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OPINION	:	No. 84-406
	:	
of	:	<u>DECEMBER 11, 1984</u>
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THE HONORABLE ROBERT H. PHILIBOSIAN, DISTRICT ATTORNEY, COUNTY OF LOS ANGELES, has requested an opinion on the following question:

Does the Los Angeles County Grand Jury have the authority to conduct an audit of the Office of the Marshal of the Municipal Courts in said county?

CONCLUSION

The Los Angeles County Grand Jury has the authority to conduct an audit of the Office of the Marshal of the Municipal Courts in said county.

ANALYSIS

The present inquiry is whether the Los Angeles County Grand Jury is authorized to conduct an audit of the Office of the Marshal of the Municipal Courts in that county.

Penal Code section 925 provides:

"The grand jury shall investigate and report on *the operations, accounts, and records of the officers, departments, or functions of the county* including those operations, accounts, and records of any special legislative district or other district in the county created pursuant to state law for which the officers of the county are serving in their ex officio capacity as officers of the districts. The investigations may be conducted on some selective basis each year, but the grand jury shall not duplicate any examination of financial statements which has been performed by or for the board of supervisors pursuant to Section 25250 of the Government Code; this provision shall not be construed to limit the power of the grand jury to investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county. The grand jury may enter into a joint contract with the board of supervisors to employ the services of an expert as provided for in Section 926." (Emphasis added.)¹

¹ Government Code section 25250 provides:

"At least biennially the board of supervisors shall examine and audit, or cause to be audited, the financial accounts and records of all officers having responsibility for the care, management, collection, or disbursement of money belonging to the county or money received or disbursed by them under authority of law. The audit shall encompass the immediately preceding two-year period, or any portion thereof not included in a prior audit. This financial examination or audit may be performed in coordination with the investigations conducted by the grand jury under Section 925 of the Penal Code, or the board of supervisors may resolve to accept reports delivered pursuant to Section 933 of the Penal Code in lieu of its own separate examination if such reports are found to fulfill some or all of the requirements of this section. In connection with the requirements of this section and section 25253, the board of supervisors may employ the services of an independent certified public accountant or licensed public accountant to perform an examination of the financial statements in accordance with generally accepted auditing standards."

Penal Code section 928 provides:

"Every grand jury may investigate and report upon *the needs of all county officers in the county*, including the abolition or creation of offices and the equipment for, or the method or system of performing the duties of, the several offices. Such investigation and report shall be conducted selectively each year. The grand jury shall cause a copy of such report to be transmitted to each member of the board of supervisors of the county." (Emphasis added.)

The grand jury is a judicial body whose authority, except as provided by the constitution (cf. Cal. Const., art. I, §§ 14, 23), is subject to legislative enactment. (*Fitts v. Superior Court* (1936) 6 Cal.2d 230, 241; *Gillett-Harris-Duranceau & Associates, Inc. v. Kemple* (1978) 83 Cal.App.3d 214, 221; 64 Ops.Cal.Atty.Gen. 900, 901 (1981).) While its scope of investigation (*Monroe v. Garrett* (1971) 17 Cal.App.3d 280) and audit powers (30 Ops.Cal.Atty.Gen. 125 (1957)) are broadly construed (56 Ops.Cal.Atty.Gen. 41, 43 (1973)), the grand jury has no inherent investigatory powers beyond those granted by the Legislature (*Allen v. Payne* (1934) 1 Cal.2d 607; *Board of Trustees v. Leach* (1968) 258 Cal.App.2d 281, 285; 46 Ops.Cal.Atty.Gen. 144 (1965)).

With respect, then, to the express terms of Penal Code section 925, *supra*, the specific issue would be whether the office of the marshal is included within "the officers, departments, or functions of the county." The Marshal of Municipal Courts, Los Angeles County, is selected, appointed, and subject to discharge by majority vote of the aggregate number of judges of all the municipal courts in the county, and is subject to such regulations governing the organization, policies, rules, and regulations for the conduct of said office as may be prescribed by majority vote of said judges. (Gov. Code, § 72643.)² The principal duty of the marshal is to attend the court. (§§ 71264, 72642, 72651; 66 Ops.Cal.Atty.Gen. 229, 230 n. 1 (1983).) Thus, a marshal is an officer, sometimes referred to as an attache, of the municipal court. (66 Ops.Cal.Atty.Gen., *supra*, at 230.)

It may be argued, therefore, that the activities of the marshal are an inseparable part of the operations of the municipal court. All courts, including municipal courts, are provided for in article VI of the California Constitution and collectively constitute the independent branch of *state* government through which the judicial power of the state is exercised. (*Sacramento & San Joaquin Drainage Dist. v. Superior Court* (1925) 196 Cal. 414, 432; see *Millholen v. Riley* (1930) 211 Cal. 29, 34; 56 Ops.Cal.Atty.Gen. 320, 321 (1973).) Hence, the constitution and regulation of municipal courts are state

² Except as hereinafter otherwise expressly indicated, all section references are to the Government Code.

rather than municipal affairs. (*Wilson v. Walters* (1941) 19 Cal.2d 111, 119; *Slavich v. Walsh* (1947) 82 Cal.App.2d 228, 234; *Nicholl v. Koster* (1910) 157 Cal. 416, 418-420; 53 Ops.Cal.Atty.Gen. 192, 194 (1970); and see 64 Ops.Cal.Atty.Gen. 261, 270 (1981).)

Thus, the constitution (art. VI, § 5, subd. (a)) provides that the *Legislature* shall provide for the organization and prescribe the jurisdiction of municipal courts, and prescribe for each such court the number, qualifications, and compensation of judges, officers, and employees. (See also § 72000.) The purpose of this provision is to leave the details of court structure to the Legislature. (*Martin v. County of Contra Costa* (1970) 8 Cal.App.3d 856, 862.) Nothing in these observations would, of course, preclude the Legislature from providing that the municipal court is subject to the auditing power of the grand jury (which, as previously noted, is itself a judicial body). It is suggested, however, that the power of audit with respect to the municipal court³ is otherwise expressly provided. Section 71383 provides:⁴

"The accounts of each municipal court and justice court shall be audited at least biennially. The *county auditor shall supply the State Controller*, with a certified copy of each such audit. If the accounts of any municipal or justice court are not audited biennially, the State Controller may audit them. If such audit is requested by the board of supervisors the cost of such audit shall be paid from the general fund of the county in which such court is situated." (Emphasis added.)

With respect to management audit of the courts, broad powers are conferred by the constitution itself upon the Judicial Council. (Cal. Const., art. VI, § 6; see § 68500 et seq.; 53 Ops.Cal.Atty.Gen. 192, 194 (1970).)⁵

Nevertheless, the county is not without responsibility and authority respecting the office of marshal. In Los Angeles County, the Board of Supervisors must provide suitable quarters including heating, lighting, janitorial services, furniture, books, and supplies necessary for carrying out the duties of the marshal. (§§ 72652, 71002,

³ It is expressly noted that the subject of this opinion does not concern in any respect whatever the adjudicatory function of the court.

⁴ Amended by Statutes of 1984, chapter 980, section 3, effective January 1, 1985, in respects not here pertinent.

⁵ In 53 Ops.Cal.Atty.Gen., *supra*, 195, the power of the grand jury to inquire into the accounts and records of all the officers of the county was cited in the context of the courts of record.

68073.)⁶ Further, the salaries of the judges, clerks, marshals, and other officers or attaches of the municipal courts must be paid by the county in which the court is situated out of the salary fund or, if there is none, the general fund of the county. (§§ 71220, 72651; 56 Ops.Cal.Atty.Gen., *supra*, 321.) In addition to their salaries, the marshal, assistants, and deputies of municipal courts, except custodians, are allowed their actual and necessary incidental expenses incurred in the actual performance of their duties, including traveling expenses. (§§ 72111, 72651.)

Upon such considerations it has been determined that officers and attaches of the municipal court may be considered for many purposes as employees of the county. (*Martin v. County of Contra Costa*, *supra*, 8 Cal.App.3d at 860; *Villanazul v. City of Los Angeles* (1951) 37 Cal.2d 718, 722-723; 64 Ops.Cal.Atty.Gen., *supra*, 270; 56 Ops.Cal.Atty. Gen., *supra*, 324-325.) We have previously concluded that the Marshal of Municipal Courts, County of San Diego, is one of the officers of the county subject to audit by the grand jury within the provisions of Penal Code section 925. (56 Ops.Cal.Atty.Gen. 41, *supra*.)⁷ It must be presumed that this interpretation has come to the attention of the Legislature, and if it were contrary to the legislative intent that some corrective measure would have been adopted over the course of the intervening decade. (*California Correctional Officers' Assn. v. Board of Administration* (1978) 76 Cal.App.3d 786, 794; 67 Ops.Cal.Atty.Gen. 23, 26-27 (1984).) Consequently, it is concluded that the Los Angeles County Grand Jury is authorized to conduct an audit of the Office of Marshal of the Municipal Courts in that county.

⁶ The office of marshal in Los Angeles County is not limited to any district but is county-wide. Thus, there is one marshal for all municipal courts established in the judicial districts in that county. (§ 72640.)

⁷ Penal Code section 925 then provided:

"The grand jury shall annually make a careful and complete examination of the accounts and records, especially those pertaining to revenue, of *all the officers of the county*, and report as to the facts it has found, with such recommendations as it may deem proper and fit." (Emphasis added.)

Thereafter, the words italicized were amended to include "the officers, departments, or functions of the county." (See § 925, *supra*.) While the word "all" was omitted, we perceive no legislative intent to limit the scope of officers affected.