



*Houses of Parliament*

*Jamaica*

*Gordon House, 81 Duke Street, Kingston, Jamaica*

*Tel.: (876) 922-0200 Fax: (876) 967-1708*

*Email: [clerk@japarliament.gov.jm](mailto:clerk@japarliament.gov.jm)*

*Website: <http://www.japarliament.gov.jm>*

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## MEMORANDUM

**TO:** The Most Honourable Juliet Holness, MP  
Speaker of the House of Representatives

**AND TO:** Ms. Valerie Curtis CD, BH(M), JP  
Clerk to the Houses

**FROM:** Mrs. Lee-Andria Wilson  
Legislative Counsel

**DATE:** November 7, 2023

**SUBJECT:** **Opinion on the Reports on Public Bodies submitted to Parliament by the Auditor-General**

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### Background:

1. On February 21, 2023, a letter was received by the Clerk to the Houses of Parliament from the former Speaker of the House of Representatives, Mrs. Marisa Dalrymple-Philibert, to direct that *before the Act [sic] [Report] is tabled directly from the Auditor-General, the Parliament is to be assured that the said Report has been sent to the Minister with responsibility for that Public Body, to whom the Report refers. The letter further directed that in keeping with the Act [the Financial Administration and Audit Act], unless a passage of two (2) months has elapsed since receipt of said report by the Minister, and he or she has not sent the Report for tabling, then and only then should the Auditor-General's Report be directly laid.* This instruction was communicated to the Auditor General by way of letter dated June 29, 2023, referring to section 30(1) and

(2) of the Financial Administration and Audit Act, (the FAA Act). In a response letter dated June 29, 2023, the Auditor General stated that the Reports in question were submitted for tabling in accordance with Section 29 of the FAA Act as opposed to section 30.

2. Advice on the matter was sought from the Attorney-General, to which an opinion dated July 26, 2023 was received outlining that the Auditor General has powers under both section 29 and 30 and made the recommendations that the Auditor-General, when submitting reports, should make clear under which section of the FAA Act she is submitting the report, as well as the Speaker, on receiving a report from the Auditor-General, is to seek clarification from the Auditor-General as to the section she has acted under if same is unclear.
3. I have been instructed as the Legislative Counsel of the Houses of Parliament to give my opinion on this matter in order to assist in a final determination of the issue.

**Issue:**

Whether the Auditor-General is empowered to conduct audits on public bodies by virtue of section 29 of the Financial Administration and Audit Act?

**Response/Opinion:**

4. An in-depth assessment of the Constitution of Jamaica, the FAA Act, the Public Bodies Management and Accountability Act (the PBMA Act), as well as the Interpretation Act was conducted. It is opined that as it relates to the auditing of public bodies by the Auditor General, audit reports are to be submitted pursuant to sections 13A and 13B of the PBMA Act. This is made on the basis that the PBMA Act is made subsequent to the FAA Act and contains within section 13A language that excludes any other enactment that is contrary to the provision. Section 13A states, inter alia:

*“Notwithstanding anything to the contrary contained in any other enactment...”*

**Law:**

5. Definition of a “Public Body”

*Section 2 of the FAA Act provides, inter alia:*

*“public body” means a statutory body or authority or any government company;”*

*Section 2 of the PBMA Act provides, inter alia:*

*“public body” means a statutory body or authority or any government company, but does not include an executive agency designated under the Executive Agencies Act;”*

## **6. Auditor General’s Powers to Audit and Report**

*Section 29 of the FAA Act provides:*

*(1) The Auditor-General shall report annually as soon as possible and not later than the 31st day of December following the end of each financial year the results of his examination:*

*Provided that the Auditor-General may, at any time if it appears to him to be desirable, prepare a special report on any matter incidental to his powers and duties under this Act.*

*(2) Every report of the Auditor-General shall be addressed to the Speaker who shall lay the report before the House of Representatives as soon as possible after its receipt by him.*

*Section 30 of the FAA Act provides:*

*(1) Notwithstanding anything to the contrary contained in any other enactment, the Auditor-General may if he thinks fit, audit the accounts of any public body and shall do so if the House of Representatives by resolution so directs.*

*(2) The Auditor-General’s report on his examination and audit of any accounts audited pursuant to subsection (1) shall be transmitted to the appropriate Minister for presentation to the House of Representatives:*

*Provided that-*

*(a) the appropriate Minister shall obtain the observations of the public body concerned on any matter to which attention has been called by the Auditor-General in his report and such observations shall be presented to the House of Representatives with the report;*

*(b) if the appropriate Minister fails within two months after receipt of the report to present it to the House of Representatives the Auditor-General shall transmit a copy of the report to the Speaker of the House to be presented by him to the House.*

*(3) The Auditor-General shall, if so required by the Minister, examine and report to the Minister the results of his examination of the accounts of any -person or organization who has received moneys by way of grant or loan out of funds*

*appropriated by Parliament or in respect of whom financial aid from the Government is sought.*

*Section 31 of the FAA Act provides, inter alia:*

- (1) In the exercise of his duties under section 30, the Auditor-General may authorize any person registered under the Public Accountancy Act, to inspect, examine or audit the books and accounts of any public body which the Auditor-General may be required to examine or audit and that person shall report his findings to the Auditor-General.*
- (2) In the exercise of his duties in relation to public bodies, the Auditor-General or any auditor appointed by him shall have the like powers as are vested in the Auditor-General for the purpose of examining accounts under sections 25 and 28.*

*Section 25 of the FAA Act provides, inter alia:*

- (1) The Auditor-General shall, in performing his functions under section 122 (1) of the Constitution ascertain whether in his opinion...*

*Section 122 of the Constitution of Jamaica provides, inter alia:*

- (1) The account of the Court of Appeal, the accounts of the Supreme Court, the accounts of the offices of the Clerks to the Senate and the House of Representatives and the accounts of all departments and offices of the Government of Jamaica (including the offices of the Cabinet, the Judicial Service Commission, the Public Service Commission and the Police Service Commission but excluding the department of the Auditor-General) shall at least once in every year, be audited and reported on by the Auditor-General who, with his subordinate staff, shall at all times be entitled to have access to all books, records, returns and reports relating to such accounts.*
- (2) The Auditor-General shall submit his reports made under subsection (1) of this section to the Speaker (or, if the office of the Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, to the Deputy Speaker) who shall cause them to be laid before the House of Representative.*

*Section 28 of the FAA Act provides:*

*The Auditor-General shall examine and certify in accordance with the outcome of his examinations the statements and accounts which are required to be submitted to him in accordance with this Act.*

*Section 13A of the PBMA Act provides:*

- (1) Notwithstanding anything to the contrary contained in any other enactment, the Auditor-General may, if he thinks fit, audit the accounts of any public body, and shall do so if the House of Representatives, by resolution, so directs.*
- (2) The Auditor-General's report on his examination and audit of any accounts audited pursuant to subsection (1) shall be submitted to the responsible Minister for presentation, subject to the requirements of subsection (3) (a), to the House of Representatives.*
- (3) The requirements of this subsection are that-*
  - (a) the responsible Minister shall-*
    - (i) obtain the observations of the public' body concerned on any matter to which attention has been drawn by the Auditor-General in his report; and*
    - (ii) cause such observations to be presented to the House of Representatives, together with the report;*
  - (b) if the responsible Minister fails, within two months after receipt of the report, to present it to the House of Representatives, the Auditor-General shall transmit a copy of the report to the Speaker of the House to be presented by him to the House.*

*Section 13B of the PBMA Act provides:*

- (1) In exercise of his duties under section 13A, the Auditor-General may authorize any person who is a registered public accountant under the Public Accountancy Act, to inspect, examine or audit the books and accounts of any public body which the Auditor-General may require to be examined or audited; and that person shall report his findings to the Auditor- General.*
- (2) In exercise of his duties in relation to public bodies, the Auditor-General, or any auditor appointed by the Auditor-General shall have like powers as are vested in the Auditor-*

*General for the purpose of examining accounts under sections 25 and 28 of the Financial Administration and Audit Act.*

**Analysis:**

7. First and foremost, I am in agreement with the Solicitor General's analysis in relation to the rules of interpretation and support her opinion that sections 29 and 30 of the FAA Act are unambiguous. Indeed, it is clear that section 29 deals with annual reports and special reports *on any matter incidental to his powers and duties under this Act*. Further, I agree that these reports are to be addressed to the Speaker, who must lay these reports before the House of Representatives as soon as possible. I also agree that under section 30, if she thinks fit, the Auditor-General may audit the accounts of public bodies and must also do same, if the House of Representatives so direct.
8. On close examination, I find that on its own, section 29 could reasonably be construed as being applicable to public bodies as it does not specifically exclude same. However, consideration must be given to the the inclusion of sections 30 and 31 in the FAA Act, which specifically refer to public bodies, establish the Auditor-General's power to audit same and directs the treatment of such reports, which differs from section 29. I find that the inclusion of sections 30 and 31 must have been deliberate as public bodies, by their very definition and structure, are independent of the government service. They are self-governing: guided by their own boards, they have their own internal and external auditors and are answerable only to the Minister in certain instances.
9. My conclusion is further buttressed by the enactment of the PBMA Act and its subsequent amendment in 2011, which included sections 13A and 13B. These sections mirror the language of sections 30 and 31 of the FAA Act. It is to be noted that, on review of the whole PBMA Act, I find no reference or similar provision in said Act to that of section 29 in the FAA Act. I find that the exclusion of a provision similar in language to that of section 29 clearly reflects the intent of Parliament regarding the manner in which audits on public bodies are to be conducted by the Auditor-General.
10. Furthermore, though there is no apparent conflict between sections 29 and 30 of the FAA Act, through deep consideration and analysis, I find that any interpretation that could possibly be gleaned from section 29 of the FAA Act, in relation to it being applicable to public bodies, could not stand in the face of the provisions of both section 30 of the FAA Act and section 13A of the PBMA Act. This is further supported by the language of section 13A, which states, "*Notwithstanding anything to the contrary*

*contained in any other enactment ...*”, which would in effect exclude any interpretation, “reasonable or otherwise”, of the applicability of section 29 to public bodies.

**Conclusion**

11. It is my opinion that reports on public bodies audited by the Auditor-General should be conducted pursuant to section 13A of the PBMA Act and/or section 30 of the FAA Act. Such reports must be submitted in keeping with the procedure outlined therein and also provided for in section 13B of the PBMA Act and section 31 of the FAA Act.

Regards,

WITHOUT PREJUDICE