



WYOMING LEGISLATIVE SERVICE OFFICE

Research Memo

04 RM 030

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Re: Recent History of State Auditing Functions

PURPOSE

Describe the former role and duties of the Wyoming State Examiner, explain the rationale resulting in the elimination of this appointed position, and summarize the current roles of the Wyoming Department of Audit and other state auditing functions.

RESULTS IN BRIEF

The office of the Wyoming State Examiner was dissolved in 1990 with a constitutional amendment that abolished the Office of the State Examiner and reassigned the duties of the State Examiner and the State Examiner's Office to the State Department of Audit and the Director of the State Department of Audit. Along with the elimination of the Wyoming State Examiner, the office of the Wyoming State Auditor was also reorganized in 1992.

The creation of the Department of Audit and the reorganization of the duties relating to the State Auditor's Office distinctly defined the duties of each entity in order to separate the oversight of money being spent among and by state agencies/departments, and, money being properly collected by the state from severance taxes, mineral royalties, sales taxes, and use taxes. The Department of Audit is singularly charged with financial oversight and "after-the-fact" auditing of state government and political subdivisions.

STATE EXAMINER

Prior to 1990, the State Examiner was authorized according to Article 4, Section 14 of the

Wyoming Constitution and further sanctioned in W.S. 9-1-501 through 9-1-512. According to prior statute, the Governor appointed the Wyoming State Examiner for a term of four years. Under W.S. 9-1-507(a) and (b), the State Examiner was required to: supervise the books, financial accounts, and financial records of all state agencies, institutions, counties, school districts, and municipalities; visit each state institution or agency once a year; examine the books and accounts of state institutions, agencies, districts, and entities not receiving loans or grants from the state farm board; and examine the books of incorporated cities and towns with a population of less than four-thousand (4,000) inhabitants. However, in lieu of conducting an annual examination institutions, agencies, districts, or entities that did not receive a loan or grant from the state farm loan board, and, cities and towns with a population under four thousand, the State Examiner reserved the right to accept an annual audit or audit report rendered by an independent, certified, public accountant per W.S. 9-1-507(b).

W.S. 9-1-511(a) and (b) required that the State Examiner prepare and file a report for each examination of public offices and institutions conducted, and, provide copies of these reports to the Governor, the Legislature, and the Department of Administration and Fiscal Control. The State Examiner was also required to file a copy of the reports concerning state agencies and institutions with the Secretary of State, and, respective county offices, school districts, and municipal offices.

REORGANIZATION

In December of 1988, the Joint Legislative-Executive Efficiency Study Committee published a study concerning the function of the State Examiner's Office and issues of governmental accountability. The report stated:

At this time, nine agencies with approximately 80 auditors are attempting to fulfill various auditing requirements. In addition to the State's effort to fulfill these auditing requirements Certified Public Accountants are also auditing local governments, school and special districts, as well as some state agencies.

With this massive disjointed audit effort, there exists an overt possibility the initial objectives of auditing may not be realized. Essentially stated: although the audits are being performed, the chances of assuring the public its funds are collected/managed judiciously, or operational and legal compliances are being met, are limited (177).

The report further explained that the State of Wyoming had suffered significant losses due to fraudulent spending and uncollected severance taxes, mineral royalties, sales taxes, use taxes, gas taxes, cigarette taxes, and commercial vehicle taxes.

In order to minimize these losses the Committee recommended a restructuring of the State Examiner's Office. The proposed "Examiner General's Office" would be independent of all state and local agencies, and, would oversee all aspects of auditing relating to the collection of tax based revenue on behalf of the State of Wyoming.

During the 1989 Legislative Session, the Legislature created the Department of Audit ('89 Laws, Ch. 210), passed the Government Reorganization Act of 1989 ('89 Laws, Ch. 13), and proposed a constitutional amendment to delete the requirement for a State Examiner ('89 Laws, SER 5). The Reorganization Act stated that the entire executive branch of the state government would be reorganized into twelve

principal departments. (The offices of Governor, Secretary of State, State Treasurer, State Auditor, Attorney General, and Superintendent of Public Instruction were exempt.) According to the Act, these newly reorganized departments were to be operational no later than July 1, 1992.

The Department of Audit was created in 1989 as an agency "under construction," and the Governor, Secretary of State, and State Treasurer appointed the director of the department for a six-year term with the consent of the Senate, in contrast with the prior Governor-appointed State Examiner. This change, according to the Director of the Department of Audit, enhanced the independence of the state's primary audit function.

According to the enacting legislation, the new "Department of Audit" was to consist of the State Examiner and all staff employed within the State Examiner's Office and certain staff from the Department of Revenue and Taxation and the State Auditor's Office. This legislation authorized the Department of Audit to conduct audits for the collection of federal and state mineral royalties, collect taxes imposed under Title 39 of the Wyoming Statutes, and exercise the same authority with respect to audits that the State Auditor and Department of Revenue and Taxation did previously. In sum, the authority to conduct audits relating to federal mineral royalties shifted from the State Auditor to the Department of Audit when departmental operations commenced on July 1, 1989.

In 1990, the Legislature approved Senate File 115 ('90 Laws, Ch. 48), which transferred the duties of the State Examiner to the Department of Audit so that the Department could review the function and position of the State Examiner and report its findings and recommended changes to the Legislature. On November 6, 1990, electors passed Constitutional Amendment No. 1, which deleted the constitutional requirement for a State Examiner and amended Article 4, Section 14 to read as follows:

Examination of accounts. The legislature shall provide by law for examination of the accounts of state treasurer, supreme court

clerks, district court clerks, and all county treasurers, and treasurers of such other public institutions as the legislature may prescribe.

In 1991, the Legislature thoroughly organized the Department of Audit ('91 Laws, Ch. 240). In this legislative action, W.S. 9-1-501, 9-1-502, and 9-1-505 relating to the State Examiner were repealed. The director of the State Department of Audit and his staff, like the former State Examiner, were now responsible for: supervising the books, financial accounts, and financial records of all state agencies and institutions, counties, school districts, and municipalities; establishing a uniform accounting procedure for monies received and distributed by the justice courts, justices of the peace, county courts, and judges of county courts; adopting and filing a seal; issuing subpoenas; administering oaths; auditing, examining, or reviewing prepared reports for state offices and institutions; filing reports with the Secretary of State; coordinating the auditing of state taxes, state royalties, federal royalties, and other revenue matters; and conducting audits at the request of any state agency.

STATE AUDITOR

In 1992, the Legislature reorganized the duties of the State Auditor ('92 Laws, Ch. 41). This legislation proclaimed the State Auditor the official "comptroller." The State Auditor is now required to: maintain the state's central fiscal accounts; order all payments into and out of the funds held by the State Treasurer; serve as the state payroll official, maintain the official payroll for all state agencies excluding the University of Wyoming and the Department of Transportation; present a preliminary annual financial report of fiscal affairs to the Governor, President of the Senate, Speaker of the House, and Joint Appropriations Committee; issue and draw warrants for payment or collection; and oversee the voucher system relating to state agencies. In sum, the State Auditor generally approves payments before they have been made, while the Department of Audit is responsible for reviewing transactions after they have occurred.

PROGRAM EVALUATION

The "audit" function housed within the Legislative Service Office (LSO) has also been revised substantially since the inception of LSO in 1971. From 1971 through 1978, the auditing function within LSO was geared toward financial audits of executive branch agencies. In May 1978, Management Council consciously chose to focus on performance/program auditing. In addition, in the mid 1980s LSO also briefly performed "sunset" audits to assist in determining whether certain executive branch programs should continue. Today, the Program Evaluation function performs a variety of in-depth studies of program administration, government effectiveness, and efficiency, not financial compliance.

DEPARTMENT OF AUDIT

The Department of Audit is currently charged with at least three separate duties: oversight of taxpayer compliance, particularly in the areas of severance and excise taxes, government financial accountability, and banking regulation. Importantly, W.S. 9-1-507 outlines the auditing functions of the Department of Audit, broadly related to public funds.

State Entities. All state institutions, agencies, entities, and incorporated cities and towns must file with the Department of Audit. At the highest level, the Department of Audit is responsible for the state's Comprehensive Annual Financial Report (CAFR). In practice, the Department contracts with an outside, certified public accounting (CPA) firm to conduct this financial review.

The level of financial oversight of political subdivisions is contingent upon the size of the entity, with the largest required by statute to submit an audit performed by a CPA and the smallest merely required to submit a statement of revenues, expenses, and ending cash balance. Immediately after reorganization, the Department of Audit regularly audited communities directly, using public employees dispersed throughout the state. However, according to the Department of Audit, a reduction in force (RIF) of ten employees eliminated this public oversight activity and

replaced these state audits with audits conducted by private CPAs.

Currently, the Department of Audit receives, and reviews a sample of, audits of political subdivisions performed by private CPAs. Historically, there was a full-time state employee that was dedicated to the review of all private audits of political subdivisions. However, the Legislature changed this requirement. Finally, based upon discussions with the Department of Audit, there does appear to be an opportunity for enhanced public audits of smaller political subdivisions that currently are not required to submit full audits. The Department of Audit reportedly does not have the resources to independently audit all of these entities at this time.

In addition to the private audits, each county, city, town, special district, and joint powers board must annually report to the Department of Audit all revenues received and expenditures made. The Department, by rule, has required political subdivisions to report using standard federal Census Bureau forms to avoid duplication of effort. These forms also allow states to add individualized data requests to the base federal request. Summaries of the data are then prepared and disseminated by the Department of Audit. By observation, questions of consistency, comparability, and interpretation may remain.

Performance Evaluations. The Department of Audit is also authorized to conduct performance measure reviews based on standards developed in W.S. 28-1-115(a)(ii)(A). As part of the state's strategic planning process, the Department of Audit is charged with verifying and validating agency performance measures. As a matter of practice, the Department is the repository for agency strategic plans. In the past, measures have regularly not been "auditable." There are also recent efforts to significantly condense the material contained in these reports.

School Finance Audits. As recently as 2002, the Department of Audit assumed the role of school finance audits, initially (and temporarily) housed within LSO. This charge includes:

- Conducting periodic audits of every school district in the State of Wyoming (at least one audit per district every three years)
- Conducting management studies, program evaluations, and performance audits on school districts
- Conducting compliance, effectiveness, and efficiency audits of the State Department of Education
- Reporting all findings and recommendations from studies and audits of school districts to the State Department of Education

Taxpayer Audits. Beyond these audits of public entities, the Department of Audit currently has two divisions that conduct financial audits of excise taxes, mineral royalties, severance taxes and ad valorem taxes. The excise tax audit function also oversees appropriate payment of taxes and fees administered by the Secretary of State and Department of Transportation. Public employees, not private CPAs, conduct these audits, regularly at the location of the taxpayer. As indicated previously, this responsibility was formerly housed with the State Auditor and the Department of Revenue.

CONCLUSION

Based on the arguments presented in the 1989 efficiency study and the aforementioned legislative efforts to eliminate the State Examiner, create the Department of Audit, and reorganize the State Auditor's Office, it is evident that the issue of state accountability was a priority. After the reorganization, the roles of the State Auditor's Office and the Department of Audit are distinguishable since the State Auditor strictly oversees the money spent among and by state agencies while the Department of Audit focuses on ensuring that the State of Wyoming is receiving the proper returns from taxes and oversight of "after-the-fact" auditing. In carrying out its missions, the Department relies heavily on private CPAs for its financial accountability function.