

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



April – June 2008

OPINIONS

COURTS

JUDICIAL ADMINISTRATION – IMMUNITY – COURT-APPOINTED SETTLEMENT OFFICERS HAVE OFFICIAL IMMUNITY

Question: Are attorneys who serve as court-appointed settlement officers – until recently known as “settlement masters” – entitled to qualified immunity in the performance of their judicial tasks?

Answer: Court-appointed settlement officers are entitled, at a minimum, to qualified immunity and may also have the greater protection of absolute immunity in the performance of their court-related functions. An individual who performs tasks integral to the judicial process, including an attorney acting as a court-appointed settlement officer, has the benefit of such official immunity. Thus, so long as a claim is related to the performance of those tasks, the appointee is entitled to this immunity, whether he or she is called a settlement master or a settlement officer.

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HEALTH OCCUPATIONS

BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS – PUBLIC OFFICERS AND EMPLOYEES – INTERPRETATION OF TERM-LIMIT PROVISION RESTRICTING BOARD MEMBER TO NO MORE THAN “2 CONSECUTIVE FULL TERMS”

Health Occupations Article (“HO”), §9-202(g), of the Annotated Code of Maryland governs the term of a member of the State Board of Examiners of Nursing Home Administrators (“Board”). Among other things, that statute provides that a term is four years and that a member of the Board “may not serve more than 2 consecutive full terms.”

Questions: How does this provision apply to a member who was first appointed to the Board after

the end of the predecessor’s term and then reappointed to a consecutive term? In particular, would such a member be eligible for appointment to another consecutive term?

Answer: The member’s eligibility for reappointment depends on whether the member’s initial appointment to the Board counts as a “full term.” If so, the member is ineligible for reappointment. If not, the member may be appointed to another term. In our opinion, whether an initial appointment constitutes service of a “full term” is determined as follows: When a member of a State board or commission is appointed to a vacancy created by the expiration of a prior term, even if the appointment is made after the end of the prior term, such service counts as a “full term.” By contrast, if a member is appointed part way into a term as a result of the death or resignation of the individual previously appointed to that term, such service does not count as a “full term” because the member has shared the term with the prior appointee to that term.

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RETIREMENT SYSTEMS

OBLIGATION OF RETIREMENT AGENCY TO AUDIT FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES RELATED TO RETIREMENT CONTRIBUTIONS

The following question relates to State financial assistance to various local educational agencies – boards of education, community colleges, and public libraries – that may be used to fund the salaries and associated costs of their personnel who are members of the Teachers’ Systems. Financial assistance is provided to these local educational agencies through a combination of local, State, and federal funding. Because of the potential for duplicative payment for employee fringe benefit costs through the receipt of financial assistance from multiple funding sources, the General Assembly has authorized audits of the local agencies that employ those members and the recovery by the State of any duplicate payments.

Since the Agency assumed responsibility for these audits in 1990, statutory amendments have altered both the scope of the Agency's audit authority and the manner in which financial assistance is determined and allocated by the State to the educational agencies.

Questions: Does the State Retirement Agency ("Agency") have authority to recover, after an audit, payments made by the State to fund retirement contributions for members of the Teachers' Retirement System of Maryland and Teachers' Pension System of Maryland (collectively "the Teachers' Systems")? Do those statutory amendments operate to eliminate or reduce the potential recovery by the State of duplicate payments?

Answer: As a result of the statutory amendments, the Agency is precluded from recovering retirement contributions based on the receipt by local boards of education of State or local categorical aid allocated for positions staffed by employees who are members of the Teachers' Systems. In addition, because the State's financial assistance programs do not allocate funding for retirement contributions, the Agency has little basis on which to make a finding of duplicative payment of retirement contributions for employees of those entities. Of course, the Agency retains authority to audit the local educational agencies and to seek repayment of any overpayment or duplicative payment that may be made for any other reason.

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June 26, 2008

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ADVICE LETTERS

ELECTION LAW – CAMPAIGN FINANCE REPORTING

Chapter 620, Laws of 2008 makes campaign finance requirements applicable to certain expenditures of a "person" who cumulatively spends more than \$10,000 to promote the success or defeat of the constitutional amendment authorizing slot machine gaming.

Question: Is the bill sufficiently narrowly tailored to meet constitutional free speech requirements?

Answer: Yes. The State has a compelling interest to provide the electorate with information about the sources of political contributions and, more particularly, who is attempting to influence the ballot

question whether to allow commercial slot machine gambling in Maryland. The legislation does not prohibit expenditures; it merely requires public disclosure when the amount spent reaches a large dollar amount. Finally, the statute is neither vague nor overbroad.

Letter to
Delegate Jon S. Cardin
April 2, 2008

Question: Does Chapter 620 apply to so as to count cumulative expenditures of more than \$10,000 made before June 1, 2008?

Answer: Yes. While the issue is not free from doubt, the General Assembly probably required the disclosure of all such expenditures beginning January 1, 2008.

Memorandum to
Jared DeMarinis
Maryland State Board of Elections
May 28, 2008

Question: Does Chapter 620 apply to persons making a contribution to a campaign finance entity?

Answer: No. Chapter 620 applies to persons making direct expenditures of more than \$10,000 to promote the success or defeat of the constitutional slots amendment, not to contributions to campaign finance entities. Because persons making contributions to campaign finance entities are already disclosed in the entities' reports, requiring this information to be disclosed again would make little sense.

Letter to
Senator Roy P. Dyson
June 3, 2008

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FLEXIBLE LEAVE ACT

Question: HB 40 (enacted as Ch.644, Acts of 2008) requires a private-sector employer with more than 15 employees who provides paid leave to allow an employee to use earned paid leave for a child, spouse, or a parent with an illness. The bill also prohibits the employer from taking action against an employee who exercises these rights and the employee from taking legal action against the employer for violating the Act. Does the Act apply to leave accrued prior to the effective date of the bill, October 1, 2008?

**PUBLIC UTILITIES COMPANIES –
EQUAL PROTECTION**

Answer: Chapter 644 applies to any leave taken after the effective date of the bill regardless of when the leave accrued.

*Letter to
Delegate Ron George
May 28, 2008*

Question: Upon further review, is the analysis provided in the Attorney General’s May 28, 2008 letter correct?

Answer: Yes. Moreover, the “flexible leave” benefit as provided by the 2008 Flexible Leave Act will apply not only to leave accrued after October 1, 2008, but will also apply to any leave accrued, but unused on October 1.

*Letter to
Delegate Ron George
June 13, 2008*

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**MOTOR VEHICLE ACCIDENT REPORTS
– ACCESS**

Question: HB 488 (an Emergency Bill signed into law May 13, 2008, Chapter 458) repeals Transportation Article §20-110 and amends existing provisions of the Business Occupations and Professions Article to provide that “without an existing relationship or interest in an issue...a person may not, for personal gain, access a report for the purpose of soliciting another person to sue or retain a lawyer to represent that person.” Is the bill constitutional?

Answer: Yes. Federal court decisions have held that “there is no First Amendment right of access to public information,” and that a law restricting access to accident reports except in limited cases would meet a First Amendment challenge. Because the bill limits commercial speech only indirectly, does not discriminate based on viewpoint, and applies to any “person,” rather than to a small group, the bill does not implicate the First Amendment. Moreover, because the access restrictions are reasonably related to the legitimate State interests of protecting privacy and preventing solicitor abuse, the bill is constitutional.

*Letter to
Senator Brian E. Frosh
April 1, 2008*

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Chapter 163, Laws of Maryland 2007 amended the Public Utility Companies Article §7-207.1 and provided that a land-based wind generating system with a certain capacity is exempted from the requirement to obtain a certificate of public convenience and necessity.

Question: Does Chapter 163 create a geographic criterion that affects the legality or constitutionality of the legislation?

Answer: No. Many Maryland laws vary by geographic areas. The provision does not discriminate against different political subdivisions, as the exception is available in any county or political subdivision, as all consist largely of land. There is a rational basis for the legislature’s decision to treat land-based generating stations differently from those based on water.

*Letter to
Senator George C. Edwards
April 2, 2008*

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