

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
SENECA COUNTY**

**JIM PETRO, AUDITOR OF STATE,
OFFICE OF THE AUDITOR**

CASE NUMBER 13-99-57

PLAINTIFF-APPELLEE

v.

OPINION

LINDA S. STOLDT, CLERK-TREASURER

DEFENDANT-APPELLANT

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court.**

JUDGMENT: Judgment affirmed.

DATE OF JUDGMENT ENTRY: May 3, 2000.

ATTORNEYS:

**KENNEDY, PURDY, HOFFEL,
GERNERT, LEUTHOLD & LEUTHOLD
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For Appellant.**

**BETTY MONTGOMERY
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**Columbus, OH 43215-3428
For Appellee.**

HADLEY, P.J. The defendant-appellant, Linda Stoldt (“appellee”) appeals the judgment of the Seneca County Court of Common Pleas finding her in contempt for failure to obey the administrative subpoena issued by the State Auditor. For the following reasons, we affirm the judgment of the trial court.

The pertinent facts and procedural history of this case are as follows. The appellant was, at all times pertinent herein, the clerk/treasurer for the Village of Attica located in Seneca County, Ohio. The appellee, Jim Petro (“appellee”) is the Auditor of State. As Auditor of State, the appellee is required to audit all local government offices once every two years. On March 19, 1999, the Auditor’s office sent the appellant a letter informing her of all the records she should prepare in anticipation of the upcoming 1997-1998 audit of the Village of Attica.

On March 30, 1999, the appellant informed the Auditor’s office that the records were not ready for audit. The Auditor’s office had anticipated this response and on that same day handed the appellant¹ a letter formally declaring the village to be unauditible, pursuant to R.C. 117.41. The issuance of this standard letter commenced the statutory 90-day period for the clerk-treasurer to present the

village's records in an auditable condition. The letter also referred the appellant to the Auditor's Local Government Services division for any assistance that might be needed to accomplish this task.

On June 30, 1999, at the end on the 90-day period, the appellant had not produced the required records. The Auditor's office made repeated attempts to contact the appellant to see what, if any, progress she had made and to ascertain when the appellant expected to produce the records. These attempts were all to no avail. On August 12, 1999, the Auditor's office served the appellant an administrative subpoena to produce the village's financial records by September 1, 1999. On August 30, 1999, the appellant replied, not by complying with the subpoena, but by sending the Auditor's office a letter informing them they had failed to follow the proper procedures. Specifically, the letter stated that the Auditor had failed to provide the appellant with a 30-day notice letter. The appellant offered to produce the records sometime between September 14 and 17, 1999.

On October 7, 1999,² the Auditor filed an application to enforce an administrative subpoena, pursuant to R.C. 117.18, in the Seneca County Court of Common Pleas. The trial court granted the Auditor's request for an expedited hearing, which was held on October 15, 1999. At the conclusion of the hearing,

¹ The Mayor and Council members also received copies of this letter.

the trial court found the appellant in contempt of the administrative subpoena and sentenced her to 30-days in jail and a \$250.00 fine. The trial court allowed the appellant the opportunity to purge herself of the contempt charge by producing the documents within two weeks.³ It is from this judgment that the appellant now appeals, asserting one assignment of error.

Assignment of Error

The trial court erred by finding that appellant, Linda S. Stoldt was in contempt of the administrative subpoena issued by Jim Petro, Auditor of State.

The appellant contends that the Auditor's office had failed to follow its own procedures and regulations and therefore, she could not have been found in contempt for failure to comply with an improper subpoena. For the following reasons, we disagree.

There is no dispute that in March of 1999, the Village of Attica was declared unauditale. R.C. 117.41 sets forth the procedure to be followed when a public office is declared unauditale.

If the auditor of state or a public accountant auditing a public office determines that the office cannot be audited because its accounts, records, files, or reports have been improperly maintained, the person making the determination may declare the public office to be unauditale. A public office declared to

² The appellant had still not produced the required records; over 180 days after the initial request had been made.

³ The appellant produced some of the records, but failed to fully comply with the subpoena. The appellant was subsequently removed from office in a separate court action filed by the Auditor of State and ordered to return all the village records and property.

be unauditible shall follow the procedures established by the auditor of state to bring its accounts, records, files, or reports into an auditible condition. If the public office fails to make reasonable efforts and continuing progress to brings its accounts, records, files, or reports into an auditible condition *within ninety days after being declared unauditible*, the auditor of state shall request legal action pursuant to section 117.42 of the Revised Code to compel the public office to bring its accounts, records, files, and reports into an auditible condition. (Emphasis added.)

The Village of Attica was declared unauditible on March 30, 1999 and the appellant received the 90-day letter that same day. Approximately 125 days later, on August 12, 1999, the appellant had still not brought the records of the village into an auditible condition, so the appellee commenced legal action, pursuant to R.C. 117.41 and 117.42. The letter explicitly stated “[f]ailure to make reasonable efforts and continuing progress to bring your accounts, records, files, and reports into an auditible condition within the ninety (90) day period could result in legal action pursuant to Section 117.42, Ohio Revised Code.”

The appellant claims that the Auditor’s office was required to give her an additional 30-day⁴ notice before they commenced legal action. The appellant cites a handout she received at a training session conducted by the Auditor’s office in 1997 as support for her claim. The handout consists of an outline of the topics that were covered during the session. Nothing in the handout explicitly states that

⁴ It must be noted that the Auditor’s office gave the appellant 125 days before they filed the subpoena. An additional 64 days passed before the contempt hearing was held. In total, the appellant was given approximately 189 days to bring the records into an auditible condition.

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the Auditor is required to give the appellant a 30-day letter prior to commencing legal action. The appellant has failed to provide this Court with any additional evidence to support her contention. Therefore, we find the appellant's contention unfounded.

Accordingly, the appellant's assignment of error is not well taken and overruled.

Having found no error prejudicial to the appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment affirmed.

WALTERS and BRYANT, JJ., concur.

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