

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



July – September 2009

OPINIONS

CODE REVISION

OPEN MEETINGS ACT – WHETHER CERTAIN OPEN MEETINGS STATUTES MAY BE REPEALED AS PART OF CODE REVISION WITHOUT CHANGING SUBSTANTIVE LAW, IN LIGHT OF THE LATER ENACTMENT OF THE OPEN MEETINGS ACT

Question: May three statutes concerning public meetings be repealed, in light of the later enactment of the Open Meetings Act, without effecting a substantive change in the law?

Answer: The older statutory provisions are, in large part, duplicative of the Open Meetings Act and may be repealed as part of code revision without effecting a substantive change in the law. However, the part of each provision that states that “no ordinance, resolution, rule or regulation shall be finally adopted at [a meeting not open to the public]” should be retained in the Code.

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September 29, 2009

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ELECTIONS

VOTING – WHETHER INACTIVE VOTERS SHOULD BE INCLUDED IN THE COUNT OF “REGISTERED VOTERS” TO DETERMINE THE NUMBER OF EARLY VOTING CENTERS

Question: Should inactive voters be included in the count of “registered voters” in determining the number of early voting centers that must be established in each county?

Answer: No. Counting registered voters for the purpose of establishing early voting centers is an “official administrative purpose” and therefore

voters in inactive status may not be included in the count.

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September 22, 2009

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GENERAL ASSEMBLY

CONSTITUTIONAL LAW – REDISTRICTING – USE OF TOTAL RESIDENTS NUMBERS FOR PURPOSES OF STATE LEGISLATIVE REDISTRICTING

Question 1: Does Maryland require that voters in State elections be United States citizens?

Answer: Yes, the Maryland Constitution requires that a person be a United States citizen to vote in a State election.

Question 2: Does Maryland require that voters in State elections be Maryland citizens?

Answer: Yes, the Maryland Constitution requires that a person be a citizen of Maryland to vote in a State election.

Question 3: Does the practice of drawing the legislative districts based on total population violate the “one person, one vote” requirements of the Fourteenth Amendment of the United States Constitution as interpreted by the Supreme Court?

Answer: No, the use of total population figures as the basis for State legislative redistricting does not violate the one person / one vote requirement of the Fourteenth Amendment.

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July 2, 2009

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MASS TRANSIT ADMINISTRATION

WHETHER APPOINTING AUTHORITY MAY NAME “ALTERNATE” MEMBERS FOR RED LINE ADVISORY COUNCIL

Question: May alternate members to the Citizens’ Advisory Council for the Baltimore Corridor Transit Study – Red Line (“Advisory Council”) be designated by an appointing authority to serve on the Advisory Council.

Answer: The legislation establishing the Advisory Council does not authorize the officials charged with appointing the Council’s membership to name alternate members. Nor may the members themselves delegate their role on the Advisory Council to someone else.

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July 2, 2009

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STATE ETHICS COMMISSION

LIQUOR CONTROL BOARDS – WHETHER LIQUOR CONTROL BOARDS ARE SUBJECT TO STATE OR COUNTY ETHICS LAWS

Liquor control boards are government agencies authorized to perform certain liquor wholesaling functions and to operate liquor dispensaries. The State Ethics Commission has always treated these boards as units of county government, as it has treated boards of zoning appeals and boards of liquor license commissioners.

Question 1: Are the liquor control boards in Garrett, Harford, Somerset, Wicomico, and Worcester counties units of State, or local, government for purposes of the Public Ethics Law?

Answer: The liquor control boards in Somerset, Wicomico, and Worcester counties (the only three that actually operate liquor dispensaries) function as State entities for purposes of the Public Ethics Law and therefore their members and employees should be governed by State ethics requirements.

A 1999 law specifies that the members and employees of the Harford County Liquor Control Board are subject to certain State ethics requirements.

In Garrett County, appointees to the liquor control board serve *ex officio* as its board of license commissioners. However, the board does not currently perform any of the functions of a liquor control board and has not done so for more than

twenty years. Therefore, the Garrett County board should be treated as a board of license commissioners, subject to the local ethics rules.

Question 2: If liquor control boards are subject to State ethics requirements, what are the implications for the zoning appeals and boards of liquor license commissioners?

Answer: None. Zoning appeals and liquor licensing boards remain subject to local ethics codes.

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August 27, 2009

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ADVICE LETTERS

COURT RECORDS – ELECTRONIC ACCESS

Question: A website maintained by the Maryland Judiciary Case Search: <http://casesearch.courts.state.md.us/inquiry/inquiry-index.jsp> allows electronic access to court records, including records from traffic cases which show, in addition to information giving rise to the traffic ticket that was issued, personal information as contained on a person’s driver’s license. Does Maryland law authorize the release of this information?

Answer: The release of this kind of personal information is authorized under State law because it is a court record, subject to the Maryland Rules governing the inspection of court records. Although the Maryland Public Information Act, Annotated Code of Maryland, State Government Article, §10-616(p) prohibits the release of “personal information” in Motor Vehicle Administration records, SG §10-616(a) qualifies that prohibition if the release of information is “otherwise provided by law.” Under Maryland Rule Title 16, Chapter 1000, there is an express recognition of the common law rule that court records “are presumed to be open to the public for inspection.” The court records access rules, thus supersede the prohibition in the Public Information Act.

Letter to
Senator Donald F. Munson
August 7, 2009

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MEDICAL RECORDS – CONFIDENTIALITY

Question 1: Do Maryland medical confidentiality laws apply to complementary and alternative medicine (“CAM”) providers who are not licensed, certified, or registered as health care providers in Maryland?

Answer: CAM providers do not currently fall within the definition of health care provider under the Maryland confidentiality provisions, but may be covered if they act as the agent or employee of a health care provider, or receive confidential information from a health care provider.

Question 2: If CAM providers were to be exempted from State licensing requirements, refrained from certain medical acts and offered specified disclosures, would they be subject to State medical confidentiality laws?

Answer: Enactment of legislation that exempted CAM providers from licensure as physicians if they refrain from certain acts related to surgical procedures and other matters, and make certain disclosures describing the CAM provider’s education and training and clearly stating that the CAM provider is not a physician, would bring CAM providers within the definition of health care provider under Maryland law.

Question 3: Are CAM providers subject to the privacy provisions of the Health Insurance Portability and Accountability Act of 1996?

Answer: CAM providers are generally health care providers under HIPAA, and are subject to its provisions if they transmit any health information in electronic form in connection with covered transactions.

*Letter to
Delegate Brian J. Feldman
August 21, 2009*

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MUNICIPAL TRASH COLLECTION – REGULATION

Question: In connection with efforts to control scavenging of trash that is placed out for collection in the City of Frederick, is there any law governing trash collection services that regulates the ownership of trash?

Answer: While there is no State law that regulates the ownership of trash, State law authorizing counties and municipalities to provide trash collection services is sufficient to authorize counties and municipalities to enact ordinances governing the ownership of trash placed for

collection. Many jurisdictions, including the Frederick County and the City of Frederick, have enacted ordinances restricting scavenging as part of their refuse collection programs. Under State law which governs the application of county ordinances in municipalities, the Frederick County scavenging law probably does not apply in the City of Frederick.

*Letter to
Senator David R. Brinkley
August 26, 2009*

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SPEED CAMERAS – REFERENDUM

Question: Chapter 500, Laws of Maryland 2009 authorizes the use of speed cameras in certain situations. May this authorization be petitioned to referendum in Cecil County?

Answer: In the absence of a Public Local Law to the contrary for a specific county, in no jurisdiction in Maryland can local action authorizing school zone speed cameras be subject to referendum.

*Letter to
Delegate Michael D. Smigiel, Sr.
July 9, 2009*

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The Opinions, Advice and Legislative Quarterly News summarizes formal opinions of the Attorney General. Also included are letters of advice by Assistant Attorneys General that have been issued on the understanding that they may be made public. (Other advice provided by the OAG may be confidential under the attorney-client privilege.)

Copies of opinions may be obtained from the Attorney General’s website at www.oag.state.md.us/opinions/index.htm. There is a direct link to each advice letter at the end of its description in the electronic version of this newsletter.

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