

OPINION NO. 78-050**Syllabus:**

1. A county welfare department is an "office" of a "taxing district" for the purposes of R.C. 117.01, and is therefore subject to examination by the Auditor of State through the Bureau of Inspection and Supervision of Public Offices.
2. Under R.C. 117.15, the county auditor, as fiscal officer of the taxing district, may charge the fund of the county welfare department for the costs of an

October 1978 Adv. Sheets

examination of that department conducted by the Bureau of Inspection and Supervision of Public Offices.

To: Kenneth B. Creasy, Director, Dept. of Public Welfare, Columbus, Ohio
By: William J. Brown, Attorney General, August 25, 1978

I have before me your request for my opinion regarding audits of county welfare departments conducted by the Auditor of State through the Bureau of Inspection and Supervision of Public Offices. Specifically, you have raised the following questions:

1. Is a county welfare department subject to an audit by the Auditor of State pursuant to the provisions of Chapter 117 of the Revised Code, specifically, or if not that Chapter, by what statutory grant of power is such a right conferred?
2. Is a county welfare department a "taxing district" as used in section 117.15, Ohio Revised Code, so that costs of an audit may be charged to the county welfare department? If not, by what statutory grant of power is the auditor empowered to assess the costs of an audit against the fiscal accounts of a county welfare department?

The Bureau of Inspection and Supervision of Public Offices (hereinafter the Bureau) is created by R.C. 117.01. That section also enumerates the powers and duties of the Bureau. It provides in part:

This section creates the bureau of inspection and supervision of public offices, in the office of the auditor of state, which bureau shall inspect and supervise the accounts and reports of all state offices as provided in sections 117.01 to 117.19, inclusive, of the Revised Code, including every state educational, benevolent, penal, and reformatory institution, public institution, and the offices of each taxing district or public institution in the state . . . (Emphasis added)

The problem thus presented is whether a "county" is a "taxing district," as it is clear that a county welfare department is an "office" of the county. See, R.C. 329.01 et seq.

Whether or not a county is a "taxing district" is a matter of some confusion. The only statutory definition of the term is found in R.C. 5711.01 (E). It provides:

As used in section 5711.01 to 5711.36, inclusive, of the Revised Code:

. . .

(E) "Taxing district" means, in the case of property assessable on the classified tax list and duplicate, a municipal corporation or the territory in a county outside the limits of all municipal corporations therein; in the case of property assessable on the general tax list and duplicate, a municipal corporation or township, or part thereof, in which the aggregate rate of taxation is uniform.

By its own terms, however, this definition is limited to R.C. Chapter 5711., and when applied to R.C. 117.01 is of limited value.

Within the various sections which comprise R.C. Chapter 117., there are several instances where a distinction is made between counties and taxing districts. Thus, in R.C. 117.06, the following language is found:

A financial report of each public institution or taxing district for each fiscal year shall be made [to the bureau.]

. . .

Any public institution or taxing district whose financial report is not filed at the time required by this section shall pay the auditor of state twenty-five dollars for each day the report remains unfiled . . . If funds are withheld from a county because of the failure of taxing district located within the county or any portion of which is so located to file, the county may deduct the amount of penalty from property tax revenue due the delinquent district.

And, R.C. 117.18 contains the following language:

The bureau . . . may require financial reports from any county, political subdivision, or taxing district showing the condition of all appropriation accounts . . .
 . (Emphasis added.)

See also, R.C. 117.15, *infra*. While it is not entirely clear from the statutes just what a "taxing district" includes, the language in R.C. 117.16 and R.C. 117.18 cited, *supra*, indicates that the terms "taxing district" and "county" are not synonymous. In fact, in 1969 Op. Att'y Gen. No. 69-047, my predecessor had occasion to interpret R.C. 117.06, and concluded that a county was not a taxing district.

There is, however, some authority to support the view that the term "taxing district" includes counties. In *State ex rel. Guilbert v. Shumate*, 72 Ohio St. 487 (1905), the Supreme Court was confronted with the constitutionality of the provisions, now contained in R.C. 117.15, which provide that the costs of audits conducted by the bureau be charged to the taxing district which was the subject of the audit. The case was an action in mandamus, brought by the auditor of state, against a county auditor. The court, in deciding the case, never actually confronted the issue, but merely assumed that a county was a taxing district. A similar result is found in 1956 Op. Att'y Gen. No 6184, p. 22, which dealt with R.C. 117.01 and county law library associations. The provision of that section under consideration was as follows:

The bureau may examine the accounts of every private institution, association, board, or corporation receiving public money for its use, . . . The expense of such examination shall be borne by the taxing district providing such public money.

My predecessor concluded that the county, which provided funds for the association, was responsible for the costs of examination, again assuming that a county is a "taxing district."

In resolving this conflicting authority it is important to keep in mind the intent of the legislature, for that is the goal of all matters involving construction of statutes. *Carter v. Youngstown*, 146 Ohio St. 203 (1946). The Ohio Supreme Court, in *State ex rel. Smith v. Maharry*, 97 Ohio St. 272 (1918) has found that the provisions of R.C. 117.01 are remedial, and therefore should be liberally construed and applied to effect their clear and controlling purpose to protect and safeguard public property and public monies. Keeping this admonition in mind, and considering the ease with which the Supreme Court in *Shumate*, *supra*, found that a county was a taxing district for the purposes of R.C. Chapter 117, I must conclude

that the term "taxing district" as used in R.C. 117.01 includes counties. Therefore, in answer to your first question, it is my opinion that a county welfare department is subject to an audit and examination by the Bureau as an "office" of a "taxing district" under R.C. 117.01.

Your second question concerns R.C. 117.15. That section provides, in pertinent part, as follows:

The necessary expenses of the maintenance and operation of the administrative office of the bureau of inspection and supervision of public offices shall be financed from the general revenue fund of the state through biennial appropriations by the general assembly. The total amount of compensation paid state examiners, their expenses, and the cost of typing reports shall be borne by the taxing districts to which such state examiners are . . . assigned . . . The auditor of state shall certify the amount of such compensation, expenses, and typing to the county auditor of the county in which the taxing district is located. The county auditor shall forthwith issue his warrant in favor of the auditor of state or the county treasurer who shall pay it from the general fund of the county, and the county auditor shall charge the amount so paid to the taxing district at the next semi-annual settlement period.

. . .

To distribute the cost of examination of each taxing district audited, the fiscal officer of each such taxing district may charge each fund examined with the pro rata share of such examination costs as each fund relates in part to the total examination expense. The bureau of inspection and supervision of public offices shall furnish the fiscal officer of such taxing district, at the conclusion of each examination, a statement showing the total cost of such examination and the percentage chargeable to each fund examined. The fiscal officer may distribute such costs to each fund. The cost of typing reports shall likewise be distributed and each fiscal officer shall be notified of the amount chargeable to the several funds individually. (Emphasis added.)

Upon examination of this statute, the question you raise appears to be directly answered. The problem is not whether the county welfare department is a taxing district, but whether the department's fund may be charged with the costs of an audit. R.C. 117.15 empowers the "fiscal officer" of the "taxing district" to charge each fund with the expense of examining that fund. In the case of a county, the fiscal officer is the county auditor, and under this section, then, the county auditor may impose the costs of examining the county welfare department to the department's fund. The statute is unambiguous in that regard.

Accordingly, it is my opinion, and you are advised that:

1. A county welfare department is an "office" of a "taxing district" for the purposes of R.C. 117.01, and is therefore subject to examination by the Auditor of State through the Bureau of Inspection and Supervision of Public Offices.

2. Under R.C. 117.15, the county auditor, as fiscal officer of the taxing district, may charge the fund of the county welfare department for the costs of an examination of that department conducted by the Bureau of Inspection and Supervision of Public Offices.