

State Examiner — Cities and Towns — Examination of Books and Accounts of—Regulations—Powers to Enforce.

The duty of the State Examiner to examine books and records of incorporated cities and towns is mandatory and cannot be dispensed with.

The State Examiner has the same power to regulate the keeping of books and accounts of incorporated cities and towns as applies to State and county officers.

The State Examiner has the same authority to enforce his regulations relative to the keeping of books and accounts in incorporated cities and towns as is given him over State and county officers, and may enforce obedience thereto in the same manner as provided in Section 212, Revised Codes of 1907.

L. Q. Skelton, Esq.,
State Examiner,
Helena, Montana.

My dear Mr. Skelton:

I have your letter enclosing a letter from Mr. John W. Dawson, your assistant, in which he wishes to be advised whether, under the law, the examination of the books of cities and towns may not be dispensed with.

Section 1 of Chapter 84 of the Laws of 1913 reads as follows:

"The State Examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty to make at least one examination each year of the books and accounts of all incorporated cities and towns, and the books and accounts of all school districts of the first and second class, in like manner as is now required by law for the books and accounts of State and County officers."

You will notice that the language of the statute is mandatory, being specific in the statement that it shall be the duty of the State Examiner to make at least one examination each year of the books and accounts of incorporated cities and towns. I think it was, beyond any doubt, the intention of the Legislature to require such examination yearly, and, therefore, your office is not at liberty to dispense with such examinations.

A reading of the letter written to you by Mr. Dawson discloses that his request is prompted by the fact that city and town officials, whose books you are required to examine, neglect to comply with the recommendations and directions of the State Examiner; hence, he feels that the service is a waste of time and an expense for which no adequate return is received.

Section 2 of Chapter 84, supra, reads as follows:

"All laws now in force relative to the examination of the books and accounts of State and County officers, are, and the same are hereby declared to be applicable to the examination of the books and accounts of incorporated cities and towns, and to the books and accounts of school districts of the first and second class."

Section 209, Revised Codes of 1907, prescribes certain regulations applicable to State and county officers, and Subdivision 2 of said section authorizes the State Examiner:

"To prescribe the general method and details of accounting for the receipt and disbursement of all moneys belonging to the State or Counties and to require of all officers an adherence to such general method and details as are required by law or prescribed by the State Examiner."

Section 212, Revised Codes of 1907, reads, in part, as follows:

"If any officer refuses or neglects to comply with a regulation prescribed by the State Examiner as authorized in paragraph 2 of Section 209 of the Political Code of Montana as amended by Chapter C, Acts of 1903 [which is the Subdivision 2 of Section 209 quoted above], the salary of such officer shall, on request of the State Examiner, to the proper official, be withheld until such recreant official obeys, and the State Examiner certifies approval to the disbursing officer."

Section 2 of Chapter 84, above, made these provisions apply to incorporated cities and towns.

That this may be done was the holding of the Supreme Court in the case of *Spratt v. Helena Power Transmission Co.*, 37 Mont. 60, 94 Pac. 631, where the court held:

"An Act original in form, which grants some power, confers some right or creates some burden or obligation, is not in conflict with the provisions of section 25, Article V of the Constitution, which provides that 'no law shall be revised or amended, or the provisions thereof extended by reference to its title only,' even though it does refer to some other existing statute, general or local, for the purpose of pointing out the procedure or some administrative detail necessary for the execution of the power, the enforcement of the right or the discharge of the burden or obligation."

That is exactly what Section 2, Chapter 84, above, does. It refers to another existing statute for the purpose of pointing out the procedure and administrative detail necessary for the execution of the duty imposed upon the State Examiner by Section 1 of Chapter 84. Therefore, the State Examiner is given the same powers relative to the control of the books and accounts of incorporated cities and towns as he has over State and county books and accounts, and if the officers of such incorporated cities and towns refuse or neglect to comply with the regulations prescribed by him, he may, under Section 212 above, suspend the payment of the salary of such recreant officer until he obeys. Such was clearly the intention of the Legislature when it imposed this duty upon the State Examiner.

Therefore, it is my opinion that the duty of the State Examiner to examine the books and accounts of incorporated cities and towns is a mandatory duty and cannot be dispensed with; further, that the State Examiner has the same power of regulating the keeping of books and accounts of incorporated cities and towns as he has over the books and accounts of State and county officials, and that he may enforce obedience to his regulations in the same manner as provided in Section 212, Revised Codes of 1907.

Very truly yours,

WELLINGTON D. RANKIN,

Attorney General.