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May 7, 2010

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

**RE: Senate Bill 828**

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 828, "Special Taxing Districts – Transportation Improvements – Exemption from County Tax Limitations." We write to address a title issue and an interpretive issue on the bill.

Senate Bill 828 exempts certain financing costs for transportation improvements from a county tax limitation that would otherwise apply to ad valorem or special taxes imposed within a special taxing district. The bill also authorizes a county government to enact a law to provide for the issuance of bonds to finance the costs of transportation improvements for which the principal, interest, and any premium shall be paid from and secured by special taxes collected by the county in a special taxing district.

Certain provisions in the body of the bill concerning bonds are not explicitly addressed in the bill's title, including the exemption from Art. 31, § 11 (procedural requirements and term limitations) and the tax-exempt status of the bonds. This could have been easily remedied had the "generally relating to" clause been amended to include a reference to bonds; nonetheless, in light of the other purpose paragraph clauses relating to bonds (page 1, lines 6-9), it is our view the title is not constitutionally deficient.

While SB 828 contains express authority for a county to provide for the issuance of bonds for transportation improvements (new § 9-1303), the bill does not include express authority for the creation of a special taxing district or for the levy of special taxes. The existing authority granted to counties to create special districts varies. *See, e.g.,* Art. 24 § 9-1301; Art. 25A § 5(O); Art. 25B § 13. Furthermore, although all

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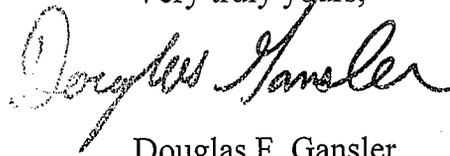
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counties currently have the authority to impose a general ad valorem tax (Tax-Property Article, § 6-202), the General Assembly has granted general taxing authority (subject to specific exemptions) only to two counties and to Baltimore City.<sup>1</sup> An individual county's authority to impose any form of special tax would need to be premised either on a general grant of taxing authority or on a statute expressly authorizing the imposition of a special tax. Maryland Declaration of Rights, Article 14.

The authority to issue bonds under SB 828 is similar to that granted to twelve counties under Art. 24, § 9-1301.<sup>2</sup> Unlike SB 828, however, § 9-1301 expressly grants to those twelve counties the authority to establish special taxing districts and to levy ad valorem or special taxes for the purposes established under that section. SB 828 does not include compatible authority, so a county would need to rely on an alternative source of authority such as Art. 24 § 9-1301 or other authorization to establish special taxing districts and to levy special taxes in order to support the debt issued under the bonding authority of SB 828.

Very truly yours,



Douglas F. Gansler  
Attorney General

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

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<sup>1</sup> Baltimore City (Ch. 27 of 1951; Art. II § 40 of the Baltimore City Charter); Baltimore County (Ch. 765 of 1949; Baltimore County Code, § 33-1); and Montgomery County (Ch. 808 of 1963; Montgomery County Code § 52-17).

<sup>2</sup> However, the authority to issue bonds under SB 828 is not conditioned on the consent of a certain percentage of property owners.