

# Opinions, Advice, and Legislation Quarterly News

Office of the  
Maryland Attorney General



July – September 2008

## OPINIONS

### CORRECTIONS

#### COUNTIES – INTERSTATE COMPACTS – WHETHER LOCAL GOVERNMENT MAY ENTER INTO AGREEMENT WITH OUT-OF-STATE JURISDICTION TO TRANSFER INMATES IN EMERGENCY CIRCUMSTANCES

**Question 1:** Does a local government have the authority to arrange to confine prisoners temporarily in a detention facility in an adjacent state if a situation should arise in which the health and safety of the inmates are at risk and there is no available option within Maryland?

**Answer:** A sheriff or a local official charged with custody of inmates in a local detention facility has a common law and statutory duty to maintain their safety. If there is an emergency situation that threatens the safety of those prisoners, the sheriff or other custodian may carry out that duty by transporting inmates temporarily to another jurisdiction if there is no viable option within Maryland. However, the custodian could not transfer custody of the inmates to the adjacent jurisdiction in the absence of a law allowing such a transfer.

**Question 2:** Could such prisoners could be transferred under the Interstate Corrections Compact?

**Answer:** The Interstate Corrections Compact does not provide such authority, as it pertains only to transfers of prisoners between states. The Compact does not authorize a local government to transfer inmates directly to a facility in an adjacent state. It is possible that an agreement between a local government and the State that allowed the transfer of local inmates to the temporary custody of the Division of Correction for the purpose of transfer to another jurisdiction could provide a legal basis for transferring convicted inmates to an out-of-state

facility under the Compact. However, the Compact does not appear to encompass a transfer of pretrial detainees held in a local jail.

*93 Opinions of the Attorney General* 92  
August 22, 2008

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### COUNTIES

#### COMMISSIONER COUNTIES – ZONING AND PLANNING – PUBLIC ROADS – PUBLIC ROADS SUBTITLE OF ARTICLE 25 NOT REPEALED BY ENACTMENT OF ARTICLE 66B

**Question:** Were parts of the public roads subtitle under Article 25 of the Annotated Code of Maryland repealed by the subsequent enactment of certain provisions of Article 66B of the Code, entitled Land Use?

**Answer:** While some provisions of the public roads subtitle appear antiquated, the public roads subtitle was not repealed by the enactment of the Land Use article.

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August 22, 2008

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#### PUBLIC SCHOOLS – SCHOOL CONSTRUCTION – USE OF RESERVE FUND IN COUNTY BUDGET FOR PUBLIC SCHOOL CONSTRUCTION

When Anne Arundel County's budget was adopted, some funds were appropriated to a capital project in the County's budget, but not to the budget of Anne Arundel County Board of Education ("Board of Education"). Under local law, these funds could be used for specific school projects only if the County Executive and the County Council agreed to a supplemental appropriation transferring the funds to the Board of Education's budget.

**Questions:** Does the appropriation by the Anne Arundel County Council for fiscal year 2008 related to school construction violate State law governing school construction funding? Is the County's creation of such an account consistent with State laws and regulations that govern the funding of public school construction?

**Answer:** The County's action in this instance was not inconsistent with State law. Here, the County appropriated funds to a relatively small reserve fund in its own capital budget to be available for a possible future supplemental appropriation to the Board of Education's budget to facilitate progress of projects or items not included in the Board's original budget request. However, a reserve fund in a county budget could not be used to circumvent the obligation of a county governing body under State law to accept or reject a local board's capital budget requests in a timely manner and to adopt a capital budget for the local school system that includes the local contribution for school construction. Nor could it be used to intrude upon a local school board's authority over matters relating to public education.

*93 Opinion of the Attorney General 114*  
August 22, 2008

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## FIREARMS

### **PREEMPTION – BALTIMORE CITY – LOCAL ORDINANCE THAT REQUIRES GUN OWNER TO REPORT THEFT OR LOSS OF GUN NOT PREEMPTED BY STATE LAW**

A proposed Baltimore City ordinance would require a gun owner to report the theft or loss of a firearm within two days of discovering that the weapon has been lost or stolen. Failure to report the theft or loss within the time specified could result in the issuance of a civil citation or criminal misdemeanor charges.

**Question:** Is the ordinance preempted by provisions of the State firearms law that prohibit local regulation of the possession, transfer, or ownership of a firearm?

**Answer:** The proposed ordinance is not preempted by State law. Because the ordinance

applies only to the gun owner, it arguably touches upon the ownership of firearms. However, apart from the duty to report the loss of the firearm, the ordinance does not otherwise restrict, control, or affect the ownership, possession, or use of firearms. Its effect, if any, on gun ownership is too remote to be deemed a regulation of ownership, such that it would be expressly preempted by State statute. Moreover, the measure is consistent with the State law prohibitions against illegal gun trafficking and does not otherwise conflict with State law.

*93 Opinions of the Attorney General 126*  
September 11, 2008

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## ADVICE LETTERS

### **BOARD OF PUBLIC WORKS AFFIRMATIVE ACTION – BONDS – MINORITY BUSINESS ENTERPRISES**

The General Assembly periodically authorizes the State to borrow funds by issuing general obligation bonds and to use the proceeds to make grants to non-State entities for capital projects – a process under the general supervision of the Board of Public Works (“Board”).

**Question:** May the Board require individual recipients of grants financed with the proceeds of those general obligation bonds to make good faith efforts to ensure that minority business enterprises (“MBEs”) participate in contracts funded by those grants? In particular, may the Board condition receipt of these funds on a grantee's commitment to the same MBE goals made applicable to State procurements by statute?

**Answer:** No. Although the Board is established by the State Constitution, its powers derive from statutory grants of authority by the General Assembly. The General Assembly has not delegated to the Board the authority to require grantees of general obligation bond proceeds to comply with the goals of the MBE program that is part of the State procurement law. In the absence of a delegation of authority from the General Assembly – similar to the

grant of authority creating the MBE program in the procurement law – the Board may not require a capital grant recipient to meet the goals of the MBE program. The Board may wish to seek authority from the General Assembly to require grant recipients to gather and provide data on minority participation and to conduct outreach activities to assess the interest of minority firms in their capital projects. This activity may be important in any disparity study or for the General Assembly to consider in determining whether to adopt an MBE program for capital grants.

*Letter to  
Sheila C. McDonald, Esq.  
Executive Secretary, Board of Public Works  
July 15, 2008*

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#### CHARTER COUNTIES TAXING AUTHORITY

**Question:** May a charter county limit its own taxing authority by charter amendment?

**Answer:** A charter county has some authority to limit the taxing authority of the county council by charter amendment. The extent of limitation permissible varies by the type of tax involved, the level of restriction imposed, and whether any State law requires imposition of the tax or indicates an intent that the county governing bodies have discretion in setting the tax.

*Letter to  
Delegate Donald H. Dwyer, Jr.  
July 15, 2008*

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#### CLERKS OF THE COURT STATE ARCHIVES – COURT RECORDS

The *Mdlandrec.net* system (“System”) is a joint program of the Maryland Judiciary and the State Archives to establish an electronic database of images of Maryland land records in the State. Copies obtained from the System contain a legend at the bottom of each page documenting the source of the record, its availability on the System, and the date that it was printed from the System.

**Question:** Is the Clerk of the Circuit Court the custodian of such a record and may the Clerk certify the record with the copy of the electronic data as an official land record despite its having this additional legend?

**Answer:** The clerk is a custodian of the record and may certify the record as an official land record, despite the addition of the legend generated by the System that was not part of the original record filed with the Clerk.

*Memorandum to  
Steven Hales  
Clerk of the Circuit Court for Worcester County  
July 2, 2008*

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#### MUNICIPALITIES TAXATION – FEES

**Question:** Is State enabling legislation necessary for the City of Annapolis to lawfully impose a sidewalk fee?

**Answer:** Yes. The “sidewalk fee” is more likely to be considered a tax than a regulatory fee, utility fee, or service charge. Thus, absent State enabling legislation, the charge violates Article XI-E, §5 of the Maryland Constitution.

*Letter to  
Senator John C. Astle  
July 14, 2008*

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#### NATURAL RESOURCES REAL PROPERTY – MINERALS

**Question:** What is the usual meaning of “mineral rights” in a deed or conveyance, and does that term ordinarily include rights to natural gas?

**Answer:** Ordinarily, “minerals” or “mineral rights” in a deed or conveyance will be interpreted to include all inorganic substances that can be taken from the land, including oil and natural gas. However, if evidence shows the grantor and grantee intended a different or more restrictive meaning, that meaning will prevail. The term “mineral rights” – what is included, what is excluded – ultimately

depends upon the intent of the parties to the deed or conveyance at issue.

**Question:** What legal process or remedy is available to property owners seeking to establish their ownership of the minerals on or beneath their property?

**Answer:** In general, a grant or reservation of “mineral rights” creates a perpetual “interest in land” (sometimes referred to as a “mineral estate”) which does not terminate due to non-use or the mere passage of time. Therefore, in legal proceedings to resolve “old” mineral rights claims – via an action to quiet title or for declaratory judgment – the successors in interest to the recorded mineral claim must be identified, if possible, and joined as parties. This is often difficult, particularly where the mineral rights were separated from the surface estate many years ago. Moreover, from the land owner’s perspective, traditional concepts such as adverse possession or abandonment may not offer effective or practical means to rejoin the severed mineral interest with the surface estate. For these reasons, a number of states have enacted a lapsed or dormant minerals statute, a marketable record title statute, or some combination of both. To date, Maryland has not.

*Letter to*  
[Senator George C. Edwards](#)  
*September 23, 2008*

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**RETIREMENT SYSTEMS  
LAW ENFORCEMENT OFFICERS –  
STATE’S ATTORNEYS**

**Question:** Are special investigators employed by the State’s Attorney for Worcester County eligible to participate in the Law Enforcement Officers Pension System (“LEOPS”)?

**Answer:** Yes, if the County participates in that System.

*Letter to*  
[Joel J. Todd, State’s Attorney](#)  
*for Worcester County*  
*July 7, 2008*

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**SECOND AMENDMENT  
MARYLAND GUN LAW**

**Question:** In *District of Columbia v. Heller*, 554 U.S. \_\_\_\_ (June 26, 2008), the Supreme Court held that the Second Amendment conferred an individual right to keep and bear arms. What effect does the Court’s Opinion have on laws in Maryland’s Gun Laws?

**Answer:** It has been generally understood that the Second Amendment does not apply to or limit the action of state governments. Even if the Second Amendment does apply to the states, however, the Supreme Court’s decision in *Heller* would not affect the firearms laws currently in place in Maryland.

*Letter to*  
[Delegate Samuel I. “Sandy” Rosenberg](#)  
*July 18, 2008*

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