

Blake S. Atkin #4466  
ATKIN LAW OFFICES, P.C.  
7579 North West Side Highway  
Clifton, Idaho 83228  
837 South 500 West, Suite 200  
Bountiful, Utah 84010  
Telephone: (801) 533-0300  
Facsimile: (801) 533-0380  
Email: batkin@atkinlawoffices.net

Attorneys for Plaintiff

---

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH**

---

GREGORY P. HAWKINS, In his capacity as  
Salt Lake County Auditor

Plaintiff,

v.

Salt Lake County, a political subdivision of  
the State of Utah; Max Burdick, in his  
capacity as chair of the Salt Lake County  
Council; Randy Horiuchi, Jim Bradley, Arlyn  
Bradshaw, Michael Jensen, David Wilde, Jani  
Iwamoto, Steve DeBry, Max Burdick in their  
capacity as members of the Salt Lake County  
Council; and Peter Corroon, in his capacity  
as Mayor of Salt Lake County

Defendants.

**VERIFIED COMPLAINT**

Civil No.

Judge:

---

Plaintiff, Gregory P. Hawkins, the duly elected Salt Lake County Auditor, by and through undersigned counsel, hereby complains against Defendant Salt Lake County as follows:

**I. PARTIES AND JURISDICTION**

1. The plaintiff, Gregory P. Hawkins was elected Salt Lake County Auditor in November 2010 and took office in January 2011.

2. The defendants are Salt Lake County, The Salt Lake County Mayor, and the members of the Salt Lake County Council who voted for and adopted an ordinance on November 15, 2011 purporting to separate over 22 % of the Auditor's office (the budget officer role) and consolidate that function into the office of the county executive (county mayor), and have indicated that they intend to separate and reconsolidate another 34% in the future.

3. This action is brought pursuant to the Utah Declaratory Judgment Act, Utah Code Annotated section 78B-6-408.

## **II. GENERAL ALLEGATIONS**

4. The allegations contained in the preceding paragraphs of this Complaint are incorporated herein by this reference.

5. In November, 2010, Gregory P. Hawkins was duly elected by the people of Salt Lake County to serve as County Auditor. Mr. Hawkins qualified for and took office regularly in January 2011.

6. At the time of the election, the Auditor's office had four divisions, Property Tax Compliance which constituted about 23.4 % of the office budget and staffing; Fiscal Accountability and Compliance which constituted about 34.2 % of the office budget and staffing; Budget, Analytics, and Compliance which constituted about 22.1 % of the office budget and staffing, and Compliance and Performance Assessment which constituted about 20.3 %.

7. Beginning almost immediately after the election, Salt Lake County, through its mayor and county council continued a course that threatened to and looked for ways to “dismantle” the auditor’s office and to consolidate the duties of the Salt Lake County Auditor into the office of the Salt Lake County Mayor.

A. In November of 2009 the Mayor tried to get the council to separate the budget officer role from the Auditor. That attempt failed to garner the necessary votes on the council to start the process. It was not attempted again until the motion, resolution and ordinance being challenged in this action.

B. In November, 2010, the Mayor proposed moving payroll and accounting to his office and moving auditing to the Council. In connection with the separation of Payroll from the Auditor, the Mayor promised \$500,000 in savings. The Council approved moving payroll. No savings were realized, and in fact the Mayor has sought additional personnel to perform these functions.

C. In January, 2011, the Mayor’s CAO, Doug Willmore, stated that the Mayor and the council would reduce the Auditor down to one full time employee (FTE) if he did not “toe the line.” The Mayor's and Council's staffs privately discussed "dismantling" the auditor's office. That conversation was overheard by a member of the Auditor’s staff.

D. In February 2011, the Council approved a cursory "best practices" study regarding moving accounting and auditing and in March 2011 discussed removing all 9 FTE’s from the Auditor’s Audit division. At the November 8 COW, council member Arlyn Bradshaw stated that he thought the votes were there to dismantle the Auditor’s office at that time.

E. In March, the Council established a Legislative Audit committee and discussed moving the Auditor's entire audit staff to the Council. In April, the Auditor entered into an MOU (Memorandum of Understanding) that he would do audits as the legislative audit committee of the Council directed.

F. In August 2011, the Mayor's staff issued budget instructions to elected officials that would disproportionately impact elected officials other than the Mayor. The Auditor has statutory responsibility to provide budget instructions and forms. When the Auditor stated that he intended to fulfill his role as budget officer, the Mayor's staff accused the Auditor of trying to "subvert the Mayor's budget process." Exhibit A. The

Mayor then suggested that the Budget Officer role be separated from the Auditor's office and reconsolidated into the office of the Mayor. Members of the Council advocated taking immediate action against the Auditor.

G. In November, the Mayor proposed eliminating 65% of the Auditor's budget and more than half of his full time employee allocations and adding the same full time employee allocations to the Mayor's staff, and transferring all budget and accounting functions to the Mayor.

H. In November, the Council declined the Auditor's request to hire additional deputy auditors to fulfill statutorily mandated duties. The Auditor felt he needed 18 additional FTEs, but would try to get by with only six. The Council has refused to provide sufficient resources to perform his mandatory statutory functions.

8. The threats to dismantle the Auditor's office for failing to "toe the line" finally resulted in a motion on November 8, 2011, which included an ordinance, a resolution to amend the optional plan of government, budget adjustments, and legislative intent to attempt to separate the accounting office and reconsolidate it with the mayors office. The ordinance passed the County Council on November 15, 2011. The motion, resolution and ordinance attempt to separate the budget officer function of the Salt Lake County Auditor and reconsolidate it into the office of the mayor. That ordinance would separate about 22 % of the Auditor's office and consolidate it into the Mayor's office.

9. The ordinance was adopted on November 15, 2011 and is set, by its terms, to take effect on January 1, 2012.

10. Notwithstanding the effective date of the Ordinance, the Council's fiscal staff has ordered the Auditor to provide access to the County's budgeting system to the Mayor's staff to allow the Mayor to begin acting as budget officer immediately.

11. The next election for Salt Lake County Auditor is set for November 2014.

12. Throughout the events leading to the filing of this complaint, the Salt Lake County District Attorney has represented both the Auditor and the Salt Lake County Commission and the Salt Lake County Mayor with regard to the statutes and the interpretations of the statutes that the Auditor seeks in this action. Because of the necessary conflict of interest that the Salt Lake County Attorney would have in representing both the Plaintiff and the defendants in this matter, the Salt Lake County Auditor has hired independent counsel and is appearing in this action through his independent attorney.

**FIRST CAUSE OF ACTION**  
**(Declaratory judgment)**

13. The allegations contained in the preceding paragraphs of this Complaint are incorporated herein by this reference.

14. Plaintiff Gregory P. Hawkins is the duly elected Salt Lake County Auditor.

15. Mr. Hawkins was elected Salt Lake County Auditor in November 2010.

16. At that time the duties of the Salt Lake County Auditor included his being the budget officer of the county.

17. By ordinance dated November 15, 2011, the Salt Lake County Council attempted to consolidate the role of budget officer with the office of County Mayor. The county budget officer has been, since the adoption of Salt Lake County's current form of government, the Salt Lake County Auditor.

18. This ordinance was adopted on November 15, 2011 and, by its terms, unless enjoined by this court, will take effect on January 1, 2012.

19. Utah Code Annotated, section 17-16-3 permits the county legislative body (in this case the county council) to consolidate county offices and establish the duties of those consolidated offices, or to separate and reconsolidate offices.

20. However, the County Council may not “consolidate the office of county executive with the office of county auditor, unless a referendum approving that consolidation passes.”

21. There is thus considerable doubt, given the nature, history, and constitution of Salt Lake County Government whether Ordinance could ever be valid.

22. However that may turn out, the Ordinance as it was currently adopted cannot be enforced. The Statute, 17-16-3, goes on to delineate the conditions that must be met for such a consolidation ordinance as the one passed by the Salt Lake County Council on November 15, 2011 to take effect:

(3) Each county legislative body shall ensure that any ordinance consolidating or separating county offices:

(a) is enacted before the February 1 of the year in which county officers are elected; and

(b) takes effect on the first Monday in January after the year in which county officers are elected.

23. The Salt Lake County Auditor will not be elected until the year 2014.

24. Utah Code Annotated Section 78B-6-408 provides:

A person with an interest in a deed, will, or written contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may request the district court to determine any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations.

25. Mr. Hawkins, as the duly elected Salt Lake County Auditor, has legal relations that are affected by the municipal ordinance adopted by the Salt Lake County Council on November 15, 2011 and is entitled pursuant to Section 78B-6-408 to a determination the validity of the ordinance.

26. Mr. Hawkins is entitled to a determination that because the ordinance was not enacted before February 1 in the year in which he was elected, and because it does not take effect on January 1 of the year after he was elected, the ordinance is invalid under Utah Code Annotated Section 17-16-3.

27. Mr. Hawkins is also entitled to a determination that the ordinance is unconstitutional because it would abolish the office of budget officer in the Auditor's office and reestablish it in the office of the mayor.

28. Such action by the county council is being taken in bad faith and in violation of the Constitution of this State. State Ex Rel. Hammond Et Al. V. Maxfield Et Al. 103 Utah 1, 132 P.2d 660, (Ut. 1942).

29. Mr. Hawkins is also entitled to a determination that the ordinance is unconstitutional because it would work a substantial change in the duties and functions of the

office of The Auditor after the people of Salt Lake County had elected Mr. Hawkins to serve in that capacity.

**SECOND CAUSE OF ACTION**  
**(Declaratory Judgment Relating to Funding)**

30. Utah Code Annotated Section 78B-6-408 provides:

A person . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may request the district court to determine any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations.

31. Mr. Hawkins, as the duly elected Salt Lake County Auditor has certain mandatory functions that he must perform. It is the duty of Salt Lake County government to provide the Salt Lake County Auditor with sufficient funds to perform those mandatory statutory functions.

32. Salt Lake County is failing to provide a budget sufficient to allow the Auditor to perform his statutorily mandated functions under Utah Code Annotated section 17-19-1(3). See *Grand County v. Murphy*, 268 P.2d 677 (Utah 1954).

33. The Auditor has given 3 detailed presentations to the Council showing that the duty is mandatory ("shall"), the number of entities that have to be "examined," that "examine" means audit, the number of audits required annually, the average time for similar audits, and the number of FTEs needed to accomplish the function.

34. The number of FTE's the Auditor needs is 24 and he currently has 6. He has told the Council that he would try to do it with 12, that is, 6 new FTEs. The Council denied the request.

35. The Salt Lake County Auditor is entitled to a declaratory judgment that Salt Lake County must fund its request for 18 more FTE's to perform its statutory duty pursuant to Utah Code Annotated section 17-19-1(3).

**THIRD CAUSE OF ACTION**  
**(Declaratory Judgment Relating to Meaning of Statutes)**

36. Utah Code Annotated Section 78B-6-408 provides:

A person . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may request the district court to determine any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations.

37. Salt Lake County has taken the position that "claim" as used in 17-19-1(1) relates to only "disputed claims" and does not relate to "any bill, account or charge of any nature." *See*, Utah Code Ann. §§ 17-15-16, 17-19-3(1)(b), 17-53-305, 17-53-406(4). .

38. As a result, Salt Lake County has interfered with the Salt Lake County Auditor in performing his statutory duty to audit and examine the payment of any claim before it is paid by Salt Lake County. For instance, Salt Lake County has taken the position that payroll payments are not claims and therefore the Salt Lake County Auditor does not have the statutory duty to audit payroll charges.

39. Salt Lake County has instituted a practice of using purchasing cards that allows claims to be paid before they are examined by the Auditor.

40. The Salt Lake County Auditor is entitled to a declaration that “claim” means "any bill, account or charge of any nature," and that Salt Lake County has the duty to cooperate with the Salt Lake County Auditor in examining any and all bills, accounts or charges of any nature, including payroll payments *see*, Utah Code Annotated Sections 17-19-1(1) & (2), 17-53-305, 17-53-406(4), 17-15-16, and 17-19-3(1)(b), and that the current policy for using purchasing cards allows "claims" to be paid before they are examined by the Auditor in violation of the law.

41. In a similar vein, Salt Lake County has taken the position that “books” includes only records kept on paper and that the Salt Lake County Auditor is not entitled under Utah Code Annotated 17-19-6 to examine electronically stored financial records.

42. The Salt Lake County Auditor is entitled to a declaratory judgment that "books" includes electronically stored financial records and that the Auditor is not limited in the scope of audits he conducts under Utah Code Annotated section 17-19-1(3) and 17-19-6.

43. The Salt Lake County Auditor is entitled to a declaratory judgment that "keep the books" means accounting or maintain, manage and control financial records, and that the Auditor is the accountant for the county under Utah Code Annotated sections 17-19-1(2)(c), 17-19-3(3)(a), 17-19-5(1), 17-19-6, , 17-19-9, 17-53-209(6).

The Salt Lake County Auditor is entitled to a declaratory judgment that he has authority to conduct "performance audits," including information technology audits, under Utah Code Annotated section 17-19-1(3)(d) and (4)(a), and 17-19-8..

**FOURTH CAUSE OF ACTION**  
**(Temporary Restraining Order)**

44. The allegations contained in the preceding paragraphs of this Complaint are incorporated herein by this reference.

45. The Ordinance, by its terms, is set to take effect at noon on January 1, 2012. If the ordinance takes effect at that time, 22 of the office of the Auditor of Salt Lake County would need to be dismantled. The Mayor and the Council's office have indicated an intention to begin transferring authority disrupting the Auditor's office beginning immediately. The dismantling of the office will create irreparable harm to the office of the Salt Lake County Auditor. In addition, the effect that the ordinance is having and will continue to have on the morale of those employees of the office of the Auditor who will be affected by the ordinance creates irreparable harm. Employees who will become unemployed if the ordinance is enforced have already begun to search for new employment, and that alone is an irreparable harm. Should any of them succeed in obtaining new employment additional irreparable harm will ensue. There will also be irreparable harm of Plaintiff is not allowed to continue to act in the office to which he was elected.

46. The threatened injury to the office of the Salt Lake County Auditor outweighs whatever damage the restraining order may cause to the respondents. All that will happen to the

defendants is a delay in enforcing the ordinance; on the other hand, a traditional and long standing office of the Salt Lake County Auditor will be devastated, its personnel disbursed, and its processes disrupted and its statutory duties left unfulfilled.

47. The restraining order, if issued, would not be adverse to the public interest. The best definition of the public interest in this regard is the legislative pronouncement that such an ordinance is to be enacted by February 1 of the election year of the county officer involved, and not to take effect until January 1, after the election year. Thus the legislature contemplated nearly a year of transition and an election cycle before a reorganization and reconsolidation of an office such as the budget officer can be reconsolidated as is contemplated by this Salt Lake County ordinance. Salt Lake County would do it in a month and a half, without input from the voters. Public policy cries out for them to be stopped.

48. There is a substantial likelihood that the Salt Lake County Auditor will prevail on the merits or the case presents serious issues on the merits which should be the subject of further litigation.

Gregory P. Hawkins, Salt Lake County Auditor, is entitled to a Temporary Restraining Order Restraining the defendants, their agents, servants, employees, and attorneys and those acting in concert with them who receive notice of this order from taking any action to enforce or prepare to implement ordinance no. of the Salt Lake County Council or to prevent the Salt Lake County Auditor to fulfill any of his responsibilities as the budget officer of Salt Lake County.

**FIFTH CAUSE OF ACTION**  
**(Preliminary Injunction)**

49. The allegations contained in the preceding paragraphs of this Complaint are incorporated herein by this reference.

50. The Ordinance, by its terms, is set to take effect at noon on January 1, 2012. If the ordinance takes effect at that time, more than 22% of the office of the Auditor of Salt Lake County would need to be dismantled. The Mayor and the Council's office have indicated an intention to begin transferring authority disrupting the Auditor's office beginning immediately. The dismantling of the office will create irreparable harm to the office of the Salt Lake County Auditor. In addition, the effect that the ordinance is having and will continue to have on the moral of those employees of the office of the Auditor who will be affected by the ordinance creates irreparable harm. Employees who will become unemployed if the ordinance is enforced have already begun to search for new employment, that alone is an irreparable harm. Should any of them succeed in obtaining new employment additional irreparable harm will ensue. There were also be irreparable harm if Plaintiff is not allowed to continue to act in the office to which he was elected.

51. The threatened injury to the office of the Salt Lake County Auditor outweighs whatever damage the injunction may cause to the respondents. All that will happen to the defendants is a delay in enforcing the ordinance; on the other hand, a traditional and long

standing office of the Salt Lake County Auditor will be devastated, its personnel disbursed, and its processes disrupted and its statutory duties left unfulfilled.

52. The Preliminary Injunction, if issued, would not be adverse to the public interest. The best definition of the public interest in this regard is the legislative pronouncement that such an ordinance is to be enacted by February 1 of the election year of the county officer involved, and not to take effect until January 1, after the election year. Thus the legislature contemplated nearly a year of transition and an election cycle before a reorganization and reconsolidation of an office such as the budget officer office is reconsolidated as is contemplated by this Salt Lake County ordinance. Salt Lake County would do it in a month and a half without input from the voters. Public policy cries out for them to be stopped.

53. There is a substantial likelihood that the Salt Lake County Auditor will prevail on the merits or the case presents serious issues on the merits which should be the subject of further litigation.

54. Gregory P. Hawkins, Salt Lake County Auditor, is entitled to a Preliminary Injunction enjoining the defendants, their agents, servants, employees, and attorneys and those acting in concert with them who receive notice of this order from taking any action to enforce or prepare to implement ordinance no. of the Salt Lake County Council, the resolution, or motion or to take any action to prevent the Salt Lake County Auditor from fulfilling any of his responsibilities as the budget officer of Salt Lake County.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against defendants as follows:

1. On his First Cause of Action, a determination that the motion, resolution and ordinance of the Salt Lake County Council, dated November 15, 2011 is unconstitutional and invalid under Utah Code Section 17-16-3, and a permanent injunction issued to prevent the enforcement thereof.

2. On his Second Cause of Action, a determination that the County must fund the office of the Auditor to the extent necessary to meet statutory mandates, which includes 18 new FTEs.

3. On his Third Cause of Action, a determination of the meaning of statutes governing the duties and responsibilities of the Salt Lake County Auditor.

4. On his Fourth Cause of Action for a temporary restraining order Restraining the defendants, their agents, servants, employees, and attorneys and those acting in concert with them who receive notice of this order from taking any action to enforce or prepare to implement the motion, resolution or of the Salt Lake County Council dated November 15, 2011 or to prevent the Salt Lake County Auditor to fulfill any of his responsibilities as the budget officer of Salt Lake County.

5. On his Fifth Cause of Action for a Preliminary Injunction enjoining the defendants, their agents, servants, employees, and attorneys and those acting in concert with them who receive notice of this order from taking any action to enforce or prepare to implement the motion, resolution or ordinance of the Salt Lake County Council dated

November 15, 2011, or to prevent the Salt Lake County Auditor to fulfill any of his responsibilities as the budget officer of Salt Lake County.

DATED THIS \_\_\_\_\_ day of November, 2011.

**ATKIN LAW OFFICES, PC**

\_\_\_\_\_  
Blake S. Atkin  
*Attorneys for Plaintiff*

**VERIFICATION:**

Lonn Litchfield, having been first duly sworn, deposes and says: I am the Chief Deputy Auditor in the office of the Salt Lake County Auditor. I have read the allegations of this complaint and state that the facts set forth herein are true to the best of my knowledge, information, and belief after reasonably diligent investigation of the facts.

Dated this \_\_ day of November, 2011

\_\_\_\_\_  
Lonn Litchfield, Chief Deputy Auditor

\_\_\_\_\_  
Notary Public

Plaintiff's Address:

Gregory P. Hawkins  
Salt Lake County Auditor  
2001 S. State Street, Suite N3300  
Salt Lake City, UT 84190-3050

**MAILING CERTIFICATE**