

OFFICE OF THE ATTORNEY GENERAL



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Honorable Lowell Barron
State Senator
P. O. Box 65
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Gas Districts - Examiners of
Accounts - Audits - Public
Records - Municipalities

Code of Alabama 1975, § 41-5-6(8)
authorizes the Department of
Examiners of Public Accounts to
audit the records of the
DeKalb-Cherokee Counties Gas
District. Pursuant to Code of
Alabama 1975, § 11-43-85, the
Department of Examiners of Public
Accounts is to conduct an audit
of the books and accounts of the
City of Fort Payne upon request
from the mayor of the city, or
when directed to do so by the
Ethics Commission.

Dear Senator Barron:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

Does Code of Alabama 1975, § 41-5-6(8)
authorize the Department of Examiners of

Public Accounts to audit the records of the
DeKalb-Cherokee Counties Gas District and
the records of the City of Fort Payne?

FACTS, LAW AND ANALYSIS

Code of Alabama 1975, § 41-5-6 sets forth the powers of the Chief Examiner of the Department of Examiners of Public Accounts. Section 41-5-6(8) states that the chief examiner shall "Exercise any other power necessary to expedite the making of thorough and accurate audits of the accounts of all persons receiving or disbursing public funds; . . ."

Gas districts are provided for at Code of Alabama 1975, § 11-50-390, et seq. There are public corporations formed by several municipalities, and constitute a governmental entity. Northwest Alabama Gas District v. City of Guin, 569 So.2d 341 (Ala. 1990); Town of Hackleburg v. Northwest Alabama Gas District, 277 Ala. 355, 170 So.2d 355 (1965). A gas district is a public agency. Town of Hackleburg v. Northwest Alabama Gas District, supra. Thus, its funds are public funds.

Considering the public and governmental status of a gas district, it is the opinion of the Attorney General that § 41-5-6(8) authorizes the Department of Examiners of Public Accounts to audit the financial records of the DeKalb-Cherokee Counties Gas District.

Section 36-25-4(7) provides that it shall be the duty of the State Ethics Commission:

". . . whenever in its opinion a thorough audit of any person or any business should be made in order to determine whether this chapter has been violated, the commission shall direct the examiner of public accounts to have such audit made and a report thereof filed with the commission. The examiner of public accounts shall upon receipt of such directive immediately comply therewith."

Thus, the Department of Examiners of Public Accounts may also audit the accounts of a gas district when directed to do so by the State Ethics Commission under § 36-25-4(7).

The auditing of the accounts and financial records of a municipality is governed by Code of Alabama 1975, § 11-43-85 which provides:

"In cities and towns, the mayor, at least once a year, shall appoint an independent public accountant or the department of examiners of public accounts to conduct an examination in accordance with generally accepted auditing standards of all books and accounts of the city or town since the preceding examination and to make a full report thereof in writing, under oath, to be submitted to the council at its first meeting after the completion of such report, and the same shall be spread upon the minutes of the council. For his services said independent public accountant or the department of examiners of public accounts shall be paid such sum as may be agreed upon."

According to this provision, the Department of Examiners of Public Accounts is to conduct an audit of the books and accounts of a municipality upon request from the mayor of the municipality. Opinion of the Attorney General to Honorable Ronald L. Jones, Chief Examiner of Public Accounts dated April 18, 1988, Attorney General No. 88-00263.

Furthermore, if a mayor does not request an audit as outlined above, the State Ethics Commission could direct an audit by the Department of Examiners of Public Accounts pursuant to § 36-25-4(7).

CONCLUSION

Code of Alabama 1975, § 41-5-6(8) authorizes the Department of Examiners of Public Accounts to audit the records of the DeKalb-Cherokee Counties Gas District. Pursuant to Code of Alabama 1975, § 11-43-85, the Department of Examiners of Public Accounts is to conduct an audit of the books and accounts of the City of Fort Payne upon request from the mayor of the city, or pursuant to § 36-25-4(7) when directed by the Ethics Commission to do so.

Honorable Lowell Barron
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I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General
By:



JAMES R. SOLOMON, JR.
Chief, Opinions Division

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