

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



April – June 2005

OPINIONS

ATTORNEYS – UNAUTHORIZED PRACTICE OF LAW – LAY PERSON'S COMPLETION OF STANDARD COMPUTER-GENERATED LOAN FORMS WITH FACTUAL INFORMATION NOT UNAUTHORIZED PRACTICE OF LAW

Question: Under Maryland law, does a bank loan officer engage in the unauthorized practice of law if the loan officer completes a mortgage loan form generated by a computer?

Answer: The use of a computer by a lay person to generate and complete a standardized mortgage loan form does not constitute the unauthorized practice of law when the individual simply inserts factual information in blanks on the form.

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ENVIRONMENT – PUBLIC UTILITIES – SANITARY DISTRICTS – SMART GROWTH LAW – OBLIGATION OF SANITARY COMMISSION TO PROVIDE SEWER CONNECTION WHEN STATE FUNDING IS LIMITED BY SMART GROWTH LAW

Queen Anne's County is extending its sewage system into subdivisions on Kent Island, where many properties have failing septic systems. State funding for this extension would apparently be limited to providing service to developed properties. However, in some of the same subdivisions there are undeveloped lots that are barred by regulation from employing individual septic systems due to lot conditions. State law generally requires that a county sanitary commission provide a connection to a sewage system for all properties abutting the road or right-of-way in which a sewer line is placed.

Question 1: If vacant lots are interspersed among occupied lots within a subdivision and front on the roads and rights-of-way in which the sewer lines will be installed, may the vacant lots be excluded from service?

Answer: The County will be required to provide a connector for each vacant lot within a service area that is interspersed among developed lots along a right-of-way in which a sewer line is laid. Nonetheless, sewerage service may not necessarily be available for each such lot. For example, the County might impose a moratorium or other restriction on service for new development because of utility-related reasons such as insufficient treatment plant capacity or the Secretary of the Environment might impose restrictions on new connections for the protection of waters of the State. Absent such restrictions, however, the owner of the vacant lot would be eligible for sewerage service.

Question 2: May vacant lots be excluded from service if the lots do not front on the roads and rights-of-way in which sewer lines will be installed? For example, if a block consists of vacant lots on both sides of the street, must the County place a sewer line along the street to serve those lots?

Answer: The County is not necessarily obligated to provide service to a street with vacant lots. Under State law, a sanitary commission may determine the extent of sewerage services by defining its service area. If there is no current need for a sewer line along a street and it would be feasible to design a system without laying a line along that street, the street could be excluded from the defined service area.

Question 3: Assume that the vacant lots interspersed with occupied lots front on the roads and right-of-way in which the sewer lines will be installed. Assume also that these lots are unbuildable under current septic system regulations, but that development of lots might be

approved if alternative technologies for sewage disposal are employed or if lots are combined to create larger lots that can use conventional septic systems. May these lots be excluded from service? Once the lots become buildable, would the County be required to provide connections to the system for these lots?

Answer: Consistent with our answer to the first question, the County would be required to provide a connector for each vacant lot within a defined service area, even if an alternative sewage disposal technology were available or a combination of that lot with another would make a septic system technically feasible. Under State law, a lot owner may not use a traditional septic system or an alternative technology for sewerage service with a sanitary district if a public sewerage system is available. Thus, if vacant lots interspersed among developed lots are within the service area, neither traditional septic systems nor alternative technologies may be used. On the other hand, if public sewerage service is unavailable due to other factors, the lot owner may be able to combine lots in a manner that would allow construction of an individual septic system or employ alternative technology for sewage disposal.

Question 4: May the County exclude from service those farms and woodland areas that front interceptor lines that will connect subdivisions to the treatment plant?

Answer: A sanitary commission is not required to provide sewerage service outside defined service areas. The placement of an interceptor line necessary to connect a service area to a treatment facility does not make properties outside the service area that abut that line eligible for sewerage service. Thus, the County would not be required to provide service to the woodlands and farms mentioned in your opinion.

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**LAW ENFORCEMENT OFFICERS – ARREST –
CRIMINAL LAW – WHETHER MARYLAND LAW
GRANTS NSA POLICE LAW ENFORCEMENT
POWERS**

Federal law provides for National Security Agency (“NSA”) police and gives them certain law enforcement powers at NSA facilities and within a specified area around those facilities. Certain provisions of the Criminal Procedure Article authorize certain “police officers” in Maryland to make arrests and conduct searches under prescribed circumstances. Other provisions confer authority under Maryland law on federal law enforcement officers.

Question 1: Is an NSA police officer covered under certain provisions of State law that confer various powers of law enforcement officers?

Answer: Most of the Maryland statutory provisions conferring powers on police officers do not directly apply to an NSA officer because an NSA officer is not a “police officer” as defined in the Criminal Procedure Article. Certain provisions applicable to a “federal law enforcement officer” would apply to an NSA officer acting within the territorial jurisdiction of the NSA police.

Question 2: Can an NSA officer take action if a crime is committed in the officer’s presence outside the territorial jurisdiction of NSA police?

Answer: Under Maryland law, an NSA officer may make a citizen’s arrest, if the officer witnesses certain crimes outside the territorial jurisdiction of the NSA police.

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**PUBLIC ETHICS LAW – LOBBYING – ELECTION
LAW – PARTIES – WHETHER POLITICAL PARTY
MAY BE REQUIRED TO REGISTER AS LOBBYIST
UNDER PUBLIC ETHICS LAW**

Question: Do the lobbyist registration requirements of the Maryland Public Ethics Law apply to a political party regulated under the State Ethics Law?

Answer: A political party recognized by and regulated under the State Election Law is not required to register as a lobbyist with the State Ethics Commission pursuant to the Public Ethics Law, as a result of its communications with public officials or employees. A party's communications with voters are regulated by the Election Law, rather than the Public Ethics Law, when those communications are designed to influence voters and advance the party's candidates and associated platform. Only in the unlikely event that those communications bore no relation to any election campaign or issue – a situation that is difficult for us to envision – could those efforts fall within the rubric of “grass roots lobbying” subject to limited regulation under the Public Ethics Law. A political party could be subject to some provisions of the lobbying law if it hired regulated lobbyists to engage in lobbying activities unrelated to any electoral issue.

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ADVICE LETTERS

ACCOUNTANTS – COUNTIES

Question: The accounting firm that conducts the independent audit of the financial position of St. Mary's County and related entities places a handwritten firm “signature” on the cover letter of the auditor's report without including the signature of any individual member of the firm. Is that practice legally valid?

Answer: The use of a manual firm “signature” is apparently a common practice among accounting firms and is sanctioned under audit reporting standards adopted by a nationwide professional association of certified public accountants. The use of a handwritten firm “signature” rather than the signature of an individual does not invalidate the audit report or limit the firm's responsibility for that report, although it obviously makes it more difficult for a reader to identify the member of the firm who authorized the firm's action. If the County wishes

to have a more precise identification of the individual firm members and employees involved in the audit, it may require, as part of its contract with the firm, that the firm identify those individuals and that the audit report indicate the member of the firm who authorized the issuance of the report on behalf of the firm.

Letter to
John B. Norris, Esquire
County Attorney for St. Mary's County
June 24, 2005

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BUDGETARY ADMINISTRATION – MALPRACTICE INSURANCE – PHYSICIANS

Question: May the Governor, by budget amendment, expend funds to subsidize malpractice insurance premiums of physicians in advance of the schedule set forth in a recently passed statute?

Answer: The Governor has discretion to approve a budget amendment that would accelerate the schedule for payment of funds for the insurance subsidy; however, such a budget amendment could not effect a reallocation of revenues dedicated to the Fund contrary to the purposes of the Fund.

Letter to
Senator Brian E. Frosh
Commissioner Alfred W. Redmer
May 10, 2005

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BUDGET AND MANAGEMENT – AGENCY BUDGE PRIORITIES

Question: Does the Department of Budget and Management have the authority to override the budget priorities set by the Maryland Commission on Human Relations? If so, does the Commission have any recourse?

Answer: Under the general direction of the Governor, DBM has the authority and responsibility to prepare a draft budget for the Governor, which may or may not include all of the

agencies' priorities. Subject to certain limitations, an agency and the General Assembly have several ways to communicate and effectuate their priorities. For instance, the agency may communicate its priorities directly to the Governor; or the agency's priorities may be a topic for legislative hearings.

*Letter to
Senator Sharon Grosfeld
June 9, 2005*

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ENVIRONMENT – STATE NOISE CONTROL LAWS

Question: What is the authority of Anne Arundel County to enforce State noise control laws and to enact and enforce local noise ordinances?

Answer: Anne Arundel County may not enforce State noise laws but may enact local noise ordinances that are the same as, or more stringent than State noise regulations adopted by the Maryland Department of the Environment and State law.

*Letter to
Delegate John R. Leopold
April 27, 2005*

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FINANCIAL INSTITUTIONS – CHECK CASHING FEES

Question: May Maryland's financial institutions impose a check cashing service fee when a payee seeks to cash a check at an institution where the payee has no account?

Answer: Although there is no law in Maryland on the subject, case law in other jurisdictions suggests that Maryland customers would not be protected from the imposition of such fees imposed by the drawer's bank.

*Letter to
Senator Kathy Klausmeier
June 28, 2005*

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INTERNATIONAL TRADE AGREEMENTS – MARYLAND PARTICIPATION

Question: What is the status of Maryland law governing Maryland's participation in international trade agreements between the federal government and foreign parties?

Answer: Under SG §3-308, which was recently enacted by the General Assembly and approved over the veto of the Governor, the Governor and other State officials are barred from either directly binding the State to an international trade agreement or consenting to a federal action to bind the State to such an agreement unless the General Assembly passes a law specifically authorizing the State's participation in the agreement.

*Letter to
The Honorable Rob Portman
Ambassador, U.S. Trade Representative
June 23, 2005*

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MUNICIPALITIES – ANNEXATION – ELECTIONS – REFERENDA

Question: Is a citizen petition that sought a referendum with respect to a proposed annexation by the City valid?

Answer: The petition submitted to the municipality contained a drafting error – *i.e.*, it indicated that its purpose was to require a referendum by the voters residing in the area to be annexed rather than municipal voters. This error rendered the petition invalid, and thus the petition does not require the matter to be submitted to a municipal referendum. However, this conclusion is not free from doubt.

*Letter to
Delegate Bennett K. Bozman
April 7, 2005*

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**PUBLIC DEMONSTRATIONS –
FREE SPEECH – POLICE**

Question: During a public ceremony at which the Governor vetoed the Fair Share Health Care Fund Act (SB 790/HB 1284) enacted by the General Assembly, police responded to both protesters and supporters of the Governor’s veto by requiring them to put away their signs, threatening arrest of protesters who booed, and moving them to a designated “protest area” out of view of television cameras. Did police actions at the public bill veto ceremony held at a local courthouse constitute an unconstitutional limitation of free expression in a public forum?

Answer: It is unclear whether rights were violated in this instance. Cases discussing the constitutionality of such restrictions of public expression in a public forum make clear that the permissibility of such limitations depends heavily on the facts of the situation: facts that are before the police, the layout of the area, interactions of police and protesters at the event, the nature of the forum, whether boos or chants effectively blocked communication of scheduled speakers, and whether restrictions were applied in a content-neutral manner. Thus, whether police actions in this particular instance constituted an unconstitutional restriction on the expression of protesters and supporters depends on the facts of the bill veto ceremony.

*Letter to
Delegate Samuel I. Rosenberg
June 8, 2005*

Question: Is it lawful for a person or persons to stand in a public right-of-way along a public road or adjoining area and hold up signs addressing an issue of public importance?

Answer: While there are numerous provisions governing related activity including TR §21-507(a) which prohibits persons standing in a roadway to solicit a ride, employment or business from the occupant of a vehicle; and TR §8-714 which proscribes the posting of signs outside the limits of a municipal corporation and within 500 feet of a state highway without a permit, there is no law

absolutely prohibiting this activity. Such activity, however, may be subject to local regulation and to orders by the police designed to maintain order.

*Letters to
Senator Andrew P. Harris
The Honorable Donald H. Dwyer, Jr.
June 7, 2005*

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REFERENDUM – PETITION LANGUAGE

Question: SB 796 – The Medical Decision Making Act of 2005, was submitted for advance approval before being petitioned for voter referendum. Was the petition defective because it contained language describing the purpose of the petition?

Answer: Under Election Law §6-201(c)(2), the signature page of a petition for referendum “shall contain: either (i) a fair and accurate summary of the substantive provisions of the proposal; or (ii) the full text of the proposal.” Because the phrase “Petition to Repeal Maryland’s Life Partnership Registry” is not a summary or part of the summary of the bill, Maryland law requires that the phrase be removed from the petition.

*Letter to
Delegate Donald H. Dwyer, Jr.
April 15, 2005*

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**WORKERS COMPENSATION –
PHYSICIAN NETWORK**

Question: Does the Workers’ Compensation Commission have the authority to adopt regulations establishing a “certified provider network” of doctors retained by an employer to provide medical care to an injured employee covered under workers’ compensation?

Answer: The Commission lacks the authority to adopt regulations establishing a certified provider network. The Court of Appeals and the Commission have read the Worker’s

Compensation law as giving an employee the right to select his or her own doctor.

*Letter to
Senator Nathaniel Exum
April 6, 2005*

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