

AUDITOR'S STATEMENT REGARDING RECENT COURT DECISION CONFIRMING THE CONFIDENTIALITY OF THE AUDITOR'S WORKING PAPERS

On September 29, 2021, the House Investigative Committee commanded the State Auditor to produce confidential working papers relating to two specific audits. The Auditor responded that the Auditor's working papers were confidential by statute. The committee refused to accept this answer. Today, Circuit Court Judge Lisa W. Cataldo confirmed the Auditor's position by quashing the subpoena duces tecum issued by the House Investigative Committee as to those confidential audit papers. (Two public documents covered by the subpoena will be released.)

The House Investigative Committee had subpoenaed working papers related to a 2019 audit of the Department of Land and Natural Resources' Special Land and Development Fund and a 2021 audit of the Agribusiness Development Corporation; contracts related to both audits; and the Office of the Auditor's *Manual of Guides*, i.e., the office's internal policies and procedures.

"The Court confirmed what we have maintained throughout the House committee's investigation – that audit working papers are confidential by law and need to be protected," said State Auditor Les Kondo. "The confidentiality statute's plain language and the Legislature's intent are unambiguous: 'The auditor shall not be required to disclose working papers.'"

The Legislature enacted the confidentiality statute in 1996. A legislative committee at the time underscored that "the scope and nature of the duties and responsibilities imposed upon the Auditor ... are of such critical importance to the state, the Auditor's working papers should be kept confidential." The Legislative record states that subjecting the Auditor's working papers to disclosure requirements would "seriously impair" the Auditor's ability to fulfill mandated responsibilities and statutory duties.

The subpoena issued by the House Investigative Committee put the State Auditor in a perilous position: either produce working papers protected by statute or risk being held in criminal contempt. The Judge's decision affirmed that the confidentiality statute means what it says, and the committee has no right to the working papers. According to Kondo, the Office will provide the committee two items, its *Manual of Guides* and copies of certain contracts relating to audit Reports Nos. 19-12 and 21-01 – items the Auditor never disputed were public documents – by the court-appointed deadline.

"The ongoing effort by the committee to 'audit the Auditor' goes beyond the committee's original authorizing resolution and therefore beyond the committee's legitimate authority to investigate under the resolution. Moreover, this unauthorized excursion has had the effect of diverting the committee's attention away from what it *was* authorized to investigate, the very serious issues uncovered in our Report Nos. 19-12 and 21-01," said Kondo. "In the wake of the Court's ruling, I look forward to the committee getting back to the legitimate work it was authorized to do. That is following up with DLNR and ADC on their actions to address the findings and recommendations in their respective audit reports."