

244

CONSERVANCY DISTRICT, BOARD OF DIRECTORS—MAY NOT EMPLOY FIRM OF PUBLIC ACCOUNTANTS TO AUDIT ITS BOOKS—MAY NOT LAWFULLY PAY FIRM FROM MAINTENANCE FUND OF CONSERVANCY DISTRICT.

SYLLABUS:

The Board of Directors of a conservancy district may not employ a firm of public accountants to audit its books nor may they lawfully pay such firm from the maintenance fund of the conservancy district.

Columbus, Ohio, March 11, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for an opinion dated January 21, 1949, reads as follows:

“It has been called to the attention of this Bureau by one of our State examiners working on Conservancy Districts that a Conservancy District organized under the ‘Conservancy Act of Ohio’, Sections 6828-1 to 6828-79, General Code, has employed a private firm of Certified Public Accountants to make an audit of the records of said Conservancy District covering a period of several years since the district was established.

“The records and accounts of said Conservancy District have been audited annually by the Bureau of Inspection and Supervision of Public Offices in accordance with the provisions of Section 6828-57, G. C., which reads in part:

“The bureau shall audit such accounts at least once a year, and shall file one copy of said audit and report with the clerk of the court in the cause wherein the district was established, one copy with the secretary of the district and one copy with the auditor of state. The expense of such audits and examinations shall be paid out of any funds of the district available therefor upon bills rendered monthly by the bureau of inspection and supervision of public offices.’

“In view of the foregoing facts, and the provisions of Section 6828-57, G. C., we respectfully request that you give consideration to the following question, and furnish us your formal Opinion in reply thereto :

“When a private firm of Certified Public Accountants has been employed, at the request of the Common Pleas Judge of a county in which a conservancy district is located, to make an audit of the records and accounts of said conservancy district covering a period of years since the establishment of the district, during which time the records of said district have been examined annually by the Bureau of Inspection and Supervision of Public Offices, can the cost of the audit made by the firm of Certified Public Accountants lawfully be paid from the maintenance fund of the conservancy district?”

The following questions and answers from the Springfield Conservancy District were submitted with the request :

“Question 1. How was the employment of the firm of Certified Public Accountants authorized?”

“Answer : By the Board of Directors of the Springfield Conservancy District.

“Question 2. Did the Common Pleas Judge issue an order to the Conservancy District Board to prepare a report for his consideration, or did the Judge personally employ the Certified Public Accountants to perform such work?”

“Answer : a. The Common Pleas Judge did not issue an order to the Conservancy Board to prepare a report. b. The Judge did not personally employ the accountants.”

There being no request of a common pleas judge in issue that question will not be considered.

Section 6828-1, et seq., General Code, sets up the authority for the establishment and organization of conservancy districts in the state of Ohio.

Section 6828-15, General Code, sets forth the powers of the Board of Directors of said districts. In the enumeration of the powers and duties nothing is said about the employment of an accountant, nor would subsection (n) cover such employment since such employment is not necessary or incident to the fulfillment of the purposes for which the district is established.

Section 6828-16, General Code, states that the district may let work by contract to the lowest responsible bidder, but this section refers to the establishment and maintenance of the district, and not to the internal functions of administration.

Section 6828-26, General Code, permits the board to appoint appraisers, but this is in relation to land and has no application in the determination of the present question.

Section 6828-42, et seq., General Code, sets up the financial administration of the district. Nothing is said therein about employment of accountants.

Section 6828-57, General Code, quoted in your letter, says that the Bureau of Inspection and Supervision of Public Offices shall audit the books. It does not give any authority to the Board of Directors to have a private audit.

Since there is no express power given the board to have a private accountant and since a procedure is set up whereby auditing is made the duty of the aforementioned bureau, I am of the opinion that the board may not employ a private firm to audit its books.

As Judge Wilkin in his article "A Study of Administrative Law: The Conservancy Act of Ohio," 3 L. J. O. S. U. 33, said:

"* * * Well-recognized engineering and legal authorities were drawn into collaboration for the creation of such law."

Had there existed a necessity for a private audit these authorities would have recognized it. But they failed to provide for such an audit and instead made one administrative agency a check against another by requiring the Bureau of Inspection and Supervision of Public Offices to audit the district's books.

In opinion No. 689, Opinions of the Attorney General for 1937, Vol. II, the syllabus reads as follows:

“A board of trustees of a school district library established under the provisions of Section 7635, General Code, is not authorized to employ a public accountant to audit the accounts of the library.”

In my opinion the reasons given in the above mentioned opinion are equally applicable to the present situation. Basically the opinion relies on the rules set forth in *State, ex rel. Locher, Pros. Atty., v. Menning, et al.*, 95 O. S. 97, and *State, ex rel. Bentley v. Pierce, Auditor*, 96 O. S. 44.

In 95 O. S. 97, the court said “administrative boards may not expend money except as provided by statute.” In 96 O. S. 44, in the third branch of the syllabus, the court said :

“In case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

The principles enumerated in the above cases have become roots in our present legal system. They have been cited with favor by Ohio courts unnumbered times. They are a landmark in the principles of administrative law.

In opinion No. 7202, Opinions of the Attorney General for 1944, at page 603, the syllabus is as follows :

“The Muskingum Watershed Conservancy District can not spend conservancy district recreational funds for advertising and the entertainment of persons invited by the district officials to inspect the works of the Muskingum Watershed Conservancy District and its recreational facilities.”

This opinion cites with approval 95 O. S. 97, and also cites *State, ex rel. Smith v. Maharry*, 97 O. S. 272, wherein it is stated in the first branch of the syllabus :

“All public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund, and all persons, public or private, are charged by law with the knowledge of that fact. Said trust fund can be disbursed only by clear authority of law.”

For the above mentioned reasons I am of the opinion that the Board of Directors of a conservancy district may not employ a firm of public

accountants to audit its books nor may they lawfully pay such firm from the maintenance fund of the conservancy district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.