

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



April – June 2006

OPINIONS

ATTORNEY GENERAL – INTERPRETATION OF ELIGIBILITY REQUIREMENT THAT CANDIDATE HAS “PRACTICED LAW IN THIS STATE FOR AT LEAST TEN YEARS”

Question: Does legal work performed in Maryland and authorized by federal law count toward the requirement in the State Constitution that a candidate for Attorney General have practiced law in the State for at least 10 years, even if the attorney was not a member of the Maryland bar the entire time?

Answer: Yes. Practice in Maryland authorized by federal and State law counts toward the durational experience requirement in the Maryland Constitution, even if that work was performed while the attorney was not a member of the Maryland bar. In order to satisfy the practice requirement for the office of Attorney General, an individual must have been authorized to practice law in Maryland for at least 10 years and must have performed activities that constitute the practice of law during that period in the State. While the State Constitution explicitly requires that a candidate for Attorney General have practiced law in the State for 10 years and implicitly requires that the candidate be admitted to the State bar, it does not require that a candidate have accumulated all of that experience while a member of the State bar.

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May 19, 2006

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CONSTITUTIONAL LAW – ESTABLISHMENT CLAUSE – BUDGETARY ADMINISTRATION – STATE FUNDS MAY BE EXPENDED FOR TRANSPORTATION SERVICES IN CONNECTION WITH CONVENTION OF RELIGIOUS ORGANIZATION IN BALTIMORE CITY

Question: Is the expenditure of State funds for transportation services in connection with the

National Baptist Congress of Christian Education in Baltimore constitutional?

Answer: Yes. The State may expend the appropriation without offending the Establishment Clause. In particular, funds may be expended for the specific purpose of transportation services under a grant agreement that restricts the use of the funds and imposes appropriate controls.

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May 26, 2006

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CRIMINAL PROCEDURE – DNA DATABASE – INTERPRETATION OF STATUTE THAT AUTHORIZES DNA SAMPLING OF INMATES WHO HAVE BEEN PREVIOUSLY CONVICTED OF QUALIFYING OFFENSES

State law requires that the Maryland State Police Forensic Science Division (“Crime Lab”) include DNA samples from certain categories of individuals in the statewide DNA data base. One category consists of individuals who have been convicted of qualifying offenses in the past and who remained incarcerated after October 1, 1999.

Question: May the Crime Lab collect and maintain a DNA sample from an inmate who was imprisoned for both qualifying and non-qualifying offenses without determining whether the portion of the sentence attributable to the qualifying offense has been completely served? Also, may the Crime Lab collect and maintain a DNA sample from an inmate who has been convicted of a qualifying offense in the past, but who is currently serving a sentence for a non-qualifying offense?

Answer: Yes. The relevant statute does not require that an inmate be currently serving a sentence for a qualifying offense in order to be eligible for DNA sampling, so long as the inmate

has at one time been convicted of a qualifying offense.

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June 20, 2006

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EDUCATION

COMMUNITY COLLEGES – WHETHER BOARD OF TRUSTEES HAS DISCRETION TO OFFER IN-COUNTY TUITION RATES ABSENT AUTHORIZATION FROM THE GENERAL ASSEMBLY

Question: May the Board of Trustees for Prince George’s Community College (“Board”) lawfully offer in-county tuition rates to students who are neither citizens of the United States nor lawfully admitted to the United States? May the Board do so if it does not count such students when it computes full-time equivalent enrollment for the purpose of determining State funding?

Answer: The Board lacks the authority to waive the out-of-county tuition rates for undocumented aliens. Maryland law allows the Board to charge a student in-county tuition rates only in specified circumstances, and does not afford the Board the discretion to determine whether to charge such rates in this situation. This conclusion holds true even if the Board were to decide to forgo State funding for such students by not counting such a student as a full-time equivalent student.

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May 4, 2006

PUBLIC SCHOOLS – ELIGIBILITY OF CURRENT MEMBERS OF APPOINTED BOARD OF EDUCATION TO RUN FOR ELECTIVE POSITION ON BOARD

Question: Are current members of the New Prince George’s County Board of Education eligible to run for elected positions on the Board as of July 1, 2006, without resigning from their current positions?

Answer: Yes.

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June 9, 2006

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ADVICE LETTERS

BALTIMORE CITY PUBLIC SCHOOLS – FEDERAL FUNDS

Question: House Bill 1215 was proposed, in part, to prohibit the State Board of Education from imposing a restructuring arrangement for the governance of certain Baltimore City Public Schools or from removing a public school from the direct control of the Baltimore City Board of School Commissioners. In enacted, what is the bill’s potential impact on federal funds that Maryland receives under the federal No Child Left Behind Act?

Answer: House Bill 1215 is unlikely to have an impact on Maryland’s receipt of federal funds.

*Letter to
Senator Nathaniel J. McFadden
April 6, 2006*

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BAY RESTORATION FEES – LIENS

Question: May a lien be imposed on the property of a citizen who fails to pay the Bay Restoration Fee (“Flush Tax”) as required?

Answer: Under §9-1602.5(d)(3) of the Environment Article, a local government, water or wastewater billing authority or other authorized collection agency may use its procedures and authority to enforce collection of the Bay Restoration Fee. In certain jurisdictions, unpaid water and sewage bills become a lien on the affected property. Therefore, these jurisdictions

may use this procedure to enforce the collection of the Bay Restoration Fee.

*Letter to
Delegate David D Rudolph
April 13, 2006*

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**CONSTITUTIONAL LAW – ESTABLISHMENT
CLAUSE– BUDGETARY ADMINISTRATION**

Question: Is the expenditure of State funds for various activities in connection with the National Baptist Congress of Christian Education (NBCCE) in Baltimore constitutional?

Answer: The constitutional test requires an assessment of whether the expenditure has a secular purpose and whether the State aid has the effect of advancing religion, *i.e.*, whether a government program that benefits a religious organization is provided to all on the basis of the same neutral criteria. Under this test, paying for an event that encourages and educates foster care and adoptive parents for needy children is likely constitutional; the expenditure of funds for the NBCCE souvenir journal, for the NBCCE President’s reception, for lodging NBCCE staff, and for expenses of NBCCE contractors would likely be unconstitutional; whether the expenditure of funds for tote bags, t-shirts, and other types of receptions is permissible depends on whether the State subsidizes analogous items for other conventions according to neutral criteria.

*Letter to
John M. Wasilisin, Deputy Secretary
Department of Budget & Management
June 9, 2006*

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**EDUCATION – DISABLED CHILDREN
– DUE PROCESS – EQUAL PROTECTION**

Question: Is it constitutional for a public school system to deny special education services to a home-schooled student on the basis the student attends neither a public school nor a private school?

Answer: Yes. Federal and State laws governing the provision of special education services under the Individuals with Disabilities Education Act (“IDEA”) to children in private schools do not apply to home-schooled students; those laws, so construed, are constitutional. Thus, neither the IDEA nor the State education law requires that a local school system provide speech therapy services to a home-schooled student. However, neither do they bar the school system from providing such services.

*Letter to
Senator James Brochin
April 4, 2006*

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ELECTIONS – REFERENDUM

On May 31, 2006, Marylanders for Fair Elections, a group challenging early voting legislation, submitted signatures in an effort to satisfy the constitutional requirement that they file one-third of the necessary signatures by that date to petition those bills to referendum.

Question: May Senate Bill 478 of the 2005 Session be referred to referendum for the 2006 ballot and, if it is not referable, should the filed petition signature pages be verified?

Answer: Senate Bill 478 (2005) may not be referred to referendum at this time because a referendum effort must occur immediately after the regular session at which the legislation is initially passed. Thus, the required signatures should have been filed no later than June 1, 2005. In addition, because most of the provisions of Senate Bill 478 were subsequently amended by House Bill 1368 (2006), those provisions of the bill may not be petitioned to referendum. However, because the

timing of the referendum drive in these circumstances is an issue of first impression, the local boards of election should proceed to verify signatures so that the referendum process may continue without interruption in the event that a court reaches a different conclusion.

Question: Will House Bill 1368 of the 2006 Session remain in effect pursuant to Section 2 of the Article XVI of the Maryland Constitution if MFE ultimately submits the required number of signatures to petition that bill to referendum?

Answer: Yes. House Bill 1368 (2006) was enacted as an emergency law and thus will remain in effect despite the petition. It will be repealed 30 days after the election if it is rejected by a majority of the voters at the November election.

*Letter to
Linda H. Lamone, Administrator
State Election Board
June 8, 2005*

REFERENDUM SIGNATURES

Question: In the event a law is petitioned to referendum, §6-210(c) of the Election Law Article provides that the verification and counting of validated petition signatures shall be completed with 20 days after the filing of the petition. Results are filed with the State Board of Elections. Does a county board of elections have the authority to recheck signatures on a referendum petition after it has certified the results to the State Board of Elections?

Answer: No, the county board lacks authority to recheck the signatures.

*Letter to
Delegate Richard S. Madaleno, Jr.
June 27, 2006*

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LANDLORD/TENANT – EVICTIONS – ILLEGAL DRUGS

Question: Does a landlord have legal grounds for evicting a renter suspected of involvement with illegal drugs?

Answer: While terms of leases vary, it is virtually universal that a residential lease will provide that illegal activities on the property are in violation of the lease and are grounds for termination of the lease. Eviction proceedings may commence under breach of lease provisions set out in Real Property Article §8-402.1. Another remedy, set out in Real Property Article §14-120, permits an action to abate a nuisance consisting of use of property by persons who assemble for a specific purpose related to illegal drug activity. In the event that a lease goes month-to-month after the expiration of the original term of the lease, §8-402 also permits a landlord, after giving 30 days notice, to file for eviction.

*Letter to
Delegate David D. Rudolph
June 2, 2006*

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MARRIAGE CEREMONIES – JUDGES

Question: May bankruptcy judges and magistrate judges perform wedding?

Answer: Yes. Under Family Law Article §2-406 a marriage ceremony may be performed by a judge, including “a judge of a United States District Court or a United States Court of Appeals.” Bankruptcy judges and magistrate judges, as judges of the United States District Court, are authorized to conduct weddings.

*Letter to
Delegate Leonard H. Teitelbaum
May 31, 2006*

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SOCIAL SECURITY NUMBERS – EMPLOYEES

Question: Chapter 458, Laws of Maryland 2006 (House Bill 388) prohibits an employer from printing an employee's social number on the employee's pay check, or notice of payment. Does this prevent an employer from including the last four digits of an employee's social security number on an employee's paycheck or pay document?

Answer: No. Use of the last four digits does not implicate the privacy and theft concerns addressed by the bill.

*Letter to
Ms. Tami Burt
Department of Legislative Services
June 29, 2006*

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WASHINGTON SUBURBAN SANITARY COMMISSION – PERSONNEL – DEPARTMENT OF BUDGET AND MANAGEMENT

The Washington Suburban Sanitary Commission ("WSSC") recently decided to abolish approximately 80 merit system positions in its Information Technology department and to offer employees occupying these positions the opportunity to apply for contractual positions in the restructured department.

Question: Is this process contrary to Article 29, §11-102 of the Annotated Code of Maryland? Does it violate due process or other constitutional requirements?

Answer: No. WSSC has the authority under Article 29, §11-103 to abolish its merit system classifications, and to offer the laid-off employees the opportunity to compete for non-merit system positions. Maryland law has long recognized that an executive department of government may abolish the position which a merit system employee holds, so long as its action is for a bona fide reason and is not a subterfuge to evade the merit system laws.

*Letter to
Delegate Brian Moe
April 21, 2006*

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