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April 22, 2009  
Corrected Copy

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

***Re: House Bill 1141, "Maryland-National Capital Park and Planning Commission – Montgomery County Municipal Corporations – Authority to Regulate Commercial Signs"***

Dear Governor O'Malley:

We hereby approve House Bill 1141 for constitutionality and legal sufficiency. This bill allows municipal corporations in Montgomery County to enact additional or stricter commercial sign regulation than is imposed by the State, the Maryland-National Capital Park and Planning Commission ("MNCPPC"), or Montgomery County.

HB 1141, if approved, will apply only to municipal corporations located in Montgomery County. The Maryland Constitution requires that the General Assembly "classify all ... municipal corporations by grouping them into not more than four classes *based on population.*" MD. CONST., Art. XI-E, §2 (emphasis added). Moreover, once the municipalities are placed in their classes, the General Assembly is only allowed to "act in relation to the ... affairs of any such municipal corporation only by general laws which shall in their terms and in their effect apply alike to all municipal corporations in one or more of the classes." MD. CONST., Art. XI-E, §1. The legislature has chosen to group all municipal corporations into a single classification. MD. ANN. CODE, Art. 23A, §10. Thus, at first blush, HB 1141, by treating municipal corporations in Montgomery County

differently from other municipal corporations in the State, appears to violate the constitutional prohibition on classification on any basis except population. HB 1141 also appears to violate the statutory determination to classify all municipal corporations into a single group.

It is our view, however, that HB 1141 has the effect of increasing, not diminishing, uniformity among municipal corporations. Article 23A, §2 of the Maryland Code provides the general express powers that, absent modification, belong to every municipal corporation in the State, including those in Montgomery County. Amongst those general powers is the power “[t]o make reasonable regulations concerning buildings and signs to be erected within the limits of the municipality...” MD. CODE, Art. 23A, §2(b)(5). This particular municipal power granted by Article 23A, is, however, partially withdrawn by the more specific rules governing the MNCPPC. Within Montgomery and Prince George’s counties, no municipality is permitted zoning authority. Instead, that authority is “vested exclusively in and may be exercised within their discretion only by the County Council of Montgomery County or the County Council of Prince George’s County, each acting respectively as a district council.” MD. ANN. CODE, Art. 28, §8-112(a).<sup>1</sup> Finally, there is an exception even to this exception that permits municipalities in Montgomery County to impose “additional or stricter building requirements” than imposed by the Montgomery County Council on, amongst other things, signs located “on land zoned for single-family residential use.” MD. CODE, Art. 28, §8-115.1(a), (b)(2)(ii). Thus, under current law, while a municipal corporation in Montgomery County may regulate residential signs, it is only the County Council of Montgomery County, sitting as a district council, that may currently regulate signs in commercial districts.

HB 1141 grants municipalities in Montgomery County the power to regulate commercial signs to the same extent that they currently may regulate residential signs. More importantly for this analysis, HB 1141 increases uniformity among municipal corporations by granting municipal corporations in

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<sup>1</sup> The constitutionality of MD. ANN. CODE, Art. 28, §8-112(a) is beyond the scope of this letter.

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Montgomery County the power to regulate signs in the same way that other municipal corporations outside the jurisdiction of the MNCPPC do. It is for this reason that we approve the bill for constitutionality and legal sufficiency.

Very truly yours,

  
Douglas F. Gansler  
Attorney General

DFG/DF/mlb

cc: The Honorable Alfred C. Carr, Jr.  
The Honorable John P. McDonough  
Joseph Bryce  
Karl Aro