

Opinions, Advice, and Legislation Quarterly News

Office of the
Maryland Attorney General



October – December 2009

OPINIONS

EDUCATION

PUBLIC SCHOOLS – COUNTIES – MAINTENANCE OF EFFORT REQUIREMENT

County governments in Montgomery and Prince George's counties requested that the State Board of Education ("State Board") grant a partial waiver of the Maintenance of Effort ("MOE") requirement for Fiscal Year 2010, as permitted by the State education law. The State Board denied the requests. Both counties then enacted budgets that included the full amount of MOE funding for their school systems, but also directed the school system to make payments through the county for debt service on school facilities – payments that in previous fiscal years had been made from the county budget rather than the school system budget.

In Wicomico County, the County Council did not require that the local school board use budgeted MOE funds to pay debt service. Rather, the Council directed the local board to use money from its school construction fund to defray part of the debt service cost. That fund, accumulated from prior years' surpluses, had not been included in the MOE computation for Fiscal Year 2010.

Question 1: Were the methods used by Montgomery and Prince George's counties to satisfy the MOE requirement permissible under the State's education law?

Answer: No. The budget restriction imposed by Montgomery and Prince George's counties is not a permissible means of satisfying a county's MOE obligation. The MOE law states that shifting appropriations between a county budget and the school budget "may not be used to artificially satisfy" the MOE requirement. The shifting of debt service to the school board budget for the first time for Fiscal Year 2010 and its payment from MOE funds artificially satisfies the MOE requirement, unless a corresponding

adjustment is made to the prior year's budget in computing the MOE target amount.

Question 2: Was the method used by Wicomico County to satisfy its MOE requirement permissible under State law?

Answer: Yes. Wicomico County did not re-direct school dollars to pay for an item previously paid for through the County budget. Instead, debt service was paid in part by surplus funds not already included in the MOE calculation. The use, at the suggestion of the local board, of surplus funds from the school construction fund for debt service appears consistent with the State education law and the purpose of that fund.

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November 4, 2009

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ADVICE LETTERS

COLLECTIVE BARGAINING

COUNTY LIBRARIANS

Question: May the General Assembly pass legislation granting collective bargaining rights to county librarians and staff?

Answer: The General Assembly has enacted laws which, among other things, authorize counties to create public libraries, establish boards of trustees and outline the powers and duties of such boards. The General Assembly may enact legislation granting county public librarians and staff collective bargaining rights.

Letter to
Delegate Tom Hucker
John P. McDonough, Esquire
October 28, 2009 & November 18, 2009

SHERIFFS – PERSONNEL – COMMISSIONER COUNTIES

Below are several questions concerning citizen initiatives and collective bargaining for the Cecil County Deputy Sheriffs.

Question 1: May the Board of County Commissioners place a question concerning collective bargaining on the ballot for the November 2010 elections as a citizen initiative question?

Answer: Unlike the constitutions of certain other states, the Maryland Constitution does not provide for citizen initiatives to place questions on the State election ballot in a commission county like Cecil County. No statute authorizes citizen initiatives in Cecil County. Accordingly, under current law the Board of County Commissioners has no authority to place a question on the ballot as a citizen initiative.

Question 2: May the General Assembly authorize the placement of a question concerning collective bargaining in the County on the November 2010 ballot as a citizen initiative question?

Answer: The General Assembly could enact a statute to authorize the placement of a citizen initiative question on the ballot in Cecil County. Alternatively, it could itself authorize by statute a referendum on the particular question. Although the question could appear on the ballot under either type of law, there is a difference in the process. An initiative process allows citizens to propose laws and to enact or reject them at the polls; the referendum allows voters to petition an enactment of a legislative body to a vote of the people. The distinction between the two processes is that the initiative circumvents any action by the legislative body whereas a referendum requires that the legislative body enact a law as a prerequisite to a vote. In either case, the process must first be authorized by the General Assembly.

Question 3: May the General Assembly require the Board of County Commissioners to delegate its power to set compensation for Deputy Sheriffs to an arbitrator?

Answer: The General Assembly may provide for collective bargaining for deputy sheriffs in Cecil County by amending Annotated Code of Maryland, Courts & Judicial Proceedings (“CJ”), §2-309(i), a provision solely applicable to Cecil County. In fact, the General Assembly has provided for collective bargaining for deputy sheriffs in several counties by statute. In such legislation, the General Assembly could include binding and non-binding arbitration.

As an alternative to enacting such a bill that directly authorizes collective bargaining, the General Assembly could pass a law empowering the County Commissioners to pass an ordinance providing for collective bargaining.

*Letter to
Brian Lockhart
President, Cecil County Commissioners
December 21, 2009*

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GAMING – BINGO – SLOT MACHINES

Below is a series of questions relating to the legality of certain machines that purport to assist in the conduct of bingo. There are two sets of qualifications that these machines must meet in order to be legal. First, the proposed machines must relate to “bingo,” and second, the machines must fit within the exception to the new definition of slot machines found at Criminal Law Article (“CR”) §12-301(3)(iv).

Question 1: Is it permissible for a device to display, in addition to bingo cards, such things as spinning reels, poker cards, or other symbols?

Answer: Yes.

Question 2: Since the statute requires that players “mark and monitor” their electronic card, is it permissible for the ball draw to occur in its entirety prior to the player’s purchase of the card or must it occur after the purchase of the card, thus allowing the player to “mark and monitor” his cards as the balls are drawn?

Answer: The definition of bingo contemplates a “live call,” *i.e.*, each number is called as it is drawn and players have an opportunity to mark the number and monitor the progress of their card or cards before the next number is drawn.

Question 3: Since the statute requires that players “mark and monitor” their electronic cards, is it permissible for the device to apply the entire ball draw at one time to the player’s card and mark all spaces hit upon simply one touch of the device?

Answer: No.

Question 4: Since the statute banned all “instant bingo” machines except a vending machine type of device delivering a paper ticket that must be manually opened, may an electronic bingo device be permitted nonetheless as a game of instant bingo?

Answer: No.

Question 5: May a location in the State, commercial or nonprofit, offer games under the exception allowed for facsimiles of bingo cards that are conducted by players via slot machine style cabinets that display reels, cards, or symbols along with a bingo card and thus offer an unlimited number of such machines?

Answer: It depends upon the jurisdiction. While State law places no limit on the number of machines that may be located in a single place under CR §12-301(3)(iv), some local jurisdictions have regulatory authority that would permit them to impose such limits. *See, e.g.,* CR §§13-606(h) (Baltimore County); 13-703(c) and 13-709 (Calvert County); 13-1103 (Charles County); 13-1809 (Montgomery County); and 13-2608 (Worcester County).

Question 6: If the Office of the Attorney General determines that a device is an illegal slot machine can the State Police seize such a machine?

Answer: Slot machines are contraband that are subject to summary seizure. Prior advice from the Attorney General's Office is not a prerequisite to seizure.

*Letter to
Senator Thomas V. "Mike" Miller
November 16, 2009*

MUNICIPALITIES – REFERENDUM

Proponents of an unsuccessful attempt to petition a town ordinance to referendum questioned the constitutionality of the town charter concerning referendum petitions. The municipal charter for the town provides alternative means for petitioning town ordinances to referendum. One method of petition requires signatures of a percentage of those "who voted at the last general election." Another requires a percentage of signatures of all "qualified voters." The proponents had elected to use the alternative involving voters at the last election.

Question: Does the town charter provision granting a right to petition based on signatures of persons who voted at the last general election violate the Maryland Constitution?

Answer: No. Because the town charter also grants a right to petition based on signatures of all qualified voters, the existence of an alternative

mechanism based on signatures of actual voters does not violate the Maryland Constitution.

*Letter to
Delegate Justin D. Ross
October 7, 2009*

SALE TAX – SCHOOL SALES

Question: Are sales of items by schools subject to the State sales and use tax?

Answer: While the sales and use tax generally applies to sales of tangible personal property and certain specific services, application of the tax depends on the kinds of items sold and purpose of the sale.

Student concerts/play productions and school sporting events: Since these events fit within a relevant definition, a school should not collect sales tax on admission to those events. If the school sells food at these events, food (but not sodas and candy) is tax exempt. If a non-profit sells the food at the event, however, it is all subject to sales tax.

School based student bookstore: Sales tax is charged against "school spirit" items (such as sweatshirts, T-shirts) even if sales are made for fundraising purposes. As to snacks, it depends on what items are offered for sale.

Fundraising proceeds obtained by a student organization: Depending on the items sold in the fundraiser, the purchaser may be liable for a sales tax. However, two types of fundraisers are tax exempt: (1) sale of magazine subscriptions – if proceeds used solely for educational benefit of the school; (2) because sale of food by a school is tax exempt, the school need not collect sales tax for fundraisers like sale of "pizza kits." A fundraiser based on the sale of other items of personal property, however, is likely subject to sales tax.

*Letter to
Delegate Michael D. Smigiel, Sr.
December 28, 2009*

**STATE AGENCY –
INFORMATION SHARING – JUVENILES**

Question: What is State law with regard to sharing of information among schools, police, the Department of Juvenile Services, and the Department of Education concerning gang affiliations and violence?

Answer: There are a variety of statutes and regulations that bear on sharing such information, including specific provisions permitting the sharing of information with school districts concerning students who have committed certain offenses, as well as statutes which permit information-sharing between agencies where conducive to the function of the agency.

*Letter to
Delegate Anne R. Kaiser
October 14, 2009*

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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