

680516.1

AUDITOR GENERAL: Frequency of Audits.

The determination of the frequency of audits is within the discretion of the auditor general, subject to direction of the legislature.

"As required by the legislature" means something other than "by law" such as by joint or concurrent resolution.

The auditor general is not required to follow the audit frequency in statutes passed either before or after the adoption of the Michigan Constitution of 1963.

No. 4637

May 16, 1968.

Honorable Albert Lee, C.P.A.
Auditor General
The Capitol
Lansing, Michigan

You have requested an opinion on the following questions:

1. How often is the Auditor General required to audit State agencies where no audit frequency is indicated in the statutes relating to the individual agencies?
2. Do the statutes in effect prior to the 1963 Constitution which specify how frequently audits shall be made apply subsequent to the new Constitution?
3. Is the Auditor General required to follow the audit frequency specified in the statutes subsequent to the new Constitution?

Article IV, Section 53 of the Michigan Constitution of 1963, in pertinent part provides:

"The legislature by a majority vote of the members elected to and serving in each house, shall appoint an auditor general, who shall be a certified public accountant licensed to practice in this state, to serve for a term of eight years. He shall be ineligible for appointment or election to any other public office in this state from which compensation is derived while serving as auditor general and for two years following the termination of his service. He may be removed for cause at any time by a two-thirds vote of the members elected to and serving in each house. The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

"The auditor general upon direction by the legislature may employ independent accounting firms or legal counsel and may make investigations pertinent to the conduct of audits. He shall report annually to the legislature and to the governor and at such other times as he deems necessary or as required by the legislature. He shall be assigned no duties other than those specified in this section."

As a general rule a constitutional grant of powers to an officer is usually self-executing, 16 C.J.S. "Constitutional Law" § 54, and similarly so is a provision imposing a duty on an officer. *People ex. rel. Clardy v. Balch*,

268 Mich. 196 (1934). Section 53 evidences a clear intent upon its face that the duty of conducting post audits and performance post audits be self-executing. There is an express distinction between the power to conduct such audits and the powers to employ independent accounting firms or legal counsel or to make investigations pertinent to the conduct of such audits, the latter powers being contingent upon the direction of the legislature. Further, the expressed prohibition that the auditor general be assigned no other duties than those specified implies quite clearly that the duties specified except as limited by the Constitution be self-executing.

Section 53 while requiring the auditor general to annually report to the governor and the legislature does not specify the frequency which he is to audit the various state agencies.

Accordingly, it is my opinion in answer to your question that insofar as there is an absence of specific legislative direction as to the frequency of audits that such determination is within the discretion of the auditor general.

In construing this section consideration must be given to the primary purpose of changing the mode of selection of the auditor general from election by the people to appointment by the legislature. That purpose, as set forth in the address to the people,¹ was to make the auditor general primarily responsible to the legislature. It is a fundamental principle in interpreting a constitutional provision to determine the intent of the framers of that constitution and the people adopting it, *Holland v. Clerk of Garden City*, 299 Mich. 465 (1941), and in determining that intent it is proper to refer both to the address to the people and the debates of the constitutional convention. *Burdick v. Secretary of State*, 373 Mich. 578 (1964).

Section 53 provides that the auditor general “. . . report annually to the legislature and to the governor and at such other times as he deems necessary or as required by the legislature. . . .” In construing this language in light of the primary purpose for adopting this section, i.e. making the auditor general primarily responsible to the legislature, it is necessary to conclude that implicit in the power of the legislature to require the auditor general to report to them as they deem necessary is the power to specify the frequency which he is to audit state agencies.

It is significant that the framers of the Constitution in giving to the legislature the power to require the auditor general to report to them as they deem necessary did not employ the often used phrase as “provided by law” but rather use the phrase as required “by the legislature.” When used in constitutions, the phrase “provided by law” has been construed to mean by statute. The use of this language effectuates the purpose of Section 53 in making the auditor general responsible to the legislature by removing an element of control from the executive branch of government.

“When a proposed law is introduced in the legislature, it is called a ‘bill.’ When a bill is passed and approved and becomes a law, it is called an ‘act.’” *Decher v. Secretary of State*, 209 Mich. 565, 576 (1920). When passed a

¹ Address to the People, Official Record, Constitutional Convention of 1961, Vol. II, p. 3355 et seq.

bill is presented to the governor and is subject to his veto power.² Thus it must be concluded that the enactment of a statute is a process involving both the legislature and the governor. *Lawson v. Kanawha County Court*, 80 W. Va. 612, 92 S.E. 786 (1917).

Accordingly, it is my opinion that while the legislature has the power to specify the frequency which the auditor general is to audit state agencies, "as required by the legislature" means something other than "by law" such as by joint or concurrent resolution. It follows in answer to your last two questions that the auditor general is not required to follow the audit frequency in statutes passed either before or after the adoption of the Michigan Constitution of 1963.

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680527.1

WORKMEN'S COMPENSATION ACT:

Week of Incapacity — meaning of

Weekly Benefits — computation and amount of

Under the Workmen's Compensation Act, a week of incapacity is a period of 7 consecutive days, not including the day of injury, in which an injured worker is incapacitated from earning a full week's wages. If an injured worker is incapacitated part of a day from earning full wages, during any week, he is incapacitated from earning full wages for that week.

While an injured worker's incapacity for work resulting from the injury is partial, he is entitled to workmen's compensation benefits based on a percentage of the difference between his average weekly wages before the injury and the average weekly wages which he is able to earn thereafter, subject to the maximum weekly rates provided in section 10(a) of part II of the Workmen's Compensation Act.

No. 4612

May 27, 1968.

Senator Sander M. Levin
State Capitol
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Your inquiry of May 25, 1967, with respect to the interpretation and administration of the Workmen's Compensation Act,¹ hereinafter referred to as the Act, poses two basic questions:

First, is an employee who is partially disabled as the result of an injury that arose out of and in the course of his employment entitled to compensation only after having accumulated "(a)n aggregate of 7 or more days of

² Article IV, Section 33, Michigan Constitution of 1963.

¹ P.A. 1912 (1st Ex. Sess.), No. 10, as amended (C.L. 1948, § 411.1 *et seq.* [M.S.A. 1960 Rev. Vol. and 1968 Cum. Supp. § 17.141 *et seq.*]).