

The question presented is whether the office of state auditor may perform its statutory audit duties when the elected state auditor is not a licensed CPA.

There is no express requirement in the code that the state auditor is a CPA. This is consistent with the other state offices. For example, there is no express requirement in the code that the attorney general is licensed to practice law. An examination of the statutory duties of the state auditor, however, leads to the conclusion that the state auditor cannot perform his or her statutory duties unless licensed as a CPA.

When there are multiple statutory provisions relating to a subject the courts will consider all of the statutes together in an effort to harmonize them. *State v. Lutgen*, 606 N.W.2d 312, 314 (Iowa 2000). If there is a conflict between a general and specific statute the specific statute would ordinarily control. *State v. Perry*, 440 N.W.2d 389, 390 (Iowa 1989). Statutes should be construed together even if enacted at separate times, are found in separate chapters, and do not refer to each other. 82 C.J.S. Statutes § 366, at 801-08 (1953).

Iowa Code § 11.2(1) requires the state auditor to annually “audit the state and all state officers and departments receiving or expending state funds, except that the accounts, records and documents of the treasurer of state shall be audited daily.” In addition, governmental subdivisions (with some exceptions for small entities) must be annually audited. These audits may be conducted, at the choice of the subdivision, by either the office of state auditor or a private CPA firm. Iowa Code § 11.6(1)(a)(2).

Thus the state auditor is required to audit – no surprise there. The next thing to do therefore is examine how the activity of auditing is regulated by Iowa law.

The practice of accounting is regulated by Iowa Code Chapter 542. The code creates an accountancy examining board (§ 542.4), sets forth the educational requirements to be a certified public accountant (§ 542.5), and the regulatory process to obtain and maintain a CPA license. As one would expect, there are also enforcement and penalty provisions for unlicensed individuals practicing accounting. (§§ 542.13-.15)

There are two categories of auditing defined by law. An “attest or attest service” describes an audit where the accountant has examined an organization’s records and can attest to the organization’s financial condition. Iowa Code § 542.1(a). A “compilation” is a service where the accountant has reviewed financial statements which provide the statement of the organization’s management as to its financial condition. Iowa Code § 542.8. In other words, the accountant vouches for the reliability of information provided in an attest service but not in a compilation service.

In addition, accountants prepare a “report” of an organization – a term that has a specific meaning as a writing “that states or implies assurance as to the reliability of the attested information or compiled financial statements and that includes or is accompanied by a statement or implication that the person or firm issuing the report has special knowledge or competence in accounting or auditing.” Iowa Code § 542.26.

So what is the practical difference in these two types of services performed by or in reports issued by licensed CPAs? The code tells us that:

Only a certified public accountant may issue a report on financial statements of a person, firm, organization, or governmental unit, or offer to render or render any attest service. Only a certified public accountant or licensed public accountant may render compilation services. This restriction does not prohibit such acts by a public official or public employee in the performance of that person’s duties;

Iowa Code § 542.13(1).

So, one has to be a CPA to issue a report or render attest service of a “governmental unit.” These are the audits which the state auditor performs for the state, its departments, and governmental subdivisions.

And one has to be a CPA or licensed public accountant (a lower tier of certification) to render compilation services. But there is an important exception for compilation services – a public official or employee in the performance of his

or her duties may render compilation services. This means, for example, a county recorder may report to the board of supervisors on the fees received by his or her office without being an accountant.

But the text makes clear this exception applies only to compilation services. The code reads “**this** restriction” immediately after the sentence requiring licensed individuals to perform compilation services. It does not say “**these** restrictions” to refer to both attest and compilation services.

Reading these statutory provisions together leads to the conclusion that an elected state auditor who is not a CPA cannot himself perform audits. The legislature has regulated the verb “to audit” and has required those who perform such services to be licensed. It has created a specific exception for public officials and employees to do a compilation of financial information but has not extended that same exception for reporting on or attesting to the financial condition of another organization.

The expression of an exception for public officials and employees to do compilation services implies a restriction against public officials and employees doing attest services or issuing audit reports (unless they are licensed).

“[L]egislative intent is expressed by omission as well as by inclusion, and the express mention of one thing implies the exclusion of others not so mentioned.”
Bennett v. Iowa Dep't of Nat. Res., 573 N.W.2d 25, 28 (Iowa 1997).

The question remains whether this restriction has any practical effect on the operation of the office of state auditor if the elected official is not a CPA. After all, no one thinks the elected official is going to personally be examining financial records or writing audit reports. The office of state auditor employs individuals who are CPAs. Couldn't these individuals do the professional accounting work and write the resulting audit reports?

There are two significant problems with this response. First, we all recognize that the various elected officials at all levels of government cannot possibly perform every statutory duty themselves. These elected officials must appoint deputies, assistants, and clerks to discharge their duties. These lower-ranking individuals derive their power to enforce the law from the authorization given by the elected

official. Even though the enforcement is practically done by the employee, the law recognizes that it is done in the name of the elected official. The agency relationship created between the elected official and his or her assistant is what gives the assistant's actions legitimacy.

If the office of state auditor is headed by a non-CPA this agency relationship is flipped. The elected state auditor would be forced to hire assistants to do a task which he personally cannot legally do. There is no precedent elsewhere in government where an elected official can continue in office when he or she is barred legally from performing a statutory duty and must rely on a subordinate to perform the duty. Indeed – in these circumstances can such an employee really be called a “subordinate”?

The second problem with this arrangement is also found in the regulation of accounting firms in the State of Iowa. The office of state auditor is licensed as an accounting firm. Accounting firms are regulated by Iowa law just as individual CPAs are.

The law recognizes that many accounting firms are national or international businesses. It would be impractical for every accountant in such a large organization to be licensed in every jurisdiction where the firm does business. Instead, the law provides for reciprocity among CPA licensure and focuses on the firm's operations in the State of Iowa.

Some accounting firms have organizational structures where they are owned in whole or part by another person or company which is not a CPA. This situation is called a “nonlicensee owner.” One could argue that a non-CPA elected state auditor would be such an owner. But this does not mean that such a person could supervise audits. Even when there is a nonlicensee owner, the person “responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report” must meet nationally recognized standards for performing those services – i.e. be a trained accountant. Iowa Code § 542.7(1)(d).

An accounting firm may not provide attest services unless the firm itself is licensed and the ownership of the firm complies with Chapter 542 and the rules adopted by

the board of accountancy examiners. Those rules require that the person in charge of an accounting firm be a CPA. Iowa Administrative Code 193A-8.1(5). In addition, individual CPAs cannot perform attest services in a firm which is out of compliance with these requirements. Iowa Code § 541.13(12).

Thus, a review of the regulatory environment for those who perform audits leads to the firm conclusion that an elected state auditor who is not a CPA cannot supervise the office's statutory audit functions. The question remains as to whether there is a ready mechanism in Iowa law for such a non-CPA to be challenged if he is elected to office.

The accountancy examining board, as has already been mentioned, has enforcement authority. The board could seek an injunction against the state auditor to prevent him from engaging in the unlicensed practice of accounting. Iowa Code § 542.14. The board could choose to focus its enforcement activities against the state auditor conducting audits of governmental subdivisions. At least in this circumstance there would be a ready answer for what to do: the governmental subdivisions have statutory authority to hire a private CPA or CPA firm to conduct their annual audits.

But for the state auditor's duty to audit state government agencies and departments there is no good answer. The governor has certain powers to suspend state officers who are unable to perform their duties. The legislature might consider impeachment. The attorney general could consider a removal action. None of these are attractive options for the public. In the time period when such a challenge was pending there would be significant doubt whether the state's books were being legally audited. This should not be understood as criticism of the skills or professionalism of the CPAs employed in these tasks - the question is whether their office is legally supervised by a person with the right credentials.

A court faced with such a challenge to the state auditor would have a difficult choice: follow the language of the law and disrupt the people's choice to elect an unqualified state auditor or ignore what the law plainly says. And there is no guarantee as to how a court would treat such a challenge. It would be very difficult for the unlicensed state auditor to demonstrate that the plain text of the law

authorized him or her to supervise attest audits and issue reports. The best argument that could be made would be that if the legislature wanted the state auditor to be a CPA it could have expressly done so. This is certainly true, but the logic of this would mean that there is no reason that the attorney general of our state would be required to be a lawyer – he could just hire lawyers to do everything.

There is also not a ready answer for the CPAs who work in the state auditor's office. These individuals would face the risk of professional discipline if they were working in a firm which was not properly supervised by a CPA. This would be a particularly unfair result for these dedicated professionals, but it appears there is no mechanism in the law to avoid it.

The public would be better served if the legislature looked at this issue and expressly stated whether or not the elected state auditor had to be a licensed CPA. The legislature, if it acted quickly, could even provide that such a requirement would only apply in the future and that any non-CPA auditor currently in office could continue to serve. Or, the legislature could make the requirement express and state that a person is not qualified for office unless a licensed CPA in good standing. This will be a policy choice best resolved in the legislature after all the competing policy issues are considered.