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April 28, 2010

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

RE: House Bill 571

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency, House Bill 571, "Prince George's County - Alcoholic Beverages Licenses - Waterfront Entertainment Retail Complex." While we approve the bill, we write to point out certain interpretive issues that are raised by the bill.

House Bill 571 authorizes the Board of License Commissioners in Prince George's County to issue two different types of Class D beer and wine licenses in a waterfront entertainment retail complex as defined by the County zoning ordinance. First, the Board may issue a special Class D license that may be issued for an establishment in a waterfront entertainment retail complex permitting the sale of wine and beer from 9 a.m. to 2 p.m., seven days a week. Second, the Board may issue a Class D beer and wine license for an event held in a waterfront entertainment retail complex. This license is a temporary license and may not be issued for longer than seven consecutive days.

Although the special Class D license allows only the sale of wine and beer, it has been codified in Article 2B, § 6-401, which relates to Class D beer, wine, and alcohol licenses. The provision would more logically have been codified in § 5-401, which relates to Class D beer and light wine licenses. The miscodification does not, however, affect the meaning of the provision. Perhaps, it could be moved to the appropriate section in the annual corrective bill.

An additional issue is that the bill does not state whether the special Class D license is subject to the limitations on the number of licenses to be issued in the County

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that appears in Article 2B, § 9-217. Currently, that provision permits the issuance of 55 Class D beer and light wine licenses. This provision is clearly separate from the existing authorization for Class D beer and light wine licenses under § 5-401. It has a higher permit fee than that imposed by § 5-401(q) and the hours are different than those set for Class D beer and wine licensees under § 11-301(d)(5). As a result, it seems likely that this provision was intended to permit the issuance of licenses without regard to the limits currently set in § 9-217. It might be advisable, however, to clarify this during the next legislative session.

At page 2, lines 14-15, the bill provides that a special Class D licensee may sell beer and wine "on and off the premises." It is common that a retail licensee is given authority to sell alcoholic beverages *for consumption* on and off the premises. (Emphasis added). See page 3, lines 3-5, with respect to temporary event licenses. It is virtually unprecedented, however, that a retail licensee would be authorized to sell alcoholic beverages from outside the licensed premises. As a result, it seems possible that this is a drafting error and should be clarified next session.

Finally, page 2, lines 28-30 of the bill states that the Board may issue an event license to "an individual or entity" that holds an event. Licenses are not issued to entities, however, but only to individuals authorized to act for entities. Article 2B, § 9-101(a). In our view, the Board should restrict itself to only issuing this license to individuals until this language can be clarified or corrected.

Very truly yours,



Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Melony G. Griffith
The Honorable John P. McDonough
Joseph Bryce
Karl Aro
Edmond B. O'Connell, Esquire