

# Opinions. Advice. and Legislation Quarterly News

Office of the  
Maryland Attorney General



January – March 2004

## OPINIONS

### CHILD ABUSE AND NEGLECT – CONFIDENTIALITY RESTRICTIONS ON CONTENT AND DISSEMINATION OF REPORTS BY INDEPENDENT JUVENILE JUSTICE MONITOR

In 2002, the General Assembly codified the position of Independent Juvenile Justice Monitor within the Governor's Office for Children, Youth, and Families, making the Independent Monitor responsible for determining "whether the needs of children under the jurisdiction of the Department [of Juvenile Services, "DJS"] are being met in compliance with State law, that their rights are being upheld, and that they are not being abused."

**Question 1:** To what extent does Article 88A, §6(b), imposing confidentiality requirements pertaining to child abuse investigations, limit the information about incidents and investigations of possible child abuse and neglect that the Independent Monitor may include in reports provided to various State officials?

**Answer:** A report by the Independent Monitor may, and should, include findings and recommendations about public agency performance in response to allegations of child abuse and neglect at DJS facilities. However, to comply with Article 88A, §6(b), the report should not identify, or disclose information that invades the privacy of, a child, the child's family, the individual who allegedly committed the abuse, or the individual who reported suspected abuse to State or local authorities.

**Question 2:** To what extent does Article 88A, §6(b) or other law limit the information in a report of the Independent Monitor that may be disclosed in response to a request under the Public Information Act (PIA)?

**Answer:** Assuming that a report is prepared in compliance with Article 88A, §6(b), that statute

would not further restrict the public inspection of the report under the PIA. Of course, in responding to a PIA request, the Independent Monitor must also consider other applicable exceptions to the general rule of disclosure under the PIA. In particular, the Independent Monitor should consult with agencies that provided investigative reports, to determine whether public disclosure of the contents of those reports would compromise a current investigation or otherwise be contrary to the public interest. To the extent possible, the Independent Monitor should identify the parts of a report subject to the investigative records exemption at the time the Independent Monitor provides the report to State officials.

**Question 3:** Do the restrictions imposed by Article 88A, §6(b) on the information in a report depend on which agency provided the information to the Independent Monitor?

**Answer:** No, the restrictions imposed by Article 88A, §6(b) apply to information that the Independent Monitor obtains from DJS, local departments of social services, law enforcement agencies, or other agencies, as well as to results of any investigation by the Independent Monitor itself.

*89 Opinions of the Attorney General 31*  
February 17, 2004

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### COMMISSIONER COUNTIES – ABSENT NEW STATE ENABLING LAW, CALVERT COUNTY COMMISSIONERS CANNOT SET STANDARDS FOR HUMANE TREATMENT OF DOGS

**Question:** Does current law permit the Calvert County Commissioners to prescribe the type of shelter that an owner must provide if a dog is kept outdoors?

**Answer:** The current State enabling statute concerning regulation of dogs authorizes the Commissioners to enact laws for the protection of the public, but not to set standards for the humane treatment of animals. If the County Commissioners wish to enact an animal protective ordinance, they should seek the necessary enabling legislation from the General Assembly.

*89 Opinions of the Attorney General 48  
February 25, 2004*

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**COMMUNITY COLLEGES – TRUSTEE OF  
CHESAPEAKE COLLEGE “HOLDS OVER”  
AFTER EXPIRATION OF TERM UNTIL  
SUCCESSOR IS APPOINTED AND QUALIFIES**

**Question:** Does the term of a member of the Board of Trustees of Chesapeake College end automatically four years from the day of the trustee’s appointment, or does the trustee continue to serve until a successor is appointed and qualified?

**Answer:** A trustee continues to serve after the expiration of four years, until a successor is appointed and qualifies.

*89 Opinions of the Attorney General 18  
January 16, 2004*

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**EMPLOYEE RIGHTS – TENANCY RIGHTS OF LIVE-  
IN DOMESTIC EMPLOYEE – ENFORCEMENT IF  
EMPLOYER IS FOREIGN DIPLOMAT**

**Question 1:** Does a live-in domestic employee have tenancy rights, including the right to invite and receive guests, if the employee is required to live at the employer’s residence as a condition of employment and the employee is compensated in part by the employer’s provision of room and board?

**Answer:** Whether a live-in domestic employee has tenancy rights depends on the particular arrangement between the employer and employee – *i.e.*, whether that arrangement gives the employee exclusive control over the premises occupied by the

employee. A domestic employee who does not have tenancy rights does not have the right of a tenant to admit guests to the employer’s home without the employer’s assent. However, this does not mean that the employer may control the employee’s right to associate with others. An employer who isolated an employee from outside contacts by threat of force or legal action would likely violate federal laws against peonage, involuntary servitude, and forced labor.

**Question 2:** Are the live-in employee’s rights affected if the residence is owned by a foreign diplomat or by a foreign government that employs a household employee to work for a diplomat?

**Answer:** Even when a live-in employee has tenancy rights, those rights may be difficult to enforce if the residence is occupied by a foreign diplomat or maintained by a foreign government for use by diplomats. The Vienna Convention on Diplomatic Relations, a treaty that has the force of law, makes the private residence of a foreign diplomat “inviolable” – that is, it cannot be entered by the host country’s authorities without the diplomat’s permission. Moreover, diplomatic immunity would likely shield the diplomat from suit by the live-in employee, or anyone else, in federal or State court. However, the employee has the right to complain to the Justice Department, which can conduct an investigation and, if a violation is found, seek a waiver of diplomatic immunity. The worker can also seek relief from the State Department, which can mediate or negotiate with the diplomat or foreign government about the dispute.

*89 Opinions of the Attorney General 3  
January 5, 2004*

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**HEALTH MAINTENANCE ORGANIZATIONS –  
HMO LAW FORBIDS BALANCE BILLING OF  
HMO MEMBERS FOR EMERGENCY  
AMBULANCE SERVICES**

**Question:** Does a provision that prohibits health care providers from directly billing HMO patients apply to the Baltimore City Fire

Department when it bills for emergency ambulance services?

**Answer:** Yes, the Fire Department may recover its fees from the HMO for emergency ambulance services that are “covered services” under the HMO plan. It may not bill the HMO member directly for those services.

*84 Opinions of the Attorney General 53  
March 18, 2004*

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**MARYLAND-NATIONAL CAPITAL PARK AND  
PLANNING COMMISSION – MODE OF  
APPROVAL OF POLICE MUTUAL AID  
AGREEMENT**

The Maryland-National Capital Park and Planning Commission (“MNCPPC”) and Montgomery County are considering a mutual aid agreement that would extend the jurisdiction of the Park Police outside park property within Montgomery County.

**Question:** What is the proper method for the Montgomery County Council to approve the proposed agreement – by a law or by a resolution of the County Council?

**Answer:** The County may enter into the mutual aid agreement by enacting a law approving the agreement or by taking other appropriate action under County law that involves the participation of both the County Executive and the County Council. Approval by a resolution of the County Council alone would not suffice.

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March 25, 2004*

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**MOTOR VEHICLE ADMINISTRATION – EFFECT OF  
HAGUE CONVENTION ON ACCEPTANCE OF  
FOREIGN BIRTH CERTIFICATE**

Under the Hague Convention of 1961, to which the United States is a signatory, the only formality that may be required to certify the authenticity of a

foreign document is the addition of a certificate known as an “apostille,” issued by the competent authority of the country from which the document emanates.

**Question:** Is it legally permissible for the Motor Vehicle Administration (“MVA”) not to accept a foreign birth certificate with an apostille as proof of age and identity in connection with an application for a Maryland driver’s license or an MVA identification card?

**Answer:** The Hague Convention makes a proper apostille conclusive with respect to the authenticity of a foreign birth certificate and dispenses with the need for any other form of legalization. However, the Convention does not – and does not purport to – require that the country where a foreign document is produced give that document the same legal effect as a domestic document. While the MVA may not reject a foreign birth certificate bearing an apostille out of concern about its authenticity, if the MVA has another rational basis for treating such a document differently from a domestic birth certificate, the Hague Convention does not compel the MVA to do otherwise.

*84 Opinions of the Attorney General 60  
March 22, 2004*

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**OPEN MEETINGS ACT – PRE-APPLICATION  
MEETING UNDER ST. MARY’S COUNTY  
ZONING ORDINANCE**

**Question:** Does a pre-application meeting under the St. Mary’s County zoning law, conducted in anticipation of a future application for site plan approval, constitute a “public agency” meeting for purposes of the St. Mary’s County Open Meetings Act?

**Answer:** No, the public notice provisions of the Act do not apply.

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February 17, 2004*

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**PHYSICIANS – APPLICATION TO ORTHOPEDIC PRACTICE GROUP OWNING DIAGNOSTIC EQUIPMENT OF LAW PROHIBITING SELF-REFERRAL**

State law prohibits self-referral by health care practitioners.

**Question 1:** Does this law prohibit a physician who is associated with an orthopedic or other non-radiology medical practice group that owns a magnetic resonance imaging (“MRI”) machine or computerized tomography (“CT”) scanner from referring patients for tests on the equipment owned by the practice?

**Answer:** Yes.

**Question 2:** Would the answer be different if all of the equipment readings were performed by a radiologist employee or member of the practice group, or if the readings were contracted out to a radiology practice group?

**Answer:** No.

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January 5, 2004*

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**SHERIFFS – APPOINTMENT OF MUNICIPAL POLICE OFFICER AS SPECIAL DEPUTY SHERIFF; TRAFFIC STOP OUTSIDE MUNICIPALITY**

**Question 1:** What is the definition of “special deputy” and what are the duties of the office?

**Answer:** Under the common law, a sheriff may appoint a “special deputy” to perform a specific task or carry out a specific function when the sheriff’s regular deputies are unavailable or unable to perform that duty. State law expressly permits the Sheriff of Harford County to appoint a police chief or a certified police officer of a municipality in the County as a “special deputy.” A special deputy appointed in that manner is not an employee of, or entitled to compensation from, Harford County.

**Question 2:** May the Sheriff of Harford County designate as special deputies all qualified members of municipal police forces within the County, and

are there any limitations or time restrictions on such a designation?

**Answer:** The Sheriff may make all qualified members of municipal police forces “special deputies” *only* if all are needed for the specific purpose or function justifying the appointment of special deputies. The period of the designation would be limited to the duration of the circumstances justifying the designation. Of course, the Sheriff may find it useful to designate in advance those officers who are eligible to serve as special deputies and who may be called on in the future to perform in that capacity.

**Question 3:** May a municipal police officer designated as a special deputy make a traffic stop outside the municipality but within Harford County?

**Answer:** A municipal police officer generally may not make a traffic stop to enforce State motor vehicle laws outside the municipality, unless the officer follows an offender into another jurisdiction in “fresh pursuit.” Appointment as a special deputy sheriff ordinarily confers no greater authority to make routine traffic stops. However, in rare cases the particular circumstances justifying the appointment of a special deputy may involve making a traffic stop, and if so, the special deputy can make a traffic stop within Harford County outside the officer’s municipal jurisdiction.

**Question 4:** What liability would attach for the Sheriff and the municipality in the event of a lawsuit arising from the actions of a municipal police officer designated as a special deputy?

**Answer:** Liability would depend on the circumstances. The officer would remain an employee of the municipality and would not be considered an employee of the Sheriff or the County. Even if a claim were asserted against the Sheriff, in most cases the Sheriff would have no individual liability; the suit would essentially be against the State.

*89 Opinions of the Attorney General 66  
March 26, 2004*

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## ADVICE LETTERS

### BUDGETARY ADMINISTRATION – REMOVING BUDGET BILL CONTINGENCY

In the Budget Bill for fiscal year 2005, as submitted by the Governor, was an appropriation of \$278 million to the Non-Public Placement Program for the cost of educating children with disabilities, as well as a contingency reducing the General Fund appropriation by \$6.4 million on the enactment of legislation altering the State/local share of the cost of educating these children.

**Question:** May the General Assembly amend the Budget Bill to delete the contingency?

**Answer:** Yes, because striking the contingency would not result in exceeding the full appropriation prescribed by the Governor in the event of legislative inaction.

*Letter to Mr. David B. Juppe*  
*Department of Legislative Services*  
*March 11, 2004*

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### BUDGETARY ADMINISTRATION – SALARY OF SALARY OF EXECUTIVE DIRECTOR OF STADIUM AUTHORITY

**Question:** Did a 2002 State budget bill limitation on increases in the compensation of Executive Branch employees apply to salary increases and bonuses awarded to the former Executive Director of the Maryland Stadium Authority during fiscal year 2003?

**Answer:** No.

*Letter to Alison Asti, Esquire*  
*Maryland Stadium Authority*  
*March 24, 2004*

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### BUDGETARY ADMINISTRATION – PROHIBITION ON SPENDING TO PURPOSEFULLY PROMOTE PARTICIPATION BY FAITH-BASED ORGANIZATIONS IN COMMUNITY SERVICE PROGRAMS

Section 41 of the fiscal year 2005 budget bill, as amended by the House Appropriations Committee, provides that, as a general rule, no funds in the budget may be spent pursuant to or in furtherance of any policy or program to purposefully promote or facilitate the participation of faith-based organizations in State programs providing community services. It also prohibits spending to support any unit, office, or activity of State government the name of which may reasonably be read to imply such a purpose.

**Question 1:** Would Section 41 prevent the participation of faith-based organizations in programs, supported by State or federal funds, that provide funding for community services?

**Answer:** No. If the funding program were administered on a neutral basis, a faith-based organization could participate.

**Question 2:** Would Section 41 prevent the use of State funds as a match for a new federal program making funds for community services available to private groups, including faith-based organizations?

**Answer:** No, as long as the federal program is not restricted to faith-based organizations.

*Letter to Delegate Norman H. Conway*  
*March 23, 2004*

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### CHILD ABUSE AND NEGLECT – ADMINISTRATIVE APPEAL FOR INDIVIDUAL GRANTED PBJ

House Bill 63, which was unfavorably reported by committee, would have changed the term “found guilty” in a number of places in the Family Law Article to “convicted.”

**Question:** What was the reason for the bill?

**Answer:** The Office of Administrative Hearings has dismissed appeals of individuals who have been granted probation before judgment based on findings of indicated abuse or neglect, on the basis that they had been “found guilty” of abuse. The intent was apparently to preserve for these individuals the right to an administrative appeal before they are identified in the State’s central registry of abusers.

*Letter to Delegate Joseph F. Vallario, Jr.  
January 29, 2004*

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#### **DEVELOPMENTALLY DISABLED PERSONS – COMMUNITY PLACEMENT**

**Question:** Is State law concerning care of a developmentally disabled individual, including the Health Department policy of offering out-of-State institutional placements to Medicaid beneficiaries at State expense, consistent with federal law and the Supreme Court decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999)?

**Answer:** Yes, Maryland law is consistent with the *Olmstead* decision, which primarily concerned the right of mentally disabled individuals, under the Americans with Disabilities Act, to community placement.

*Letter to Senator J. Lowell Stoltzfus  
January 27, 2004*  
*Letter to Senator Thomas M. Middleton  
March 22, 2004*

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#### **DISCRIMINATION – APPLICATION OF ARTICLE 49B PROHIBITIONS TO MARYLAND COURTS**

**Question:** Are Maryland courts subject to Article 49B prohibitions on discrimination?

**Answer:** Yes, as a general proposition. However, because of judicial immunity and the principle of separation of powers, there are situations, especially where alleged discrimination relates to an order of the court or the behavior of a judge during trial, when the Human Relations

Commission would not be able to exercise jurisdiction.

*Letter to Delegate Virginia P. Clagett  
March 12, 2004*

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#### **FIRST AMENDMENT – ESTABLISHMENT CLAUSE – SCHOLARSHIPS AND CONTINUING EDUCATION FUNDS FOR NON-PUBLIC SCHOOL TEACHERS**

Two unsuccessful legislative proposals (House Bills 1164 and 1275) would have extended the benefits of the Maryland Teacher Scholarship Program and a tax credit for teacher continuing education costs to teachers in private and parochial schools.

**Question:** Would these proposals violate the Establishment Clause of the First Amendment?

**Answer:** No. Neither proposal would involve government indoctrination or define beneficiaries in terms of religion. Both proposals could be found to have the secular purpose of improving the quality of teachers, and not to have the effect of advancing religion or to produce an excessive entanglement between church and state.

*Letter to Senator John C. Astle  
January 19, 2004*

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#### **GAMING – “POKER EVENT” CONDUCTED BY “VETERANS RECOGNITION COMMITTEE”**

As a general matter, State law prohibits all betting, wagering, and gambling. However, a number of provisions in the State gambling laws carve out exceptions for events run by charitable or veterans’ organizations. An owner of an establishment at which “poker events” take place argued that he should be able to hold the events under the umbrella of a non-profit entity called the “Veteran’s Recognition Committee.”

**Question:** Does the involvement of such an entity change the status of a “poker event” under the gambling laws?

**Answer:** Even if the Veteran’s Recognition Committee could conduct legal gambling under one of several exceptions in the gambling laws, none of these exceptions would authorize it to conduct a “poker event.”

*Letter to Michelle Barnes*  
*State’s Attorney for Dorchester County*  
*March 16, 2004*

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#### **MARRIAGE – SAME-SEX MARRIAGES AND CIVIL UNIONS**

Two unsuccessful 2004 bills related to same-sex marriages and civil unions. House Bill 16 would have added a provision to the Maryland Constitution that “[o]nly a marriage between a man and a woman is valid in this State.” House Bill 728 would have added provisions to the Family Law Article that a marriage between two individuals of the same sex validly entered into outside Maryland is not valid here and that such marriages are against the public policy of Maryland.

**Question 1:** If enacted, what would be the effect of these laws on same-sex marriages and civil unions entered into in other states?

**Answer:** Both current law and HB 16 prohibit recognition of same-sex marriages in Maryland, regardless of their validity where performed. Both current law and HB 728 permit recognition of a civil union in Maryland for the purpose of application of another state’s law. Current law can be read to create a public policy exception to the general rule that a marriage valid where performed is valid everywhere, so as to overcome the Full Faith and Credit Clause of the United States Constitution. HB 728 would make this conclusion even clearer.

*Letter to Delegate Joseph F. Vallario, Jr.*  
*February 24, 2004*

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**Question 2:** What would be the position of the Attorney General’s Office if a State official were sued in an attempt to seek recognition in Maryland of a same-sex marriage from another state?

**Answer:** The Attorney General would defend such a suit on the ground that Family Law Article, §2-201 reflects State policy prohibiting the recognition of such a marriage, and this constitutes a policy exception to the federal constitutional requirement according full faith and credit to foreign acts, records, and proceedings.

*Letter to Delegate Luiz R.S. Simmons*  
*February 27, 2004*

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#### **PLANNING AND ZONING – USE OF DEVELOPMENT IMPACT FEES**

**Question:** May the proceeds from impact fees imposed on new development be used for renovation of an existing school that needed renovation even before the development?

**Answer:** No. If proceeds are used for purposes that benefit the general public, an impact fee is likely to be considered a tax and may be beyond local taxing authority.

*Letter to Delegate Mary-Dulany James*  
*January 28, 2004*

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#### **PROCUREMENT – CONSIDERATION OF WHETHER CONTRACTOR WILL RENDER SERVICES FROM OUTSIDE U.S.**

Senate Bill 362, which failed, would have prohibited units of State government from awarding contracts for services to be rendered from sites outside the United States and would have required a State unit to terminate a contract if, during the life of the contract, the contractor shifted work outside the U.S. House Bill 183, which passed both houses of the General Assembly in an amended form, would authorize a State unit to consider, in procuring services, whether the

services are to be rendered from a site outside the U.S.

**Question:** Do these bills violate the Commerce Clause of the United States Constitution or any federal law or trade regulation?

**Answer:** While the matter is not free from doubt, there is no clear violation.

*Letter to Delegate Pauline H. Menes*  
*February 19, 2004*

*Letter to Senator Janet Greenip*  
*February 27, 2004*

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#### **PUBLIC HEALTH – STATE PROGRAM TO FACILITATE IMPORTATION OF PRESCRIPTION DRUGS**

**Question 1:** Could the State or one of its political subdivisions lawfully set up a program to facilitate the importation of prescription drugs from outside the United States?

**Answer:** No; such a program would currently violate federal criminal laws. While the Medicare Prescription Drug Improvement and Modernization Act of 2003 may loosen current prohibitions on the importation of prescription drugs, that law must be implemented through regulations that are not likely to be adopted in the near future.

**Question 2:** Would the State or a political subdivision that set up such a program be subject to tort liability to an individual injured by use of imported drugs?

**Answer:** Yes; tort liability could accrue to the State or a political subdivision that established such a program. However, the State could statutorily create immunity for itself or a political subdivision.

*Letter to Delegate Kumar P. Barve*  
*January 28, 2004*

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#### **PUBLIC INFORMATION ACT – E-MAIL OF MEMBERS OF GENERAL ASSEMBLY AS PUBLIC RECORDS**

**Question:** Are e-mail messages of members of the General Assembly “public records” under the Public Information Act?

**Answer:** Yes; however, e-mail relating to a member’s legislative activity would be privileged from disclosure under the speech and debate privilege. Other records might be covered by different Public Information Act exclusions, depending on the facts.

*Letter to Delegate Mary-Dulany James*  
*February 10, 2004*

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#### **STATE EDUCATION AID – USE OF “THORNTON” FUNDS TO COVER BUDGET DEFICIT**

**Question:** Does the flexibility that a local school system has in spending State aid allow for the use of “Thornton” funds (State aid authorized under Chapter 288, Laws of 2002) to cover previous budget shortfalls, such as that accumulated by the Baltimore City Public School System?

**Answer:** A school system may spend additional State education aid authorized by Chapter 288 on lawfully incurred debts for legitimate education expenses. The State education law provides for various specific measures to prevent or discipline overspending by local boards of education and to remedy violations of the Education Article.

*Letter to Delegate Susan L. M. Aumann*  
*and Delegate Gail H. Bates*  
*January 30, 2004*

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**STATE LOTTERY – ANTI-ASSIGNMENT PROVISION  
SURVIVES AMENDMENT OF UNIFORM  
COMMERCIAL CODE**

**Question:** Did a 2001 amendment to the Maryland Uniform Commercial Code (“MUCC”) override the anti-assignment provision of the Maryland State Lottery Law, even though the Legislature did not expressly repeal or amend that provision? Can prizes awarded by the State Lottery be voluntarily assigned?

**Answer:** The recent revisions of the MUCC do not amount to an implicit repeal of the Lottery Law’s ban on assignments. Thus, absent further clarification from the General Assembly, installment payments related to winnings in the Maryland Lottery may not be voluntarily assigned.

*Letter to Delegate Peter Franchot  
January 12, 2004*

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**STREETS AND ROADS – COUNTY LICENSE FOR  
SOLICITATION OF DONATIONS FROM  
VEHICLE OCCUPANTS**

House Bill 187 (Chapter 156, Laws of 2004), as introduced, would have permitted the Anne Arundel County Council to enact a licensing program for qualified organizations, or individuals at least 18 years old, who wished to solicit money or donations from the occupants of vehicles by standing in roadways, median dividers, or intersections. The County could have required a licensee to provide notice as to the dates when solicitation would occur and could have charged a fee for the license in an amount not to exceed the County’s cost to administer the program, up to a maximum of \$100 per year. The fee could have been waived for an individual unable to pay. Amendments proposed by the County Delegation would have altered the bill in several ways: licenses would have been available only to certain types of organizations and fees could have been waived for any reason in the discretion of the County Council.

**Question:** Would the bill, as introduced or as amended, violate the First Amendment?

**Answer:** The bill as introduced could be administered consistent with the First Amendment as a content-neutral, and therefore valid, time, place, and manner regulation, but the amended bill would have been of doubtful constitutional validity. Under the bill as introduced, the fee would be set by definite standards and the fee could be administered in a way that would not place an undue burden on protected speech; however, the amended bill would have been problematic, in part because of its standardless, case-by-case waiver provision.

*Letter to Delegate John R. Leopold  
February 17, 2004*

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**TAXATION – ADDITION TO STATE INCOME TAX,  
EQUAL TO MINIMUM LOCAL INCOME TAX,  
FOR NONRESIDENT WHO EARNS INCOME IN  
MARYLAND**

A provision in Senate Bill 508, the Budget Financing Act of 2004, imposes an additional income tax on nonresidents at a rate equal to the lowest county income tax rate.

**Question:** Is such a tax constitutional?

**Answer:** While the matter is not free from doubt, there is no clear constitutional violation. States may constitutionally impose a tax on income of a nonresident derived from property owned within Maryland or from any business, trade, or profession carried on in Maryland, and the additional tax would not discriminate against nonresidents.

*Letter to Senator Ulysses Currie  
March 3, 2004*

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**TAXATION – PAYROLL TAX ON ENTITIES  
EMPLOYING 10,000 OR MORE**

Senate Bill 715, which passed the Senate but failed in committee in the House, would have established a Community Health Resources

Commission Fund, to be used for various health-care-related grants, payments, and stipends, as well as for costs of the Commission. The Fund would have consisted in part of proceeds of a payroll tax on for-profit and nonprofit entities employing more than 10,000 persons.

**Question:** Would it be constitutionally permissible to impose a payroll tax on entities employing 10,000 or more?

**Answer:** Yes.

*Letter to Senator Thomas M. Middleton*  
*March 4, 2004*

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