

# Opinions, Advice, and Legislation Quarterly News

Office of the  
Maryland Attorney General



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## OPINIONS

### COMMISSIONER COUNTIES - AUTHORITY TO LAY PIPELINE IN MUNICIPAL ROAD

**Q1:** Does a public local law enacted by the General Assembly authorize Carroll County to install a pipeline in a Sykesville road without the Town's consent?

**Answer:** Yes.

**Q2.** Does this law constitute a taking of property without just compensation in violation of the Fifth Amendment of the United States Constitution and Article III, §40 of the Maryland Constitution?

**Answer:** No.

**Q3.** Does Carroll County have general power to condemn a municipality's public property, including roads and highways?

**Answer:** No.

*Opinion No. 02-003  
March 6, 2002*

### COMMUNITY COLLEGES - HISTORIC PRESERVATION

**Question:** Does the Maryland Historical Trust or the Montgomery County Historic Preservation Commission have jurisdiction over two capital projects proposed to be constructed by a community college on State land in Takoma Park?

**Answer:** The projects are subject to the consultative process of the Maryland Historical Trust; they are not subject to the work permit process administered by the Montgomery County Historic Preservation Commission.

*Opinion No. 02-002  
February 27, 2002*

### OFFICE OF CHILDREN, YOUTH, AND FAMILIES - RULEMAKING PROCEDURES

A recent Policy Statement issued by the Subcabinet for Children, Youth, and Families establishes a strict two-year limit on services provided to an eligible child under the State's "Return/Diversion" initiative, an effort to avoid out-of-State placement of children with special needs.

**Question:** Does this Policy Statement fit the definition of "regulation" in the State Administrative Procedure Act ("APA"), and should it be adopted under the rulemaking provisions of the APA to be enforceable? Also, would a policy that sets such a time limit adversely discriminate against children with the most significant needs and disabilities?

**Answer:** The strict time limit on duration of services established by the Policy Statement should be adopted in accordance with the APA. However, were it adopted under the APA, such a policy would not be discriminatory on its face.

*Opinion No. 02-004  
March 11, 2002*

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**STADIUM AUTHORITY - DISPOSITION OF  
REVENUES FROM PERMANENT SEAT LICENSES**

**Question:** A State statute governs the disposition of revenues from the sale of permanent seat licenses (“PSLs”) at the Baltimore football stadium. May the PSL revenues be used to defray three categories of expenses claimed by the Baltimore Ravens (the “Team”): (1) the monthly payments made by the Ravens to the Stadium Authority for general operation and maintenance expenses of the stadium; (2) payments made by the Ravens directly to vendors for “design, construction, furnishings, and leasehold improvements” to the stadium; and (3) a share of an expansion fee paid by the new Cleveland franchise that the Ravens would have received, but that the National Football League required the Team to waive as a condition of its relocation to Baltimore?

**Answer:** (1) The Team may not use PSL revenues to cover the payments required under its lease with the Stadium Authority for operation and maintenance expenses. (2) The Team’s own expenditures for improvements at the stadium are not ordinarily a permissible use of PSL revenues. (3) The share of the expansion fee that the Team was required to forgo is properly characterized as a “loss” sustained by the Team as a result of its relocation, and therefore PSL revenues may be used to cover that loss.

*Opinion No. 02-001  
February 13, 2002*

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**ADVICE LETTERS**

**BUDGETARY ADMINISTRATION–  
STATE DEDICATED FUNDS**

**Question:** Do State laws governing the Waterway Improvement Fund and the Maryland Emergency Medical System Operations Fund forbid the use of money in those Funds for purposes not specified in the laws?

**Answer:** As a general rule, money in the Funds can only be used for the purposes enumerated in the law establishing each Fund. However, those laws may be amended or superseded by further enactments.

*Note:* Section 1 of the Budget Reconciliation and Financing Act of 2002, SB 323, effectively superseded Natural Resources Article, §8-707(a) by requiring the Governor to transfer \$8 million from the Waterway Improvement Fund to the State’s General Fund. Part of Section 2 of SB 323 would have required the Governor to transfer \$5 million from the Maryland Emergency Medical System Operations Fund to the State’s General Fund, but that provision was deleted from the bill as enacted.

*Letter to  
Senator Donald F. Munson  
February 26, 2002*

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**CHARTER COUNTIES – TAXES**

**Question:** May the General Assembly, in a bill authorizing Prince George’s County to implement a tax, designate the uses of the tax revenue?

**Answer:** Yes; such a bill would not violate the Home Rule Article of the State Constitution.

*Letter to  
Delegate Joseph F. Vallario, Jr.*

*March 29, 2002*

**Question:** May the General Assembly authorize a county to impose a tax and require that the proceeds be directed to specific educational programs, rather than to the schools in general?

**Answer:** Yes; the General Assembly may generally require that the revenues from a specific tax be used for specific purposes. Moreover, education is a matter entirely within State control, so that the State may impose requirements as to educational spending even on charter counties without violating the Home Rule Article of the State Constitution.

*Letter to  
Delegate Mark K. Shriver  
March 14, 2002*

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#### **COUNTIES – SUBDIVISION REGULATION**

**Question:** Do the St. Mary's County Commissioners have legal authority to write subdivision regulations?

**Answer:** Yes; a 2000 change in Article 66B, §5.03 grants to county commissioners greater authority than they previously had to make changes in subdivision regulations recommended by the local planning commission.

*Letter to  
Senator Roy P. Dyson  
February 26, 2002*

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#### **EDUCATION – AUTHORITY OF BOARD OF EDUCATION TO CHALLENGE RESTRUCTURING LEGISLATION**

**Question:** May the Prince George's County Board of Education use public or non-public funds to finance the legal costs of a constitutional challenge to legislation that would restructure the Board?

**Answer:** No; State law precludes the Prince George's County Board of Education from challenging the constitutionality of such legislation, regardless of the source of funds.

*Letter to  
Senator Leo E. Green  
Delegate James W. Hubbard  
February 20, 2002*

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**FINANCIAL INSTITUTIONS –  
STATE PREEMPTION OF LOCAL REGULATION**

**Question:** What is the effect of HB 649 (2002), which provides that only the State may enact laws that regulate extensions of credit by a financial institution?

**Answer:** The provisions of the bill act to clarify the current state of the law. The General Assembly has not delegated to local authorities power to regulate financial institutions, and has regulated in this field so comprehensively as to preempt local regulation. Certain exemptions in the bill, recognizing that federal law preempts State law and disclaiming restriction of local authority to establish property rights or to regulate local fiscal and economic development policy, also reflect current law.

*Letter to  
Delegate Maggie L. McIntosh  
February 8, 2002*

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**FRANCHISES – POWER OF GENERAL ASSEMBLY  
TO GRANT OR TO DELEGATE AUTHORITY  
TO GRANT FERRY FRANCHISE**

**Q1:** Could the General Assembly itself enact legislation granting a ferry company a franchise to provide service between Crisfield, Maryland and Reedville, Virginia, and between Somerset and St. Mary's Counties?

**Answer:** Yes; as the waters of the Chesapeake Bay in Maryland are part of the public domain, the General Assembly could enact legislation granting a franchise to use the waters for ferry service. Such a franchise would not violate the constitutional prohibition on granting monopolies or the prohibition on special laws.

**Q2:** Could the General Assembly authorize Somerset and St. Mary's Counties to grant such a franchise?

**Answer:** Yes; the General Assembly could delegate to the counties the authority to grant a ferry franchise.

*Letter to  
Delegate Charles A. McClenahan  
February 11, 2002*

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**FREEDOM OF SPEECH –  
POLITICAL SPEECH**

A mass mailing was sent to residents of a voting district by the Marijuana Policy Project. The mailing included the name of a legislator and requested that recipients of the mailing contact the legislator and request that the legislator vote for medical marijuana legislation pending before the General Assembly. The mailing did not indicate the legislator's position on the issue.

**Question:** Is this type of direct mail permitted under Maryland law when it does not indicate the legislator's position on the issue?

**Answer:** This type of mass mailing is not prohibited under Maryland law, and the organization sending out the mailing has no obligation to indicate the legislator's position.

*Letter to  
Delegate Thomas E. Hutchins  
March 20, 2002*

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**GOVERNOR – PARDONS –  
RESTORATION OF VOTING RIGHTS**

**Question:** Does the Governor's authority to issue partial pardons allow him to issue a pardon that would have the sole effect of permitting the pardoned person to vote?

**Answer:** Yes; the Governor may issue such a pardon, even to restore civil rights lost as a result of a federal conviction.

*Letter to  
Senator Andrew P. Harris  
January 24, 2002*

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**HEALTH AUTHORITIES –  
NUISANCE CONTROL**

SB 672, enacted as Chapter 333, Laws of Maryland 2002, makes certain changes to the law concerning the control of nuisances by health authorities, authorizing local officers to engage in summary abatement procedures.

**Question:** Is the legislation constitutional?

**Answer:** The legislation does not violate constitutional rights to procedural due process, does not authorize unconstitutional takings, and does not violate the Fourth Amendment to the United States Constitution by permitting unreasonable or impermissible warrantless searches.

*Letter to  
Senator Donald F. Munson  
February 26, 2002*

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**HEALTH – MEDICAL RECORDS**

**Question:** May a guardian *ad litem* appointed for a child in a divorce case object to the release of the child's psychiatric reports to a county school psychologist?

**Answer:** The State's Medical Records Law generally requires health care providers, such as psychiatrists, to preserve the confidentiality of a patient's records, but permits a provider to disclose

the records in certain circumstances. Depending on the circumstances of a particular case, a guardian *ad litem* appointed by a court might be a “person in interest” with authority to decide whether a psychiatrist may disclose health records relating to a minor. Provisions of the Family Law Article relating to child abuse and neglect require that a psychiatrist notify social services departments and law enforcement agencies if they have “reason to believe” a child has been subject to abuse or neglect. But these provisions do not obligate a psychiatrist to provide information to a school psychologist. In some circumstances, reports or records of child abuse or neglect may be disclosed to a licensed practitioner, such as a psychologist, treating the child.

*Letter to  
Delegate Joan B. Pitkin  
January 15, 2002*

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#### STATE EMPLOYEES – RIGHT TO SUE

In its January 2002 decision in the case of *Robinson v. Bunch*, the Court of Appeals of Maryland held that Maryland law provides a State remedy for a State employee who alleges violations of the federal Fair Labor Standards Act.

**Q1:** Does a State employee have a right to sue in State court directly under the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), or the Family and Medical Leave Act (FMLA)?

**Answer:** Because of the Eleventh Amendment to the United States Constitution, none of these federal statutes authorizes a damage remedy against the State in State court. However, State employees likely can bring actions for injunctive relief in State court for alleged violations of the statutes. Successful plaintiffs can also obtain attorneys’ fees.

**Q2:** Independent of the ADEA, ADA, or FMLA, does a State employee have a right to sue under distinct provisions of State law?

**Answer:** Provisions of the State Personnel and Pensions Article may be read to confer on State employees federal rights secured by the ADA, ADEA, and FMLA. These rights would be enforceable through the administrative and judicial review mechanisms set forth in the grievance provisions of State law. Relief could include back pay, but neither damages nor attorneys’ fees. In addition, a State employee who alleges discrimination on the basis of age or physical or mental handicap could seek relief, in the form of a cease and desist order, equitable relief, or back pay, under Article 49B. Neither the State Personnel and Pensions Article nor Article 49B creates a private right of action for damages or a right to attorneys’ fees.

*Letter to  
Delegate Samuel I. Rosenberg  
January 23, 2002*

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#### TERRORISM – SUPPORT OF TERRORIST ORGANIZATIONS

HB 815 (2002) would have prohibited a person from soliciting or knowingly providing “material support or resources” for an organization that the person knew to be a “terrorist organization” or controlled by a terrorist organization, unless (in the case of a controlled organization) the person received written assurance that the support or resources would not be transferred to or expended on behalf of the terrorist organization. The bill, which received an unfavorable report in the House Judiciary Committee, defined “terrorist organization” and “material support or resources,” and it would have authorized criminal penalties and fines for violators.

**Question:** Is the bill constitutional?

**Answer:** Yes; the bill does not violate the First Amendment or the Supremacy Clause of the United States Constitution, and it is not unconstitutionally vague. However, to satisfy the Sixth Amendment, it may be advisable to amend the bill to clarify the ability of organizations and individuals to seek, and of attorneys to provide,

legal advice and representation with respect to investigations and charges based on terrorist activities.

*Letter to  
Delegate Samuel I. Rosenberg  
February 11, 2002*

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