

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

THE TRIBUNE PUBLISHING CO., d/b/a )  
COLUMBIA DAILY TRIBUNE )  
Petitioner, )  
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)  
THOMAS M. KEYES, STATE AUDITOR )  
OF THE STATE OF MISSOURI )  
Defendant. )

vs.

No. 29439

JUDGMENT

The facts in this case are not in dispute. Thomas Keyes was the State Auditor of the State of Missouri on or about the sixth day of June, 1977. The Auditor's office under the direction of Mr. Keyes' predecessor, Mr. Ashcroft, had performed an audit upon the State Board of Cosmetology in 1974. This audit was duly posted by the State Auditor in accordance with the applicable statutes. Page six of that audit report, and in particular paragraph C thereof, made reference and comments concerning expenses for travel incurred by inspectors of the State Board of Cosmetology.

On June 6, 1977, Donald L. Keough, reporter for the Columbia Tribune, requested, both verbally and by letter, that Mr. Keyes grant him an opportunity to examine time sheets, employee expense accounts, and records and documents from the State Board of Cosmetology, raw files, work papers and other written material as they pertained to that report issued by the then State Auditor, John Ashcroft, which was made on March 27, 1974. Mr. Keyes refused to allow Mr. Keough to examine the material stating that he was prohibited from so doing by reason of advice given in an Attorney General's Opinion (Lear, No. 200, Oct. 20, 1975).

On June 8, 1977, Plaintiff filed a lawsuit against the Defendant, Mr. Keyes, praying for declaratory judgment and injunction. Plaintiff prayed for the following relief:

1. An Order declaring and determining that all written materials retained by the State Auditor in connection with the 1974 audit of the Board of Cosmetology constitute a public record regardless of whether or not the material contained therein appears in the final audit.
2. An Order declaring and determining that all raw files, work papers and other written material and documents filed in the office of the State Auditor as a result of a statutory audit come within the meaning of the "Sunshine Law", Chapter 610, RSMo. 1969, and therefore should be available to the public for inspection and duplication.
3. Plaintiff prayed for an injunction against the Defendant, his servants, agents and employees, enjoining them from refusing to make available for inspection and duplication the records referred to above.
4. That Mr. Keyes be directed to make available to Mr. Keough and the Columbia Tribune all of the employees' time sheets, employees' expense accounts, records and documents of the office of the State Board of Cosmetology, raw files, work papers and other written materials accumulated and retained as a portion of the 1974 audit of the State Board of Cosmetology.
5. And for any such other relief which may be meet and just in the premises.

After some preliminary motions were filed in this cause and disposed of, an answer was filed by the Defendant, Mr. Keyes, on July 29, 1977. On September 27, 1977, the Judge of Division I was disqualified and the cause transferred to Division II. Further, on July 8, 1978, an evidentiary hearing was held by this Court.

At that hearing the uncontradicted evidence was that none of the original records of the Board of Cosmetology were in the possession of Mr. Keyes or the office of the Auditor. He possessed only photostatic copies and abstracts of the records requested and the originals were in the possession of the State Board of Cosmetology.

The evidence established that in connection with audits of state agencies, such as the State Board of Cosmetology, work papers include: an audit program prepared by an examiner who is an employee of the State Auditor which audit program includes audit tests to be performed. In addition, work papers may contain an examiner's notes with references to persons supplying information, responses to questionnaires obtained in confidence by the examiner, matters which may become the subject of prosecution, subjective opinions of examiners about persons and officials which may not have been substantiated, results of audit tests, information which is confidential under other statutes and which the State Auditor had access to because he believed his work papers to be confidential notations of current examiners to future examiners regarding audit tests to be conducted in the future, and other matters as appear in Defendant's Exhibit 2, "Examples of Information Contained in Workpapers." The work papers are actually prepared by the examiner.

The Court further finds that the disclosure of the work papers would hinder the State Auditor and his office in the performance of his constitutional and statutory duties. It is further found that, based upon the testimony of the State Auditor, Thomas M. Keyes, to make an agency aware by publication of such information of the audit tests which have been previously used and will be used in auditing that agency weakens the validity of the tests. Public access to work papers containing references to persons supplying information would deter them from making the information available. Disclosure of unverified subjective opinions of examiners which lead to disclosure by parties who are not expert in audit work could result in harm to unsuspecting persons. Public disclosure of potential criminal prosecution could hinder such prosecution by alerting the suspect. Public access to work papers could result in disclosure of matters which are confidential under other state statutes.

The Court further finds that personal comments by auditors on the competence of officials constitute a subjective opinion of the auditor. Such notations are necessary in the work papers so that future auditors may determine the extent of testing in that official's area of responsibility. Disclosure of such personal comments could result in unwarranted public ridicule of such persons.

The Court further finds that recognized governmental auditing practices require that the work papers sought by the Plaintiff be confidential.

The Court further finds that the State Auditor pursuant to his statutory duty reported in his findings the result of the examinations of the State Board of Cosmetology in the 1974 audit.

The issues as they developed in this case are as follows:

1. Plaintiffs contend that each and every piece of paper, report and memoranda which comes into the hands of the State Auditor in the course of an audit is a public document which should be subject to public examination and copying. This, Plaintiff argues, is mandated by the language of Section 29.270 RSMo. 1969. That section reads as follows: "All audit reports and reports of examinations made by the State Auditor shall be made a matter of public record." The Defendants answer that argument by saying that that particular section, portion of Section 29, must be read in pari materia with Sections 29.070 and 29.080, which prohibit examiners from revealing the condition of any office examined by that examiner or any other information secured in the course of any examination of an office to anyone, except the State Auditor.
2. Plaintiffs argue that even if the Defendant's legal contention is correct as set forth in number one above the provisions of the so called "Sunshine Law", Section 610 of RSMo. 1969 and in particular Sections 610.015 and 610.025 RSMo. 1969, give them the right to copy and inspect the data requested. The contention being that Section 610 RSMo. 1969 supercedes and takes precedence

over Sections 29.070 RSMo. 1969.

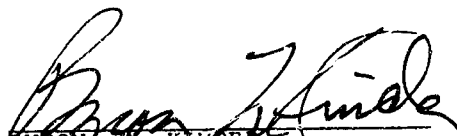
This matter has been under advisement by this Court for some length of time. This Court has deliberately delayed ruling on this particular case due to the fact that the issues raised here in this case are remarkably similiar to a case which I heard in February, 1978. That case was Sylvia Miller vs. Edgar H. Crist, Case No. 30004, 19th Judicial Circuit, Division Two. In that particular case Defendant sought to copy financial data concerning small loan companies which were in the possession of the Director of Finance. The Plaintiff, Ms. Miller, sought to examine or copy documents which the Director of the Division of Finance claimed were confidential. Ms. Miller argued that the Sunshine Law abrogated the confidentiality sections of the finance laws. This Court ruled in favor of the Commissioner of Finance and refused to issue a Writ of Mandamus directing him to allow Ms. Miller to examine the documents and copy them. Appeal was taken to the Missouri Court of Appeals, Western District.

Since the Miller case presented so many similar and legal and factual issues this Court has reserved ruling on this matter until the Appellate Court had had a time to address itself to the issues involved herein.

On the 23rd of April, 1979, the Missouri Court of Appeals, Western District, Sylvia Miller, Relator Appellate vs. Edgar H. Crist, individually and as Commissioner of Finance, State of Missouri, issued its opinion. Briefly stated the Kansas City Court of Appeals ruled that the right to inspect and copy documents based upon Sections 610.015 and 610.025 RSMo. 1969, are statutes of general application which apply to all government records with certain exceptions. The confidentiality statutes are specific statutes covering narrow categories of records. The general rule is that a statute dealing with a subject generally will rarely have the effect of repealing by implication either wholly or partially an earlier statute which deals with

a narrow subject matter in a particular way. A copy of the opinion of the Missouri Court of Appeals, Western District, referred to herein, is attached to this Judgment for the benefit of the parties to this cause. This Court holds that the opinion in the Miller case resolves the issues in this case.

THEREFORE, for the reasons set forth below, this Court enters its Order and Judgment in favor of the Defendant and against the Plaintiff and denies the relief prayed for herein, and dismisses this cause and assesses the costs against the Plaintiff.

  
BYRON L. KINDER,  
CIRCUIT JUDGE, DIVISION TWO  
19TH JUDICIAL CIRCUIT

Dated this 8th day of May, 1979.