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April 21, 2009

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

Re: Senate Bill 330, "Dorchester County – Board of Education – Benefits"

Dear Governor O'Malley:

We hereby approve Senate Bill 330 for constitutionality and legal sufficiency. We write separately, however, to caution that it must be carefully applied so as not to violate the prohibition against in-term compensation increases found in Article III, §35 of the Maryland Constitution.

Senate Bill 330 permits, but does not require, the Dorchester County Council to provide health insurance and other fringe benefits to the voting members of the Dorchester County Board of Education. The bill does not specify, and thus leaves open indefinitely, the period during which the county council is to make the decision to provide these benefits. Finally, §2 of the bill provides that it is to "be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any member of the Dorchester County Board of Education elected before November 2010."

It seems clear that this final provision was intended to prevent the county council from violating Article III, §35 of the Maryland Constitution, which, in pertinent part, provides: that "the salary or compensation of any public official [may not] be increased or diminished during his [or her] term of office except those whose full term of office is fixed by law in excess of 4 years."¹ The

¹ Because the term of the members of the Dorchester County Board of Education is 4 years, MD. EDUC. ANN. CODE, §3-5A-01(d), the constitutional provision applies.

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application of SB 330 will be constitutional if the county council decides during the current term of office of the members of the Board of Education to make the provision of health care benefits effective during the next term of office. Because, as was discussed above, SB 330 does not require the county council to decide whether to provide health benefits during the current term of office, however, that decision could instead be made during the next or any subsequent term of office. If the decision is thus postponed, §2 of the bill will be ineffective to prevent a violation of Article III, §35.² Of course, this does not render the bill itself unconstitutional, but rather suggests that future county councils will need to be mindful of these issues.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/DF/mlb

cc: The Honorable Richard F. Colburn
The Honorable John P. McDonough
Joseph Bryce
Karl Aro

² Other bills passed this session used a different formulation that makes clear that the bill's application is forever limited by Article III, §35 of the Constitution. *See, e.g.*, HB 1326, §2 ("That, pursuant to Article III, §35 of the Maryland Constitution, this Act may not be construed to extend or apply to the salary or compensation of the State's Attorney for Frederick County in office on the effective date of this Act, but the provisions of this Act concerning the salary or compensation of the State's Attorney for Frederick County shall take effect at the beginning of the next following term of office").