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## Legislative Powers

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Mooney: McCall v Barrios-Paoli  
**LEGISLATIVE POWERS**

*N.Y. CONST. art. III, § 1:*

*“The legislative power of this State shall be vested in the Senate and Assembly.”*

*N.Y. CONST. art. V, § 1:*

*“[T]he legislature may assign [the State Comptroller] supervision of the accounts of any political subdivision of the state.”*

**COURT OF APPEALS**

McCall v. Barrios-Paoli<sup>1</sup>  
(decided April 1, 1999)

Appellant, the Agencies of New York City (Appellant hereinafter “the City”), was compelled to comply with nonjudicial subpoenas from the State Comptroller in his pursuit of conducting performance audits.<sup>2</sup> The City appealed, claiming that the Comptroller lacked authority to inquire into the management and operations of the agencies.<sup>3</sup> The Court of Appeals of New York affirmed the decisions of the Supreme Court and the Appellate Division, holding that the New York State Constitution<sup>4</sup> gives the State Comptroller the authority to conduct performance audits of political subdivisions.<sup>5</sup> In June 1991, the Deputy Comptroller of New York State and the City entered into a Memorandum of Understanding intended to “formalize and commit to writing the performance audit protocol . . . practiced by the New York State

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<sup>1</sup> 688 N.Y.S.2d 107 (1999).

<sup>2</sup> *Id.* at 112.

<sup>3</sup> *Id.*

<sup>4</sup> N.Y. CONST., art. V, § 1. This section provides “the legislature may assign [the State Comptroller] supervision of the accounts of any political subdivision of the state.” *Id.*

<sup>5</sup> *McCall*, 688 N.Y.S.2d at 111.

Deputy Comptroller's Office and all audited New York Agencies."<sup>6</sup> Between December 4, 1996 and April 11, 1997, the Comptroller's Office sent out engagement letters to six city agencies.<sup>7</sup> The audits proposed to investigate compliance with the law, the efficiency and accuracy of data gathering systems, and the allocation of resources.<sup>8</sup> Specifically, the Comptroller sought to examine:

the Department of Finance's Industrial and Commercial Incentive Program to determine whether real property tax benefits were being provided in accordance with the law;<sup>9</sup>

the Police Department (NYPD) to assess the on-line complaint system for reporting crime, complaint statistics, the methodology used for reporting arrests, and the internal control systems in place for recording, compiling and reporting statistical information;<sup>10</sup>

the Human Resources Administration to obtain information about the adequacy and efficiency of its systems for gathering data and reporting statistics on the number of people receiving public assistance who found employment;<sup>11</sup>

the Taxi and Limousine Commission and the NYPD's monitoring of medallion and for-hire vehicle drivers to determine whether summonses were being properly issued and tracked and evaluated the effectiveness of the Commission's program for identifying unsafe drivers;<sup>12</sup>

the Department of Health to obtain information about eating establishments inspections

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<sup>6</sup> *Id.* at 110.

<sup>7</sup> *Id.* at 111.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *McCall*, 688 N.Y.S.2d at 111.

<sup>12</sup> *Id.*

and determine the economy and efficiency with which inspection were being performed;<sup>13</sup>

the Department of Health to evaluate the effectiveness of policies, procedures, and controls for ensuring security over birth and death records and obtaining information related to maintenance of these records to assess the feasibility of consolidation or coordination of state and city vital functions;<sup>14</sup>

the Administration of Children's Services to assess the adequacy of caseworker hiring, training, and supervision and assertion compliance with State Regulations concerning these functions.<sup>15</sup>

On appeal, the city argued that the Constitution did not give explicit authority for performance audits. The City's argument focused on one specific word, "accounts," in the Constitution.<sup>16</sup> The city stated "the word 'accounts' means both in the abstract and in the context, only financial audits were intended."<sup>17</sup>

The court started its analysis by stating the State has far-reaching ability from programs and services of its political subdivisions, each year appropriating significant public monies to local governments.<sup>18</sup> Moreover, the court emphasized that the Chief Fiscal Officer is a vital part of the constitutional machinery for assuring accountability in the expenditures of those funds. Hence, in furtherance of the unique, fundamental duty to superintend the fiscal concerns of the state, the Comptroller conducts audits of the state's political subdivisions.<sup>19</sup>

The Court Appeals then referred to the State Constitution<sup>20</sup> and state statutes<sup>21</sup> to show where the Comptroller's power is derived.<sup>22</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 112.

<sup>15</sup> *McCall*, 688 N.Y.S.2d at 112.

<sup>16</sup> N.Y. CONST., art V, §1. *See supra* note 4 and accompanying text.

<sup>17</sup> *McCall* at 112.

<sup>18</sup> *Id.*

<sup>19</sup> *Blue Cross & Blue Shield v. McCall*, 89 N.Y.S.2d 160, 164 (1996).

<sup>20</sup> N.Y. CONST., art V, § 1. *See supra* note 4 and accompanying text.

Article IV, section 1 of the New York Constitution, confers on the Legislature the power to delegate to the Comptroller “supervision of the accounts of any political subdivision of the state . . . and administrative duties as may be incidental to the performance of these function.”<sup>23</sup> In greater detail the General Municipal Law § 33 states, “the Comptroller shall cause the accounts of all Officers of each Municipal Corporation . . . to be inspected and examined by one or more examiners of municipal affairs for such periods as the Comptroller deems necessary. On every such examination, inquiry shall be made as to the financial condition and resources of the Municipal Corporation . . . and into the method an accuracy of its account.”<sup>24</sup>

In its decision, the Court acknowledged that neither the Constitution nor the statutes specify what type of audit the Comptroller can conduct.<sup>25</sup> However, the Court was not persuaded by the City’s argument supporting the narrow reading of the word accounts.<sup>26</sup> It states that both the “Constitution permits the delegation to the Comptroller of the authority to conduct performance audits of political subdivisions, and that in the exercise of that authority the Legislature has empowered the Comptroller to conduct such audits of City agencies.”<sup>27</sup>

Finally, the court looked to the constitutional history to show that in 1925<sup>28</sup> there was no intent to limit the Comptroller’s role.<sup>29</sup> The 1925 Annual Report of Comptroller<sup>30</sup> states “the examination, investigation and audit of municipal fiscal accounts and affairs . . . to see that controlling statues observed, that the local activities were economically and efficiently administered, to call

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<sup>21</sup> N.Y. GEN. MUNC. § 33 and § 34.

<sup>22</sup> *McCall*, 688 N.Y.S.2d 107.

<sup>23</sup> N.Y. CONST., art V, § 1.

<sup>24</sup> N.Y. GEN. MUNC. § 33.

<sup>25</sup> *McCall*, 688 N.Y.S.2d 107.

<sup>26</sup> *Id.* at 113.

<sup>27</sup> *Id.*

<sup>28</sup> The constitution was amended for the first time in 1925 to describe the Comptroller’s responsibility with respect political subdivisions.

<sup>29</sup> *McCall*, 688 N.Y.S.2d at 113.

<sup>30</sup> 1926 N.Y. Legis Doc No. 8, part 1 at xviii.

attention to and correct illegal and irregular practices, and to advise improvements where possible.”<sup>31</sup> Again in 1938,<sup>32</sup> the constitution retained the Comptroller’s responsibility for examining “accounts for the purpose of ascertaining the accuracy of the records and the legality of the payment of claims, together with such other investigations as may be necessary in order to determine the efficiency of administration in so far as the fiscal affairs of such municipality are concerned.”<sup>33</sup> For the foregoing reasons, the Court of Appeals concluded that the Comptroller has the authority to conduct performance audits of political subdivisions of the state.

In sum, the New York Constitution gives the Comptroller the legal right to conduct performance audits on the municipal governments of the states.<sup>34</sup> Similarly, the United States Constitution gives the Government Accounting Office, through delegation by Congress,<sup>35</sup> the power to conduct “economy and efficient audits”<sup>36</sup> to make sure the Federal monies are being

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<sup>31</sup> *Id.*

<sup>32</sup> In 1938, there was a Constitutional Convention that produced the current New York Constitution.

<sup>33</sup> *McCall*, 688 N.Y.S.2d at 107.

<sup>34</sup> *Id.* at 107.

<sup>35</sup> U.S. CONST. art I, § 8.

<sup>36</sup> Government Auditing Standard § 2.6.

used properly. Both the State Comptroller of New York and the Governmental Accounting Office conduct performance audits in reliance on their delegated duty.

*John Mooney*