



Purchasing Department.

Re: Indemnification and Choice of Law

To Whom It May Concern:

The purpose of this memorandum is to explain the contract requirements placed upon Ohio agencies and instrumentalities by Ohio law. In particular, this memorandum addresses the issues of indemnification and choice of law.

Ohio Constitution Article VIII, §3 prohibits the state from incurring any debt which is not expressly authorized by the Ohio Constitution. Ohio Constitution Article II, §22 requires that there be an appropriation by the General Assembly before money may be withdrawn from the state treasury, and reserves for each biennial General Assembly the power to make appropriations for that two year period. The Ohio Supreme Court has held that if a state agency incurs a liability, direct or contingent, in the absence of an expressed appropriation to pay such liability, debt is created. (*State v. Medbery*, 7 Ohio State 522 [1857].) Any such debt is impermissible unless it is expressly permitted by the Constitution.

As an instrumentality of the State of Ohio, The Ohio State University is subject to these constitutional limitations. The University is also bound by Ohio Revised Code §131.33, which provides in pertinent part:

No state agency shall incur an obligation which
exceeds the agency's current appropriation authority.

Taken together, the language of these provisions prohibits the University from agreeing to indemnification clauses. Future payment of attorneys fees violates these provisions as well.

The University is similarly prohibited from agreeing to contract provisions which specify that law, other than Ohio law, shall govern the contract. As a state instrumentality, the University is only amenable to suit for money damages in the Ohio Court of Claims. Therefore, since the Court of Claims construes Ohio law, and since the University may only be sued in the Court of Claims, the University may only agree to a contract provision specifying Ohio law.