

AUDITS:
COUNTIES:
STATE AUDITOR:
COUNTY HOSPITALS:

The State Auditor is obligated to include county hospitals established pursuant to Sections 205.160 to 205.340, RSMo, within the scope of his audit of counties containing such an institution.

OPINION NO. 224

November 26, 1975

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



Dear Mr. Lehr:

This opinion is in response to your question as follows:

"Am I required to include within the audit scope of audits of third and fourth class counties conducted pursuant to Section 29.230, RSMo, county hospitals created pursuant to Sections 205.160-205.340, RSMo?"

Section 29.230, RSMo, 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.

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No political subdivision shall be audited by petition more than once in any one calendar or fiscal year." (Emphasis added)

This provision establishes authority for the State Auditor to audit the accounts of county and local government. Subsection 29.230.1 requires the State Auditor to audit the accounts of "county officers," during their terms, in counties that do not elect a county auditor. Subsection 29.230.2 requires the State Auditor, upon proper petition, to audit any political subdivision of the state (including counties having a county auditor).

In order to answer your question, it must be determined whether the board of trustees of a county hospital, established pursuant to Sections 205.160 to 205.340, RSMo, are "county officers" within the meaning of Subsection 29.230.1.

Sections 205.160 to 205.340, RSMo, generally provide for county hospitals. Trustees of the hospital are elected to four year terms, Section 205.170. The county treasurer (or collector) shall serve as treasurer of the board. Section 205.190. The board of trustees shall govern the operation of the hospital and have complete control over expenditures. Section 205.190. A property tax may be levied, as certified by the board of trustees to the county court. Section 205.200. The county court is authorized to appropriate money for the improvement and maintenance of the hospital. Section 205.230. The county court is authorized to issue general obligation bonds for the hospital, Section 205.160, and revenue bonds, Section 205.161.

The Supreme Court of Missouri has characterized a county hospital as a "county entity," and an "instrumentality of the county," and a "creature" of the county. Fulton National Bank v. Callaway Memorial Hospital, 465 S.W.2d 549, 551-552 (Mo. 1971). Furthermore, the court has considered the members of the board of trustees of county hospitals as "public officials" of the county. State ex rel. Holman v. Trimble, 293 S.W. 98, 102 (Mo. Banc 1927).

This office has issued several opinions which relate to this question. A county hospital performs a governmental function not a proprietary function. Opinion No. 15, Cave, April 10, 1950. The conduct of a county hospital is "county business." Opinion No. 92, Vogel, March 5, 1953. The members of the board of trustees of a county hospital are "public officers." Opinion No. 70, Peal, December 1, 1954. See also Opinion No. 2, Amos, May 7, 1953, which contains an analysis of the legal status of members of the board of trustees of county health centers (Sections 205.010 to 205.155, RSMo) which are identical in legal status with trustees of county hospitals. In that opinion, we stated, at page 9:

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". . . it is obvious that the members of a Board of Trustees of a County Health Center have the title and status of public officials, and have been required to perform the duties of such public officials. . . ."

The Supreme Court of Missouri has held that a county hospital is not a political subdivision of the state for purposes of jurisdiction before the court. Stribling v. Jolley, 245 S.W.2d 885, 890 (Mo.Banc 1952).

Contrast also, the Hospital District Law (Chapter 206) under which a hospital district which is formed is expressly characterized as a "body corporate and political subdivision of the state." (Subsection 206.010.2, RSMo).

From the foregoing, it our conclusion that while a county hospital established pursuant to Sections 205.160 to 205.340, RSMo, is actually under the control of a board of trustees instead of the county court, its operation is part of the functioning of county government. As such, the members of the board of trustees are public officials of the county and are considered "county officers supported in whole or in part by public moneys" as the term is used in Subsection 29.230.1, RSMo.

Therefore, it is our view that you, as State Auditor, are obligated to include a county hospital established pursuant to Sections 205.160 to 205.340, RSMo, within the scope of an audit of a county containing such an institution.

CONCLUSION

It is the opinion of this office that the State Auditor is obligated to include county hospitals established pursuant to Sections 205.160 to 205.340, RSMo, within the scope of his audit of counties containing such an institution.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General