

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



April – June 2003

OPINIONS

HEALTH - PHYSICIANS – DRUGS – PROPOSED NALOXONE DISTRIBUTION PROGRAM

The Baltimore City Health Department proposed a program, called “Staying Alive,” to prevent deaths from heroin overdoses. The program would teach illicit drug users how to reduce the risk of overdose and would distribute naloxone, a drug used to treat overdoses, to heroin users. An individual receiving naloxone would be instructed how to administer the drug to other illicit drug users.

Q1: Would a physician who prescribed naloxone as part of the Staying Alive program be subject to criminal prosecution or professional censure?

Answer: A physician who prescribed naloxone to a participant in the Staying Alive program for treatment of *that participant* would not be liable for criminal prosecution or professional censure. However, if the physician prescribed the drug to a participant with the understanding that the participant would administer it to another individual who was not a patient of the physician, the physician might be subject to criminal prosecution and disciplinary action for aiding the unauthorized practice of medicine and for violation of State laws relating to prescription drugs.

Q2: Would an individual to whom naloxone is prescribed be vulnerable to criminal prosecution if that individual administered the drug to someone experiencing a heroin overdose?

Answer: A participant in the Staying Alive program would not be liable to criminal prosecution if the participant were prescribed naloxone for the participant’s own use. However, if the participant were prescribed the drug on the understanding that he or she would administer it to another person, the

participant might be subject to criminal prosecution for the unauthorized practice of medicine, for the unlicensed provision of emergency medical services, and for violation of State laws pertaining to prescription drugs.

*Opinion No. 03-009
April 30, 2003*

MUNICIPAL UTILITIES – TOWN MAY AUTHORIZE UTILITY TO PROVIDE TELECOMMUNICATIONS SERVICES BEYOND TOWN LIMITS

Question: May the Easton Utilities Commission (Commission), an agency of the Town of Easton, provide telecommunications services beyond the corporate limits of the Town?

Answer: The municipal charter may authorize the Commission to provide telecommunications services to Town residents. The Commission may extend those services beyond the Town’s corporate limits, as long as extraterritorial services are ancillary to municipal services and do not adversely affect the services provided to municipal subscribers or compromise the public purpose justifying the provision of telecommunications services. Subject to those conditions, the Commission may extend service throughout Talbot County pursuant to a non-exclusive franchise awarded by the County.

*Opinion No. 03-010
June 24, 2003*

ADVICE LETTERS

BUDGET – AUTHORITY OF GOVERNOR TO CONTROL SPENDING AT UNIVERSITY SYSTEM OF MARYLAND

Question: What is the Governor's authority to control the spending of public money at the University System of Maryland (USM)?

Answer: The Governor may control the expenditure of public money by USM in the following ways:

1. Under the Executive Budget Amendment to the State Constitution, the Governor prepares the annual Budget and has broad discretion over whether to include funds for any purpose, including funds for USM;

2. Subject to various limitations, the Governor has the power to reduce appropriations made in the Budget Act, including appropriations to USM;

3. Pursuant to the allotment clause of the Budget Act, the Secretary of the Department of Budget and Management may delay the allotment of appropriated funds, including those appropriated to USM;

4. The Governor may request State agencies and institutions, including USM, to limit spending of appropriated funds. However, in the case of USM, unspent funds would not revert to the General Fund.

*Letter to
Warren G. Deschenaux, Director, Office of Policy
Analysis, Department of Legislative Services
and Delegate Peter Franchot
May 20, 2003*

EDUCATION – PUBLIC SCHOOLS – APPOINTMENT OF COUNTY SCHOOL SUPERINTENDENT

Question: What is the effect of a resolution of the Howard County Board of Education and a contract amendment entered into by the Board in connection with renewal of the employment contract of the County School Superintendent?

Answer: The effect of the resolution and contract amendment is to make a prospective

reappointment, which conflicts with the requirements of §4-201(b) of the Education Article of the Code, and is therefore unenforceable.

*Letter to
Delegate Elizabeth Bobo
and Delegate Frank Turner
June 16, 2003*

ELECTIONS – VOTER REGISTRATION

The Attorney General was asked to clarify issues relating to the possibility that 16-year-olds might be permitted to register before August 19, 2003, and to vote in the September 9, 2003 primary election, in Baltimore City.

Q1: Is Election Law Article, §3-102, which authorizes the registration of an individual who "will be 18 years old on or before the day of the next succeeding general or special election," in conflict with Article I, §1 of the State Constitution, which entitles residents 18 years old or older to vote at "all elections" held in the State?

Answer: No; Article I, §1 does not apply to primary elections, which did not exist when the State Constitution was adopted, and the election law is consistent with longstanding State policy.

Q2: Would Election Law Article, §3-102 permit an individual to vote at an unanticipated special election that might occur before the individual reached the age of 18?

Answer: No.

Q3: Does Election Law Article, §3-102 conflict with the 26th Amendment to the United States Constitution or with any other federal law?

Answer: No.

*Letter to
Delegate Donald H. Dwyer, Jr.
May 21, 2003*

GOVERNOR – EXECUTIVE ORDER – REPORTS OF MISCONDUCT BY PUBLIC EMPLOYEES

Paragraph D of Executive Order 01.01.2003.13 directs agency heads to require employees

to report any arrest or other legal proceeding in which the employee is involved.

Question: Is that paragraph consistent with the State Personnel & Pensions Article or does it unconstitutionally invade the privacy rights of employees?

Answer: If Paragraph D is construed in the context of the entire executive order to encompass off-duty misconduct that may reflect on job fitness or performance, it is consistent with the State Personnel & Pensions Article and the constitutional rights of employees.

*Letter to
Delegate Shane Pendergrass
May 23, 2003*

HEALTH – MARYLAND HEALTH CARE FOUNDATION – SUSPENSION OF ACTIVITIES

Q1: May the Maryland Health Care Foundation cease its activities?

Answer: Because the Foundation was created by the General Assembly through a statute that gave it “perpetual existence,” subject to modification or termination by the General Assembly under certain circumstances, the trustees of the Foundation may not dissolve it without authorization from the General Assembly. However, it could be consistent with the trustees’ fiduciary obligations and the prudent use of State resources to temporarily suspend its operations.

Q2: What should be done with the Foundation’s records if its operations are suspended?

Answer: Records related to activities that are transferred to another entity are appropriately transferred to that entity. Records of completed activities should be offered to the State Archivist. Records necessary to resume operations in the future should remain available; they might be placed in long-term storage, or the Foundation might enter into a memorandum of understanding with another State agency to hold the records.

*Letters to
Marilyn D. Maultsby, Executive Director
Maryland Health Care Foundation
June 13 and July 11, 2003*

HEALTH INSURANCE – CAREFIRST REFORM

The Governor signed into law as Chapters 356 and 357 (2003) CareFirst “reform” legislation that, among other provisions, requires a nonprofit health service plan to serve certain public purposes, establishes a nonprofit health service plan oversight committee, alters the compensation of the CareFirst board, imposes term limits and limits on compensation of board members, and prohibits the acquisition of the CareFirst health service plan during the 5 years after the effective date of the Act.

The Blue Cross Blue Shield Association proposed a settlement agreement under which State officials would refrain from implementing certain portions of the legislation.

Question: Would the proposed settlement agreement be valid and enforceable?

Answer: No; Article 9 of the Maryland Declaration of Rights provides that “no power of suspending Laws or the execution of Laws, unless by, or derived from the Legislature, ought to be exercised or allowed.” Moreover, the Court of Appeals has said that “neither government officials nor private parties may validly contract to ‘supersede’ applicable law.” Therefore, executive branch officials could not by mere agreement suspend the provisions of the Act. However, other valid mechanisms might be employed to delay the immediate effectiveness of portions of the legislation.

*Letter to
Kenneth H. Masters, Chief Legislative Officer
Office of the Governor
May 7, 2003*

HIGHER EDUCATION – RESIDENT TUITION

House Bill 253 (2003), as introduced, would have provided that an individual other than a non-immigrant alien is exempt from paying nonresident tuition at a public institution of higher education in Maryland if the individual attended a public or private secondary school in Maryland for at least 3

years, graduated from such a school, or received the equivalent of a high school diploma in Maryland, and meets certain other requirements. Senate amendments would have extended the exemptions to active duty members of the U.S. Armed Forces, and their spouses and financially dependent children, if the active duty member is stationed, resides, or is domiciled in Maryland. The bill, as amended, passed both houses of the General Assembly, but was vetoed by the Governor.

Question: Did the bill, as amended, meet the requirement imposed by Article III, §29 of the Maryland Constitution, that a bill address a single subject?

Answer: Yes; the provisions of HB 253, as amended, were all germane to the narrowly focused subject of who is exempt from the payment of nonresident tuition at the public institutions of higher education in the State. Moreover, the provisions added by amendment were not taken from another proposal considered but rejected by the General Assembly. Therefore, the bill met the single subject requirement.

*Letter to
Senator Paul G. Pinsky
April 4, 2003*

LEGISLATIVE ETHICS

A newspaper article raised questions about alleged conflicts between the role of the Speaker of the House of Delegates and his employment as assistant to the Director of Recreation and Parks in Anne Arundel County. The Speaker asked for advice in this regard.

Question: Does the Anne Arundel County Ethics Commission have authority to take action regarding conduct of the Speaker as a State legislator that benefitted Anne Arundel County and the County Department of Recreation and Parks?

Answer: No; an attempt by the County Ethics Commission to exercise such authority would run afoul of constitutional provisions protecting State legislative actions from inquiry by other bodies and would result in impermissible control of legislative actions by a body in the executive branch of a

political subdivision. In addition, public general laws permitting employment of legislators in local government would preempt any effort by a political subdivision to regulate the secondary employment of a legislator.

*Letter to
Delegate Michael E. Busch
Speaker of the House
June 9, 2003*

MUNICIPALITIES

ESTABLISHMENT OF SPECIAL TAXING DISTRICT

Question: Does College Park, a municipal corporation, have authority to establish a special taxing district to finance construction of a parking facility?

Answer: Yes; Article 23A, §44 of the Code grants the appropriate authority. However, under that section and §44A, tax revenues collected may not be used directly to pay construction costs; rather, they may be used to service and redeem debt incurred to pay for construction.

*Letter to
Robert H. Levan, Esquire
City Attorney, City of College Park
May 20, 2003*

REMOVAL OF MUNICIPAL OFFICERS AND EMPLOYEES

Question: Who has authority to remove the heads of the offices, departments, and agencies of the Town of Thurmont?

Answer: Although agency heads are appointed by the President (or Mayor) with the approval of the Board of Commissioners, the Mayor alone has the authority to remove these officials, except in one instance in which the Charter specifically provides a role for the Board of Commissioners.

*Letter to
Senator David R. Brinkley
June 12, 2003*

**OPEN MEETINGS LAW –
GENERAL ASSEMBLY – LOCAL DELEGATIONS**

Question: Is the Western Maryland delegation within the Maryland General Assembly subject to the Open Meetings Act?

Answer: Whether a local delegation is subject to the Open Meetings Act depends on whether it functions as a “public body,” as defined in the Act. When the General Assembly is in session, a local delegation may become a select committee created by rule, and thus a public body subject to the Act. However, during the legislative recess, a local delegation is not a public body subject to the Act.

*Letter to
Delegate George C. Edwards
April 28, 2003*

**PUBLIC CHARTER SCHOOL ACT – ELIGIBILITY
TO FORM CHARTER SCHOOL**

Question: Does the Public Charter School Act of 2003 permit a private school that serves students with special needs and is operated by a religious group or denomination to form a charter school?

Answer: No; the Act permits the establishment of public charter schools within the existing public school system to provide innovative learning opportunities and creative approaches to improve the education of students. The Act specifies that these schools must be strictly secular and defines “public charter school” as one that “is open to all students” Therefore, neither a private school designed to serve a specific population, nor one that is operated by a religious group or denomination, is eligible to form a charter school under the Act.

*Letter to
Delegate Jean B. Cryor and
Delegate Brian J. Feldman
May 30, 2003*

**PUBLIC PROPERTY – CONDEMNATION AND
SUBSEQUENT USE**

Baltimore County has condemned certain private property and has converted it to a park.

Question: Does the law prevent Baltimore County from selling this land to private developers for residential development?

Answer: Assuming that the initial condemnation was done in good faith and that any future action with respect to the property will be undertaken in conformance with the laws and ordinances governing the use and disposition of County property, the County can legally make the park property available for private residential development.

*Letter to
Delegate Rick Impallaria
May 22, 2003*

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