

IN THE CIRCUIT COURT OF COLE COUNTY MISSOURI

CLAY COUNTY COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 19AC-CC00055
	)	
NICOLE GALLOWAY, AUDITOR OF	)	
THE STATE OF MISSOURI,	)	
	)	
Defendant.	)	

**ORDER AND JUDGMENT**

On this 23rd day of October, 2019, the Court takes up the motion of the Missouri State Auditor's Office (the Auditor or SAO) to dismiss all counts in Plaintiff Clay County Commission's (Commission) First Amended Petition.

On March 26, 2019, a hearing was held in which argument from counsel was heard on the motion to dismiss. The allegations in the First Amended Petition are taken as true for the purposes of the motion.

On a motion to dismiss, the well-pleaded allegations of fact, and such inferences as are fairly deducible from those facts, are admitted. *Ward v. W. Cty. Motor Co., Inc.*, 403 S.W.3d 82, 84 (Mo. banc 2013). Conclusions of the pleader are not admitted. *Therrien v. Mercantile-Commerce Bank & Trust Co.*, 227 S.W.2d 708 (Mo. banc 1950).

The Commission's First Amended Petition makes three requests for declaratory relief, upon which the Commission's requests for injunctive and other relief is based. All requests made by the Commission appear to turn on a single question of law.

The Commission's primary complaint is that the State Auditor requested closed meeting minute records, and such a request is unconstitutional because it is indicative of a "performance audit" and not restricted to a financial post-audit of transactions.

This Court finds that the authority of the State Auditor is not limited to financial post-audits of county accounts, and that the State Auditor is authorized to conduct a "performance audit." Section 29.005(2) RSMo defines an audit to include "performance," and §29.185 RSMo specifically provides that "an audit may include either financial or performance audit objectives or one or more objectives from both types of audits." Thus, the State Auditor is not limited to performing a particular kind of audit when auditing a political subdivision under §29.230.2 RSMo.

This Court further finds that there is nothing *per se* unconstitutional about a records request. If there is content in such records that should not be disclosed, such an issue is properly raised in a proceeding to enforce an administrative subpoena.

Finally, the Commission's various counts in this case are dependent upon the proposition that the request for closed meeting minutes is an unconstitutional act, a conclusion this Court cannot draw on the facts alleged. Accordingly, the Commission has not pleaded a case that can grant the relief it requests.

THEREFORE, this Court finds that the Commission has failed to state a claim upon which relief may be granted as a matter of law, and this case is hereby dismissed with prejudice. Costs are taxed to Plaintiff.

SO ORDERED

A handwritten signature in black ink, appearing to read "Jon E. Beetem", with a stylized, flowing script.

Jon E. Beetem, Circuit Judge – Division I