

through any arrangement, management, funds or property." See *Arington v. City of Fairfield, Alabama, supra*. The making of a state grant to an organization which denies a person membership in that organization because of the person's sex clearly constitutes that kind of unlawful discrimination.

Therefore, it is our opinion, and you are advised, that both the Fourteenth Amendment to the United States Constitution and the Equal Rights Amendment to the Pennsylvania Constitution prohibit the disbursement of State funds to organizations conducting annual agricultural fairs when those organizations discriminate in membership on the basis of sex.

Very truly yours,

LILLIAN B. GASKIN  
*Deputy Attorney General*

VINCENT X. YAKOWICZ  
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OFFICIAL OPINION No. 75-44

*State Workmen's Insurance Fund—Audit by Insurance Commissioner.*

1. The Insurance Commissioner cannot properly audit the Fund which he is responsible for administering as a member of the Fund.
2. Article VIII, § 10 the Pennsylvania Constitution precludes charging any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth with the function of auditing that transaction after its occurrence.

Harrisburg, Pa.  
December 1, 1975

Honorable William J. Sheppard  
Insurance Commissioner  
Harrisburg, Pennsylvania

Dear Commissioner Sheppard:

We have your request for an opinion as to the legality of your serving the State Workmen's Insurance Fund in a dual capacity as a member of the board under the provisions of the Act of June 2, 1915, P. L. 762 § 2, 77 P. S. § 211, and conducting an audit of the fund under the provisions of the Act of May 1, 1933, P. L. 102 § 1, 77 P. S. § 345 in light of the provisions of Article VIII, § 10 of the Pennsylvania Constitution. It is our opinion, and you are hereby advised, that the Insurance Commissioner cannot properly audit the fund which he is responsible for administering as a member of the Fund.

The present wording of the Act of May 1, 1933, P. L. 102 § 1, as amended by the Act of July 26, 1961, P. L. 902, No. 387 is:

“The Insurance Commissioner shall every three years or oftener if deemed to be necessary, personally or by his deputy, actuary or examiners visit the State Workmen’s Insurance Fund and make a complete inspection and examination of the affairs of the State Workmen’s Insurance Fund to ascertain its financial condition and its ability to fulfill its obligations, whether the State Workmen’s Insurance Board in managing the Fund has complied with the provisions of law relating to the Fund, and any other facts relating to its business methods and management, and the equity of the Board’s plans and dealings with its policyholders.”

Article VIII, § 10 of the Pennsylvania Constitution provides in part:

“Any Commonwealth officer whose approval is necessary for any transaction relative to the financial affairs of the Commonwealth shall not be charged with the function of auditing that transaction after its occurrence.”

No similar section appeared in the original Constitution of 1874.

The Act of April 9, 1929, P. L. 343, Article IV, Section 402, 72 P. S. § 402 provided in part:

“It shall be the duty of the Department of the Auditor General to make all audits, which may be necessary in connection with the administration of the financial affairs of the government of this Commonwealth, with the exception of those of the Department of the Auditor General. It shall be the duty of the Governor to cause audits to be made of the affairs of the Department of the Auditor General.

“At least one audit shall be made each year of the affairs of every department, board, and commission of the executive branch of the government, . . .”

The Act of June 3, 1933, P. L. 1474, § 1 amended the second paragraph quoted above to read:

“At least one audit shall be made each year of the affairs of every department, board, except the State Workmen’s Insurance Board, and commission of the executive branch of the government, . . .” apparently because of the Act of May 1, 1933, P. L. 102 directing the Insurance Commissioner to conduct an audit of that fund.

The Act of March 18, 1971, P. L. 109, No. 4, § § 3 and 4 amending the Act of 1929 and implementing Article VIII, § 10 of the Constitution presently reads:

“Except as may otherwise be provided by law it shall be the duty of the Department of the Auditor General to make all

audits of transactions after their occurrence, which may be necessary, in connection with the administration of the financial affairs of the government of this Commonwealth, with the exception of those of the Department of the Auditor General. It shall be the duty of the Governor to cause such audits to be made of the affairs of the Department of the Auditor General.

“At least one audit shall be made each year of the affairs of every department, board and commission of the executive branch of the government, . . .” thus removing the exception pertaining to the State Workmen’s Insurance Fund.

“No officer of this Commonwealth charged with the function of auditing transactions after their occurrence shall approve the same transactions prior to their occurrence. . . .”

Thus, in addition to the duplication which your auditing of the Fund would constitute, the above provisions from the Constitution and implementing legislation actually preclude you from auditing the Fund.

Accordingly, we conclude and you are so advised that the Constitution and implementing legislation

- (1) supersede the Act of May 1, 1933, P. L. 102 § 1, as amended;
- (2) proscribe and preclude the Insurance Commissioner from auditing the State Workmen’s Insurance Fund; and
- (3) confer the power and impose the duty upon the Auditor General to conduct the audits of the Fund.

This matter has been discussed with the Counsel for the Auditor General who has expressed agreement herewith.

Very truly yours,

DONALD J. MURPHY  
*Deputy Attorney General*

VINCENT X. YAKOWICZ  
*Solicitor General*

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OFFICIAL OPINION No. 75-45

*Governor’s Council on Drug and Alcohol Abuse—State Adverse Interest Act—County Commissioners—State Employee.*

1. A county commissioner whose county receives funds from the Governor’s Council on Drug and Alcohol Abuse may not be a member of the Council.