Assistant State Auditor shall act as State Auditor in the absence of the State Auditor does not militate against the conclusion expressed above. His power and duty to act as State Auditor in the ab-

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sence of the State Auditor is derived from his occupancy of position of First Assistant State Auditor, to which office or place the Legislature has attached the authority to act as State Auditor in the absence of the State Auditor. While acting as State Auditor in the absence of the State Auditor, the First Assistant does not hold the office of State Auditor, but is merely empowered as First Assistant State Auditor to exercise pro tem the powers and duties attached to the principal office. *Pfeffer v. Mahnke, 260 S. W. 1031.*

Very truly yours

ATTORNEY GENERAL OF TEXAS

*R. W. Fairchild*

APPROVED AUG 21, 1943 <sup>By</sup>

R. W. Fairchild  
Assistant

*Gerald C. Mann*

ATTORNEY GENERAL OF TEXAS



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