



**THE ATTORNEY GENERAL
OF TEXAS**

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April 4, 1975

The Honorable D. R. "Tom" Uher
Chairman, State Affairs Committee
House of Representatives
Capitol Building
Austin, Texas

Letter Advisory No. 91

Re: Constitutionality of proposed
legislation giving State
Auditor a 15-year term.

Dear Representative Uher:

On behalf of your Committee, you have asked our opinion regarding the constitutionality of House Bill 779 with respect to article 16, section 30 of the Texas Constitution.

The bill would amend section 3 of article 4413a-9, V. T. C. S., the statute which directs the Legislative Audit Committee to appoint a State Auditor. As amended, the section would read:

Such Committee, or the majority of the membership thereof, shall appoint an investigator of all custodians of public funds, disbursing agents, and personnel of departments, the title of such officer to be State Auditor. The State Auditor shall serve for a term of fifteen (15) years and may not be reappointed. A person appointed to fill a vacancy in the office of State Auditor may be reappointed to a full term so long as he has served no more than five years of the unexpired term of his predecessor in office. Such auditor shall be a Certified Public Accountant of Texas.

You advise that the bill is intended to give the State Auditor complete independence by providing him with a fifteen year term.

In pertinent part, article 16, section 30 of the Texas Constitution provides:

The duration of all offices not fixed by this
Constitution shall never exceed two years . . .

This language applies only to public officers. Aldine Independent School District v. Standley, 280 S.W.2d 578 (Tex. Sup. 1955).

In concluding that the Superintendent of the State Hospital at San Antonio was a "public officer," the Court in Knox v. Johnson, 141 S.W.2d 698, 700 (Tex. Civ. App. --Austin 1940, writ ref'd.), observed:

[He] is expressly and specifically treated and referred to as an officer of the State. Thus we have his position designated as an office. He is required to take the constitutional oath of office, and execute an official bond as is required of other state officers. He is made custodian of and responsible for state property and state funds. His 'term of office' and the salary therefore are fixed by law. Definite and specific governmental duties and powers are imposed upon him in which the State as a whole is interested. Manifestly, he discharges strictly a governmental function affecting the public as a whole, and clearly is an officer of the State.

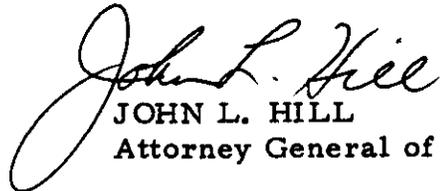
And see Letter Advisory No. 63(1973).

The state auditor (1) is referred to as an "officer" by article 4413a-9, V. T. C. S., in both its present and proposed forms, (2) is required by article 4413a-10, V. T. C. S., to qualify for office by taking the constitutional oath of office and executing a bond approved by the appointing power and payable to the Governor, (3) is required by article 4413a-12, V. T. C. S., to have his appointment approved by the Senate, (4) is required to perform examinations and audits of all accounts, books and other financial records, and the quality of service rendered by state government and to make reports and recommendations to the Legislative Audit Committee pursuant to articles 4413a-13 and 4413a-14, V. T. C. S., and (5) has a term of office and salary which are statutorily defined by articles 4413a-9 and 4413a-17, V. T. C. S. Furthermore, unlike the position considered in Standley, the State Auditor is not a position which is created at the discretion of the appointing authority. The statute provides that the Legislative Audit Committee, "shall" appoint the State Auditor.

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Accordingly, it is our conclusion that the State Auditor occupies a public office and that his term is limited by article 16, section 30 of the Constitution to a period not to exceed two years. Kimbrough v. Barnett, 55 S. W. 120 (Tex. Sup. 1900).

Very truly yours,


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APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman
Opinion Committee