

FILE

Subject

State Board
Civil Rights

ION CHIEF

Copy to _____

October 23, 1975

ATTORNEY GENERAL OPINION NO. 75- 408

Mr. Lawrence C. Wilson
Chairperson
Commission on Civil Rights
535 Kansas Avenue, 5th Floor
Topeka, Kansas 66603

Re: Department of Administration--Director of Accounts
and Reports--Auditing of Claims

Synopsis: In auditing any claim against the state presented for payment, the Director of Accounts and Reports must determine that such claim is due and unpaid, and in making that determination, the Director is entitled to exercise the right of the State as a creditor of such claimant to set-off against such claimed indebtedness such amounts as are known to him to be due to the State from such claimant in determining the final indebtedness which is due and unpaid.

* * *

Dear Mr. Wilson:

As chairperson of the Kansas Commission on Civil Rights, you request my opinion whether the Director of the Division of Accounts and Reports has the "authority and responsibility to withhold present and/or future payments of compensation and other monetary allowances which Commissioners collectively or individually might accrue in the performance of their duties as commissioners for the Kansas Commission on Civil Rights," and if so, under what circumstances is such withholding authorized.

The question arises out of the fact that claims were certified to the Director of Accounts and Reports for payment to members

Mr. Lawrence C. Wilson
Page Two
October 23, 1975

of the Commission for services performed by such members other than attending meetings of the Commission or duly authorized subcommittees thereof, as described fully in my earlier opinion, no. 75-279, to Mr. Lopez, Executive Director of the Commission. Requests have been made to those receiving such overpayments, we are advised, for repayment of the amounts improperly paid. In those instances where such requests have not been honored, the Director of the Division of Accounts and Reports has proceeded to withhold from amounts claimed to be due for attendance at Commission meetings, those amounts improperly paid previously.

K.S.A. 75-3731 states in pertinent part thus:

"The controller shall examine and audit every receipt, account, bill, claim, refund and demand on the funds in the state treasury arising from activities carried on by state agencies. He shall ascertain whether or not the obligation has been incurred in accordance with laws and rules or regulations promulgated under authority of law, and that the amount is correct and is unpaid. The controller shall not approve for payment any account, bill, claim, refund or demand on funds in the state treasury or issue his warrant on the treasurer of the state unless such claim is ordered by act of the legislature or was contracted against the state by a duly authorized officer or agent of the state in pursuance of law; and all accounts, bills, claims, or demands arising from such contracts shall, before being paid, be certified to by the state officer so contracting, that such claim was contracted by him for the state, under the authority of law, and that the amount claimed is correct, according to such contract, and is unpaid.

Claims for salaries or wages by employees shall be certified to by the administrative head of the state agency or his authorized representative, wherein such person or persons are employed, that such claims were contracted or incurred for the state, under authority of law, that the amounts claimed are correct and unpaid, and that the amounts are due as salaries and wages for services performed by the persons named." [Emphasis supplied.]

Mr. Lawrence C. Wilson
Page Three
October 23, 1975

Clearly the Director of Accounts and Reports has express authority to audit claims presented for payment. He may not authorize payment unless he determines that the amount claimed is due and unpaid. In making that determination, the Director is entitled to consider any reciprocal claim by the State which may be applied to reduce the amount of the claimed indebtedness. In this instance, for example, members of the Commission have previously been paid for their services in that capacity more than is authorized by law. Claims were submitted for services performed by Commissioners in addition to attendance at meetings of the Commission or subcommittees thereof. These claims were honored. Apparently, since the overpayments have been discovered, one or more members of the Commission have neglected or refused to repay the amounts of such overpayments, and yet have continued to submit claims for services currently being rendered in attendance at meetings of the Commission. The state is thus a creditor of such members of the Commission who have neglected or refused to repay the amounts due. "A fundamental right of any creditor is that of set-off." *Western Cas. and Surety Co. v. United States*, 109 F. Supp. 422 at 426 (Ct.Cl. 1953). In determining whether a claim submitted by a member of the Commission for services currently performed is due and unpaid, the Director of Accounts and Reports is entitled to exercise for the State its fundamental right of any creditor, to determine the amount of indebtedness actually owing, and in making that determination, may apply to any current claimed indebtedness or obligation owing to such member of the Commission any amounts due and owing to the State by such Commissioner as a result of past overpayments to such Commissioners for services performed by them in excess of that authorized by law.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. James R. Cobler, Director
Division of Accounts and Reports
Department of Administration
2nd Floor - State Capitol
Topeka, Kansas 66612

Mr. Anthony D. Lopez
Executive Director
Commission on Civil Rights
535 Kansas Avenue, 5th Floor
Topeka, Kansas 66603

Mr. Lawrence C. Wilson
Page Four
October 23, 1975

cc: Mr. Roger Lovett
Legal Counsel
Commission on Civil Rights
535 Kansas Avenue, 5th Floor
Topeka, Kansas 66603