



The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON 02133-1008

RONALD MARIANO

Speaker

Room 356

OFFICE PHONE
(617) 722-2500

March 24, 2023

The Honorable Diana DiZoglio
Auditor of the Commonwealth
State House, Room 230
Boston, MA 02133

Dear Auditor DiZoglio,

I write to confirm receipt of your letter dated March 7, 2023, claiming an authority to compel a performance audit of the General Court, including the House of Representatives, and the email from your staff dated March 15, 2023, requesting a meeting to begin the audit process. Upon receiving your letter, I asked the Counsel to the House of Representatives to research the legality of your claim. Counsel's conclusion and legal analysis are enclosed. This letter is the House's final response to your request, and is based on a careful reading of our history and laws.

That your office has the legal authority to conduct an audit of the General Court is a claim entirely without legal support or precedent, as it runs contrary to multiple, explicit provisions of the Massachusetts Constitution, and is wholly unnecessary as the public currently has full and ready access to the House's financial information.

All of the House's accounts are available on the Commonwealth's Financial Records Transparency Platform ("CTHRU") webpage, which can be viewed at www.macomptroller.org/cthru. There are **no expenditures** of the House that are not posted on CTHRU and available for public inspection. Additionally, the House adopts rules for each legislative session, including a rule that requires all House accounts to be independently audited on an annual basis "*in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States,*" and that the audit report be filed with the House Clerk for public inspection.

Any performance assessment of the House of Representatives relative to its budgeting, hiring, spending and procurement, active and pending legislation, committee appointments, legislative rules, and its policies and procedures are the sole constitutional purview of the Members elected to the House of Representatives by the people of the Commonwealth. The suggestion that you have such authority violates basic separation of powers principles that the Supreme Judicial Court has called "fundamental...to our form of government," and interferes with what that same Court opined are the "exclusive" and "absolute" constitutional powers of the House of Representatives.

The people of the Commonwealth are the final arbiters of the performance of their duly elected representatives. As those duly elected representatives, we safeguard these constitutional protections not because of institutional jealousies but because the Massachusetts Constitution guarantees "the people of this Commonwealth...the sole and exclusive right of governing themselves," and that part of the Constitution which establishes the House of Representatives begins by declaring, "There shall be in the Legislature of this Commonwealth a representation of the people." For an executive officer to claim any authority over the General Court is to suggest an authority over the people themselves.

Therefore, given that your attempt to conduct a performance audit of the House of Representatives exceeds your legal authority and is unconstitutional, your request to meet to begin such audit is respectfully denied.

Sincerely,

A handwritten signature in blue ink that reads "Ronald J. Mariano". The signature is written in a cursive, flowing style.

Ronald J. Mariano
Speaker of the House



The Commonwealth of Massachusetts

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March 23, 2023

The Honorable Ronald J. Mariano
Speaker of the House
State House, Room 356
Boston, MA 02133

Dear Speaker Mariano,

On March 7, 2023, Auditor DiZoglio addressed an engagement letter to you declaring her intent to commence a performance audit of the General Court, including the House of Representatives, and claiming Section 12 of Chapter 11 of the General Laws as the legal basis for her authority. You forwarded me a copy of that letter and requested my opinion as to the Auditor's legal and constitutional authority to conduct such an audit. My conclusion is that the Auditor lacks any legal authority to conduct an audit of the General Court, or either branch thereof. Specifically, as applied to the House of Representatives, any such audit by the Auditor, an officer of the Executive Branch, would violate both Article X of Section 3 of Chapter 1 of Part the Second of the Constitution of the Commonwealth as well as Article XXX of the Declaration of Rights of the Massachusetts Constitution.

Prior to addressing in detail the fundamental constitutional and legal issues raised by the Auditor's claim, I want to first dispel the notion that the most recent audit of the House of Representatives was in 1922, as the Auditor has been publicly stating. As you know, the House is independently audited pursuant to House Rule 85A, and the reports for those annual audits are filed with the House Clerk and available to the public.

I presume that the 1922 document that the Auditor has been referencing is the Report of the Auditor for the Fiscal Year ending November 30, 1922, filed January 10, 1923. This report was not, nor does it reflect, an audit of the House of Representatives. In fact, we have no records of the Office of the State Auditor ever auditing the House of Representatives. A close inspection of the 1922 document itself, and of the historical context in which it was produced, makes it clear that this report is merely an accounting of the Commonwealth's revenue, expenses and debt, including those expenses of the Legislature and other branches and departments of the Commonwealth, including the Auditor's office itself. Clearly, such summaries of the Commonwealth's financial transactions do not amount to a performance audit in today's meaning. As referenced by then-Auditor Alonzo B. Cook in his introduction to the report, the task of summarizing the fiscal transactions of the Commonwealth in an annual report and all other duties "of the state auditor *except such as [they] relate to the auditing of the*

accounts” were transferred to the Commission on Administration and Finance pursuant to Chapter 545 of the Acts of 1922—just as the General Court previously transferred this basic accounting function from the Governor’s Council to the newly created Office of the Auditor of Accounts in 1849.

As for the Auditor’s assertion that Section 12 of Chapter 11 of the General Laws vests the State Auditor’s Office with the statutory authority to audit the General Court, this is incorrect for several reasons. The plain language of the statute omits any reference to the General Court, and Section 12 as a whole, reveals that an audit of the General Court could not have been contemplated. The term “department” as used in Section 12 encompasses only agencies and offices within the executive branch and not the other separate branches of government. The Auditor’s immediate predecessor, Auditor Bump, interpreted Section 12 likewise, previously stating publicly that “the Legislature is not an agency or department but rather another branch of government and, thus, subject to protections under the separation of powers doctrine.” Moreover, in a 1940 *Opinion of the Attorney General to the Auditor*, Attorney General Dever opined that the statute only applies to “units or divisions of the Commonwealth’s own **administrative, or similar, services**,” which is further evidence that Section 12 only applies to accounts within the executive branch or to those accounts necessary to administer the laws enacted by the General Court. (Emphasis added). The Auditor’s opinion of her office’s authority is one her predecessors do not share, as evidenced by the several, unsuccessful, attempts by multiple prior auditors to codify the very authority the Auditor now claim.¹

Even if one were to accept the incorrect notion that Section 12 grants the State Auditor’s Office with an implied statutory authority to audit the House of Representatives, such an argument would still ultimately fail because the exercise of this purported authority, absent the express consent of the House of Representatives, would violate the Massachusetts Constitution.

Article X of Section 3 of Chapter 1 of Part the Second of the Constitution of the Commonwealth vests the House of Representatives with certain unilateral powers that cannot be exercised or restricted by the executive branch, judicial branch, or even by a previous session of the General Court. Specifically, Article X provides the House with the “exclusive” and “absolute” authority to “settle the rules and orders of proceeding” in the House of Representatives.” The Supreme Judicial Court has defined this rule-making power as encompassing determinations as to its own rules and other internal matters, as distinct from “laws govern[ing] conduct external to the” House.

Furthermore, the Supreme Judicial Court has explained that where the General Court has enacted “statutes relating to internal proceedings” of the General Court “each House was essentially engaged in its rule-making function” pursuant to Article X. As such, the Supreme Judicial Court has held that such “procedural statutes are not binding upon the Houses” and that each “branch, under its exclusive rule-making constitutional prerogatives, is free to disregard or supersede such statutes by unicameral action.”

Thus, even if Section 12 brought the state legislative bodies within the purview of the State Auditor’s Office, the House of Representatives superseded any such statutory directive, most recently on February 1, 2023, when it adopted Rules for the 193rd General Court, which included, as it has since 1985, House Rule 85A which specifically requires the House Business Manager to procure “outside,

¹ See e.g. [House, No. 6](#) (1999); [House, No. 2](#) (1995); [House, No. 3](#) (1994); [House, No. 19](#) (1985); [House No. 19](#) (1983).

independent audits of House financial accounts.” House Rule 85A is a clear exercise of the House’s exclusive and absolute constitutional authority to determine its own rules of proceeding and overrules any statutory provision regarding audits of the inner workings of the House.

Finally, a “fundamental” and foundational principle “to our form of government” is the separation of powers, which is articulated in Article XXX of the Declaration of Rights of the Massachusetts Constitution. Article XXX provides:

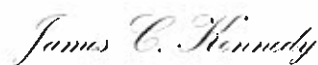
In the government of this commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men.

The Supreme Judicial Court has opined that, in comparison to the federal constitution and the constitutions of most other states, the Massachusetts version of separation of powers contained in Article XXX “is in a most explicit form, and on its face calls for a complete and rigid division of all powers among the three branches.” The Supreme Judicial Court has been clear that Article XXX “scrupulously” protects against the interference by one branch with the internal functioning of another branch.

As an officer of the executive branch, created by the Legislature and later elevated to the Constitution, the Auditor’s attempt to conduct a performance audit of the House including reviewing *“budgetary, hiring, spending and procurement information, as well as information regarding active and pending legislation, the process for appointing committees, the adoption and suspension of House and Senate rules and the policies and procedures of the House”* is indeed the kind of “interference by one department with the power of another department” that the Supreme Judicial Court has held Article XXX “scrupulously” protects against. This is particularly true where, as explained above, Section 12 does not expressly contemplate audits of a co-equal branch of government such as the House of Representatives, and where such audits would intrude upon the House’s own existing rules and its express, exclusive and absolute constitutional authority to determine its own rules in regard to internal matters.

To concur with the Auditor that her office has the authority to conduct an audit of the House of Representatives would require one to concur with the conclusion that a statute may, by implication, permit what the Constitution of the Commonwealth explicitly and repeatedly prohibits. Absent the express consent of the House of Representatives, any audit of the House of Representatives by the Office of the State Auditor would be an unconstitutional ultra vires act by the Office of the State Auditor.

Sincerely,

A handwritten signature in cursive script that reads "James C. Kennedy".

James C. Kennedy