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April 27, 2010

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

RE: House Bill 566

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency House Bill 566, "Prince George's County – Community Association Property Management Services – Registration." In reviewing the bill, we have considered whether the bill violates charter home rule. While the bill appears to legislate on a matter on which Prince George's County could legislate under the Express Powers Act, we conclude that it is not clearly unconstitutional and thus may be signed into law.

House Bill 566 requires the Prince George's County Office of Community Relations (OCR) to establish a "Community Association Managers Registry" on or after January 1, 2011. Any entity, including a sole proprietorship, that provides community association management services for an association in the county must register and renew by January 31 of each year and pay an annual fee of \$100. A person who willfully violates, or causes another person to willfully violate, the bill's provisions is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$1,000.

Article XI-A, § 4 of the Maryland Constitution prohibits the General Assembly from enacting a local law for a single charter county on any subject covered by the Express Powers Act. It appears that this bill legislates on a matter about which Prince George's County could legislate pursuant to the Express Powers Act, namely, the police power granted to each charter county in Article 25A, § 5(S). Thus, the ability of the General Assembly to pass this legislation is certainly questionable in light of Article XI-A, § 4.

However, even though the bill addresses a matter governed by the Express Powers Act, given the scope of regulation, it might be argued that, had the County enacted the same

The Honorable Martin O'Malley
April 27, 2010
Page 2

provisions, they would not qualify as a "local law." The Court of Appeals has held that "because of its significant extraterritorial impact, [a Montgomery County ordinance was] not a 'local law' and that the Montgomery County Council exceeded the authority delegated to charter home rule counties in enacting the ordinance." *Holiday Universal, Inc. v. Montgomery County*, 377 Md. 305 (2003).

To be sure, a "community association" as that term is defined in HB 566 would need to be located in Prince George's County. But the provider of many of the "community association management" services¹ triggering registration could be outside the county (e.g., the collector of monthly assessments). Additionally, the contract may not have been signed in the county, and the service provider may never need to enter the county to carry out its obligations under the contract. If, because of this extraterritorial effect, the county could not have enacted the legislation because it goes beyond what might qualify as a "local law," there would not appear to be a prohibition on the General Assembly enacting it for a single county. Given the uncertainty of whether the bill would constitute a "local law" under *Holiday Universal*, the bill is not clearly unconstitutional and may be signed into law.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/BAK/kk

cc: The Honorable Melony G. Griffith
The Honorable Michael Vaughn
The Honorable John P. McDonough
Joseph Bryce
Karl Aro

¹ These include collecting monthly assessments; preparing budgets, financial statements, or other financial reports; negotiating contracts; executing the resolutions and decisions of a community association; managing the operation and management of community-owned properties; and arranging, conducting, or coordinating meetings of a community association or its governing body. See HB 566, page 2, line 15 through page 3, line 6.