

HOUSE No. 1391

The Commonwealth of Massachusetts.

EXECUTIVE DEPARTMENT, BOSTON,
January 24, 1911.

To the Honorable Senate and House of Representatives:

Under Chapter 220 of the statutes of 1910, the responsibility is placed upon the Governor and Council of examining the estimates of expenditures for the ensuing fiscal year, and the Governor is required to transmit these to the General Court, "with such recommendations, if any, as he may deem proper."

In order to pass upon any estimate for a department, board or institution in accord with this statute, the executive should have the right to ascertain whether or not the business of that department, board or institution is being conducted on an efficient business basis.

However, Chapter 220 does not invest the executive with authority to obtain the information which is requisite for arriving at a just conclusion; and there is no law under which the executive is at present empowered to obtain such information, as will be seen from the appended letter from the Attorney-General under date of January 21, 1911, to which your attention is respectfully directed.

It is, of course, impossible for the executive effectively to carry out the provisions of the statute referred to unless also empowered to ascertain the facts.

Speaker Walker, who framed this statute, is reported recently to have said:—

"My bill for the control of the State finances is doing just what I wanted it to do. It has placed the responsibility where it belongs—on the Governor—and made him realize it. He is now responsible to the people.

“ Before the bill was passed last year there was no real responsibility anywhere. It is now ‘ up to ’ the Governor. He must exercise control and be responsible for increase in expenditures and in the debt as well. If our accounting and auditing system is wrong it should be made right. The Governor must investigate. He cannot evade the responsibility. If he needs assistance, he must have it. If the Council does not prove an efficient body to investigate and advise (I had hoped it would), then experts must be employed to investigate and advise the Governor.”

It is not sufficient that the accounts of all expenditures be duly audited, or that the Auditor be authorized to furnish the executive with information respecting the financial operations of the Commonwealth. It is necessary that the executive be empowered to employ experts to study and investigate the departments of the State, to determine their business conduct and efficiency and to report thereon to the Governor and Council.

I therefore ask for such authority at once to investigate the business methods of the several commissions, boards, and institutions, and all other divisions and departments of the State which receive appropriations of public money, in order that the executive may determine whether these methods are in accord with the highest standards of modern business efficiency.

Such business investigation by or under the executive is an absolute necessity, if Chapter 220 of the Statutes of 1910 is to be intelligently complied with.

This is especially true at the present time, as the appropriations asked for by the several departments of the Commonwealth are increasing alarmingly; we are fully aroused to the financial danger of such a situation, and it is necessary to see at once what retrenchments, if any, are possible.

EUGENE N. FOSS.

The Commonwealth of Massachusetts.

DEPARTMENT OF ATTORNEY GENERAL, BOSTON,
January, 21, 1911.

His Excellency the Governor and the Honorable Council.

GENTLEMEN: — You have orally required my opinion upon the question of your authority, under the provisions of Statutes of 1910, chapter 220, to verify or to make investigation with reference to the estimates submitted to you by officers or boards having charge of any department, institution or undertaking which receives an annual appropriation of money from the treasury of the Commonwealth in accordance with such provisions, by examining and auditing the books and accounts or prescribing the methods of accounting of such officers or boards.

The statute to which you refer is as follows: —

SECTION 1. Every officer or board having charge of any department, institution or undertaking which receives an annual appropriation of money from the treasury of the commonwealth, including annual appropriations to be met by assessments, shall, annually, on or before the fifteenth day of November, submit to the auditor of the commonwealth statements in detail showing the amount appropriated for the current fiscal year and the amounts required for the ensuing fiscal year, with an explanation of the reason for any increased appropriation, and with citations of the statutes relating thereto, and with a statement of the expenditures for the current year and for each of the next preceding two years. The said estimates shall not include any estimates for special purposes or objects. The auditor of the commonwealth shall embody the said statements, with a like statement relating to his own department, in one document, which shall be printed, and shall be submitted on or before the first Tuesday in January of each year to the governor and council for examination, and the governor shall transmit the same to the general court with such recommendations, if any, as he may deem proper. The auditor shall also submit his estimates for the ensuing fiscal year for the ordinary and other

revenue of the commonwealth which shall be made a part of the document herein provided for. Copies of the document shall be distributed to the members of the general court.

SECTION 2. Officers, heads of departments, boards, commissions and trustees of institutions, who, in their annual reports, or otherwise, recommend appropriations from the state treasury for special purposes or objects, including appropriations to be met by assessments, in addition to the ordinary running expenses, shall submit estimates thereof in detail to the auditor of the commonwealth on or before the fifteenth day of November in each year, and he shall classify them and embody them in one document which shall be printed, and shall be submitted on or before the first Thursday in January of each year to the governor and council for examination, and the governor shall transmit the same to the general court with such recommendations, if any, as he may deem proper. He shall make recommendations as to how much should be raised by the issue of bonds and how much should be paid out of current revenue. Copies of the document shall be distributed to the members of the general court.

SECTION 3. The plans, estimates and specifications made in accordance with the provisions of chapter five hundred and twenty of the acts of the year nineteen hundred and seven, or of amendments thereof, relating to any improvement described in either of the documents aforesaid, shall at the same time be submitted to the governor and council.

SECTION 4. The auditor shall furnish to the governor and council such further information in regard to the revenue, expenditures and other financial operations of the commonwealth, and in such form as the governor may require.

SECTION 5. The governor may, in his discretion, transmit to the general court from time to time, with his recommendations, if any, thereon, particular items in either of the said documents, and may withhold other items for further investigation.

SECTION 6. Section twenty-six of chapter six of the Revised Laws, as amended by section six of chapter two hundred and eleven of the acts of the year nineteen hundred and five and section five of chapter five hundred and ninety-seven of the acts of the year nineteen hundred and eight, and all acts and parts of acts inconsistent herewith, are hereby repealed.

SECTION 7. This act shall take effect upon its passage.

It is to be observed that this statute provides that the Auditor shall in the first instance receive the estimates of State officers and boards and transmit them to the Governor and Council for examination, together with estimates for

ordinary and other revenue of the Commonwealth made by him, and that the only power vested in the Governor with respect to such estimates is that of making such recommendations as he may deem proper. It is also made the duty of the Auditor to furnish to the Governor and Council further information in connection with such estimates regarding the revenue, expenditures and other financial operations of the Commonwealth in such form as the Governor may require.

I am of the opinion that this statute does not confer upon the Governor and Council, or upon the Governor alone, any new or additional right to examine the expenditures or books of account of, or to prescribe the method of accounting which shall be used by, any State officer or board for the purpose of verifying or otherwise investigating the estimates so required. It is already provided by Statutes of 1908, chapter 597, section 4, that, —

Under the direction of the auditor, the supervisor of accounts shall direct and control all the accounts in all departments, and shall have full authority to prescribe, regulate and make changes in the methods of keeping and rendering accounts, and shall see that they are properly maintained, and that all items are correctly allocated between capital receipts and disbursements and operating revenue and expense. He shall establish in each department a proper system of accounts, which shall be uniform so far as is practicable. He shall establish a proper system of accounting for stores, supplies and materials, and may provide, where he deems it necessary, for a continuing inventory thereof. He may inquire into the methods of purchasing and handling such stores, supplies and materials by the departments, reporting to the auditor such changes as may in his judgment be deemed wise. He shall provide such safeguards and systems of checking as will insure, so far as is possible, the proper collection of all revenue due the commonwealth; and, where he deems it necessary, shall provide that forms and receipts shall be numbered consecutively, making the departments responsible for their use or cancellation, —

and by section 6, that, —

Whenever the word “departments” occurs in this act it shall be understood to include all departments, boards, commissions, institutions and officers of the commonwealth which incur expenses or to which income accrues, unless the context requires a different interpretation.

Under these provisions of law the Auditor is given full authority to prescribe, regulate and make changes in the methods of keeping or rendering accounts in all State departments, boards, commissions and offices, and to see, by audit or otherwise, that they are properly maintained; and there is nothing in the language of Statutes of 1910, chapter 220, to warrant a conclusion that by its enactment the Legislature intended to supersede or modify the authority of the Auditor under the statutes above cited by conferring upon the Governor and Council any supervision or control of public expenses or the methods of accounting therefor. Upon the contrary, it is the obvious intention of the latter statute that the estimates furnished to the Governor and Council in accordance with its requirements should be furnished through the Auditor, and that any additional information which may be required in the premises should be supplied by him. (§ 4.)

The general power of the Governor and Council to investigate the expenditures of State officers, boards or commissions was made the subject of an opinion by my predecessor to His Excellency the Governor, dated April 26, 1909 (Attorney-General's Report, 1909, p. 31), in which it was stated that:—

The Governor and Council may at any time examine such bills and vouchers in the Auditor's department, and thus familiarize themselves with the expenditures of the Commonwealth as much as they wish. They may take such measures as they see fit to ascertain that the money appropriated for the various institutions in the Commonwealth is being expended in the manner intended by the Legislature, and may make such personal investigation at the institutions themselves as may be necessary to make sure that this is being done; but they have no right to say that the money appropriated by the Legislature shall not be expended in the way authorized by it. There are various departments under the immediate supervision of the Governor, and in such departments it is his duty to see that the money appropriated is properly expended therein. There are other departments in which it is the duty of the head of such departments to see that money appropriated is properly expended, and for which the Governor is not responsible, and in which he has no authority except so far as may be necessary to see that the warrants are drawn in accordance with the appropriations authorized by the Legislature. Should the Governor and Council be of opinion that the finances of any institution are not being properly

and economically expended, the remedy would be by removal of the trustees or other officers over whom they have authority, in accordance with the statutes in such case made and provided. To this extent, under the Constitution and law of the Commonwealth the Governor and Council have authority to investigate the expenditures of any department, and to familiarize themselves as much as they see fit with any of the expenditures of the Commonwealth.

I am, therefore, forced to the conclusion that, in the investigation of the estimates submitted to the Governor and Council, under the provisions of Statutes of 1910, chapter 220, the Governor and Council are not authorized to audit the books or accounts of any officer or board whose estimates are before them for consideration, or to prescribe any method of accounting to be followed by such officer or board, and that such information as may be required with respect to matters of finance, in addition to that supplied by the estimates themselves, is to be furnished by the Auditor in such form as the Governor may require.

Very truly yours,

JAMES M. SWIFT,
Attorney-General.

