

# Opinions, Advice, and Legislation Quarterly News

Office of the  
Maryland Attorney General



April - June 2002

## OPINIONS

### COUNTIES)

#### AMENDMENT OF BUDGET FOR PUBLIC SCHOOLS

**Question:** May the Board of County Commissioners for Frederick County approve a budget amendment that would increase the “surplus” revenue category in the County Board of Education budget for the current year?

**Answer:** No; under a public local law applicable in Frederick County, the County Commissioners may not amend a budget they have adopted to recognize an increase in the amount of “surplus” listed under revenue from “local” sources. However, if the increased surplus were attributable to unanticipated State or federal revenue, the County Commissioners would have discretion under the Education Article to approve the expenditure of those funds, even after adoption of the budget.

*Opinion No. 02-006*  
*May 2, 2002*

### CRIMINAL PROCEDURE –

#### STATE’S ATTORNEY’S DISCLOSURE OF LOCATION AND DATE OF EXECUTION OF SEARCH WARRANT

**Question:** May the State’s Attorney disclose to a community association the location and date of execution of a search warrant related to controlled dangerous substances in the community, so that the information may be used in a nuisance abatement action?

**Answer:** Except for certain specifically authorized purposes, the Maryland Rules require that search warrant materials be filed with the court and

sealed, and that public officials refrain from disclosing their contents in the absence of a court order. Thus, unless the address and date of execution of a search warrant have already been publicly disclosed ) for example, as a result of a criminal prosecution ) the State’s Attorney may not provide that information to a community organization without a court order. Disclosure to a community organization of the date on and the location from which illegal drugs or paraphernalia have been seized would further the public policy goals of the nuisance abatement law and, hence, would be an appropriate basis for a court order.

*Opinion No. 02-007*  
*May 20, 2002*

### MUNICIPALITIES –

#### SUBPOENA POWER FOR LOCAL HUMAN RELATIONS COMMISSION

**Question:** May the Town of Easton, by ordinance, grant subpoena power to a local human relations commission for purposes of the commission’s investigations and proceedings?

**Answer:** The Town may establish a local human relations commission pursuant to its police powers; implicit in that authority is the power to grant the commission subpoena power, if the commission is to carry out investigative and adjudicative functions.

*Opinion No. 02-005*  
*April 9, 2002*

### PUBLIC SAFETY)

#### BUDGETARY ADMINISTRATION OF 911 FUND

**Question:** Is a wireless telephone company entitled to recover from the 911 Trust Fund (the "Fund") its costs of providing enhanced 911 service for its customers?

**Answer:** No; a wireless telephone company does not have a right to recover from the Fund its expenses of providing enhanced 911 service. However, the Emergency Number Systems Board has discretion to approve payments from the Fund for those costs, if the company incurs the costs pursuant to a contract with a local government, if the request is consistent with local plans for enhanced 911 services, and if the expenses otherwise qualify for reimbursement under the State 911 law.

*Opinion No. 02-008  
June 4, 2002*

Maryland Declaration of Rights, which prohibits simultaneously holding two offices of profit?

**Answer:** Because the Director of the Montgomery County Office of Procurement does not exercise a large portion of the sovereign power of the State and in most respects serves at the direction and under the supervision of the County's Chief Administrative Officer, the position of Director is not an office of profit. Therefore, holding both positions would not violate Article 35.

*Letter to  
Ms. Beatrice Tignor  
June 28, 2002*

---

## ADVICE LETTERS

### ALCOHOLIC BEVERAGES – OPENING COUNTY DISPENSARIES ON SUNDAY

**Question:** Can the Worcester County Liquor Control Board open its dispensaries to the general public on Sundays beginning at 12:30 p.m.?

**Answer:** Yes.

*Letter to  
Delegate Bennett Bozman  
May 28, 2002*

---

### CONSTITUTIONAL LAW – TWO OFFICES OF PROFIT

**Question:** Would simultaneous service as a member of the new Board of Education for Prince George's County and as Director of the Montgomery County Office of Procurement violate Article 35 of the

---

### FEDERAL PREEMPTION – USE OF CONSUMER CREDIT HISTORIES FOR INSURANCE PURPOSES

House Bill 521, enacted as Chapter 580, Laws of Maryland 2002, and House Bill 1002, enacted as Chapter 553, both addressed insurers' use of consumer credit histories as a basis for adverse actions with respect to consumers of personal line homeowner's and motor vehicle insurance.

**Question:** Are the bills constitutional and legally sufficient?

**Answer:** Neither bill would be preempted by the federal Fair Credit Reporting Act. However, the title and generally relating clause of HB 1002 suggest that the bill's provisions are limited to motor vehicle liability insurance and do not reveal that the bill also relates to homeowner's insurance; therefore, the bill has a title defect. Although the title might be sufficiently misleading as to violate Article III, §29 of the Maryland Constitution, which requires that the subject matter of each bill be described in its title, this violation would not result in the invalidity of the bill as a whole.

It would only render unenforceable the severable HB 1002 provision relating to homeowner's insurance, and that provision is largely covered by HB 521. Moreover, the title defect could be cured in 2003.

*Letter to  
Governor Parris N. Glendening  
May 14, 2002*

---

**FIRST AMENDMENT –  
DISTRIBUTING MATERIAL FROM SIDEWALK  
OUTSIDE MVA OFFICE**

**Question:** Can the Motor Vehicle Administration ("MVA") prevent a pro-Palestinian group from distributing information from a table outside an MVA facility without violating the First Amendment?

**Answer:** Sidewalks located on the property of a government office, if they serve no purpose other than to permit persons to walk from the parking lot to the office, are not considered a traditional public forum and may be closed to speech activity completely, as long as the closure is viewpoint neutral and reasonable in light of the purpose for which the sidewalks are maintained. However, since the MVA has chosen to allow the distribution of material outside its offices by any group that obtains a permit and abides by certain rules, it cannot exclude a particular group, such as the pro-Palestinian group in question, based on the group's message.

*Letter to  
Delegate Samuel I. Rosenberg  
May 20, 2002*

---

**GENERAL ASSEMBLY –  
REMEDY FOR PLAGIARIZED TESTIMONY**

**Question:** What remedies are available for plagiarized and distorted testimony during a hearing before the General Assembly?

**Answer:** Plagiarized testimony before a legislative committee might amount to copyright infringement, which is subject to criminal and civil remedies under federal law. However, federal

prosecution seems unlikely, and the potential defendants might have defenses to a civil action under federal copyright law. State law appears to offer no additional remedy.

*Letter to  
Delegate George C. Edwards  
May 17, 2002*

---

**GENERAL ASSEMBLY –  
APPOINTMENT OF CO-CHAIRMAN OF  
LEGISLATIVE ETHICS COMMITTEE**

**Question:** Does a potential conflict of interest preclude the President of the Senate from appointing a new co-chairman for the Joint Committee on Legislative Ethics? May the President decide in advance to appoint the person recommended by the departing co-chairman?

**Answer:** State law clearly and expressly requires that the leadership of the Joint Committee be appointed in part by the Senate President, and in the absence of any provision for a substitute, no other person may make the appointment. The rule of necessity permits a public officer to carry out essential duties despite a conflict of interest when the officer is the only one who may legally act. The President may subdelegate his authority to determine the appointee, as long as the appointment remains in the President's ultimate control, and he may agree in advance to appoint the person recommended by the departing co-chairman.

*Letter to  
Senator Thomas V. "Mike" Miller, Jr.  
June 24, 2002*

---

**INSURANCE –  
AUTO REPAIR CONTRACTS**

**Question:** May an automotive repair facility sell a repair contract?

**Answer:** Yes. However, because an automotive repair facility that sells a repair contract is engaged in the business of insurance, it must meet all requirements

of the Insurance Article and be authorized by the Maryland Insurance Administration to engage in the sale of insurance.

*Letter to  
Delegate James W. Hubbard  
April 23, 2002*

---

**MARYLAND INSURANCE ADMINISTRATION –  
SERVICE OF SUBPOENAS**

**Question:** What legal requirements apply to service of subpoenas by the MIA?

**Answer:** The MIA must follow Maryland Rule 2-510, which requires delivery of a copy to the person named or to an agent of that person. It may not serve subpoenas by certified mail, restricted delivery, even though that method is allowed for service of process generally under Maryland Rule 2-121(a).

*Note:* This question was posed before the enactment of Senate Bill 158 as Chapter 452, Laws of Maryland 2002. Effective October 1, 2002, that legislation expands the ways in which the MIA may serve subpoenas, so that they may be served “in the same manner as a subpoena of a circuit court may be served” (as before SB 158) and also “in the same manner as service of process in a civil action in a circuit court may be served.”

*Letter to  
Delegate Michael R. Gordon  
April 2, 2002*

---

**MARYLAND STADIUM AUTHORITY –  
DEVELOPMENT OF HIPPODROME  
PERFORMING ARTS CENTER**

The Hippodrome Performing Arts Center is being developed by the Maryland Stadium Authority (“MSA”). As part of that project, the MSA has created two affiliated for-profit entities, MSA Hippodrome, Inc., a corporation, and Hippodrome Performing Arts Center, LLC, a limited liability company. MSA Hippodrome, Inc., is wholly owned

by the MSA and is staffed and governed by MSA employees.

**Q1:** Are MSA employees who serve as officers and directors of MSA Hippodrome, Inc., covered by the Maryland Tort Claims Act?

**Answer:** An MSA employee who, as part of his or her duties, serves as an officer or director of this MSA subsidiary will be covered by the Maryland Tort Claims Act.

**Q2:** Can the MSA be held liable for the obligations of the two entities?

**Answer:** It is unlikely that the liabilities or obligations of the affiliated entities will be attributed to the MSA solely because the MSA has an ownership interest in one or both of the entities.

*Letter to  
Alison L. Asti, Esquire  
Maryland Stadium Authority  
April 11, 2002*

---

**PUBLIC INFORMATION ACT –  
DISCLOSURE OF NAMES OF APPLICANTS FOR  
APPOINTMENT TO BOARD OF EDUCATION**

**Question:** Is the State Department of Education required to disclose the names of applicants for appointment to the Prince George’s County Board of Education?

**Answer:** No; in fact, it is forbidden to do so. The Public Information Act prohibits the disclosure of information in personnel files, including applications. Therefore, the names of applicants for appointment to the new Board of Education for Prince George’s County may not be disclosed.

*Letter to  
Senator Leo E. Green  
May 13, 2002*

To receive copies of any item in this newsletter, please contact Kathy Izdebski, (410) 576-6327, or e-mail her at [kizdebski@oag.state.md.us](mailto:kizdebski@oag.state.md.us). Copies of opinions may also be obtained from the Attorney General’s website: [www.oag.state.md.us](http://www.oag.state.md.us).