

Opinion No. 21-3061

July 26, 1921

BY: HARRY S. BOWMAN, Attorney General

TO: Hon. A. G. Whittier, State Traveling Auditor, Santa Fe, New Mexico.

Independent Audits of Books of Municipalities Unauthorized.

OPINION

{*78} In reply to your letter of the 21st instant, asking if it would be proper and legal for your office to employ an independent auditing firm to audit the books of incorporated cities and towns, in view of my opinion of the 29th of April advising you that such auditors may not be employed by state officials, I would say:

Sections 4 and 6, Chapter 186, Laws 1921, imposed upon your office the duty of requiring from town and village officials quarterly and annual financial reports, and authorized you to examine into all financial affairs of incorporated cities, towns and villages, and in making such examinations to include complete audits of the accounts of the offices examined.

It is universally held that where authority is given to do a particular thing and the mode of doing it is prescribed that it is limited to be done in that mode and all other modes are excluded. Also, that where by law the duty of performing certain work is cast upon a designated official it is not competent for other persons to be employed to do the work required of such official and to pay for such services.

The two foregoing rules of law were adopted by the Supreme Court of this state in the very recent case of Fancher, et al. vs. Board of County Commissioners of Grant County, wherein was involved the right of an independent auditing concern to collect for services performed for Grant County which had been prescribed to be done by county officials.

In a very elaborate, well-considered opinion the court held that for such services no compensation could be received by the auditing company.

It might be suggested that the provisions of Chapter 186, Laws 1921, are not mandatory upon the Traveling Auditor, as in section 6 the traveling auditor is granted the power to make an examination into the financial affairs of the offices. This very question was before the court in the case of News Dispatch Printing Company vs. Board of County Commissioners (Oklahoma), 161 Pac. 207, where it was contended that the language of the act under discussion did not compel the commissioners to call the state examiner to make the audit and that therefore they would be authorized to employ other persons to perform the services.

{*79} That court held that it was a familiar rule of construction that when one person or class of persons is named in an act of the lawmaking power as being authorized to do a certain thing therein named, all other persons are thereby excluded from doing the same thing as effectually as if they were positively forbidden, and many cases in support of this rule are cited in the case.

From the foregoing and other authorities, which we have examined, we are satisfied that your office would not be authorized to employ independent firms or accountants to do the auditing work for incorporated cities, towns and villages.

Of course, the 1921 act could not affect contracts entered into prior to the date of the act becoming effective, and any contracts theretofore made would be valid until the services provided for therein would be completed. The law applies only to contracts entered into subsequent to the 13th day of June, 1921.