

DOUGLAS F. GANBLER
ATTORNEY GENERAL

KATHERINE WINDREP
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



DAN FRIEDMAN
Counsel to the General Assembly

SANDRA BENSON BRANTLEY
BONNIE A. KIRKLAND
KATHRYN M. ROWE
Assistant Attorneys General

THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 14, 2008

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

Re: Senate Bill 675

Dear Governor O'Malley:

We have reviewed and hereby approve Senate Bill 675 for constitutionality and legal sufficiency. The legislation creates County Commissioner Districts in Carroll County and establishes eligibility criteria for individuals serving as County Commissioners of Carroll County. Because the bill is silent as to how and when the commissioners will be elected, we write to address those questions.

Carroll County has historically had a commissioner form of government with three county commissioners elected at-large. *Getty v. Carroll County Bd. of Com'rs*, 399 Md. 710, 715-19 (2007). In 2003, legislation mandating the expansion of the Carroll County Board of Commissioners from three members to five and establishing a process for the creation of five commissioner districts was adopted and signed by the Governor as Chapter 417, 2003 Laws of Maryland. *Id.* at 715. In 2004, the Act was approved by the Carroll County voters and, pursuant thereto, a Commission Redistricting Committee was established. *Id.* The committee recommended a redistricting plan to the county delegation to the General Assembly, but the delegation proposed a different plan, which was not enacted into law during the 2006 session. *Id.* at 716-18. After the county board of elections decided that the commissioners would be elected at-large in the 2006 elections, a voter sued to compel the election of county commissioners by district. *Id.* at 719. The board of elections and the plaintiff voter entered into a consent agreement providing for the election of the commissioners by district. *Id.* at 720. The Court of Appeals then struck down the consent decree and ordered that the November 2006 election proceed with the election of three at-large county commissioners. *Id.* at 723, 738-45.

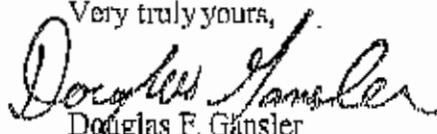
While Senate Bill 675 makes clear that the five commissioners will represent five districts, it does not specify whether the voters of each district elect their own commissioner or if they are to be elected county-wide by the voters at-large. In the absence of specific direction, we rely on other evidence to conclude that the General Assembly intended to require the election of commissioners

The Honorable Martin J. O'Malley
April 14, 2008
Page 2

by district. As noted, Chapter 417, Laws of 2003 intended to require the election of commissioner in each of five districts. Moreover, that Senate Bill 675 requires the drawing of districts "of substantially equal population" suggests that the General Assembly intended that commissioners be elected by commissioner district. The districts created by Senate Bill 675 are of substantially equal population. The maximum deviation is 4.8%, which is well within constitutional limitations. See *Marylanders for Fair Representation v. Schaefer*, 849 F. Supp. 1022, 1032 (D. Md. 1994).

We also conclude that these commissioners are to be elected in elections beginning in November 2010. Although Senate Bill 675 was enacted as an emergency measure, Article XVII, §1 of the Maryland Constitution requires that the election for county offices be held only in every fourth year, which is the year that the gubernatorial elections are to be held. See Article XVII, §2. Moreover, although nominations for public office are generally made by primary, see Election Law Article Title 5, Subtitle 7, Senate Bill 675 was enacted after the February 12, 2008 primary was conducted, or too late for the nomination of candidates for the November 2008 elections.

For these reasons, we hereby approve the constitutionality and legal sufficiency of Senate Bill 675.

Very truly yours,

Douglas F. Gansler
Attorney General

DFG/DF/kk

cc: The Honorable David R. Brinkley
The Honorable Allan H. Kittleman
The Honorable Dennis C. Schnepfe
Joseph Bryce
Mark J. Davis, Assistant Attorney General
Karl Aro