

Statutory Audit Threshold

Question: We're a pretty small city with no outstanding debt. Do we need to have an audit?

Answer: Totaling up all of your actual receipts from the budget recently submitted (excluding receipts represented by inter-fund transfers) your city is well over the threshold requirement for an annual audit. The threshold is found in K.S.A. 75-1122(a):

The governing body of every unified school district, the governing body of every recreation commission having aggregate annual gross receipts in excess of \$150,000 and the governing body of all other municipalities either [1] having aggregate annual gross receipts in excess of \$275,000 or [2] which has general obligation or [3] revenue bonds outstanding in excess of \$275,000 shall have its accounts examined and audited by a licensed municipal public accountant or accountants or certified public accountant or accountants at least once each year. . . .

Also, as a city of the third class required to be audited, you are also required to “annually determine the total cost to be incurred . . . in complying with the requirements of this act and shall identify the same in the budget of the city.”

* * * * *

Question: This Home Rule thing has been really bugging me as I cannot seem to get my head wrapped around it. But I have a question regarding the application of Home Rule with regards to audit requirements:

The State Constitution under Article 12 Section 5 gives all Cities powers of Home Rule. Which gives the City the power to opt out of certain state statute requirements through Charter Ordinance. <http://www.kslib.info/constitution/art12.html>

Kansas Statute 75-1122: Requires municipalities with gross receipts in excess of \$275,000 or which has general obligation or revenue bonds outstanding in excess of \$275,000 to have an audit each year.

My thoughts:

The way I read the Constitution is that Article 12 Section 5 is giving power to all Cities under Home Rule and they must pass a Charter Ordinance if they want to be exempted from certain state statutes. However those State Statutes “cannot be enactments of statewide concern applicable uniformly to all cities, other enactments applicable uniformly to all cities and

enactments prescribing limits on indebtedness.” So I am thinking that KSA 75-1122 actually is uniform to all Cities, therefore the City could not pass a Charter Ordinance exempting them from the State’s audit requirements. (Chaper 12 under KSA is Cities and Municipalities)

Let me know your thoughts or if I am missing something in my interpretation. Is there a standard definition of uniform enactments?

Thank you. I really appreciate any insight you can give.

Answer: Even the appellate courts seem to struggle with consistent interpretation of Constitutional Home Rule.

In the audit case the ability to opt out comes from the fact that some cities are not required to have performed an annual audit due to the dollar threshold – while other cities are required to have such an audit - making the law non-uniform. We are attaching a link to an AGO that discusses the very question that you raise. <http://ksag.washburnlaw.edu/opinions/1992/1992-093.pdf>

We hope that the attached is helpful. Thank you very much for writing and for your thoughts.

* * * * *