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April 22, 2008

The Honorable Martin J. O'Malley
Governor of Maryland
State House
Annapolis, Maryland 21401-1991

RE: *Senate Bills 131*

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 131, "Municipal Corporations - Hotel Rental Tax." We have considered whether the bill would violate the Municipal Home Rule requirement of the Maryland Constitution, and while the matter is not free from doubt, we cannot say that it is clearly unconstitutional.

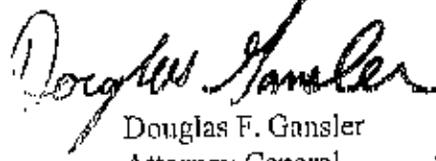
SB 131 authorizes a municipal corporation to impose a hotel rental tax of up to 2%. The tax may not be imposed by a municipality that has a hotel rental tax sharing arrangement with the county in which the municipality is located, is located in a county that does not impose a hotel rental tax, or is located in a county that distributes at least 50% of its hotel rental tax revenue to promote tourism within the county. Further, a municipality may not impose a hotel rental tax on a hotel that has 10 or fewer sleeping rooms.

Maryland Constitution Article XI-E, § 1 provides that the General Assembly "may not pass any law relating to the incorporation, organization, government, or affairs" of municipal corporations other than Baltimore City, "which will be special or local in its terms or in its effect, but the General Assembly shall act in relation to the incorporation, organization, government or affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply to all municipal corporations. ..." Article XI-E, § 5 further provides that a municipal corporation may not levy any tax, license fee, franchise tax or fee "unless it shall receive the express authorization of the General Assembly for such purpose, by a general law which in its terms and its effects applies alike to all municipal corporations. ..." These provisions indicate that legislation authorizing the imposition of a hotel rental tax would ordinarily be required to apply to all municipalities. On the same issue as is presented by SB 131 this office previously advised that "[i]t is at least arguable that the fact that the proposed amendment would affect some municipal corporations differently than others does not mean that it does not apply alike to all municipal corporations." See Letter to the Honorable Patrick J. Hogan from Assistant Attorney General

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Kathryn M. Rowe. dated March 5, 2007. Further, as there are no cases interpreting Article XI-E, it is difficult to predict with any certainty the standards that a court would apply. Thus, while SB 131 raises a Municipal Home Rule issue, we continue to believe that such a statute is not clearly unconstitutional and may be signed into law.

Very truly yours,

A handwritten signature in black ink that reads "Douglas F. Gansler". The signature is written in a cursive, flowing style.

Douglas F. Gansler
Attorney General

DFG/BK/kk

cc: The Honorable Nancy J. King
The Honorable Craig L. Rice
The Honorable Dennis C. Schnepfe
Joseph Bryce
Karl Aro