

the additional authority to approve the job classifications of such temporary employees.

Very truly yours,

PAUL J. CAREY, JR.  
*Deputy Attorney General*

VINCENT X. YAKOWICZ  
*Solicitor General*

ROBERT P. KANE  
*Attorney General*

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OFFICIAL OPINION NO. 77-9

*Auditor General—Board of Commissioners of Public Grounds and Buildings—Article VIII, § 10 of the Pennsylvania Constitution—Administrative Code—Fiscal Code—Audit—Approval—Statutory Construction Act*

1. Inasmuch as the Auditor General is statutorily required to conduct audits of all transactions after their occurrence that have been approved by the Board of Commissioners of Public Grounds and Buildings, Section 404 of the Fiscal Code and Article VIII, § 10 of the Pennsylvania Constitution prevent him from pre-approving those same transactions.
2. Since the only function that the Board has is to pre-approve leases, it follows that the Auditor General is barred from serving as a member of the Board.

Harrisburg, Pa. 17120  
April 18, 1977

Honorable Al Benedict  
Auditor General  
Harrisburg, Pennsylvania

Dear General Benedict:

We have received a request for an opinion as to the legality of the Auditor General serving as a member of the Board of Commissioners of Public Grounds and Buildings in view of the proscription in Article VIII, § 10 of the Pennsylvania Constitution that a Commonwealth officer may not post-audit a transaction that he himself has previously approved. It is our opinion and you are hereby advised that this constitutional provision precludes the Auditor General from serving as a member of the Board.

The Board of Commissioners of Public Grounds and Buildings was created by The Administrative Code of 1929, Section 446, 71 P.S. § 156 and consisted of the Governor, the Auditor General and the State Treasurer. The powers and duties of the Board are set forth in Section 2413 of The Administrative Code, 71 P.S. § 643 as follows:

"The Board of Commissioners of Public Grounds and Buildings shall have the power, and its duty shall be:

(a) To approve or disapprove all proposed leases for offices, branch offices, rooms and accommodations;"

On the other hand, Section 402 of the Fiscal Code, 72 P.S. § 402 provides, in part, as follows:

"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."

The latter provision charges the Auditor General with the duty to audit after their occurrence all leases which have been approved by the Board of Commissioners of Public Grounds and Buildings. Thus, if both provisions were to be effective the Auditor General would be in the position of having to post-audit certain transactions which he has previously approved in his capacity as a member of the Board of Commissioners of Public Grounds and Buildings. His dual function in this regard would violate Article VIII, § 10 of the Pennsylvania Constitution (as approved by the electorate in 1968), which provides:

"The financial affairs of any entity funded or financially aided by the Commonwealth, and all departments, boards, commissions, agencies, instrumentalities, authorities and institutions of the Commonwealth, shall be subject to audits made in accordance with generally accepted auditing standards.

*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.*" (Emphasis added)

The second paragraph of this provision was implemented by an amendment to Section 404 of the Fiscal Code, 72 P.S. § 404, which provides:

"No officer of this Commonwealth charged with the function of auditing transactions after their occurrence shall approve the same transactions prior to their occurrence. Notwithstanding any provision of any law to the contrary, from and after the effective date of this act, the Auditor General shall not be required or empowered to pre-approve or pre-audit any transaction with respect to which said officer is empowered or required to conduct an audit after the transaction has occurred."

Inasmuch as the Auditor General is statutorily required to conduct audits of all transactions after their occurrence that have been approved by the Board of Commissioners of Public Grounds and Buildings, Section 404 of the Fiscal Code and Article VIII, § 10 of the Pennsylvania Constitution prevent him from pre-approving those same transactions. Since the only function that the Board has is to pre-approve leases, it follows that the Auditor General is barred from serving as member of the Board.

The alternative would be to have the Auditor General serve as a member of the Board, and thereby be precluded from post-auditing the Board's transactions. This would be an undesirable and absurd result because the Legislature has not presented an alternative method of post-auditing the Board's transactions (such as it has done in the case of the Auditor General's own office), and thus the transactions of the Board would remain without audit. Such an absurd result is not to be countenanced. Section 1922 of the Statutory Construction Act, 1 Pa. C.S. § 1922. Moreover, this conclusion is further supported by Section 1936 of the Statutory Construction Act, 1 Pa. C.S. § 1936. Section 402 of the Fiscal Code was amended by the Act of March 18, 1971, P.L. 110 and clearly requires the Auditor General to audit the financial transactions of all boards of the Executive Branch of Government (which would include the Board in question). There has been no similar re-enactment or amendment of Section 446 of The Administrative Code to show a legislative intent that the Auditor General should continue to sit as a member of the Board despite the fact that he may no longer post-audit the transactions. Accordingly, we may conclude that the Legislature intended to place the auditing function of the Auditor General (his primary function) ahead of his membership on the Board.

This office has reached a similar conclusion with regard to the Auditor General's approval of expenditures from the Cornwall Furnace Trust Fund. O.O. No. 64, Op. Pa. Atty. Gen. 182 (1973). In addition, the former Auditor General was of the legal opinion that the Constitution precluded him from serving as a member of the Board for the reasons we have set forth herein, and he therefore declined to do so.

We are sending copies of this opinion to the other members of the Board for their information.

Very truly yours,

W. W. ANDERSON  
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VINCENT X. YAKOWICZ  
*Solicitor General*

ROBERT P. KANE  
*Attorney General*