

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



October – December 2007

OPINIONS

ATTORNEYS

Attorney Grievance Commission – Attorney Trust Accounts – Financial Institutions – Whether Financial Institution Must Have a Branch in Maryland or a Neighboring Jurisdiction in Order to Handle Trust Accounts of Maryland Lawyers

The court rules governing trust accounts require that such accounts be maintained “in” Maryland, a state contiguous to Maryland, or the District of Columbia, at a financial institution approved by the Commission.

Question: Is a federal savings association that has its headquarters and one branch in New York, but has no branch in Maryland or neighboring jurisdictions, permitted to handle trust accounts of Maryland lawyers?

Answer: A financial institution located in another state must be authorized to do business and establish a branch in either Maryland or a contiguous jurisdiction in order to handle attorney trust accounts under Maryland law. Unless the financial institution has such a branch or intends to open one before it accepts attorney trust accounts, the Commission may not approve the financial institution to handle those accounts.

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November 14, 2007

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COLLEGES AND UNIVERSITIES

Community Colleges – Procurement – Whether State Living Wage Law Applies to Community Colleges

Question: Does the State Living Wage Law, State Finance and Procurement Article, §18-101 *et seq.*, apply to Anne Arundel Community College?

Answer: The Living Wage Law does not apply to Anne Arundel Community College.

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November 7, 2007

Maryland Higher Education Commission – Judicial Review – Litigation Between State Entities

House Bill 81 of the 2007 regular session would have authorized judicial review of a determination of the Maryland Higher Education Commission (“Commission”) resolving objections by one institution that a proposed program of another institution is “duplicative” of existing programs or violates the State’s equal opportunity obligations under State and federal law. This bill was not enacted.

Questions: May a State higher educational institution sue another State higher educational institution in circuit court?

Answer: Current law generally does not authorize a State higher educational institution to sue another State institution in circuit court concerning program duplication or compliance with equal educational opportunity obligations. Nor may an institution seek judicial review of a Commission decision resolving objections to a program proposed by another institution. The General Assembly may grant an institution the right to seek judicial review by passing legislation similar to House Bill 81 (2007).

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December 17, 2007

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HOUSING

Condominiums – Freedom of Religion – Preemption Proposed Baltimore City Ordinance Concerning Reasonable Accommodation of Religious Practices Not Preempted by State or Federal Law

Question 1: Does existing Federal and/or State law already provide for “reasonable accommodation for religious practices” in multiple-family dwellings, including condominiums?

Answer 1: The proposed ordinance would not be preempted by existing federal and State fair housing laws or the Maryland Condominium Act.

Question 2: If existing law does not provide for these protections, is it within the authority of the Baltimore City Council to provide for these protections as written in City Council Bill 07-0648?

Answer 2: It is a proper exercise of the City Council’s legislative authority to enact a fair housing law designed to prohibit discrimination based on religion and to ensure reasonable accommodations for the free exercise of religious practices.

Question 3: If so, how should “reasonable accommodations” be defined?

Answer 3: “Reasonable accommodation” should be defined as “modest, affirmative steps that do not pose an undue financial hardship or substantial burden.”

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October 23, 2007

PUBLIC ETHICS LAW

Ethics Commission – Financial Disclosure Statements – Role of Ethics Commission in Identifying Individuals Required to File Statements and in Reviewing Filings

Question 1: Does the State Ethics Commission have the primary responsibility under Maryland law for determining and tracking who is

a public official required to file a financial disclosure statement?

Answer 1: The Public Ethics Law defines a “public official” with respect to each of the three branches of State government. With respect to the executive branch, the Ethics Commission is the agency primarily responsible for determining whether certain individuals fall within that category, based on information provided by the employing agency. The Ethics Commission has a limited role in determining whether some employees of the judicial branch should be excluded from the filing requirement. The law does not assign the Ethics Commission a role in determining whether an employee of the legislative branch is a “public official.”

Question 2: Is the State Ethics Commission required to review each such statement annually?

Answer 2: The Public Ethics Law directs the Ethics Commission to review each financial disclosure statement and not just a sampling of filings. However, in our opinion, the Ethics Commission has discretion how to conduct that review in the most efficient and effective manner – which may not necessarily involve each statement being reviewed during the same year that it is filed.

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November 9, 2007

PUBLIC SCHOOLS

Education – Public Information Act – Access of County Auditor to Student Records as Part of Audit and Under the Public Information Act

Question: Can the Baltimore County Auditor inspect records of the Baltimore County Public Schools relating to student eligibility for enrollment based on residency?

Answer: The County Auditor may not inspect records relating to student residence as part of a performance audit evaluating the adequacy of the Board of Education’s policy regarding acceptable proof of residency. However, the County Auditor may inspect such records in order to conduct a financial audit of tuition and out-of-county

payments pursuant to the State education law. In any such audit, care must be taken by the County Auditor and the school system to comply with privacy protections mandated by federal law.

*92 Opinions of the Attorney General 137
October 18, 2007*

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ADVICE LETTERS

ELECTIONS

Campaign Finance

Question: May a campaign finance entity established under Maryland law make contributions in municipal elections?

Answer: The right of a campaign finance entity to make expenditures is governed by the Election Law Article, which does not permit a campaign finance entity to participate in municipal elections, except in Baltimore City.

*Letter to
Kevin Karpinski, Esquire
December 18, 2007*

Certificate of Candidacy

Question: Are the State Board of Elections and, where applicable, the local boards of elections, required to accept a certificate of candidacy that is either not timely filed or that is not accompanied by documents required by Election Law Article §5-304(d)?

Answer: No. The State and local boards should not accept a certificate of candidacy, and the documents that accompany the certificate, after the deadline. Nor should a board accept for filing such documents that do not comply with the statutory requirements. Only in unusual situations where the failure to comply is due to the action – or inaction – of election officials should a board consider less than strict compliance with the statutory requirements. These rare cases should be decided on a case-by-case basis with advice of counsel.

*Memo to
Jared DeMarinis, State Board of Elections
November 7, 2007*

Voter Registration – Citizenship

Question: May a local board of elections require that an applicant for voter registration submit evidence of U.S. citizenship before being qualified to register?

Answer: No. If a local board of elections were to unilaterally impose a proof of citizenship requirement, the action would likely not survive a legal challenge. A court would likely determine that differing registration standards among the local boards in the State violate the “uniform registration” requirement of Article 1, Section 2 of the Maryland Constitution and that, under that section, only the General Assembly can impose such standards. A court would also probably invalidate a local board’s attempt to regulate in any area that the General Assembly has delegated to the State Board. Finally, a court would likely find that the imposition of more rigorous registration standards in one jurisdiction violates Article 7 and 24 of the Declaration of Rights of the Maryland Constitution, and the Fourteenth Amendment to the U.S. Constitution.

*Letter to
Joseph Torre, Election Director
Anne Arundel County Board of Elections
November 28, 2007*

Voting – Parties – Primary Elections

Election Law Article (“EL”), §3-102(a) provides, among other things, that an individual may register to vote if the individual will be 18 or older on the date of the next general or special election. In the past, the election boards have allowed individuals who will be 18 by the time of a general election to vote in a primary election even if they were not 18 at the time of the primary. However, a recent Court of Appeals decision held that a State constitutional provision that, among other things, requires a voter to be 18 or older, applies to primary elections. Because of that decision, SBE required voters to be 18 to vote in a primary election.

Question: Because the political parties have, in recent days, asserted their *federal* constitutional rights to freedom of association, does the Maryland Constitution as recently construed – at least with regard to the voter-age requirement – violate the parties’ First Amendment associational rights to

include in their primaries voters who will be 18 before the general election?

Answer: The conflict between the Maryland constitutional provision and the First Amendment rights now asserted by the parties requires that SBE permit 17-year-olds who will be 18 by the next general election to vote in the parties' primary elections.

*Letter to
Senator Jamie Raskin
December 19, 2007*

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HIGHER EDUCATION

University of Maryland Medical System – Subject to State Access to Public Records Law

Question: Is the University of Maryland Medical System (“UMMS”) subject to the open government laws?

Answer: In essence, because the statute creating UMMS specifies that it is not a “public body,” it is not subject to the Open Meetings Act. See Annotated Code of Maryland, Education Article (“ED”), §13-303(a)(2). Moreover, the Open Meetings Act itself exempts the governing bodies of hospitals from its purview. SG §§10-502(h)(3)(x). On the other hand, it is likely that UMMS would be considered a “unit or instrumentality” of the State and therefore subject to the PIA.

The letter also discusses application of the Open Meetings Act and PIA to several other quasi-governmental entities.

*Letter to
Senator Joan Carter Conway
October 4, 2007*

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IMMIGRANT WORKERS

Licenses

Question: Are there any prohibitions regarding a state's right to regulate employment of migrant workers?

Answer: The regulation of migrant workers is generally within the powers of the states. The State could issue a temporary drivers license to a nonresident migrant worker for use during the time of employment. However, the State lacks the authority to authorize the employment of persons who are not legally in the country, or who are legally present but barred from employment by federal law.

*Letter to
Delegate Donald H. Dwyer, Jr.
October 15, 2007*

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SEPARATION OF POWERS

Question: May the General Assembly enact legislation to include the Judicial Branch within the Information Technology coordination and oversight currently performed by the Department of Budget and Management for Executive Branch agencies without violating the separation of powers doctrine?

Answer: Yes. So long as the courts are still able to exercise their judicial power effectively, such legislation would not violate the separation of powers.

*Letter to
Delegate Charles Barkley
December 11, 2007*

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MARRIAGE

First Amendment

Question: Would changing the name of “marriage” in State law to “civil marriage” affect the free exercise of religion protected under the United States and Maryland Constitutions?

Answer: No. The proposed legislation would not deny any religious denomination the right to perform a marriage ceremony in accordance with the rules and customs of the denomination.

*Letter to
Delegate Shane Pendergrass
October 15, 2007*

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STATE GOVERNMENT TASK FORCES

MARYLAND WHISTLE BLOWER LAW

Question: What protections are granted to State employees under Maryland's Whistle Blower law?

Answer: The law protects State employees who make disclosures that serve the public interest by assisting in the elimination of fraud, waste, abuse, and unnecessary government expenditures. In order to have a valid claim, an employee must show both a protected disclosure and an impermissible reprisal for that disclosure. A protected disclosure includes revelations of gross mismanagement, abuse of authority, and violations of law; a workplace grievance concerning treatment by a supervisor alone is not a protected disclosure.

*Letter to
Senator Donald F. Munson
October 11, 2007*

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PUBLIC ETHICS LAW

Lobbying

Under State Government Article ("SG"), §§15-713(1) and (3), the provisions of the Public Ethics Law prohibit a regulated lobbyist from lobbying for compensation that is dependent on the outcome or any other contingency related to executive or legislative action; or knowingly counseling others to violate the law.

Question: Would SG §§15-713(1) and (3) be unconstitutional if an intellectual property system were created, which would compensate citizens for their lobbying activities?

Answer: SG §§15-713(1) and (3) are not unconstitutional simply because they prohibit contingent fee lobbying.

*Letter to
Delegate Steven R. Schuh
December 12, 2007*

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Residency

Question: SG 17-108 provides in part that an individual may not be a member of a task force unless the individual has been a bona fide resident of the State for at least 12 months and of the county in which the individual is appointed for at least 6 months before the day of the individual's appointment. Do these provisions apply to members of task forces who are not "officers."?

Answer: No. While the provision is not completely clear, it probably applies only to officers.

*Letter to
Delegate Christopher B. Shank
October 23, 2007*

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