

Book X.  
Title XXX.

Concerning auditors.  
(De discussoribus.)

Bas. 56.10.

Headnote.

Discussores.

These officials were auditors; that is to say, examining accountants. They were employed as special agents of the imperial government to examine the status of the receipts of taxes, inquire into delinquencies and, it seems, collect arrears, they are not to be confounded with equalizers or adjusters of assessment rolls, though they seem to have been used for that purpose by the Ostrogothic king Theoderic. Cass., Var. 4.38. They were also employed to audit the accounts in municipalities, noting the income and outlay and determining the delinquencies, if any. Law 4 of this title. Other similar duties were doubtless imposed on them from time to time. They were, as noted in law 3 of this title, of comparatively high rank, and were at times chosen to fulfill the duties as auditor against their wishes. Gothofredus on C. Th. 11.26.1.

10.30.1. Emperors Valentinian, Valens and Gratian to Arthemius, Vicar of Spain.

Whenever it shall be proved in any dispute that a revision (of an account) has been unjustly made and the auditor is unable to justify his act, he shall be assessed with a tax of the same kind and shall be compelled to pay the same amount in which he wrongly made another debtor.

Given May 14 (369).

C. Th. 11.26.1.

Note.

The auditor of accounts would, according to this law, at times report as delinquent a taxpayer who was not so in fact. The audit was wrong. It will be noted, that such error, willfully or negligently made, cost the auditor the same amount of money which he charged up, as being delinquent, to the taxpayer, and he had to pay this in the same kind of property as the taxpayer, as, for instance, in gold, silver, grain or other property.

10.30.2. Emperors Arcadius and Honorius to Messala, Praetorian Prefect.

Lest the accidental loss of a tax receipt give rise to praying upon the taxpayers, we decree, that whenever receipts issued by auditors or apparitors are listed in the public records, and unjust demand to pay the amount over again shall not be made.<sup>1</sup>

Given at Milan November 27 (400).

C. Th. 11.26.2.

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<sup>1</sup> [Blume] C. 4.21.4; C. 10.2.2 and note.

10.30.3. Emperors Theodosius and Valentinian to Apollanius, Praetorian Prefect.

We order that the auditing of land taxes (*jugorum*)<sup>2</sup> shall be entrusted throughout the various provinces and cities and persons of a rank as high as the consistorian countship, and on those in the (imperial) service, but not actively engaged therein, and on advocates of the provincial courts.

Given December 28 (442).

Note.

For the consistorian counts, see C. 12.10.

It will be noted that advocates of the court of the provincial governors were eligible for the office of auditor. C. 2.7.6 provided that such advocates should not be compelled to perform the duty of that or other offices of similar kind. Hence, the instant law, if not considered inconsistent with C. 2.7.6, must be construed to mean that these advocates might be appointed with their consent, but could not be forced to accept the appointment.

10.30.4. (Synopsis in Greek) Emperor Justinian to Julianus, Praetorian Prefect.

No one shall become auditor (*discussor*) except by imperial command which specially mentions the title of auditor. No one shall, by order of the prefects or by that of any judge, become, in the provinces, an auditor, either of public works, or of money used for public food supplies, or ports, or which is paid out for public aqueducts of cities, construction of walls, paving of roads, building of bridges and fortifications, or, which pertains to the baths or to any other public function unless an imperial order has been issued. 1. Whenever the emperor, however, has sent money from the treasury for building walls or for any other public work, or whenever he finds that money has been left to the cities by some person either in a lump sum or in annual payments, he will, when it seems best to him, send an auditor who must inspect the work, audit the accounts and report to the emperor, so that he may issue an imperial release for money properly expended to those who paid it out, so that neither they nor their heirs or successors will be compelled to submit to a second examination. 2. And if the auditor himself, who is sent, is ordered to execute a release to those who have properly expended money, and he, after having examined the accounts, issues a release for money so rightly expended, this also shall be valid, so that neither an imperial order or any other guaranty will be necessary to the party who expended the money or to his heirs or successors, but the release of the auditor will suffice. 3. The constitution also promises their expenses to the auditors, so that they may make the audit without loss. 4. But if anyone expends money on public work or for other public benefit out of his own means, neither he nor his heirs or successors shall be subjected to any audit, nor to an examination of public accounts,

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<sup>2</sup> [Blume] *Jugorum* - genitive of *juga*, taxation-units, mentioned at length at headnote C. 11.58. The tax itself was referred to as *jugatio*. 1 *Karlowa* 903. An examination (*discussio*) of tax units would imply that the *discussor* was concerned with equalization or adjustment of the assessment roll, referred to in headnote C. 11.58, which would be inconsistent with what has been said in the headnote to this title. The instant law, considering the purport of the whole title, doubtless referred to auditing the tax, not the taxation-units.

as, for instance, is made in connection with gifts (to a non-curial)<sup>3</sup>, cost of haulage or transportation (agocica vel parapampica), outlay for public mules or muleteers, or the other expenses, commonly called "ordinary expenses" (solemnia). 5. No president shall send an auditor, but he shall report to the emperor, so that he may send an auditor of these matters, who must not make a penny of unlawful gain, but who must preserve the rights of the public accounts as well as of the taxpayers. 6. If he pays any public money which he finds in the hands of anyone, into the imperial treasury (ornamentum), he may retain six solidi out of every pound for his services. 7. But if he accepts a single penny from the provincials, given either voluntarily or involuntarily, he must return it and pay fourfold of that amount to the fisc, and suffer the punishment to be imposed by the emperor, for betraying the fisc and inflicting damage on the taxpayers. From the giver, moreover, must, as though he acknowledged himself a debtor of the fisc, again be demanded the amount which he should pay into the public treasury and by reason of which he underwent the examination. 8. As to the audit of those outlays, called "ordinary expenses" (solemnia), the emperor will, after he has been advised that an audit is finished, furnish a release to those who have undergone such audit, so that they need not fear another examination, and will also authorize the auditor himself, to give a release to those whose accounts are examined, so that those who receive it (the release) may not fear another examination. 9. The auditor, moreover, shall receive nothing for furnishing the release and if he has dared to do so (on his demand therefor), the land-owners and citizens shall have the right to repel his audacity and petition the emperor so that someone may be sent who may visit punishment on the person who has dared to demand anything. 10. If any president, contrary to this law, should, without an imperial order sent to him in writing, send an auditor for any of the matters mentioned, he himself shall pay a fine of twenty pounds of gold, and his staff a fine of fifteen pounds. 11. Nor shall he (the auditor) give any orders as to cleansing the sewers, or as to buildings which lean against the (city) walls or as to their destruction, or as to those structures built on the public porches, called produlia, or as to destruction or ruins or intercolumnar structures of the city, or as to statues, or on account of any other invented reason of similar nature, or as to public affairs. 12. If he does so, the residents of the cities have permission to repel the execution thereof and refuse to respond to such exactions, and, besides, if the rectors of the provinces pass such acts over in silence, he, as well as all city and provincial apparitors, shall be subject to the same (foregoing) punishment, permission being given to any person, who wishes to do so, to complain to the emperor and disclose what has been done, so that the matter may be corrected by imperial indignation. The presidents, moreover, who have ordered anything of the sort to be done, will be punished by a fine of twenty pounds of gold, and may expect greater imperial displeasure; and the members of their staff, under them, will suffer a fine of fifteen pounds of gold, aside from corporal chastisements. 13. For only the emperor shall have power to entrust an inspection of these accounts, and that to a man who is thoroughly honest and who may examine them with fidelity and for the good of the cities, without accepting anything for it. 14. The fathers of the cities, moreover, and land owners of good repute, shall take care that no public or municipal place near the wall or on the public porches or in the streets, or in any other locality, is occupied by anyone to the public injury, and that no public place is

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<sup>3</sup> [Blume] See C.10.36.

leased without an imperial rescript. If leased by them illegally, the right shall be revoked, and the lessees are punished. 15. They shall also take care that those who, in pursuance of an imperial rescript, have water rights, will not defraud each other so that one receives more or less than another. 16. It shall be the duty of the magnificent Count of the Crown Domain and the palatine officials under him, to inquire into and report these things and collect the proper fines. If he neglects this, he shall be subject to a fine of twenty pounds of gold, and his staff to a fine of fifteen pounds.

Given at Chalcedon June 24 (510).

Note.

The auditing of municipal accounts is considered in C. 1.4.26 and C. 8.12.1. All these laws, as well as some chapters of Novel 128, were designed to prevent interference of the central authorities in purely municipal affairs, both on the part of the governor and praetorian prefect. By Novel 17, c. 4; Novel 24, sec. 3; 25, c. 4; 26, c. 4; 30, c. 8, it was made the special duty of the governor of the province to see that cities were well provided and that the proper public works were erected and kept up. Nevertheless, the general management of the public works and the local expenditures were, it seems, to be left in the hands of the local man. Justinian, by C. 1.2.26, created a general board of audit, consisting of the bishop of the place and the leading local dignitaries, three in number, changed to five by Novel 128, c. 16. Municipalities all over the empire had decayed, and Justinian evidently sought to inject some life into them. He reserved to himself the right of sending special accountants to exercise supervision; but they were required to be sent on his personal mandate and the local authorities were warned to recognize no one who came with a mandate from anyone else, even from the praetorian prefect. Auditors had previously been sent by the latter, at the expense of the municipalities and a great burden had evidently been imposed on them thereby. See Bury, 2 Hist. Later Roman Empire 351. Liebenam, Stadteverw. 502.