



Tel: (876) 359-0085-6  
E-Mail: attorneygeneral@agc.gov.jm  
Reference Number:

**ATTORNEY-GENERAL'S CHAMBERS**  
13 Hillcrest Avenue  
Kingston 6  
Jamaica

November 6, 2023

The Most Honourable Juliet Holness, MP  
Speaker of the House of Representatives  
Houses of Parliament  
Gordon House  
81 Duke Street  
Kingston

Dear Madam Speaker,

**Re: Tabling of Auditor General's Submitted Reports**

On July 4, 2023 the former Speaker of the House of Representatives (the former Speaker) requested legal advice from the Attorney-General. The request was "how the Auditor General's reports in relation to public bodies are to be treated." The Attorney-General instructed me to respond, which I did in letter dated July 26, 2023 to the former Speaker.

I made the following conclusion and recommendation as set out below:

**"Conclusion**

*I conclude as follows:*

- (i) *The Auditor-General has discretion to submit reports under either section 29 or 30 of the Act.*
- (ii) *If the Auditor-General acts under section 29, she can submit the following reports:*
  - a. *Annual reports,*
  - b. *Special reports.*
- (iii) *If the Auditor-General acts under section 29 of the Act, once the Speaker receives the report, the Speaker is to table the report as soon as possible.*
- (iv) *If the Auditor-General acts under section 30 of the Act, she can submit reports on the examination and audit of accounts audited by a public body:*

- a. *if she acts in her discretion, or*
  - b. *if she acts pursuant to the direction of a resolution by the House of Representatives.*
- (v) *If the Auditor-General acts under section 30 of the Act, the report must be sent to the appropriate Minister.*
- (vi) *The obligations of the Minister once receiving the report from the Auditor-General who has acted under section 30 of the Act are as follows:*
- a. *To obtain the comments of the public body which are to be presented to the House of Representatives with the report, and*
  - b. *To present the report to the House of Representatives within two (2) months after receiving the report from the Auditor-General.*
- (i) *If the Minister fails to present the report to the House of Representatives within 2 months after receipt from the Auditor-General who has acted under section 30 of the Act, the Auditor-General must send a copy of the report to the Speaker of the House of Representatives and, pursuant to section 30 of the Act, the Speaker must present the report to the House of Representatives.*

### **Recommendation**

*I did not receive instructions regarding this issue, but I suggest the following:*

- (i) *If it is not being done now, when the Auditor-General submits reports, the Auditor-General should make it clear under which section of the FAA she is submitting the report.*
- (ii) *If the Speaker receives a report from the Auditor-General and it is not clear whether the Auditor-General has acted under section 29 or 30 of the Act, the Speaker should make an enquiry of the Auditor-General to clarify the issue. When the Auditor-General provides that clarification, the Speaker should act accordingly."*

On August 2, 2023, the former Speaker requested clarification on the opinion as follows:

*"In reference specifically to part (i) of your Summary of Conclusion, which states "The Auditor-General has the discretion to submit reports under either section 29 or 30 of the Act", please direct me to the section of the FAA Act, any other law, or case law that indicates that the Auditor General has the discretion to audit a public body under any other section other than section 30 of the FAA Act."*

*My understanding of the query is whether there is any law or case law that gives the Auditor-General the discretion to audit a public body other than section 30 of the FAA Act.*

There are a few statutes that establish public bodies that provide for the Auditor General to audit those public bodies. I have set out below a few examples.

✓ Section 13A of the Public Bodies Management and Accountability Act provides as follows:

*"(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 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 26 (2) of the Natural Resources Conservation Authority Act provides as follows:

*"The accounts of the Authority shall be audited annually by the Auditor-General or by an auditor appointed in each year by the Authority with the approval of the Minister."*

Paragraph 4(2) of the First Schedule of the National Housing Trust Act provides:

*"The accounts of the Trust shall be audited annually by the Auditor-General or by any auditor appointed annually by the Trust and approved by the Minister."*

Paragraph 7(1) of the First Schedule of the Standards Act states:

*"The Bureau shall keep proper accounts and other records in relation to its business and shall prepare annually a statement of accounts in a form satisfactory to the Minister and shall submit the same from time to time with vouchers to the Auditor-General or such other auditor as the Minister may approve to be audited."*

Section 26(2) of the Tax Administration Jamaica Act provides:

*"Notwithstanding the requirements of the Public Bodies Management and Accountability Act, the external audit of the accounts of the Authority shall be conducted by the Auditor-General."*

I so advise.

Yours faithfully,

  
Marlene Aldred  
Solicitor-General