

**AUDITOR OF STATE BULLETIN 2000-009  
MAY 31, 2000**

TO: ALL COUNTY AUDITORS  
ALL CITY AUDITORS, FINANCE DIRECTORS & TREASURERS  
ALL VILLAGE FISCAL OFFICERS  
ALL SCHOOL DISTRICT TREASURERS  
ALL EDUCATIONAL SERVICE CENTER TREASURERS  
ALL PUBLIC EMPLOYEE RETIREMENT SYSTEM FISCAL OFFICERS  
ALL PUBLIC UNIVERSITY FISCAL OFFICERS  
ALL COMMUNITY COLLEGE TREASURERS  
ALL TECHNICAL COLLEGE DISTRICT TREASURERS  
ALL TOWNSHIP CLERKS  
ALL LIBRARY CLERKS/TREASURERS  
ALL JOINT FIRE DISTRICT FISCAL OFFICERS  
ALL JOINT RECREATION DISTRICT FISCAL OFFICERS  
ALL JOINT ADAMH FISCAL OFFICERS  
ALL JOINT AMBULANCE DISTRICT FISCAL OFFICERS  
ALL JOINT AMBULANCE AND FIRE DISTRICT FISCAL OFFICERS  
ALL UNION CEMETERY DISTRICT FISCAL OFFICERS  
ALL DRAINAGE IMPROVEMENT DISTRICT FISCAL OFFICERS  
ALL JOINT EMERGENCY MEDICAL DISTRICT FISCAL OFFICERS  
ALL TOWNSHIP POLICE DISTRICT FISCAL OFFICERS  
ALL TOWNSHIP FIRE DISTRICT FISCAL OFFICERS  
ALL TRANSIT AUTHORITY FISCAL OFFICERS  
ALL PORT AUTHORITY FISCAL OFFICERS  
ALL METROPOLITAN HOUSING AUTHORITY FISCAL OFFICERS  
ALL AIRPORT AUTHORITY FISCAL OFFICERS  
ALL HOSPITAL FISCAL OFFICERS  
ALL TOWNSHIP ROAD DISTRICT FISCAL OFFICERS  
ALL WATER AND SEWER DISTRICT FISCAL OFFICERS  
ALL TOWNSHIP WASTE DISPOSAL DISTRICT FISCAL OFFICERS  
ALL INDEPENDENT PUBLIC ACCOUNTANTS]

**SUBJECT: INDEPENDENT PUBLIC ACCOUNTANT AUDIT ENGAGEMENT LETTERS-  
INDEMNITY CLAUSES AND RESTRICTIONS ON USE OF THE AUDITOR'S REPORT**

It has recently come to our attention that some Independent Public Accountants [IPAs], in contracting for auditing services, have asked public offices to sign "engagement letters" containing certain indemnity clauses in favor of the IPA, and/or clauses purporting to restrict the public office's use of the IPA's reports.

*Indemnity Clauses*

Indemnity clauses, also known as "hold-harmless" provisions, in contracts have been the subject of two recent Ohio Attorney General opinions, numbers 96-060 and 99-049. In each opinion, the Attorney General affirmed that such clauses might be acceptable under certain limited circumstances. These circumstances are:

**T** The clause may bind the State or political subdivision only for the duration of the period for which appropriations are made (biennium in the case of the State, and an annual budget period in the case

of a political subdivision);

- T The clause must specify a maximum dollar amount for which the State or political subdivision is obligated;
- T The maximum dollar amount for which the State or political subdivision is obligated must be appropriated by the General Assembly or the subdivision's legislative body;
- T The State or political subdivision must receive adequate "consideration" to support the financial obligation the State or subdivision assumes under the clause.

The Auditor of State's standard three party contract between the entity, the Auditor of State, and the IPA does not permit such clauses. Further, the Auditor has seen no such clause which meets the four criteria listed above. Engagement letters with these clauses should not be signed without the Auditor of State's approval.

*Restrictions on Use of The Auditor's Report*

Some IPAs have placed clauses in the engagement letters requiring the public office to obtain the IPA's permission before using the auditor's report(s). The auditor's reports that accompany a defined set of financial statements, such as the General Purpose Financial Statements, the Comprehensive Annual Financial Report, or financial statements prepared on the cash-basis of accounting commonly used by smaller governments, are public documents, and, as such, their use may not be restricted.

However, if the governmental entity intends to issue another document, such as an Offering Circular for securities, and wishes to use the auditor's report or otherwise refer to the auditing firm, or the Auditor of State, by name, it is Auditor of State policy to request that the audited entity make prior notification to us. The IPAs also may have such a policy.

A suggested engagement letter clause for this situation follows:

**Republishing Our Report**

If you intend to publish or otherwise reproduce our opinion on your financial statements, or to refer to the Auditor of State in a document (e.g., a debt offering statement) containing information in addition to the audited financial statements, you understand it is our policy to request that you make prior notification to us. We request that you provide us with a draft of the document to read, and allow us to take any action, at our cost, we deem necessary before you print and distribute the document. (Such actions might include, but would not be limited to, advice to you on revising disclosures in the document.) Should the Auditor of State not be permitted to read the document or take needed actions prior to its distribution, we reserve the right to notify parties relying on the document that reliance is not appropriate.

If you have any questions about these matters, please contact The Division of Audit Administration, Christie Watson, at 800-282-0370.