

DOUGLAS F. GANSLER  
ATTORNEY GENERAL

KATHERINE WINFREE  
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 29, 2009

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

**Re: House Bill 42 and Senate Bill 335**

Dear Governor O'Malley:

We have reviewed House Bill 42 and Senate Bill 335, which are identical. These bills authorize Dorchester County, Talbot County, and the municipalities in either county to create a property tax credit for the real property owned by Habitat for Humanity of Talbot and Dorchester Counties, Inc. while the property is being renovated for purposes of transfer to a private owner. Because the bills apply to one entity, we have considered whether they are special laws, and therefore, unconstitutional under Article III, § 3 of the Maryland Constitution. It is our view that they are not. Therefore, we hereby approve the constitutionality and legal sufficiency of both House Bill 42 and Senate Bill 335.

Any review must start with the premise that statutes are presumed constitutional unless the repugnancy is clear. *University of Maryland Medical System Corp. v. Malory*, 143 Md. App. 327, 352 (2001). Article III, § 33 of the Maryland Constitution prohibits special legislation. The section provides, in relevant part, that "the General Assembly shall pass no special Law, for any case, for which provision has been made, by an existing General Law." A special law is one that relates to particular persons or things of a class, as distinguished from a general law, which applies to all persons or all things of a class. *Cities Service Co. v. Governor*, 290 Md. 553 (1981). In the *Cities Service* case, the Maryland Court of Appeals conducted a two-part inquiry to determine if the law was an impermissible special law. First, the Court asked whether invalidating the legislation will effectuate the historical purpose of preventing influential persons from gaining an undue advantage through the enactment of private acts. Second, the Court undertook a close analysis of the bill and its legislative history, including the bill's actual purpose; whether the beneficiaries are identified by name; whether the beneficiaries sought and persuaded the legislature to pass the bill; whether the public need and the public good are

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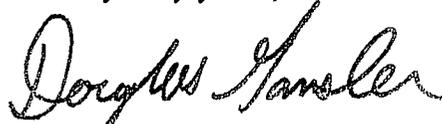
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served by the bill; and whether the classifications contained in the bill are reasonable or arbitrary. *Cities Service Co.*, 290 Md. at 568-70. The Court noted that of these factors, "no one is conclusive in all cases." *Id.* at 570. The Attorney General has previously observed that, of these factors, it is within the unique province of the General Assembly to determine whether the public need and the public good are served by the bill. 66 Op. Att'y Gen. 207, 209 (1981).

We believe that House Bill 42 and Senate Bill 335 do not violate Article III, § 33 of the Maryland Constitution. The mission of Habitat for Humanity is to acquire rundown property, renovate it to a functional home, and then transfer the property to a private party who would not otherwise be able to buy the house. These bills only authorize a credit for these rundown properties while owned by Habitat for Humanity and being renovated. Once the work is completed, the real property will have a higher market value and tax potential. Consequently, these bills establish a law that uniquely addresses the housing needs of low income individuals by converting rundown property to functioning housing.

In accordance with the foregoing, we hereby approve the constitutionality and legal sufficiency of both House Bill 42 and Senate Bill 335.

Very truly yours,



Douglas F. Gansler  
Attorney General

DFG/SBB/kk

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